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The Special Counsel

November 1, 2022

The Honorable Denis R. McDonough
Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Re: OSC File No. DI-23-000003
Request for Investigation—5 U.S.C. § 1213(c)

Dear Secretary McDonough:

I am referring to you for investigation a whistleblower disclosure alleging employees at the Department of Veterans Affairs (VA), VA Detroit Healthcare System, John D. Dingell VA Medical Center (Detroit VAMC), Detroit, Michigan, engaged in violations of law, rule, or regulation and an abuse of authority. A report of your investigation on these allegations and any related matters is due to the Office of Special Counsel (OSC) on January 9, 2023.

[REDACTED], Advanced Medical Support Assistant, who consented to the release of her name, disclosed that [REDACTED], Reasonable Accommodations Coordinator, Veterans Integrated Services Network 10 Human Resources, requested money in exchange for processing, advocating for, and providing a favorable outcome on [REDACTED] reasonable accommodation and reassignment requests in violation of the Standards of Ethical Conduct for Employees of the Executive Branch¹ and other federal laws, including criminal laws.² The allegations to be investigated include:

- [REDACTED] requested \$400 from [REDACTED], of which she accepted \$200, in exchange for the performance of her official duties in violation of 5 C.F.R. § 2635.302(b) and (c); 5 C.F.R. § 2635.702(a); and 5 U.S.C. § 7353; and
- Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegation.

[REDACTED] contacted [REDACTED] to assist her with requests for a reasonable accommodation and reassignment. During this time, [REDACTED] and [REDACTED] also spoke about [REDACTED] requests on their personal cell phones. [REDACTED] stated that she and [REDACTED] did not have a relationship prior to [REDACTED] contacting Human Resources for

¹ 5 C.F.R. Part 2635, as amended at 81 F.R. 81641 (effective Jan. 1, 2017).

² See 18 U.S.C. § 201(c).

assistance. On January 23, 2022, [REDACTED] told [REDACTED] that the Internal Revenue Service levied her property, namely by garnishing her wages and seizing her bank account. [REDACTED], via personal telephone conversation, told [REDACTED] that she would not be able to process [REDACTED] reasonable accommodation and reassignment requests because she lacked the monetary resources to travel to work and perform her official duties. [REDACTED] stated that [REDACTED] asked her for \$400. Based on this conversation, [REDACTED] believed that she had to pay [REDACTED] to process her requests. [REDACTED] told [REDACTED] that she could only provide \$200. On January 13, 2022, [REDACTED] sent [REDACTED] her Cash App³ account information and [REDACTED] paid her \$200. Following the \$200 payment, [REDACTED] gave [REDACTED] her personal e-mail address, and [REDACTED] sent [REDACTED] her resume. On April 4, 2022, again via personal cell phone text message, [REDACTED] told [REDACTED] that her requests had been sent to [REDACTED] supervisor, [REDACTED], Clinical Support Supervisor. On June 10, 2022, after repeated requests from [REDACTED], [REDACTED] sent [REDACTED] back the \$200 via Cash App. [REDACTED] can provide copies of the texts.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation and an abuse of authority. Please note that specific allegations and references to specific violations of law, rule, or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report, along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Pages/DOW.aspx>. If your investigators have questions regarding the statutory process or the report required under 5 U.S.C. § 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or cmcmullen@osc.gov.

Sincerely,



Henry J. Kerner
Special Counsel

Enclosure

cc: The Honorable Michael J. Missal, Inspector General

³Cash App is a financial services platform that enables its users to transfer money to one another instantly using a mobile phone application. See <https://cash.app>.

APPENDIX

AGENCY REPORTS UNDER 5 U.S.C. § 1213

GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/Pages/Resources-PublicFiles.aspx>. Please refer to our file number in any correspondence on this matter.

RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).