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OFFICE OF THE ASSISTANT SECRETARY
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18 JUL 2023

Mr. Henry Kerner
U.S. Office of Special Counsel
1730 M Street, N.W. Suite 300
Washington, D.C. 20036-4505

SUBJECT: Whistleblower Investigation-
Alleged violation of law, rule, or regulation at
Fort Irwin, California (Office of Special Counsel
File Number DI-23-000193)

Dear Mr. Kerner:

In accordance with Title 5, United States Code, Sections 1213(c) and (d), the enclosed summary and report is submitted in response to your referral of information requesting an investigation of allegations and a report of findings in the above referenced case.

The Secretary of the Army (SA) has delegated to me her authority, as Agency head, to review, sign, and submit to you the statutorily required report. The report has been constructed to eliminate references to privacy protected information. A separate table of exhibits and witnesses is also provided which identifies each person named in the report. We request that this table not be made available on your website, in your public library, or in any other forum in which it will be accessible to persons not expressly entitled to this privacy protected information.

The Department of the Army takes very seriously its responsibility to address, in a timely and thorough fashion, matters referred by OSC. In this case, the Army conducted a thorough and comprehensive investigation in response to the OSC's referral of the allegation submitted by the Whistleblower, [REDACTED], in which he asserted the Fort Irwin Chief of Police, [REDACTED], has engaged in conduct that violates Army regulations pertaining to the possession and use of privately owned firearms on Fort Irwin. He alleged that [REDACTED] used his privately owned firearms instead of a government-issued service weapon without authorization; failed to register his privately owned firearms with Fort Irwin pursuant to Army regulations; and used privately owned firearms at the Fort Irwin firing range without authorization and which are not in compliance with California law.

[REDACTED] was given the opportunity to provide additional evidence in support of his allegation and he provided additional background information when interviewed as well as documentary evidence (a photograph, video, and emails) supplementing his allegation to OSC. After interviewing 23 witnesses, to include [REDACTED] and [REDACTED] and reviewing documentary evidence, the investigating officer (IO) found the allegations against [REDACTED] are unsubstantiated. The IO found that while [REDACTED] did carry his privately owned firearm in an open carry configuration on Fort Irwin in violation of his authorization to carry his privately owned firearm pursuant to the Law Enforcement Officers Safety Act (LEOSA)(18 U.S.C. § 926B), [REDACTED] always properly secured his privately owned firearm within DES before drawing his government-issued service weapon for use while on duty. The IO found that [REDACTED] only used his government-issued service weapon while on duty. The IO also found that [REDACTED] took all actions required to properly register his privately owned firearms on Fort Irwin and that [REDACTED] did not use a privately owned firearm at an official Fort Irwin firing range without authorization. The IO further determined that all of [REDACTED] firearms comply with California law which regulates the possession of firearms with certain characteristics.

Although not an allegation made by [REDACTED] the IO did determine that [REDACTED] carried his privately owned firearm in an open carry configuration on Fort Irwin in violation of his authorization to carry his privately owned firearm when traveling between his home on Fort Irwin and DES before and after his duty day. [REDACTED] was authorized to carry his privately owned firearm only in a concealed carry configuration. [REDACTED] has been advised of this requirement and he, along with other law enforcement officers, will participate in refresher training on LEOSA certification and requirements annually.

I am satisfied that the IO's conclusions constitute an appropriate outcome in this matter. Accordingly, the Army has made no referral of alleged criminal violation to the Attorney General pursuant to Title 5 U.S.C., §1213(d)(5)(d). This report, with enclosures, is submitted in satisfaction of my responsibilities under Title 5 U.S.C. §§1213(c) and (d). Please direct any further questions you may have concerning this matter to [REDACTED], Office of The Judge Advocate General, at 571-256-2870.

Sincerely,



Agnes Gereben Schaefer

SUMMARY OF THE REPORT OF INVESTIGATION

I. INFORMATION INITIATING THE INVESTIGATION

By correspondence dated 6 February 2023, the Office of Special Counsel (OSC) forwarded to the Secretary of the Army allegations from a named whistleblower, a former Sergeant and Lead Police Officer for the Directorate of Emergency Services, at the National Training Center and Fort Irwin Army Installation in California, that an employee had engaged in conduct that may constitute a violation of law, rule, or regulation; gross mismanagement; an abuse of authority and a substantial and specific danger to public safety.

The whistleblower alleges that the Fort Irwin Chief of Police (Witness #1), has engaged in conduct that violates Army regulations and California State law. The allegations are:

(1) Witness #1 used his privately owned firearms in place of a government-issued service weapon without authorization.

(2) Witness #1 failed to register his privately owned firearms with Fort Irwin pursuant to Army regulations.

(3) Witness #1 uses privately owned firearms at the Fort Irwin firing range without authorization and are not in compliance with California law.

II. CONDUCT OF THE INVESTIGATION

On 6 February 2023 the Office of the Army General Counsel forwarded the OSC referral to the Commander, United States Army Garrison, National Training Center (NTC) and Fort Irwin (Fort Irwin Commander) for appropriate action, including the initiation of an investigation into the allegations pursuant to Army Regulation (AR) 15-6, Procedures for Investigating Officers and Boards of Officers, and the implementation of appropriate corrective actions as necessary.

On 15 February 2023, the Fort Irwin Commander appointed an investigating officer (IO) to conduct the AR 15-6 investigation and to prepare the draft Army report addressing the allegations made by the whistleblower to the OSC. The purpose of the investigation was to inquire into the allegations made to OSC and to make findings concerning whether any wrongdoing occurred, and if so, by whom, and whether adequate policies and procedures are in place to preclude any recurrence of any improprieties, irregularities, or misconduct. Including the whistleblower, the IO interviewed 23 people, including follow up questions as needed.

III. APPLICABLE RULES, REGULATIONS, AND POLICIES

1. Title 18 U.S.C. § 926B - Carrying of concealed firearms by qualified law enforcement officers (Law Enforcement Officer Safety Act (LEOSA)). Title 18 U.S.C. § 926B is implemented within the Army by Department of Defense Instruction (DoDI) Number 5525.12, Subject: Implementation of the Law Enforcement Officers Safety Act of 2004, as amended (LEOSA), September 23, 2022; and Army Directive 2021-13, Authorization for Law Enforcement Officers to Carry Privately Owned Firearms on Army Installations, 11 May 2021.
2. Army Directive 2021-13, Authorization for Law Enforcement Officers to Carry Privately Owned Firearms on Army Installations, 11 May 2021. Army Directive 2021-13 authorizes installation senior commanders to approve qualified, actively serving Army law enforcement professionals who possess a valid credential, pursuant to LEOSA, to carry a concealed, personally owned firearm (POF) (handgun only) while off duty, for personal protection, not in the performance of official duties on Army installations to which they are assigned within the United States and U.S. territories. The directive states, “qualified, actively serving, Army law enforcement professionals” are defined as Soldiers or Department of the Army Civilians authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution (or incarceration) of any person for any violation of law, who have statutory powers of arrest or apprehension under Title 10, U.S. Code, section 807(b) (Article 7(b) of the Uniform Code of Military Justice), regardless of the individual’s current assignment.
3. AR 190-14, Carrying of Firearms and Use of Force for Law Enforcement and Security Duties, paragraph 2-6, states that only Government-owned and government-issued weapons and ammunition are authorized to be carried by DA personnel while performing official duties.
4. AR 190-11, Physical Security of Arms, Ammunition, and Explosives, paragraph 4-5c(2), requires that all personnel residing on an Army installation submit a request to the unit commander to register privately owned firearms.
5. National Training Center (NTC) Regulation 385-63, Range Safety, paragraph 3-33, states that privately owned weapons will not be fired anywhere on the Fort Irwin Installation except in compliance with the Directorate of Family, Morale, Welfare and Recreation (DFMWR), Outdoor Recreation Division Recreation Center.
6. California Senate Bill 23 Assault Weapon Characteristics and California Penal Code Section 30500, *et seq.*, place restrictions on the use of assault weapons and establish a registration and permit procedure for their lawful sale and possession. Each law identifies firearms subject to these restrictions based upon appearance and operational characteristics.

IV. FINDINGS

A. OSC REFERRED ALLEGATION 1: The whistleblower alleged that Witness #1 uses his privately owned firearms in place of a government-issued service weapon without authorization.

The whistleblower alleged that Witness #1 used a personally owned firearm (POF) instead of his government-issued service weapon provided by the Directorate of Emergency Services (DES) in violation of Army Regulation 190-14. When contacted by the IO, the whistleblower provided a photo and video dated 7 December 2022 of Witness #1 in uniform at his place of work in DES with a black pistol in his uniform holster. Based upon interviews of numerous witnesses and upon reviewing the DES Issuing and Receiving of Weapon logbook, the IO determined that the photo and video were probative only when placed in context. The IO determined that the photo and video were taken just after Witness #1 arrived at work. He was not yet on duty and had not yet drawn his government-issued service weapon nor placed his POF in his locker. According to the Issuing and Receiving of Weapon logbook, Witness #1 drew his firearm at 0540 hours on 7 December 2022 from the arms room on the day the photo was taken and returned it at 1600 hours the same day. Multiple witnesses that work in the office with Witness #1 stated that it is a common practice for him to come into the building with his POF in his uniform holster, then place his POF in his locker, and then draw his government-issued service weapon for the duty day. (Tabs D, E, H, K, L, M, N, O, P, Q) When interviewed, Witness #1 confirmed that this is his usual routine. (Tab R)

According to the logbooks reviewed by the IO, Witness #1 regularly draws his government-issued service weapon when he arrives at the office prior to beginning his duties and turns it in when he leaves. Logbook records were not available between September 5 and 21, and October 5 and 23 2022. However existing logbook records and statements of witnesses who observed his routine support the conclusion that Witness #1 similarly drew his service weapon for use on duty during these periods.

Witness #1 is a current Law Enforcement Officers Safety Act (LEOSA) cardholder and is authorized to carry a POF on Fort Irwin when off duty. In accordance with Title 18 U.S.C. § 926B (LEOSA) and DoDI 5525.12, Army Directive 2021-13 authorizes senior installation commanders to approve qualified, actively serving Army law enforcement professionals who possess a valid credential to carry a concealed, POF (handgun only) while off duty, for personal protection, not in the performance of official duties on Army installations to which they are assigned within the United States and U.S. territories. Fort Irwin DES law enforcement officers initially received authorization to carry POFs pursuant to LEOSA on 27 July 2020. Witness #1 signed an acknowledgement of this authorization 9 May 2022. (Tab A) This authorization remains in effect. Based upon the statements of multiple witnesses and Witness #1's admission, the IO determined that Witness #1 does carry a POF while in uniform, but only while off duty when traveling between his residence on Fort Irwin and his office at DES, before and after his daily tour of duty. The IO determined that, while Witness #1 is authorized to carry a POF while off duty, it must be concealed and not carried openly. The IO raised this issue with the

Provost Marshall/Director of Emergency Services who was unaware of this required carrying configuration and stated that refresher training on proper LEOSA carry requirements will be conducted to ensure compliance by all personnel. Accordingly, the IO determined that the allegation that Witness #1 used his POF in place of a government-issued service weapon while on duty without authorization is unsubstantiated.

B. OSC REFERRED ALLEGATION 2: The whistleblower alleged that Witness #1 failed to register his privately owned firearms with Fort Irwin pursuant to Army regulations.

The whistleblower has stated that Witness #1 has failed to register his privately owned firearms with Fort Irwin, as is required by Army Regulation 190-11. The whistleblower stated that, based on his review of the Fort Irwin database of registered weapons in late September 2022, Witness #1 failed to register any of his firearms despite having them in his possession in his residence on Fort Irwin for several months.

According to Witness #1, he and his spouse possess five (5) firearms in their residence on Fort Irwin. (Tabs R and T) His spouse no longer owns a sixth weapon referred to in Witness #1's statement. The IO reviewed Witness #1's Fort Irwin Provost Marshall Office Weapon Permit form (Tab B) and confirmed that that Witness #1 and his spouse registered four (4) firearms on Fort Irwin in August 2019. Additionally, on 16 July 2021 Witness #1 completed and submitted a NTC Form 655 (Tab C) to register the fifth firearm, an Aero Custom rifle, in compliance with AR 190-11, paragraph 4-5c(2). The IO determined that Witness #1 is not responsible for the apparent administrative oversight that resulted in this weapon not being added to his registration form. The IO concluded that Witness #1 registered his and his spouse's POFs with the installation as early as 27 August 2019, with the latest POF registered on 16 July 2021. Accordingly, the IO determined that the allegation that Witness #1 failed to register his privately owned firearms with Fort Irwin pursuant to Army regulations is unsubstantiated.

C. OSC REFERRED ALLEGATION 3: The whistleblower alleged that Witness #1 used his privately owned firearms at the Fort Irwin firing range without authorization and that are not in compliance with California law.

(1) Using Privately Owned Firearms at Fort Irwin firing range without authorization allegation.

NTC Regulation 385-63, paragraph 3-33, states that privately owned weapons will not be fired anywhere on the Fort Irwin Installation except in compliance with the DFMWR Outdoor Recreation Division Recreation Center. The whistleblower claims he witnessed Witness #1 using POFs on the military/government-only shooting range without authorization during range operations in October 2022. The IO interviewed Witness #2 who stated that he was either the Range Safety Officer or the Range Officer in Charge from late 2020 through the end of 2022. Witness #2 stated that he never saw Witness #1 with a POF on any of the military/government-only shooting ranges. (Tab D)

As stated in NTC Regulation 385-63, one of the duties of the Range Safety Officer is to verify all weapon systems are clear and safe before moving off a range. The IO determined that, as the Range Safety Officer, Witness #2 would have had known if an unauthorized weapon was fired on the military/government-only shooting range. Accordingly, the IO determined that Witness #1 did not fire his POF on the military/government-only shooting range without authorization.

However, based on sworn statements, the IO did determine that when DES personnel first obtained their LEOSA authorization, DES civilian police officers fired their POFs on the government range in mid-2020. (Tabs E and Q) At that time, DES leadership authorized the use of the range for POFs on this single occasion because they believed the LEOSA authorization required weapons qualification on an approved government range. Witness #1 was not the Chief of Police at the time this occurred. The IO determined that this was the only occasion on which DES civilian police officers fired POFs on a government-only range and that all POF qualifications are now completed on the Sportsman's Range at which the use of POF is authorized. (Tab I) Based upon similar statements by several witnesses, including the Range Safety Officers and the Range Officers in Charge, the IO determined that the allegation that Witness #1 used a POF at a military/government-only range without authorization is unsubstantiated.

(2) Possessing/Using firearms that are not California compliant allegation.

The whistleblower also alleged that Witness #1 has in his possession POFs that are not compliant with California law. The IO reviewed California Senate Bill 23 Assault Weapon Characteristics and the California Penal Code, which restricts weapons based upon characteristics. Essentially, weapons must comply with the following restrictions:

- A minimum of 30" in length.
- No pistol grip protruded "conspicuously" beneath the action.
- No folding or telescoping stocks permitted / no thumb hole stocks.
- No detachable magazine unless the upper can be separated from the lower receiver.
- No forward pistol grips.
- No threaded barrel.

Based upon photographs of the POFs in question and Witness #1's descriptions of the weapons (Exhibit T), the IO determined Witness #1's POFs are legal in the state of California. Specifically, the IO found that Witness #1's Aero Custom has a barrel length of 22," and an overall length of 44.5." This rifle is compliant with California law because the buttstock of the rifle is fixed to a position so that it cannot move and uses a magazine lock which requires the separation of the upper assembly from the lower assembly to change out the magazine. On 16 July 2021 Witness #1 completed and submitted a NTC Form 655 (Tab C) to register this rifle on Fort Irwin. Accordingly, the IO determined that this rifle does not violate California Penal Code 30515.

With respect to Witness #1's spouse's Colt M4 Carbine, the IO found that this weapon has a 16" barrel and is 32" in overall length. The minimum permissible length California is 30". The rifle uses a magazine lock, it has no forward pistol grip, and uses a pin to lock the buttstock in place making the rifle compliant with California law. This rifle was registered with the installation on 27 August 2019. (Tab B) Accordingly, the IO determined that the allegation that Witness #1 possess firearms that are not compliant with California law is unsubstantiated.

D. ADDITIONAL ALLEGATIONS. Two matters of concern, unrelated to the allegations referred by OSC, were raised by witnesses other than the whistleblower during the course of the investigation. The IO considered evidence relevant to those two matters and determined neither was substantiated.

V. INVESTIGATING OFFICER'S RECOMMENDATIONS

Based on his findings, the Investigating Officer recommended that:

- a. No actions be taken against Witness #1 because Allegation 1 was determined to be unsubstantiated. Witness #1 did not use his POF in place of a government-issued service weapon without authorization.
- b. No actions be taken against Witness #1 because Allegation 2 was determined to be unsubstantiated. Witness #1 did register his privately owned firearms with Fort Irwin pursuant to Army regulations.
- c. No actions be taken against Witness #1 because Allegation 3 was determined to be unsubstantiated. Witness #1's POF's comply with California law, and he did not fire a POF on a military/government-only shooting range without authorization.

VI. APPROVING AUTHORITY'S ACTIONS

On 23 May 2023, the Fort Irwin Commander reviewed the investigation, approved the IO's findings and recommendations, and further directed that refresher training on LEOSA certification and requirements be conducted annually.