



U.S. OFFICE OF SPECIAL COUNSEL
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Washington, D.C. 20036-4505

The Special Counsel

February 6, 2023

The Honorable Christine E. Wormuth
Secretary
U.S. Department of the Army
101 Army Pentagon
Washington, D.C. 20310-1700

Re: OSC File No. DI-23-000193
Referral for Investigation—5 U.S.C. § 1213(c)

Dear Secretary Wormuth:

I am referring to you for investigation a whistleblower disclosure that officials at the U.S. Department of the Army (Army), U.S. Army Installations Management Command, Fort Irwin Directorate of Emergency Services (DES), Fort Irwin, California engaged in conduct that constitutes a violation of law, rule, or regulation, gross mismanagement, an abuse of authority and a substantial and specific danger to public safety. A report of your investigation of these allegations and any related matters is due to the Office of Special Counsel (OSC) on April 7, 2023.

██████████, a former Sergeant and Lead Police Officer for the Fort Irwin DES, who consented to the release of his name,¹ alleges that Chief of Police ██████████ ██████████ has engaged in conduct that violates Army regulations pertaining to the possession and use of privately owned firearms on Fort Irwin. The allegations to be investigated include:

- ██████████ uses his privately owned firearms in place of a government-issued service weapon without authorization;
- ██████████ failed to register his privately owned firearms with Fort Irwin pursuant to Army regulations;
- ██████████ uses privately owned firearms at the Fort Irwin firing range without authorization and that are apparently not in compliance with California law; and
- Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

¹ ██████████ can be reached via email at ██████████ or telephone at ██████████

██████ served as a Lead Police Officer at Fort Irwin between October 2019 and November 2022. He alleged that while employed as a Fort Irwin Police Sergeant, he witnessed ██████ carry his privately owned weapon in place of a government-issued service weapon while on duty on numerous occasions without authorization. He reported that ██████ continued to use his privately owned weapon despite a 2021 warning for the same misconduct from his then-supervisor, ██████ ██████ allegedly told ██████ that he had purchased a tan Sig Sauer M17 handgun that resembles a government-issued service weapon and admitted to carrying it in lieu of a service weapon while on duty. When ██████ confronted ██████ about the alleged violation, ██████ admonished him for raising the issue.

Pursuant to Army regulations,² all personnel residing and storing firearms at Fort Irwin are required to register their privately owned firearms with the Fort Irwin police. ██████ disclosed that, based on his review of the Fort Irwin database of registered weapons in late September 2022, ██████ a resident of Fort Irwin, failed to register any of his personal firearms despite having them in his possession on Fort Irwin property for at least several months.

██████ also formerly served as a firearms instructor and range safety officer for the Fort Irwin shooting range. In October 2022, ██████ witnessed ██████ use personal firearms on the military/government-only shooting range without authorization. The whistleblower also observed ██████ cleaning additional firearms in his office at the police station after using them at the shooting range, including an AR-15 rifle and a high-caliber hunting rifle. Based on his training and experience, he believed those two weapons to be non-compliant with California law. When asked, ██████ allegedly acknowledged their noncompliance with California law. ██████ also maintains that his weapons check confirmed that these two firearms had not been registered with Fort Irwin as of late September 2022. Based on the information provided, it appears that ██████ is not in compliance with the Army regulations he is charged with enforcing.

Pursuant to my authority under 5 U.S.C. § 1213, I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation, gross mismanagement, an abuse of authority and a substantial and specific danger to public safety. Please note that specific allegations and references to 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

² Army Regulation 190-11 directs the senior commanders of Army installations to “[r]egulate privately owned weapons, explosives, and ammunition on Army installations” and to “[e]stablish procedures and publicize punitive policies that regulate privately owned weapons, explosives, and ammunition on Army installations.” Such policies include “(1) Registration of firearms belonging to personnel living on the installation and registration of firearms by personnel who bring a weapon onto the installation for the purpose of engaging in authorized activities such as hunting, dog training, or marksmanship events.” AR 190-11 § 1-13(c)(1).

The Honorable Christine Wormuth

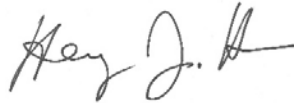
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OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending 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 for assistance. I am also available for any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry J. Kerner", with a stylized flourish at the end.

Henry J. Kerner
Special Counsel

Enclosure

cc: The Honorable Donna W. Martin, Inspector General

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).