



U.S. Customs and  
Border Protection

January 2, 2024

Henry J. Kerner  
Special Counsel  
Office of Special Counsel  
1730 M Street, Suite 300  
Washington, D.C. 20036-4505

Commissioner

Re: Second Supplemental Report Regarding: OSC File No. DI-22-000519

Dear Mr. Kerner:

On June 21, 2023, the Department of Homeland Security (DHS), Customs and Border Protection (CBP) submitted to the Office of Special Counsel (OSC) a report regarding OSC's referral for investigation of a whistleblower disclosure that employees within Air and Marine Operations (AMO) engaged in conduct that may constitute an abuse of authority and a substantial and specific danger to public safety. The OSC received the allegations from a whistleblower who alleged that the majority of CBP's Light Enforcement Helicopter fleet lack crashworthy fuel tanks, and that an employee in AMO headquarters improperly attempted to remove critical information from an aircraft mishap report concerning the crash and destruction of AMO Helicopter N841BP on May 12, 2021. In response to additional questions from the OSC, a supplemental report was submitted to the OSC on September 18, 2023. Subsequently, on October 19, 2023, the OSC replied with the following questions:

- Please clarify whether the agency found that [REDACTED] directing critical information to be removed from Aircraft Mishap Report for AMO Helicopter N841 BP constitutes a violation of a law, rule, or regulation, an abuse of authority, or any other form of wrongdoing?
- Please clarify what action the agency intends to take in response to its findings?

Answers to each of these questions are addressed herein:

As previously stated in the September 18, 2023, supplemental response, the report of investigation concerning the whistleblower disclosure was to be reviewed by a CBP Discipline Review Board (DRB). [REDACTED]

Per Agency policy, the DRB is responsible for reviewing the report and proposing possible adverse or disciplinary action to a deciding official. Pursuant to 5 U.S.C. §1214(f), an agency is restricted from taking disciplinary action against the subjects of an investigation without prior approval from the Special Counsel. Per IPD's guidance, Agency management had withheld pursuing any disciplinary action against named subjects until receiving IPD's investigation and recommendation. [REDACTED]

advised OCC not provide the findings to CBP at large. Discussions occurred between OCC and IPD through August regarding the potential disciplinary process to be used by the Agency, including the make-up of DRB membership and other ensuing disciplinary steps. Subsequently, CBP intended to forward the disclosure report and IPD's recommendations to the DRB. However, [REDACTED] retired from service on September 30, 2023, prior to the submission of the report to the DRB. As [REDACTED] has retired, the Agency no longer has authority to pursue possible disciplinary action.

Irrespective of [REDACTED] retirement, the Agency has taken several actions following the investigation. Recently, CBP has requested that U.S. Coast Guard (USCG) conduct an independent review of AMO's safety and crash investigation policies and procedures. As a DHS agency that utilizes similar aircraft and equipment, USCG will be able to provide additional incite and recommendations regarding CBP's crash investigative process. USCG has agreed to conduct this review with the intention of starting in early 2024.

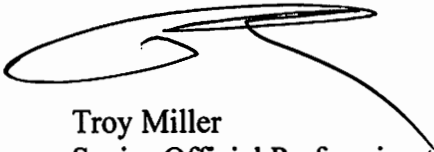
In addition to the USCG review, AMO Training, Safety and Standards Directorate (TSS) has made changes to both the policy and the standard operating procedures regarding accident investigations which ensure better communication between the Safety Officers and executive leadership (specifically TSS). Specifically, regular monthly meetings have been implemented between Aviation Safety Officers, Marine Safety Officers, and Ground Safety Officers from the field and the respective AMO Safety Program Managers and TSS management. AMO also revised the reporting process and associated timelines for mishap reports to include set milestones for safety team members to communicate with local branch and headquarters leadership. These milestones require the safety team members to brief local branch directors at the location of a mishap with a preliminary report of what occurred. The safety team is then required to provide a preliminary formal report to the AMO Executive Assistant Commissioner (EAC) within 7 days after a mishap and a final mishap report to the EAC within 45 days. Establishing these milestones in the reporting process ensures that the organization can develop resolutions to address possible latent safety concerns quickly and efficiently.

Furthermore, after an incident occurs, the EAC will assign a senior executive who will be accountable for implementing the findings and recommendations from the resulting safety mishap report. The EAC will also track the recommendations in a safety recommendation tracker and meet with both the safety team and the assigned executive regularly to ensure that the recommendations are addressed in a timely manner.

With respect to the aircraft retrofit, AMO recently awarded a contract to purchase new H125 aircraft to recapitalize older AS350 in the fleet. These new aircraft are equipped with Crash Resistant Fuel Tanks (CRFT). Recognizing this recapitalization will occur over time, AMO will install CRFT in a number of CBP's newer AS350 (2B1 and E Models). The quantity and timeline will depend upon the delivery of H125 acquisitions.

If you require further information regarding this matter, please contact Philip Carpio in the Office of Chief Counsel at 202-344-2940.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy Miller". The signature is written in a cursive style with a large, sweeping initial "T" and "M".

Troy Miller  
Senior Official Performing the Duties of the Commissioner  
U.S. Customs and Border Protection

cc: Secretary, Department of Homeland Security  
Acting Deputy Secretary, Department of Homeland Security  
Chief Human Capital Officer, Department of Homeland Security  
General Counsel, Department of Homeland Security