



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

May 23, 2023

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

Re: OSC File No. DI-23-000571
Referral for Investigation – 5 U.S.C. § 1213(c)

Dear Secretary McDonough:

I am referring to you for investigation a whistleblower disclosure that employees at the Department of Veterans Affairs (VA), Richmond VA Medical Center (Richmond VAMC), Richmond, Virginia, engaged in conduct that may constitute a violation of law, rule, or regulation, and a substantial and specific danger to public health and safety. A report of your investigation of these allegations and any related matters is due to the Office of Special Counsel (OSC) by July 24, 2023.

The whistleblower, [REDACTED], who consented to the release of her name, alleged unsafe working conditions in the Richmond VAMC's textile care processing service (Laundry Service), which launders the facility's soiled textiles.¹ The allegations to be investigated include:

- Richmond VAMC Laundry Service employees have found used syringes (contaminated sharps) that appear to contain blood or other substances in soiled textiles received from various patient care units;
- The Richmond VAMC has not repaired leaks in the roof of the building that houses the Laundry Service allowing rainwater to enter and pool in certain work areas; and
- Any additional, related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

VHA Directive 1850.03(1), *Textile Management Services*, instructs the facility to establish and use procedures to ensure sharps and surgical instruments are separated from soiled textiles to mitigate injury to textile care processing employees.² Occupational Safety and Health

¹ The textiles include the following: flat sheets; fitted sheets; pillowcases; bedspreads; pillows; wash cloths; bath towels; bath blankets; tablecloths, napkins, patient gowns, and pajamas.

² Similarly, VHA Directive 1014 *Safe Medication Injection Practices* directs medical staff to dispose of needles and syringes immediately after use in a facility-approved sharps waste disposal container.

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Administration (OSHA) regulations state that contaminated sharps shall be discarded immediately or as soon as feasible in closable, puncture resistant, leakproof, and labeled or color-coded containers.³ However, [REDACTED] alleged that since the summer of 2022, laundry employees have found contaminated sharps wrapped in soiled textiles at least two to three times a day, approximately three to four days a week. [REDACTED] asserted that the protective gloves worn by laundry employees tear easily and do not prevent a syringe puncture and that Richmond VAMC management has failed to correct the problem despite complaints.

[REDACTED] also alleged that since approximately 2020, streams of rainwater run down from the roof in three different areas of the Laundry Service, including in the dryer area which caused a week-long outage last year. She asserted that the Richmond VAMC has tried unsuccessfully to fix the roof that leaks over the dryer but has not attempted to fix the other two leaks. [REDACTED] also asserted that the leaks cause laundry employees to walk through water to access certain operations or stand in water to remove lint from collection containers. Wet floor conditions such as these violate OSHA regulation 29 C.F.R. § 1910.141.

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 a substantial and specific danger to public health and safety. 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 section 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,



Henry J. Kerner
Special Counsel

Enclosure

cc: The Honorable Michael J. Missal, Inspector General

³ See 29 C.F.R. § 1910.1030(d)(4)(iii)(A)(1)(i) – (iv).

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).