



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

The Special Counsel

June 8, 2023

The Honorable Christine Wormuth
Secretary of the Army
101 Army Pentagon
Washington, D.C. 20301

Re: OSC File No. DI-23-000639
Request for Investigation—5 U.S.C. § 1213(c)

Dear Secretary Wormuth:

I am referring to you for investigation a whistleblower disclosure that employees at the U.S. Department of the Army (Army), U.S. Army Forces Command, 20th Chemical Biological, Radiological, Nuclear, Explosives Command, CBRNE Analytical and Remediation Activity (CARA), Aberdeen Proving Ground, Aberdeen, Maryland, engaged in conduct that constitutes a violation of law, rule, or regulation, 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) by August 7, 2023.

The whistleblower, [REDACTED], who consented to the release of his name, is a Pilot and Aviation Safety Officer with CARA at Aberdeen Proving Ground. The allegations to be investigated include:

- Supervisory Pilot [REDACTED] failed to conduct a required investigation into a safety mishap that occurred on February 6, 2023, in which Army Pilot Instructor [REDACTED] caused the helicopter engine to overheat during training, resulting in \$200,000 of damage to the helicopter;
- Thereafter, [REDACTED] attempted to prevent [REDACTED], CARA Safety Officer, from initiating an independent investigation into the mishap and provided false information to the Army Safety Center regarding the incident; and
- Any additional, related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

[REDACTED] operates helicopters transporting biological and nerve agents. On February 6, 2023, [REDACTED] supervisor, Supervisory Pilot [REDACTED], asked [REDACTED], Instructor Pilot, to accompany [REDACTED] for a training involving the relocation of a helicopter. Once inside the helicopter, [REDACTED] instructed [REDACTED] to roll down the number one throttle, which he did, and the engine then shut down. According to [REDACTED]

██████████ a pilot must wait at least two minutes to allow the rotor RPM to reach zero to restart the engine, otherwise the engine may overheat. Nevertheless, ██████████ restarted the engine prior to a complete shutdown, causing the engine to overheat, and resulting in an excess of \$200,000 in damage.

██████████ the Command Safety Officer, immediately sent a mishap report to the Army Safety Center at Fort Rucker, Alabama, as required by Army Regulation (AR) 385-10, Chapter 3, 3-8(a).¹ Additionally, as the damage to the helicopter totaled \$200,000, the incident was classified as a “Class C safety mishap,” and AR 385-10 requires the Command to investigate and complete and submit a report of the investigation to the U.S. Army Combat Readiness Center (USACRC)/Safety Center within 90 days. ██████████ asked ██████████ the USACRC safety officer/supervisor, how to proceed with the investigation because he was both the safety officer and a witness, and thus his and ██████████ involvement in the investigation would likely be a conflict of interest. ██████████ advised ██████████ that the Army would appoint an independent investigator outside ██████████ and ██████████ command to conduct the investigation.

Despite the guidance from ██████████, ██████████ repeatedly directed ██████████ to refrain from initiating any investigation. Soon thereafter, ██████████ sent ██████████ a completed DA Form 2397-AB (the form), or report and recommendation, containing incorrect statements about the incident, in particular, confirming that an investigation had occurred when it had not. ██████████ also directed ██████████ wal to forward the form to the USACRC Safety Center. However, ██████████ refused to submit the form because the Command had not completed an investigation, and the form may only be sent to the USACRC Safety Center following an investigation. Shortly thereafter, on April 26, 2023, ██████████ removed ██████████ from his position as Safety Officer as well as his access to electronic safety investigative records. To date, the agency has not interviewed ██████████ concerning the mishap even though he is the only other witness to the mishap other than ██████████

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 violation of law, rule, or regulation; an abuse of authority; and a substantial and specific danger to public 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.

¹ The regulation provides that the commander or supervisor who first becomes aware of any [Class C] accident will, through their chain of command, immediately notify- (1) The immediate commander or supervisor of all personnel involved, and (2) The Commander, USACR/Safety Center.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Documents/Public%20Files/1213%20Appendix.pdf>. 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,

A handwritten signature in black ink, appearing to read "Henry J. Kerner". The signature is fluid and cursive, with a prominent initial "H" and "J".

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/PublicFiles>. 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).