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September 6, 2024

Johanna Oliver
Attorney, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Ste. 300
Washington, DC 20036

Re: DI-23-000586

Dear Ms. Oliver:

Kindly consider this document to constitute [REDACTED] response to the TSA Investigative Report dated June 27, 2024 and submitted to OSC via cover letter dated July 24, 2024. For the reasons set forth below, OSC should deem TSA's report to be inadequate and refer it back to TSA for further investigation and action.

Exposure of Security Gap

TSA INV concludes in its report that there was no violation of any rule, law or regulation and as such TSA has taken no action and plans to take no action as a result of the investigation. The premise upon which this conclusion and determination is made rests on the following statement: "The investigation determined that [REDACTED] used by BOS employees to test the AITs was not [REDACTED] or which the AIT was designed to identify."

The problem with this statement is that it does not answer the fundamental, and more important question, of whether or not the AITs, and their algorithms, SHOULD be designed or programmed to detect threats of this nature. Why are the AITs designed and or programmed NOT to detect threats of this nature? If they are not designed or programmed to detect threats of this nature, does this not indicate that there is a serious gap in TSA screening protocols which can be easily be exposed by would be assailants and other bad actors?

The TSA INV report indicates that while the AITs are not programmed and designed to detect threats [REDACTED] they are detectable by x-ray and pat-downs which is where they are primarily used. Rather than

be reassuring, this statement emphasizes the exact concern which [REDACTED] was raising in this disclosure. The AITs as either designed or programmed (TSA INV report does not really clarify which) [REDACTED] yet they are the only form of physical screening most (or many) passengers go through before boarding an aircraft. Does this not suggest that there is a major security vulnerability within our airports which needs to be addressed?

The TSA INV report reveals that the AITs are designed and programmed to detect

[REDACTED]

TSA INV Report Inadequately Explains Why the AITs Are not Designed or Programmed to be Able to Detect [REDACTED]

TSA's INV report repeatedly dismisses the AITs' failure to detect the [REDACTED] at issue by simply stating that the [REDACTED] was "not intended to be scanned through the AIT" and "was not intended or authorized to be scanned through the AIT". While meant to be reassuring, these statements do the opposite as they establish that the AITs appear to be quite limited in their ability to detect foreign objects. The effectiveness of airport screening lies in its ability to detect all possible threats, or at least as many of them as possible. The TSA INV report provides no information as to the actual limitations of the AITs in question but instead suggests that they are very limited in being able to detect items which are "not created for the AIT" or not designed with the intent to be recognized by the AIT. Unless we live in a world where those wishing to do us harm are inclined to check with TSA first when [REDACTED] of choice, the TSA INV report and its justifications for why [REDACTED] was not detected by the AIT leaves much to be desired.

TSA's INV report's explanation is further concerning when one looks at the [REDACTED] in question. The TSA INV report indicates that because the [REDACTED] showed "severe degradation" [REDACTED] which would trigger an AIT alarm. The TSA INV report further suggests that the age of the device was a factor in the AIT's ability to detect it. Neither of these explanations should provide OSC with any comfort in this matter.

[REDACTED]

[REDACTED] If so, why are the AIT algorithms set at this level? Does this not create a gap in security where passengers are able to evade TSA security screening [REDACTED]

[REDACTED], imagine the quantity of drugs which could be smuggled onto an airplane in such a manner.

It is interesting to note that [REDACTED] ends his statement of January 29, 2024 by indicating that [REDACTED] was being sent for testing to determine if its characteristics were in line [REDACTED]. This statement suggests that the [REDACTED] item was being tested on all fronts, from chemical composition to physical makeup, to determine if from the machine's perspective [REDACTED]. It is noted that the [REDACTED] when received by the TSA laboratory; however there is no information as to the condition of the [REDACTED] at the time of the events at issue. In addition, while the TSA INV report [REDACTED]

[REDACTED]

[REDACTED] Is this not really the question [REDACTED] was raising when he brought this matter to the attention of the Agency?

How does TSA reconcile its explanation in the TSA INV report as to why [REDACTED] with the common every day experience of virtually every person who has ever flown wherein so much as a small item left in a pocket, or a unremoved belt, triggers a call for additional screening? [REDACTED]

[REDACTED]. In his statement, [REDACTED] stated that the AIT was looking for “a normal person, with normal parts within a normal range”. According to [REDACTED] “everything matters” from the person’s height, to their weight, how they carry their weight, what they are wearing and what is underneath their clothes. It is unclear from [REDACTED]’s statement whether the system is designed to alarm if it detects something outside the SOP guidelines or whether the system effectiveness is diminished should it detect something outside the SOP guidelines. One would think that the system would alarm anytime it detects something outside of the SOP guidelines; [REDACTED]’s statement that a TSO wearing a TSA jacket would affect the machine’s performance without indicating that the same would trigger an alarm is very concerning. To think that TSA’s AIT security is that vulnerable to deception is a scary proposition and one not explained at all by this TSA INV report.

Moreover, TSA’s INV report is inherently contradictory. In one sentence it says that the purpose of the Pelican Case and the items therein is to provide every security officer an opportunity to physically and visually inspect historical and trending threat devices. [REDACTED]

[REDACTED] Which is it? And of what benefit is it to have employees observe, touch and visualize items which TSA is admitting in this report DO NOT mimic actual explosives which its technology will detect while labeling them as such and telling their employees that they do?

This Report of AIT Failures Cannot be Viewed in a Vacuum

The TSA INV report approaches this matter as if it was a one off, singular, event and without consideration and investigation into highly relevant background information and context. TSA’s INV report suggests that at no time were questions asked of anyone as to whether or not similar instances or failures had been observed with the AITs. Specifically, TSA’s INV report makes no mention of the fact that during a BOS FET Program test scenario in which a role player entered the AIT with a [REDACTED] the AIT similarly failed to detect its presence and alarm. This incident with the [REDACTED] occurred on March 3, 2023, just a week prior to the March 11, 2023 and was known senior leadership at BOS TSA. This incident was referenced by Mr. [REDACTED] in his initial communications and emails to leadership at the time he reported the March 11, 2023 incident. It was because there were two instances of an apparent failure to detect involving [REDACTED] that [REDACTED] made the recommendation to take the AITs out of service on March 11,

2023. This incident involving the [REDACTED] was also referenced in his initial whistleblower complaint.

Failure to Act/Improper Investigation

The TSA INV report purports to have investigated whether leadership at TSA BOS acted properly in response to the disclosure brought to its attention to [REDACTED]. Unsurprisingly the TSA INV reports concludes that they did. However, this finding is clearly self-serving, based on incomplete facts and a is the product of an investigation done with the conclusion predetermined. In support of this harsh criticism the following is noted:

The TSA INV report indicates that upon receipt of TSM [REDACTED]'s reporting on March 11, 2023 that three AIT's failed to detect [REDACTED] SA senior leadership took the following action: 1) They instructed that the AIT's be recalibrated and put back into service; 2) Initiated a Priority One service ticket which was then downgraded to a Priority Two. The Priority Two service was completed two days later on March 13, 2023. Based on these actions, TSA INV report concludes that senior leadership acted appropriately upon learning that its AIT's could not, and did not, detect a [REDACTED]

Missing from the TSA INV report is the fact that rather than conduct an actual investigation into whether or not the AIT's should have detected the [REDACTED] of an individual, senior leadership at TSA immediately [REDACTED] ary based investigation into what was labeled the "Unauthorized Testing and Tampering with Screening Equipment." Rather than interview [REDACTED] and the other subordinate employees involved in the March 11, 2023 incident to learn more about exactly what occurred in an effort to ascertain if there was an actual security gap or weakness, senior leadership at Boston focused its attention on how the subordinate employees, including TSM [REDACTED] came to learn of this potential security weakness with the intent to discipline them for coming across this knowledge. These actions on the part of senior leadership formed the basis of a whistleblower retaliation complaint filed by [REDACTED] MA-23-0001439. This claim was subsequently settled.

Further evidencing TSA senior leadership's failed response to the concerns raised by [REDACTED] can be found in the false, misleading and deceptive information said leadership initially provided to OSC's disclosure unit. Specifically, when asked by OSC to explain what action, if any, it took in response to [REDACTED] disclosure, senior leadership at TSA BOS responded that it had ordered an investigation and fact finding. Based on these misrepresentations by TSA BOS senior leadership, OSC in May of 2023 was set to close this disclosure matter. It was only after, and as a result of [REDACTED] informing OSC that the only investigation being conducted by TSA BOS was the disciplinary based investigation into the Unauthorized Testing and Tampering with Screening Equipment and not into whether the AITs were missing [REDACTED]

██████████ and imploring OSC to obtain a copy of that Fact Finding to confirm the same, did OSC refer this matter for investigation. Had TSA BOS senior leadership had its way, this matter would have been completely whitewashed and never brought to the attention of anyone outside of Boston Logan.

Consistent with this statement, the TSA INV report reveals that TSA BOS never brought the concerns raised by ██████████ to the attention of headquarters. We know this to be true because ██████████ indicates that had BOS reached out to HQ about the AIT issue he would have been one of the people notified. He received no such notification and only became aware of this matter through other channels. Specifically, ██████████ indicates that this complaint never came to him through his normal course of business. As such, he never spoke to local TSA to discuss the matter. All context he received came from through the Congressional Inquiry, OSC and the Investigative Team which occurred months after the fact.

In her statement ██████████ attempts to fault ██████████ for allowing “unauthorized testing” and for not having “as clear a working knowledge of the technology as he should have.” This statement coming from the same individual whose immediate reaction to a subordinate informing her that the AITs may not be detecting known threats in the form ██████████ was not to authorize an investigation into whether or not the AITs were missing possible threats, was not to notify TSA headquarters, but was instead to launch an investigation entitled “Unauthorized Testing and Tampering with Screening Equipment.” Does this sound like a person whose primary concern is the public safety? Does this sound like a person who wants to hear concerns from staff on the ground and who is willing to take such concerns seriously? Or, instead, does this sound like a person who wants to simply put in her 8 hours, toe the company line and have those below her be fearful of reporting what they see?

Speaking of not having a working knowledge of the technology, OSC is referred to ██████████ Memorandum of March 14, 2023 in which he expresses dissatisfaction the TSA BOS leadership’s explanation that “recent changes in the AIT algorithms downloaded to the AIT equipment to accommodate the concerns expressed recently by some passengers may be the explanation for the AIT’s failing to pick up the ██████████ on 03/11/2022 and by inference, the ██████████ in the BOS FET test on 03/03/2023”. The problem with this explanation offered by TSA BOS Leadership on or before March 14m 2023 is that according to the TSA INV report those changes to the AITs had not yet been made in Boston. The changes to the algorithm being referred to did not occur in Boston until March 20 ,2023 according to Mastin. This begs the question. Was BOS leadership purposely being misleading to ██████████ on or before March 14, 2023 or did TSA BOS senior leadership not have working knowledge of the technology being used in its airport.

The fact of the matter is that on the day in question ██████████ was told by his subordinates ██████████ and that individual went through the AIT, the machine did not alarm. Whether the action of the employee was authorized or not was, in the mind of ██████████

wholly secondary to whether or not there was a security threat with respect to the screening equipment. Why would the machine not alarm [REDACTED] That should have been the question on the minds of the FSD, the DFSD and the AFSD when Mr. [REDACTED] brought this information to their attention. It is the question which remains on Mr. [REDACTED] mind to this day regardless of whether the machines pass recalibration or not.

It is insulting that [REDACTED] would comment that [REDACTED] did not have a clear working knowledge of the technology especially when the TSA INV report reveals that not a single person questioned or interviewed could answer the question of whether or not [REDACTED] at issue should have triggered an alarm when concealed in [REDACTED]. AIT Program Manager [REDACTED] did not know the answer to that question when initially interviewed. Nor could Supervisory Explosive Specialist [REDACTED] answer that question when he was asked. Yet [REDACTED] criticized TSM [REDACTED] for taking the prudent course of action by removing the AITs from service and reporting what he observed.

To this day, over a year later and as argued above, it is uncertain as to whether TSA has properly answered that very question. Despite allegedly conducting forensic testing on [REDACTED] at issue, the best TSA can offer to date is that because [REDACTED] was old [REDACTED], it was no longer of the [REDACTED] to be detectable by the AITs. Nowhere in that response does TSA answer the ultimate question of should we be relying on AIT screening equipment which cannot detect items of that [REDACTED]

Conclusion

As set forth above, TSA's INV report is deficient at best. Based on its prior actions in this matter it is the opinion of [REDACTED] that said report is purposely misleading and self-serving. Mr. [REDACTED] remains deeply concerned by the gap in security he believes exists with respect to these AITs. To be clear, TSA's INV reports provides no insight into whether or not the AITs are able to properly and consistently detect [REDACTED] whether those objects be [REDACTED] or any other item which is not part of the normal human anatomy.

Wherefore, he requests that OSC remand this matter back to TSA for further investigation.

Thank you.

Very truly yours,

[REDACTED]
[REDACTED]

[REDACTED]
Enc.



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

May 23, 2023

Mr. [REDACTED]

Sent via email to: [REDACTED] and [REDACTED]

Re: OSC File No. DI-23-000586

Dear Mr. [REDACTED]

The U.S. Office of Special Counsel (OSC) has completed its review of the information you referred to the Disclosure Unit. You alleged that employees of the Department of Homeland Security (DHS), Transportation Security Administration (TSA), Boston Logan International Airport (Boston Logan), Boston, Massachusetts, engaged in conduct that constitutes a substantial and specific danger to public safety.

OSC is authorized by law to determine whether a disclosure should be referred to the involved agency for investigation or review, and a report. However, OSC does not have the authority to investigate disclosures. OSC may refer allegations of violations of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or censorship related to scientific research. Disclosures referred to the agency for investigation and a report must include information sufficient for OSC to determine whether there is a substantial likelihood of wrongdoing.

You alleged that the Advanced Imaging Technology (AIT) machines at Boston Logan have failed to detect known security threats during TSA officer training exercises, including by failing to detect [REDACTED] distributed for the purpose of conducting TSA officer training exercises. You alleged that recent modifications to the algorithms utilized by the AIT machines have diminished the ability of the screening equipment [REDACTED] that could represent threats potentially compromising airport security. You informed OSC that you filed a complaint concerning these allegations with the DHS Office of Inspector General (OIG) in March 2023.

As we discussed, OSC generally does not refer allegations of wrongdoing to the head of the agency involved where the agency has investigated or is currently investigating the same allegations. Following our May 2, 2023 discussion, TSA's Office of Investigations informed OSC

Mr. [REDACTED]

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that the Federal Security Director (FSD) and Boston TSA have opened an investigation of this matter and are conducting a fact-finding inquiry. Because we have determined that the FSD and Boston TSA are in the process of reviewing these allegations, we do not have a basis to refer this matter to the DHS Secretary at this time. However, if, at the conclusion of the fact-finding investigation, the agency has not taken appropriate action and you still have information indicating that there is a substantial and specific danger to public safety, you may re-file with our office at that time.

Finally, our records indicate that you filed a complaint of prohibited personnel practices with our office on April 19, 2023. See OSC File No. MA-23-001439. If you wish to follow up on this matter, you may contact the assigned OSC attorney, [REDACTED]
[REDACTED] Because the Disclosure Unit does not review allegations of prohibited personnel practices, we will not take further action on this matter.

Accordingly, we are closing our file. If you wish to discuss this matter further, please contact me at [REDACTED]

[REDACTED]
Attorney, Disclosure Unit

Re: Determination in your case; DI-23-000586 ([REDACTED])

[REDACTED].com>

Tue 5/23/2023 5:16 PM

To [REDACTED]
[REDACTED]

Mr [REDACTED]:

I received the closure letter. We obviously have a lot of concerns. As we believe we conveyed to you at the time of our discussion, the investigation conducted by the Agency was entitled: Unauthorized Testing/Tampering with Security Equipment. The investigation conducted was a fact finding into how my client and others came to be aware of the security issue. It was not an investigation into whether or not the security issue exists.

Unless you have been told about another investigation, my client has no reason to believe that the security threat he raised has properly been investigated by TSA. Moreover, unless you have been told otherwise there has been no information communicated to my client or any of the others involved in that investigation as to its outcome. My client was told that the Fact Finder has completed his investigation and inquiry back in March. Did the Agency tell you that it was done investigating or that it had an ongoing investigation. If it indicated that there is an ongoing investigation, once again, unless they told you something different my client is only aware of the one Fact Finding referenced above which was completed back in March such that any indication of an ongoing investigation would be a falsehood.

Lastly, if there is a second ongoing investigation I can only say that such an investigation doesn't seem to be very interested in learning of the truth as my client has never been called into such an investigation nor have any of the other individuals involved.

I implore you to reconsider the decision to close this matter before getting satisfactory answers to the above. My client worries every day that he is allowing individuals into the airports secure area which have not been properly and thoroughly vetted for all possible risks. I would think that OSC would want to be assured that TSA has actually investigated and taken action to ensure that these risks have been vetted rather than simply take at face value the statement that an investigation has been done without any proof.

This is a serious matter and we do not feel that OSC's investigation to date or lack thereof and it's willingness to close the file so quickly is giving this matter the kind of attention it deserves given what's at stake.

I would appreciate speaking with you and your superiors if at all possible.

Thank you.

[REDACTED]

Sent from my iPhone

On May 23, 2023, at 4:50 PM, [REDACTED] wrote:

Good afternoon,

Please see attached for the Office of Special Counsel's determination regarding your disclosure, DI-23-000586.

Sincerely,

[REDACTED]

Attorney-Advisor

U.S. Office of Special Counsel | Disclosure Unit

1730 M Street, N.W., Suite 218 | Washington, DC 20036-4505

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<OSC Decision Letter, DI-23-000586 [REDACTED].pdf>