



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

October 19, 2023

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
272 Martin Luther King Jr Avenue, S.E.
Washington, D.C. 20528

Re: OSC File No. DI-23-001125
Request for Investigation—5 U.S.C. § 1213(c)

Dear Secretary Mayorkas:

I am referring to you for investigation a whistleblower disclosure concerning officials of the Department of Homeland Security (DHS), Transportation Security Administration (TSA), George Bush Intercontinental/Houston Airport (IAH), Houston, Texas. The whistleblower, [REDACTED], a former Assistant Federal Security Director who consented to the release of his name, alleged that TSA IAH employees have engaged in activity that may constitute a violation of law, rule, or regulation and an abuse of authority. A report of your investigation on these allegations and any related matters is due to the Office of Special Counsel (OSC) by December 20, 2023.

[REDACTED] disclosed that TSA IAH employees have violated the standards of ethical conduct for government employees set forth in 5 C.F.R. § 2635.101 and 48 C.F.R. § 3.101-2. The allegations to be investigated include:

- TSA IAH leadership improperly solicited and accepted parking at IAH for both official and personal vehicles at no cost from the airport operator, the Houston Airport System (HAS), a department of the city of Houston, Texas;
- This solicitation and acceptance violates the standards of ethical conduct for government employees set forth in 5 C.F.R. § 2635.101 and 48 C.F.R. § 3.101-2 because HAS is regulated by TSA under 49 C.F.R. § 1542; and
- Any additional, related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

[REDACTED] disclosed that in January 2022, Deputy Federal Security Director [REDACTED] and Assistant Federal Security Director-Inspections [REDACTED] emailed HAS officials requesting parking at no cost at IAH for official TSA vehicles, their personal vehicles, and the personal vehicles of Federal Security Director [REDACTED] and Transportation Security

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Inspector [REDACTED]. In response to that solicitation, HAS provided 11 parking tags, at a value of approximately \$80 each per month, to TSA IAH leadership at no cost. TSA IAH leadership solicited additional parking spaces at no cost from HAS and as of March 2023, have received 9 additional parking tags without charge. Presently, TSA IAH leadership have received and are using twenty 20 parking tags from HAS at no cost.

Under 5 C.F.R. § 2635.101 and 48 C.F.R. § 3.101-2, government employees are prohibited from soliciting or accepting anything of monetary value from a person or entity who conduct activities that are regulated by the employee's agency. HAS is an airport operator regulated by TSA under 49 C.F.R. § 1542, and according to [REDACTED], does not have a policy or practice of providing free parking for all federal employees who work at the airport. As such, [REDACTED] alleged that TSA IAH leadership has violated the standards of ethical conduct for government employees cited above by soliciting and accepting parking at no cost from HAS, the entity it is charged with regulating.

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 an abuse of authority. 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/Documents/PublicFiles/1213 Appendix.pdf](https://osc.gov/Documents/PublicFiles/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", with a stylized flourish at the end.

Henry J. Kerner
Special Counsel

Enclosure

cc: The Honorable Joseph V. Cuffari, 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).