



**U.S. OFFICE OF SPECIAL COUNSEL**  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

June 22, 2017

The President  
The White House  
Washington, D.C. 20500

Re: OSC File Nos. DI-16-2101 and DI-16-2552

Dear Mr. President:

Pursuant to 5 U.S.C. §1213(e)(3), the Office of Special Counsel (OSC) is forwarding a U.S. Department of Agriculture (USDA) report based on disclosures of wrongdoing at the Office of the Assistant Secretary for Civil Rights (OASCR), Washington, D.C. OSC has reviewed the agency report and whistleblower comments, and in accordance with 5 U.S.C. §1213(e), provides the following summary of the reports and its findings.<sup>1</sup> Dr. Brianna Schur and Mr. Akio Watson (the whistleblowers), who consented to the release of their names, alleged that OASCR has failed to process Equal Employment Opportunity (EEO) complaints in a timely manner, thereby violating EEO regulations, and has processed complaints in a manner that violates agency regulations.

The whistleblowers' allegations were referred to former Secretary Tom Vilsack for investigation pursuant to 5 U.S.C. § 1213 (c) and (d). The USDA's Office of the Inspector General (OIG) investigated the allegations, and on January 12, 2017, Secretary Vilsack submitted the agency's report of investigation to OSC. Mr. Watson provided comments to the report on March 28, 2017. Dr. Schur did not comment.

In May 2015, OSC transmitted to the President and Congress a letter closing cases with similar allegations involving OASCR. *See* OSC File Nos. DI-14-2558, DI-14-4627, and DI-15-0001. In these cases, an agency investigation confirmed that, between 2009

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<sup>1</sup> The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c). Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

and 2014, almost fifty percent of USDA EEO complaints filed against senior managers were not processed in a timely manner. USDA asserted that it attempted to correct this problem by making significant process changes and allocating additional resources to facilitate the review of EEO claims within the 180-day period mandated by EEO regulations. In addition, the agency acknowledged that OASCR's use of contractors to process complaints filed against senior USDA leadership violated USDA regulation 4300-009.

The whistleblowers in the present matter alleged that problems remained in OASCR through the summer of 2016, despite USDA's assertions that significant corrective actions were taken to fix deficiencies. Specifically, Dr. Schur asserted that over 240 days elapsed between when she filed a formal EEO complaint and when she was first contacted by an investigator, in violation of relevant EEO regulations. Mr. Watson alleged that an EEO complaint he filed against OASCR senior leadership was improperly reviewed by a contractor, in violation of USDA regulations, which at the time required processing by the U.S. Postal Service EEO office, pursuant to a memorandum of understanding between these two agencies.

The report explained that between July 2015 and August 2016, 156 formal complaints or approximately 27 percent of complaints were not processed in the required 180-day period. The report attributed the majority of overdue cases to delays in the receipt of congressionally appropriated funding. With respect to the improper processing of complaints, the report explained that between August 2015 and July 2016, OASCR adjusted its processing protocols to permit the use of contractors to review these complaints without issuing any formal guidance regarding this change. This resulted in OASCR processing complaints in a manner that technically violated USDA's own outdated EEO regulations, which prohibited the use of contractors. Nevertheless, the report explained that despite violating department regulations, OASCR's use of contractors complied with updated EEO guidelines. The report asserted that these EEO guidelines superseded USDA's dated regulations.

In his comments, Mr. Watson objected to the report's conclusions. He noted that despite USDA's assertion that his complaint did not identify a true conflict, the official who initially reviewed his complaint before it was sent to an EEO contractor was the responsible management officer named in his complaint. Mr. Watson also provided statements of animus from this individual suggesting an inherent bias and conflict in the triage and initial processing of his complaint. Mr. Watson further asserted that employees knowingly gave false statements to the OIG.

OSC has reviewed the original disclosure, agency report, and Mr. Watson's comments. OSC has determined that the report contains all the information required by statute. As noted in OSC's prior letter, OASCR is responsible for protecting the civil rights of all USDA employees. Given this important mission, OASCR should be held to a

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high standard of service. In its letter accompanying the current report, the agency asserted that the majority of complaints were investigated in a timely manner, and that despite OASCR's violation of USDA regulations, its actions were permissible under EEO rules. These conclusions appear to minimize the report's findings and do a disservice to employees affected by these deficiencies.

Since at least 2009, OASCR's mismanagement of the EEO complaint process has resulted in significant delays in case processing, and the implementation of a review process which, at times, violated agency regulations. While the majority of complaints are now processed in the required timeframe, a significant number of cases were delayed in the last year. Furthermore, during this time OASCR used a business process that violated USDA regulations and failed to issue any formal guidance concerning pending modifications to these regulations that would facilitate compliance. In response, USDA is developing updated regulations consistent with recent revisions to MD-110 that allow the use of contactors in processing complaints to formalize their process.

While OASCR has taken positive steps to improve its performance, based on the significant number of cases that are still subject to delays, OSC has determined that the agency response is unreasonable in part. USDA may need to devote more resources to OASCR to ensure that cases are promptly processed and hold senior supervisors accountable for the mismanagement in this office.

As required by 5 U.S.C. §1213(e)(3), OSC has sent copies of the agency report and the whistleblower comments to the Senate Committee on Agriculture, Nutrition, and Forestry, and the House Committee on Agriculture. OSC has also filed redacted copies of the agency report and whistleblower comments in our public file, which is available at [www.osc.gov](http://www.osc.gov). OSC has now closed this file.

Respectfully,



Adam Miles  
Acting Special Counsel

Enclosures