



**U.S. OFFICE OF SPECIAL COUNSEL**

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The Special Counsel

July 10, 2019

The Honorable Emily W. Murphy  
Administrator  
General Services Administration  
1800 F Street, N.W.  
Washington, D.C. 20405

Re: OSC File No. DI-19-3713  
Referral for Investigation--5 U.S.C. § 1213(c)

Dear Administrator Murphy:

Pursuant to my responsibilities as Special Counsel, I am referring to you for investigation whistleblower disclosures concerning officials at the General Services Administration (GSA), Region 6, Kansas City, Missouri, and Goodfellow Federal Center (Goodfellow), St. Louis, Missouri. [REDACTED] who consented to the release of his name, alleged that GSA officials may have engaged in conduct that constitutes gross mismanagement, a gross waste of funds, an abuse of authority, and a substantial and specific danger to public health. A report of your investigation on these allegations and any related matters is due to the Office of Special Counsel (OSC) on September 9, 2019.

Mr. [REDACTED] an Occupational Health and Safety Specialist, disclosed that GSA Region 6 and Goodfellow officials placed employees at risk by failing to properly address serious environmental contamination at Goodfellow. The allegations to be investigated include:

- GSA officials in Region 6 and at Goodfellow were aware of potential environmental contamination at Goodfellow since at least 2002 but took no action to notify GSA employees and tenant agencies<sup>1</sup> or restrict access to contaminated areas until 2016, placing GSA and tenant employees at risk of exposure to 83 identified contaminants;
- GSA officials permitted storage of explosives in GSA facilities that house child care centers and neglected to institute policies and programs to prevent the improper handling and storage of explosives; and
- The same Region 6 management officials currently responsible for implementing corrective actions have failed on several occasions over at least 10 years to meaningfully improve the region's environmental and fire protection and life safety programs despite repeated assurances otherwise.

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<sup>1</sup> GSA has leased space at Goodfellow to many federal agencies, including but not limited to the Department of Veterans Affairs, Social Security Administration, Department of Defense, and Department of Agriculture.

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Mr. ██████ disclosed that GSA Region 6 management have been aware since at least 2002 that many of the facilities at Goodfellow, including the child care center and cafeteria, were contaminated with toxic substances including arsenic, asbestos, lead, and mercury.<sup>2</sup> Between 2002 and 2013, officials ordered a series of duplicative tests and studies, at a cost of over \$2 million, which confirmed the contamination. The tests included a 2008 Combined Preliminary Assessment/Site Inspection Report completed by SCS Engineers, which confirmed that the facilities were contaminated and recommended that immediate steps be taken to protect employees.

According to Mr. ██████ officials took no action at any point prior to 2016 to mitigate and prevent employee exposure. Mr. ██████ alleges that management failed to install warning signs, restrict employee access, provide personal protective equipment, or determine if medical surveillance was warranted. Mr. ██████ alleged that management failed to properly conduct a comprehensive hazard assessment in prior years when contamination was likely to be more concentrated and employee exposure more widespread. Thus, the potential level of exposure to GSA employees and tenant agency employees is unknown.

The GSA Office of Inspector General, Office of Audits, issued a report in March 2019 finding that GSA's Region 6 Public Building Service (PBS), Occupational Safety and Health (OSH) Program lacked foundational policies to carry out its mission and protect employees and tenants. That report highlighted repeated regional failures, including responses to prior audit reports issued in 2010 and 2015. At the time of the 2010 and 2015 reports, PBS assured the Office of Audits that it was taking action to address environmental safety shortcomings at another Region 6 facility—Bannister Federal Complex—and to update its environmental risk management policies nationwide. Despite these assurances, PBS has not developed a comprehensive environmental management program.

In addition, Mr. ██████ noted that as of today, the GSA Facilities Safety Program is still in draft form. In October 2015, OSC also transmitted to the President and Congress a letter detailing a matter involving environmental safety and health allegations at the Bannister Federal Complex. GSA insisted then that it had consistently maintained a quality OSH program, a finding that OSC directly questioned in its transmittal letter to the President dated October 30, 2015.

Mr. ██████ stated that Region 6 maintains two childcare facilities in buildings that also contain explosives—the Richard Bolling Federal Building in Kansas City, Missouri and the Robert A. Young Federal Building in St. Louis, Missouri. He noted that the Inspector General in 2015 found that GSA lacked a policy restricting explosives in federal buildings pursuant to 41 C.F.R. § 102-74.435 and lacked an occupancy permit program to avoid incompatible occupancies pursuant to 29 C.F.R. § 1960.34.(a)(7).

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<sup>2</sup>A total of 83 contaminants were identified in testing over the years.

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The 2019 Office of Audits report, and Mr. [REDACTED]'s disclosures, confirm that GSA has continuously failed to implement and maintain comprehensive safety and health or environmental management programs, even in the face of multiple reports finding serious shortcomings over a period of at least 10 years. While GSA has indicated its intention to correct its deficiencies, Mr. [REDACTED] disclosed that GSA officials' ongoing, willful failure to properly administer its OSH program continued unabated for years, wasting over \$2 million and exposing scores of employees and tenants to unsafe and unhealthy working environments. Further, many of the individuals currently responsible for correcting these failures are the same individuals who were responsible for both creating the failures and subsequently neglecting to correct them, despite assurances otherwise.<sup>3</sup>

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 gross mismanagement, a gross waste of funds, an abuse of authority, and a substantial and specific danger to public health. 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 5 U.S.C. § 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 for assistance. I am also available for any questions you may have.

Sincerely,



Henry J. Kerner  
*Special Counsel*

Enclosure

cc: The Honorable Carol F. Ochoa, Inspector General

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<sup>3</sup>The whistleblower identified the following employees: [REDACTED], Region 6 Public Building Service (PBS) Commissioner; [REDACTED], Facilities Management Division Director; [REDACTED], Zonal Director, Leasing; [REDACTED], Deputy PBS Commissioner; [REDACTED], Service Center Director.

**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).