



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

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The Special Counsel

March 6, 2020

The Honorable Barbara M. Barrett  
Secretary  
Department of the Air Force  
1060 Air Force Pentagon  
Washington, D.C. 20330

Re: OSC File No. DI-20-000404  
Referral for Investigation – 5 U.S.C. § 1213(c)

Dear Secretary Barrett:

I am referring to you for investigation a whistleblower disclosure concerning the U.S. Department of Air Force, Air Force Reserve Command Niagara Falls Air Reserve Station Fire Department (Niagara Air Reserve FD), Niagara Falls, New York. The whistleblower alleged that employees may have engaged in conduct that constitutes a violation of law, rule or regulation, gross mismanagement, and a substantial and specific danger to public safety. A report responding to the allegations and any related matters is due to the Office of Special Counsel (OSC) on May 5, 2020.

The whistleblower, [REDACTED], who consented to the release of his name, is a firefighter and fire inspector at the Niagara Air Reserve FD. [REDACTED] disclosed that throughout 2019, and possibly several years prior, Niagara Air Reserve FD officials falsified training records. He further alleged that leadership is aware of the falsification but has failed to address it. The allegations to be investigated include the following:

- Niagara Air Reserve FD training instructors, administrators, and/or management improperly created or otherwise maintained training records that reflect employees completed mandatory and/or voluntary training when they had not attended the training; and
- Niagara Air Reserve FD employees did not receive requisite training to perform their duties safely and responsibly.

The Air Force uses the Automated Civil Engineering System (ACES) to maintain training records, which can be accessed by anyone in the Niagara Air Reserve FD. The Niagara Air Reserve FD also keeps a personnel shift calendar that shows which employees are on duty and when, and which employees are not on duty or otherwise in a leave status. [REDACTED] reported that when he compared a small sample of 2019 ACES training attendance records with the 2019 personnel shift calendar, he discovered that for approximately 22 trainings, many employees that appeared on the ACES records as having

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attended the training also appeared on the personnel shift calendar as off-duty or in a leave status.

██████████ stated that Assistant Chief ██████████ is the lead administrator for the training program at the Niagara Air Reserve FD, and as such, he is responsible for certifying and/or validating ACES training records. According to ██████████, since approximately 2013, ██████████ has said that he would allow ██████████ to accumulate training certifications and/or mandatory training hours without having attended the trainings at issue. ██████████ further asserted that he has heard ██████████ make the same offer to other employees at the Niagara Air Reserve FD.

Department of Defense (DoD) Manual 6055.06, *DoD Fire and Emergency Services Certification Program* implements a comprehensive DoD Fire & Emergency Safety Certification Program as part of the overall DoD Emergency Management Program. See DoDM 6055.06 at § 1.2. Further, DoD Instruction 6055.06, *DoD Fire and Emergency Services (F&ES) Program* directs the Air Force to ensure that appropriate training is provided so that fire departments are prepared to respond to emergencies appropriately. See DoDI 6055.06 at § 6.10. ██████████ alleged that many of the trainings with falsified attendance records or certifications are necessary to maintain credentials or safely perform emergency services. Consequently, Niagara Air Reserve FD employees might not have actually received the necessary training or qualifications to assist in different emergencies or obtain credentials, thereby impairing the agency's ability to accomplish its mission. ██████████ asserted that an audit of all training records for 2019, 2018, and 2017 would reveal additional instances of falsified training documentation.

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, gross mismanagement, 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.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be found on OSC's website at the following address:

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<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 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 Lieutenant General Sami D. Said, 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).