

Section III, Tab D

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

The Special Counsel

January 31, 2023

The Honorable Frank Kendall III
Secretary
U.S. Air Force
1670 Air Force Pentagon, Washington DC 20330-1670
Washington, D.C. 20301

Re: OSC File No. DI-23-000207
Request for Investigation—5 U.S.C. § 1213(c)

Dear Secretary Kendall:

I am referring to you for investigation a whistleblower disclosure concerning employees of the Department of Defense (DoD), U.S. Air Force (Air Force), Air Force Materiel Command, Oklahoma City Air Logistics Complex (OC-ALC), Oklahoma City, Oklahoma. The whistleblower, Mr. Micheal Williams, a former Tool and Parts Attendant, who consented to the release of his name, alleged that OC-ALC employees have engaged in conduct that constitutes 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 March 31, 2023.

Mr. Williams disclosed that during his employment with OC-ALC from January 4 through October 11, 2022, officials failed to resolve sewage leaks at the OC-ALC base despite complaints he and other employees submitted. He reported that the leaks and the conditions created by the leaks persist. The allegations to be investigated include:

- The sewage pipelines in OC-ALC campus buildings 3001 and 9001 leak liquid sewage waste onto the mechanical production floor;
- The OC-ALC's failure to repair the sewage pipelines exposes 44 Tool and Parts Attendants as well as numerous other mechanical workers in buildings 3001 and 9001 to continuous dripping waste;
- Mr. Williams reported the leaks and resulting conditions to OC-ALC leadership on numerous occasions, but the damaged sewage pipelines have not been repaired; and
- Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

Mr. Williams alleged that a brown, thick liquid substance with a foul odor consistent with human waste regularly leaks into the production area of OC-ALC buildings 3001 and 9001. Mr. Williams confirmed with his Unit 547 supervisor, [REDACTED], that the liquid resulted

from sewage pipelines leaks. He reported that 44 people work in his unit but believes that as many as several thousand OC-ALC employees work in each building. These employees are regularly exposed to leak drippings at various points within the production area, which he estimates to be a mile long.

Mr. Williams explained that yellow polyethylene tarps are used to collect heavier leaks and pool the liquid into buckets. Lighter leaks fall directly onto the production floor, creating messy brown pools. Mr. Williams alleged that these pools were not cleaned and were left to dry and harden into gritty brown stains on the epoxy layer of the production floor.

Mr. Williams complained to [REDACTED] approximately 20 times between February and September 2022. Other tools and parts attendants made similar complaints. In response, [REDACTED] submitted service tickets to building maintenance. However, building maintenance has not repaired the leaking pipes. OC-ALC Unit Supervisor [REDACTED] advised Mr. Williams to just “try not to get any (waste leaks) on you.” Mr. Williams alleged the failure of OC-ALC leadership to repair the sewage pipelines and requiring employees to work in these conditions in buildings 3001 and 9001 has resulted in a substantial and specific danger to public health and safety.

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 substantial and specific danger to public health. Please note that specific allegations 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 section 1213, please contact [REDACTED], 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 Stephen Davis, Air Force 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).



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC 20330

OFFICE OF THE GENERAL COUNSEL

3 February 2023

MEMORANDUM FOR DAF/IGQ

FROM: SAF/GCA

SUBJECT: Referral of Whistleblower Disclosures for Investigation – OSC File No. DI-23-000207

By letter dated January 31, 2023, and signed by the Special Counsel, the Office of Special Counsel (OSC) referred to the Secretary of the Air Force (SECAF) for investigation whistleblower disclosures alleging that employees at the Oklahoma City Air Logistics Complex (OC-ALC), Air Force Materiel Command, Oklahoma City, OK, have engaged in conduct that constitutes a substantial and specific danger to public health.

According to OSC, the whistleblower, Mr. Michael Williams, a former Tool and Parts Attendant, who consented to the release of his name, disclosed that during his employment with OC-ALC from January 4 through October 11, 2022, officials failed to resolve sewage leaks at the OC-ALC base despite complaints he and other employees submitted. He reported that the leaks and the conditions created by the leaks persist. The allegations to be investigated include:

- The sewage pipelines in OC-ALC campus buildings 3001 and 9001 leak liquid sewage waste onto the mechanical production floor;
- The OC-ALC's failure to repair the sewage pipelines exposes 44 Tool and Parts Attendants as well as numerous other mechanical workers in buildings 3001 and 9001 to continuous dripping waste;
- Mr. Williams reported the leaks and resulting conditions to OC-ALC leadership on numerous occasions, but the damaged sewage pipelines have not been repaired; and
- Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

In its letter, OSC requires SECAF to report his/her findings within 60 days of receipt of the OSC referral letter. According to OSC, **SECAF's report is due on or before March 31, 2023**. In the Appendix to its letter, OSC states that 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. This means that time is of the essence in responding to OSC's referral letter.

As set forth in HAF Mission Directive 1-14, paragraph 3.2.8., SECAF has designated SAF/GC as the Senior Management Official to provide overall guidance on OSC matters.

This communication is privileged as attorney work product and/or as an attorney-client communication or other privilege recognized under the law. Do not distribute, forward or retransmit without the prior approval of the Office of the Air Force General Counsel.

According to AFI 51-1102, SAF/GC shall “coordinate Air Force investigations into allegations referred by OSC.” SAF/GCA has been delegated responsibilities for OSC matters.

Pursuant to the OSC’s request, 5 U.S.C. 1213(c) & (d), and AFI 51-1102, paragraph 2.1, I request the following:

1. An investigation into all of the allegations set forth in OSC’s referral letter;
2. A written report which provides:
 - a. A summary of the information with respect to which the investigation was initiated (this is the information directly from OSC’s referral letter as set forth above)
 - b. A description of the conduct of the investigation.
 - c. A detailed summary narrative of all relevant (positive and negative) information obtained during the investigation;
 - d. A section setting out the legal requirements/legal framework;
 - e. Recommended findings, with legal and factual analysis, on whether there are any violations of law, rule, or regulation, gross mismanagement¹ and/or a substantial and specific danger to public safety; and
 - f. A draft list of each and every violation of law, rule or regulation, specifically citing to the law, rule, or regulation;
3. A copy of all of the documentary evidence and testimony collected and/or reviewed; and
4. Recommendation(s) for administrative/corrective action are welcome but not required.

It should be emphasized that the report OSC, and SAF/GC, have requested is not a standard IG report. Section 1213(c) requires the head of the agency to respond to OSC’s formal referral of allegations of wrongdoing. “Special Counsel shall promptly transmit the information [of its determination of wrongdoing] ... to the appropriate agency head and require the agency head – to conduct an investigation... and submit a written report setting forth *the findings of the agency head...*” (Emphasis added). Thus, this report is the Secretary’s report to OSC pursuant to OSC statute. The IG’s version of the report remains a recommended draft unless and until SecAF or his/her delegatee agrees with it and makes it his/her report.

The Secretary’s report must comply with the requirements of 5 U.S.C. § 1213(d), which are included in paragraph 2.1.3 (and its subparagraphs) of AFI 51-1102. These statutory reporting requirements include the following:

1. *A summary of the information with respect to which the investigation was initiated* (this information is contained within the OSC referral letter and is set out above following the

¹ The definition of gross mismanagement to be used for this investigation is the definition found in the Appendix of AFI 51-1102, which is taken from Court of Federal Appeals and MSPB caselaw in the context of whistleblower disclosures. The definition generally used by the Inspector General must not be used as under the applicable caselaw, the precedential opinions specifically state there is no requirement to show that the gross mismanagement is “blatant.”

stated allegations).

2. *A description of the conduct of the investigation.* By policy, OSC requires that the complainant be interviewed at the beginning of the investigation. In addition, individuals in the positions referenced above should, at a minimum, also be interviewed as part of the investigation.

3. *A summary of evidence obtained from the investigation.*

4. *A listing of any violation or apparent violation of law, rule, or regulation.*

OSC in its referral letter refers to “law, rule and regulation, gross mismanagement and a gross waste of funds.” As previously stated, OSC emphasizes in its referral letter that “specific allegations and references to specific violations of law, rule or regulation are not intended to be exclusive.” The investigation should include any applicable rules. According to OSC, if in the course of the AF disclosure investigation, we discover additional violations, those findings on these additional matters should be included in the report to OSC.

It should be noted that intent is not a requirement for a violation of law, rule or regulation, unless specifically stated in the text of such law, rule or regulation. Such a statement would be exceedingly rare. In almost all cases, negligent violations are still violations that must be included. Indeed, Section 1213(d)(4) requires “a listing of any violation *or apparent* violation of any law, rule or regulation.” (Emphasis added). While the draft report may find that an action (or lack of action) is not intentional, such characterization is not determinative of whether a violation has occurred.

While SAF/GCA will address the last report requirement set out in Section 1213(d), we welcome, but do not require, IG recommendations. Section 1213(d)(4) requires “[a] *description of any such action taken or planned as a result of the investigation, such as: 1) changes in agency rules, regulations or practices; 2) the restoration of any aggrieved employee; 3) disciplinary action against any employee; and 4) referral to the Attorney General of any evidence of criminal violation.*”

Due to the specialized OSC practice (both in terms of legal requirements and OSC’s formal and informal requirements) and the time constraints in submitting the Secretary’s report, we respectfully request that you work closely with SAF/GCA as you prepare and conduct the investigation and keep us apprised of your progress. We will likely need to ask for extensions to complete the investigation and prepare the Secretary’s report. Please advise SAF/GCA at least two weeks prior to the report deadline if SAF/GCA will need to submit a request for an extension of time to OSC, along with a justification for the requested extension. In addition, due to time constraints and to assist SAF/GCA’s review of the draft report, we will need the underlying evidence (testimony and exhibits) prior to completion of the investigation and/or completion of the draft report.

At the completion of the investigation and draft report, please submit the report of investigation with attachments (exhibits and testimony) to SAF/GCA no later than 30 days prior to the due date of the report.

If you have any questions concerning the above, please reach out to me at (703) 695-0491.

[REDACTED]
Associate General Counsel
Fiscal, Ethics & Administrative Law

Cc: [REDACTED] AFLOA/JACL LLFSC

GLEASON, TODD A CIV USAF AFMC HQ AFMC/IGQ

From: [REDACTED] CIV USAF AFMC HQ AFMC/IGQ
Sent: Wednesday, June 14, 2023 10:51 AM
To: [REDACTED] CIV USAF AFMC HQ AFMC/IGQ
Subject: FW: OSC File No. DI-23-000207 Referral to SECAF
Attachments: OSC 1213 Referral Tasking Memo ALC OK Feb 23.pdf; DI-23-000207 1213c Referral.pdf
Signed By: [REDACTED]

-----Original Message-----

From: [REDACTED] CIV USAF U S AIR FORCE HQ/DAF/IGQ
[REDACTED] |>
Sent: Monday, February 6, 2023 7:33 AM

[REDACTED]

Subject: FW: OSC File No. DI-23-000207 Referral to SECAF

Good Morning [REDACTED] -

OSC has referred the attached case to SECAF for investigation -- GC has tasked SAF/IG to complete the investigation based on the allegation that "OC-ALC employees have engaged in conduct that constitutes a substantial and specific danger to public health." Given the alleged events took place at the Oklahoma City Air Logistics Complex (OC-ALC), TIG has concurred that AFMC/IG is therefore tasked to complete the Investigation. Initial suspense is 31 Mar 23 -- please coordinate any extensions through our office.

Please review the attached and let me know if you have any questions -- would recommend securing a Technical Advisor given the nature of the complaint (AFCEC?). Please conduct an initial complaint clarification interview to support an initial Investigative Plan with framed allegations and witnesses identified. We will coordinate the IP with GC to make sure they are satisfied with the Allegations prior to initiating the formal investigation. Please ensure as a minimum the framed Allegations address the four "allegations" listed on the referral memo. (I would consider those "issues" as opposed to the actual framed "Allegations.") Please use the AFCRPSG Attach 10, "ROI Format for Non-Senior Official Investigations Other Than 10 USC § 1034." Do not use the GC/OSC ROI template we have used in the past. Please conduct this

IG Investigation IAW AFI 90-301 chap 4 -- SAF/IGQ will coordinate with SAF/GCA for all AFI 51-1102, Cooperation with Office of Special Counsel, requirements.

As AFMC/IG has conducted several OSC investigations in the last few years, you are familiar with the somewhat non-standard investigative and coordination process -- we have coordinated with SAF/GCA to allow SAF/IG to conduct the investigation as consistent with AFI 90-301 as possible -- with some exceptions to accommodate the required SAF/GC and OSC coordination.

[REDACTED] has created an ACTS case and will be transferring to AFMC/IG today.

Please let me know if you have any questions -- happy to hold a telecon with you and your team to address any questions or concerns.

VR

[REDACTED]

[REDACTED], DAFC
Deputy Director
SAF/IGQ, Inspector General Complaints Resolution Directorate
Office: 202-404-5668
DSN: 754-5668
Email: [REDACTED]

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Controlled by: SAF/IG
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Distribution/Dissemination Controls: FEDCON
POC: SAF.IGQ.Workflow@us.af.mil

-----Original Message-----

From: [REDACTED]
Sent: Friday, February 3, 2023 1:51 PM
To: [REDACTED]
<[REDACTED]>
Cc: [REDACTED]
<[REDACTED]>
[REDACTED]

[REDACTED]
Subject: RE: OSC File No. DI-23-000207

[REDACTED]

Sorry for the delay. Attached is the SAF/GCA tasking memo to DAF/IGQ regarding the whistleblower disclosures alleging that employees at the Oklahoma City Air Logistics Complex (OC-ALC), Air Force Materiel Command, engaged in conduct that constitutes a substantial and specific danger to public health.

Vr
[REDACTED]

[REDACTED]
Associate General Counsel (SAF/GCA)
Office of the Air Force General Counsel
Telework Phone: 813-340-6713(Primary)
Phone: 703-695-0491 DSN: 227-0491
Pentagon Room #: 4C934

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-----Original Message-----

From: [REDACTED]
Sent: Wednesday, February 1, 2023 7:22 AM
To: [REDACTED]
<[REDACTED]>
Cc: [REDACTED]
<[REDACTED]>
Subject: FW: OSC File No. DI-23-000207

[REDACTED]

Good morning. Did your office receive a copy of the attached OSC referral?
And I apologize as I should know this, but do you require a tasking letter
from SAF/GCA?

Vr

[REDACTED]
Associate General Counsel (SAF/GCA)
Office of the Air Force General Counsel
Telework Phone: 813-340-6713(Primary)
Phone: 703-695-0491 DSN: 227-0491
Pentagon Room #: 4C934

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-----Original Message-----

From: [REDACTED]
Sent: Tuesday, January 31, 2023 1:42 PM

To: [REDACTED]

Subject: [Non-DoD Source] OSC File No. DI-23-000207

[REDACTED]
Attached is a 1213(c) referral to the Secretary of the Air Force with a courtesy copy to the Inspector General. The report is due on March 31, 2023. [REDACTED] is the assigned attorney and may be contacted at (202) 804-7096 or [REDACTED]. As always, we are available to discuss the disclosures with you or the assigned investigators.

We request that you acknowledge receipt and let us know who will be investigating this matter. Thank you.

Kind regards,





Deputy Chief, Disclosure Unit

U.S. Office of Special Counsel

1730 M St., N.W.

Washington, D.C. 20036

(202) 804-7020

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Building 9001 Tool Crib Area

WWYK210096, Work Order 22075 - Repair Plumbing Leaks on 2W43 Restroom

- 332 Opened 2-28-2019 to Repair by Replacement overhead piping
 - Initial estimate via Plumbing Supervisor \$4,850.00
 - Formal Assessment (value unknown) 4-18-2019
 - Design 6-13-2019
 - Solicitation 7-18-2019
 - Construction Contract Award 7-16-2020
 - Construction Complete 5-06-2021
 - Total Cost \$1.2M

- Tool crib supervisor sent email 7-27-2020
 - Notified Bldg 9001 Facility Manager of emergency work orders: RS011, K4836, K4853, K4894
 - ABW/CE responded by clearing clogs and cleaning original piping system
 - Liquid “presumed sewage” did contact one employee
 - Safety RAC 3 requested &/or created - Control Number S-20200811-167604 - B9001, POST V-44 SEWER LINE LEAK 9-29-2020
 - Requested Men’s restroom be closed until plumbing issue corrected permanently
 - CE closed restroom on work order (K4923)

- New piping system continued to have issues; i.e. backup issues backing up but to a lesser extent than prior to replacement 5-2021 – 5-2022
 - Bldg 9001 Facility Manager engagement:
 - ~Seven WOs turned in 5-2021 – 4-2022
 - Requested removal of venting device and cap-closed suspected vent pipe
 - Installed hand dryers to eliminate paper products being flushed
 - Replaced missing receptacles for feminine products
 - Removed the paper towel dispensers
 - Last incident 5-20-2022

* dates are “best faith” information and recollections; ABW/CE manages the system(s) of record for work order and project dates