



U.S. OFFICE OF SPECIAL COUNSEL
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March 17, 2010

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

Re: OSC File No. DI-08-2778

Dear Mr. President:

The Office of Special Counsel (OSC) received a disclosure from Stanley Brasch, a Computer Specialist at the Department of Transportation (DOT), Federal Aviation Administration (FAA), Kansas City, Missouri. Mr. Brasch, who consented to the release of his name, alleged that during a June 2008 annual computer meeting in New Orleans, Louisiana, several FAA managers and their spouses attended a dinner hosted by representatives of Dell, Inc. (Dell), at no cost to the employees or their spouses. Mr. Brasch asserted that because Dell is a sole-source provider of computer equipment and software to FAA, the acceptance of the meals by FAA employees was a violation of 5 C.F.R. § 2635.202(a), which prohibits federal employees from accepting gifts of value greater than \$20 from prohibited outside sources or because of the employees' official positions.

OSC referred Mr. Brasch's allegations to the Honorable Ray LaHood, Secretary of Transportation, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d).¹ Secretary LaHood delegated investigative authority to FAA's Office of Security and Hazardous Materials (ASH). On November 16, 2009, OSC received the agency's report, which substantiated Mr. Brasch's allegations. In response to OSC's request for additional information regarding corrective action taken by FAA, the agency submitted supplemental information by letter dated January 22, 2010. Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Brasch provided comments on the agency report. As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the agency's report and Mr. Brasch's comments to you.

As noted, the agency's report substantiated Mr. Brasch's allegations. According to the report, the investigation revealed that twelve FAA employees and two spouses attended the dinner paid for by Dell, and that Dell paid approximately \$60 per meal for these individuals.

¹ Initially, OSC informally referred Mr. Brasch's allegations to the DOT Office of Inspector General (OIG), requesting that OIG inform us of any information OIG had or obtained regarding these allegations and any actions taken or planned as a result of the allegations. OSC understood that OIG referred the matter to FAA's Investigations Division (AEO 500). Despite granting two extensions of time to OIG over a period of six months, we did not receive a response to our informal referral. Therefore, we referred the allegations to Secretary LaHood for an investigation and report.

The report identifies the twelve employees by name and position level, and indicates that they work for FAA's Air Traffic Organization (ATO) throughout several FAA regions. The employees who attended the dinner included eight managers, two supervisors, a non-supervisory computer specialist,² and a secretary. Noting that the ethics regulations prohibit the acceptance of gifts of value greater than \$20 from a prohibited source, the report concludes that Dell is a government contractor providing services and equipment to FAA, and that the employees who attended the dinner are responsible for providing input and recommendations for the Dell contract. The report further notes that none of the employees conferred with agency ethics officials to determine whether they could attend the dinner. Based on the investigative findings, Lisa Baccus, FAA Senior Managing Attorney for Ethics, determined that the twelve employees who attended the dinner violated § 2635.202(a).

In response to the findings of ethics violations by the twelve employees, FAA assigned Robert Tobin, Group Manager, ATO Finance, Information Technology Directorate, to review the violations and determine appropriate disciplinary action. The report states that Mr. Tobin would provide a status report on the disciplinary determination by no later than 60 days from the date of FAA's report, *i.e.*, by November 30, 2009. In addition, to reduce the likelihood of a recurrence of this type of violation, the report indicates that agency ethics officials would issue a memorandum to FAA employees, reinforcing the gift prohibition under § 2635.202(a). On December 10, 2009, OSC requested supplemental information regarding FAA's disciplinary determination. In response, the agency provided confirmation that FAA issued written reprimands to the ten managers and supervisors who violated § 2635.202(a). An oral admonishment was given to the secretary and a written admonishment was issued to the non-supervisory computer specialist. All twelve employees were required to repay the amount of their meals. In addition, another supervisor who did not attend the dinner was issued a reprimand because of his overall responsibility for the Dell contract. The agency's letter of January 22, 2010, confirming FAA's disciplinary determination and action taken, is included as part of the agency's report.

Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Brasch had an opportunity to review and provide comments on the agency's report. Mr. Brasch notes in his comments that he believes there may have been similar ethics violations that have not been investigated by the agency. He states that FAA's Information Technology Group consists of three sections, all of which held separate annual computer meetings in their respective areas in 2008. In addition, he raises concerns that Dell may have improperly influenced FAA management in relation to the award of its contract, and that Dell and other information technology equipment suppliers may be overcharging FAA. He further notes that he believes FAA has not followed proper identification and inventory procedures for new computer equipment. Mr. Brasch requests that DOT further investigate these issues.

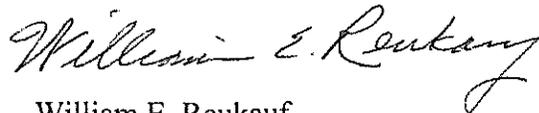
² The agency's supplemental letter of January 22, 2010, states that this non-supervisory employee was erroneously identified as a manager in the report.

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OSC has reviewed the original disclosure, the agency's report, and the whistleblower's comments. Based on that review, OSC has determined that the agency's report contains all of the information required by statute and that the findings of the agency head appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), OSC has sent copies of the agency report and Mr. Brasch's comments to the Chairmen and Ranking Members of the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure. OSC has also filed copies of the agency report and Mr. Brasch's comments in our public file and closed the matter.

Respectfully,

A handwritten signature in cursive script that reads "William E. Reukauf".

William E. Reukauf
Associate Special Counsel

Enclosures