



THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

December 9, 2010

Mr. William E. Reukauf  
Associate Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, NW, Suite 218  
Washington, D.C. 20036-4505

Dear Mr. Reukauf:

This letter is in response to your letter dated June 2, 2010, regarding OSC File No. DI-10-1226.

Ms. Ethel L. Tendell (whistleblower) is a field examiner who reports to the Department of Veterans Affairs (VA) Western Area Fiduciary Hub in Salt Lake City, Utah. Ms. Tendell asserted that the Support Services Division Chief failed to provide timely notification of a recall for the 2009 Pontiac G6 vehicles assigned to her and other field examiners, which may have resulted in specific danger to public safety.

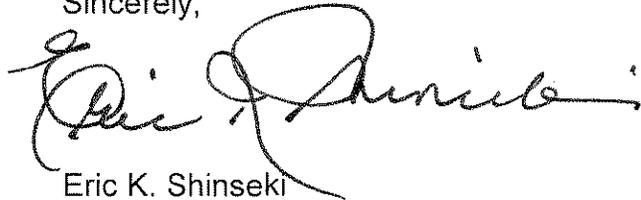
During the period from June 8-25, 2010, the Veterans Benefits Administration (VBA) investigated Ms. Tendell's assertions. In connection with this investigation, VBA contacted the General Services Administration (GSA) to inquire about the subject vehicle. The GSA senior fleet service representative for Utah advised VBA that GSA had not received a recall notice from the manufacturer on this specific vehicle and therefore had not issued a recall letter to the VBA fleet coordinator in Salt Lake City.

GSA advised that a new database for recall information was under development and suggested that VBA use the National Highway Traffic and Safety Administration (NHTSA) Web site as an interim measure to obtain vehicle recall information. On July 1, 2010, during a national conference call sponsored by VBA's Associate Deputy Under Secretary for Field Operations, the Associate Deputy Under Secretary for Management (ADUSM) provided verbal information to all regional office station management regarding the recall notice and instructed that they ensure that all vehicles in their possession obtain immediate maintenance. The ADUSM also provided instructions on the use of the NHTSA website to locate vehicle recall information and provided verbal instructions that Fleet Management Coordinators (FMCs) visit this site on a quarterly basis to obtain recall information for their specific fleet. Additionally, the ADUSM instructed

her staff to provide refresher training to regional office FMCs on September 28-29, 2010. This refresher training is designed to ensure that FMCs understand their responsibilities to employees who drive GSA-leased vehicles. The training also addresses their responsibilities for maintaining appropriate documentation on routine vehicle maintenance and recall issues. To ensure compliance with this new directive, VBA plans to require that an annual Systematic Analysis of Operations be conducted by regional offices that will require a thorough review of the documentation maintained by FMCs. The management directive for Administrative Services is currently being revised to incorporate this requirement.

Enclosed is the full report of the investigation conducted in connection with Ms. Tendell's allegations. Questions may be directed to Ms. Bonnie Miranda, Associate Deputy Under Secretary for Management, Veterans Benefits Administration, at (202) 461-9412.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric K. Shinseki". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Eric K. Shinseki

Enclosure  
VBA Report, Exhibits 1-21

## VBA REPORT ON OSC FILE NO. DI-10-1226

### I. Summary of Information

On June 2, 2010, the Secretary of Veterans Affairs (VA) received a letter from the U.S. Office of Special Counsel (OSC) regarding a whistleblower disclosure from the VA Western Area Fiduciary Hub, Salt Lake City, Utah, that may constitute a violation of law, rule, or regulation, gross mismanagement, and a substantial and specific danger to public safety by failing to inform employees of the existence of a safety vehicle March 2009 recall related to the Pontiac G6. On June 8, 2010, the assignment was made to the Veterans Benefits Administration (VBA). VBA's Office of Facilities, Access and Administration conducted an informal fact-finding investigation by conducting telephone interviews and receiving of e-mails from various individuals. The whistleblower made the following assertions:

1. VA failed to provide any documentation pertaining to the maintenance or upkeep of the 2009 Pontiac G6.
2. VA failed to provide routine inspection of the vehicle.
3. VA failed to supply recall information to the complainant and other field examiners in a timely manner, which could have resulted in a specific danger to public safety.

Ms. Tendell, Field Examiner (whistleblower), received her government leased vehicle (GLV), a 2009 Pontiac G6, from the Denver Auto Auction (an authorized General Services Administration (GSA) vehicle dealer) in new condition on April 6, 2009. Ms. Tendell asserted that she uses the 2009 Pontiac G6 vehicle to conduct field examinations for her work in VA, and is required to travel throughout Wyoming and Colorado. She further stated that she is ordinarily in the field four days out of her five-day duty week. Ms. Tendell alleged that on February 11, 2010, she was driving the 2009 Pontiac G6 when it suddenly froze while she was making a 3-point turn. The vehicle would not shift gears into reverse, drive, or neutral. The vehicle stopped at a diagonal, blocking on-coming traffic in both directions. Ms. Tendell called GSA, which arranged for the vehicle to be transported to a dealership to be repaired.

### II. Conduct of the Investigation

During the period of June 8-25, 2010, an initial fact-finding investigation (via telephone conversations and emails) was initiated to address issues and allegations set forth by the OSC. Mr. Bernard Johnson, VBA's Deputy Director, Office of Facilities, and Ms. Gayle Brown, Management Analyst, Office of Facilities, Access and Administration, spoke with VBA employees, GSA

representatives and with representatives from the Suss-Buick-Pontiac-GMC Dealership in Aurora, Colorado. Subsequent interviews took place during July through November 2010 to clarify information or obtain additional evidence.

### III. Summary of Evidence

#### Re: Maintenance Documentation and Routine Inspection

The evidence provided below addresses Ms. Tendell's assertions (#1 and #2., Summary of Information) that VA failed to provide any documentation pertaining to the maintenance or upkeep of the 2009 Pontiac G6 and failed to provide routine inspection of the vehicle. The investigation indicated that when Ms. Tendell assumed possession of her vehicle from the Denver Auto Auction, she was required to sign a GSA Form 1152, Motor Vehicle Assignment/Termination Transaction. **(Exhibit 2a, Sample GSA Form 1152.)** By signing the GSA Form 1152, a person acknowledges receipt of a "motor vehicle packet" that included "A Guide to your GSA Fleet Vehicle" (GSA Guide) which instructs the operator to "familiarize yourself with the vehicle's owner's manual and perform any operator checks or inspections listed therein." **(Exhibit 4, "A Guide to your GSA Fleet Vehicle," pages 29-30.)** Additionally, the GSA Guide also states on page 32, "If your vehicle is equipped with an oil monitoring system, have the oil changed when the 'change engine oil' light turns on. This is an automated electronic program, and you will not receive any notice from GSA Fleet." (Emphasis added.)

According to the Owner's Manual for the 2009 Pontiac G6, **(Exhibit 5, 2009 Pontiac G6 Owner Manual excerpt)**, regarding scheduled maintenance, the 2009 Pontiac G6 vehicle is equipped with an electronic notification system that alerts operators when routine maintenance is due. The manual states: "When the CHANGE OIL SOON message displays in the Driver Information Center (DIC), service is required for the vehicle. Have the vehicle serviced as soon as possible within the next 600 miles (1000 km). It is possible that, if driving under the best conditions, the engine oil life system may not indicate that vehicle service is necessary for over a year." **(Exhibit 5, page 6-4.)**

Mr. Danny Ice, Program Assistant, Denver Regional Office, asserted that Ms. Tendell received the 2009 Pontiac G6 vehicle during the week of April 6, 2009, and that he provided her the operating information that included the GSA document "A Guide to Your GSA Fleet Vehicle". Mr. Ice also asserted that Ms. Tendell's car is equipped with the electronic notification to "change oil" and "check engine" and that her car had five miles on the odometer when it was assigned indicating that it was a new vehicle. **(Exhibit 2, Statement of Mr. Danny Ice, Program Assistant, Denver Regional Office.)**

Since Ms. Tendell's vehicle had an oil-monitoring system, according to the GSA Guide, she was not expecting to receive notice from the GSA Fleet.

Additionally, when interviewed, Ms. Tendell stated that she received a copy of VBA Circular No. 2324-10-14 (Motor Vehicle Management Program), via email on January 26, 2010, from Mr. Van Berckelaer, her supervisor. **(Exhibit 3, VA Policy Covering Employee Use of GSA Motor Vehicles.)** The VBA Circular outlines the authorized driver's maintenance responsibilities on page 3, item 4.f. Responsibilities of authorized drivers include "performing operator maintenance checks such as ensuring proper fluid levels, correct tire air pressure and cleanliness of the vehicle, and notifying the Administrative Support Assistant immediately of any defective equipment."

During a phone interview on June 18, 2010, Ms. Tendell stated that she never received any information or emails from Mr. Thomas Mangum, Fleet Management Coordinator, regarding maintenance required for her vehicle. Ms. Tendell also stated that the only way she knew that her vehicle required service was when the vehicle itself started flashing "change oil soon," on February 3, 2010. This statement is evidence that the electronic signaling system in her vehicle appears to have been functioning properly. Ms. Tendell also provided evidence that she opened an email from Mr. Mangum (forwarded by her supervisor), the day after her vehicle had been serviced, notifying her that the "vehicle is due for general service, lube, oil, filter." **(Exhibit 6, Statement of Ms. Tendell, VA Field Examiner, Western Area Fiduciary Hub, Salt Lake City.)**

Emails provided by Mr. Mangum indicate that he sent an email message on February 2, 2010, to Ms. Tendell's supervisor, Mr. Van Berckelaer, notifying him of the requirement for vehicle service. **(Exhibit 7, email from Mr. Mangum, VA ADA, SSD, re: General Vehicle Maintenance due on GSA Vehicle.)** On the same date, Mr. Van Berckelaer notified Ms. Tendell of the requirement that her vehicle was due for routine maintenance. On February 4, 2010, when Ms. Tendell read the email notification, she responded with the information requested by management (vehicle's recorded mileage and the date that the required service was performed) since she already had the oil changed the day prior. **(Exhibit 8, Email from Ms. Tendell, Field Examiner, WAFH, acknowledging notification that Vehicle Maintenance is Due.)**

A report indicating the date that preventative maintenance was performed on Ms. Tendell's vehicle. **(Exhibit 9, Report showing Date Preventative Maintenance was Performed on Ms. Tendell's GSA Vehicle.)** The report indicates that the vehicle mileage was 6,897 on the date the routine service was performed (February 3, 2010).

The evidence establishes that notification regarding routine vehicle maintenance was provided to Ms. Tendell on a timely basis, and that she received notification from both the vehicle's electronic system and via email from her supervisor, Mr. Van Berckelaer, on Tuesday, February 2, 2010. **(Exhibit 8, Email from Ms. Tendell, Field Examiner, WAFH, Acknowledging Notification that Vehicle Maintenance is Due.)**

Finally, Ms. Tendell's 2009 Pontiac G6 is a government vehicle that is issued by GSA, and maintained by VA, per the GSA Fleet Management contract. Legal requirements regarding scheduled maintenance and inspection requirements for Government Owned or leased motor vehicles are found in 41 CFR Chapter 102-34.285, *What kind of maintenance program must we have?* These requirements apply to motor vehicles operated in any State, Commonwealth, territory or possession of the U.S., and the District of Columbia. The following must be included in the scheduled maintenance:

- Meet Federal, State, and local emission standards;
- Meet manufacturer warranty requirements;
- Ensure the safe and economical operating condition of the motor vehicle throughout its life; and
- Ensure that inspections and servicing occur as recommended by the manufacturer or more often if local operating conditions require.

According to 41 CFR Ch § 102-34.290 (b), *Must our motor vehicles pass state inspections?*, motor vehicles owned or leased by the Government that are exempted from the display of U.S. Government license plates and motor vehicle identification must comply with emission and mechanical inspection programs of the State, Commonwealth, territory or possession of the U.S. or the District of Columbia in which they are regularly operated. **(Exhibit 1, Scheduled Maintenance of Government Owned or Leased Motor Vehicles.)**

Ms. Anna Vanderhazen, GSA Fleet Management Representative, stated that GSA does not conduct extensive inspections on vehicles, unless the Agency is obtaining a state license plate. Inspections are routinely made by the Agency and/or vehicle operator. **(Exhibit 10, Statement of Ms. Vandenhazen, GSA Fleet Service Representative.)**

Mr. Magnum stated that the Agency does not conduct annual inspections on any GSA vehicle, because the state conducts all inspections. **(Exhibit 11, Statement of Mr. Magnum, VA ASA, SSD, Salt Lake City.)**

**Re: Recall Information**

The evidence provided below addresses Ms. Tendell's assertion (#3., Summary of Information) that VA failed to supply recall information to the complainant and other field examiners in a timely manner, which could have resulted in a specific danger to public safety.

The recall notice pertaining to 2009 Pontiac G6 vehicle is provided as **Exhibit 12, 2009 Pontiac G6 Recall Notice**. The recall was issued on March 6, 2009, and included a statement that "the recall is expected to begin on or before March 24, 2009."

A sample Product Safety Recall bulletin from General Motors (GM) outlines the "Dealer Recall Responsibility," as follows: "All unsold new vehicles in dealers' possession and subject to recall must be held and inspected/repaired per the service procedure of the recall bulletin before customers take possession of these vehicles." (**Exhibit 13, Sample Page of General Motors Recall Bulletin.**) The recall notice for Ms. Tendell's 2009 Pontiac G6 was published on March 3, 2009, and contained instructions that the recall was expected to begin "on or before March 24, 2009," which is prior to the date that Ms. Tendell took possession of the vehicle from the dealer (April 6, 2009). Per GM's recall policy, the dealer, Denver Auto Auction, should have held the vehicle and completed the inspection and repair required by the recall notice before releasing the vehicle to Ms. Tendell.

Ms. Marie Lowe, Program Assistant at the Salt Lake City Judiciary Hub, contacted Mr. Mangum on February 11, 2010, to report that Ms. Tendell's vehicle was at the Pontiac Dealership as a result of an incident and that the dealership informed her that a recall had been made on the 2009 Pontiac G6. (**Exhibit 14, Email informing Mr. Magnum, ASA, SSD, of Vehicle Recall Notice.**) The recall notice stated that, on some vehicles, "The transmission shift cable adjustment clip may not be fully engaged, the shift lever and the actual position of the transmission gear may not match. With this condition, the driver could move the shifter to "park" and remove the ignition key, but the transmission gear may not be in "park." (**Exhibit 12, 2009 Pontiac G6 Recall Notice.**)

A copy of the Service Repair report on Ms. Tendell's 2009 Pontiac G6 vehicle following the February 11, 2010, sudden stoppage incident is provided. (**Exhibit 15, Service Repair Report on Ms. Tendell's 2009 Pontiac G6.**) The date the repairs were made is February 11, 2010. The date of the recall inspection and maintenance is also February 11, 2010.

Mr. Mangum stated that he was not notified by GSA or the manufacturer regarding the recall notice. Based upon Ms. Tendell's incident with the Pontiac G6, he contacted the Suss Buick-Pontiac-GMC dealership on February 12, 2010, and was informed by one of the dealership's representatives that the work performed on Ms. Tendell's vehicle was not a direct result of the recall. **(Exhibit 11, Statement of Mr. Magnum, ASA, SSD, Salt Lake City.)**

During VBA's investigation, Mr. Huston from Suss Buick-Pontiac-GMC stated that Ms. Tendell's vehicle was inspected and the mechanic found that there was a mechanical problem directly related to the transmission. Once the transmission was disassembled and the clutches and valves were inspected, it was observed that the clutch was burnt and the valve was sticking. Mr. Huston stated that the recall and the problem that Ms. Tendell experienced were not remotely similar. **(Exhibit 17, Statement of Mr. Huston, SUS Buick-Pontiac-GMC.)**

Mr. Douglas Alston, Chief, Support Services Division, Salt Lake City, spoke directly with the dealer who towed and repaired the vehicle and they stated that the vehicle experienced transmission problems that were not directly related to the recall. **(Exhibit 18, Statement from Mr. Alston, Chief, Support Service Division, Salt Lake City.)**

In an effort to ascertain whether any regional office had received the Pontiac G6 recall information, Ms. Gayle Brown contacted several VBA field examiners at other VBA field facilities. Four VBA field examiners drive a Pontiac G6 to perform their official duties and all informed her that they had not been contacted by anyone in VA or GSA regarding the recall information; therefore, we were able to confirm that the Pontiac G6 recall information was not received by GSA or disseminated to any regional office. **(Exhibit 19, Statements from the VA Regional Office Field Examiners, re: Receipt of a Recall Notice.)**

Mr. James Yates, Senior FSR, Utah Fleet Management Zone, stated in an email message to Mr. Mangum that GSA had not received a recall notice from the manufacturer regarding the Pontiac G6 (G10-5198H) **(Exhibit 20, Email of Mr. Yates, Senior FSR, Utah Fleet Management Zone, re: Vehicle Recall Notice Procedure.)**

#### **IV. Sustained or Unsustained Violations**

**Assertion #1** - VA failed to provide any documentation pertaining to the maintenance or upkeep of the 2009 Pontiac G6.

This assertion is unsustainable. When Ms. Tendell took delivery of the vehicle from the Denver Auto Auction on April 6, 2010, Ms. Tendell received “**A Guide to Your GSA Fleet Vehicle,**” (Exhibit 4). From her supervisor, she received a copy of VBA Circular No. 2324-10-14, **VA Policy Covering Employee Use of GSA Motor Vehicles** (Exhibit 3). The evidence also shows that Mr. Van Berkelaer contacted Ms. Tendell via email on February 2, 2010, regarding the requirement for routine maintenance to be accomplished on her vehicle. (Exhibit 8, Email from Ms. Tendell, Field Examiner, WAFH.)

VA provided Ms. Tendell with the GSA guide and the Owner’s Manual. The GSA Guide explains that, because Ms. Tendell’s vehicle is equipped with an oil-monitoring system, she would not be receiving GSA notifications regarding maintenance, but rather that her car would notify her of maintenance issues. Although not required, Ms. Tendell’s supervisor, Mr. Van Berkelaer, provided notification by email regarding the need for routine maintenance. Additionally, the Owner’s Manual states “it is possible that...the engine oil life system may not indicate that vehicle service is necessary for over a year.” Since there was low mileage on Ms. Tendell’s vehicle at the time of the incident, there was no additional maintenance required at that time other than the routine oil change. (Exhibit 5, 2009 Pontiac G6 Owner Manual, page 6-4.)

Therefore, according to the evidence, VA provided Ms. Tendell with the documentation regarding the maintenance and upkeep of her vehicle. In addition, VA went beyond the requirements outlined in the GSA Guide and notified Ms. Tendell, via her supervisor, of routine maintenance.

**Assertion #2** - VA failed to provide routine inspection of the vehicle.

This assertion is unsustainable. The complainant asserts that while in her possession the vehicle had not been routinely inspected by VA or GSA, aside from the repair that occurred subsequent to the February 11, 2010, incident. Ms. Anna Vandenhazen (GSA, FSR), stated during the investigative interviews conducted during June 14 -15, 2010, that GSA is not required to conduct extensive inspections on vehicles unless the Agency is obtaining state license plates. (Exhibit 10, Statement of Ms. Vandenhazen, GSA Fleet Service Representative.)

Ms. Tendell took possession of a new Pontiac G6 on April 6, 2009, from the Denver Auto Auction, which under the GSA program, issues new cars to VA employees. Ms. Tendell had the vehicle in her possession for less than one year and, at the time of the incident on February 11, 2010, her vehicle was not yet due

for any maintenance since the vehicle's electronic warning system had not notified her of such. **(Exhibit 5, 2009 Pontiac G6 Owner Manual, pages 6-4.)** According to the evidence, VA provided the required maintenance and associated inspection of Ms. Tendell's vehicle when it was due. No evidence indicated that additional inspections of Ms. Tendell's vehicle were required.

**Assertion #3** - VA failed to supply recall information to the complainant and the other field examiners in a timely manner, which could have resulted in a specific danger to public safety.

The assertion regarding VA's failure to supply recall information to the complainant is unsustained, since VA never received the recall information from GSA, and the dealer was responsible for the inspection and repair associated with the recall notification. The assertion that VA failed to notify the other field examiners regarding the recall information in a timely manner once the recall information was brought to its attention, is sustained.

The complainant stated that on February 11, 2010, Ms. Tendell notified the following individuals of the Pontiac G6 vehicle recall: Mr. Mangum; Mr. William Van Berckelaer, her supervisor; and Mr. Franko Fritz, the Western Area Fiduciary Hub Manager. Ms. Tendell informed them that she was not notified of the March 2009 Pontiac G6 recall by VA or GSA. She also conveyed her concern that other employees operating a 2009 Pontiac G6 were also not aware of the recall and consequently had not been afforded the opportunity to obtain essential repairs.

As indicated in the Summary of Evidence, Mr. Huston (Suss Buick-Pontiac-GMC) stated that the vehicle was inspected and the mechanic found that there was a mechanical problem directly related to the transmission. Once the transmission was disassembled and the clutches and valves were inspected, it was observed that the clutch was burnt and the valve was sticking. Mr. Huston stated that the recall and the problem that Ms. Tendell experienced were not remotely similar. **(Exhibit 17, Statement of Mr. Huston, Suss Buick-Pontiac-GMC.)**

In a subsequent effort to obtain additional clarification from the service department where repairs were made to Ms. Tendell's vehicle, Mr. Sean Burns, Chief of VBA's Administration Division, contacted Mr. Todd Blitstein, Repair Technician, Suss Buick-Pontiac-GMC, and discussed with him whether the transmission problem resulting in the "sudden stoppage" incident was related in some way to the inspection and repairs required by the recall notice. Mr. Blitstein stated that the repairs resulting from the "sudden stoppage" incident were in no way related to the vehicle recall. **(Exhibit 18a, Record of Phone Contact with Suss Automotive Repair.)**

Mr. Magnum stated that he never received any recall information from GSA pertaining to this specific vehicle and we have substantiated his statement based on the information provided by Mr. James Yates, GSA. As indicated in the Summary of Evidence, Mr. Yates stated that GSA had not received a notice from the manufacturer regarding the Pontiac G6 recall (G10-5198H) pertaining to Ms. Tendell's vehicle. He also indicated that the recall inspection for VBA's other Pontiac G6 (G10-5197H) had been completed at the same time, with no repairs required. **(Exhibit 20, Email of Mr. Yates, Senior FSR, Utah Fleet Management Zone, Federal Acquisition Service.)**

While researching the complainant's assertion, we determined that she did inform Mr. Mangum, Mr. Van Berckelaer, and Mr. Fritz and that they failed to notify the other employees under their supervision who operated a Pontiac G6 vehicle. VA took action to correct this and prevent it from occurring in the future.

#### V. Actions Taken

1. On July 1, 2010, the Associate Deputy Under Secretary for Management (ADUSM) provided verbal information regarding the Pontiac G6 recall to all regional office management (57 regional offices) during a national conference call and instructed management to immediately obtain the required maintenance for any Pontiac G6 within its fleet that had not been addressed.
2. During that same call, the ADUSM provided the following Website address for the National Highway Traffic and Safety Administration (NHTSA), Office of Defects Investigation:  
<http://www-di.nhtsa.dot.gov/cars/problems/recalls/>  
and instructed that the site be queried on a quarterly basis by the FMCs to obtain recall information for all vehicles within their fleet. This requirement will be included in a revision to the VBA Administrative Services directive.
3. VBA's Office of Facilities, Access and Administration developed a training program on Fleet Management, which was presented nationwide to all regional office FMCs on September 28 and 29, 2010. To ensure there is no reoccurrence in the future, FMCs were directed to keep appropriate documentation on each vehicle and conduct research on recalls. **(Exhibit 21, VBA's Nationwide Fleet Management Training.)**
4. Mr. Magnum received verbal counseling from his supervisor,

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Mr. Douglas Alston, Support Services Chief, Salt Lake City, regarding his failure to notify the other driver of the Pontiac G6 recall. As FMC, he should have ensured the other driver had this information. However, since there is currently no VA directive or handbook requiring FMCs to research recall information, local management determined that a verbal counseling was appropriate.