



U.S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

May 2, 2012

The Honorable Carolyn N. Lerner  
Special Counsel  
Office of the Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

Re: OSC File No. DI-11-3903

Dear Ms. Lerner:

I am in receipt of your correspondence wherein you conclude that allegations raised by Victoria Winkels, an employee of the United States Department of Justice, Federal Bureau of Prisons, constitute a substantial likelihood that a violation of law, rule or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety has occurred. Ms. Winkels has made allegations related to the misallocation of appropriated funds by Mr. Paul Cole. Further, Ms. Winkels alleged Mr. Cole failed to follow agency requirements for charging employee salaries as set forth in the Bureau's program statement governing the use of appropriated funds.

Ms. Winkels reported Mr. Cole failed to follow the 40-hour rule, which establishes the manner by which the time of employees assigned to the Facilities Department is charged, when they are assigned to work on projects funded with Buildings and Facilities funds. Ms. Winkels also alleged Mr. Cole failed to allocate overtime attributable to a Building and Facilities construction project or obtain prior approval from the Regional Facilities Administrator and the Chief, Facilities Management Branch, as required.

The Office of Special Counsel requested an investigation and report on the allegations made by Ms. Winkels. Please accept this correspondence as a summary of our investigation and findings. It should be noted that the Attorney General has delegated to me authority to review and sign the report, in accordance with 5 U.S.C. § 1213 (d).

Sincerely,

Scott Schools  
Associate Deputy Attorney General

Enclosure

**Federal Bureau of Prisons - Office of Internal Affairs**

**Report of Investigation**

OIA Case Number 2012-03704 & 2012-03281

OSC Case Number DI-01-3903

**Subject:** ALLEGED VIOLATION OF LAW, RULE, REGULATION, GROSS MISMANAGEMENT, A GROSS WASTE OF FUNDS, AN ABUSE OF AUTHORITY, OR A SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY HAS OCCURRED AT THE FEDERAL CORRECTIONAL INSTITUTION, WASECA, MINNESOTA

**(1) Summary of the Information with Respect to Which the Investigation was Initiated**

This investigation was initiated based upon a whistleblower disclosure alleging that employees at the United States Department of Justice (DOJ), Federal Bureau of Prisons (BOP), Waseca, Minnesota, are responsible for violations of law, rule or regulation, gross mismanagement, abuse of authority, and substantial and specific danger to public health and safety. The Office of Special Counsel (OSC) received these allegations from Victoria Winkels, Facilities Assistant at the Federal Correctional Institution (FCI) in Waseca, Minnesota, who consented to the release of her name.

According to Ms. Winkels, a BOP official engaged in behavior related to: (1) misappropriation of government funds by violation of the 40-Hour Rule; (2) failure to obtain approval for staff overtime related to Building and Facilities projects.

**(2) Conduct of the Investigation**

This investigation commenced in March 2012, following receipt of an OSC letter tasking the Attorney General to conduct an investigation pursuant to 5 USC 1213.

The DOJ, BOP, Office of Internal Affairs (OIA), conducted an investigation at FCI Waseca, Minnesota, during the week of March 26, 2012. During the investigation, interviews of twelve employees were conducted by the OIA. Additionally, an examination of institution records was conducted from which additional evidence was obtained.

### (3) Summary of Evidence Obtained from the Investigation

#### Background:

The Bureau of Prisons receives appropriated funds for costs related to Salaries and Expenses (S&E) as well as Buildings and Facilities (B&F). The S&E appropriation is a "general appropriation" meaning it normally funds all proper and necessary Bureau expenses not specifically provided for in other appropriations. The S&E funds may not be used for construction of new facilities or new construction of any value or for remodeling or renovations that exceed \$10,000 at existing facilities<sup>1</sup>.

The B&F appropriation is provided for the purchase and acquisition of facilities, new construction at new and existing facilities, renovations, major repairs, and equipping such facilities for penal and correctional use, and related necessary expenses. The B&F funds are also provided for construction, remodeling, and equipping necessary building and facilities at existing penal and correctional facilities, including all necessary related expenses.

During August 2006, B&F funding guidance was disseminated by the BOP regarding the manner in which time should be charged by Facilities Department staff assigned to work on B&F projects, referred to as the 40-Hour Rule. With respect to the matter under investigation, the 40-Hour Rule applies to Facilities Department staff in S&E positions assigned to work on a B&F project. If a Facilities Department staff member works on a B&F project in excess of 40 hours per two-week pay period, their Time and Attendance (T&A) records must accurately reflect the time they worked on the project. Additionally, the T&A for the pay period(s) involved must reflect the correct B&F funding source. Lastly, no salary obligations may be incurred against any B&F project (including overtime) without prior written approval from the respective Regional Facilities Administrator and the Chief, Facilities Management Branch, in the Central Office.

FCI Waseca was opened in August 1995 as a low security male correctional facility. During August 2008, plans were initiated

---

<sup>1</sup> Bureau of Prisons Program Statement 2310.03, Appropriations, Use of.

to convert FCI Waseca to house female offenders. Accordingly, \$610,000 of B&F funds (Project 4NQ) were allocated to make the necessary modifications. Supervision for the project was assigned to various S&E-funded staff assigned to FCI Waseca's Facilities Department. The department is comprised of sixteen staff including two supervisory staff (Facility Manager and General Foreman), one support staff (Facility Assistant), and ten staff who work in various building trades. When necessary, the staff assigned to the various trades are most likely to be assigned to work on various B&F projects.

**Allegation 1:**

Ms. Winkels reported that on August 11, 2008, Regional Director Michael Nalley approved \$610,000 in funding for project 4NQ to convert FCI Waseca from a male correctional facility to a female facility. She explained this type of project was typically funded with B&F appropriations. According to Ms. Winkels, funding for the project did not include salaries, benefits, or overtime. She said Facilities Department staff were required to document hours they worked on a B&F funded project by completing a Weekly Accrual Form. Ms. Winkels provided documentation of seventeen instances when she believed staff violated the 40-Hour Rule. During the investigation, the number of incidents reported by Ms. Winkels was reduced to fifteen, after it was determined she included two examples when a staff member worked forty hours during a pay period<sup>2</sup>. Accordingly, the following were examined:

---

<sup>2</sup> The 40-Hour rule specifically states "in excess of 40 hours." Clarification of the 40-Hour Rule was discussed with the whistleblower during the investigation. Accordingly, she agreed that two of the examples she provided, in which staff worked 40 hours on a B&F project, did not constitute a violation of the rule.

Staff	Pay Period	Dates	B&F Hours Worked	Estimated S&E Salary Expense
L. Miller	#12	06/05/11 - 06/18/11	60	\$2131.20
M. Gullickson	#13	06/19/11 - 07/02/11	54	\$1820.34
M. Gullickson	#14	07/03/11 - 07/16/11	44	\$1483.24
L. Miller	#16	07/31/11 - 08/13/11	44	\$1562.88
L. Miller	#17	08/14/11 - 08/27/11	49	\$1740.48
L. Huber	#19	09/11/11 - 09/24/11	42	\$1415.82
A. Pratt	#21	10/09/11 - 10/22/11	42	\$1380.12
A. Pratt	#22	10/23/11 - 11/05/11	43	\$1412.98
A. Pratt	#23	11/06/11 - 11/19/11	42	\$1380.12
D. Johnson	#23	11/06/11 - 11/19/11	47	\$1527.50
A. Pratt	#24	11/20/11 - 12/03/11	44	\$1445.84
B. Pederson	#25	12/04/11 - 12/17/11	60	\$2131.20
B. Pederson	#26	12/18/11 - 12/31/11	45	\$1598.40
P. DeGrood	#26	12/18/11 - 12/31/11	46	\$2467.44
A. Pratt	#26	12/18/11 - 12/31/11	46	\$1511.56

During the investigation, several of the foremen who worked on B&F projects expressed concern regarding the hours annotated on their accrual forms being altered or falsified. An examination of the forms provided by the whistleblower revealed that some appeared to have been modified. Further, there were instances when staff were on leave and could not have worked the hours attributed to them. In fact, one staff member was on leave for an entire week, yet there was an accrual form indicating he worked twenty hours on a B&F project. Accordingly, the staff whose accrual forms were used to support the whistleblower's claims were interviewed with respect to the accuracy of the documents.

Mr. Lynn Miller reported the hours attributed to him for the first week of pay period #12 were inaccurate. He stated he believed the number depicting the hours he worked was altered. According to Mr. Miller, he was on leave for ten hours and would have only been on duty for a total of thirty hours during the week. He explained that given the amount of time he actually spent on the job with his inmate work crew, it was likely he only worked on the project for fifteen hours during the week. Mr. Miller confirmed the annotation of thirty hours for the second week of pay period #12 was probably accurate. (Mr. Miller would have worked a total of forty-five hours on the B&F project during pay period #12.) Mr. Miller said he also did not

believe the hours attributed to him for pay period #16 were accurate, as he believed the handwriting was not his. He confirmed the number of hours annotated on the accruals form for pay period #17 appeared to have been made in his handwriting, and he had no reason to believe the document was inaccurate.

Mr. Michael Gullickson reviewed the accruals forms for pay periods #13 and #14 and stated it was likely the hours attributed to him working on a B&F project were accurate.

Mr. Aric Pratt said it appeared as though someone had altered the forms he submitted for pay periods #21, #23, and #26 giving the appearance he worked more hours than he had. An examination of the forms revealed the possibility they had been altered in that numbers appeared to have been added. Mr. Pratt reported that from 10/16/11 through 10/22/11, he annotated working two hours on a B&F project. He said the single-digit entry he made was altered by someone writing the number '4' in front of the number '2' creating the number '42.' Similarly, Mr. Pratt stated that from 12/25/11 through 12/31/11, he annotated he worked eight hours on a B&F project. He claimed someone wrote the number '2' in front of the '8' to give the appearance he worked twenty-eight hours on a B&F project during the week. He stated the entry was clearly inaccurate, because he was only in the institution for twenty-seven hours during the week and would not have spent all of his time during the week working on a B&F project. Mr. Pratt did not dispute the hours attributed to him during pay periods #22 and #24.

Mr. David Johnson said he did not believe the hours annotated for 11/6/11 through 11/12/11 were accurate. He stated the number '18.5' appeared to have been changed to 28.5 hours. Mr. Johnson said he utilized sick leave on November 7 and November 10, 2011, and November 11, 2011, was a holiday. He explained he would have only been at work for a total of eighteen hours, so it was not possible he worked 28.5 hours as annotated on the accrual form. Mr. Johnson was uncertain if the hours annotated for the week beginning 11/13/11 were accurate.

Mr. Peter DeGrood reviewed the accruals forms for the weeks of 12/18/11 through 12/31/11. He said he was certain the hours annotated on the accruals forms were accurate. Mr. DeGrood stated the writing on the forms appeared to be his, and he remembered having to work long hours to complete his assigned tasks on a B&F project.

Mr. Delbert Ziemke reviewed accruals forms for 7/31/11 through 8/13/11<sup>3</sup>. He reported he was on annual leave for the entire second week of the pay period. Mr. Ziemke said he could not have worked twenty hours on a B&F project, as indicated on the accruals form and believed the form had been falsified.

Mr. Larry Huber reviewed the accruals form for 9/11/11 through 9/17/11 and stated he believed the form had been altered. According to Mr. Huber, the form indicated he worked sixteen hours on a B&F project during the week. He said it appeared as though the number '1' was written in front of the number '6' to give the appearance he worked sixteen hours on the B&F project during the week. He explained that given his knowledge of the 40-Hour Rule, he would not have worked more than forty hours during a pay period without prior approval.

Mr. Bradley Pederson reviewed the accruals forms for 12/04/11 through 12/17/11 and 12/18/11 through 12/31/11. He stated the first set of accrual forms was accurate, and he likely worked sixty hours on a B&F project during the week. Mr. Pederson said he did not believe the number of hours attributed to him on the second set of accruals was accurate due to numbers being altered.

Ms. Winkels stated she did not alter or falsify any of the documents she provided as evidence. She explained she made a correction on the form submitted by Aric Pratt on which it indicated he worked 28 hours on a project during the week 12/25-12/31/11. Ms. Winkels recounted that when she reviewed the form with Pratt's T&A form, she noted he was only in the institution for twenty-seven hours during the week. She stated she wrote the number '27' off to the side and annotated on the form, "28 too many hours 27 entered in TMS."

As previously discussed, many of the accruals forms provided as evidence by the whistleblower were deemed questionable. Given the noted discrepancies reported by project foremen and their claims of accrual forms being altered or falsified, it was more likely than not that eight of the fifteen

---

<sup>3</sup> These forms were initially provided by the whistleblower as evidence of 40-Hour Rule violations. Although they were not accepted as evidence supporting violations of the rule, the forms were relevant with regard to the concern over falsified and/or altered documents being presented as evidence.

submissions actually constituted a violation of the 40-Hour Rule. Accordingly, the following instances were determined to constitute accruals of more than forty hours in a pay period:

Staff	Pay Period	Dates	B&F Hours Worked	Estimated S&E Salary Expense
L. Miller	#12	06/05/11 - 06/18/11	45	\$1597.95
M. Gullickson	#13	06/19/11 - 07/02/11	54	\$1820.34
M. Gullickson	#14	07/03/11 - 07/16/11	44	\$1483.24
L. Miller	#17	08/14/11 - 08/27/11	49	\$1740.48
A. Pratt	#22	10/23/11 - 11/05/11	43	\$1412.98
A. Pratt	#24	11/20/11 - 12/03/11	44	\$1445.84
B. Pederson	#25	12/04/11 - 12/17/11	60	\$2131.20
P. DeGrood	#26	12/18/11 - 12/31/11	46	\$2467.44

Mr. Gullickson said that when he began his BOP employment in 1997, he was likely provided guidance about the application of the 40-Hour Rule. He reviewed the accrual forms for pay periods #13 and #14 and said he had no reason to dispute their accuracy. He confirmed he exceeded forty hours during both of the aforementioned pay periods and did not obtain permission from his supervisor to do so. Mr. Gullickson explained he was also involved with completing various tasks unrelated to the B&F project, and it was likely he lost track of the time he spent on the B&F project. Mr. Gullickson acknowledged his understanding that permission from his supervisor was required prior to him working on a B&F project for more than forty hours during a pay period. He also stated he understood it was his responsibility to manage his time appropriately with regard to the amount of time he worked on B&F projects during a pay period.

Mr. Miller said that at the time he completed the accrual forms for pay periods #12 and #17, he did not know supervisory approval was required for him to work on a B&F project for more than forty hours during a pay period. He stated he became aware of the requirement during the course of this investigation.

Mr. Pederson said that at the time he completed the accrual forms for pay period #25, he was not aware he needed his supervisor's approval prior to working on a B&F project for more than forty hours during a pay period. He stated he first became aware of the requirement during January or February 2012, after the matter became an issue within the Facilities Department.

Mr. Pratt said that at the time he completed the accrual forms for pay periods #22 and #24, he did not have a clear understanding of the 40-Hour Rule. He recounted that sometime during December 2011, his supervisor (Mr. Paul Cole) told him he needed to keep track of the hours he spent working on B&F projects to ensure he did not exceed more than forty hours in a pay period.

Mr. DeGrood said that at the time he completed the accrual forms for pay periods #25, he was not aware he needed his supervisor's approval prior to working on a B&F project for more than forty hours during a pay period. He stated he first became aware of the requirement during a discussion with Mr. Cole in January 2012. According to Mr. DeGrood, Mr. Cole asked him why he worked on a B&F project for more than forty hours in a pay period. He said he told Mr. Cole he had been instructed to ensure he completed the work that had been assigned to him. Mr. DeGrood stated Mr. Cole questioned him about his knowledge of the 40-Hour Rule to which he replied he knew nothing about it.

Mr. Paul Cole stated that when he was promoted to the Facility Manager position in December 2011, he was aware of the 40-Hour Rule, although he did not have experience with its application. He recounted that at the time of his promotion, there were no B&F projects requiring staff to work more than forty hours in a pay period. Mr. Cole said that during September or October 2011, FCI Waseca was authorized to start a B&F project involving construction of the interior of the multi-purpose building. He said he obtained general guidance from the regional office as to how the 40-Hour Rule related to S&E staff working on B&F projects. Mr. Cole maintained that sometime afterward, he had discussions with his staff about the 40-Hour Rule. He said he could not specifically remember with whom he had discussions, but stated it would have likely been any of his staff who spent a substantial amount of time working on a B&F project.

The eight specific incidents of S&E Facilities Department staff working on a B&F project for more than forty hours during a pay period accounted for approximately \$14,100 in S&E salary costs. According to the 40-Hour Rule, this amount should have been charged against the B&F project to which the staff member was assigned at the time.

**Allegation 2:**

Ms. Winkels reported there were occasions when staff assigned to the Facilities Department worked overtime without prior approval from the Regional and Central Offices. Some of the instances referenced by Ms. Winkels related to staff requesting compensatory time off in lieu of overtime payment. According to Mr. Steven Van Aman, Chief, Facility Operations, prior approval would not be required for staff electing to receive compensatory time. He explained that prior approval was only required when staff elected to receive overtime payment. Accordingly, the following instances of overtime payment were reviewed:

Staff	Date	Purpose	Hours	Estimated S&E Salary Expense
M. Gullickson	07/13/11	Tie in water main for project 4NQ.	1.5	\$75.84
A. Hartfiel	07/18/11 through 07/21/11	Install pipe for project 4NQ.	11	\$885.06
P. DeGrood	07/20/11 & 07/21/11	Install pipe for project 4NQ.	6.5	\$522.99
B. Pederson	07/22/11	Escort contractors for project 4NQ.	1	\$53.28
A. Hartfiel	07/29/11	Escort contractors for project 4NQ.	2.5	\$201.15
D. Johnson	08/02/11	Escort contractors for project 4NQ.	2.75	\$134.06
A. Pratt	08/15/11 through 08/17/11	Electrical rough-in for project 4NQ.	16.5	\$813.28
P. DeGrood	08/15/11 through 08/17/11	Install conduit for project 4NQ.	14.75	\$1186.78

Each instance of overtime was approved by Mr. Cole. He stated he was not aware prior authorization was required for a staff member to work overtime on a B&F project if they were going to request overtime pay in lieu of compensatory time.

Based upon a review of the overtime authorizations for staff who elected to receive overtime pay, the estimated S&E salary cost that should have been designated as a B&F expense was \$3872.

**(4) Violation or Apparent Violation of Law, Rule or Regulation**

**Allegation 1:**

There was sufficient evidence to substantiate a violation of law, rule or regulation. BOP appropriations guidelines prohibit the use of S&E funding to pay the salaries of S&E Facilities Department staff assigned to work on B&F projects for more than 40 hours during a pay period, without prior approval. The investigation determined there was an estimated \$14,100 in S&E salary expenditures that should have been charged to the applicable B&F appropriation.

Mr. Gullickson confirmed his understanding of the 40-Hour Rule. He acknowledged there were two occasions when he worked on a B&F project for more than forty hours during a pay period without prior approval.

Mr. Cole had overall responsibility for ensuring permission was obtained prior to staff working on a B&F project for more than forty hours during a pay period. He said he had general knowledge of the 40-Hour rule and claimed to have discussed the guidelines with his staff. However, he was vague with regard to whom or when he provided guidance. Some of the staff interviewed had clear knowledge of the rule, but others did not. Mr. DeGrood, Mr. Miller, Mr. Pederson, and Mr. Pratt reported they did not receive clear guidance regarding the application of the 40-Hour Rule until December 2011 or the beginning of 2012. They specifically denied that prior to this, they were ever told they needed prior permission before they could work on a B&F project for more than forty hours during a pay period.

**Allegation 2:**

There was also sufficient evidence to substantiate a violation of law, rule or regulation. According to BOP appropriations guidelines, no salary obligations may be incurred against any B&F project (including overtime) without prior written approval from the respective Regional Facilities Administrator and the Chief, Facilities Management Branch, in the Central Office<sup>4</sup>. The investigation determined there were

---

<sup>4</sup> Salary would not be considered a B&F expense unless a foreman worked more than 40 hours on the project during a two-week pay period.

seven incidents when staff worked overtime on a B&F project without receiving prior approval. The estimated S&E salary cost that should have been designated as a B&F expenditure was \$3872.

Mr. Cole confirmed he was unaware of this requirement and accepted full responsibility for failing to obtain approval prior to permitting a staff member to work overtime on a B&F project.

**(5) Action Taken or Planned as a Result of the Investigation**

**Allegation 1:**

The investigation conducted by the BOP, OIA determined there was sufficient evidence Mr. Gullickson and Mr. Cole failed to follow appropriations guidelines issued by the BOP with regard to the 40-Hour Rule. Accordingly, the allegation of Failure to Follow Policy will be sustained against Mr. Gullickson and Mr. Cole, and the disciplinary process will commence. The BOP will also ensure Mr. Cole receives specific training with regard to the 40-Hour Rule. Mr. Cole will then be required to provide the same training to his staff, including Mr. Gullickson.

We discussed with the whistleblower the information provided by a number of witnesses that the records appeared to have been altered. The whistleblower denied that she had altered the records, and the handwriting on the records was not of sufficient quantity to justify obtaining handwriting exemplars. There were insufficient additional investigative leads or evidence to substantiate whether the accrual forms were in fact modified or who made any such modifications. For these reasons and because the unaltered records confirmed eight violations of the 40-hour rule, we determined that further investigation was not warranted and would not be fruitful in pursuit of the matters that were the subject of OSC's request for an investigation. Accordingly, the issue is closed.

**Allegation 2:**

The investigation conducted by the BOP, OIA also determined there was sufficient evidence Mr. Paul Cole failed to follow appropriations guidelines by failing to obtain approval prior to permitting his staff to work overtime on a B&F project. Accordingly, the allegation of Failure to Follow Policy will be

sustained against him, and the disciplinary process will commence. The training provided to Mr. Cole and his staff will also encompass the requirement to obtain approval prior to staff working overtime on a B&F project.