



United States Department of State

*Under Secretary of State  
for Management*

*Washington, D.C. 20520*

August 30, 2012

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

Re: OSC File No. DI-12-0320

Dear Ms. Lerner,

This letter responds to OSC's July 18, 2012 email requesting a supplemental report. OSC requested a supplemental report of Passport Services' Office of Adjudication's review of approximately 2,000 applications submitted between October 1, 2011 and January 12, 2012 to all other passport agencies/centers in which the applicant was charged a file search fee. The Secretary delegated her authority to me as the Under Secretary for Management to act in this matter pursuant to Delegation of Authority No. 198. Enclosed please find the Department's Supplemental Report submitted in accordance with 5 U.S.C. § 1213(d). The investigation and this follow-up review revealed no abuse of authority.

Thank you for your attention to this matter.

Sincerely,

  
Patrick M. Kennedy

Enclosure:

As stated

**U.S. DEPARTMENT OF STATE, BUREAU OF CONSULAR AFFAIRS, PASSPORT  
SERVICES DIRECTORATE, DIVISION OF LEGAL AFFAIRS  
SUPPLEMENTAL REPORT CONCERNING THE OFFICE OF SPECIAL COUNSEL'S  
APRIL 4, 2012 REFERRAL FOR INVESTIGATION (OSC FILE NO. DI-12-0320) TO  
THE U.S. DEPARTMENT OF STATE**

**I. Background**

The Department of State provided an investigative summary to the Office of Special Counsel (OSC) on July 18, 2012 responding to a disclosure of Passport Specialist Joel Warne. He alleged that as of October 1, 2011, the Department's Bureau of Consular Affairs, Passport Services Directorate, Office of Adjudication (CA/PPT/A) directed employees at the Western Passport Center (WPC) to charge passport applicants an unnecessary file search fee. More specifically, he alleged they were directed to 1) withhold the fact from passport applicants who cannot produce a prior passport or other form of citizenship information that it is likely that they will need to submit a birth certificate containing the names of both parents, regardless of whether there is a prior passport in the system; and 2) charge passport applicants who cannot produce a prior passport a \$150 File Search Fee, knowing that the applicant may be required to produce an acceptable birth certificate regardless of the search results.

The investigation revealed that there was no abuse of authority. After reviewing all 68 passport records processed at WPC during the relevant time period with an associated file search fee, PPT/A determined that no applicant who paid the file search fee had their applications suspended pending submission of a birth certificate with their parent(s)' full name(s). In its investigative summary, the Department noted that in addition to the audit of WPC documents completed as a part of its investigation, CA/PPT/A was reviewing all applications from all agencies/centers that were charged a file search fee between October 1, 2011 and January 12, 2012. On July 18, 2012, OSC requested that the Department provide a supplemental report including its findings from this expanded review.

**II. The Audit Process**

In conjunction with the targeted review of applications at WPC, CA/PPT/A undertook a large scale review of passport applications nationwide involving file search fees. In order to determine if file search fees had been charged incorrectly, CA/PPT/A reviewed all applications received at all passport agencies between the date the guidance in question took effect (October 1, 2011) and the date the subsequent clarifying guidance was released to the field (January 12, 2012) where the applicant was charged the \$150.00 file search fee. CA/PPT obtained a list of 2,057 unique passport application records and 43 duplicate or unavailable records from the Office of Consular Systems and Technology (CA/CST) that met these parameters.

After reviewing all 2,057 unique passport records, CA/PPT/A did not find any instances where an applicant was charged a \$150.00 file search fee to access his or her previous passport record, and was then subsequently required to produce a birth certificate to satisfy the requirement that an applicant provide a birth certificate with the full name(s) of the applicant's parent(s). CA/PPT/A did find one instance, unrelated to the allegations referred by OSC, where

the file search fee should have been refunded. Although this case is outside the scope of the allegations referred by OSC, the Department further investigated this situation to determine how the error occurred and took steps to prevent its reoccurrence.<sup>1</sup>

During its audit, CA/PPT/A also found 176 records where the file search fee was paid and the applicant submitted limited evidence with the passport application. These records included three non-documentary verifications from U.S. Citizenship and Immigration Services, three delayed or hospital birth certificates, three foreign birth certificates for derivative cases, seven California county and Texas state birth abstracts, 25 damaged passports, and 122 photocopies of evidence. At the time of adjudication, the specialists who received these 176 cases determined the evidence submitted failed to constitute acceptable secondary evidence of citizenship. As explained in the Investigative Summary, adjudicators are generally expected to use discretion as it pertains to secondary evidence. These 176 cases are also unrelated to the allegations referred by OSC. Nevertheless, the Department is reviewing each of these individual applications to ensure that the file search fee was properly charged, and will refund the fee if it determines that it was not allowable.

### **III. Conclusion**

Based on this audit and the previous investigation undertaken, the Department upholds its conclusion that no abuse of authority occurred.

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<sup>1</sup> This passport application was submitted at a passport acceptance facility on December 3, 2011, along with a DS-64 statement for a lost passport, and a file search request and \$150 fee. The application was adjudicated at the Los Angeles Passport Agency (PPT/LA), which found no record of a previous passport during the original search for passport records. Since the passport specialist could not find a record of a previously issued passport to use as citizenship evidence, on December 30, 2011, PPT/LA requested the applicant provide a birth certificate as citizenship evidence, as required by 22 C.F.R. § 51.41 (*not* for purposes of providing a certificate with the full name(s) of the applicant's parent(s)). However, when the applicant submitted the requested birth certificate, a subsequent records search found a record of a previously issued passport. As a result, the application was issued on 1/23/2012. In this case, the passport specialist should have refunded the file search fee because the applicant submitted a birth certificate as citizenship evidence. The initial passport specialist also should have been more diligent in searching for a passport record to prevent delays to the customer and added burden to the agency's staffing to request information from the applicant. A refund of the \$150 file search fee will be processed by the Department in the next twelve weeks and existing policy guidance will be resent to the passport specialist and PPT/LA as a reminder on the proper search techniques to use when conducting a requested file search.