



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

The Special Counsel

June 8, 2013

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

Re: OSC File No. DI-12-4662

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find an agency report based on a disclosure made by a whistleblower at the Department of Transportation (DOT), Federal Aviation Administration (FAA), Ypsilanti System Support Center (YIPSSC), Belleville, Michigan, alleging that employees engaged in conduct that may constitute a violation of law, rule, or regulation, and gross mismanagement. David S. Nash, who consented to the release of his name, is an Airways Transportation Systems Specialist at YIPSSC. Mr. Nash disclosed that FAA employees improperly retained cash proceeds from the sale of scrap metal from discarded FAA radar equipment, with the apparent permission of a manager, and with the intent to use the proceeds to purchase personal goods.

**DOT did not substantiate Mr. Nash's allegations, finding that scrap metal was sold but the proceeds were properly deposited to the U.S. Treasury. Notwithstanding this finding, FAA issued a memorandum reminding employees at all facilities at which radar equipment is being replaced that they are prohibited from retaining proceeds from the sale of scrap metal. I have determined that the report meets all statutory requirements and that the findings of the agency head appear reasonable.**

Mr. Nash's allegations were referred to The Honorable Ray LaHood, Secretary, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). The investigation of the matter was delegated to the Office of Inspector General (OIG). On March 14, 2013, the Secretary submitted the agency report to this office. Mr. Nash did not submit comments on the report. As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the report to you.<sup>1</sup>

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<sup>1</sup> The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations 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 and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c) and (g).

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***Mr. Nash's Disclosures***

Mr. Nash alleged that on September 6, 2012, while working on Common Air Route Surveillance Radar (CARSR) site upgrades, two FAA employees approached him with two envelopes of cash, and asked him to count the money, verify the amounts, and sign the envelopes, which he did. Mr. Nash inquired about the purpose of the cash and was told that FAA had sold scrap metal from discarded FAA radar units that had been upgraded, both from the site at which Mr. Nash was employed, as well as from 21 other sites that had received CARSR upgrades. Mr. Nash saw two receipts from a scrap yard totaling over \$2,000.00. Mr. Nash alleged that the employees reported that the retention of the proceeds had been approved by their supervisor and that the money would be used to purchase personal goods, such as patio chairs and a barbecue grill, for employees at the radar sites. The envelopes were stored in the locked drawer of a file cabinet, to which Mr. Nash did not have access, at YIPSSC.

Mr. Nash then immediately reported these events to Paul Drobnik, YIPSSC Manager, and Robert Scarbrough, Cleveland Air Route Traffic Control Center District Manager, stating that he did not believe this process was proper. On September 11, 2012, one of the FAA employees who had shown Mr. Nash the cash on September 6 showed him a document stating that the money had been delivered to Mr. Drobnik. The document indicated that Susan Greco, an Operations Support Manager at YIPSSC, witnessed the transfer of funds. The document was dated August 11, 2012, and it was listed as "Transfer of Custody of Scrap Funds from CARSR Implementation Project." According to Mr. Nash, Mr. Drobnik had access to the file cabinet, the money, and the scrap receipts at YIPSSC. Mr. Nash also disclosed that improper retention of scrap proceeds may have occurred at 21 previous CARSR upgrade sites, and could happen at 60 more sites scheduled for CARSR upgrades. Pursuant to 40 U.S.C. § 571, all proceeds from the sale or disposal of surplus federal property are to be "deposited in the Treasury as miscellaneous receipts." 40 U.S.C. § 571(a)(1).

***The Agency Report***

The report did not substantiate Mr. Nash's disclosures, finding that the allegation that FAA employees improperly retained proceeds from the sale of discarded radar equipment was unfounded. While an employee sold scrap metal from FAA's radar site in Canton, Michigan, the investigation revealed that the proceeds were sent to the U.S. Treasury. The OIG also did not substantiate that a Program Manager told FAA employees at YIPSSC or at

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Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete, based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

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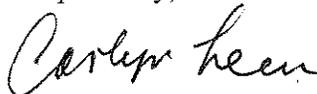
other radar sites that they were permitted to retain the proceeds from the sale of discarded radar equipment to purchase personal goods.

Further, the report did not substantiate Mr. Nash's allegation that Ken Harris, a Manager at YIPSSC who works at the CARSR upgrade sites, may have authorized the improper retention of scrap proceeds at 21 previous CARSR upgrade sites and that this could also occur at 60 more sites scheduled for CARSR upgrades. According to the report, Mr. Harris's responsibilities do not include the disposal of scrap metal from each upgrade site, nor did Mr. Harris know if scrap metal was sold from any other CARSR site. The report further stated that Marvin Dunn, CARSR Implementation Lead, had not assigned Mr. Harris any duties related to the disposal of property and would not expect Mr. Harris to be involved with that facet of the project. However, on November 30, 2012, Mr. Dunn sent out a memorandum reminding FAA employees at these facilities that they are prohibited from retaining scrap proceeds and that employees must turn proceeds into the U.S. Treasury.

I have reviewed the original disclosure and the agency report. Based on that review, I have determined that the agency report contains all of the information required by statute and that the findings of the agency head appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the unredacted report to the Chairman and Ranking Member of the Senate Committee on Commerce, Science and Transportation and the Chairman and Ranking Member of the House Committee on Transportation and Infrastructure. I have also filed a copy of the redacted report in our public file, which is now available online at [www.osc.gov](http://www.osc.gov). The redacted report identifies DOT employees, other than Mr. Nash, and other individuals by title.<sup>2</sup> OSC has now closed this file.

Respectfully,



Carolyn N. Lerner

Enclosures

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<sup>2</sup> DOT provided OSC with a redacted report, which substituted titles for the names of DOT employees and other individuals referenced therein. DOT cited the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) as the basis for these revisions to the report produced in response to 5 U.S.C. § 1213. OSC objects to DOT's use of the FOIA and Privacy Act to remove the names of these individuals on the basis that the application of the FOIA and Privacy Act in this manner is overly broad.