



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

July 26, 2013

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

Re: OSC File No. DI-12-2455

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find agency reports based on disclosures received from a Motor Vehicle Operator (operator) at the Department of State (State). The whistleblower, Nicole Thompson, alleged that employees in State's Bureau of Administration, Office of General Services Management, Fleet Management and Operations Division (FMO), engaged in conduct that may constitute gross mismanagement and a substantial and specific danger to public safety. Ms. Thompson alleged that FMO employees failed to properly maintain and repair the FMO bus fleet and permitted unsafe buses to be used in the FMO bus rotation. Ms. Thompson consented to the release of her name.

The agency report partially substantiated Ms. Thompson's allegations. The investigation determined that although FMO complies with the requirements for routine maintenance of the bus fleet, it does not consistently repair mechanical problems reported by operators as expeditiously as warranted. Moreover, FMO sometimes allows vehicles to remain in the fleet prior to the repairs being made. Corrective actions have been taken by the agency to address issues raised in the investigation. Based on my review of the original disclosure, the agency's report, Ms. Thompson's comments, and subsequent communications with the agency, I have determined that the report contains all of the information required by statute and that the findings appear to be reasonable.

On May 31, 2012, OSC referred Ms. Thompson's allegations to the Honorable Hillary Clinton, then-Secretary of State, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Clinton delegated authority to respond to this disclosure to Patrick F. Kennedy, Under Secretary of State for Management. On June 27, 2012, Mr. Kennedy referred this matter to State's Office of Inspector General (OIG) for an investigation and report. On October 10, 2012, Mr. Kennedy provided the results of the OIG's investigation to our office. Upon receipt, OSC determined that the report failed to specify what, if any, corrective action was taken to address the report's findings. In addition, my office received notification from Ms. Thompson of additional alleged violations that occurred subsequent to the OIG investigation. Consequently, the matter was referred back to State on October 12, 2012. On November 14, 2012, Mr. Kennedy submitted a final report detailing the findings of the OIG investigation and outlining the corrective actions proposed and/or taken by State's Bureau of Administration. Mr. Kennedy's November 14, 2012, report also responded to the additional safety concerns raised by Ms. Thompson.

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On November 15, 2012, the agency's reports were forwarded to Ms. Thompson for her review and comments. By letter dated November 17, 2012, Ms. Thompson provided comments in response to the reports. On June 12, 2013, OSC confirmed that the corrective actions proposed by the Bureau of Administration were completed. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the report and Ms. Thompson's comments to you.¹

I. Ms. Thompson's Disclosures

Ms. Thompson, a FMO operator since 2006, alleged that FMO failed to establish and abide by a scheduled maintenance program for the buses in its fleet as required by the Guide to Federal Fleet Management. According to Ms. Thompson, FMO management officials refused to implement a maintenance program and repeatedly neglected necessary bus repairs in an effort to keep costs low to remain competitive with private transportation companies. Ms. Thompson also alleged that FMO failed to repair mechanical problems that were regularly brought to management's attention by the operators and that unsafe buses remain active in the fleet despite their reported problems. As a result, Ms. Thompson contended that there was a substantial and specific danger to the health and safety of bus drivers and State employees and their families who utilized FMO fleet services.

In her disclosure to OSC, Ms. Thompson cited several specific examples in which the agency's failure to maintain and repair buses in its fleet created an unsafe situation. In one example, despite Ms. Thompson's refusal to drive a bus after its brakes failed, the fleet managers assigned another operator to drive the same bus rather than addressing the malfunctioning brakes and safety concerns. According to Ms. Thompson, the bus was driven without the necessary repairs for approximately another month and a half until the bus's brakes caught fire and it had to be towed back to the fleet yard.

Ms. Thompson alleged that the agency failed to establish and adhere to a routine maintenance program. According to Ms. Thompson, buses are sent for repairs only when a major defect is reported by numerous operators and after multiple operators refuse to drive the particular bus because of the defect. Further, according to Ms. Thompson, even while the buses were in the shop, FMO fleet supervisors directed the mechanics to forego recommended repairs outside the scope of

¹ 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).

Upon receipt, I review 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). I 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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the reported serious defect. Ms. Thompson indicated that she was chastised for seeking higher-level assistance because of the fleet supervisors' ongoing lack of responsiveness to safety concerns raised by the operators. After she reported an unsafe bus to FMO Chief James Goodwin and Assistant Chief Michael Passmore, she was directed by Mr. Passmore to report any future safety concerns to the FMO fleet supervisors, rather than to higher-level officials.

Ms. Thompson also disclosed that FMO management ignored safety concerns she and other operators raised following the 2010 leasing and subsequent use of several buses manufactured by International Bus Company (International). The operators complained that the buses' higher centers of gravity, perimeter seating, and lack of proper handrails rendered these buses unsafe. FMO management ignored the operators' warnings and at least two serious injuries occurred in August 2010 and January 2012, one of which required an ambulance transport after passengers were launched from their seats.

II. The Agency Investigation

The agency provided an initial OIG report in response to Ms. Thompson's allegations on October 10, 2012. According to the report, the buses in the State Department's fleet are leased to State by the General Services Administration (GSA). Consequently, the investigation included interviews with more than 25 FMO employees, as well as interviews with GSA officials and the review of GSA maintenance records.

While the report provides a point-by-point response to a wide range of issues alleged by Ms. Thompson, the findings of the report are summarized as follows:

- FMO meets GSA requirements for routine maintenance of the bus fleet;
- FMO does not always expeditiously fix mechanical problems reported by the motor vehicle operators, and FMO sometimes leaves these vehicles in the fleet; and
- FMO records do not show that drivers are required to drive buses that the operators believe are unsafe. Operators told the OIG inspector that if they felt that a bus was unsafe, they did not drive it. In addition, the Office of General Services Management Director specifically instructed the drivers that they were not required to operate a vehicle if they felt it had a legitimate issue that rendered it unsafe.

The OIG report did not substantiate Ms. Thompson's allegation that FMO buses were not subject to regularly scheduled routine maintenance. It found that all the vehicles have a preventive maintenance schedule that requires a maintenance inspection at least every 12 months and more frequently for higher usage vehicles. These inspections, according to the report, require both tire and brake inspections, along with a number of other required services. The investigation found that all 14 buses leased to the State Department by GSA had been subject to preventive maintenance within the year prior to the investigation. In addition, the 14 buses had had tire and brake repairs, on average, three times per year over the two year period prior to the investigation.

With regard to Ms. Thompson's allegation that the FMO failed to repair mechanical problems that were brought to management's attention and that the FMO kept unsafe buses in the fleet, the OIG investigation acknowledged that, on occasion, driver reports of mechanical problems with the

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buses were not acted upon by the FMO managers in a timely manner. In one instance a bus was kept in service for two days after a driver, citing an antifreeze leak and grinding breaks, wrote "Don't Drive" in the remarks section of the vehicle logbook. In a second incident cited in the report, a bus was kept in service for ten days after a driver first noted that the vehicle was experiencing brake problems. Despite three driver notations that the vehicle's brakes needed to be adjusted, it remained in service until it had to be towed ten days after the first notation. In a final example, the OIG inspector found no paperwork indicating that a vehicle that was towed on January 31, 2012, and remained out of service until February 13, 2012, was actually serviced and repaired during the time it was not in service.

The OIG investigation addressed Ms. Thompson's allegation regarding brake problems she reported on March 20, 2012, while driving a group of school-aged children attending a State Department program. The report found discrepancies between Ms. Thompson's version of the events, the recollection of a quality assurance staff member who, according to Ms. Thompson, accompanied her on the bus following her complaints, and the dispatcher on duty during a subsequent incident involving this same bus. While Ms. Thompson indicated that she reported the problem and that she was accompanied by the quality assurance staff member after her report, the quality assurance staff member indicated that he met Ms. Thompson at the FMO but did not accompany her on the drive from the FMO to the fleet yard. The OIG review of the vehicle's logbook confirms that Ms. Thompson drove the bus in the morning and reported a brake problem after driving 23 miles. In the afternoon, another operator, according to the logbook, noted that the bus's air conditioning was not working but did not mention the brakes.

Ms. Thompson alleged that the vehicle's brakes "caught fire" on April 17, 2012, while being driven by another driver. According to Ms. Thompson, the dispatcher tried to coerce the operator who was driving the bus at the time to drive to the fleet yard. The OIG report found no record of the brakes catching fire on April 17, 2012; however, there was a record of a report of "smoking" brakes on April 27, 2012. The operator driving the bus on April 27, 2012, indicated during the OIG investigation that the dispatcher initially asked the driver if he could drive the vehicle back to the fleet yard. When the driver indicated he could not, the dispatcher, according to the operator, called a tow company. The bus's maintenance records indicate that the rear brake shoes and drums were replaced and the vehicle was returned to service on May 1, 2012.

The OIG report addressed Ms. Thompson's allegation that several bus accidents had occurred as a result of the agency's failure to respond to driver concerns about brake issues. An OIG review of accident reports for calendar years 2010, 2011, and 2012 indicated that none of the accidents were specifically attributed to brake failure. The report found that Ms. Thompson's allegation that the agency responded to operator concerns about vehicle safety by advising operators that buses should be kept on the road by foregoing nonessential/non-safety maintenance until a bus enters the shop for break-down maintenance, was taken out of context. The email cited by Ms. Thompson as containing these remarks further stated that if drivers "honestly feel that a bus you are assigned to operate has a legitimate safety issue rendering it unsafe, you ARE NOT required to operate it." According to the report, agency management characterized its approach of selectively deferring nonessential repairs that did not affect the safe operation of the bus as "good stewardship of taxpayer dollars."

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Finally, in response to Ms. Thompson's allegation that FMO management disregarded driver concerns about the use of International buses and passenger safety, the report found that four out of eight International buses have perimeter seating. The report further noted that these buses meet Department of Transportation-approved standards and GSA specifications for passenger vehicles. Although the OIG investigation reported two accidents in vehicles with perimeter seating, one on August 8, 2010, and one on January 31, 2012, neither incident, according to the report, was the result of a brake malfunctioning.

By memorandum dated October 17, 2012, State's Administrative Bureau, Office of Operations responded to the OIG report's corrective action recommendations. The Administrative Bureau's analysis of the OIG's recommendations was provided as an attachment to the agency's final report to our office dated November 14, 2012. The Administrative Bureau's conclusions included the following:

1. The Bureau of Administration should institute a comprehensive record keeping system to track maintenance of the shuttle buses;
2. The Bureau of Administration should develop and implement procedures for maintenance of shuttle buses, including identifying an employee responsible for the fleet's maintenance;
3. The Bureau of Administration should coordinate with the General Services Administration to resolve concerns about buses with perimeter seating or exchange the buses for models without perimeter seating;
4. The Bureau of Administration should develop and implement a communication and interaction process with the General Services Administration that involves determination of specifications for future replacement vehicles, notification of regional General Services Administration staff when a vehicle is sent to a vendor for service, and implementation of a credit process when a vehicle is out of service for an extended period of time; and
5. The Bureau of Administration should review the actual and projected demands on the shuttle bus system, the cost of leasing and contracting for shuttle buses, the number of days lost to the system when vehicles are out of service, and the number of shuttle vehicles, and should prepare written documentation that the shuttle bus program can meet its mission in a reasonable manner, and that the General Services Administration is the best source of vehicles for the shuttle operation.

In addition to providing the Administrative Bureau's analysis and conclusions, the agency responded to additional allegations raised by Ms. Thompson following the investigation. Ms. Thompson alleged that, on its first run following a repair, a bus broke down and had to be towed back to a vendor for additional service. State confirmed that the bus did break down following the first repair but indicated that the cause of the second breakdown was unrelated to the first incident.

Ms. Thompson alleged that, on October 11, 2012, she was forced to drive a bus with a gash in one of its back tires, despite the fact that she had reported the gash on September 27, 2012. In response to this allegation, the agency could find no record that Ms. Thompson or any other operator reported a tire problem on this vehicle prior to October 11, 2012. When Ms. Thompson reported the gash to a supervisor on October 11, 2012, the supervisor determined, based on the fact that the tire was not flat and that it was one of a set of dual-wheel tires on the same axle, the bus was safe to operate and instructed Ms. Thompson to complete her shift. According to the agency report, at the

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end of the shift, the bus was inspected and it was determined that the bus could safely be driven to the tire repair vendor for further inspection. The bus was driven to the tire repair vendor where it was inspected that same day. The repair shop notified the FMO that, despite the gash, the bus was safe to operate. Despite this finding, FMO management instructed the tire repair vendor to replace the gashed tire as a precautionary measure. The bus returned to service only after the tire was replaced.

Ms. Thompson alleged that a “new” bus acquired from GSA broke down on its first day of service. The agency responded that the bus referenced by Ms. Thompson was not new, but rather a 2008 model which was an excess vehicle from another agency. According to the agency report, the bus was serviced and inspected by GSA prior to being put into service at State on September 27, 2012, but did break down on October 3, 2012. Following the breakdown, the bus was towed to a service vendor, repaired, and returned to service. Similarly, Ms. Thompson alleged that the broken rearview mirror of one particular bus was not repaired for months. The report confirmed that the bus was involved in an accident on August 21, 2012, and that, as a result of the accident, the rear view mirror was completely torn off. According to the agency report, however, the bus was sent to the repair shop for service the following day and returned to service after the mirror was replaced.

Finally, Ms. Thompson alleged that other buses have continuous problems, including the anti-lock braking system light remaining on signaling a possible brake problem, and the rear exhaust not properly expelling gases. The agency responded that “all concerns reported by the motor vehicle operators are immediately addressed by our fleet supervisory team” and that, despite an investigation, the agency was not “...able to identify any specific occurrences or problems of this nature.”

III. The Whistleblower’s Comments

Ms. Thompson was offered the opportunity to comment on the agency report on November 15, 2012. In her comments, Ms. Thompson took issue with several facts that served as the basis for the agency’s response and, more generally, asserted that faulty equipment poses a danger both to the driver and to the public. She further asserted that sending buses in for repair for one isolated reason without addressing other potential problems is time consuming and not cost efficient, as there have been several incidents of buses being in for repair and breaking down the next day for another reason. Ms. Thompson also advocated for implementation of a “chargeback system” approach to fleet management which, according to information provided by Ms. Thompson, would “...make it easy for fleet managers to see the costs of underutilized vehicles and take appropriate corrective actions to remove them from fleets.”

IV. Agency Actions Taken

On June 12, 2013, OSC received confirmation that, as of March 22, 2013, the five actions proposed as a result of the OIG investigation and the analysis conducted by State’s Administrative Bureau were completed. In addition, OSC was notified that the Standard Operating Procedures (SOPs) pertaining to the maintenance of fleet vehicles have been updated and implemented and that these revised SOPs include detailed roles, responsibilities, procedures, and reporting requirements

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associated with maintenance of the shuttle bus fleet. OSC was further informed that the revised SOPs have been disseminated to the appropriate FMO employees.²

V. Findings

I have reviewed the original disclosure, the agency reports, and Ms. Thompson's comments. Based on that review, I have determined that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency reports and Ms. Thompson's comments to the Chairman and Ranking Member of the Senate Committee on Foreign Relations and the Chairman and Ranking Member of the House Committee on Foreign Affairs. I have also filed a copy of the reports and Ms. Thompson's comments in our public file, which is now available online at www.osc.gov, and closed the matter.

Respectfully,



Carolyn N. Lerner

Enclosure

² State officials acknowledged that the original suspense date of October 30, 2012, for preparation, approval, and implementation of the revised SOPs was not met. Due to "extensive editing, review and clearance," the SOPs were not implemented until March 27, 2013.