



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

The Special Counsel

December 20, 2013

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

Re: OSC File No. DI-13-0923

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find an agency report based on a disclosure made by an anonymous whistleblower. The whistleblower alleged that officials at the Department of Defense (DoD), Washington Headquarters Services (WHS), Facilities Services Directorate (FSD), Washington, D.C., engaged in conduct that may constitute a violation of a law, rule, or regulation, and gross mismanagement.

The agency report partially substantiated the whistleblower's allegations. According to the report, documents containing sensitive personally identifiable information (PII), such as Social Security numbers, were stored on the WHS shared computer drive in violation of DoD policy. The whistleblower also alleged that the individuals whose sensitive PII was improperly stored on the shared drive failed to receive notification of the breaches. While the agency acknowledged that the affected individuals were not notified, it claimed that such notifications were not required because of the low risk of harm. Based upon my review of the original disclosure and the agency report, I have determined that the agency report contains all of the information required by statute and that the findings appear to be reasonable. However, because the agency has not taken corrective action, ongoing verification will be required to ensure security gaps are closed.

The whistleblower's allegations were referred on April 2, 2013, to Secretary of Defense Chuck Hagel to conduct an investigation.¹ Secretary Hagel delegated authority to William E. Brazis, Director, WHS, to address the allegations. On July 10, 2013, Director Brazis submitted the agency's report to this office. The whistleblower declined to comment on the report. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the agency report to you.

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).

Upon receipt, the Special Counsel reviews the agency's 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's report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

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The whistleblower disclosed that nine times between October 2012 and February 2013, he or she discovered numerous documents containing sensitive PII improperly stored on WHS's shared computer drive. On these occasions, the whistleblower found over 100 pages of sensitive information belonging to current and former DoD employees, which included Social Security numbers, home addresses, and personal telephone numbers. After discovering these documents, the whistleblower notified FSD management in October and November 2012. However, documents containing the PII data were still accessible on the shared drive on March 26, 2013. The whistleblower alleged that the agency violated the Privacy Act of 1974, 5 U.S.C. § 552a(e)(10), by failing to establish the proper safeguards to protect privacy information. Additionally, the whistleblower alleged that the agency violated its Privacy Program, 5400.11-R (May 14, 2007) by failing to promptly notify individuals whose PII was compromised.

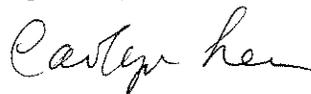
The agency's report partially substantiated the whistleblower's allegations. It confirmed that PII of 461 WHS employees was available and accessible to other WHS employees, who did not have an official "need to know." The agency concluded that the underlying breach of PII appears to have been caused by the consolidation of legacy data into a new infrastructure, which resulted in security gaps in folder and shared drive access. The agency asserted that it is engaged in ongoing efforts to safeguard PII on the network. However, the report did not substantiate the allegation that the affected employees needed to be notified. It cited an August 2, 2012, memorandum from the Director of Administration and Management in its determination that no notification was necessary. The agency reasoned that there was a low risk of harm because all the persons who had access to the PII had been screened through various background checks.

On December 19, 2013, agency officials advised OSC that they were unable to complete the corrective actions related to the security gaps because of other ongoing projects and the fact that it is necessary to engage a contractor to close the gaps. A contract is estimated to be in place by February 1, 2014. As such, I am requesting an update from the agency in 60 days to ensure that this contract has been awarded.

I have reviewed the original disclosure and the agency report. Based on that review, I have determined that the agency's report contains all of the information required by statute, and the findings appear to be reasonable. However, as noted above, I have requested an update from the agency to verify that the contract to correct the security gaps has been awarded.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency's report to the Chairs and Ranking Members of the Senate and House Armed Services Committees. I have also filed a copy of the agency's report in our public file, which is now available online at www.osc.gov.

Respectfully,



Carolyn N. Lerner

Enclosure