



U.S. OFFICE OF SPECIAL COUNSEL

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

The Special Counsel

January 24, 2014

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

Re: OSC File No. DI-12-2390

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find agency reports based on disclosures made by an employee at the Department of the Air Force (Air Force), Air Force Research Laboratory (Research Lab), Kirkland Air Force Base, New Mexico, alleging that an employee at the Research Lab engaged in conduct that constituted a violation of law, rule, or regulation. The whistleblower, Dr. Roy Hamil, who consented to the release of his name, is a Technical Advisor at the Research Lab. Dr. Hamil alleged that Senior Scientist Dr. Deanna Pennington directed the transfer of laser equipment, valued at approximately \$20,000, from the Research Lab to the Department of Energy, Sandia National Laboratory (Sandia Lab), Livermore, California, without the required authorization.

**Although the Air Force did not substantiate Dr. Hamil's allegations, it did determine that the laser equipment was transferred without documentation. The Air Force also conceded that it is generally better practice to document when government property is physically moved from one agency to another. I have determined that the reports meet all statutory requirements and that the findings of the agency head appear reasonable.**

Dr. Hamil's allegations were referred to then-Secretary of the Air Force Michael B. Donley, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). On February 5, 2013, Secretary Donley submitted the agency's report to OSC based on an investigation conducted by the Senior Officials Directorate of the Office of the Inspector General (OIG). On May 30, 2013, OSC received a supplemental report from the Air Force. Dr. Hamil submitted comments on the reports pursuant to § 1213(e)(1). As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the reports and comments to you.<sup>1</sup>

---

<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

*The Whistleblower's Disclosures*

Dr. Hamil disclosed that Dr. Pennington improperly directed the transfer of laser equipment from the Research Lab to the Sandia Lab. He alleged that the laser equipment, an amplifier valued at approximately \$20,000, was moved without proper authorization. According to Dr. Hamil, Dr. Pennington did not have the authority to approve equipment transfers under either the Economy Act of 1932 (Economy Act), 31 U.S.C. § 1535 (1994) or the Air Force Logistics Material Control Activity (LMCA), AFMAN 23-110. Dr. Hamil stated that despite the fact that the Research Lab initiated the transfer authorization process, Dr. Pennington disregarded the process when she ordered the laser equipment transfer without receiving final approval from the appropriate personnel. Once the transfer process was completed, the authorization process ceased. Dr. Hamil explained that because Dr. Pennington did not obtain authorization for the equipment transfer, there was no approved justification for the equipment transfer and no authorization paperwork. Consequently, Dr. Hamil deduced that the Department of Energy had no written liability for the equipment and no required return date.

*The Agency Reports*

In its investigation, OIG did not substantiate Dr. Hamil's allegations, although it determined that the equipment was transferred without documentation. The removal of the laser equipment from the Research Lab to the Sandia Lab was completed as a collaborative research effort between the two institutions, where each party bore the cost of its contribution to the joint project. Further, OIG found that no written agreement for use of the equipment was required based on inter-agency policies. According to Department of Defense Instruction 4000.19, only intra-governmental support requiring reimbursement must be documented. The instructions in AFI 25-201, *Support Agreements Procedures*, dated May 1, 2005, are similar: support agreements are "normally documented" where the Air Force provides "significant recurring support." From these two documents, in part, OIG concluded that no written documentation was needed because the equipment transfer involved only collaborative effort without reimbursement. However, the Air Force acknowledged in its report that it is generally better practice to document when government property is relocated from one agency to another.

---

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, 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).

As of the February 5 report, the Sandia Lab had returned the equipment to the Research Lab. Additionally, OIG maintained that because the cost and use of the equipment had a clear, justifiable benefit to the Air Force, it was within the mission of the Directed Energy Directorate of the Research Lab to authorize the use of the property. The report also asserted that the investigating officer found no evidence to support a conclusion that Dr. Pennington directed or ordered employees to ship the amplifier to the Sandia Lab. Thus, OIG could not substantiate the allegation that Dr. Pennington and agency employees transferred the laser equipment without the required authorization or paperwork.

With respect to the Economy Act, the report notes that the Sandia Lab did not order the laser equipment from the Research Lab; rather, the Research Lab supplied the equipment as its contribution to the research effort. Each party also bore the cost of its own contributions to the research effort. As a result of these findings, OIG concluded that the transfer of laser equipment did not trigger the Economy Act, as it only applies where one agency places an order for goods and services with another agency. See 31 U.S.C. § 1535.

The investigation further determined that the transfer of equipment did not violate the LMCA process<sup>2</sup>. Mr. Peter Lopez, an Equipment Custodian at the Research Lab, is responsible for maintaining “all the equipment in the laboratories under our division.” He stated that under AFMAN 23-110, the LMCA tracks certain types of equipment and that “non-accountable”<sup>3</sup> equipment is exempt from tracking. However, Mr. Lopez noted that it would be good practice to create such documentation. The investigation also concluded that the laser equipment was non-accountable based, in part, on a statement from Dr. Hamil that all the property sent to the Sandia Lab was “non-accountable,” and on a statement from Mr. Chunte Lu, a Research Engineer at the Research Lab, that all the property he shipped for the experiment was non-accountable. According to OIG, because the laser equipment was deemed non-accountable it did not need to be tracked pursuant to the LMCA.

In addition, in light of the fact that the investigation found that a written agreement was not required and that the equipment at issue was paid for by the Research Lab and used for its purposes in a joint project, OIG found that no other law, rule, or regulation was violated.

---

<sup>2</sup> The Air Force reports contain a suggestion that OSC may not have had a reasonable basis to refer allegations relating to a violation of the LMCA, based on the whistleblower’s alleged testimony that he did not recall the acronym “LMCA.” Such a claim is baseless and detracts from the facts of this case. Whistleblowers, such as Dr. Hamil, make valuable and important contributions to agency efficiency and cost-saving. In most cases, even where allegations are not substantiated, changes in agency policy or practice improve the efficiency of the federal government.

<sup>3</sup> The February 5 report indicates that additional information about the term “non-accountable” can be found in AFMAN 23-110.

*The Whistleblower's Comments*

In his comments, Dr. Hamil asserted that some of the testimony in the Air Force's report needed to be clarified because it gave an inaccurate representation of what occurred in the movement of the material without authorization. He reaffirmed his position that when material or money is transferred from one laboratory to another to carry out activities, there must be a written document allowing the transfer to take place. He asserted that whether the equipment is non-accountable is immaterial. Dr. Hamil also disagreed with the agency's depiction of Dr. Pennington's authority as being merely advisory and claims that she had a much larger scope of authority.

\*\*\*\*\*

I have reviewed the original disclosure, the agency reports and Dr. Hamil's comments. I have determined that the reports meet all statutory requirements 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 reports and comments to the Chairmen and Ranking Members of the Senate and House Committees on Armed Services. I have also filed copies of the redacted report, supplemental report, and redacted comments in our public file, which is available online at [www.osc.gov](http://www.osc.gov). The redacted report identifies Air Force employees (other than Dr. David Hardy, Dr. Robert Peterkin, Dr. Pennington, and Dr. Hamil) and witnesses by title only and contains certain language substituted to maintain the confidentiality of the parties involved.<sup>4</sup> OSC has now closed this file.

Respectfully,



Carolyn N. Lerner

Enclosures

---

<sup>4</sup> The Air Force provided OSC with a redacted report, which substituted titles for the names of Air Force employees and other individuals referenced therein. The Air Force 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 the Air Force'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.