



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

November 25, 2014

The President
The White House
Washington, D.C. 20510

Re: OSC File No. DI-14-1666

Dear Mr. President:

Pursuant to my duties as Special Counsel, enclosed please find the Department of Veterans Affairs' (VA) report based on disclosures of wrongdoing at the Southern Arizona Veterans Affairs Health Care System (SAVAHCS), Health Information Management (HIM) Department, Tucson, Arizona. OSC has reviewed the report and, in accordance with 5 U.S.C. § 1213(e), provides the following summary of the allegations and our findings.

The whistleblower, Randall Scott Williams, who consented to the release of his name, alleged that employees at the SAVAHCS engaged in conduct that may constitute a violation of law, rule or regulation. Specifically, Mr. Williams disclosed that agency employees improperly and repeatedly accessed his medical records without cause.

The agency did not substantiate the whistleblower's allegations, concluding that all instances of access to Mr. Williams's medical records were for valid work related reasons. Notwithstanding this finding, the agency recommended that the Veterans Health Administration (VHA) evaluate its document scanning policy for employee health records when the employee is a veteran receiving treatment at a VHA facility. Based on my review, I have determined that the report meets all statutory requirements and that the findings appear to be reasonable.

Mr. Williams's allegations were referred to then-Secretary Eric K. Shinseki to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Investigation of the matter was delegated to the VHA Office of the Medical Inspector (OMI). Chief of Staff Jose D. Riojas was delegated the authority to review and sign the report. On September 25, 2014, Mr. Riojas submitted the agency's report to the Office of Special Counsel. Pursuant to 5 U.S.C. § 1213(e)(1), the whistleblower provided comments on the agency report on October 22, 2014. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the report to you.¹

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

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I. Mr. Williams's Disclosures

Mr. Williams, a scanning technician at SAVAHCS, disclosed that agency employees improperly and repeatedly accessed his medical records without cause. Specifically he alleged that starting in April 2012, SAVAHCS employees repeatedly accessed his medical records for unknown reasons, and this improper access constituted an impermissible intrusion into his privacy and violated law and agency policy.

Mr. Williams explained that in response to several workplace incidents, he filed a request for his Sensitive Patient Access Report (Access Report), covering the time between January 3, 2011 and December 27, 2013. The Access Report revealed that Mr. Williams's medical records were accessed twenty-four times by eight individuals, including six times by Mr. Williams's supervisor, Mark Dycus, and five times by Alma Yant, lead scanning technician.

As an employee of the VA, Mr. Williams is entitled to use VA health care services, and his Access Report indicated that he received medical treatment from VA providers. However, the eight individuals whom he identified in his disclosure were coworkers or supervisors in the HIM unit, an administrative department that is not responsible for providing medical care. As none of the employees identified by Mr. Williams were involved in his medical treatment, there was no evident justification for them to have accessed his medical records. Mr. Williams also noted that his medical records were accessed by Mr. Dycus during a period when Mr. Dycus pursued disciplinary measures against him for his work performance.

II. The Agency's Report

The report did not substantiate Mr. Williams's allegations concerning improper access of his medical records. The report found that all twenty-four instances of access to Mr. Williams's electronic health records between January 2011 and September 2013 were proper.

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 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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The report defined proper access as including instances in which the user provides a plausible explanation based on their job duties. In contrast, improper access is defined as instances in which access was made for no apparent reason or an unauthorized reason.

The report explained that the HIM office is responsible for scanning paper medical records and analyzing them for accuracy, timeliness, and completeness. As noted above, Mr. Williams was a scanning technician in HIM at the time of his disclosure. As a veteran who received care at SAVAHCS, Mr. Williams's records were reviewed by HIM employees for the purpose of uploading them into his file and for quality assurance efforts. Mr. Williams's ongoing care at the facility necessitated that employees in this unit access his files as more documents were scanned and added to them.

The report noted that of the twenty-four instances of access to Mr. Williams's records, twenty were made by HIM employees in the performance of their official duties related to health care operations and scanning medical records. Ten instances of access occurred close in time to the addition of a new document into Mr. Williams's files. The remaining ten represented standard quality assurance reviews conducted by other HIM employees and supervisors.

In addition, four instances of accesses to Mr. Williams's files were made by the facilities information security office in the performance of its official duties. The report noted that the facilities information security office accessed Mr. William's files as a part of a routine audit designed to identify unauthorized file accesses.

Notwithstanding these findings, OMI recommended that VHA's HIM program office evaluate the appropriateness of the current documentation scanning policy and the feasibility of revising processes to limit the scanning of an employee/veteran's health information, to either the scanning lead or the supervisor. A draft of this revised policy has been prepared by the HIM program office and is undergoing review by VA leadership as of the date of this letter.

III. The Whistleblower's Comments

Mr. Williams's disagreed with the contents of the report and expressed disappointment with the agency's findings. He disputed the conclusion that employees entered his health records for valid work-related reasons. Specifically, Mr. Williams challenged the need to access his health records to validate "demographic information" associated with medical records recently uploaded into his file. According to Mr. Williams, multiple quality review checks were unnecessary. He also suggested the access was unrelated to legitimate work purposes.

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IV. The Special Counsel's Findings

I have reviewed the original disclosure and the agency report. Mr. Williams's comments, provided in response to the agency report, clearly highlight the sensitivity of situations where an employee's medical records are accessible by individuals in their supervisory chain of command. Notwithstanding his objections, the VA's efforts to review and update pertinent policies to ensure the security of employees' personal information indicates the agency is taking reasonable measures to prevent possible future privacy violations. For these reasons, I have determined that the findings of the agency head appear reasonable and the agency report meets all statutory requirements.

As required by 5 U.S.C. §1213(e)(3), I have sent copies of the agency report and the whistleblower's comments to the Chairmen and Ranking members of the Senate and House Committees on Veteran's Affairs. I have also filed copies of the redacted agency report and whistleblower comments in our public file, which is available at www.osc.gov. OSC has now closed this file.

Respectfully,



Carolyn N. Lerner

Enclosures