



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

The Special Counsel

September 28, 2015

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

Re: OSC File No. DI-14-4467

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 Western Area Fiduciary Hub, Salt Lake City, Utah, made to the Office of Special Counsel (OSC). 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, Ethel L. Tendell, who consented to the release of her name, is a field examiner. Ms. Tendell disclosed that VA officials failed to inform employees of the existence of safety recalls issued for the government-owned vehicles (GOV) they were assigned. She further disclosed that VA management failed to take appropriate action after being notified of the recall issues. She asserted these employees' actions constituted violations of law, rule, or regulation; gross mismanagement; and a substantial and specific danger to public safety.

The investigation substantiated all of Ms. Tendell's allegations, and the agency has taken or initiated appropriate corrective and disciplinary action to address these failures. It is important to note that this is the second time that Ms. Tendell has made a disclosure to OSC that the VA failed to notify her regarding recalls affecting her assigned GOV. On June 2, 2010, OSC notified the VA that the agency had failed to notify Ms. Tendell of recall notices on her assigned GOV. The agency's July 22, 2010 report stated that the Veterans Benefits Administration (VBA), which oversees the GOVs for the Western Area Fiduciary Hub, was taking action to prevent safety issues from recurring. However, the measures that the VA took following Ms. Tendell's first disclosure did not prevent the VA from again failing to inform employees of safety recalls on their assigned GOVs.

I am satisfied that the additional actions the VA has taken in response to Ms. Tendell's second disclosure, including establishing new procedures and reporting requirements nationwide, are adequate. Although I have determined that the agency report meets all statutory requirements and the findings appear reasonable, I note that better oversight may be needed to prevent future lapses that could compromise safety.

The President

September 28, 2015

Page 2 of 3

Ms. Tendell's allegations were referred to the Secretary of VA Robert A. McDonald to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). The Secretary delegated the investigation of the matter to the VBA. On June 18, 2015, the Secretary submitted the agency's report to this office. Ms. Tendell declined to comment on the report. As required by law, 5 U.S.C. § 1213(e)(3), OSC is now transmitting the report to you.¹

As a field examiner, Ms. Tendell travels throughout Colorado in her GOV, a 2013 Ford C-Max Hybrid. On February 3, 2014, after Ms. Tendell's GOV was towed to a Ford dealership because of a flat tire, the dealership informed Ms. Tendell that there were three outstanding safety recalls for her GOV. However, VA employees had failed to inform Ms. Tendell about the recalls. Ms. Tendell was also contacted by a VA employee who discovered that the VA had failed to notify her and other employees of safety recalls for their assigned Ford Escape GOVs.

All of Ms. Tendell's allegations were substantiated. In its investigation, VBA concluded that the agency did not notify Ms. Tendell of three or more recalls on her assigned GOV. The VA also failed to notify other employees about safety recalls on their GOVs. Ms. Tendell notified numerous management officials including the Salt Lake City (SLC) regional fleet manager, SLC regional office support services chief, western area office executive management officer, and western area fiduciary hub manager about the failure to notify her of the recall. The VBA investigation found that the VA did not take timely action when informed of the outstanding recall notice and did not adequately respond to employee concerns.

As a result of these determinations, the VA has taken corrective and disciplinary action. In April 2014, the VBA Office of Administration and Facilities hired a full-time, certified national safety officer to monitor and enforce VBA compliance with federal vehicle safety guidelines. VBA regional offices were notified that they were required to repair all vehicles with pending recalls and, as of April 15, 2015, all vehicle recall repairs were completed. On March 19, 2015, the VBA deputy under secretary for field operations held a national conference call to address VBA's plan to improve its current fleet management processes and procedures. On April 22, 2015, the VBA national fleet manager and VBA

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 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).

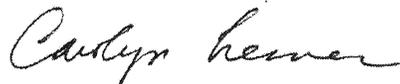
The Special Counsel
The President
September 28, 2015
Page 3 of 3

health and safety manager conducted a mandatory training for over 70 regional office fleet management personnel on identifying and tracking vehicle defects and recalls. The VBA national fleet manager will hold monthly conference calls with regional office fleet managers to provide updates from VA and the General Services Administration (GSA). The VA has represented to OSC that a VBA Field Operations policy letter that introduces new monthly reporting requirements and new VBA Vehicle Recall Standard Operating Procedures are in the final stages of review. In addition, the agency issued a three-day suspension to the SLC Regional Fleet Manager Thomas Mangum.

I have reviewed Ms. Tendell's disclosures and the agency report. Based on this review, I have determined that the report meets all statutory requirements and the findings of the agency head appear reasonable. As noted above, I expect the VA will take all measures necessary to properly maintain GOVs and ensure the safety of its employees.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the unredacted agency report to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs. We have also filed copies of the redacted report in our public file, which is available at www.osc.gov.² OSC has now closed the matter.

Respectfully,



Carolyn N. Lerner

Enclosure

² The VA provided OSC with a report containing employee names (enclosed), and a redacted report in which employees' names were removed. The VA has cited Exemption 6 of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(6)) as the basis for its redactions to the report produced in response to 5 U.S.C. § 1213, and requested that OSC post the redacted version of the reports in our public file. OSC objects to the VA's use of FOIA to remove these names because under FOIA, such withholding of information is discretionary, not mandatory, and therefore does not fit within the exceptions to disclosure under 5 U.S.C. § 1219(b), but has agreed to post the redacted version of the report as an accommodation.