



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

The Special Counsel

October 9, 2015

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

Re: OSC File No. DI-14-1515

Dear Mr. President:

Pursuant to my duties as Special Counsel, enclosed please find a Department of Veterans Affairs (VA) report based on disclosures of a violation of law, rule, or regulation at the VA North Texas Health Care System in Dallas, Texas. The U.S. Office of Special Counsel (OSC) has reviewed the report and, in accordance with 5 U.S.C. § 1213(e), provides the following summary of the investigation, whistleblower's comments, and my findings. The whistleblower, Nicole Goulding, who consented to the release of her name, is a veteran and therapeutic radiology technician at the VA North Texas Health Care System. She disclosed that a coworker accessed her medical records without proper authority, and that her supervisor improperly disclosed her medical information to her coworkers.

**The VA substantiated Ms. Goulding's allegation that a coworker accessed her medical records without proper authority or a need for the information in the performance of official duties, and found that the VA North Texas Health Care System had already investigated the matter and disciplined the coworker. Nevertheless, the VA did not substantiate the allegation that Ms. Goulding's supervisor disclosed her medical information to her coworkers. In response to these findings, the VA conducted privacy training for employees in Radiation Oncology Department; advised the VA North Texas Health Care System privacy officer of her responsibilities regarding reporting privacy violations in the VA's Privacy and Security Event Tracking System; and created a notice to privacy complainants explaining the complaint process and what information can be shared with a complainant regarding actions taken as a result of their complaint.**

On July 24, 2014, OSC referred the whistleblower's allegations to then-Acting Secretary of Veterans Affairs Sloan D. Gibson to conduct an investigation pursuant to 5 U.S.C. § 1213(c). The Secretary delegated to Chief of Staff Robert L. Nabors, II, the authority to review and sign the report. The Veterans Health Administration, Information Access and Privacy Office conducted an investigation of Ms. Goulding's allegations. On

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June 16, 2015, Mr. Nabors submitted the VA's report to this office. Ms. Goulding commented on the VA's findings. I am now transmitting the report and the whistleblower's comments to you.<sup>1</sup>

Based on my review of the disclosure, agency report, and Ms. Goulding's comments, I have determined that the VA's report contains all of the statutorily required information and that the findings appear reasonable. 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.<sup>2</sup> I have also filed a copy of the redacted report and whistleblower's comments in our public file, which is available online at [www.osc.gov](http://www.osc.gov). This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosures

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<sup>1</sup> OSC is authorized by law to determine whether a disclosure should be referred to the involved agency for investigation or review, and a report. OSC may refer allegations of 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 or safety. 5 U.S.C. § 1213(a), (b). Disclosures must include information that aids OSC in making its determination. Disclosures must include information sufficient for OSC to determine whether referral is warranted. OSC does not have the authority to investigate disclosures and therefore, does not conduct its own investigations. 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).

<sup>2</sup> The VA provided OSC with an unredacted report containing employee names and a redacted report that substituted titles for the names of employees other than the subjects of the investigation. The VA cited the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act of 1974 (5 U.S.C. § 552a) as the basis for these revisions to the report produced in response to 5 U.S.C. § 1213, and requested that OSC post the redacted version of the report in our public file. OSC objects to the VA's use of FOIA and the Privacy Act to remove these names on the basis that it is an overly broad application of the Privacy Act, and 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). Nevertheless, OSC has agreed to post the redacted version as an accommodation. Additionally, the portion of the whistleblower's comments containing a copy of the unredacted report was omitted from the public file.