



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

The Special Counsel

May 18, 2016

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

Re: OSC File No. DI-15-2454

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding a Department of Veterans Affairs (VA) report based on disclosures of wrongdoing at the Miami VA Health Care System (Miami VAHCS), Miami, Florida. I have reviewed the VA report in accordance with 5 U.S.C. § 1213(e) and provide the following summary of the investigation, the whistleblower comments, and my findings.¹ The whistleblower, Aaron Todd, disclosed that members of the Miami VAHC's Compensated Work Therapy (CWT) Program assigned to the Prosthetics and Sensory Aids Service (PSAS) routinely accessed VA patients' private health information (PHI) without authorization, which constituted a violation of law, rule, or regulation and gross mismanagement.

The agency did not substantiate Mr. Todd's allegation that CWT workers routinely accessed VA patients' PHI. During the investigation, however, the agency determined that a CWT working in the PSAS reception area improperly obtained individually-identifiable information by taking telephone messages containing names, dates of birth, and portions of Social Security numbers. The privacy officer investigated the incident, recorded the information in the Privacy and Security Event Tracking System, and reported it to the VA's Network Security Operations Center, which is responsible for assigning severity ratings to privacy and information security incidents. The Data Breach Core Team determined the practice was a policy violation rather than a data breach as defined by the Health Insurance Portability and Accountability Act Breach Notification Rule. The agency also took steps to ensure that going forward, CWT participants were

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).

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not assigned to areas with any potential access to clinical areas within the facility, and confirmed that as of May 1, 2015, no CWTs within the Miami VAMC had access to any such areas. I have reviewed the agency's report and determined that the report contains all the information required by statute and the findings appear reasonable.

I referred Mr. Todd's allegations to Secretary Robert A. McDonald for investigation pursuant to 5 U.S.C. § 1213 (c) and (d). Secretary McDonald delegated the investigation to the Office of the Medical Inspector (OMI) and the authority to review and sign the report to former Chief of Staff Robert L. Nabors, II, who submitted the agency's findings to OSC on December 9, 2015. Mr. Todd commented on the report.

In the report, the agency distinguished CWT program participants from Work-Study program participants and Vocational Rehabilitation program participants. Specifically, OMI explained that unlike CWTs, who are considered patients, not employees, Vocational Rehabilitation and Work-Study program participants are treated as employees and sign agreements to be subject to the same conduct as other comparable VA employees. As such, Vocational Rehabilitation and Work-Study participants' may lawfully access patient PHI in the course of their duties.

In his comments, Mr. Todd expressed concern that the report contained inaccurate information and reflected OMI's intent to downplay the seriousness of his allegations and cover-up agency wrongdoing. Mr. Todd also worried that Work Study Program participants should not have access to PHI and that OMI failed to address this issue in the report. Mr. Todd agreed with the agency recommendation of further training on the role of CWTs and recommended that the agency offer Vocational Rehabilitation Program participants the same training.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the unredacted agency report and the whistleblower comments to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs. I recognize that Mr. Todd has continuing concerns regarding the VA's response to the investigation. In light of the additional security investigation and the recent corrective action the VA has taken, however, I have determined the agency findings appear reasonable. I have also filed a copy of this letter, the redacted agency report and the whistleblower's comments in OSC's public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosures