



**U.S. Immigration
and Customs
Enforcement**

Ms. Carolyn N. Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, D.C. 20036

Re: Supplemental Report for OSC File Nos. DI-14-1069, DI-14-1070, DI-14-1071

Dear Ms. Lerner:

The enclosed report is submitted in response to your request for supplemental information relating to the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement's (ICE) report regarding the Office of Special Counsel (OSC) File Nos. DI-14-1069, DI-14-1070, DI-14-1071. On September 19, 2014, ICE submitted the initial report containing its investigative findings. On November 21, 2014, the OSC requested a supplemental report from ICE. I have been delegated the authority to review and sign this supplemental report.

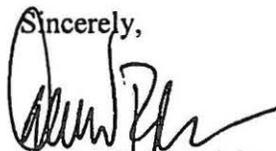
ICE has enclosed two versions of its supplemental report. The first version of the report contains the names and positions of ICE law enforcement officers and is For Official Use Only (FOUO), as specified by Title 5, U.S.C., Section 1213(e). Each page of the report has been marked accordingly. We understand that, as required by law, you will provide a copy of the unredacted version of the report to the President of the United States and the appropriate oversight committees in the Senate and House of Representatives for their review. In these legally required re-disclosures of the unredacted report, ICE respectfully requests that the OSC retain ICE's FOUO markings and convey the sensitivities of the identifiable information contained in the report.

The second version of the report has been redacted to eliminate references to privacy-protected information and is suitable for release in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. Section 552. ICE has redacted the names and positions of law enforcement officers pursuant to FOIA exemptions (b)(6) and (b)(7)(C) because the release of this information would constitute a clearly unwarranted invasion of the law enforcement officers' personal privacy. Accordingly, these exemptions are specifically asserted to protect ICE's law enforcement officers from possible acts of threat, coercion, and bribery. ICE requests that only the redacted version of the report be made available on your website, in your public library, or in any other forum in which it will be accessible to persons not expressly entitled by law to a copy of the unredacted report.

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Please do not hesitate to contact my office at (202) 732-3000 should you require any further information regarding these matters.

Sincerely,



Daniel H. Ragsdale
Deputy Director

Enclosure

Cc: Chief Human Capital Officer
Principal Deputy General Counsel

For Official Use Only (FOUO)

I. Summary of Supplemental Information Requested by the Office of Special Counsel

On November 21, 2014, the Office of Special Counsel (OSC) submitted a request to the U.S. Immigration and Customs Enforcement (ICE) for a supplemental report regarding the OSC File Nos. DI-14-1069, DI-14-1070, DI-14-1071. The OSC requested: (1) a revised cover letter stating that Deputy Director Daniel Ragsdale had been delegated authority to review and sign the report; (2) identifying information of employees as opposed to referring to them only by titles; (3) identifying information of employees whose hours claimed in WebTA exceeded the number of hours claimed on their Administratively Uncontrollable Overtime (AUO) form and the factual bases for determining that these discrepancies were not instances of misconduct; and (4) clarification regarding whether employees always submitted AUO forms and whether their supervisors would require those forms before approving the accompanying WebTA entry.

II. Identifying Information of Employees as Opposed to Referring to Them Only By Titles

In its request for a supplemental report, the OSC requested that the report include identifying information about the employees as opposed to referencing titles or the number of employees who engaged in the activity mentioned (e.g., “IEA,” “one employee,” or “three employees”). The OSC listed specific references to employees in the report for whom the information was requested. The relevant portions of the original report are set forth below, with the requested identifying information:

[Page 9]: The justifications provided by the additional ten employees were repetitive in nature, similar to those provided by the subjects of the investigation. For example, Deportation Officer (DO) ██████████ used the phrase “Fugitive Operations” 151 times out of 205 total instances of AUO claimed by the employee (74 percent of the justifications). Supervisory Detention and Deportation Officer (SDDO) ██████████ used the phrase “CAP SDDO Duties” 221 times out of 282 total instances of AUO claimed by the employee (78 percent of the justifications).

[Page 8]: The average AUO hours worked for each of the Operations/Transportation Section (OTS) employees was over 570 hours for the 16 months examined (over 3,421 hours total among the six subjects whose records were reviewed). The least amount of AUO worked by any individual subject within OTS during this period was 509 hours (Immigration Enforcement Agent (IEA) [REDACTED] [REDACTED] while the greatest was 662.75 hours (Supervisory Immigration Enforcement Agent (SIEA) [REDACTED] [REDACTED]

[Page 9]: The average AUO hours worked per subsequent employee was over 577 hours for the 16 months examined (5,774 hours total among the ten subsequent employees whose records were reviewed). The least amount of AUO worked by any individual employee during this period was 403.75 hours (DO [REDACTED] [REDACTED] while the greatest was 738.5 hours (DO [REDACTED] [REDACTED]

III. Employees Whose Hours Claimed in WebTA Exceeded the Number of Hours Claimed on their AUO Form

As explained in ICE's original report in response to the OSC's referral of allegations, dated September 19, 2014, OPR also reviewed AUO forms and WebTA certified Time and Attendance records for an additional ten employees ("sample employees") in ICE's Enforcement and Removal Operations (ERO) Columbus sub-office to determine whether the patterns and practices of the subjects of the investigation were common throughout the office or unique only to the OTS. In its request for a supplemental report, the OSC requested that the report identify the sample employees whose hours claimed in WebTA exceeded the number of hours claimed on their AUO form. Furthermore, the OSC requested the factual bases for determining that these accounting discrepancies were not instances of misconduct possibly warranting further investigation and/or disciplinary action. The relevant portion of the original report is set forth below, with the requested identifying information:

[Page 10-Sample Employees]: OPR identified 20 instances where more AUO hours were claimed in WebTA than what was claimed and approved on the AUO forms, resulting in an overage of 24 hours by five of the ten [sample] employees (DO [REDACTED] (2 hours); DO [REDACTED] [REDACTED] (1.5 hours); DO [REDACTED] [REDACTED] (0.25 hours); SDDO [REDACTED] (19 hours); Assistant Field Office Director (AFOD) [REDACTED]

██████████ (1.25 hours). SDDO ██████████ was responsible for 11 overages, totaling 19 hours.

Since these sample employees were not the subjects of the allegations referred by the OSC, they were not interviewed regarding these discrepancies. Relying only on a review of the records, there is insufficient information to determine the factual bases behind most of these discrepancies. For all but one of the employees, however, the number of hours at issue was very low (i.e., 2 hours, 1.5 hours, 0.25 hours, and 1.25 hours) and only took place during three or fewer pay periods. As such, OPR has not obtained any evidence to support that these instances are anything more than administrative errors. As indicated before, SDDO ██████████ was responsible for 11 overages, totaling 19 hours. In one instance, SDDO ██████████ claimed a total of five more AUO hours in WebTA (2013 PP6) than what he claimed on the corresponding AUO form. A review of the WebTA entry reveals that he validated and attested his WebTA timesheet at 7:07 a.m. on Friday, April 4, 2013, and his supervisor, AFOD ██████████ certified the timesheet at 10:12 a.m. on that same day. AUO was then claimed on Saturday (5 hours). On Monday, April 7, 2013, SDDO ██████████ added the additional AUO hours from weekend duty to WebTA and recertified but failed to update the corresponding AUO form. The supervisor then approved the entry in WebTA. Based only on the documentation, this instance appears to be a circumstance where the employee submitted his AUO form and WebTA timesheet and then received additional duties requiring him to work AUO. The WebTA was subsequently changed to reflect that additional work; however, the AUO form was not updated. While many of his other instances have no equally apparent explanation, OPR has not obtained any evidence to support that the discrepancies were anything more than administrative errors caused by a lack of diligence.

Furthermore, although the initial report to the OSC did not identify any OTS employees who had claimed more AUO hours in WebTA than what was claimed on the corresponding AUO form, pursuant to this supplemental request for information, OPR's review revealed that there was one such occurrence, but it had been inadvertently omitted from the final report submitted to the OSC. In that one instance, IEA ██████ claimed a total of five more AUO hours in WebTA (2013 PP2) than what she claimed on the AUO form. A review of the WebTA entry reveals that she certified her WebTA entry at 4:51 a.m. on Friday, February 8, 2013. AUO was then subsequently claimed on Friday night (2 hours) and Saturday (3 hours) for Duty Calls. On Monday, February 11, 2013, IEA ██████ added the additional AUO hours from the weekend duty and recertified. Her supervisor, SDDO ██████ then approved the entry in WebTA. OPR did not find any evidence to support misconduct associated with this incident.

IV. Whether Employees Always Submitted AUO Forms and Whether Supervisors Required Those Forms Before Approving Accompanying WebTA Entries

In its request for a supplemental report, the OSC requested that the report identify the eight employees with instances of missing AUO forms and describe why their supervisors approved their WebTA timesheets without the accompanying AUO form.¹ Furthermore, the OSC requested the factual bases for determining that these discrepancies were not instances of misconduct possibly warranting further investigation and/or disciplinary action. The relevant portions of the original report are set forth below with the requested identifying information:

[Page 8-OTS Employees]: OPR identified 12 instances where ERO Columbus could not provide AUO forms during the review period. IEA ██████ was missing 11 AUO forms, covering 188 AUO hours. IEA ██████ was missing one AUO form, covering 14.5 AUO hours. During his interview, IEA ██████ stated that he would always submit an AUO form to his supervisor, SIEA ██████ and if he did not, SIEA

¹ In the OSC's request for a supplemental report, the OSC requested the identities of the eight employees with instances of missing AUO forms. In fact, only six employees (two OTS employees and four sample employees) were found to have had missing AUO forms as indicated in the September 19, 2014, initial report.

██████████ will not approve his WebTA entry. The employee further stated that he does not maintain a copy of the AUO form, as it is not required and the submitted form is provided to the office timekeeper for retention. SIEA ██████████ stated that he will not approve an employee's WebTA entry without reviewing an AUO form and providing the form to the timekeeper for retention. ERO Columbus was unaware that any AUO forms were missing and, as a result of the OPR investigation, ERO Columbus implemented an office-wide process to ensure that all AUO forms are accounted for in the future.

[Page 9-Sample Employees]: OPR identified 16 instances where AUO forms were missing, but hours were still claimed as AUO hours in WebTA during those relevant pay periods. As with the six subjects, the WebTA records for this other group of employees were certified by the employees' supervisor(s); however, those AUO forms were not able to be produced when requested by OPR during the investigation. The missing forms account for approximately 294 AUO hours for four (DO ██████████ DO ██████████ DO ██████████ DO ██████████) of the ten employees.

As explained above in the relevant portion, all of the subjects interviewed regarding the missing AUO forms consistently stated that AUO forms were always required prior to certifying the WebTA. IEA ██████████ stated that he did not recall failing to submit any AUO form; however, if he had forgotten, his supervisor would certainly have reminded him to complete one. SIEA ██████████ stated that he ensures all of his employees complete the AUO form and that he makes them complete it before he certifies their Time and Attendance. Neither IEA ██████████ nor SIEA ██████████ has an explanation for the missing forms; however, they maintain that there would have been a form for each pay period and presume that the relevant AUO forms were lost. Further, due to IEA ██████████ missing only one AUO form, she was not interviewed about this issue and she is not being investigated for potential misconduct. In order to prevent future occurrences of missing AUO forms, ERO Columbus implemented a new system to better ensure the effective and consistent collection and maintenance of completed AUO forms.

It is important to note that the eight OTS employees turned in 272 AUO forms during the 34 pay periods reviewed. Of those 272 AUO forms submitted, only 12 forms were missing,

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accounting for 4.4% of the total forms. This low percentage of missing forms in conjunction with the explanations provided by the interviewed employees demonstrate that the missing AUO forms are not a widespread issue and did not warrant an investigation of potential misconduct.