



## U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

September 10, 2018

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

Re: OSC File No. DI-15-2333

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), I am forwarding to you a report from the Department of Justice (DOJ), Office of Inspector General (OIG), based on disclosures of wrongdoing within the OIG of the Department of Defense (DOD).<sup>1</sup> The whistleblower, John Crane, disclosed that DOD-OIG employees destroyed audit records in violation of agency document retention requirements. On April 18, 2018, the DOJ-OIG submitted its report in response to OSC's referral.

OSC also referred the whistleblower's disclosures that senior DOD-OIG officials withheld a report of investigation from public release to protect a high-level DOD official, and that the same officials engaged in extensive and systemic mishandling of investigations. OSC referred those allegations to the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE). The Integrity Committee reviewed the allegations and notified OSC by letter dated July 21, 2017, of its determination to take no further action.

The whistleblower submitted comments on August 15, 2018. OSC reviewed the reports and the whistleblower's comments, and provides the following summary of the reports and my findings.

### Allegations Referred to DOJ-OIG

The whistleblower disclosed that DOD-OIG employees failed to comply with agency rules for document retention and destruction of materials related to a DOD-OIG audit of the National Security Agency's (NSA) Trailblazer and Thinthread programs. He explained that employees improperly destroyed classified information related to the audit, and intentionally mischaracterized the document destruction as authorized, resulting in false representations to DOJ and a federal court. He alleges that the destruction of classified audit materials violated DOD Instruction 5200.01 and other laws, rules, or regulations concerning the protection and destruction of classified information. The whistleblower also alleged that DOD-OIG officials impeded his effort to conduct an investigation of the alleged document destruction, and into a related allegation that DOD-OIG proactively identified sources. OSC referred these allegations for review and response under 5 U.S.C. § 1213(c).

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<sup>1</sup> With the whistleblower's consent, DOJ-OIG agreed to investigate the allegations against DOD-OIG.

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DOJ-OIG's report found no evidence that DOD-OIG improperly destroyed documents related to the audit. The report revealed that DOD-OIG retained documents related to the audit both electronically in its audit management database, and in hard copies in a secure facility. However, the report did find that an audit team leader destroyed some hard copy documents, to include duplicates and documents unrelated to the audited NSA programs. The report concluded that DOD-OIG appropriately destroyed these documents in accordance with DOD-OIG policies.

With respect to statements made by DOJ prosecutors in federal court regarding the destruction of documents, DOJ-OIG's report concluded that prosecutors clarified initial inaccurate representations in subsequent communications with the court. The report concluded that there was no evidence to support the whistleblower's allegation that DOD-OIG officials intentionally provided misinformation to prosecutors in an effort to impede the defense or mislead the court.

DOJ-OIG's report also found insufficient evidence to reach a determination on the question of whether DOD-OIG officials prohibited or impeded the whistleblower from conducting an investigation into the document destruction and source confidentiality issues. The report noted that the whistleblower, as the Assistant Inspector General for Communications and Congressional Liaison, was not an investigator or responsible for investigations. Finally, the report found no evidence to support the whistleblower's claim that DOD-OIG proactively identified sources.

#### Allegations Referred to the CIGIE Integrity Committee

The whistleblower disclosed that senior DOD-OIG officials engaged in an abuse of authority when they departed from prior agency practice and determined not to publicly release a report of investigation. The whistleblower alleged that they did this to protect a senior DOD official who was the subject of the investigation. In addition, the whistleblower alleged that senior DOD-OIG employees: (1) applied improper standards to civilian reprisal investigations; (2) failed to correct identified deficiencies in military reprisal programs; (3) abused their authority in numerous investigations; and (4) abused their authority by removing investigative independence in civilian reprisal investigations. OSC referred these allegations to CIGIE's Integrity Committee under 5 U.S.C. §§ 1213(c) and (g)(2). However, the Integrity Committee instead reviewed the allegations under section 11(d) of the Inspector General Act of 1978. After reviewing the referred allegations, the Integrity Committee determined to take no further action.

#### The Whistleblower's Comments

In his comments, the whistleblower observed that his multiple allegations of wrongdoing by DOD-OIG officials were addressed separately, and that the length of time the allegations were under review or investigation resulted in a degradation of evidence that challenges the ability of investigators either to substantiate or disprove the allegations. He

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challenged the investigative independence of DOJ-OIG and asserted that its report fails to comply with applicable standards for investigation.

The whistleblower also criticized the process by which OSC referred his allegations, notwithstanding his consent. For example, he raised concerns about OSC's decision to refer some of his allegations to CIGIE's Integrity Committee.

The Special Counsel's Determination

I have reviewed the whistleblower's disclosures, the investigative reports and related documents, and the whistleblower's comments. In view of the evidence, I have determined that DOJ-OIG's report regarding DOD-OIG's document retention and destruction practices meets all statutory requirements and the findings appear reasonable. Because CIGIE's Integrity Committee reviewed the allegations under section 11(d) of the Inspector General Act of 1978 and not 5 U.S.C. § 1213, I am unable to reach a determination on the reasonableness of the findings.

While DOJ-OIG's report found no evidence to support the whistleblower's numerous and complex allegations of wrongdoing, I acknowledge that the review and subsequent investigation of his allegations took a significant amount of time. Under my leadership, OSC is committed to conducting a timely review in all future cases. I appreciate the whistleblower raising this issue.

I also acknowledge the whistleblower's concern regarding the challenges in resolving allegations against independent inspectors general through OSC's process. OSC continues to work closely with CIGIE's Integrity Committee to ensure the appropriate coordination and resolution of all such allegations, and as a result of this case is developing a framework through which to approach future cases.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the report, and the whistleblower's comments to the Chairmen and Ranking Members of the Senate and House Committees on Armed Services. I have also filed copies of these documents in our public file, which is available at [www.osc.gov](http://www.osc.gov). This matter is now closed.

Respectfully,



Henry J. Kerner  
*Special Counsel*

Enclosures