



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

February 23, 2018

The Honorable Elaine Chao
Secretary of Transportation
1200 New Jersey Ave, S.E.
Washington, D.C. 20590

Re: OSC File No. DI-17-5225
Referral for Investigation—5 U.S.C. § 1213(c)

Dear Madam Secretary:

I am referring to you for investigation a whistleblower disclosure that employees at the Department of Transportation, Federal Aviation Administration (FAA), engaged in actions that constitute a violation of law, rule or regulation; gross mismanagement; and a substantial and specific danger to public safety. A report of your investigation and any related matters is due to the Office of Special Counsel on April 23, 2018.

██████████, who consented to the release of his name, disclosed that the FAA is attempting to modify the Microprocessor En-Route Automated Radar Tracking System (MEARTS) alerts using a flawed software adaptation process which places the flying public at risk. His allegations include the following:

- The safety of the flying public using air traffic control (ATC) services provided by the Anchorage Air Traffic Control Center is at risk because of ongoing attempts to complete adaptation of the MEARTS system using unverified data.
- FAA officials falsified checklists indicating that data verification took place when it had not.
- FAA management has been aware of the risks associated with the MEARTS system adaptation since its inception but has failed to address them.

As a computer specialist at the Anchorage Air Route Traffic Control Center, ██████████ is tasked with supporting the MEARTS system used for air traffic control operations for the Alaska area. He explained that since approximately 2009, the facility has been attempting to adapt and alter the MEARTS system with the goal of reducing the number of “nuisance” Minimum Safe Altitude Warning (MSAW) alerts for ATCs tracking and monitoring aircraft.¹ ██████████ asserts, however, that the adaptation of the software system has had the effect of inhibiting the presentation of valid MSAW alerts to ATCs. This

¹ ██████████ explained that a “nuisance” alert refers to triggered MSAW alerts that appear because of parameters set within the system, but do not signify any significant unsafe condition.

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inhibition, in turn, has the potential to cause ATCs to miss certain unsafe conditions that require warnings, resulting in a greater potential for aircraft crashes.

██████████ believes that this flaw in the MEARTS system adaptation is the direct result of the FAA's failure to verify the data used in the process. ██████████ also alleges that he raised this lack of data verification to management, but management failed to address his concerns and pointed him to a checklist showing the data was verified. ██████████ contends, however, that agency officials falsified this checklist. ██████████ believes the records were falsified because he observed his name next to several entries in a log indicating verification, but never himself verified any results.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses a substantial and specific danger to public safety. Please note that specific allegations and references to specific violations of law, rule or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC.

As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Pages/DOW.aspx>. If your investigators have questions regarding the statutory process or the report required under section 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 for assistance. I am also available for any questions you may have.

Sincerely,



Henry J. Kerner
Special Counsel

Enclosures

cc: The Honorable Calvin L. Scovel, III

APPENDIX

AGENCY REPORTS UNDER 5 U.S.C. § 1213

GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here <https://osc.gov/Pages/Resources-PublicFiles.aspx>. Please refer to our file number in any correspondence on this matter.

RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).