



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

February 13, 2018

The Honorable Jefferson Beauregard Sessions III
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: OSC File No. DI-18-1767
Referral for Investigation – 5 U.S.C. § 1213(c)

Dear Attorney General Sessions:

I am referring to you for investigation a whistleblower disclosure that employees at the Bureau of Prisons (BOP), Federal Correctional Complex, Beaumont, Texas (FCC Beaumont), may have engaged in conduct that constitutes a violation of law, rule, or regulation and a substantial and specific danger to public safety. A report of your investigation on these allegations and any related matters is due to the Office of Special Counsel (OSC) by April 16, 2018.

The whistleblower, [REDACTED] is a corrections officer at FCC Beaumont and has consented to the release of his name. The allegations to be investigated include the following:

- At the direction of management, FCC Beaumont personnel routinely deny inmate requests to be placed in administrative detention and separated from the general prison population by inmates concerned for their personal safety; and
- The denial of inmate requests to be placed in administrative detention jeopardizes FCC Beaumont staff member safety.

In his capacity as union president, [REDACTED] was notified that on June 20, 2017, an inmate requested to be placed in protective custody based on his belief that his life was in danger. The request was made to Operations Lieutenant [REDACTED] Operations lieutenants are authorized to grant or deny inmate protective custody requests. According to [REDACTED] [REDACTED] responded to the request by asking the inmate if he could provide any information or “snitch” on his fellow inmates. When the inmate refused, [REDACTED] immediately denied his request to be placed in protective custody, and ordered the inmate to return to his assigned housing unit. Within minutes of his return, the inmate was attacked by a fellow inmate.

Following this incident, [REDACTED] conducted a review and learned from another lieutenant, [REDACTED] that FCC Beaumont captains instructed operations lieutenants to grant inmate requests for administrative detention only in exchange for information about

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another inmate. ██████ asserts that approach to meting out protective custody violates section 541.27 of BOP Program Statement 5270.11. That section permits inmates to be placed in administrative detention status if they have been the victim of an inmate assault or are being threatened by other inmates. The BOP Program Statement does not require a proffer of information in exchange for granting a protective custody request.

In addition, ██████ contends that this *quid pro quo* approach toward evaluating protective custody requests puts BOP staff at risk. ██████ explained that it is not uncommon for an inmate to commit an act of violence against a corrections officer in order to be removed from general population. He asserts that inmates who feel their safety is in jeopardy, and whose requests for administrative detention are denied, will be more inclined to resort to violence against FCC Beaumont staff members as a guaranteed means of being extricated from the general population.

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 violation of law, rule, or regulation and 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 Michael E. Horowitz, Inspector General

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).