



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

March 13, 2018

The Honorable David J. Shulkin, M.D.
Secretary
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

VIA ELECTRONIC MAIL

Re: OSC File No. DI-18-2335
Referral for Investigation – 5 U.S.C. § 1213(c)

Dear Secretary Shulkin:

I am referring to you for investigation a whistleblower disclosure that employees at the Department of Veteran Affairs, Southern Arizona VA Healthcare System (SAVAHCS), Tucson, Arizona, may have engaged in conduct that constitutes a violation of law, rule, or regulation. A report of your investigation on these allegations and any related matters is due to the Office of Special Counsel (OSC) by May 14, 2018.

The whistleblower, [REDACTED] is a maintenance worker at the SAVAHCS and has consented to the release of his name. The allegations to be investigated include the following:

- SAVAHCS Fleet Management Lead [REDACTED] terminated a contract with Mobile Detailing Concepts (MDC) for vehicle detailing services in order to hire GA Painting, a company owned by her brother, to perform the same service for the VA's vehicle fleet; and
- In response to [REDACTED] disclosure concerning this matter, SAVAHCS management told him not to discuss this matter with anyone outside the agency and took steps to conceal GA Painting's work at the SAVAHCS.

[REDACTED] alleges that [REDACTED] fabricated performance deficiencies against MDC with the express purpose of securing an early termination of MDC's contract. [REDACTED] who is a contracting officer's representative, terminated MDC's contract in August 2017. Two weeks later, [REDACTED] hired GA Painting, a company owned by her brother [REDACTED] to provide vehicle detailing services to the SAVAHCS. According to [REDACTED] [REDACTED] a fleet management co-worker who knows [REDACTED]

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██████████ family alerted him to the situation. ██████████ asserts that GA Painting charged the SAVAHCS \$1.00 to \$2.00 more per vehicle per washing.

During the week of November 24, 2017, ██████████ and now-retired co-worker, ██████████ who was the fleet management engineering supervisor's secretary, met with SAVAHCS Associate Director ██████████ to report their concerns about the termination of MDC and the hiring of GA Painting. ██████████ informed them that she would request a review by the SAVAHCS Ethics Committee. During the course of the meeting, ██████████ asked them not to go to the media or to report this situation to anyone outside the facility. Approximately one week later, Fleet Management supervisor ██████████ instructed ██████████ and ██████████ to remove all GA Painting invoices from the vehicle folders. ██████████ stated that the invoices were being removed for an audit.

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. 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

Enclosure

cc: The Honorable Michael J. Missal, 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).