

January 28, 2015

Ms. Lisa Terry, General Counsel  
U.S. Office of Special Counsel (OSC)  
1730 M St, NW  
Suite 218  
Washington, DC 20036  
lterry@osc.gov

Subject: Comments on proposed rules about contractor disclosures “NPRM” Request that OSC file an amicus curiae brief in Carson v. MSPB, docket no. 14-1306 at CADC

Dear Ms. Terry,

The U.S. Office of Special Counsel (OSC) issued, via the federal register, on January 22, 2015, the proposed rule, “Revision of Regulations To Allow Federal Contractors, Subcontractors, and Grantees To File Whistleblower Disclosures With the U.S. Office of Special Counsel.”<sup>1</sup>

Per the guidance in the proposed rule, I submit the following comments:

**There appears to be is a typographical error in the proposed rule. Specifically, on page 4 of the proposed rule, the first new paragraph now begins:**

Under the proposed rule, OSC may receive disclosures from current and former contractors who allege retaliation for making a protected disclosure under 41 U.S.C. 4712, if they work or worked on behalf of a U.S. government agency in which Federal employees are themselves eligible to file disclosures.

I think it should read:

Under the proposed rule, OSC may receive disclosures from current and former contractors, if they work or worked on behalf of a U.S. government agency in which Federal employees are themselves eligible to file disclosures.

My point is there is no necessary connection between the statutory right to make a whistleblower disclosure to OSC and the statutory right to seek whistleblower protection from OSC.<sup>2</sup>

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<sup>1</sup> See

<https://www.federalregister.gov/articles/2015/01/22/2015-00753/revision-of-regulations-to-allow-federal-contractors-subcontractors-and-grantees-to-file>

<sup>2</sup> Employees of some federal agencies, such as intelligence agencies, can make whistleblower disclosures to OSC but cannot seek protection at OSC from agency whistleblower

**I make a whistleblower disclosure, as a federal agency employee who is not employed at OSC, per 5 U.S.C. §1213(g)(1), that OSC is abusing its authority and violating law with this proposed rule.** <sup>3</sup>

**Basis in law and fact of my whistleblower disclosure:**

1. For a good number years now, I have been making the whistleblower disclosure that OSC is unlawfully denying, since 1989, every American, including federal contractors, subcontractors and grantees, their statutory right to make whistleblower disclosures to it per 5 U.S.C. §1213(g)(1). <sup>4</sup>
2. My analysis of why such “individuals” have this statutory right was previously transmitted to OSC and can be found online. <sup>5</sup>
3. A recent initial decision of the Merit Systems Protection Board (MSPB) found “the plain reading of language of the statute” is that contractor employees in the Department of Energy have such a statutory whistleblower disclosure right. <sup>6</sup>
4. OSC attorneys, including Special Counsel Lerner, take no exception to my statements that, by current legal ethics, their primary professional duty as OSC attorneys is NOT to follow the law, but to ENSURE any possible law-breaking by their client - OSC - remains unexposed.<sup>7</sup>

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reprisal.

<sup>3</sup> I will submit the required OSC whistleblower disclosure form separately to OSC’s whistleblower disclosure unit.

<sup>4</sup> By “every American,” I mean every American who does not have a statutory right to make whistleblower disclosures to OSC per 5 U.S.C. §1213(b) and (c).

<sup>5</sup> See <http://whsknox.blogs.com/olc/sec-1213-g-analysis.pdf>

<sup>6</sup> See Carson v. Department of Energy, docket no. AT-1221-14-0520-W-1, initial decision September 30, 2014, pages 8 and 9, <http://whsknox.blogs.com/olc/initial-decision-9-30-14.pdf>. This initial decision is now being reviewed by the full MSPB.

<sup>7</sup> No attorney at OSC has stated I lack “reasonable belief” in my claims of OSC law-breaking, instead they explain why they are precluded, by legal ethics, from requesting an Office of Legal Counsel (OLC) opinion of the issues, because it could well find their client - OSC - in the wrong.

5. This proposed rule directly contradicts two 1981 binding Office of Legal Counsel (OLC) of Department of Justice opinions, which prohibits OSC from requiring an agency heads to respond, per 5 U.S.C. §1213(c), to disclosures made by agency contractor employees while allowing them to make informal referrals of such disclosures to the involved agency. The 1989 law, creating a separate whistleblower disclosure (i.e. §1213(g)(1)) process for everyone - including agency contractor employees - who do not have a whistleblower disclosure right at OSC per 5 U.S.C. §1213(c), resulted from these Office of Legal Counsel Opinions. Contrary to the binding opinions from OLC, the proposed rule states OSC has the legal authority to direct agency heads to respond to disclosures of agency contractor employees, per 5 U.S.C. §1213(c).<sup>8</sup>
6. By continuing to violate 5 U.S.C. §1213(g)(1) and in proposing this rule as a possible ruse to evade exposure of its decades-long law-breaking failure to allow agency contractor employees to make whistleblower disclosures to it, OSC apparently intends to continue to prevent many other Americans from being able to exercise their statutory whistleblower disclosure right at OSC.<sup>9</sup> This is an abuse of authority, but it is typical of OSC, a decades-long, law-breaking fraud of a “law enforcement agency,” which has left America much diminished and more threatened.

Respectfully,

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph Carson, PE  
10953 Twin Harbour Drive  
Knoxville, TN 37934  
865-300-5831

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<sup>8</sup> See 5 U.S. Op. Off. Legal Counsel 77, 1981 WL 30880 (O.L.C.) <http://whsknox.blogs.com/olc/olc-1981wl30880.pdf> and 5 U.S. Op. Off. Legal Counsel 77, 1981 WL 30990 (O.L.C.) <http://whsknox.blogs.com/olc/olc-1981wl30900.pdf>

<sup>9</sup> This includes individuals as patients at Veterans Administration facilities and employees of facilities licensed by federal agencies, such as commercial nuclear power plants. Bottom line, OSC has never, not in 26 years since the law was enacted, transmitted a whistleblower disclosure to an agency head per 5 U.S.C. §1213(g)(1), as the law requires a public record of such transmittals at 5 U.S.C. §1219(a)(4) and OSC admits there are no such records.