
REPORT TO CONGRESS

FROM THE

U.S. OFFICE OF SPECIAL COUNSEL

FOR

FISCAL YEAR 2003



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U.S. Office of Special Counsel
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The Special Counsel

June 2004

The Honorable Richard B. Cheney
President of the Senate
Washington, DC 20510

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. President and Mr. Speaker:

I respectfully submit, in accordance with 5 U.S.C. § 1218, Fiscal Year 2003 Report to Congress from the U.S. Office of Special Counsel, the last full year of operations under the previous Special Counsel. A copy of this report will also be sent to each Member of Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Bloch".

Scott J. Bloch

Enclosure

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BIOGRAPHY OF THE SPECIAL COUNSEL

On June 26, 2003, President George W. Bush nominated Scott J. Bloch for the position of Special Counsel at the Office of Special Counsel. The U.S. Senate unanimously confirmed Mr. Bloch on December 9, 2003. On Jan. 5, 2004, he was sworn in to serve a five-year term.

Mr. Bloch brings over 17 years of experience to the Office of Special Counsel, including litigation of employment, lawyer ethics, and complex cases before state courts, federal courts and administrative tribunals. He briefed and argued cases before state and federal appellate courts.

From 2001-2003, Mr. Bloch served as Associate Director and then Deputy Director and Counsel to the Task Force for Faith-based and Community Initiatives at the U.S. Department of Justice, where he worked on First Amendment cases, regulations, intergovernmental outreach, and programmatic initiatives. Before serving in the Justice Department, he was a partner with Stevens & Brand, LLP, of Lawrence, Kansas, where he practiced in the areas of civil rights law, employment law, and legal ethics. Mr. Bloch tried jury trials before state and federal courts, representing employees and employers in cases involving whistleblower and other retaliation claims, as well as civil rights claims. He worked on important cases that set precedents in the field of legal ethics, including a ground-breaking Texas case that changed the way plaintiffs' lawyers handle mass tort cases.

Mr. Bloch served as chair of his county Bar Ethics and Grievance Committee, investigating cases of alleged breaches by attorneys of ethics rules, and making recommendations to the state Supreme Court on disciplinary action. He also served on the state board of discipline, hearing testimony and legal arguments, and making findings on appropriate discipline of attorneys. For five years, he served as an Adjunct Professor at the University of Kansas School of Law.

Mr. Bloch earned his bachelor's and law degree from the University of Kansas, where he graduated Order of the Coif, and served on the Boards of Editors of *The Kansas Law Review* and *The Kansas Criminal Procedure Review*.

He lives with his wife, Catherine, and their seven children in Alexandria, Virginia.



Scott J. Bloch

INTRODUCTION

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system in federal employment, by protecting employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. OSC also has jurisdiction under the Hatch Act to enforce restrictions on political activity by government employees. In addition, the agency operates a secure channel for disclosures by federal whistleblowers of government wrongdoing. Finally, OSC enforces federal employment rights secured by the Uniformed Services Employment and Reemployment Rights Act.

OVERVIEW OF OSC OPERATIONS

Statutory Background

OSC was first established on January 1, 1979.¹ From then until 1989, it operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (“the Board”). By law, OSC received and investigated complaints from current and former federal employees, and applicants for federal employment, alleging prohibited personnel practices by federal agencies; provided advice on restrictions imposed by the Hatch Act on political activity by covered federal, state, and local government employees; and received disclosures from federal whistleblowers (current and former employees, and applicants for employment) about wrongdoing in government agencies. The office also enforced restrictions against prohibited personnel practices and political activity by filing, where appropriate, petitions for corrective and/ or disciplinary action with the Board.

In 1989, Congress enacted the Whistleblower Protection Act. The law made OSC an independent agency within the Executive Branch, with continued responsibility for the functions described above. It also enhanced protections against reprisal for employees who disclose wrongdoing in the federal government, and strengthened OSC’s ability to enforce those protections.²

In 1993, Congress passed legislation that significantly amended Hatch Act provisions applicable to federal and District of Columbia (D.C.) government employees, and enforced by OSC.³ Provisions of the act enforced by OSC with respect to certain state and local government employees were unaffected by the 1993 amendments.

In 1994, the Uniformed Services Employment and Reemployment Rights Act became law. It defined employment-related rights of persons in connection with military service, prohibited discrimination against them because of that service, and gave OSC new authority to pursue remedies for violations by federal agencies.⁴

OSC’s 1994 reauthorization act expanded protections for federal employees, and defined new responsibilities for OSC and other federal agencies. It provided that within 240 days after

receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred, exists, or is to be taken. The act extended the protections of certain legal provisions enforced by OSC to approximately 60,000 employees of what was then known as the Veterans Administration (now the Department of Veterans Affairs), and to employees of certain government corporations. It also broadened the scope of personnel actions covered under these provisions. Finally, the act made federal agencies responsible for informing their employees of available rights and remedies under the Whistleblower Protection Act, and directed agencies to consult with OSC in that process.⁵

Mission

OSC's mission is to protect current and former federal employees, and applicants for federal employment, especially whistleblowers, from prohibited employment practices; promote and enforce compliance by government employees with legal restrictions on political activity, and facilitate disclosures by federal whistleblowers about government wrongdoing. OSC carries out this mission by:

- investigating complaints of prohibited personnel practices, especially reprisal for whistleblowing, and pursuing remedies for violations;
- providing advisory opinions on, and enforcing Hatch Act restrictions on political activity;
- operating an independent and secure channel for disclosures of wrongdoing in federal agencies;
- protecting reemployment and antidiscrimination rights of veterans under the Uniformed Services Employment and Reemployment Rights Act; and
- promoting greater understanding of the rights and responsibilities of federal employees under the laws enforced by OSC.

Budget and Staffing

During FY 2003, OSC operated with a budget of \$12,368,081, and a full-time equivalent personnel authorization of approximately 105 employees.

Organization and Functions

OSC maintains its headquarters office in Washington, D.C. Two field offices are located in Dallas, Texas, and Oakland, California (known as the San Francisco Bay Area Field Office).

Agency components during FY 2003 consisted of the Immediate Office of the Special Counsel; five operating divisions; and two administrative support branches: the Human and Administrative Resources Management Branch, and the Information Systems Branch. Functions and responsibilities of these units are as follows:

Immediate Office of the Special Counsel. The Special Counsel and staff in this office are responsible for policymaking and overall management of OSC. They also manage the agency's congressional liaison and public affairs activities, and its outreach program, which includes promotion of compliance by other federal agencies with the employee information requirement at 5 U.S.C. § 2302(c).

Complaints and Disclosure Analysis Division. This division includes the two principal intake offices for new matters received by OSC – the Complaints Examining Unit and the Disclosure Unit.

Complaints Examining Unit. This is the intake point for all complaints alleging prohibited personnel practices and other violations of civil service law, rule, or regulation within OSC's jurisdiction.⁶ Attorneys and personnel management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers all matters stating a potentially valid claim to the Investigation and Prosecution Divisions for further investigation.⁷

Disclosure Unit. This unit is responsible for receiving and reviewing disclosures received from federal whistleblowers. It advises the Special Counsel on the appropriate disposition of the information disclosed (including possible referral to the head of the agency involved for an investigation and report to OSC; referral to an agency Inspector General; or closure). The unit also reviews agency reports of investigation, to determine whether they appear to be reasonable and in compliance with statutory requirements before the Special Counsel sends them to the President and appropriate congressional oversight committees.

Investigation and Prosecution Divisions. These consist of three parallel units, staffed primarily by investigators and attorneys. Division I includes the Hatch Act Unit and the San Francisco Bay Area Field Office; Division II includes the Dallas Field Office; and Division III includes the Alternative Dispute Resolution Unit.

Each division conducts field investigations of matters referred after preliminary inquiry by the Complaints Examining Unit. Division attorneys conduct a legal analysis after investigations are completed, to determine whether the evidence is sufficient to establish that a prohibited personnel practice (or other violation within OSC's jurisdiction) has occurred. Investigators work with attorneys in evaluating whether a matter warrants corrective action, disciplinary action, or both.

If meritorious cases cannot be resolved through negotiation with the agency involved, division attorneys represent the Special Counsel in any litigation before the Merit Systems Protection Board. They also represent the Special Counsel when OSC intervenes, or otherwise participates, in other proceedings before the Board. Finally, division investigators and attorneys also investigate alleged violations of the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act.

Alternative Dispute Resolution Unit. In selected cases referred by the Complaints Examining Unit for further investigation, the Alternative Dispute Resolution Unit contacts the complainant and the agency involved, and invites them to participate in OSC's voluntary Mediation Program. If mediation resolves the complaint, the parties execute a written and binding settlement agreement; if not, the complaint is referred for further investigation.

Hatch Act Unit. The unit issues advisory opinions to individuals seeking information about Hatch Act restrictions on political activity by federal, and certain state and local, government employees. The unit is also responsible for enforcing the act. It reviews complaints alleging a Hatch Act violation and, when warranted, investigates and prosecutes the matter (or refers the matter to an Investigation and Prosecution Division for further action).

Legal Counsel and Policy Division. This unit provides general counsel and policy services to OSC, including legal advice and support on a wide range of issues; legal representation of OSC in litigation filed against the agency; policy planning and development; and management of the agency ethics, Freedom of Information/Privacy Act, and annual survey programs.

Human and Administrative Resources Management Branch. This unit provides administrative and management support services to OSC, in furtherance of program, human capital, and budget decisions. Management services and administrative support are provided in connection with OSC human resource, financial management (including payroll), space acquisition, facilities management, and procurement responsibilities.

Information Systems Branch. This unit is responsible for overall management and administration of OSC's information technology resources, in support of agency program and administrative operations. The branch chief serves as the agency's Chief Information Officer.

PROHIBITED PERSONNEL PRACTICE COMPLAINTS

Receipts and Investigations

OSC is authorized to receive and investigate complaints alleging any one or more of 12 prohibited personnel practices defined by law.⁸ *Table 1*, below, contains summary data (with comparative data for the two previous fiscal years) on OSC's receipt and processing of such complaints during FY 2003.⁹

Table 1

Summary of Prohibited Personnel Practice Complaints Activity – Receipts and Processing¹⁰			
	<i>FY 2001</i>	<i>FY 2002</i>	<i>FY 2003</i>
Pending complaints carried over from previous fiscal year	1,064	740	594
New complaints received	1,301	1,558	1,791
<i>Total complaints on hand at start of the fiscal year:</i>	2,365	2,298	2,385
Complaints referred for field investigation	267	191	162
Complaints processed and closed	1,625	1,704	1,732
Processing times	<i>Less than 240 days</i>	945	1,284
	<i>More than 240 days</i>	680	420
Pending complaints carried over into next fiscal year	740	594	653

Stays

An individual may request that the Special Counsel seek to delay, or "stay," an adverse personnel action, pending investigation of the action by OSC. If the Special Counsel has reasonable grounds to believe that the action resulted from a prohibited personnel practice, OSC may ask the agency involved to delay the personnel action. If the agency does not agree to a delay, OSC may then ask the Merit Systems Protection Board to stay the action. During 2003, OSC obtained seven stays with of personnel actions through negotiation with agencies, or litigation at the Board.

Mediation

OSC offers mediation in selected prohibited personnel practice cases as an alternative to further investigation after referral by the Complaints Examining Unit. Once a case is identified as mediation-appropriate, the Alternative Dispute Resolution Specialist contacts the parties to discuss OSC’s program. An offer of mediation is made to the complainant first. If the complainant accepts, OSC then offers mediation to the agency involved. Pre-mediation discussions are designed to help the parties form realistic expectations and well-defined objectives for the mediation process.

OSC’s Mediation Program has shown steadily increasing effectiveness since its first full year of operations in FY 2001. *Table 2*, below, contains summary data (with comparative data for the two previous fiscal years) on program activity during FY 2003.

Table 2

Summary of Prohibited Personnel Practice Complaints Activity – Mediation Program				
		<i>FY 2001</i>	<i>FY 2002</i>	<i>FY 2003</i>
Complaints identified before investigation as mediation-appropriate		41	39	43
Initial acceptance rates by parties	<i>Complainants</i>	70%	80%	82%
	<i>Agencies</i>	61%	68%	69%
Mediated and other resolutions ¹¹		0	14	23
Resolution rate – OSC mediation program		–	82%	92%

Settlement outcomes in OSC’s Mediation Program varied, depending on the interests of the parties. Monetary recoveries included retroactive promotions, attorney fees, and lump sum payments. In addition to monetary recoveries, benefits received by complainants included revised performance appraisals, transfers, and letters of recommendation.

The following are examples of cases in which settlement agreements were obtained through OSC’s Mediation Program in FY 2003:

- A seasonal park ranger at the National Park Service alleged various prohibited personnel practices when the Park Service failed to select him for a ranger position for the 2003 season. He had previously disclosed that the Park Service routinely failed to take action against the use by commercial hunting outfitters of illegal salt licks to lure elk outside park boundaries.
- A senior employee at the Environmental Protection Agency alleged retaliation when the agency reassigned him after disclosing that the Administrator had possible conflicts of interest in connection with the clean-up of several Superfund sites. His reassignment was the subject of national media attention, as well as hearings by Senate and House committees in 2002.

Corrective Action

If, after investigation of a complaint, OSC believes that a prohibited personnel practice has been committed, OSC notifies the agency involved. By law, before initiating litigation seeking corrective action from the Merit Systems Protection Board, OSC must report its findings and recommendations to the agency involved. Once the agency has had a reasonable period of time to take corrective action and fails to do so, OSC may file an enforcement action with the Board. Usually, however, corrective action is obtained through negotiation by OSC of a settlement between the complainant and the agency involved.

The following is a representative sample of corrective actions obtained by OSC during FY 2003 through negotiation with agencies:

- An employee with the National Park Service received a retroactive promotion from WS-9 to WS-14, back pay and other benefits from 1996-2002, and attorney fees, to

resolve a complaint alleging a pattern and practice of whistleblower reprisal that detrimentally affected the employee's career. The employee had disclosed evidence of gross mismanagement in the preservation of historical artifacts at a historical park.

- Eight current and former employees of the U.S. Forest Service received a lump sum payment to resolve a claim of whistleblower reprisal. The Forest also reduced one employee's 14-day suspension to a reprimand, and gave another individual a "bridge" appointment to repair a break in federal service after his separation for failure to accept a geographic reassignment. The employees had disclosed evidence of questionable forest management practices.
- Low satisfactory proficiency ratings given to two Department of Veterans Affairs physicians were replaced with higher ratings, resolving a claim of whistleblower reprisal. The employees had disclosed evidence of conflicts of interest in connection with referrals of patients to the private practices of some part-time doctors employed by the department.
- A disabled veteran preference-eligible, who had been influenced to withdraw from competition by his supervisor at the Social Security Administration, received a retroactive promotion to the position for which he had applied, accompanied by back pay.
- The General Services Administration's Federal Protective Service resolved a claim of whistleblower reprisal by rescinding the complainant's proposed removal. The employee had reported to the agency's Inspector General that co-workers had created false law enforcement credentials.
- Officials for the Department of Homeland Security (the component formerly known as the Border Patrol) agreed to restore a helicopter pilot's flight authorization (previously revoked), give him a paid reassignment, and provide him with a lump sum payment. The employee had alleged that the revocation of his flight authorization, and a reassignment, occurred because of disclosures he made outside the agency, including to Congress, about the safety of the "MD600N" helicopter. The employee's disclosures led to, and were supported by, a General Accounting Office review of the agency's helicopter purchase.

Disciplinary Action

After investigating a prohibited personnel practice complaint, OSC may determine that disciplinary action against an employee is warranted. If the agency involved agrees to impose appropriate disciplinary action, then OSC can settle the matter without resorting to litigation at the Merit Systems Protection Board. If, on the other hand, the agency fails to act, OSC can file an enforcement action with the Board, seeking disciplinary action.

The following is an example of disciplinary action obtained by OSC in FY 2003 through negotiation with the agency involved:

- The Department of Veterans Affairs agreed to provide corrective and disciplinary action to resolve a complaint from an employee, who alleged that officials canceled his undocumented detail to a higher-graded position (chief of the Police Service) because he filed a complaint with the department's Office of Inspector General. OSC's investigation revealed that a human resources officer had advised a manager to end the detail because of the employee's complaint. Based on this prohibited personnel practice (reprisal for cooperation with or disclosure of information to an Inspector General),¹² the department agreed to suspend both the human resources officer, and the manager who canceled the detail, for 14 days without pay. The department also agreed to document the employee's detail, and to make a lump sum payment to him for damages and attorney fees.

Enforcement Actions

Enforcement actions are cases filed by OSC with the Merit Systems Protection Board that seek either corrective action or disciplinary action. OSC generally files a corrective action complaint with the Board when an agency refuses to provide such action after a formal written request by the Special Counsel. OSC did not have to file an enforcement action for corrective action during FY 2003. OSC did, however, file two enforcement petitions seeking disciplinary action by the Board in prohibited personnel practice cases.

The following disciplinary action was obtained by OSC during FY 2003, pursuant to an enforcement action filed with the Board in a previous fiscal year:

- A Defense Commissary Agency employee alleged that a regional personnel director failed to select him for a promotion because he had filed union grievances about possible nepotism (involving the personnel director's alleged involvement in the hiring and promotion of her husband). OSC charged the personnel director with nepotism in a disciplinary action complaint filed with the Merit Systems Protection Board. That official served a 45-day suspension pursuant to settlement of OSC's disciplinary action complaint. (OSC's investigation also resulted in corrective action for the employee involved, consisting of agreement by the agency to his retroactive promotion with back pay.)

Summary of Favorable Actions

Complaints involving allegations of reprisal for whistleblowing – OSC's highest priority – accounted for the highest numbers of the complaints resolved, and the highest numbers of favorable actions obtained by OSC during FY 2003.¹³ *Table 3*, below, contains summary data (with comparative data for the two previous fiscal years) on all favorable actions obtained by OSC in connection with its processing in FY 2003 of whistleblower reprisal and other prohibited personnel practice complaints.

Table 3

Summary of Prohibited Personnel Practice Complaints Activity – Favorable Actions				
		<i>FY 2001</i>	<i>FY 2002</i>	<i>FY 2003</i>
Total favorable actions obtained (all prohibited personnel practices)	<i># of actions</i>	74	126	115
	<i># of complaints</i>	66	107	83
Favorable actions obtained (reprisal for whistleblowing)	<i># of actions</i>	39	98	75
	<i># of complaints</i>	39	83	75
Stays negotiated with agencies ¹⁴		13	7	6
Stays obtained from Merit Systems Protection Board		1	1	1
Disciplinary actions negotiated with agencies		4	13	12
Disciplinary action complaints filed with the Board		0	1	2
Disciplinary actions obtained from the Board		0	0	1

HATCH ACT MATTERS

Overview

Under the Hatch Act, federal employees, employees of the D.C. government, and certain employees of state and local governments, are prohibited from engaging in certain types of political activity. The act, as amended in 1993, permits most federal and D.C. employees to take an active part in partisan political management and partisan political campaigns. Nevertheless, there continue to be important restrictions on political activity by federal employees, including prohibitions on partisan candidacy, solicitation of political contributions, and political activity while on duty. OSC issues Hatch Act advisory opinions upon request, enabling individuals to determine whether they are covered by the act, and whether any contemplated political activities are permitted or prohibited by the act.

OSC also receives and investigates complaints alleging past or current violations of the Hatch Act by government employees. In appropriate cases involving past conduct, OSC may send a warning letter, informing the employee about the act, and notifying the employee that engaging in future activity barred by the act will be considered to be a knowing and willful violation. In appropriate cases involving a current violation, OSC may send a cure letter, asking the employee involved to come into compliance with the act by resigning from his or her position, or by withdrawing from candidacy. If OSC determines that the violation warrants prosecution, a written complaint for disciplinary action will be filed with the Merit Systems Protection Board.

Advisory Opinions

During FY 2003, OSC issued approximately 3,284 advisory opinions in response to telephone and written inquiries, including e-mails.

Enforcement Actions

The following are examples of cases filed by OSC during FY 2003, and results obtained in cases that year in cases filed earlier, in disciplinary action proceedings at the Merit Systems Protection Board, alleging violations of the Hatch Act:

- In October 2000, OSC filed a complaint for disciplinary action against a D.C. government employee, charging him with violating the Hatch Act's ban on candidacy for public office in a partisan election. In March 2002, the Merit Systems Protection Board found that the employee violated the act, and ordered that he be removed from his employment with the District of Columbia.¹⁵ The employee appealed the Board's decision to the U.S. Court of Appeals for the Federal Circuit, arguing that the Hatch Act violated constitutional rights under the First Amendment and the equal protection clause of the Fifth Amendment. On June 11, 2003, the Federal Circuit upheld the constitutionality of the act, and affirmed the Board's decision.¹⁶
- After the D.C. government re-hired the employee in the case described above shortly after his removal, OSC filed a petition in May of 2003 for enforcement of the Board's final order against the D.C. government. The matter was still in litigation at the close of the fiscal year.¹⁷
- On November 20, 2001, OSC filed a complaint for disciplinary action against an air traffic controller employed by the Federal Aviation Administration. He was charged with violating the Hatch Act by running as a candidate in a partisan election, and by soliciting campaign contributions in support of his candidacy. The administrative law judge's Initial Decision found that the employee had violated the act, and recommended that he be suspended for 120 days. Both OSC and the employee filed exceptions to the initial decision with the Board. On September 8, 2003, the Board sustained the judge's findings, and ordered the employee to be suspended for 120 days.¹⁸ The decision is on appeal by the employee to the Federal Circuit Court of Appeals.
- On July 25, 2003, the director of a Pennsylvania municipality signed a settlement agreement with OSC, after sending an e-mail from her office while on duty to 11 subordinate employees, soliciting volunteers for a political campaign. Under the terms of the settlement agreement, the employee admitted violating the Hatch Act prohibition on use of official authority or influence to interfere with or affect the result of an election, and to advising city employees of opportunities to volunteer their services for a political purpose. She agreed to serve a 30-day suspension without pay.¹⁹
- In August of 2003, OSC filed a complaint seeking disciplinary action against a chemical engineer employed by the Department of the Army in Aberdeen, Maryland. The complaint charged the employee with knowingly and willfully violating the Hatch Act's prohibition against candidacy for public office in a partisan election, and asked the Board to order the employee's removal from his position. The administrative law judge issued an Initial Decision finding in OSC's favor. The employee filed a petition with the Board for review of

that decision, and OSC has filed a reply. The matter was pending at the close of the fiscal year.²⁰

- On September 24, 2003, OSC filed a complaint charging that the then-Deputy Assistant Secretary of Defense for Counternarcotics violated Hatch Act prohibitions against candidacy in a partisan election, fundraising, and use of official authority to interfere with or affect the results of an election. After OSC's OSC filing of the complaint, the employee resigned from federal service. The matter was still pending before an administrative law judge at the close of the fiscal year. (The parties resolved the matter during FY 2004 by settlement of the complaint.)²¹

Table 4, below, contains summary data (with comparative data for the two previous fiscal years) on OSC advisory and enforcement activities pursuant to the Hatch Act in FY 2003.

Table 4

Summary of Hatch Act Advisory Opinion and Complaint Activity				
		FY 2001	FY 2002	FY 2003
Advisory opinions issued		2,806	3,245	3,284
New complaints received		185	213	197
Matters referred for further investigation		10	8	35
Warning letters issued		59	49	43
Corrective actions taken by recipients of cure letters:	<i>Withdrawal from partisan races</i>	21	12	18
	<i>Resignation from covered employment</i>	6	5	7
	<i>Other</i>	2	1	0
	<i>Total:</i>	29	18	25
Disciplinary action complaints filed with the Merit Systems Protection Board		8	4	4
Disciplinary actions obtained (through negotiation or ordered by the Board)		8	4	4

WHISTLEBLOWER DISCLOSURES

Overview

In addition to its investigative and prosecutorial mission, OSC provides a safe channel through which federal employees, former federal employees, or applicants for federal employment may make whistleblower disclosures – that is, information that they reasonably believe evidences a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.²² Such matters are processed by OSC's Disclosure Unit.

Upon receipt of such information, if the Special Counsel determines that there is a *substantial likelihood* that the information discloses one or more of the kinds of wrongdoing described above, he is required to send the information to the head of the agency concerned. OSC does not divulge the identity of the whistleblower without that person’s consent. The agency receiving the disclosure is required to investigate the matter, and send a report from the agency head to the Special Counsel, describing the findings of the investigation. The Special Counsel sends the agency report, any comments by the whistleblower, and any comments or recommendations by the Special Counsel, to the President and congressional committees with jurisdiction over the agency. A copy of the agency report, and any comments on the report, are also placed in a public file located at OSC.²³

On the other hand, the Special Counsel may find that there is *not* a substantial likelihood that information received from a whistleblower discloses the type of wrongdoing described above, but that it merits attention nonetheless. In such cases, the Special Counsel may, with the consent of the whistleblower, require the head of the agency involved to review the matter and inform the Special Counsel of what action has been or is being taken.²⁴ OSC then notifies the whistleblower.

Table 5, below, contains summary data (with comparative data for the two previous fiscal years) on OSC receipts and dispositions of whistleblower disclosures during FY 2003.

Table 5

Summary of Whistleblower Disclosure Activity – Receipts and Dispositions ²⁵				
		FY 2001	FY 2002	FY 2003
Pending disclosures carried over from previous fiscal year		247	287	556
New disclosures received		380	555	535
<i>Total disclosures on hand at start of the fiscal year:</i>		627	842	1,091
Disclosures referred to agency heads for investigation and report		15	19	11
Agency head reports sent to President and Congress		6	10	23 ²⁶
Results of agency investigations and reports	<i>Disclosures substantiated in whole or in part</i>	5	7	13
	<i>Disclosures unsubstantiated</i>	1	3	10
Disclosure matters processed and closed		340	286	401 ²⁷
Pending disclosures carried over to next fiscal year		287	556	690

Results of Referrals to Agency Heads

The following are examples of results obtained during FY 2003 from OSC referrals of whistleblower disclosures to agency heads for investigation and a report:

- OSC referred allegations that in order to protect the airline industry, Federal Aviation Administration supervisors suppressed information about aviation security, and manipulated testing data. The allegations involved the agency’s Special Assessments Team, commonly known as the “Red Team.” The Red Team was comprised of a small, elite group of security

agents who traveled to major airports across the country and abroad to conduct airport security testing – chiefly, covert penetration testing. The agency’s report substantiated the allegation that it grossly mismanaged the Red Team Program and failed to use team findings to improve airport security.

In a letter to the President, the Special Counsel concluded that: (1) the investigation and findings in the agency report appeared to be reasonable; and (2) the agency fulfilled the statutory requirement that it identify planned corrective actions responding to the findings. The Special Counsel also reported, however, that the agency’s response to OSC’s inquiry about accountability did not appear to be reasonable, because the agency did not identify individuals responsible for the management failures identified in its report, nor did it explain what measures had been taken to hold them accountable.²⁸

- OSC referred allegations that workers performing shipboard welding and inspections were not certified, and that a significant portion of the work done by the Voyage Repair Team (responsible for welding on Navy aircraft carriers and destroyers) at the Naval Aviation Depot, North Island, in San Diego, California, did not meet federal and industry standards.

The Department of the Navy’s report substantiated the allegations, finding that the welders had improperly welded catapult hydraulic piping systems on four U.S. aircraft carriers (the U.S.S. Abraham Lincoln, U.S.S. Constellation, U.S.S. Nimitz, and U.S.S. John C. Stennis). The department’s investigation also found that welders had improperly welded the jet blast deflector cylinder vent piping on board a fifth aircraft carrier, the U.S.S. Carl Vinson. As a result of its investigation, the Navy:

(1) repaired all known nonconforming welds; (2) sent welders and inspectors at the North Island aviation depot to the Puget Sound Naval Shipyard for shipboard qualification and recertification training; and (3) instituted a welding audit program, consisting of an initial welding audit of all Naval Air Systems Command organizations, to be followed by an audit every two years.

The Special Counsel’s letter to the President noted that the Navy had not yet scheduled welding and nondestructive testing inspection audits for West Coast Naval Air Systems Command locations, as originally planned. The Special Counsel also recommended further inquiry into the level of disciplinary action taken against individuals responsible for the deficiencies identified in the whistleblower allegations.²⁹

- OSC referred allegations that two supervisory nurses in the extended care unit at the Department of Veterans Affairs Medical Center in North Little Rock, Arkansas, engaged in inappropriate behavior that endangered patient health and safety. The whistleblower described multiple incidents in which patients were yelled at, deprived of meals and otherwise mistreated, and in which medical center procedures for reporting patient accidents and falls were not followed.

The Special Counsel informed the President that the agency report was deficient, on the limited basis that the agency refused to provide the names of the employees who were

disciplined as a result of its investigation. The Secretary of Veterans Affairs substantiated the allegations, and stated that the nurses resigned in the face of pending disciplinary action.³⁰

- OSC referred allegations received from 48 employees of the Joint Readiness Training Center and Fort Polk in Louisiana. The whistleblowers alleged that officials at Fort Polk failed to safeguard procurement-sensitive information during a commercial activities cost comparison and procurement, conducted pursuant to OMB Circular A-76, for Whole Base Operations and Support Services. As a result, the whistleblowers alleged, private sector contractors gained an unfair advantage in the cost comparison and procurement process.

The agency report confirmed that the release of the procurement-sensitive information was unauthorized; identified a second unauthorized release of such information during the A-76 study, which the agency also investigated; and determined that both releases violated the Federal Acquisition Regulation and a Department of Defense ethics regulation. The report concluded, however, that neither release of information adversely affected the integrity of the A-76 study or the procurement process. The report also outlined disciplinary actions taken by the agency against the individuals responsible for the releases of information. OSC incorporated the whistleblowers' comments on the agency report into the Special Counsel's report to the President and Congress.³¹

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS

OSC has a vital role in the process of investigating and prosecuting cases involving the federal workforce under the Uniformed Services Employment and Reemployment Rights Act (USERRA). The act prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services, by making it illegal for an employer to deny any benefit of employment on the basis of an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. The right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training is also protected under the act.

OSC receives referrals of possible USERRA violations by federal executive agencies from the Veterans' Employment and Training Service (VETS) at the U.S. Department of Labor. In such cases, OSC may appear on behalf of, and act as attorney for, the aggrieved person. If the Special Counsel believes there is merit to the complaint, OSC will initiate an action before the Merit Systems Protection Board.

Table 6, below, shows other summary data (with comparative data for the two previous fiscal years) on OSC's receipt and disposition during FY 2003 of USERRA cases.

Table 6

Summary of USERRA Activity – Receipts and Dispositions			
	<i>FY 2001</i>	<i>FY 2002</i>	<i>FY 2003</i>
Referrals pending at start fiscal year	9	10	8
New referrals received during fiscal year (including reopened cases)	18	19	7
Referrals processed and closed (total)	17	21	11
Closed referrals – no corrective action obtained	17	19	8
Closed referrals – corrective action obtained	0	2	3
Pending referrals carried over into next fiscal year	10	8	4

OSC obtained the following corrective actions during FY 2003 in matters alleging a USERRA violation:

- An employee of the Department of Veterans Affairs alleged that the department failed to promptly reemploy her as requested at the end of her brief military service. Approximately 12 months after her initial request, the department reemployed her, but refused to pay her salary or other benefits of employment lost as the result of the delayed rehiring. After OSC sent a formal report to the department, it agreed to full corrective action, consisting of back pay with interest, seniority, and annual and sick leave the employee would have accrued had she been reemployed promptly. The department also accepted OSC’s recommendation for training of certain departmental managers on the Uniformed Services Employment and Reemployment Rights Act.
- A U.S. Army veteran, employed by the Postal Service as a part-time employee, alleged that the agency reduced his work hours upon learning that he was receiving military retirement income. OSC successfully negotiated with the agency for payment to the veteran of the additional salary he would have earned had his hours not been reduced.
- A reservist alleged that his former employer, the U.S. Army Declassification Agency, failed to grant his request to amend his leave record, so that military leave could be substituted for the annual leave that he had previously requested and that had been approved.³² The reservist, however, was ordered to perform his military duty during the time he intended to be on annual leave. The reservist alleged that the agency’s unwillingness to change his leave status to military leave denied him a benefit of employment because of his reservist duties. OSC obtained agreement by the agency to properly convert the reservist’s leave.

OUTREACH PROGRAM

The Outreach Program provides OSC speakers and other resources to inform government employees about their rights and remedies under the laws enforced by OSC. To assist other agencies in meeting their statutory obligation to ensure under 5 U.S.C. § 2302(c), OSC created an educational program known as the 2302(c) Certification Program in FY 2002. Under the

certification program, OSC provides easy-to-use methods and training resources by other agencies.

To participate in OSC's certification program, agencies must agree to: (1) place informational posters at agency facilities about prohibited personnel practices and whistleblowing; (2) provide information about both subjects to new employees as part of their orientation; (3) make information available periodically to current employees about prohibited personnel practices and whistleblower rights and remedies; (4) furnish training to supervisors on prohibited personnel practices and whistleblower protections; and (5) establish a computer link from the agency's internet or intranet web site to OSC's web site. Once an agency has completed these five steps, OSC issues a certificate of compliance with § 2302(c).

A certificate of compliance issued by OSC is valid for three years. During FY 2003, OSC certified nine agencies or agency components under the program (in addition to three agencies certified the previous year). Another 18 agencies or components registered for the program during in FY 2003, joining nine others registered in FY 2002 that were working towards certification by the end of FY 2003.

OSC continued to upgrade outreach information on its web site during FY 2003. Recent updates include updated sections on prohibited personnel practices and the Hatch Act, and a new section dealing with the unique employment status of Transportation Security Administration employees.

OSC also issued 24 press releases, publicizing its enforcement efforts and results. OSC employees spoke at 72 events during the year, including agency training sessions, conferences, and meetings. Employees participated as speaker at widely attended events such as the Judge Advocate General School Annual Conference, the Office of Government Ethics' Annual Ethics Conference, the Office of Personnel Management's Symposium on Labor and Employee Relations, and the Federal Dispute Resolution Conference.

ANNUAL SURVEY PROGRAM

Each year, as required by law, OSC surveys persons whose cases were closed during the previous fiscal year. During FY 2003, mailed survey forms to identifiable persons in matters closed during FY 2002 (with or without favorable action) who: (1) filed a complaint with OSC alleging a prohibited personnel practice or other prohibited employment activity; or (2) filed a report through the whistleblower channel operated by the OSC's Disclosure Unit. Survey results for FY 2002 are shown in *Appendix A* and *Appendix B* of this report.³³

FURTHER INFORMATION³⁴

Annual Report

Additional copies of this report can be requested by writing or contacting:

Director, Congressional and Public Affairs
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 202-254-3600
<http://www.osc.gov/documents/reports/ar-2003.pdf>

Prohibited Personnel Practice Complaints

Individuals with questions about prohibited personnel practices can contact the OSC Officer of the Week at:

Complaints Examining Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 800-872-9855
 202- 254-3630
Fax: 202- 653-5151

The OSC complaint form (Form OSC-11) *must* be used to file a prohibited personnel practice complaint.³⁵ The complaint form can be printed from OSC's web site (under "Forms"). Complaints can also be filed with OSC electronically from its web site, <http://www.osc.gov/documents/forms/osc11.pdf>

Mediation Program

Questions about OSC's Mediation Program should be directed to:

Alternative Dispute Resolution Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 800- 872-9855
 202- 254-3600
E-mail: adr@osc.gov

Hatch Act Questions

Requests for advice about the Hatch Act can be made by telephone, regular mail, or e-mail to:

Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 800- 85-HATCH [(800) 854-2824]
202- 254-3650
Fax: 202- 653-5151
E-mail: hatchact@osc.gov

The OSC web site has additional information about the Hatch Act, including frequently asked questions by federal, state and local government employees, and selected OSC advisory opinions responding to common factual situations.

Whistleblower Disclosures

Whistleblower disclosures (of information evidencing a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a danger to public health or safety) can be reported in confidence to:

Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 800- 572-2249
202- 254-3640
Fax: 202- 653-5151

The OSC whistleblower disclosure form (Form OSC-12) may be used to file a disclosure. The form can be printed from OSC's web site (under "Forms"). Disclosures can also be filed with OSC electronically from its web site, <http://www.osc.gov/documents/forms/osc12.pdf>

Uniformed Services Employment and Reemployment Rights Act

Questions about OSC's role in enforcing the act may be directed to:

Ronald K. Jaicks
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 202- 254-3600
E-mail: userra@osc.gov

Outreach Program

Questions about OSC outreach activities, and requests for OSC publications, should be made to:

Director of Outreach
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: (202) 254-3600
Fax: (202) 653-5151

Many forms and publications are available at OSC's web site (under "Forms" and "E-Library") at <http://www.osc.gov/forms.htm>.

FY 2002 PROHIBITED PERSONNEL PRACTICE SURVEY RESPONSES		
<i>Number mailed: 1,771³⁶</i>	<i>Responses returned: 430</i>	<i>Response rate: 24%</i>
Has the federal agency where you work (or the agency where you worked most recently, if you are no longer employed by a federal agency) informed you about your rights and remedies with regard to prohibited personnel practices?		
Yes		70
No		312
Do not recall		27
Never employed by a federal agency		10
How did you first become aware that you could file a complaint with OSC?		
OSC web site		95
OSC speaker		7
OSC brochure		20
OSC poster		7
News story		20
Agency personnel office		17
Union		58
Co-worker		83
Other		114
What was the subject of the allegation(s) in your complaint? (Circle all that apply.)		
Combination of reprisal for whistleblowing and other prohibited personnel practices		189
Reprisal for whistleblowing only		52
Prohibited personnel practice other than reprisal for whistleblowing		205
Hatch Act (unlawful political activity)		14
Uniformed Services Employment and Reemployment Rights Act (USERRA)		16
Arbitrary and capricious withholding under the Freedom of Information Act (FOIA)		18
Other		51
Was your complaint successfully resolved at OSC?		
Yes		20
Partially		16
No		376
Do not know, or N/A		7
What reason did OSC give for closing your complaint without obtaining the relief that you sought? (Circle all that apply.)		
No OSC jurisdiction over your position, the agency, or agency official(s) involved in the complaint		63
No personnel action(s) taken by agency involved		37
OSC could not disprove the agency's stated reason(s) for the action(s) involved in your complaint		61
Insufficient evidence that the action(s) involved in your complaint violated a law or regulation		127
You or OSC settled the matter with the agency involved		10
You declined corrective action offered by the agency involved		1
You withdrew your complaint		7

OSC filed a petition with the Merit Systems Protection Board (MSPB) for corrective action	7				
OSC obtained a decision in the corrective action proceeding filed with the MSPB	4				
Closed for further action on discrimination allegations through EEO processes	21				
Matter was resolved through OSC Mediation Program	1				
Other	141				
Do not recall	31				
What reason did OSC give for closing any reprisal for whistleblowing allegation in your complaint without obtaining the relief that you sought? (Circle all that apply.)					
Information you disclosed did not appear to be a legally protected disclosure	30				
Disclosure occurred after personnel action(s) complained of	5				
Insufficient proof that agency action official(s) knew of the disclosure	30				
Insufficient proof of connection between disclosure and personnel action(s) complained of	57				
You filed an Individual Right of Action (IRA) or other appeal with the MSPB	20				
Other	102				
Do not recall	29				
How would you rate the service provided by OSC in each of the following areas?					
	Very satisfied	Satisfied	No opinion, or N/A	Dissatisfied	Very dissatisfied
<i>Courtesy</i>	77	125	66	54	121
<i>Oral communications</i>	36	75	73	99	132
<i>Written communications</i>	34	70	49	102	158
<i>Timeliness</i>	29	92	41	113	158
<i>Results</i>	13	25	23	57	302
Did you file an Individual Right of Action (IRA) or other appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?					
Yes	108				
No	275				
N/A	20				
Did you ask for the same relief that you sought from OSC?					
Yes	95				
No	10				
Do not recall	8				
Were you successful at the MSPB in obtaining the same relief that you sought from OSC?					
Yes	14				
Partially	10				
No	61				
Appeal pending	28				
If the answer to [the previous question] was "yes" or "partially," how did you obtain that relief?					
Settlement	16				
Decision after hearing	2				
Other	9				

FY 2002 DISCLOSURE UNIT SURVEY RESPONSES					
<i>Number mailed: 286</i>		<i>Responses returned: 66</i>		<i>Response rate: 23%</i>	
Has the federal agency where you work (or the agency where you worked most recently, if you are no longer employed by a federal agency) informed you about your right to make whistleblower disclosures, and the channels for making such disclosures?					
Yes		8			
No		42			
Do not recall		5			
Never employed by a federal agency		8			
How did you first become aware that you could file a disclosure with OSC?					
OSC web site		15			
OSC speaker		1			
OSC brochure		4			
OSC poster		4			
News story		1			
Agency personnel office		3			
Union		7			
Co-worker		9			
Other		19			
Were you successful in obtaining the action you sought through OSC?					
Yes		3			
Partly successful		7			
No		56			
What reason did OSC give for closing your disclosure matter? (Circle all that apply.)					
No OSC jurisdiction over agency involved, your position, or agency official(s) involved in your disclosure		15			
Insufficient evidence of a violation of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety		21			
You withdrew your disclosure		4			
You resolved the matter with the agency involved		2			
Your disclosure was referred to the agency involved for a report to OSC on the agency's inquiry into the matter		8			
Other		20			
Do not recall		3			
How would you rate the service provided by OSC in the following areas?					
	<i>Very satisfied</i>	<i>Satisfied</i>	<i>No opinion / inapplicable</i>	<i>Dissatisfied</i>	<i>Very dissatisfied</i>
Courtesy	16	8	9	8	3
Oral communications	23	20	16	10	3
Written communications	9	15	8	9	10
Timeliness	4	6	11	13	16
Results	11	12	18	23	31

Endnotes

¹ Reorganization Plan Number 2 of 1978. See 5 U.S.C.A. App.1, § 204. The Civil Service Reform Act of 1978 (Public Law No. 95-454, 92 Stat. 1111) enlarged OSC's functions and powers.

² Public Law No. 101-12 (1989). Provisions setting forth OSC authorities and responsibilities were codified at 5 U.S.C. § 1211, *et seq.*

³ Public Law No. 103-94 (1993), codified in scattered sections of 5 U.S.C. and 12 U.S.C..

⁴ Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, *et seq.* The Veterans' Employment Opportunities Act of 1998 (Public Law No. 103-424) also expanded OSC's role in protecting veterans. The act made it a prohibited personnel practice to knowingly take, recommend, or approve (or fail to take, recommend, or approve) any personnel action, if taking (or failing to take) such action would violate a veterans' preference requirement. See 5 U.S.C. § 2302(b)(11). (The former § 2302(b)(11) was re-designated as § 2302(b)(12).)

⁵ Public Law No. 103-424 (1994), codified in various sections of title 5 of the U.S. Code. The provision making federal agencies responsible, in consultation with OSC, for informing their employees of rights and remedies under the Whistleblower Protection Act appears at 5 U.S.C. § 2302(c).

⁶ Unless noted otherwise, all references after this to prohibited personnel practice complaints include complaints alleging other violations of civil service law, rule, or regulation listed at 5 U.S.C. § 1216, except for alleged violations of the Hatch Act. For the purpose of this annual report, Hatch Act allegations are treated as a separate category of complaints.

⁷ When the Complaints Examining Unit makes a preliminary determination to close a complaint without further investigation, it must by law provide complainants with a written statement of reasons, to which they may respond. On the basis of the response, if any, the unit decides whether to close the matter, or refer it to the Investigation and Prosecution Divisions.

⁸ The 12 prohibited personnel practices are (in substance): (1) discrimination based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation (allegations of discrimination, except discrimination based on marital status or political affiliation, are generally deferred by OSC to EEO processes, consistent with 5 C.F.R. § 1810.1); (2) soliciting or considering improper employment recommendations; (3) coercion of political activity; (4) deceiving or willfully obstructing anyone from competing for employment; (5) influencing anyone to withdraw from competition to improve or injure the employment prospects of another; (6) giving an unauthorized preference or advantage to improve or injure the employment prospects of another; (7) nepotism; (8) reprisal for whistleblowing; (9) reprisal for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or an Inspector General; or refusing to obey an order that would require one to violate a law; (10) discrimination based on personal conduct that does not adversely affect job performance; (11) violating veterans' preference requirements; and (12) violating a law, rule or regulation implementing or directly concerning merit system principles at 5 U.S.C. § 2301. It should be noted that these are *general* summaries of the prohibited personnel practices defined at 5 U.S.C. § 2302(b). That section should be consulted for fuller descriptions of the elements of each of these violations.

⁹ It should be noted that complaints frequently contain more than one type of allegation. *Table 1*, however, records all allegations received in a complaint as a single matter.

¹⁰ The numbers in this table, as well as in other tables in this report, may vary somewhat from those in previous years' annual reports. This is due to the fact that in response to an audit by the General Accounting Office, OSC developed more sophisticated computer programs to more accurately track prohibited personnel practice and whistleblower disclosure matters. Use of the new programs has led to recalibration of some statistics from previous years.

¹¹ This category includes complaints settled through mediation by OSC (including "reverse-referrals" - *i.e.*, cases referred back to the Alternative Dispute Resolution Unit by an Investigation and Prosecution Division due to the apparent potential for a mediated resolution). Also included in this category are complaints that entered the initial OSC mediation process, and were then resolved through withdrawal of the complaint, or through mediation by an agency other than OSC.

¹² 5 U.S.C. § 2302(b)(9)(C).

¹³ The Whistleblower Protection Act defined the primary role of OSC as protection of employees, especially whistleblowers, from prohibited personnel practices. By comparison to complaints alleging other prohibited personnel practices, the number of whistleblower reprisal matters in which favorable actions are obtained each year, as well as the number of favorable actions in such matters, tend to reflect that emphasis.

Favorable actions are actions taken to directly benefit the complaining employee; actions taken to punish, by disciplinary or other corrective action, the supervisor(s) involved in the personnel action; and systemic action, such as training or educational programs, to prevent future questionable personnel actions. The term encompasses: (1) stays of personnel actions obtained by OSC through voluntary action by the agency involved, or by filing a petition for a stay with the Merit Systems Protection Board; (2) action taken by the parties to resolve a prohibited personnel practice complaint after engaging in voluntary mediation by OSC; (3) action taken by an agency at the request of OSC as a settlement of a prohibited personnel practice complaint, in advance of a written request for corrective action by the Special Counsel; (4) actions taken by an agency with knowledge of a pending OSC investigation, which satisfactorily resolve those matters under inquiry by OSC; and (5) disciplinary action obtained by OSC after filing a petition with the Board, charging an employee with the commission of a prohibited personnel practice.

¹⁴ Stays and disciplinary actions listed in this table (except for disciplinary actions obtained by OSC from the Board) are included in the totals shown in the first two rows above, but are broken out here for further information.

¹⁵ Special Counsel v. Briggs, Merit Systems Protection Board Docket No. CB-1216-01-0002-T-1.

¹⁶ Briggs v. Merit Systems Protection Board, 331 F.2d 1307 (Fed. Cir., 2003).

¹⁷ Special Counsel v. District of Columbia Public Schools System, Merit Systems Protection Board Docket No. CB-1216-01-0002-C-1.

¹⁸ Special Counsel v. McEntee, Merit Systems Protection Board Docket No. CB-1216-02-0007-T-1.

¹⁹ OSC File No. HA-01-1585.

²⁰ Special Counsel v. Linder, Merit Systems Protection Board Docket No. CB-1216-03-0013-T-1.

²¹ Special Counsel v. Hollis, Merit Systems Protection Board Docket No. CB-1216-03-0014-T-1.

²² 5 U.S.C. § 1213(a).

²³ 5 U.S.C. § 1213(c)-(e).

²⁴ 5 U.S.C. § 1213(c)-(e).

²⁵ It should be noted that many disclosures contain more than one type of allegation. This table, however, records all allegations received in a whistleblower disclosure as a single matter.

²⁶ This number includes reports on disclosures referred to agency heads by OSC before FY 2003.

²⁷ This number includes cases that OSC referred to agency Offices of Inspector General for various reasons.

²⁸ Disclosure referred to the agency in February of 2002; closed in March of 2003.

²⁹ Disclosure referred in November of 2001; closed in March of 2003.

³⁰ Disclosure referred in March of 2002; closed in December of 2002.

³¹ Disclosure referred in November of 2002; closed in July of 2003.

³² Pursuant to 5 U.S.C. § 6323(a), federal employees who perform active military duty may request paid military leave.

³³ Due to staff shortages, distribution of surveys for matters closed in FY 2003 could not be completed in time for this report.

³⁴ For callers with hearing/speech disabilities, all OSC telephone numbers listed here may be accessed using TTY by dialing the Federal Relay Service at (800) 877-8339.

³⁵ 5 C.F.R. § 1800.1.

³⁶ Includes, for purposes of this survey, mailings to complainants who alleged a Hatch Act violation.