

REPORT TO CONGRESS



**U.S. OFFICE OF SPECIAL COUNSEL
FISCAL YEAR 2004**

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Report to Congress

**U.S. Office of Special Counsel
Fiscal Year 2004**



U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

The Special Counsel

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

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

Dear Mr. President and Mr. Speaker:

I respectfully submit, in accordance with 5 U.S.C. § 1218, Fiscal Year 2004 Report to Congress from the U.S. Office of 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 U.S. Office of Special Counsel. The U.S. Senate unanimously confirmed Mr. Bloch on December 9, 2003. On January 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 and is admitted to practice in the United States Supreme Court.



Scott J. Bloch

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, complex litigation, 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*.

Mr. Bloch has published various articles relating to the office, including: "The Judgment of History: Faction, Political Machines, and the Hatch Act," published in the *University of Pennsylvania Journal of Labor & Employment Law*, 7 U. Pa. J. Lab. & Emp. L. 225 (2005); "Don't Bury the Hatch Act: Hidden Dangers for the Unwary and Politically Active Prosecutor's Office Employee," published in *The Prosecutor* in the September/October 2004 issue (Vol.38/Number 5, Sept/Oct 2004); and "The Perils of Partisanship in Public Employment," published in the American Bar Association's newsletter *Pass It On* (Vol. 14/Number 1, Fall 2004).

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

MESSAGE FROM THE SPECIAL COUNSEL

Upon taking office as the new Special Counsel in January 2004, two major problems confronted OSC: a serious backlog of cases in all of the units (Complaints Examining Unit, Hatch Act Unit and Disclosure Unit) and a cumbersome structure of three separate Investigation and Prosecution Divisions (IPDs). It was not clear whether the problems stemmed from faulty organizational structures, procedural inefficiencies, lack of adequate personnel, or a combination of these. Moreover, the agency seemed to lack a vision and needed performance goals and standards. Personnel did not seem strategically placed to solve agency challenges. Agency structure was process oriented, not results driven.

The backlogs had plagued the agency for several years. The OSC Annual Report to Congress repeatedly discussed this problem. If OSC could not timely address its own case load, Congress might task other agencies to assume the responsibilities of OSC. It was my belief that chronic backlogs prevented OSC from “dispensing justice.” I often repeated the adage, “justice delayed is justice denied.”

During my tenure, much has been done to investigate and remedy these problems. In April of 2004, I created a comprehensive plan to substantially reduce the chronic case backlog and also to ensure these persistent case backlogs did not occur again. The plan consisted of reorganizing several OSC offices, creating several new offices, and streamlining internal OSC procedures.

I formed a Special Projects Unit (SPU) to begin immediately to investigate the problem of the backlog of cases and to find solutions. The SPU began working first on Prohibited Personnel Practices (PPPs) in the Complaints Examining Unit (CEU) and Hatch Act cases in early 2004. The purpose of the unit was to help investigate and resolve cases, and, at the same time, to study the procedures of the CEU and the Hatch Act Unit. At the conclusion of the SPU’s work on PPPs, several procedures for the CEU were implemented that will help prevent backlogs in the future.

During FY 2004, I revitalized OSC’s role in enforcing the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA is the federal employment law that proscribes workplace discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, and other uniformed services and grants service members reemployment rights. USERRA also prohibits an employer from denying any benefit of employment on the basis of an individual’s service.

With the historic mobilization of service members, the Special Counsel realized that as service members return to their civilian careers in the federal sector, it was imperative that their reemployment rights be vigorously protected. Thus, I changed the manner in which USERRA claims were internally processed by assigning them only to experienced attorney. The change resulted in quicker processing times. Most significant, however, was my willingness to prosecute federal agencies for violations of the law. Since USERRA was passed in 1994, OSC had never filed a USERRA enforcement action with the U.S. Merit Systems Protection Board. I changed that precedent, and, under my leadership, OSC filed, and subsequently successfully resolved, its first USERRA cases with the Board.

I have found, however, that although reducing the backlog of PPP cases as a whole will help OSC meet its strategic goal of protecting federal employees from PPPs, there are other ways of measuring success. We must improve the timeliness of OSC’s review of the more serious PPP cases and whistleblower disclosures

of public health or safety concerns, with the goal of protecting the most vulnerable federal employees. OSC's case priority system for PPP cases, which was established and implemented in FY 2001, established a set of standards for determining which cases would receive the earliest investigative attention. The preliminary results of this strategy have been promising and indicate that OSC's most serious cases have been processed more quickly and the backlog reduced in this category more than in other categories.

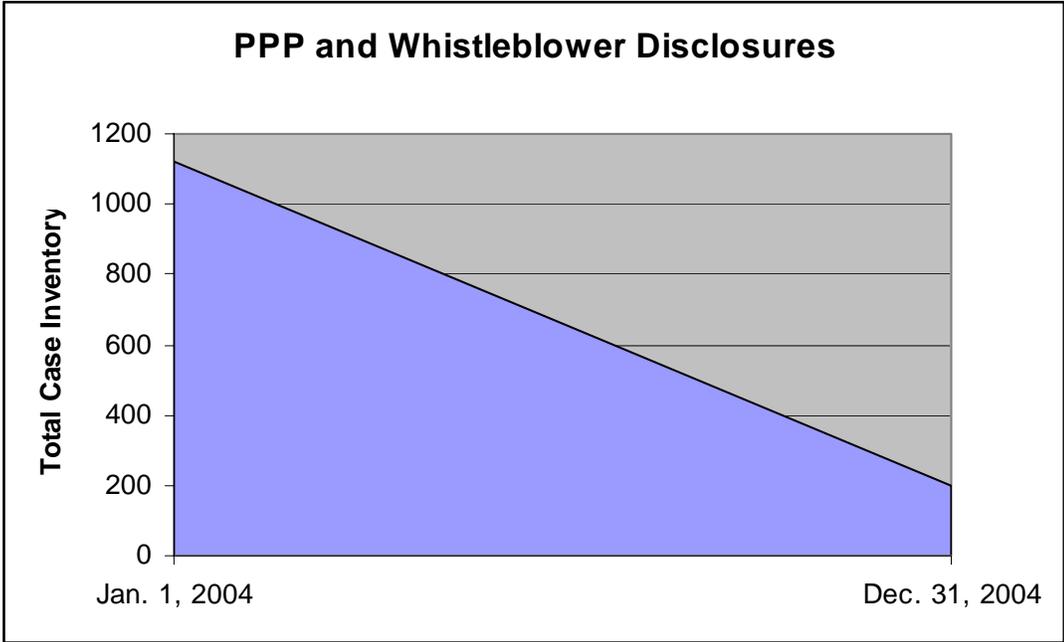
I am pleased to report that since January 2004, there was significant success in reaching backlog reduction in the CEU, Hatch Act Unit, and the Disclosure Unit (DU).

The quality of the agency's handling of cases, particularly PPPs, is paramount to its mission and goals. Along with the implementation of the SPU in 2004, I hired an independent organization to thoroughly assess the workforce, agency efficiency, training needs, and strategic human capital management. Many of the recommendations will be implemented into FY 2005 and beyond.

A Government Accountability Office (GAO) March 2004 Report (GAO 04-36) was critical of OSC's chronic backlog problem. We provided a detailed response back to the GAO on May 17, 2005 and it is available on the OSC website [GAO document](#). The response includes several strategies to reduce the backlogs in PPP and other cases that have already yielded results.

OSC has substantially reduced the backlogged prohibited personnel practice (PPP) cases in the Complaints Examining Unit from 447 to 119 cases and reduced the number of whistleblower disclosure cases in backlog from 674 to 82. Therefore, the overall cases backlog reduction in FY 2004 is 82%. (See table below.) The work continued beyond FY 2004 and into the 2005 calendar year. OSC will report on the overall success of our backlog reduction efforts as well as reorganization in next year's Annual report.

OSC Backlogged Cases in CY 2003 vs. CY 2004



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 as 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 was charged with enforcing 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 (WPA). 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.¹

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.² 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 (USERRA) became law. It defined employment-related rights of persons in connection with military service, prohibited discrimination against them because of that service, required reemployment after return from military service, and gave OSC new authority to pursue remedies for violations by federal agencies.³

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.⁴

Mission

OSC's mission is to protect current and former federal employees, and applicants for federal employment, especially whistleblowers, from prohibited employment practices or other illegal employment practices under USERRA; 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 2004, OSC operated with a budget of \$13,424,000, and a full-time equivalent personnel authorization of approximately 113 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 2004 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).

Special Projects Unit The Special Counsel set up a new unit to focus on strategies to eliminate the backlog problems that plagued the agency, and study the processes and procedures used in the various OSC units. It was used as a laboratory for innovative and new ways to address the agency's problems. The SPU played a vital role in the backlog reduction efforts and was instrumental in procedural changes that are making OSC a more efficient agency. The unit will act as a mobile "SWAT Team" if and when backlogs arise in the future, and help prevent them in the investigative unit. Also, SPU will continue to perform special projects as assigned by the Special Counsel.

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.¹ 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.²

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.

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.¹ 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 2004.²

Table 1

Summary of Prohibited Personnel Practice (PPP) Complaints Activity – Receipts and Processing^a			
	FY 2002	FY 2003	FY 2004
Pending complaints carried over from previous fiscal year	740	594	653
New complaints received (Intake Unit)	1,558	1,791	1,964
<i>Total complaints</i>	2,298	2,385	2,617
Complaints referred for field investigation	191	162	244
Complaints processed and closed	1,704	1,732	2,093
Processing times			
<i>Less than 240 days</i>	1,284	1,471	1,799
<i>More than 240 days</i>	420	261	294
Percentage processed in under 240 days	75%	85%	86%

^a The numbers in this table, as well as in other tables in this report, may vary somewhat from those in previous years' 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.

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 2004, OSC obtained 12 stays 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 (ADR) 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. Two cases from FY 2004 include:

- In one case, the employee alleged that the Agency reassigned him, failed to promote him, and failed to give him any meaningful duties in violation of 5 U.S.C. 2302 (b)(8). He had previously disclosed lapses in airport security both before and after September 11, 2001. His disclosures were also the subject of an OSC Disclosure complaint. Additionally, the Complainant’s case was the subject of considerable Congressional and media attention, including a profile of Complainant in *Vanity Fair* magazine. The parties agreed to OSC mediation and all issues have been resolved.

- In another case, a high level official alleged that after he disclosed potential vulnerabilities in the nation’s food supply to bio-terrorism threats, his Agency reassigned him. The Complainant’s disclosure was the topic of several newspaper articles and professional journals. The parties agreed to OSC mediation and all issues have been resolved.

The ADR Program completed 18 mediations and generated a case resolution rate of 86% during FY 2004.

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

Table 2 below, contains summary data (with comparative data for the three previous fiscal years) on program activity during FY 2004.

Table 2

Summary of Prohibited Personnel Practice Complaints Activity – Mediation Program					
		FY 2001	FY 2002	FY 2003	FY 2004
Complaints identified before investigation as mediation-appropriate		41	39	43	82
Initial acceptance rates by parties	<i>Complainants</i>	70%	80%	82%	68%
	<i>Agencies</i>	61%	68%	69%	64%
Mediated and other resolutions ^b		0	14	23	18
Resolution rate – OSC mediation program		-	82%	92%	86%

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 (the 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 2004 through negotiation with agencies:

- The Department of the Army agreed to stop wage garnishment (approximately \$350 biweekly) of a GS-13 attorney-advisor and refunded him a total of \$14,542.57 and \$772.44 in interest when it was determined that the agency did not provide him the required due process opportunity to provide proof that he did not owe this debt.

- A nurse in a federal correction facility, who alleged that she was removed because she made protected disclosures regarding the privacy of patient information, received approximately \$32,000 in back pay, benefits and attorney’s fees and was allowed to voluntarily resign. The agency also agreed to provide Whistleblower Protection Act (WPA) training to managers.
- An employee of the Department of Energy, who alleged reprisal for making protected disclosures, had his 14-day suspension rescinded; was compensated for lost pay plus interest; received all related benefits from the rescission of the 14-day suspension; received \$2,000 for attorney’s fees; and had all records related to the 14-day suspension expunged from his employment files, with the exception of his Personnel Security file. In return, the employee agreed to accept a one-day suspension based on “falsely listing a co-worker as the sender of an agency facsimile transmitted to the media.” (The agency also agreed to provide WPA training to persons involved in the suspension).

^b 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.

- OSC settled a case in which a former GS-15 Security Specialist at the Department of The Air Force agreed to remove a letter of reprimand from the employee's Official Personnel File. The employee alleged that she received the reprimand in reprisal for disclosing to the IG that her two supervisors violated the Federal Acquisition Regulation and abused their authority.

- The Department of the Navy cancelled a reassignment of complainant (from his duty station in Norfolk, VA, to Pt. Magu, CA). The employee alleged that the reassignment was in retaliation for having joined in a class action lawsuit against the agency.

Disciplinary Action

If OSC determines that disciplinary action (the imposition of discipline on an employee who has committed a violation) is warranted, it can file a complaint directly with the Board. Should the agency agree to take appropriate disciplinary action on its own initiative, then the matter can be settled without resort to an MSPB proceeding.

The following are examples of disciplinary action obtained by OSC in FY 2004 through negotiation with the agency involved:

- The Air Force suspended a selecting official for five days and her supervisor for three days, and gave the Division Chief an oral admonishment that will remain in his supervisory file for two years for violating the anti-nepotism laws and granting an unauthorized preference or advantage to certain applicants (including several relatives of agency officials and advocacy for official's own relative) for vacant positions in an installation. (The Air Force also agreed to provide outreach training about prohibited personnel practices to relevant management officials.)

- OSC secured disciplinary and corrective action in a case in which we believe a former Chief Administrative Law Judge (ALJ) of the Social Security Administration (SSA) granted an unauthorized preference to an employee. The ALJ selected the employee in 1998 as an Attorney Adviser and 18 months later, made inquiries with SSA personnel about raising her grade. In April 2000, the servicing personnel office acted on the ALJ's request, retroactively converting the employee to a higher grade as of November 1998, 90 days after her original appointment, and awarding her back pay. Four months later, the ALJ selected the employee for a management position for which she would not have been qualified without the retroactive upgrade.

- While our case was pending, the ALJ in the above case was removed by the Board for alleged sexual harassment in a separate case against him. Pursuant to the settlement, if the ALJ is successful in any appeal of his removal, the agency will consider OSC's recommended discipline of 30 days' suspension for the ALJ. OSC also secured a reprimand for the personnel specialist who assisted the ALJ in retroactively promoting the employee at issue. The Agency also removed all of the employee's SF-50's; initiated collection proceedings against the person receiving the unauthorized preference for the difference in when she would have received her promotions absent the unauthorized preference; and offered priority consideration for future similar positions to the other candidates for the management position.

Enforcement Actions

Enforcement actions are cases filed by OSC with the MSPB 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.

- A petition for corrective action was filed with the MSPB on behalf of the complainant, who claimed that the agency involved violated his due process rights when it terminated him without giving him 30 days written notice, nor an opportunity to respond, nor a notice of his rights to appeal the decision to the MSPB. The ALJ assigned to adjudicate the case ruled in the agency's favor against OSC. Because of some of the nuances of the case, the Special Counsel decided not to file a petition for review of the Administrative Law Judge's decision with the full board.

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 2004^{1 0}

Table 3, below, contains summary data (with comparative data for the three previous fiscal years) on all favorable actions obtained by OSC in connection with its processing in FY 2004 of whistleblower reprisal and other prohibited personnel practice complaints.

Table 3

Summary of Prohibited Personnel Practice Complaints Activity – Favorable Actions					
		FY 2001	FY 2002	FY 2003	FY 2004
Total favorable actions obtained (all prohibited personnel practices)	<i># of actions</i>	74	126	115	80
	<i># of complaints</i>	66	107	83	65
Favorable actions obtained (reprisal for whistleblowing)	<i># of actions</i>	39	98	75	57
	<i># of complaints</i>	39	83	75	49
Stays negotiated with agencies ^c		13	7	6	11
Stays obtained from Merit Systems Protection Board		1	1	1	1
Disciplinary actions negotiated with agencies		4	13	12	11
Corrective action complaints filed with the Board		0	0	0	1
Disciplinary actions obtained from the Board		0	0	1	0

^c 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.

HATCH ACT MATTERS

Overview

Under the Hatch Act, federal employees, employees of the District of Columbia (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 2004, OSC issued approximately 3,913 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 2004, and results obtained in cases that year in cases filed earlier, in disciplinary action proceedings at the MSPB, alleging violations of the Hatch Act:

- Senior Executive Runs for Office. In November, 2003, OSC settled a complaint for disciplinary action against the former Deputy Assistant Secretary of Defense for Counter Narcotics, Department of Defense. OSC's complaint for disciplinary action alleged that the employee violated the Hatch Act by becoming a candidate for nomination and election to the U.S. House of Representatives 8th District in Virginia. According to OSC's complaint, the employee, acting in concert with the Friends of the 8th Congressional District Committee (Friends of the 8th), a partisan political group, sought nomination and election to the House of Representatives. OSC also alleged that the employee knowingly solicited political contributions in support of his campaign. OSC's complaint also included a third allegation, charging the employee with using his official title and position description at the Department of Defense while engaging in political activity. Based upon the settlement agreement, the employee admitted that he engaged in activities from March to October 2003, which constituted candidacy under the Hatch Act. He also admitted that on more than one occasion between March and October 2003, while federally employed, he knowingly solicited political contributions. He also agreed that his violations of the Hatch Act warranted imposition of a penalty consistent with 5 U.S.C. § 7326, which includes removal from federal service. The Department of Defense agreed to permanently place a copy of this settlement agreement in the employee's Official Personnel File. The employee resigned his federal employment after OSC filed the complaint against him. As a result of the settlement, OSC moved to dismiss its complaint against him.

- Solicitation of Subordinates in Violation of the Hatch Act. On July 9, 2004, OSC filed a complaint against District of Columbia (D.C.) Mayor Anthony Williams' Chief of Staff for soliciting uncompensated volunteer services from his subordinates to support the Mayor's bid for reelection. Although OSC's investigation found that the Chief of Staff had solicited uncompensated volunteer services from his subordinates, the evidence failed to substantiate that the Chief of Staff solicited monetary contributions or engaged in political activity while on duty. After OSC filed its complaint, the Chief of Staff resigned from his position.
- Candidacy of State Official. OSC filed a complaint for disciplinary action against the Deputy Police Chief of the Henderson, Nevada Police Department and Speaker of the Nevada Assembly. OSC's complaint charges the employee with violating the Hatch Act's prohibition against being a candidate for elective office in a partisan election. The employee ran in 2002, and after that election, OSC notified him that he was covered by the Act and that his 2002 candidacy violated the Act. OSC also warned him that future violations of the Hatch Act could result in disciplinary action charges being brought against him before the MSPB. Despite OSC's warning, the employee filed for re-election on May 5, 2004, and became a partisan candidate for the Nevada Assembly, District 23 (Clark County).
- Other Candidacy Violations. OSC filed a complaint for disciplinary action against an Area Administrator with the Alabama Department of Public Health. OSC's complaint charges the employee with violating the Hatch Act's prohibition against being a candidate for election office in a partisan election. In 2002, the employee ran for re-election to the Alabama House of Representatives after his employer notified him about the Hatch Act and that his candidacy may conflict with the Act.
- In July 2004, OSC filed a complaint for disciplinary action against a state employee with the Finger Lakes Developmental Disabilities Service, part of the New York Office of Mental Retardation and Developmental Disabilities. The complaint charged that despite her employer warnings about the Hatch Act she was a candidate in the partisan elections for Rochester City Council and New York State Senate, 56th District, in 2001 and 2002, respectively.
- Federal Employees Send Prohibited E-mail Messages While on Duty. During FY 2004, OSC filed two similar complaints for disciplinary action against federal employees for sending politically partisan electronic mail messages while on duty in violation of the Hatch Act.

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 2004.

Table 4

Summary of Hatch Act Advisory Opinion and Complaint Activity		FY 2002	FY 2003	FY 2004
Advisory opinions issued		3,245	3,284	3,913
New advisory requests received (written)			159	176
New complaints received		213	197	248
Complaints referred for further investigation		8	35	25
Warning letters issued		49	43	93
Corrective actions taken by recipients of cure letters:	Withdrawal from partisan races	12	18	17
	Resignation from covered employment	5	7	8
	Other	1	0	6
	Total:	18	25	31
Disciplinary action complaints filed with the Merit Systems Protection Board		4	4	7
Disciplinary actions obtained (through negotiation or ordered by the Board)		4	4	2
Total matters pending at end of FY	<i>Complaints</i>	264	254	146

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.¹¹ 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 for an investigation. OSC does not divulge the identity of the whistleblower without that person’s consent. The agency is required to investigate the matter, and send a report from the agency head to the Special Counsel, which describes the agency’s findings and conclusion. 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.¹²

In FY 2004, 572 new matters were received in the Disclosure Unit, a 7% increase compared to FY 2003. There were 18 Agency referrals in FY 2004, compared to 11 in FY 2003.

Please note that hundreds of cases in the DU had not been properly processed from prior years. They had been given “3B” status, which is the lowest level of priority. The head of the unit reviewed each case and determined that they were likely closures and that they did not involve public health or safety issues. When Scott Bloch came to office, the career staff once again reviewed the cases and gave each a full and fair resolution. Because these cases were all resolved in FY 2004, the number of referrals sent to agencies for investigation is artificially deflated. If these cases had been resolved in the year they were filed with OSC, our referral rate would have been higher.

See *Table 5* below, which contains summary data (with comparative data for the two previous fiscal years) on OSC receipts and dispositions of whistleblower disclosures during FY 2004.

Table 5

Summary of Whistleblower Disclosure Activity – Receipts and Dispositions^d			
	FY 2002	FY 2003	FY 2004
Pending disclosures carried over from previous fiscal year	287	556	690
New disclosures received	555	535 ^e	572 ^f
<i>Total disclosures</i>	842	1,091	1,262
Disclosures referred to agency heads for investigation and report	19	11	18
Agency head reports sent to President and Congress	10	23 ^g	8
Results of agency investigations and reports	<i>Disclosures substantiated in whole or in part</i>	7	13
	<i>Disclosures unsubstantiated</i>	3	10
Disclosures processed	<i>In more than 15 days</i>	192	290
	<i>In less than 15 days</i>	94	111
Percentage of disclosures processed in less than 15 days	33%	28%	12%
Disclosure matters processed and closed	286	401	1,154 ⁱ

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

^e This figure includes 60 identical subject matter cases.

^f This figure includes 60 identical subject matter cases.

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

^h This number is large due to the backlog resolution effort.

ⁱ This number is large due to the backlog resolution effort. Please see OSC’s response to the GAO Report on our web site.

Results of Referrals to Agency Heads in FY 2004

- Improper Use of Government Property. OSC referred allegations that a manager at the Bureau of Indian Affairs, Bemidji, Minnesota, violated Section 102-36 of the Federal Management Regulations by giving a government desk to an employee for personal ownership, instead of following the proper procedures for excessing government property.

OSC initially requested further information about the incident from the Department of the Interior Office of Inspector General (OIG). When the OIG failed to provide a satisfactory response, OSC referred the matter to the Secretary of the Interior for investigation. According to the Department of the Interior's report, the investigation substantiated the whistleblowers' allegation that the manager did not dispose of the desk properly; however, the agency also found that the desk was broken, and the cost of repairing it would have exceeded the value of the desk. The report further stated that the Superintendent would ensure that agency personnel receive appropriate training in property management and the disposition of government property. OSC found the agency report to be deficient because the investigators failed to interview the whistleblowers and the report did not include an adequate description of the conduct of the investigation, as required by 5 U.S.C. § 1213(d).

- Time and Attendance Abuse by Air Traffic Controllers. During FY 2004, OSC referred allegations from two whistleblowers that air traffic controllers (ATCs) at the Willow Run Airport, Belleville, Michigan, routinely failed to arrive on time for their assigned shifts and left work early failing to complete their scheduled tours of duty. The whistleblowers alleged that this practice, known by Federal Aviation Administration (FAA) employees in different areas of the country as "shoves, pushes or early-outs," was a violation of law and constituted a substantial and specific danger to public health and safety. Under this practice, ATCs who arrive late or leave early do not inform FAA managers they will be late or will leave early. As a result, the whistleblowers alleged that the Air Traffic Control Tower at Willow Run Airport was often dangerously understaffed or unattended and that ATCs received compensation for hours they did not work.

The whistleblowers also filed complaints with the Department of Transportation (DOT). The FAA Civil Aviation Security and the DOT Office of the Inspector General investigated allegations of "shoving" at Willow Run. In April 2001, the DOT OIG concluded that at least four ATCs were engaging in the "shoves" practice. The whistleblowers filed a disclosure with the OSC in August 2001, because they alleged that no action had been taken to stop the practice and that ATCs continued to routinely engage in "shoves."

DOT found no evidence to support the allegations that ATCs were swapping shifts or departing the facility prior to the end of their assigned tour of duty. Thus, the agency did not substantiate the allegation that "shoving" has continued since being brought to the attention of the FAA Office of Civil Aviation and the DOT OIG in 2000, or that any danger to public safety resulted from the scheduling of air traffic controllers at Willow Run. The report did conclude that there was significant distrust between the ATCs and management and recommended that periodic audits be conducted to attempt to address the problem. Finally, the report acknowledged that the practice of shoving has occurred in the past and could occur in the future. For this reason, the OIG recommended that the FAA periodically audit the scheduling practices at Willow Run and ensure that safeguards are in place to prevent the practice of shoves from recurring.

The Disclosure Unit closed an additional three cases for investigation under § 1213. However, those cases ultimately involved criminal allegations, and thus, they cannot be included in the public file nor can a summary be provided pursuant to 5 U.S.C. § 1213(f).

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

OSC has a vital role in enforcing USERRA in the federal sector. 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 MSPB.

At the start of FY 2004, OSC had four pending USERRA cases. It received 14 referrals from VETS during the fiscal year. OSC declined representation in six cases and, at the direction of Special Counsel Scott Bloch, filed two USERRA actions before the MSPB. The filing of the actions marked the first time OSC had represented a claimant before the MSPB in a USERRA action in the ten-year history of the statute.

Table 6, below, sets forth the FY 2004 data concerning OSC’s receipt and disposition during FY 2004 of USERRA cases (with comparative data for the two previous fiscal years).

Table 6

Summary of USERRA Referral Activity			
	FY 2002	FY 2003	FY 2004
Pending referrals carried over from previous fiscal year	10	8	4
New referrals received from DOL	19	7	14
Pending referrals at the end of the fiscal year	8	4	12
Cases filed before MSPB	0	0	2

USERRA Filings with the MSPB

A summary of the two cases OSC filed with the MSPB in FY 2004 is set forth below.

- A reservist alleged that he was dismissed from the agency’s 16-week supervisory training program because 1) his reservist duties conflicted with the supervisory training schedule and 2) he would be absent from work on Saturdays due to future reservist duties, which the agency believed would cause significant morale problems at the workplace because new supervisors were expected to work on Saturdays. Employees who completed the supervisory training program would be automatically promoted. The dismissal meant the reservist did not receive a promotion and lost the economic and related employment benefits. The case focuses on the question of whether the agency violated USERRA’s “anti-discrimination” provisions by dismissing the reservist from the program.

- A reservist was terminated from his seasonal employment because he was injured while on military duty and could not perform the tasks for which he was hired. He suffered a loss of pay due to the termination of his employment. The case focuses on the question of whether the agency violated USERRA by denying the reservist retention in employment because of his military service.

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.

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), which is valid for three years.

In FY 2004, OSC had a total of 26 certified agencies or agency components and another 47 agencies or components registered for the program.

OSC also issued 18 press releases, publicizing its enforcement efforts and results. OSC employees participated in 64 outreach events.

ANNUAL SURVEY PROGRAM

Each year, as required by 5 USC, Section 1212, the OSC surveys persons who have contacted the agency for assistance and whose cases were closed during the previous fiscal year. During FY2004, OSC surveyed individuals whose complaints were closed in FY 2003 and FY 2004. This included persons whose case type was either Prohibited Personnel Practice (PPP), Hatch Act (HA) and USERRA were sent a written notification to facilitate their electronic participate in the survey. The form used for these surveys for the PPP and USERRA cases asks the following questions required by law:

- whether potential respondents were fully apprised of their rights;
- whether they were successful at the OSC of the MSPB; and
- whether (successful or not) they were satisfied with the service received from the OSC;
- additional questions are asked based on the nature of the matter.

For FY 2003 and FY2004 closed cases, OSC's survey was entirely web-based, except for the letter of notification. As a result, there was a much more efficient processing of survey results by OSC, and paperwork was greatly reduced. An analysis of the results shows that there continues to be a low level of respondents being informed by their agencies concerning their rights and responsibilities (15% for FY2003, 20% for FY2004). Survey questions and responses to those questions in surveys covering matters closed during FY 2003 and FY 2004 appear in Appendices A, B, C and D.

FURTHER INFORMATION¹³

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, D.C. 20036-4505
Telephone: 202-254-3600
[Annual Report 2004](#)

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, D.C. 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.¹⁴ The complaint form can be printed from OSC's web site (under "Forms") or filed with OSC electronically. [OSC Complaint Forms](#)

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, D.C. 20036-4505
Telephone: 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, D.C. 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, D.C. 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") or filed with OSC electronically. [OSC Disclosure Forms](#)

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, D.C. 20036-4505
Telephone: 202-254-3600
E-mail: userra@osc.gov

Outreach Program

For questions about OSC outreach activities, and requests for OSC publications:

Director of Outreach
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 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](#)")

Appendix A

ANNUAL SURVEY PROGRAM FY 2003-2004

FY 2003		FY 2004	
Number Mailed	1,795	Number Mailed	2,048
Number Returned	273	Number Returned	341
Response Rate	15%	Response Rate	16%

What was the nature of your correspondence to OSC? (Please choose only one answer)		
Response Options	FY 2003	FY 2004
You filed a complaint concerning a Prohibited Personnel Practice	251	293
You requested a written advisory opinion from OSC concerning a possible violation of the Hatch Act (unlawful political activity)	16	45
Your case involved a USERRA complaint	6	3

Appendix B

FY 2003-FY 2004 PROHIBITED PERSONNEL PRACTICE SURVEY RESPONSES

1. Did the agency against which you filed the complaint inform you about your rights and responsibilities with regard to prohibited personnel practices?

Response options	FY 2003	FY 2004
Yes	38	59
No	199	209
Do not recall	10	18
Never employed by a federal agency	4	7

2. Did you obtain the result that you wanted from OSC?

Response options	FY 2003	FY 2004
Yes	19	21
No	232	272

3. Did your complaint include any allegation of reprisal for whistleblowing?

Response options	FY 2003	FY 2004
Yes	127	147
No	105	125

4. What reason did OSC give for closing any reprisal for whistleblowing allegation in your complaint without obtaining the result that you desired? (Check all that apply.)		
Response Options	FY 2003	FY 2004
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	16	19
No personnel action taken by the agency involved	13	21
Information that you disclosed did not appear to be a legally protected disclosure	20	24
Your disclosure occurred after the personnel action involved in your complaint	0	5
Insufficient proof that the agency official (who took the personnel action against you) knew about your disclosure.	9	11
Insufficient proof of connection between your disclosure and the personnel action involved in your complaint	23	26
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint.	11	18
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation	21	28
You or OSC settled the matter with the agency involved	4	1
You declined corrective action offered by the agency involved	0	0
You notified OSC that you had filed or would file an Individual Right of Action (IRA) or other appeal with the Merit Systems Protection Board (MSPB)	6	5
You withdrew your complaint	1	0
Other	60	60
Do not recall	13	12

5. Did you file an Individual Right of Action or other appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?		
Response Options	FY 2003	FY 2004
Yes	59	63
No	162	186
Have not decided whether to file	11	23

6. Did you ask for the same relief that you sought from OSC?		
Response Options	FY 2003	FY 2004
Yes	52	60
No	2	1
Do not recall	5	2

7. Were you successful at the MSPB in obtaining the same result that you sought from OSC?

Response Options	FY 2003	FY 2004
Yes	5	2
Partially	7	2
No	32	32
Appeal pending	8	24

8. If the answer [to the previous question] was “yes” or “partially,” how did you obtain that result?

Response Options	FY 2003	FY 2004
Settlement	2	4
Decision after hearing	2	0
Other	1	0

9. What reason did OSC give for closing your complaint without obtaining the result that you Desired? (Check all that apply)

Response Options:	FY 2003	FY 2004
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	17	20
No personnel action taken by the agency involved	10	13
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint	21	22
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation	35	45
You or OSC settled the matter with the agency involved	2	2
You declined corrective action offered by the agency involved	0	1
You withdrew your complaint	1	0
OSC filed a petition with the Merit Systems Protection Board (MSPB) for corrective action	1	1
OSC obtained a decision in the corrective action proceeding filed with the MSPB	0	0
Closed for further action on discrimination allegations through EEO processes	3	6
Resolved through OSC’s Mediation Program	0	0
Other	41	47
Do not recall	8	6

10. 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>	FY 2003	23	58	35	41	94
	FY 2004	31	51	55	50	106
<i>Oral communications</i>	FY 2003	18	40	35	54	104
	FY 2004	20	36	69	50	118
<i>Written communications</i>	FY 2003	14	44	16	70	107
	FY 2004	17	41	29	73	133
<i>Timeliness</i>	FY 2003	12	44	32	63	100
	FY 2004	18	59	43	49	124
<i>Results</i>	FY 2003	8	11	16	42	174
	FY 2004	9	7	10	47	220

Appendix C

FY 2003-FY 2004 HATCH ACT UNIT SURVEY RESPONSES

1. As a result of our written advisory opinion given to you concerning the proposed political activity, what was the impact?		
Response Options	FY 2003	FY 2004
The OSC opinion advised that the person in question was free to carry out his or her planned political activity.	6	25
The OSC opinion advised that the person in question should not continue his or her planned political activity.	10	20

2. How would you rate the service provided by OSC in the following areas?						
Response Options	Fiscal Year	<i>Very satisfied</i>	<i>Satisfied</i>	<i>No opinion / inapplicable</i>	<i>Dissatisfied</i>	<i>Very dissatisfied</i>
Courtesy	FY 2003	11	4	0	1	0
	FY 2004	23	17	2	1	2
Clarity Written Communications	FY 2003	9	3	4	0	0
	FY 2004	29	9	2	2	3
Timeliness	FY 2003	10	2	4	0	0
	FY 2004	11	11	7	7	9
Results	FY 2003	8	3	3	1	1
	FY 2004	16	13	9	4	3

Appendix D

FY 2003-2004 USERRA UNIT SURVEY RESPONSES

1. Did the agency against which you filed the complaint inform you about your rights and remedies with regard to USERRA?		
Response Options	FY 2003	FY 2004
Yes	1	0
No	4	3
Do not recall	1	0
Never employed by a federal agency	0	0

2. Did you obtain the result that you wanted from OSC?		
Response options	FY 2003	FY 2004
Yes	1	1
No	5	2

3. What reason did OSC give for closing your USERRA case? (Check all that apply.)		
Response options	FY 2003	FY 2004
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	2	0
You declined corrective action offered by the agency involved	3	1
Insufficient evidence that the personnel action involved in your complaint violated USERRA	0	0
You or OSC settled the matter with the agency involved	0	0
You withdrew your complaint	0	0
Other	3	0
Do not recall	0	1

4. Did you file a USERRA appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?		
Response options	FY 2003	FY 2004
Yes	1	0
No	2	0
Do not recall	2	2

5. Did you ask for the same relief that you sought from OSC?		
Response options	FY 2003	FY 2004
Yes	0	0
No	1	0
Do not recall	0	0

6. Were you successful at the MSPB in obtaining the same result that you sought from OSC?		
Response options	FY 2003	FY 2004
Yes	0	0
Partially	0	0
No	0	0
Appeal pending	0	0

7. If the answer to previous question was “Yes” or “Partially,” how did you obtain that result?		
Response options	FY 2003	FY 2004
Settlement	0	0
Decision after hearing	0	0
other	0	0

Appendix E

ACRONYMS

ADR	Alternative Dispute Resolution
ALJ	Administrative Law Judge
CEU	Complaints Examining Unit
CY	Calendar Year
DOL	Department Of Labor
DOT	Department of Transportation
DU	Disclosure Unit
FAA	Federal Aviation Administration
FY	Fiscal Year
HA	Hatch Act
HAU	Hatch Act Unit
IPD	Investigation and Prosecution Division
MSPB	Merit Systems Protection Board
OIG	Office of Inspector General
OSC	Office of Special Counsel
PPP	Prohibited Personnel Practice
SPU	Special Projects Unit
SSA	Social Security Administration
USC	Unites States Code
USERRA	Uniformed Services Employment and Reemployment Rights Act
VETS	Veterans Employment and Training Services
WPA	Whistleblower Protection Act

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 various 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 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.

¹¹ 5 U.S.C. § 1213(a).

¹² 5 U.S.C. § 1213(c)-(e).

¹³ 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.

¹⁴ 5 C.F.R. § 1800.1.

U.S. Office of Special Counsel

**1730 M Street, N.W., Suite 218
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202-254-3600**

or

1-800-872-9855

The U.S. Office of Special Counsel (OSC) is an independent investigative and prosecutorial agency and operates as a secure channel for disclosures of whistleblower complaints and abuse of authority. Its primary mission is to safeguard the merit system by protecting Federal employees and applicants from prohibited personnel practices, especially retaliation for whistleblowing. OSC also has jurisdiction over the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act.

Internet Web Site:

www.osc.gov