



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

July 31, 2012

The President  
The White House  
Washington, D.C. 20500

Re: OSC File No. DI-11-3431

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find an agency report based on disclosures made by a whistleblower at the Department of Defense (DoD), Defense Commissary Agency (DeCA), Fort Myer Commissary, Fort Myer, Virginia. The whistleblower, Mr. Fred Bey, who consented to the release of his name, is a Meat Cutter at the Fort Myer Commissary. He alleged that he observed a co-worker selling illegal narcotics out of his Commissary locker at Fort Myer on several occasions. Mr. Bey also alleged that another Commissary employee stored a gun and ammunition in his locker, and that management failed to take action after being notified of these situations.

Mr. Bey's allegations were referred to the Honorable Leon E. Panetta, Secretary, DoD, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Panetta delegated responsibility for conducting the investigation to the DoD Office of the Inspector General. I received a report of the investigation on February 16, 2012. Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Bey was offered the opportunity to comment on the findings of the Secretary's office, but declined to do so.

Mr. Bey alleged that he observed Mr. Cornelius (Neal) Jones, also an employee at Fort Myer Commissary, storing marijuana in his Commissary locker and from there selling it to others. He also alleged that he observed Mr. Damian Lofton, another employee, in possession of a 9mm handgun in the Commissary locker room. Mr. Bey disclosed that although management was required to conduct security inspections of the locker room, no inspections had been done since the beginning of his employment with DeCA approximately five years ago. Mr. Bey further claimed that members of management at DeCA took no action after he brought his allegations directly to them.

The DoD's investigation did not substantiate Mr. Bey's allegations. First, the U.S. Army Criminal Investigation Command (CID) found no evidence to substantiate Mr. Bey's claim that he had seen Mr. Jones either selling marijuana from his locker or storing it inside the locker. Investigators discovered that the Military Police (MP) had already subjected Mr. Jones to a K-9 search of his locker in response to a previous allegation of drug possession by Mr. Bey in July 2011. This search and investigation resulted in no finding of

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inappropriate or illegal conduct. Mr. Jones was interviewed by CID in the instant matter and consented to a search of his locker, which resulted in no finding of illegal contraband. In addition, the investigation found no evidence of inappropriate conduct. Thus, CID was not able to find any evidence to substantiate the claim that Mr. Jones had been selling marijuana from his locker at DeCA, Fort Myer.

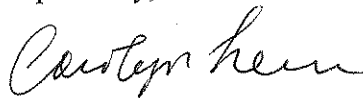
Regarding the allegations made against Mr. Lofton, CID was unable to find any evidence substantiating Mr. Bey's account. Mr. Lofton has been employed by DeCA for more than twenty years, and when interviewed, told CID investigators that he did not even own a firearm. Mr. Lofton consented to a search of his locker and personal belongings, and this search resulted in no finding of illegal contraband. In addition, the investigation found no evidence of inappropriate conduct.

In addition, CID investigators spoke to the Kennel Master of the Military Working Dog Section of the MP, and were able to verify their findings. The Kennel Master revealed that the Fort Myer Commissary is routinely subjected to searches by canines trained to detect drugs and explosives, and that none of the canines gave any indication to investigators that there was illegal contraband in the locker room on any occasion.

I have reviewed the original disclosure, and the agency's report. Based on that review, I have determined that the agency's report contains all of the information required by statute, and the findings appear to be reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency's report to the Chairmen and Ranking Members of the Senate and House Committees on Armed Services. I have also filed copies of the report, as revised by the DoD to include only employees' titles<sup>1</sup> in our public file, which is now available online at [www.osc.gov](http://www.osc.gov). This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosure

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<sup>1</sup>The DoD provided OSC with a report containing employee names (enclosed), and a redacted report in which employees' names were removed. The DoD cited Exemptions 6 and 7(C) of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(6)) as the basis for its redactions to the report produced in response to 5 U.S.C. § 1213, and requested that OSC post the redacted version of the report in our public file. OSC objects to the DoD's use of FOIA to remove these names because under FOIA, such withholding of information is discretionary, not mandatory, and therefore does not fit within the exceptions to disclosure under 5 U.S.C. § 1219(b).