



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

August 2, 2012

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

Re: OSC File No. DI-11-2120

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find an agency report substantiating in part disclosures made by a whistleblower alleging that a contract employee at the Department of the Navy (Navy), Commander Naval Installation Command, Pay and Personnel Support Center, Personnel Support Detachment Afloat West (PSD-AW), San Diego, California, engaged in conduct that constituted violations of law, rule, or regulation and an abuse of authority. Tameron W. Hodges, who consented to the release of her name, is a Human Resources Assistant at the Navy. Mrs. Hodges disclosed that Navy contractor Lolito "Dustin" L. Luna was operating a tax preparation business in his official capacity as a PSD-AW Auditor, while on duty and using government resources. She further asserted that Mr. Luna's business targeted veterans and purported to offer a Veteran's Tax Package, which allowed qualified taxpayers to receive an additional tax refund.

Mrs. Hodges's allegations were referred to the Honorable Ray Mabus, Secretary, Navy, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). The Secretary delegated the investigation of the matter to the Naval Inspector General (NAVINSGEN). On October 27, 2011, the Secretary submitted the agency's report to this office. Mrs. Hodges declined to provide comments. As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the report to you.

The allegations at issue were substantiated in part. In its investigation, NAVINSGEN concluded that Mr. Luna used his government-assigned computer during work hours to advance his tax preparation business. The evidence established that Mr. Luna violated the conditions of use of the government computer to which he had agreed and been trained to understand, as well as his employer's internal work rules intended to prevent misuses of government resources. Furthermore, contract employees are required to complete a form certifying that they shall not put "Navy IT resources to uses that would reflect adversely on the Navy (such as uses involving [gap] unofficial advertising, soliciting or selling . . .)." However, NAVINSGEN did not find evidence that Mr. Luna used his position at PSD-AW in a coercive or misleading manner toward veterans. In addition, the evidence was

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insufficient to conclude that Mr. Luna was not meeting the work performance requirements of the contract because of his misconduct.

As a result of these determinations, the Navy asked Mr. Luna's contracting employer, Alutiiq Joint Venture of Chesapeake, Virginia, to terminate Mr. Luna's employment at PSD-AW. The contractor complied and Mr. Luna's termination was effective July 22, 2011. In addition, NAVINSGEN referred the allegation that Mr. Luna's tax preparation business was in violation of Internal Revenue Service regulations to the Department of Treasury Office of Inspector General.

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 unredacted report to the Chairmen and Ranking Members of the Senate Committee on Armed Services and the House Committee on Armed Services. I have also filed copies of the redacted report in our public file, which is now available online at [www.osc.gov](http://www.osc.gov). The redacted report identifies Navy employees (other than Mrs. Hodges and Mr. Luna) and witnesses by title only.<sup>1</sup> OSC has now closed this file.

Respectfully,



Carolyn N. Lerner

Enclosure

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<sup>1</sup> The Navy provided OSC with a redacted report, which substituted titles for the names of Navy employees and witnesses referenced therein. The Navy cited the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) and the Freedom of Information Act (FOIA) (5 U.S.C. § 552) as the basis for these revisions to the report produced in response to 5 U.S.C. § 1213. OSC objects to the Navy's use of the Privacy Act and FOIA to remove the names of these individuals on the basis that the application of the Privacy Act and FOIA in this manner is overly broad.