



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

August 9, 2012

The President
The White House
Washington, DC 20500

Re: OSC File No. DI-10-1952

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find an agency report based on a disclosure from an employee of the U.S. Department of the Army, Anniston Army Depot (ANAD), Anniston, Alabama. The whistleblower, who requested anonymity, alleged that ANAD employees violated Army Regulation (AR) 190-56 regarding the duties and training of Department of the Army Civilian Police and Security Guards (DACP/SG) and by authorizing Security Guards to wear uniforms identifying them as police rather than as guards.

The whistleblower's allegations were referred to the Honorable John M. McHugh, Secretary of the Army, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d) on June 29, 2010. Secretary McHugh delegated authority to respond to OSC's request for investigation to Thomas R. Lamont, Assistant Secretary of the Army. On September 9, 2011, Assistant Secretary Lamont submitted his report based on the results of an investigation conducted by U.S. Army TAMCOM Life Cycle Management Command. The whistleblower was given the opportunity to review the report but declined to comment. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the report to you.

The agency report concluded that the whistleblower's allegation that the division of work assignments between Security Guards and Police Officers violates AR 190-56 was not substantiated. The report partially substantiated the whistleblower's allegation that ANAD does not properly train its newly-hired Police Officers based on a finding that ANAD experienced a 17-month delay in implementing its Field Training Program (FTP). Finally, the report substantiated the whistleblower's allegation that ANAD Security Guards wear uniforms identifying them as police rather than as guards in violation of AR 190-56. Based on my review of the original disclosure and the agency's report, I have determined that the report contains all of the information required by statute and that the findings appear to be reasonable.

I. Improper Assignment of Law Enforcement Responsibilities

The whistleblower disclosed that ANAD's Director of Emergency Services (DES) Jay Johnson and Deputy DES Robert Ray violated AR 190-56 by assigning the majority of ANAD's law enforcement work to Security Guards, while Police Officers were primarily tasked with performing protective services, including guarding buildings and property and controlling access to ANAD. The agency report concluded that the whistleblower's allegation that the division of work assignments between Security Guards and Police Officers violates AR 190-56 was not substantiated. According to the report, AR 190-56 does not limit or stipulate the assignment of day-to-day duties of Security Guards and Police Officers, as those duties are governed by job descriptions and Office of Personnel Management (OPM) guidance. Because the applicable OPM classification standards allow for significant overlap in duties performed by Security Guards and Police Officers, the assignment of day-to-day tasks, which the report concluded appear to be assigned irrespective of whether an employee is a Security Guard or Police Officer, did not violate OPM standards or applicable job descriptions. The report further found that because of this overlap in allowable duties, as well as the fact that over 71% of the total force is comprised of Security Guards, it is "not surprising" that Security Guards have performed more law enforcement duties.

Notwithstanding this finding, the report identified a weakness in ANAD's review of its security mission. The report concluded that, although it is possible that all of ANAD's Emergency Services jobs are properly classified, there is no documented evidence indicating that the jobs, prior to classification, were properly reviewed by a trained classifier. According to the report, the lack of documentation of a proper analysis by a classifier has led to complaints such as the one which gave rise to the disclosure to OSC. The report determined, therefore, that corrective action will be taken to address this problem and that a "meaningful and deliberate" review of ANAD's security mission will be conducted to ensure a match of duty assignments and primary function with OPM classification standards.

II. Failure to Implement a Field Training Program

The whistleblower further alleged that ANAD does not have a FTP for newly-hired Police Officers in violation of AR 190-56. The whistleblower asserted that the only training provided to newly-hired Police Officers who have successfully graduated from a police academy is having them accompany a Security Guard on a "ride along," which consists of going on patrol for one or two days. According to the whistleblower, this "ride-along" does not constitute a FTP as required by AR 190-56.

The report partially substantiated the whistleblower's allegation. According to the report, ANAD experienced a delay in implementing the FTP from March 2009 until August 2010 because ANAD did not have a senior Police Officer on staff who could serve as a Field Training Officer (FTO) as required by the 2006 version of AR 190-56. In 2009, AR 190-56's requirement that FTOs for Police Officers be in the same career field (i.e. Police Officer) was revised to permit "senior personnel" to act as FTOs. As a result of this revision,

effective July 6, 2010, ANAD DES designated the DES Lieutenants as FTOs and the first Police Officer to complete her academy training in March 2009 began her FTP in August 2010, a delay of almost 17 months. It was this 17-month delay that rendered the whistleblower's disclosure regarding the FTP partially substantiated.

The report notes that, contrary to the whistleblower's allegation that ANAD does not have a "formal" FTP, a published training plan has been in place since 2003. Pursuant to the plan, which the report indicates is reviewed and updated annually, DES provides 160 hours of training to all new DES Police Officer hires before they are sent to the USAMPS Police Academy at Fort Leonard Wood, Missouri. In response to the whistleblower's concern that more training should be required, the report noted that ". . . DES's Training Program is tailored and focused for trainees to complete security and law enforcement tasks relevant to ANAD" in accordance with AR 190-56 and that all DES Guards and Police Officers receive recurring training on a quarterly basis.

III. Misidentification of Security Guards and Police Officers

Finally, the whistleblower alleged that Director Johnson and Deputy Director Ray violated AR 190-56 by permitting Security Guards to wear uniforms identifying them as Police Officers. According to the whistleblower, as a result, both Police Officers and Security Guards wore the same uniform, displaying the word "Police" on their badges, hats, and shoulder insignia.

The report indicated that the whistleblower's allegation that ANAD Security Guards wear uniforms identifying them as police on their badges, hats, and shoulder insignias in violation of AR 190-56 was substantiated. As a result of this finding, the agency pledged to either seek a waiver that would permit Security Guards to wear the police insignia or, more likely, acquire the requisite insignia patches and pay to have the insignia affixed to the current uniform in place of the police insignia. The report further determined that, once affixed, Emergency Services personnel wearing the incorrect insignias will be in violation of AR 190-56.

IV. Findings

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

The Special Counsel
The President
August 9, 2012
Page 4

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency report to the Chairman and Ranking Member of the House Armed Services Committee and the Chairman and Ranking Member of the Senate Committee on Armed Services. I have also filed a copy of the report in our public file, which is now available online at www.osc.gov, and closed the matter.

Respectfully,

A handwritten signature in cursive script, appearing to read "Carolyn Lerner".

Carolyn N. Lerner
Special Counsel

Enclosure