



U.S. OFFICE OF SPECIAL COUNSEL

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

The Special Counsel

December 20, 2012

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

Re: OSC File No. DI-12-0886

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 Veterans Affairs (VA), VA Medical Center (VAMC) Police Service, Canandaigua, New York. The whistleblower, Anthony Comuso, who consented to the release of his name, is a Police Officer at Bath VAMC in Bath, New York. He alleged that he was directed by Lawrence Schuermann, Jr., Chief of the Police Service at Canandaigua and Bath VAMCs, to issue Personal Identity Verification (PIV) cards improperly.

**The agency report did not substantiate Mr. Comuso's allegations regarding the improper issuance of PIV cards. However, the agency did find that the Bath VAMC lacked a standard policy governing the retention of employee PIV training records. The report stated that the Bath VAMC was not in compliance with regulatory requirements regarding such records. Based upon my review of the original disclosure and the agency's reports, I have determined that the reports contain all of the information required by statute and that the findings appear to be reasonable.**

The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c).

Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

Mr. Comuso's allegations were referred to the Honorable Eric K. Shinseki, Secretary, VA, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). The matter was then referred

The President  
December 20, 2012  
Page 2

by the Under Secretary for Health to Veterans Integrated Service Network 2 and the Bath VAMC for investigation, and an Administrative Investigation Board (AIB) was convened to carry out the investigation. On June 14, 2012, the Secretary submitted the agency's report to this office. Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Comuso was offered the opportunity to comment on the findings of the Secretary's office, but declined to do so. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the report to you.

Mr. Comuso alleged that Chief Schuermann directed him to issue PIV cards and enter required employee information into the VA PIV computer prior to completion of his own background check or PIV card issuance. Furthermore, Mr. Comuso explained that he was assigned the dual tasks of entering PIV information and issuing PIV cards, which he alleged are required by regulation to be mutually exclusive of each other. Mr. Comuso further alleged that he did not receive the training required to undertake PIV related duties. Finally, Mr. Comuso alleged that Chief Schuermann directed that Mr. Comuso's employee information be entered into the VA's and Department of Justice's computer systems under a false badge number in order to enable Mr. Comuso to issue these PIV cards.

**I. Failure to Complete Whistleblower Background Check Prior to Authorization to Issue PIV Cards**

Mr. Comuso explained that he was hired as a police officer at the Bath VAMC in May 2010, and completed training at the Federal Law Enforcement Training Center in July 2010. However, Mr. Comuso did not receive a badge or identification card at this time because his security clearance and background investigation were not yet completed. While Mr. Comuso awaited the completion of those processes, he was assigned by Chief Schuermann to an office detail, as he was not yet authorized to carry a weapon or assume the responsibilities of a full police officer. Mr. Comuso alleges that after this assignment, he was approached by Assistant Chief Frank Judd and was told that Chief Schuermann had authorized Mr. Comuso to enter employee PIV information and issue PIV cards to VA employees and contractors. Mr. Comuso alleged that he performed these duties for approximately two months beginning in July 2012, issuing between 20-30 PIV cards. Mr. Comuso explained that he performed the majority of these tasks before being interviewed by a background investigator in August, and alleged that this was inappropriate.

The agency did not substantiate this allegation. The AIB found that, at the time the allegations occurred, there were no clear instructions on whether an individual responsible for issuing PIV cards must have first completed a favorable background investigation. However, the report notes that the VA's current PIV training website requires prior completion of a favorable background check for PIV Registrars and Issuers. The report does not indicate whether this requirement, as listed on the training website, was in place at the time of the allegations, but notes that at the time of the investigation, the Bath VAMC was not aware that such a requirement was in place. The report states that the facility is now aware of the requirement, and all employees with active PIV roles have had the appropriate background investigation prior to their PIV assignments.

The President

December 20, 2012

Page 3

The report also notes that, according to a review of Mr. Comuso's background check documentation, his initial background check was closed and favorably adjudicated in June 2010. The additional background check required for police officers, and not necessary to meet the PIV issuance requirement, was completed in October 2010, and favorably adjudicated in November 2010. The agency's review of the PIV enrollment portal report indicated that Mr. Comuso was involved in the PIV process in October and November 2010, after his initial background check was completed and closed. The report thus found that Mr. Comuso was not performing PIV duties prior to completion of the required background check.

## **II. Improper Assignment of Two PIV Roles to the Same Individual**

Citing FIPS PUB 201-1, App. A.1. 1. 1, Mr. Comuso alleged that in order to issue a PIV card, several critical roles (Applicant, Sponsor, Registrar, and Issuer) must be filled to ensure the integrity of the identity proofing and registration process. Additionally, it states that no individual shall hold any more than one of these roles during the proofing and registration process. However, Mr. Comuso alleged that he was assigned to the tasks of both entering PIV information and issuing PIV cards in violation of FIPS PUB 201-1.

The agency found that there was no evidence of wrongdoing in assigning Mr. Comuso to the duties in question. Rather, in reviewing the PIV enrollment portal report, the AIB found that Mr. Comuso was assigned to more than one PIV role, but not for the same card applicant. FIPS 201-1 does not preclude an individual from serving in two different PIV roles, as long as they are performed at different times and not for the same applicant. Therefore, this allegation was not substantiated.

## **III. Failure to Administer Required Training Prior to Assignment of PIV Responsibilities**

Further, Mr. Comuso alleged that he received no standard training on the issuance of PIV cards before being assigned to the task by Chief Schuermann. VA Directive 0735 requires that individuals must complete training prior to fulfilling PIV issuance roles. However, the agency was unable to substantiate this allegation, because in the course of its investigation, the AIB learned that the Bath VAMC shredded Mr. Comuso's training records when he was reassigned to the Canandaigua VAMC. The AIB learned that this was standard practice at the Bath VAMC. The report notes that this is noncompliant with both Records Control Schedule (RCS) 10-1, Item 25, and General Records Schedule, Item 29a(1), which require that training records be retained for five years, regardless of whether the employee leaves employment.

In addition, the AIB received differing testimony as to whether Mr. Comuso actually received the required PIV training. The Security Assistants interviewed testified that they recalled Mr. Comuso receiving the training and taking the associated test, and noted that he would not have received PIV issuance privileges unless he completed and submitted the test and it was graded by Chief Schuermann. However, Mr. Comuso alleged that he had received no such training and never taken a test. The AIB reviewed existing training records, and in combination with the testimony of the Security Assistants, determined that the Bath VAMC has a pattern of

The President

December 20, 2012

Page 4

providing appropriate training to employees prior to issuing PIV privileges. Thus, the agency acknowledged the differing testimony it received, but found the testimony of the Security Assistants more credible. However, the agency did recommend that the Bath VAMC develop a standard policy for maintenance and retention of PIV training records in compliance with RS 10-1 and General Records Schedule 29a(1).

**IV. Fraudulent Use of a False Badge Number**

Finally, Mr. Comuso alleged that Chief Schuermann directed Assistant Chief Judd to use a false badge number in order to register Mr. Comuso in the Department of Justice computer system. The AIB's investigation did not identify any employee who had witnessed the sharing of information relevant to PIV issuance, and the report notes that the PIV office layout would allow witnesses to observe such actions. Further, in his interview, Mr. Comuso indicated that Assistant Chief Judd did not provide Mr. Comuso with an access code. Rather, Chief Judd would sign himself in using his own access code, instruct Mr. Comuso on the necessary steps to be taken, review Mr. Comuso's work, and then digitally sign and release the completed PIV action. Thus, the agency was not able to substantiate this allegation.

**V. Findings**

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 Chairs and Ranking Members of the Senate and House Committees on Veterans' Affairs. 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).<sup>1</sup> This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosure

---

<sup>1</sup>The VA provided OSC with a report containing employee names (enclosed), and a redacted report in which employees' names were removed. The VA cited Exemptions 6 and 7(C) of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(6)) and various case law 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 VA'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), but has agreed to post the redacted version as an accommodation.