



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

The Special Counsel

December 4, 2012

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

Re: OSC File No. DI-12-0623

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find an agency report based on a disclosure made by a whistleblower at the Department of the Air Force (Air Force), 50th Civil Engineering Squadron, Schriever Air Force Base, Colorado, alleging that employees engaged in conduct that may constitute violations of law, rule, or regulation. Keith D. Anderson, who consented to the release of his name, is a Utility Systems Operator in the 50th Civil Engineering Squadron. Mr. Anderson disclosed that John Paulson, former Utility Systems Supervisor, and other employees failed to properly safeguard and dispose of information containing sensitive personally identifiable information (PII).

Mr. Anderson's allegations were substantiated. The agency found that the documents discovered by Mr. Anderson were improperly discarded. It also concluded that Mr. Paulson and agency employees violated 5 U.S.C. § 552a(b), DoD 5400.11-R § C1.4.3.1, and AFI 33-332 § 9.5.1. In addition, it was determined that Mr. Paulson and agency employees were not up to date on their training in violation of AFI 33-332 §§ 1.1.9.10 and 11.1.

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) and (g).

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

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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. Anderson's allegations were referred to the Honorable Michael B. Donley, Secretary, Air Force, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). The investigation of the matter was delegated to the Inspector General of Headquarters Air Force Space Command (AFSC), who appointed an investigating officer to conduct an investigation into Mr. Anderson's allegations. On April 30, 2012, the Secretary submitted the agency's report to this office. On July 5, 2012, Mr. Anderson provided comments on the report pursuant to 5 U.S.C. § 1213(e)(1). As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the report and Mr. Anderson's comments to you.

In his disclosure, Mr. Anderson alleged that employees failed to follow appropriate procedures for safeguarding and disposing of PII, thus placing employees and other members of the public at risk. Specifically, Mr. Anderson discovered four instances where documents containing PII were placed in the trash in violation of Air Force policies and other provisions. The documents contained over 200 pages of sensitive information, including a credit card attached to a document, pin numbers, home addresses, numerous Social Security numbers with corresponding names and other PII.

In its investigation, the AFSC determined that the documents found by Mr. Anderson in all four instances were discarded in the same manner as regular trash by Mr. Paulson and other employees. It was concluded that Mr. Paulson violated 5 U.S.C. § 552a(b) for disclosing records which are contained in a system of records; and DoD 5400.11-R § C1.4.3.1 and AFI 33-332 § 9.5.1 for failing to render personal data unrecognizable or beyond reconstruction prior to discarding employee PII. In addition, AFSC found that these provisions were also violated by one or more employees for disclosing records that are contained in a system of records, and for failing to render personal data unrecognizable or beyond reconstruction prior to discarding employee PII. The investigation further uncovered that Mr. Paulson had not completed his PII training since January 28, 2009. Furthermore, about nine percent of employees were not up to date on their training. Consequently, it was concluded that there was an apparent violation of AFI 33-332 §§ 1.1.9.10 and 11.1 by Mr. Paulson and other employees for failing to complete specialized training annually.

As a result of the investigation, the 50th Space Wing (50 SW) Commander directed that all individuals whose PII was potentially compromised be notified of the issue in accordance with Air Force policy. The Air Force asserted that all reasonable steps were taken to contact those individuals, and notification to all affected individuals who were located has been accomplished.¹ On April 20, 2012 the Command FOIA/Privacy Act Manager from the Air

¹ The Air Force informed our office that while most identified persons have been located and notified of the issue, some individuals who are not affiliated with the Air Force have not been located despite all reasonable attempts.

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Force Space Command conducted a staff assistance visit to measure the effectiveness of the unit's program and assist leadership in accomplishing the mission. The Commander also directed agency personnel to receive targeted remedial Privacy Act compliance training. In addition, agency personnel were required to re-accomplish the annual computer-based training. Among other actions, the base records manager was instructed to provide training to personnel on proper records management. These additional training requirements were completed by May 1, 2012. Furthermore, an audit of the unit's records was completed by July 2012. Mr. Paulson was not disciplined because he retired prior to the start of the investigation.

In his comments, Mr. Anderson conveyed his dissatisfaction with the Air Force's history of responding to potential PII breaches. In particular, Mr. Anderson referred to a breach he reported in 2009, when Social Security numbers were mistakenly sent via e-mail. Mr. Anderson asserted his belief that the subsequent breaches he reported to OSC in this disclosure might not have occurred if the Air Force had taken appropriate remedial actions regarding the 2009 incident. Although the agency implemented measures to ensure all recipients deleted the e-mail, Mr. Anderson contended that Air Force policies required additional action. Furthermore, Mr. Anderson stated that he decided to report these subsequent instances to OSC, rather than the Air Force, because he was displeased with the Air Force's response to the 2009 incident. Finally, Mr. Anderson reported to OSC that while he is satisfied with the actions taken in response to the current incidents, he believes that the actions will only be effective if the individuals charged with handling sensitive information act in accordance with their training and the governing regulations.

I have reviewed the original disclosure, the agency's report, and Mr. Anderson's comments. 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 and Mr. Anderson's comments 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 agency report, and Mr. Anderson's comments in our public file, which is now available online at www.osc.gov. The redacted report identifies Air Force

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employees, other than Mr. Anderson, and other individuals by title.² OSC has now closed this file.

Respectfully,

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

Carolyn N. Lerner

Enclosures

² The Air Force provided OSC with a redacted report, which substituted titles for the names of Air Force employees and other individuals referenced therein. The Air Force cited the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) as the basis for these revisions to the report produced in response to 5 U.S.C. § 1213. OSC objects to the Air Force's use of the FOIA and Privacy Act to remove the names of these individuals on the basis that the application of the FOIA and Privacy Act in this manner is overly broad.