



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

October 22, 2024

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: OSC File No. DI-24-001615
Referral for Investigation--5 U.S.C. § 1213(c)

Dear Attorney General Garland:

I am referring to you for investigation a whistleblower disclosure that officials at the U.S. Department of Justice (DOJ), Federal Bureau of Prisons (BOP), Federal Correctional Institution Beckley (FCI Beckley), Beaver, West Virginia, engaged in actions that constitute a violation of law, rule, or regulation. A report of your investigation of these allegations and any related matters is due to the Office of Special Counsel (OSC) on December 23, 2024.

The whistleblower, [REDACTED], Correctional Counselor, who consented to the release of his name, alleged that FCI Beckley officials are violating the Federal Prison Oversight Act of 2024 by assigning non-custody officers to correctional officer posts for more hours than permitted each week under the statute. The allegations to be investigated include:

- FCI Beckley officials are violating the Federal Prison Oversight Act; and
- Any additional, related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

[REDACTED] explained that due to chronic understaffing of correctional officers, FCI Beckley officials assign him and other non-custody officers¹ to mission critical correctional officer posts on a routine basis. This is a BOP practice known as augmentation. While augmentation is authorized throughout the BOP, [REDACTED] explained FCI Beckley non-custody officers are assigned to or authorized to work overtime² or compensatory time multiple times per week to fill correctional officer posts. As a

¹ Non-custody officers also include, but are not limited to, employee positions such as chaplains, electricians, nurses, and psychologists.

² Additionally, we note that the usage of overtime to fill correctional officer posts may be an excessive cost to taxpayers. For example, [REDACTED] provided information showing that one FCI Beckley non-custody officer worked at least 46 hours of overtime in a one-week period, while another non-custody officer worked at least 56 hours of

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result, non-custody officers spend less than 90 percent of their work weeks in their primary positions in violation of the Federal Prison Oversight Act.³ ██████ further asserts that FCI Beckley's usage of augmentation prevents non-custody officers from performing their normal duties, which includes implementing certain BOP programs, such as those required by the First Step Act.⁴ ██████ stated that these programs are also mission critical because they are designed to ensure that inmates have the skills necessary to successfully re-enter society upon release.

I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation. Please note that specific allegations and references to specific violations of law, rule or regulation are not intended to be exclusive. As previously noted, your agency must conduct an investigation of these matters, and I will review the report for sufficiency and reasonableness before sending copies of the agency report along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Services/Pages/DU-Resources.aspx>. If your investigators have questions regarding the statutory process or the report required under 5 U.S.C. §1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or cmcmullen@osc.gov for assistance. I am also available for any questions you may have.

Sincerely,



Hampton Dellinger
Special Counsel

Enclosure

cc: The Honorable Michael E. Horowitz, Inspector General

overtime in a three-week period. See Oral Statement of Director Collete S. Peters, House Judiciary Committee, Subcommittee on Crime and Federal Government Surveillance (dated July 23, 2024) (stating, "[O]ur staffing crisis is very expensive as we rely on overtime, augmentation and incentives to keep our prisons operational. [In 2023], we paid more than \$128 million in incentives and more than \$345 million in overtime.").

³ Federal Prison Oversight Act, Pub. L. No. 118-71, §2(c), 138 Stat. 1501-1502 (2004) (stating "[o]n and after the effective date of this Act, the Bureau of Prisons shall implement the directive in the second sentence on the topic 'Augmentation' in the matter under the heading 'SALARIES AND EXPENSES' under the head 'FEDERAL PRISON SYSTEM' in the joint explanatory statement accompanying Public Law 117-238."). See also Staff of H.R. Comm. on Appropriations on H.R. 2617/Pub. L. 117-328, 117th Cong., Legislative Text and Explanatory Statement 296-297 (Comm. Print 2023) (stating "Augmentation. - ... In addition, BOP is directed to ensure that non-custody correctional employees must spend 90 percent of their work week in their primary positions.").

⁴ First Step Act of 2018, Pub. L. 115-391, 132 Stat. 5194 (2018).

APPENDIX

AGENCY REPORTS UNDER 5 U.S.C. § 1213

GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- The statute provides that the agency report shall be reviewed and signed by the agency head. 5 U.S.C. § 1213(d). Agencies should fulfill this Congressional mandate.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/Pages/Resources-PublicFiles.aspx>. Please refer to our file number in any correspondence on this matter.

RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. 5 U.S.C. §§ 1213(f), 1219(a)(1).