



The Special Counsel

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

February 14, 2005

The Honorable Henry Waxman
Ranking Member
Government Reform Committee
United States House of Representatives
Washington, D.C. 20515-6250

Dear Representative Waxman:

This letter is a follow-up response to my previous correspondence concerning your and Rep. Danny Davis' January 26, 2005, letter regarding the Office of Special Counsel's (OSC) reorganization plan.

I share with you a 100 percent commitment to protecting federal whistleblowers, the merit system principles, and bringing justice to the federal workforce. These ideals can only be served by reducing the historic backlog in this Agency that I inherited. These backlogs serve only to impede employees' ability to secure justice in a timely manner. My recent reorganization is dedicated to the above-stated goals. Indeed, given the widespread press about these historic backlogs and the GAO report launched before I assumed office, it is indeed ironic that we are now being subjected to such scrutiny for having addressed the backlog, studied the source of the problems, and embodied a creative and long-lasting strategic solution to the problem that will redound to the credit of the federal workforce for years to come.¹

Please know that I am fully compassionate and understanding of the personal burden that reassignments and reorganizations place on individuals. We are trying to minimize each burden to the extent equity, law, and efficiency allow. Of course, I was guided by the dual goals of fairness to all employees and the demands of changing a moribund system that had hampered efforts at securing justice for complainants and providing a source of public trust for all to see.

A review of the steps I have taken will place all that has occurred in the last month in perspective, I hope, and dispel the suspicions and unfounded accusations.

Backlog Reduction

Upon becoming the new Special Counsel, my publicly-stated pledge has been to give full and fair resolution to all cases, especially the unacceptably high number in a backlog. Of these, the greatest challenge was the nearly 700 pending whistleblower disclosure claims in our Disclosure

¹ Indeed, OSC is in the process of finishing a comprehensive response to the GAO report to tell Congress how we have addressed the long-standing problem of backlogs and inefficiency at OSC.

Unit (DU), over 500 prohibited personal practice (PPP) complaints, and over 200 Hatch Act complaints (not to mention the ever-increasing requests for advisory opinions in an historic presidential election cycle). Soon after I arrived at OSC, I created a new Special Projects Unit (SPU) devoted to resolving these older cases and studying how to avoid such backlogs in the future.

I have kept my pledge to Congress and federal employees, and am pleased to report that we have made tremendous progress in our first year. In January 2005, the backlog was reduced to approximately 100 cases, 30 cases, and 40 cases respectively in those three units.² I can state without equivocation that this past year's backlog reduction efforts far surpass any undertaken in the past by this agency.

The talented career staff of OSC performed heroically by rotating in and out of the SPU to help address the persistent backlogs and fairly resolve these claims or refer them for further investigation and prosecution. During the SPU process we have doubled historic referral rates for meritorious cases to the investigation and prosecution unit. I value my experienced employees' input and leadership, which was and is essential to eliminating the backlogs and implementing permanent solutions to make the Agency more efficient and prevent future backlogs. The credit belongs to these dedicated and mission-driven individuals who welcomed the challenge that had never been presented to them in the past.

In addition to the above, I created an Employee Advisory Committee where I meet regularly with employee reps and go over their concerns and ideas, which have led to some internal policy changes and creative solutions to agency concerns nationwide.

In regards to personnel and contractual matters, I have been in full compliance with all civil service laws, rule and regulations, including the Federal Acquisition Regulations (FAR). My able career Legal Counsel and Policy division (LCPL) provides expert advice on all of these issues, and each decision is vetted by our Human Resources Division for compliance with all personnel regulations. Finally, these decisions have been reviewed by the Bureau of Public Debt (BPD), an outside arm of Treasury, who sign and implement our major contract and purchasing orders to assure maximum compliance. Moreover, I have reinstated an old hiring policy from previous Special Counsel's concerning attorney recruitment efforts for "Schedule A" attorney positions.

I also hired an intermittent federal employee under 5 U.S.C. §3109 and 5 C.F.R. §304.103. Intermittent consultants hired under this statute are not contractors as has been alleged. Further, the services of this consultant were clearly directed at helping improve our procedural operations and advice on training initiatives, contrary to the allegation that he was hired for "unspecified services." I believe the insinuations about the "boarding-school headmaster" are both irrelevant and unworthy of professional discourse.

Please know speculation and suspicion regarding the reorganization and hiring practices is without merit. Indeed, our hires since coming to OSC have been with the input of senior personnel

² A less pressing but no less significant issue was a backlog of FOIA cases that were causing us to be unable to get to FOIA claims within a timely manner, which was a result of attrition of employees and our statutory requirements to place DU and PPP cases ahead of FOIA claims. We have cut our FOIA backlog in the last few months in half and are making significant progress toward their elimination in the next six months.

in the career service and include high praise for the performance of such individuals. These individuals include persons from six different ABA accredited national law schools. They comprise four African-Americans, four women, one Hispanic woman, and a disabled Arab-American – a very talented and diverse population of which any agency would be proud. We have openly conducted outreach to wounded veterans to seek their applications to our office on several occasions.

Agency Reorganization

As you know, under my authority found in 5 U.S.C. §1211, I announced an Agency reorganization plan in early January 2005. The reorganization was needed to ensure no future case backlogs would occur and to create internally consistent procedures. I consulted with all the senior management as well as my staff repeatedly throughout the past year. While there was discussion and debate of legal and other issues, at no time did employees express specific concerns to me about policies or procedures that I can recall.

Last year, we hired an independent professional firm to conduct an Agency-wide assessment and make recommendations. These consultants, who work frequently with federal agencies, are listed on the GSA schedule. After looking at several more expensive national firms, OSC hired the consulting firm to do a short term project, in full conformity with the FAR, and signed off on by our BPD contracting officer.

The assessment team had several points of emphasis. They conducted an investigation into the laws, rules and regulations for which OSC has responsibility and evaluated the processes and procedures used by OSC to administer those laws. They interviewed approximately 80% of OSC employees individually and also talked with all employees during numerous focus groups. All of this was done with the intent of giving OSC the best possible advice on how to restructure and manage this agency.

The assessment report was not the only source of information that I used to reorganize the agency. It was one tool among several. It was never my intent that the assessment report would have overriding authority and advice on how to manage and structure the agency. I knew there would be issues within the assessment report that I agreed with and some I would not. My decisions were made by using and consulting all sources of information afforded to me over the first year as the Special Counsel including my own personal discussions with staff and personal observations.

The overall paradigm, consistent with the mission of the Agency, was to delayer the current OSC organizational structure, "power down" from a DC-centric organization to a field office structure. This has worked well. Furthermore, I sought to keep valued employees in positions of leadership, and keep existing teams intact as much as possible, since they were working well together. Previously, there were three separate investigative and prosecution divisions (IPDs), each headed by SES, each with different procedures and policies. While the team approach worked well, the inconsistency among the divisions was not feasible. Under the new structure, there will be one IPD made up of four field offices.

The restructuring will also include a new field office in the upper Midwest for nation wide geographic representation. This has generated much interest and concern by some, but I assure you there is good reason for the new office. The management directed reassignment of specific

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employees to San Francisco (one SES), Dallas (4 employees) or Detroit (7 employees) is based on the precepts of strategic management of human capital. As you know, relocation is a fairly common practice in the federal workplace. In FY 2003, for example, 22,000 federal employees were relocated, according to a recent OMB report, as reported in GovExec.Com on January 27, 2005.

The field office format will result in more evenly distributed OSC investigations and prosecution resources throughout the nation with approximately 8-10 individuals in each field office and an even distribution geographically throughout the country. The upper Midwest was the only area without an OSC field office. In the 1980's, OSC had six different field offices.

We consulted with GSA about a Midwest field office. Chicago and other regional cities had no federal space available for at least a year and the Chicago space was very expensive. GSA mentioned that Detroit had federal space that was available immediately and required no refurbishing costs.

All of the employees that have been reassigned are valued investigators and prosecutors that will remain assigned to the IPD. The personnel assigned to Detroit are all part of the same existing IPD team. In fact, they are the only wholly existing IPD team, with SES leadership, that was intact at the time of the reorganization. The other members of this division had been previously detailed or reassigned in recent years. Further, the Alternative Dispute Resolution (ADR) employee was also part of this unit and worked closely with the unit's SES who was instrumental in developing the ADR program in recent years.

The individuals assigned to the Dallas office are primarily the remaining members of a unit that had been disbanded throughout 2004. Moving these employees to Dallas allowed us to keep other teams together. This way only one team was materially changed.

In no way were any of these employees "targeted" as has been alleged. Nor were they reassigned for any other improper purpose. The implication that these employees were reassigned because they "complained or disagreed" with managerial policies is absolutely false. I have no idea where this comes from. I have no knowledge of any reassigned employee having any particular disagreement with any OSC policy. In this vein, not a single employee, reassigned or not, has to my knowledge disagreed openly with agency policy. I have been unaware of any specific opposition of management by any one of the reassigned employees in San Francisco, Dallas or Detroit. These were valued employees of OSC.

When we announced the reorganization plan on January 7, 2005, the Human Resources director asked employees to indicate, within ten days, whether they chose to accept the reassignment so we could get the entire process started. The time frame was necessary to continue with the business of the Agency. Some concern was raised about the short initial time frame, so we ultimately extended the total time to 20 days.

You have also asked why we did not seek volunteers for the reassignments. This was not the management approach we wanted to take. We wanted to put the right people in the right job at the right time. We know the individual talents of our employees and we know where they can best serve this agency. Using an ad hoc, shot-gun approach would have drastically reduced the chances for success. Most significantly, the mix-match approach of soliciting volunteers would have destroyed

our management decision to send one intact, successfully operating team to start the new field office. Finally, it is highly doubtful we would have received more than one volunteer, as events after the fact have indicated.

Please keep in mind that the new field office is only one of many parts of the reorganization that will help OSC better meet our mission. We are preparing to change and implement new standard operating procedures (SOP's) for the administrative and substantive handling of cases. This is a large undertaking and can only be accomplished with strong leadership in the field to ensure that these changes actually occur and become the culture of OSC. At the same time, we will implement vigorous new training schedules that will cross-train personnel to work in other areas of the law. In the past, the lack of cross-trained personnel was a major impediment to resolving backlogs before they overwhelmed the agency. The new smaller modular field offices will be more easily trained and capable of addressing future backlogs. Placing senior leadership in the field offices was an integral part of successfully implementing these new SOPs and cross-training initiatives.

In addition, a new customer service unit will be created to better serve the public and federal employees. Having specific personnel assigned for this purpose will help OSC gain a reputation of better customer service within the federal workforce. Currently, this function is handled by rotating OSC investigators and attorneys for specific inquiries from the public and assistance with filing complaints and/or filling out forms.

Lastly, OSC has a full-time FOIA officer and we take these inquiries seriously. Unfortunately, there is also a backlog of FOIA requests that I inherited upon my arrival at OSC. We are working expeditiously to respond to all of them in the order they were received in compliance with the law.

Budget Issues

You also asked about budgeting for the new field office. OSC was facing a shortage of office space in Washington, D.C. The agency plans to have 113 FTE on board by the end of FY 2005, which requires acquiring additional rented space. Initial consideration was given to possible expansion of the Washington, D.C. office. The cost of a DC space expansion in the same building as the headquarters would have been higher in the first year, with escalations every year. Given the now-public budget cuts for FY06, management changed course on the more expensive DC-based office expansion.

When it became clear that there were a variety of reasons for a Midwest Field Office, and that the best solution was an office in Detroit, we analyzed the financial aspects of adding space in Detroit instead of acquiring space in the more expensive location of Washington, DC. The fact that these savings are recurring more than makes up for any one-time costs associated with the startup of a new field office.

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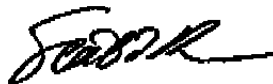
Contrary to your letter to GAO, there is no "possible" violation of any civil service law, rule or regulation. We targeted no specific employees, but instead we were guided by the goals of maximum fairness and efficiency of the service and strategic realignment of resources and human capital by delayering management, and making OSC less DC-centric, to achieve all of the goals stated in my directive. There is no evidence of any wrongdoing or failure to follow all applicable laws and regulations.

In an effort to deal with a chronic backlog and structural inefficiencies we have reassigned 12 persons. Given the expense in time and resources of an investigation for both GAO and OSC, we suggest that this letter provides answers to all questions you had. If you still want to know more, perhaps a staff briefing would be more prudent and useful.

Please be assured that we share the same goal of securing justice for all federal employees who come to the Office of Special Counsel expecting results. OSC exists to create a more efficient federal workforce, root out waste and abuse, and inspire integrity and public trust. I am quite proud of the job that our dedicated career staff has done in the last year.

I look forward to working with you and your colleagues to achieve this and more during my tenure.

Yours truly,



Scott J. Bloch