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Fielding, Fred - General Files

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Folder Title:

Office of Special Counsel Reports & Scott Bloch Issues [1]

Withdrawn/Redacted Material

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Letter	Re: OSC File No. HA-07-1741 - To: Edward Jurith - From: Amber Bell Vail	2	10/29/2007	P6/b6; b7c;
002	Report	Alleged Safety Violations at Naval Occupational Health...	117	07/12/2007	P3/b3; P6/b6; b7c;

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Fielding, Fred - General Files

FOLDER TITLE:

Office of Special Counsel Reports & Scott Bloch Issues [1]

FRC ID:

11293

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

Withdrawal Marker

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U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

March 15, 2002

Notice: OSC Policy on Legal Representation at OSC Interviews

Effective April 15, 2002, the Office of Special Counsel (OSC) will require that witnesses and subjects who choose to have legal representation at investigative interviews conducted by OSC investigators and attorneys complete an OSC Designation of Representation form. OSC will not permit legal counsel to be present at an OSC investigative interview without a signed form.

As you may know, historically OSC has permitted witnesses and subjects to have personal legal counsel present to provide advice and counsel during OSC investigative interviews. OSC designates as "subjects" those agency officials who recommended, initiated, approved and/or threatened to take the personnel action(s) at issue in the investigation. Witnesses are generally employees who have information about the matter under investigation, but who do not have responsibility for the personnel actions at issue. The investigator will inform the agency liaison which employees have been identified as potential subjects in the investigation, and will also inform the employees who have been so designated.

OSC recognizes that agencies often make agency attorneys available to provide personal representation to their employees at these interviews. OSC does not, however, permit agencies to have agency counsel present at these interviews for the purpose of representing the agency. Situations occasionally arise in which it is not clear in what capacity agency attorneys are serving or whose interests they are representing.

To ensure compliance with its policies, OSC is now requiring individuals who wish to have personal legal counsel present during their OSC investigative interviews to complete a Designation of Representation form. A copy of this form is enclosed. The Designation of Representation form must be completed before OSC will permit a witness or a subject to be represented by counsel at the OSC interview. Please note that the attorney must also sign the form, indicating that he or she is serving as the employee's personal legal representative.

OSC has developed an information sheet, "Your Role in an OSC Investigation," to answer some of the questions most frequently asked by agency employees who are interviewed in OSC prohibited personnel practice and Hatch Act investigations. It also explains employees' rights and responsibilities in connection with OSC investigations, including OSC's policies with respect to representation at interviews.

OSC investigators will provide copies of "Your Role in an OSC Investigation" and the Designation of Representation forms to the agency liaison or point of contact, after they have made the initial contact to inform the agency about the investigation. Copies are also available on OSC's web site at www.osc.gov. (Click on "Publications.")



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Your Role in an OSC Investigation

What is the Office of Special Counsel?

The Office of Special Counsel (OSC) is an independent federal executive agency. OSC investigates complaints alleging prohibited personnel practices (PPPs) and violations of the Hatch Act. If OSC finds that a PPP or Hatch Act violation occurred, it pursues appropriate remedies, both informally through negotiated settlements and formally by filing petitions with the Merit Systems Protection Board. These remedies may include corrective action for the person adversely affected, and/or discipline for individuals who violated the law. We encourage you to go to OSC web site at www.osc.gov for information about prohibited personnel practices, the Hatch Act, and OSC's investigation and prosecution policies and procedures.

Why OSC has contacted you.

OSC is conducting an investigation into allegations of PPP or Hatch Act violations that may have occurred in your agency. You have been identified as someone who has or may have information relevant to this matter. In most PPP cases, the OSC investigator obtains relevant documents and interviews the complainant and a number of agency employees who may have knowledge about events relevant to the investigation. These interviews may be conducted in person at the agency facility, at the OSC offices or by telephone. Investigations into Hatch Act and other matters follow a similar pattern.

What to expect if you are contacted by an OSC investigator

Witnesses

Witnesses are individuals who have, or may have, factual information about the events upon which the allegations are based. For example, they may be personnel officials, co-workers of the complainant, or other persons who witnessed events related to the complaint.

Federal regulations require Federal agencies and employees to provide information to OSC in connection with its investigative activities. See 5 C.F.R. § 5.4. You are required to answer all of the investigator's questions and to answer them fully and truthfully. If you do not understand the question, you may ask the investigator to restate it, or clarify it. The investigator will take notes on what you say, and may tape the interview. The investigator may also ask you to sign an affidavit or sworn statement. If so, you will have an opportunity to carefully review the statement and to make changes before signing the document. If you sign a sworn affidavit or if the interview is taped, you may ask for a copy of your statement.

In most cases, the information you provide to OSC will remain confidential. Information in OSC investigative files is protected from disclosure under the Freedom of Information Act (FOIA). Neither the complainant nor the agency will ordinarily have access to the information you provide to the investigator. You can ask the OSC investigator for more information about the confidentiality of your statements.

Witnesses, because they are not the persons responsible for the actions at issue in the complaint, generally do not have any need for legal counsel during an OSC interview, and they seldom request to have a legal representative present. If a witness requests legal representation, OSC will permit the witness to have

personal legal counsel present at the interview. Your agency may not require you to have agency counsel present during your OSC interviews.

Subjects

Subjects are agency officials who had personnel authority with respect to the personnel actions at issue in the complaint, and/or who have been identified as the individuals who may have been responsible for those personnel actions. OSC routinely interviews such agency officials to obtain information about the allegations in the complaint from the agency's perspective.

If OSC finds that an agency official committed a prohibited personnel practice or violated the Hatch Act, under some circumstances that individual may be subject to disciplinary action. For this reason, some, but not all, of the persons OSC designates as subjects obtain legal representation and have counsel present during their interviews. OSC will notify you if it considers you to be a subject. If you are not so notified, you can assume that you do not face possible disciplinary action in the matter under investigation.

Procedures for interviews with subjects are the same as those for other witnesses with one exception. Subjects are generally interviewed under oath and the interviews are usually recorded on tape.

The Role of Agency Counsel

As an independent agency, OSC does not conduct its investigations in conjunction with the agency in which the alleged prohibited personnel practice or Hatch Act violation occurred. Nor does OSC permit agencies to have members of their legal staff present at OSC interviews for the purpose of representing the agency. Agencies do, however, often provide personal legal representation to agency officials who have taken the personnel actions under investigation by OSC in the course of their official duties. Most agencies have procedures in place for requesting and granting employee requests for representation by agency counsel.

Agency Liaisons

Most agencies have staff who have been designated to serve as a liaison with OSC during the OSC investigation. These liaisons may be attorneys in the Office of General Counsel, or employee relations or human resources staff. Liaisons assist the OSC investigator by facilitating responses to requests for documents, arranging for interview rooms, scheduling interviews and engaging in other activities related to the investigation and resolution of the allegations. The liaison will also be able to answer general questions about your rights and responsibilities as a witness in the OSC investigation. When the liaison is an attorney, the liaison should not serve as the personal legal representative of any witness or subject.

Legal Representation

If you decide that you want to have a legal representative present during your OSC interview, you must inform the investigator before the interview and provide OSC with a completed Designation of Representation form. Both you and your legal representative must sign the form. You may get a copy of the form from the OSC investigator or the OSC web site at www.osc.gov. Look under "Publications."



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Designation of Personal Legal Representative

As a witness or a subject in an OSC investigation, you may choose to have personal legal counsel present at the OSC investigative interview. Witnesses, because they are not the persons responsible for the actions at issue in the complaint, generally do not need legal counsel to advise them when they respond to OSC's questions. If, however, you have been identified as subject in the investigation, i.e., you are the agency official responsible for the personnel actions at issue, under some circumstances you could be subject to disciplinary action, and you may wish to have personal legal counsel with you at the interview.

You are responsible for arranging for your own legal representation. The representative must be an attorney. OSC will not recommend, designate or arrange for representation for any witness or subject. OSC will permit a reasonable amount of time to arrange for representation. If your employing agency offers an agency attorney to serve as personal legal counsel during an OSC interview, you may accept that offer. An agency, may not, however, require you to be represented by agency counsel.

If you choose to have legal counsel with you at the OSC interview, you must complete the designation of representation form on the reverse side of this page. By signing the form you indicate that you have voluntarily chosen the designated individual to serve as your personal legal counsel. Any representative designated by you must also indicate agreement to such designation by signing the form.



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Designation of Personal Legal Representative

By signing below you indicate that you have voluntarily chosen the designated individual to serve as your personal legal counsel for the purpose of providing advice and counsel in connection with the Office of Special Counsel case identified below. The representative designated by you must also indicate agreement to such designation by signing below.

OSC Case No. _____

I hereby designate _____ to serve as my personal legal representative during the course of this investigation.

Name of Witness/Subject

Signature of Witness/Subject

Date

Name Personal Legal Representative

Signature of Representative

Date

Telephone No. of Representative

Address of Representative



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DESIGNATED AGENCY LIAISONS

The Office of Special Counsel (OSC) is an independent federal agency charged with receiving and investigating allegations of prohibited personnel practices, and when appropriate, seeking corrective and disciplinary action. See 5 U.S.C. §§ 1211-1219 and 2301-2302. (See selected excerpts on reverse side) Agencies are required to cooperate with OSC investigations by providing information and copies of relevant records and documents, and by making employees available to testify on matters under investigation. See 5 C.F.R. § 5.4. To facilitate OSC investigations some agencies have, either formally or informally, designated an agency employee to serve as a liaison with OSC.

The use of agency liaisons has been of mutual benefit for agencies and OSC. From the agency's perspective, a liaison can reduce disruption in the workplace, and ensure that witnesses and subjects understand their rights and responsibilities in connection with the investigation. From OSC's perspective, a liaison can facilitate timely responses to requests for documents, timely access to witnesses, and a secure site for interviews. A liaison can also ensure that witnesses are aware of their responsibility to give truthful testimony, that subjects are aware that OSC permits them to be represented by counsel during their interviews, and that subjects and witnesses are aware that the agency may not require the presence of agency counsel at an interview. Agency liaisons can also have an important role in facilitating amicable resolution of the issues under investigation.

It has been OSC's experience that the interests of OSC and the agency are best served when the roles of the designated agency liaison and the OSC investigator are fully understood.

An agency liaison can expect that the OSC investigator will:

- Explain in general terms the allegations under investigation;
- Explain OSC's procedures and timetable for the investigation;
- Submit requests to the agency for documents and other records through the liaison;
- Schedule interviews of all subjects through the liaison;
- Schedule interviews of most witnesses through the liaison (OSC reserves the right to contact witnesses directly when appropriate); and
- Contact the liaison about informal requests for corrective or disciplinary action.

OSC expects the agency liaison to:

- Receive and provide a timely response to all requests to the agency for documents;
- Provide a private location for scheduled interviews;
- Schedule subject and witness interviews when requested to do so;
- Ensure that subjects understand that they may have personal counsel present during the fact-finding interviews;
- Ensure that witnesses understand that they are required to give full and truthful responses to the investigator's questions; and
- Represent the agency in discussions concerning corrective or disciplinary action.

Pertinent Provisions of Sections 1212, 1214, 1216 and 1303 of Title 5, United States Code

Sec. 1212 (b)(1): "The Special Counsel and any employee of the Office of Special Counsel designated by the Special Counsel may administer oaths, examine witnesses, take depositions, and receive evidence."

Sec. 1214 (a)(1)(A): "The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken."

Sec. 1214 (a)(5): "In addition to any authority granted under paragraph (1) of this subsection, the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice (or a pattern of prohibited personnel practices) has occurred, exists, or is to be taken."

Sec. 1216 (a): This subsection provides further that the Special Counsel shall investigate any allegation of certain prohibited political activities (Hatch Act), arbitrary or capricious withholding of information requested under the Freedom of Information Act (5 U.S.C. § 552), any activity prohibited by civil service law, rule or regulation, or involvement of any employee in discrimination found by any court or appropriate administrative authority.

Sec. 1303 : "The Office of Personnel Management, Merit Systems Protection Board, and the Special Counsel may investigate and report on matters concerning --

(1) the enforcement and effect of the rules prescribed by the President under this title for the administration of the competitive service and the regulations prescribed by the Office of Personnel Management under section 1302 (a) of this title; and

(2) the action of an examiner, a board of examiners, and other employees concerning the execution of the provisions of this title that relate to the administration of the competitive service."

Civil Service Rule 5.4 (5 C.F.R. § 5.4) provides as follows:

"When required by the Office [of Personnel Management], the Merit Systems Protection Board, or the Special Counsel of the Merit Systems Protection Board or by authorized representative of these bodies, agencies shall make available to them, or their authorized representatives, employees to testify in regard to matters inquired of under the civil service laws, rules, and regulations, and records pertinent to these matters. All such employees, and all applicants and eligibles for positions covered by these rules shall give to the Office, the Merit Systems Protection Board, the Special Counsel, or to their authorized representatives, all information, testimony, documents, and material in regard to the above matters, the disclosure of which is not otherwise prohibited by law or regulation. These employees, applicants, and eligibles shall sign testimony given under oath or affirmation before an officer authorized by law to administer oaths. Employees are performing official duty when testifying or providing evidence pursuant to this section."



U.S. OFFICE OF SPECIAL COUNSEL

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www.osc.gov

The Special Counsel

October 18, 2007

The Honorable Fred F. Fielding
Counsel to the President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-06-1731

Dear Mr. Fielding:

Pursuant to 5 U.S.C. § 1213(e)(3), I am transmitting the enclosed letter and report to the President. If I may provide more information concerning this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Bloch". The signature is stylized and cursive.

Scott J. Bloch

Enclosures



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October 18, 2007

The Special Counsel

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

Re: OSC File No. DI-06-1731

Dear Mr. President:

I received disclosures from Ms. Krista Haddon, an Occupational Health and Safety Specialist, alleging that it is impossible to hear the fire alarm in the classrooms at the United States Department of the Navy (Navy), Occupational Health, Safety and Environmental Training Center (Training Center), Naval Air Depot North Island, San Diego, California. Ms. Haddon, who consented to the release of her name, alleged that the inability to hear a fire alarm constitutes a substantial and specific danger to public safety.

I required the Honorable Donald C. Winter, Secretary of the Navy, to conduct an investigation into the whistleblower's disclosures pursuant to 5 U.S.C. § 1213(c) and (d). The Secretary submitted a comprehensive agency report completed by the Office of the Naval Inspector General (OIG). As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the report to you.

The agency investigation substantiated Ms. Haddon's allegations and reflected that the agency took corrective action to address the public safety issues created by an inaudible fire alarm system. Specifically, the agency found that Navy management personnel failed to implement adequate interim control measures pending fire alarm repairs; that management personnel failed to repair an inaudible fire alarm system as required by regulations; that the four year lapse to effect repairs was unreasonable; and that management personnel failed to document the interim controls and to plan to abate the hazard properly as required by the Navy's Program Manual.

The report stated that the Training Center fire alarm system was not repaired until the commencement of the agency investigation. Although there is no specific time limit requirement to correct deficiencies in a fire alarm system, the agency concluded that "[f]our years is simply too long to wait before taking effective corrective action to get the alarms working again." The agency further stated that although it may be reasonable to delay upgrading an existing system for several years in order to do a coordinated base-wide upgrade, provided that system continues to operate as designed, it is unreasonable to use future projects to justify leaving a fire safety deficiency uncorrected for four years. In addition, OIG agreed with Navy subject-matter experts that the repair or replacement should have been funded and performed within six months of discovery.

The Special Counsel

The President

Page 2

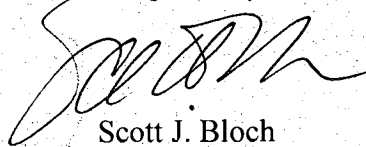
As stated above, the agency's corrective action reflected that the Training Center's fire alarm system was tested and repaired, and thus, the fire alarm is now audible to people in the classrooms. Further, on June 28, 2007, a government contract in the amount of \$7.4 million was awarded as part of an effort to upgrade the Training Center fire alarm system and an agency working group team was established to review fire equipment and safety regulations.

Ms. Haddon declined to submit formal comments, but expressed satisfaction that the agency had responded with corrective action to address her public safety concerns and expressed gratitude that federal employees responded promptly and professionally.

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

As required by § 1213(e)(3), I have sent a copy of the report to the Chairmen of the Senate and House Committees on the Armed Forces. I have also filed a copy of the agency report in our public file and closed the matter.

Respectfully,

A handwritten signature in black ink, appearing to read "S. Bloch", written over a horizontal line.

Scott J. Bloch

Enclosure

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