



SECRETARY OF THE AIR FORCE
WASHINGTON

JAN 4 2010

The Honorable William E. Reukauf
Acting Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington DC 20036-4505

Re: OSC File No. DI-08-1283

Dear Mr. Reukauf:

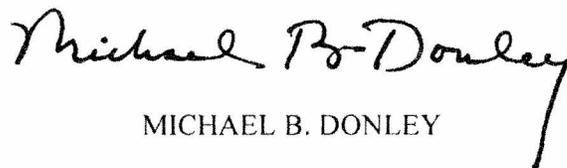
I am responding to your February 23, 2009 correspondence, referring for investigation a whistleblower disclosure from Mrs. Stephanie M. Armel, Sexual Assault Prevention and Response Assistant at Sheppard Air Force Base (AFB) Texas. You requested that the Air Force (AF) investigate Mrs. Armel's allegations that Ms. Barbara King, Sexual Assault Response Coordinator, "failed to protect private information, improperly emailed personal information without permission, and violated time and attendance rules."

The investigation concluded that Ms. King failed to protect private information in violation of AF policies and the Privacy Act, failed to keep adequate records of her compensatory time and violated time and attendance rules. Ms. King received a verbal counseling for improperly emailing personal information and was retrained on proper procedures necessary to protect Privacy Act information. No criminal violations were discovered during this investigation. The matter will be referred to her current supervisor for appropriate action on the other substantiated violations.

I am enclosing two versions of the report of investigation. The first contains the names of witnesses and is for your official use. I understand you will provide a copy of this version to the President and the House and Senate Armed Services Committees and to Mrs. Armel. I request that you make only the redacted version available to the public.

We appreciate your efforts to bring this matter to our attention. If the AF can be of any further assistance, please contact Cheri L. Cannon, Deputy General Counsel for Fiscal, Ethics and Administrative Law at (703) 693-9291 or cheri.cannon@pentagon.af.mil.

Sincerely,


MICHAEL B. DONLEY

Attachments:

1. Report of Investigation
2. Redacted Report of Investigation



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

2010

Office of the General Counsel

January 4, 2010

SAF/GCA
1740 Air Force Pentagon
Washington DC 20330-1740

Catherine A. McMullen
Chief, Disclosure Unit
United States Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington D.C. 20036-4505
VIA EMAIL: cmcmullen@osc.gov

Re: OSC File No. DI-08-1283

Dear Ms. McMullen

We request that a redacted version of the Air Force Report of Investigation (ROI) for the above-referenced matter be placed in the OSC public file. In submitting the ROI to OSC, we included a redacted version wherein the names of Air Force officers, enlisted members and civilian employees (other than Mrs. Armel) have been redacted to protect their privacy interests. Due to the nature of Mrs. Armel's allegations (which did not reveal a criminal violation), it is foreseeable the disclosure of this information to the public would result in a substantial harm, embarrassment, inconvenience, or unfairness to the individuals involved.

Our request for these redactions is based upon the Privacy Act which prohibits disclosing personal information to anyone other than the subject of the record without his or her written consent (unless such disclosure falls within one of the Privacy Act exceptions not applicable herein). *See* 5 U.S.C. § 552a. We believe the witnesses and individuals about whom Mrs. Armel made his allegations and those involved in the investigations have a reasonable expectation of privacy in the information presented in the ROI. We also believe that disclosure of their names would not benefit the general public in that the specific identity of the individuals need not be revealed in order for the reader of the redacted report to understand the relevant facts. That is, the redacted information does not in and of itself reveal anything regarding the operations or activities of the Air Force, or the performance of its statutory duties. In our view, the individuals' probable loss of privacy outweighs the public interest in knowing the names of the individuals. We have attached hereto a list of redactions made to the ROI.

With regard to the copy of the ROI sent to Mrs. Armel, we understand that under OSC policy, the whistleblower will receive an unredacted version of the ROI and we express no objection.

Thank you for your consideration of this request. If you have any questions regarding this request, please contact Deb Gunn at 703-695-4435 or by email at deborah.gunn@pentagon.af.mil or you may contact Major Tom Uiselt at 703-695-0491 or by email at thomas.uiselt@us.af.mil.

Sincerely



for

CHERI CANNON
Deputy General Counsel
(Fiscal, Ethics and Administrative Law)

REPORT OF INVESTIGATION
OSC File No. DI-08-1283

INFORMATION INITIATING THE INVESTIGATION

By letter dated February 23, 2009, the Office of Special Counsel (OSC) referred to the Secretary of the Air Force (SECAF) for investigation a whistleblower disclosure from Mrs. Stephanie M. Armel, Sexual Assault Prevention and Response Assistant at Sheppard Air Force Base (AFB), Texas (OSC referral letter).¹ According to the OSC referral letter, Mrs. Armel alleged that her supervisor, Ms. Barbara King, the Sexual Assault Response Coordinator (SARC)² at Sheppard AFB “failed to protect private information, improperly emailed personal information without permission, and violated time and attendance rules.”

After review and based upon the information disclosed by Mrs. Armel and correspondence received at OSC’s request from the Air Force Inspector General (SAF/IG), OSC concluded that there was “a substantial likelihood that the information provided discloses a violation of law, rule, or regulation” when Ms. King (1) “failed to adequately secure and protect agency case files and information regarding sexual assault victims”; (2) “emailed a list containing the personal information regarding victim advocate volunteers” to other volunteers without obtaining the expressed written consent of the volunteers; and (3) “violated time and attendance regulations” by overstating the number of hours worked on her time and attendance records, and “improperly claiming on-call status on her time and attendance records.” OSC further stated that, if true, Mrs. Armel’s allegations disclose violations of both AFI 33-332, *Privacy Act Program*, Chapter 12 - Disclosing Records to Third Parties (January 29, 2004) and a document referred to by the OSC as “Record Keeping, *Department of the Air Force Policies and Procedures for the Prevention of and Response to Sexual Assault* (June 3, 2005), which outline the procedures for maintaining and safeguarding agency case files and personal information.” The allegations also disclose violations of 5 C.F.R. § 551.431, *Time spent on standby duty or in an on-call status*, “which describes when an employee may claim on-call status.” See OSC referral letter.

OSC SUMMARY OF DISCLOSURE INFORMATION

According to the OSC referral letter, Mrs. Armel provided the following information:

- (1) Ms. King “has failed to adequately secure and protect agency case files and information regarding sexual assault victims. Ms. King has continuously left victim

¹ According to the OSC referral letter, Mrs. Armel consented to the release of her name in conjunction with this report of investigation.

² A SARC is an “Air Force civilian employee or Air Force officer reporting to the Wing Vice Commander (WG/CV), who serves as the commander’s central point of contact at installation level or within a geographic area to ensure appropriate care is coordinated and provided to victims of sexual assault and tracks the services provided to a victim from the initial report through final disposition and resolution.” The SARC “(e)nsures the implementation of prevention programs, to include sexual assault awareness, prevention and response training.” AFI 36-6001, *Sexual Assault Prevention and Response (SAPR) Program*, Attachment 1 (September 29, 2008).

case files open on her desk.” The “files contain social security numbers and other personal information. Routinely, individuals who are not authorized to view these files, including victims of sexual assault, have entered Ms. King’s office while the open files were on Ms King’s desk.” Mrs. Armel raised her concerns with Ms. King before reporting her concerns to the Executive Officer of the 82d Training Wing on December 6, 2007, and to the Inspector General of the 82d Training Wing (82 TRW/IG) on December 11, 2007, but Ms. King continued to leave the case files unsecured.

- (2) On March 21, 2008, Ms. King emailed the SARC Victim Advocate³ Roster “to multiple individuals without obtaining the expressed written consent of the volunteers.” The SARC Victim Advocate Roster is “a list containing the personal information of victim advocate volunteers”, including names, phone numbers, email addresses, etc. The list was emailed to other volunteers who were not authorized to view the information.
- (3) Ms. King violated time and attendance regulations by reporting on her time and attendance reports that she worked from 8:00 AM to 5:00 PM each day when she actually arrived at work between 9:00 and 9:30 AM every day. Additionally, Ms. King improperly claimed on-call status on two or three occasions when she received SARC-related telephone calls, but did not respond in person by going to the location of the victim to provide assistance. Mrs. Armel believes that the rules governing work conducted while on-call require an employee to respond in person in order to claim on-call status on her time and attendance records.

CONDUCT OF THE INVESTIGATION

Pursuant to 5 U.S.C. § 1213(c), an agency is afforded 60 days to complete the report required by Title 5, U.S.C. § 1213. OSC granted the Air Force extensions until January 4, 2010 within which to submit the required report. On December 24, 2009, the Air Force requested an additional extension to submit the report, along with the report on a related case, OSC File No. DI-09-1734, on January 22, 2010. The Air Force awaits OSC’s decision on the request.

Prior to referring this case to the SECAF, on April 23, 2008, the OSC forwarded Mrs. Armel’s allegations to the Air Force Inspector General (SAF/IG) and requested a written response addressing the allegations by June 23, 2008. SAF/IG tasked the Inspector General of Air, Education and Training Command (AETC/IG) to handle OSC’s request for information. On May 2, 2008, AETC/IG requested that the commander of the 82d Training Wing (82 TRW/CC) at Sheppard AFB conduct a command review of the allegations. On May 7, 2008, 82 TRW/CC appointed IO1 as the investigating officer (IO) to conduct a Commander-Directed Investigation (CDI) of the allegations and to complete a report of investigation (CDI ROI). During the course of the investigation, Mrs. Armel expressed concern to OSC that IO1 was biased because he was

³ Victim advocates are “(m)ilitary and DoD civilian employee volunteers, selected and trained by the SARC, who provide essential support, liaison services and care to victims.” AFI 36-6001, Attachment 1.

in the same chain of command as witnesses involved in the investigation.⁴ On September 10, 2008, 82 TRW/CC forwarded the CDI ROI to OSC. On or about October 21, 2008, the OSC concluded the CDI ROI was insufficient because the IO failed to interview any of the ten witnesses whose names Mrs. Armel provided to the IO and because the CDI ROI did not explain, to OSC's satisfaction, how Mrs. Armel was able to obtain photographs of open and unsecured files on Ms. King's desk if Ms. King's office was locked as reported in the CDI ROI. On November 4, 2008, OSC requested additional information from SAF/IG. On December 2, 2008, SAF/IG responded to OSC, but OSC determined that the response did not adequately address the matter and that the response primarily relied upon the statements of Ms. King without re-interviewing Mrs. Armel. OSC's concern with the photograph issue is that the CDI and IG accepted Ms. King's explanation of how Mrs. Armel may have staged the photographs as plausible despite Mrs. Armel's contention that she did not have access to Ms. King's office when it was locked.

In response to the OSC's referral of this case to the SECAF, pursuant to AFI 51-1102, *Cooperation with the Office of Special Counsel* (January 16, 2009), on March 25, 2009, the then-Acting General Counsel of the Air Force (SAF/GC), requested that SAF/IG investigate Mrs. Armel's allegations. In response to SAF/GC's request, the Complaints Resolution Division of the Office of Inspector General (SAF/IGQ) tasked AETC/IGQ to investigate the allegations. AETC/IG appointed IO2, a member of the Air National Guard, as IO on June 18, 2009 to complete a report of investigation (IG ROI). In early August 2009, after he had interviewed the witnesses (including the witnesses requested by Mrs. Armel who IO1 did not interview) and had submitted the draft IG ROI to AETC/IG, IO2's active duty tour expired. However, upon reviewing the IG ROI, AETC/IGQ noted deficiencies and determined that a new IO needed to be appointed to complete the IG ROI. On November 5, 2009, AETC/IG appointed IO3 of AETC/IGQ as the new IO to complete the IG ROI. IO3 completed the IG ROI on December 7, 2009. On December 10, 2009, AETC/IG approved the IO's findings on all of the allegations and forwarded the IG ROI to SAF/IG. On December 14, 2009, SAF/IGQ forwarded the IG ROI to SAF/GCA (Fiscal, Ethics and Administrative Law Division of the Air Force General Counsel's Office).

In the course of the investigation, IO2 interviewed a total of 15 witnesses, including Mrs. Armel and all 10 of the witnesses originally requested by Mrs. Armel. He collected and examined various memoranda, email, time sheets and telephone logs pertaining to the allegations. He also reviewed the applicable law, including the following: the Air Force's Privacy Act instruction, AFI 33-332; a document referred to by the OSC as "Record Keeping, *Department of the Air Force Policies and Procedures for the Prevention of and Response to Sexual Assault* (June 3, 2005)", and 5 C.F.R. § 551.431.

⁴ No witnesses involved in the investigation were in IO1's line of supervision. Although IO1 was in the same wing as Mrs. Armel, he was assigned to a different group and squadron. His appointment as the IO for the CDI was consistent with the standard procedure for base-level investigations within a wing and the guidelines set forth in AFI 90-301, *Inspector General Complaints Resolution* (May 15, 2008) which is used as guidance along with the CDI Handbook, provided by SAF/IG, dated July 7, 2006.

SUMMARY OF THE EVIDENCE

Mrs. Armel filed a whistleblower disclosure with the OSC alleging that Ms. King failed to protect private information, improperly emailed personal information without permission and violated time and attendance rules.

The IG ROI concluded that Ms. King failed to protect private information.

The Privacy Act, 5 U.S.C. § 552a, requires the written consent of the subject prior to the release of the information to third parties, unless one of the 12 exceptions of the Privacy Act applies. AFI 33-332, paragraph 12.1. Additionally, the *Department of the Air Force Policies and Procedures for the Prevention of and Response to Sexual Assault* (June 3, 2005) states that “(t)he SARC will maintain all records that could serve to identify the victim [of sexual assault] in a secure container and strictly control the access to the information.”

In November and December 2007, Ms. King failed to adequately secure and protect agency files and personal information regarding sexual assault victims in violation of AFI 33-332, paragraph 12.1. The evidence shows that Ms. King routinely left file folders with victim and perpetrator information unsecured on her desk. Mrs. Armel was able to take several photographs of unsecured records on Ms. King’s desk without Ms. King’s knowledge. Ms. King contended that Mrs. Armel could have staged the photographs to discredit Ms. King. However, multiple witnesses testified that persons outside the SARC office could and did gain access to the SARC office and view records without being detected.

The Deputy SARC at Sheppard AFB (DSARC1) testified that “maybe once a week” or “once every other week” she viewed case files left unattended on Ms. King’s desk at the SARC office with the door to Ms. King’s office left wide open. DSARC1 testified that when she has a case file out and is going to leave her office that she will, at a minimum, put the file in her desk drawer and lock the drawer rather than leave the file on her desk. She also testified that it was a “common occurrence” for Ms. King to leave the keys to the case file drawer hanging from the case file drawer while she was away from her office.

DSARC1’s predecessor as the Deputy SARC was DSARC2 who served in that capacity from May 2007 to December 2008. DSARC2 testified that he secured SARC records “a couple of times” when he would notice that Ms. King left them in her office with the door open. He testified that Mrs. Armel approached him when he was the Deputy SARC regarding her concerns that Ms. King was leaving SARC files unprotected on her desk at all times and that Mrs. Armel was “adamant” about the issue.

The following three witnesses, who were not interviewed by IO1, provided substantiating testimony. A volunteer victim advocate (VA) at Sheppard AFB was in Ms. King’s office after she received Ms. King’s permission to use the SARC’s telephone when she saw the open records. VA testified that she was able to see information regarding the perpetrator of one of the victims who she was assisting as a victim advocate. VA informed Ms. King that there were

folders out and Ms. King replied, “no problem, just go ahead and use the phone;” however, VA declined and walked out of the office.

A sexual assault victim (V) testified that it was standard operating procedure for victims to have unfettered access to the SARC and the SARC office as a safe haven. This victim testified that he walked into the SARC office unaccompanied and was able to view victim and perpetrator information in unsecured folders on Ms. King’s desk. Similarly, the Deputy Director of the Equal Opportunity Office (DDEOO) at Sheppard AFB testified that she once walked past Ms. King’s office when Ms. King was not present and saw Ms. King’s office door wide open and an open case file on Ms. King’s desk. At that time, Mrs. Armel pointed to the case file and told DDEOO that she was worried about files not being secured.

IO1 found that the evidence did not support this allegation. However, IO3 concluded that this allegation is supported by the evidence. IO1 relied on the testimony of Ms. King, her direct subordinates and Ms. King’s supervisors who reported rarely being present in Ms. King’s office, and generally only during scheduled visits. However, the testimony received during the IG investigation supports this allegation. The fact that some witnesses did not observe sensitive information unsecured on Ms. King’s desk does not discount the testimony of witnesses who observed it on other occasions.

Ms. King’s actions as described above violated *Department of the Air Force Policies and Procedures for the Prevention of and Response to Sexual Assault* (June 3, 2005). As the SARC, she failed in her duties to maintain all records that could serve to identify the victim of sexual assault in a secure container and strictly control the access to the information. She also violated the provisions of AFI 33-332, paragraph 12.1.3.6. by failing to protect personal information from disclosure.

The IG ROI concluded that Ms. King improperly emailed personal information without permission.

On March 21, 2008, Ms. King emailed a SARC Victim Advocate Roster containing personal information of victim advocate volunteers to 22 volunteers who served as victim advocates for the Sheppard AFB SARC office without the expressed written consent of the volunteers in violation of AFI 33-332, paragraph 12.1. The email, containing personal information including names, phone numbers and email addresses, was sent in violation of the Privacy Act as well as AFI 33-332, paragraph 12.1.3.6.

Additionally, Ms. King’s email violated paragraph 7.3 of AFI 33-332 because she failed to include “FOUO” (for official use only) at the beginning of the subject line of the email and failed to include a statement at the beginning of the email indicating that the email contains FOUO information that must be protected under the Privacy Act and AFI 33-332.

Ms. King admitted she sent the email. Her admission and the email itself, along with the lack of written consent from the volunteer victim advocates support this allegation. Both IO1 and IO3 found that the evidence supports substantiation of this allegation.

The IG ROI concluded that Ms. King violated time and attendance rules by reporting on her time and attendance cards that she reported to work 60-90 minutes prior to doing so.

Department of Defense, Financial Management Regulation, 7000.14-R, Volume 8, Chapter 2, paragraph 020204, *Accounting for Time and Leave*, states that “(t)ime and attendance data shall reflect a proper and accurate accounting of an employee’s actual time and attendance and leave.”

In October 2007, Ms. King violated time and attendance regulations by reporting on her time and attendance cards that she arrived at work 60-90 minutes before she actually reported. Mrs. Armel routinely worked regular hours and because of her duty location outside Ms. King’s office, she was uniquely positioned to observe Ms. King’s time and attendance. Mrs. Armel testified that Ms. King reported to work late for personal reasons and not just because she had worked on client issues the prior night. Ms. King had an upper gastrointestinal issue and there were mornings she would get up and make this known to members of the SARC office. During many absences, Ms. King would tell the SARC staff that she had her phone, but she would never take sick leave. After Mrs. Armel raised her concern about Ms. King’s time cards, Ms. King prohibited Mrs. Armel from reviewing her time cards. Mrs. Armel’s allegation is supported by DSARC2’s testimony that Ms. King would periodically report to work late, sometimes at least once per week and that her tardiness was only occasionally the result of a SARC issue. In his CDI testimony, Ms. King’s supervisor, the Vice Wing Commander of the 82d Training Wing, testified that he took Ms. King at her word that she was accurately accounting for her time on her timecards. In her CDI testimony, Ms. King admitted that documenting her compensatory time “is just a pain to do on the form” and she might not have been as diligent as she should have been in her documentation.

By her own admission which was supported by the Vice Wing Commander’s testimony, there was an “understanding” that Ms. King would work hours she determined best fit her schedule. Under this scheme, regardless of whether flex time was approved, it would be impossible to determine the actual number of hours worked by Ms. King due to her lack of diligence in recording her time and attendance. Therefore, contrary to IO1’s finding in the CDI, the evidence supports this allegation.

The IG ROI concluded that Ms. King did not violate time and attendance rules by claiming on-call status on her time and attendance record.

“All time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency is ‘hours of work.’ . . . Such time includes (2) (t)ime during which an employee is suffered or permitted to work.” 5 C.F.R. § 551.401(a)(2). Additionally, “(a)n employee will be considered off duty and time spent in an on-call status shall not be considered hours of work if (1) the employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius.” 5 C.F.R. § 551.431(b)(1).

As the SARC, Ms. King was required to carry a government-issued cell phone for official use. Her duties required around-the-clock availability. Ms. King testified that she would log time she spent talking to victims on the phone while off duty as time worked. IO3 concluded that this assertion by Ms. King appears credible because had Ms. King claimed on-call status for the entire time she carried the on-call cell phone, she would have accumulated more compensatory time than regular time. This is because Ms. King carried the on-call cell phone while she was off duty, and she spent more time off duty than on duty. The Vice Wing Commander testified that he approved the time that Ms. King logged as time spent talking to victims. Mrs. Armel made this allegation with the mistaken impression that to be included as "hours of work" that the SARC's consultations had to be performed on location with the victim rather than over the phone.

The evidence shows that Ms. King did not violate 5 C.F.R. § 551.431 by improperly claiming on-call status on her time and attendance record. It does not appear that Ms. King claimed time on-call as time worked. Ms. King's supervisor allowed her to work on cases through the night and from home if necessary. Ms. King's "hours of work" included on-call SARC duties she performed with her government-issued cell phone that was issued for the purpose of conducting official SARC business. As such, time spent performing SARC duties constitute "hours of work" for which Ms. King was entitled to be compensated. Therefore, Ms. King did not violate time and attendance rules by claiming on-call status on her time and attendance record.

CORRECTIVE ACTION

In response to IO1's conclusion in the CDI that Ms. King sent an email in violation of the Privacy Act and AFI 33-332, Ms. King received a verbal counseling and was retrained on the appropriate procedures necessary to protect Privacy Act information in June 2008. For other reasons unrelated to this investigation, Ms. King was demoted and removed from the SARC position. By the time IO3 completed the IG ROI and found that Ms. King failed to protect private information and also violated time and attendance rules by reporting on her time and attendance cards that she reported to work 60-90 minutes prior to doing so, she was no longer employed at Sheppard AFB. No criminal violations were discovered during this investigation and the matter will be referred to her current supervisor for appropriate action on the other substantiated violations.

Separate from the facts and circumstances arising in this case, the Air Force issued updated guidance on the Sexual Assault Prevention and Response (SAPR) Program. The new instruction (AFI 36-6001, *Sexual Assault Prevention and Response (SAPR) Program* (September 29, 2008)) assigns responsibility for the prevention of and response to sexual assault and establishes command relationships, authorities and responsibilities in support of the policy. Paragraph 2.13.5.3.3. of AFI 36-6001 states that SARC case files will be kept in a locked file cabinet when not in use.

CONCLUSION

As set forth above, the evidence supports Mrs. Armel's allegations that Ms. King (1) failed to protect private information in violation of paragraph 12.1.3.6. of AFI 33-332 and the Record Keeping provision of *Department of the Air Force Policies and Procedures for the Prevention of and Response to Sexual Assault* (June 3, 2005) by not securing SARC case files; (2) violated paragraphs 7.3, 12.1 and 12.1.3.6. of AFI 33-332 by emailing a SARC victim advocate roster containing personal information of victim advocate volunteers to multiple individuals without the written consent of the volunteers, without including "FOUO" (for official use only) at the beginning of the subject line of the email, and by failing to include a statement at the beginning of the email indicating that the email contains FOUO information that must be protected under the Privacy Act and AFI 33-332; and (3) violated Department of Defense, Financial Management Regulation, 7000.14-R, Volume 8, Chapter 2, paragraph 020204 by reporting on her time and attendance records that she reported to work 60-90 minutes before she reported to work. However, because Ms. King was entitled to compensation for time spent performing SARC duties during off-duty hours, Ms. King did not violate time and attendance rules by claiming work performed while on call on her time and attendance records.

According to 5 U.S.C. § 552a(i):

Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

The investigation did not reveal that Ms. King willfully disclosed agency records in violation of 5 U.S.C. § 552a(i). Because the investigation did not reveal a criminal violation, referral to the Attorney General, pursuant to 5 U.S.C. §§ 1213(c) and (d) is not appropriate.

This report is submitted in satisfaction of my responsibilities under 5 U.S.C. §§ 1213(c) and (d).