



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

The Special Counsel

May 26, 2022

The President
The White House
Washington, DC 20510

Subject: OSC File Nos. DI-18-3786, DI-18-3820, DI-18-4713, DI-18-4968

Dear Mr. President:

I am forwarding to you a report transmitted to the Office of Special Counsel (OSC) in response to the Special Counsel's referral of disclosures of wrongdoing at the Environmental Protection Agency (EPA) and EPA Office of Inspector General (EPA OIG) in Washington, D.C.¹ Two whistleblowers consented to the disclosure of their names: [REDACTED], former Deputy Chief of Staff for Operations within EPA's Immediate Office of the Administrator, and [REDACTED], former Senior Intelligence Advisor with EPA's Office of Homeland Security (OHS). Two whistleblowers chose to remain anonymous.² I have reviewed the agency reports and whistleblower comments and, pursuant to 5 U.S.C. § 1213(e), have determined that the report contains the information required by statute and that its findings appear reasonable.

The whistleblowers alleged that then-EPA Administrator Scott Pruitt, with varying degrees of assistance from EPA staff, engaged in improper and excessive spending of agency funds on travel and security; used his official position for his personal benefit and the personal benefit of certain EPA staffers; and endangered public safety. The whistleblowers also alleged that EPA OIG improperly assumed EPA program operating responsibilities including protective intelligence and counterintelligence functions in violation of the Inspector General Act of 1978.

EPA, EPA OIG, and the Government Accountability Office (GAO) investigated and substantiated many of the whistleblowers' allegations of wrongdoing by former Administrator Pruitt and by EPA.³ The Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) reviewed and declined to further investigate the

¹ See 5 U.S.C. § 1213(c) and (e). The Special Counsel referred the whistleblowers' allegations to former Acting Administrator Andrew Wheeler for investigation pursuant to 5 U.S.C. § 1213(c) and (d). EPA requested that EPA OIG investigate, and the investigation was ultimately handled by several different entities, including EPA OIG, as described herein. Former Acting Chief of Staff Michael D. Molina reviewed and signed the report before transmitting it to OSC. Acting Assistant Administrator, Office of Mission Support, Donna Vizian reviewed and signed the agency's supplemental report before transmitting it to OSC.

² Each allegation in this referral was made by one or more of the four whistleblowers. To simplify, I use the term "whistleblowers" in this letter, regardless of which of the four whistleblowers made the relevant allegations.

³ Many of these investigations were already ongoing at the time of OSC's referral.



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

The Special Counsel

whistleblowers' allegations of wrongdoing by EPA OIG.⁴ The relevant findings include the following:

- EPA OIG substantiated allegations that former Administrator Pruitt and his staff spent excessively and improperly on travel.⁵ Specifically, EPA OIG estimated that former Administrator Pruitt and staff incurred \$123,942 in “excessive airfare [costs]” without appropriate approval or justification, including making unspecified stops to Mr. Pruitt’s hometown using EPA funds, in violation of the Federal Travel Regulation (FTR) and EPA’s own policies. EPA OIG further found that EPA’s attempt to retroactively approve and justify these travel expenses, after EPA OIG first identified these issues, by issuing blanket approval for former Administrator Pruitt’s travel and by representing that it relied on documentation that did not exist at the time the travel was initially approved, further violated the FTR and EPA’s travel policies. EPA OIG made 14 recommendations and concluded on February 18, 2022, that all its recommendations were “completed or resolved with corrective actions pending.”⁶
- GAO substantiated allegations that EPA spent excessively and improperly on security.⁷ Specifically, GAO found that EPA had violated the Antideficiency Act (ADA) and section 710 of the Financial Services and General Government Appropriations Act, 2017, by spending \$43,238.68 to install a “soundproof privacy booth” in the then-Administrator’s office. GAO concluded that “EPA should report its [ADA] violation as required by law.” EPA disagreed with GAO’s finding but reported it to Congress on April 25, 2018. EPA now agrees with GAO’s finding and, through its own review, identified additional ADA violations for expenses incurred in furnishing the former Administrator’s office. EPA cooperated with the Office of Management and Budget (OMB) to report the ADA violations that GAO and EPA identified—which together totaled \$52,407.09—to the White House, Congress, and GAO, as required, on December 29, 2021.⁸
- EPA OIG referred to the Federal Bureau of Investigation the whistleblowers’ allegation that a senior member of former Administrator Pruitt’s PSD had “steered” EPA contracts

⁴ Subsequently, OSC and CIGIE entered into a Memorandum of Understanding to streamline the procedures the Integrity Committee will follow when reviewing section 1213(c) referrals.

⁵ EPA OIG, Report No. 19-P-0155, “Actions Needed to Strengthen Controls Over the EPA Administrator’s and Associated Staff’s Travel,” (May 16, 2019), available at: https://www.epa.gov/sites/production/files/2019-05/documents/epa_oig_20190516-19-p-0155.pdf.

⁶ EPA OIG’s full correspondence with EPA regarding this report is available at: <https://www.epa.gov/office-inspector-general/report-actions-needed-strengthen-controls-over-epa-administrators-and>.

⁷ GAO, Document No. B-329603, “U.S. Environmental Protection Agency—Installation of Soundproof Privacy Booth,” (April 16, 2018), available at <https://www.gao.gov/assets/b-329603.pdf>.

⁸ EPA’s first response to OSC outlined its disagreement with GAO’s findings and failed to explicitly incorporate or include GAO’s report; but EPA has now adopted GAO’s report as part of its response to OSC.



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

The Special Counsel

regarding Mr. Pruitt's security to that PSD member's personal security business.⁹ EPA OIG also started but did not complete an administrative investigation into alleged policy violations by that PSD member, citing the PSD member's retirement from federal service as its reason for not completing the investigation.¹⁰

- EPA OIG did not explicitly substantiate allegations that former Administrator Pruitt gave his staff improper salary increases.¹¹ However, EPA OIG did find that EPA had significantly increased the salaries of the staffers that the whistleblowers identified, plus the salary of one other employee, between 25.1 and 72.3 percent during a very short time. EPA responded by lowering the salaries of the relevant employees.¹²
- EPA OIG started but did not complete an investigation into allegations that Mr. Pruitt improperly used his position to benefit himself and his family, citing Mr. Pruitt's departure from federal service as its reason for terminating the investigation.¹³
- EPA's Office of Criminal Enforcement, Forensics, and Training (OCEFT) Professional Integrity and Quality Assurance (PIQA) substantiated allegations that Mr. Pruitt endangered public safety by routinely directing his PSD to use emergency lights and sirens and "excessive speed" in non-emergency situations.¹⁴ For example, the report included evidence that Mr. Pruitt directed the agent to "reckless[ly]" use lights and sirens while driving against oncoming traffic so that Mr. Pruitt could pick up his dry cleaning when he was already 35 minutes late to an EPA meeting and that the agent "did not believe [the agent] could refuse the order." Further, the report details that one PSD member was removed from his position after attempting to explain to Mr. Pruitt that his request to use lights and sirens violated policy, "sen[ding] a clear message to the PSD that if you didn't perform the bidding of the Administrator, you would lose your job." EPA has now implemented a mandatory reporting requirement for violations of these

⁹ The U.S. Department of Justice declined to prosecute.

¹⁰ See also EPA OIG, Report No. 350-R-19-004, "Semiannual Report to Congress, April 1, 2019-September 30, 2019," p.61 (ref. case no. OI-HQ-2018-CFD-0064), (November 2019), available at: https://www.epa.gov/sites/production/files/2019-11/documents/epaoig_201911_epa-350-r-19-004.pdf.

¹¹ EPA OIG, Report No. 19-P-0279, "EPA's Use of Administratively Determined Positions Is Consistent with Its Authority Under the Safe Drinking Water Act," (August 21, 2019), available at: https://www.epa.gov/sites/production/files/2019-08/documents/epaoig_20190821-19-p-0279_0.pdf.

¹² See also EPA OIG, Memorandum from Arthur A. Elkins Jr. to Scott Pruitt, "Management Alert: Salary Increases for Certain Administratively Determined Positions Report No. 18-N-0154," (April 16, 2018), available at: https://www.epa.gov/sites/production/files/2018-04/documents/epaoig_20180416-18-n-0154.pdf.

¹³ EPA OIG, Report No. EPA-350-R-18-003, "Semiannual Report to Congress, April 1, 2019-September 30, 2019," pp. 12-13, (November 2018), available at: https://www.epa.gov/sites/production/files/2018-11/documents/epaoig_20181031-epa-350-r-18-003_linked.pdf.

¹⁴ EPA, "[PIQA] Case Summary Report 1100-18-008-CI," (June 8, 2018), Enclosure to EPA Supplemental Report.



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

The Special Counsel

policies and procedures.

- CIGIE reviewed the whistleblowers' allegations that EPA OIG improperly expanded its role by participating in EPA protective intelligence and counterintelligence functions, like reviewing and assessing security threats.¹⁵ CIGIE declined to take further action. GAO did, however, review EPA OIG's and EPA OHS's jurisdiction over intelligence and related operations.¹⁶ GAO found some overlap and conflict between these offices' activities and duties and concluded that an EPA Order "assign[ing] responsibilities for homeland and national security activities to OHS"¹⁷ would address the issue.
- EPA OIG substantiated allegations that EPA's significant expansion of former Administrator Pruitt's PSD—which increased PSD costs from \$1.6 to \$3.5 million and tripled its size—was not justified by credible security threats against Mr. Pruitt at the time.¹⁸ Specifically, EPA OIG found that EPA failed to conduct an appropriate threat analysis to justify expanding the PSD and then belatedly relied on an EPA OIG report "prepared almost 6 months after the decision" to defend its decision. EPA OIG further found that EPA "ha[d] no final, approved standard operating procedures that address the level of protection required for the Administrator or how those services are to be provided" and that PSD agents had worked unauthorized overtime. EPA OIG made 12 recommendations, including that EPA "complete a threat analysis on a regular basis to identify the proper protection required for the Administrator" and that EPA create policies and standard operating procedures for its PSD. EPA has now implemented all these recommendations.

One of the whistleblowers commented on EPA's supplemental report. The comments addressed what the whistleblower identified as "material facts that were not addressed in the report and the lack of meaningful corrective action for wrongdoing." For example, the whistleblower cited EPA OIG's decision to discontinue investigating the PSD employee's alleged improper influence over a federal contract after that employee retired, and CIGIE's decision not to further investigate alleged wrongdoing at EPA OIG. The whistleblower

¹⁵ See 5a U.S.C. § 9(2) ("... there shall not be transferred to an Inspector General . . . program operating responsibilities.").

¹⁶ GAO, Report No. GAO-20-89R EPA Office of Homeland Security, "Environmental Protection Agency: Recent Policy Could Improve Working Relations between EPA's Office of Inspector General and Office of Homeland Security," (Oct. 30, 2019), available at: <https://www.gao.gov/assets/gao-20-89r.pdf>.

¹⁷ EPA Order 3230—Intelligence Operations, (May 31, 2019), included as "Enclosure I" to GAO's report. EPA failed to incorporate GAO's report or findings, or EPA Order 3230, into its initial response to OSC but later did so.

¹⁸ EPA OIG, Report No. 18-P-0239, "EPA Asserts Statutory Law Enforcement Authority to Protect Its Administrator but Lacks Procedures to Assess Threats and Identify the Proper Level of Protection," (Sept. 4, 2018), available at: https://www.epa.gov/sites/production/files/2018-09/documents/epaig_20180904-18-p-0239.pdf. See also report updates at: <https://www.epa.gov/office-inspector-general/report-epa-asserts-statutory-law-enforcement-authority-protect-its>.



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

The Special Counsel

acknowledged that EPA OIG lacked authority to compel testimony from former federal employees but stated that EPA OIG could still have reviewed other relevant evidence. The whistleblower also acknowledged that GAO partly addressed, and EPA partly resolved, allegations that EPA OIG performed certain intelligence functions but emphasized that the specific alleged wrongdoing at EPA OIG had not been investigated. The whistleblower also identified EPA's initial failure to report to OSC the full scope of PIQA's findings and EPA's delay in implementing many of EPA OIG's relevant recommendations.¹⁹ The whistleblower emphasized the great personal costs of blowing the whistle on these critical issues and also raised procedural concerns.

I thank the whistleblowers for bringing these serious allegations of wrongdoing to OSC. And I acknowledge the whistleblower's above concerns—indeed, OSC echoed and worked to address many of them following EPA's initial report, which OSC determined was not sufficiently responsive to our referred allegations—and I share in the disappointment and frustration that some of EPA OIG's recommendations took nearly three years to resolve. I also acknowledge the significant progress that EPA has made in working with OSC and other oversight bodies to take responsibility for its past failures and to prevent future abuses by senior leadership. I expect that EPA will continue to cooperate with EPA OIG, members of Congress, and other stakeholders to restore public confidence in its role as a steward of taxpayer dollars and good government.

As required by 5 U.S.C. § 1213(e)(3), OSC has sent copies of the agency report, this letter, and the whistleblower's comments to the Chairs and Ranking Members of the Senate Committee on Environment and Public Works, as well as the House Committees on Science, Space, and Technology, and on Energy and Commerce. OSC has also filed redacted copies of these documents and a copy of our original referral letter in our public file, which is available at www.osc.gov. This matter is now closed.

Respectfully,

A handwritten signature in black ink, appearing to read "Henry J. Kerner".

Henry J. Kerner
Special Counsel

Enclosures

¹⁹ OSC has subsequently addressed both these issues with EPA, as outlined above.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 26, 2020

OFFICE OF THE
ADMINISTRATOR

The Honorable Henry J. Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036

Re: OSC File Nos. DI-18-3786, DI-18-3820, DI-18-4713, DI-18-4968

Dear Mr. Kerner,

Please accept this letter and the enclosed attachments as the U.S. Environmental Protection Agency's response to your October 4, 2018 letter, which requested that EPA investigate certain allegations made by whistleblowers. Specifically, these allegations concern former Administrator Pruitt's use of agency funds for travel and security, and the EPA's Office of Inspector General's (OIG) role in assessing and managing security threats related to the protection of former Administrator Pruitt.

Pursuant to your October 4, 2018 letter, EPA and the OIG conducted investigations into the allegations in Part A of your letter, the results of which are described below. EPA also coordinated with the OIG regarding the allegations in Part B of your letter, which concern OIG's involvement in assessing and reviewing security threats against former Administrator Pruitt. After conferring with the OIG, EPA referred the allegations in Part B to the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE). CIGIE is an independent entity within the executive branch charged with addressing integrity, economy and effectiveness issues that transcend individual Government agencies. The results of EPA's referral to CIGIE are addressed in Section V below.

The EPA Administrator has delegated to me his authority to review, sign and submit to your office the Agency's report and findings as required by 5 U.S.C. § 1213 (c) and (d). This letter addresses the investigations that occurred regarding the matters at issue in your October 4, 2018 letter, as well as the results and recommendations stemming from those investigations.

I. Allegations Concerning Former Administrator Pruitt's Travel Expenses

According to Part A of your October 4, 2018 letter, the whistleblowers alleged that former Administrator Pruitt "engaged in excessive and improper spending" on travel and security.¹ Prior to receiving your letter, the EPA OIG had opened an investigation into former Administrator

¹ Letter from Henry J. Kerner to Andrew Wheeler, Oct. 4, 2018, at 2.

Pruitt's travels in response to Congressional requests and hotline complaints.² Specifically, the OIG audited the former Administrator's travel for a 10-month period (from March 1 through December 31, 2017), and evaluated: the frequency, cost and extent of the travel; whether applicable EPA travel policy and procedures were followed in processing the travel for the former Administrator and associated staff; and whether EPA's travel policy and procedures are sufficiently designed to prevent fraud, waste and abuse.

The OIG initiated the audit in September 2017 and completed it in November 2018. The OIG performed the audit in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States.³ During the audit, the OIG obtained and analyzed travel data from the EPA's Compass Data Warehouse, conducted witness interviews, and reviewed the Agency's travel policies and procedures.⁴

On May 16, 2019, EPA's OIG issued an audit report entitled "Actions Needed to Strengthen Controls over the EPA Administrator's and Associated Staff's Travel"⁵ (Travel Report). The Travel Report discusses in detail the evidence obtained as the result of the audit as well as the OIG's findings. The OIG found that EPA's travel policy is sufficiently designed to prevent fraud, waste, and abuse, and is consistent with the Federal Travel Regulations (FTR).⁶ The OIG also found that "the former administrator's use of military and charter flights was justified and in compliance with EPA policy and the FTR."⁷ Thus, the OIG made no recommendations to EPA regarding the use of military or chartered flights.⁸

In the Travel Report, the OIG made a series of recommendations to EPA. The OIG recommended that the Chief Financial Officer (CFO) update the Executive Approval Framework or other EPA policy to include a formal authorized delegate and backup for approval of Administrator-level travel.⁹ On June 28, 2018, the CFO updated the Executive Approval Framework to designate approvers for the Administrator's travel, and on July 13, 2018, the OIG verified that the updated Executive Approval Framework was posted on the EPA's intranet.¹⁰

Regarding the issue of approval of the first/business class exception for the Administrator and trip-by-trip approvals, on February 11, 2019, the Agency's Office of General Counsel (OGC) issued a legal opinion stating that the Controller had implicit authority to grant the exception allowing non-coach travel. The CFO also issued a memorandum redelegating authority to the Controller to retroactively approve the individual trips, on the grounds that there were

² "Actions Needed to Strengthen Controls Over the EPA Administrator's and Associated Staff's Travel," EPA Office of Inspector General, Report No. 19-P-0155, May 16, 2019 (https://www.epa.gov/sites/production/files/2019-05/documents/_epaig_20190516-19-p-0155.pdf). Hereinafter referred to as "Travel Report."

³ See *id.* at 4.

⁴ See *id.* The Compass Data Warehouse is a collection of data from various EPA information systems, including Compass and the Travel Document System. The data in the warehouse are refreshed daily. Therefore, downloads from the warehouse represent accounting system data. See *id.*

⁵ See *id.*

⁶ See *id.* at 18.

⁷ See *id.* at 41.

⁸ See *id.* at 43.

⁹ See *id.* at 19.

¹⁰ *Id.*

valid security concerns during the travel period in question, which the Controller did.¹¹ The OIG disagreed with the Agency's position concerning non-coach travel, finding that the Agency had not provided justification or documentation to show valid security concerns related to the travel exception. The OIG recommended that the CFO "implement controls to verify the approving official has adequate authority prior to granting first/business-class exceptions" and "implement controls agencywide to verify that the use of other than coach-class travel is properly justified and documented prior to approval of the travel authorization."¹² EPA disagreed with this recommendation and explained why in its response to the OIG's draft audit report. Specifically, EPA stated to the OIG that it already had sufficient controls in place for first/business class trips. Under EPA policy and in accordance with the FTR, an approved justification is required for first and business-class travel before an exception is granted.¹³

The OIG also recommended that EPA implement controls to require adequate justification for domestic first or business class travel and for domestic carrier, flight, and/or airfare selection when there are no contract fares. Specifically, the OIG recommended that the CFO clarify EPA policy regarding carrier, flight, and/or airfare selection when there are no contract fares.¹⁴ The OIG further recommended that the Chief of Staff implement controls within the Office of the Administrator to require adequate justification for first or business class travel, and for carrier, flight, and/or airfare selection when there are no contract fares.¹⁵ As set forth in EPA's response to the draft audit report, the Agency disagreed with OIG's recommendations because it believes that it has adequate controls in place.¹⁶ For example, EPA's travel policy provides instructions for the use of non-contract carriers. Under the policy, provided the selected fare is compliant with the exceptions for use of non-contract carriers, the traveler can use a noncontract fare. When doing so, the traveler must select a reason for use of the non-contract carrier within the agency's travel system (via a selection option within Concur), along with a justification, prior to approval.¹⁷ Furthermore, the former Administrator issued a memorandum requiring final approval of expenditures over \$5,000 made by agency personnel on his behalf to conduct official duties, and such approval had to occur by two of three individuals: the Deputy Administrator, Chief Financial Officer, or Chief of Staff.¹⁸ This control remains in place. The Agency also noted that all travel accommodations prepared by the Travel Management Center (BCD) are booked in accordance with FTR and the contract with Concur.¹⁹ Accordingly, the Agency maintained that it has adequate controls in place that require adequate justification for non-contract fare flights.

As to international travel, the OIG recommended that EPA "implement controls to verify that international trip reports are accurate and complete."²⁰ The OIG found that not all travelers submitted international trip reports and that the reports the personnel security division (PSD)

¹¹ *See id.*

¹² *See id.* at 24.

¹³ *See id.* at 64.

¹⁴ *See id.* at 29.

¹⁵ *See id.*

¹⁶ *See id.*

¹⁷ *See id.* at 64.

¹⁸ *See id.* at 65.

¹⁹ *See id.*

²⁰ *See id.* at 38.

staff and other staff submitted were sometimes inaccurate and incomplete.²¹ In response to the OIG's findings, the EPA notified the OIG that it will release a new version of its Fast International Approval of Travel (FIAT) database that tracks international travel. This new version will be internet-based, allowing users to access it anywhere. It will also send travelers reminders about completing reports.²² Furthermore, EPA's Office of Management and International Services has been "monitoring trip reports in the Lotus Notes version of FIAT and contacting travelers who have not filed a report within 7 business days to remind them of the trip report requirement."²³ Thus, the OIG determined that its recommendations for international travel reporting were satisfied.²⁴

Relatedly, the OIG found that the "use of business-class travel by the former Administrator's PSD agents and other staff for international trips was not always approved in accordance with the FTR and EPA travel policy."²⁵ The OIG recommended the CFO: (1) implement controls to ensure EPA employees comply with the FTR and EPA policy for first/business-class travel; (2) provide guidance on documentation needed to support approval for first/business-class travel; and (3) identify and review all business-class travel claimed for the staff and PSD agents who accompanied the former Administrator. EPA agreed to provide guidance and subsequently "provided several agencywide training courses in 2018, including one specifically for OA [Office of Administrator] staff and management."²⁶ EPA disagreed with recommendations one and three, however, because it believed there were sufficient controls in place at the time of approval and relatedly, that the approvals were properly granted.²⁷

Finally, the OIG found that nothing in the FTR prohibits making personal stops while traveling for business to other destinations, under FTR § 301-10.7. The OIG found, however, that the travel authorizations did not contain the necessary cost detail and other support needed to substantiate the former Administrator's stops in Tulsa, Oklahoma.²⁸ Therefore, the OIG concluded that it was "unable to determine whether additional costs were incurred for [] stops in Tulsa the former Administrator made for personal convenience."²⁹ The OIG recommended that the Chief of Staff "implement controls within the Office of the Administrator to confirm that adequate cost comparisons are provided before approving travel authorizations where an alternative travel method is used (i.e., when the direct or usually taken routes are not used)."³⁰ The Agency disagreed with this recommendation, stating that sufficient controls were in place to verify proper justification and approval for use of other than coach-class travel. Furthermore, the Agency stated in its response to the draft report that the costs associated with the former Administrator's trips with stops in Tulsa included the most advantageous method of travel.³¹

²¹ See *id.* at 35.

²² See *id.* at 37.

²³ See *id.*

²⁴ See *id.* at 38.

²⁵ See *id.*

²⁶ See *id.* at 40.

²⁷ See *id.*

²⁸ See *id.* at 34.

²⁹ *Id.*

³⁰ See *id.* at 35.

³¹ See *id.* at 53.

II. Allegations Concerning Former Administrator Pruitt's Spending on Security

Your October 4, 2018 letter also includes allegations that the Agency engaged in improper spending on former Administrator Pruitt's security.³² The whistleblowers first alleged that during a trip to Italy in 2017, the Agency "paid at least \$30,000 for a private security detail and accommodations for Pruitt when they could have used U.S. embassy-recommended hotels that met the per diem rate and already had security on-site." EPA's OIG referred this matter to an outside law enforcement agency for investigation and a possible enforcement action. To EPA's knowledge, the outside law enforcement agency ultimately did not pursue any further action on this allegation. Further, the employee who was allegedly responsible for arranging the private security detail retired from the Agency shortly after this matter was referred to an outside law enforcement agency.

The whistleblowers further alleged that EPA spent approximately \$43,000 to install a soundproof booth in former Administrator Pruitt's office. EPA initiated an internal review of this matter upon receiving a letter dated December 21, 2017, from [REDACTED], Managing Associate General Counsel, Government Accountability Office (GAO), inquiring about the purchase of the soundproof booth. GAO's letter stated that "in response to a congressional request," it would be issuing a legal opinion on whether the EPA obligated FY 2017 funds in a manner inconsistent with section 710 of the Financial Services and General Government Appropriations Act, and the Antideficiency Act.³³ To inform their legal opinion, GAO asked EPA to provide additional facts concerning the expenditure and to provide its legal views on the matter.³⁴ Specifically, GAO sought information on the amount of funds EPA obligated for the privacy booth project, the date on which EPA obligated the funds, and the name and description of the appropriation from which EPA obligated funds for the project. GAO also asked for a description of the project and the statement of work for the contract under which EPA procured the services.³⁵

In response, EPA gathered facts and documentation pertaining to the purchase of the soundproof privacy booth. EPA's OGC reviewed the relevant materials and on March 23, 2018, sent a response to GAO's letter.³⁶ In EPA's response, EPA's then Principal Deputy General Counsel opined that "all uses of appropriated funds were consistent with the appropriations act identified" by GSA.³⁷ EPA's letter further stated that the legal view of the Agency was that it had not violated section 710 of the Financial Services and General Government Appropriations Act, since EPA's obligation of funds for installation of the privacy booth "was an expense necessary to ensure that the Administrator's office was equipped with an item that enables the Administrator to conduct agency business in a private space."³⁸ The letter concluded that the expenditures on the soundproof booth "did not fall within the purview of section 710" and that EPA's actions "were consistent with all provisions of law GAO identified in its letter."³⁹

³² Oct. 4, 2018 letter at 2.

³³ See GAO letter, December 21, 2017.

³⁴ See *id.*

³⁵ See *id.*

³⁶ See GAO letter, March 23, 2018.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

On April 16, 2018, GAO issued its legal opinion concerning the expenditures associated with the soundproof booth and responded to Congress with its views. GAO disagreed with EPA's findings and analysis, as expressed in EPA's March 23, 2018 letter.⁴⁰ GAO found that EPA had "violated section 710 of the Financial Services and General Government Appropriations Act, 2017 when it failed to notify the Committees on Appropriations of the House of Representatives and Senate prior to obligating in excess of \$5,000 to install a soundproof privacy booth for the office of the Administrator during his period of appointment."⁴¹ As a result, GAO stated that the EPA should report its Antideficiency Act violation as required by law.⁴²

In response to GAO's April 16, 2018 opinion, EPA's CFO sent a letter on April 25, 2018 to Chairmen Murkowski and Calvert, and Ranking Members Udall and McCollum, of the Committee on Appropriations. The letter stated that GAO had issued an opinion concluding that EPA's installation of a soundproof privacy booth falls within section 710 of the Financial Services and General Government Appropriations Act, 2017, but that EPA had not come to the same conclusion. The letter also stated, "the purpose of this letter is to comply with th[e] [GAO] opinion and notify you that EPA, during Fiscal Year 2017, obligated \$43,238.68 from the Environmental Programs and Management appropriation account to install a soundproof privacy booth in the Administrator's office."⁴³ EPA attached sixty-two (62) pages of documentation related to the purchase of the soundproof privacy booth to its letter to the Committee. This documentation included orders for supplies, a cost breakdown of the booth from a contractor, architectural plans for the booth, and an invoice for the purchase of the booth.⁴⁴

The whistleblowers also alleged that EPA paid for an unnecessary security sweep of former Administrator Pruitt's office. In February 2018, in response to an anonymous complaint, the Professional Integrity and Quality Assurance (PIQA) staff, located in EPA's Office of Criminal Enforcement, Forensics, and Training (OCEFT), began investigating allegations regarding the security sweep and that such sweep had been done at EPA expense without following proper procurement regulations. PIQA was also investigating a claim that the sweep was conducted by an individual with personal ties to then PSD agent.

On February 21, 2018, the OIG notified EPA that OIG would initiate an investigation into allegations that a PSD agent allegedly "steered" a contract to a friend in relation to a sweep of the Administrator's office for listening devices. Therefore, PIQA did not investigate this allegation. In its November 2019 Semiannual Report to Congress, the OIG reported that the Federal Bureau of Investigation (FBI) led a joint investigative effort into the allegations regarding the alleged "steering" of the security sweep contract, with the FBI investigating potential criminal violations and EPA's OIG investigating any potential employee policy violations.⁴⁵ On June 19, 2019, the FBI notified the OIG that the U.S. Department of Justice

⁴⁰ "U.S. Environmental Protection Agency—Installation of Soundproof Privacy Booth," U.S. Government Accountability Office, April 16, 2018 (<https://www.gao.gov/assets/700/691272.pdf>).

⁴¹ *Id.* at 8.

⁴² *See id.*

⁴³ Letter from EPA to Appropriations Committee, April 25, 2018.

⁴⁴ *See id.*

⁴⁵ *See* Office of Inspector General Semi-Annual Report to Congress, April 1, 2019 – September 30, 2019 (https://www.epa.gov/sites/production/files/2019-11/documents/_epaig_201911_epa-350-r-19-004.pdf).

declined the case for prosecution. During the course of the administrative investigation, the EPA employee in question retired and, as a result, the OIG closed its administrative investigation.⁴⁶

Finally, per your October 4, 2018 letter, the whistleblowers alleged that former Administrator Pruitt improperly used his official position and agency resources for his personal benefit and the personal benefit of his staff. Specifically, they allege that former Administrator Pruitt abused his authority to secure discounted living space from a lobbyist; that he instructed EPA staff to spend official work hours contacting real estate vendors and touring potential residential properties; and that he tasked EPA staff members with his personal errands during official work hours. The OIG investigated these matters and summarized its investigatory activities in its Semiannual Report to Congress on November 30, 2018.⁴⁷ The OIG reported that it conducted an administrative investigation into former EPA Administrator Scott Pruitt's lodging agreement with a lobbyist's wife. Investigators interviewed witnesses and reviewed records pertaining to the lodging agreement, which involved the Administrator renting a room in a townhouse owned by a lobbyist's wife. Mr. Pruitt resigned prior to being interviewed by investigators. For that reason, "the OIG deemed that the result of the investigation was inconclusive" and closed the case.⁴⁸ The Semiannual Report also explained that OIG investigated allegations that former EPA Administrator Scott Pruitt had subordinates at the EPA assist him in finding personal housing and conducting other personal tasks. Investigators interviewed witnesses and reviewed records. Mr. Pruitt resigned prior to being interviewed by investigators. Therefore, "the OIG deemed that the result of the investigation was inconclusive" and closed the case.⁴⁹

III. Allegations Regarding Certain Personnel Decisions of Former Administrator Pruitt

Your October 4, 2018 letter contains whistleblower allegations concerning alleged salary increases former Administrator Pruitt provided to two then-EPA employees. The EPA OIG investigated the issue of these salary increases. The salary increases were provided to certain individuals in administratively determined (AD) positions under the Safe Drinking Water Act (SDWA). The OIG conducted its audit from January 2018 to August 2019, to evaluate EPA's use of AD positions and how the Agency filled those positions.⁵⁰ The OIG "interviewed staff from the Office of Human Resources, reviewed the provisions of the SDWA, obtained a list of AD positions, and reviewed personnel files."⁵¹ It also "compared how different EPA Administrators used AD positions between January 2009 and August 2018."

⁴⁶ See *id.* at 61.

⁴⁷ Office of Inspector General Semiannual Report to Congress, April 1, 2018-September 30, 2018 (https://www.epa.gov/sites/production/files/2018-11/documents/_epaig_20181031-epa-350-r-18-003_linked.pdf).

⁴⁸ *Id.* at 12.

⁴⁹ *Id.* at 13.

⁵⁰ On April 16, 2018, the OIG issued a Management Alert to notify EPA of certain factual information while the OIG's audit was ongoing (Management Alert: Salary Increases for Certain Administratively Determined Positions). Specifically, the Management Alert included factual information regarding six employees who occupied AD positions and addressed who requested and signed the personnel actions related to these employees, as well as the position conversions and salary increases associated with the employees. The OIG found that the Agency used authority under the SDWA to provide significant pay raises for individuals in AD positions.

⁵¹ See *id.* at 3.

OIG issued its final audit report on August 21, 2019, entitled “EPA’s Use of Administratively Determined Positions Is Consistent with Its Authority Under the Safe Drinking Water Act.”⁵² The report concluded that “EPA Administrators have used their authority under the SDWA to make a variety of appointments to AD positions, including new hires and existing employees” since January 2009.⁵³ Furthermore, the OIG identified that “appointments varied in terms of type (professional, legal, scientific and administrative) and location (Administrator’s office, program offices and regional offices).”⁵⁴ Although “EPA Administrators used their authority under the SDWA to expedite the hiring of employees intended for political appointments,” the OIG found that “the act does not specify how appointments are to be used and does not require that appointees work on drinking-water related issues.”⁵⁵ Therefore, the OIG concluded that “the agency’s use of AD positions is consistent with the authority provided by the statute,” and thus made no recommendations. The OIG further noted that as a result of the audit, EPA later reduced the salaries of two employees who had received increases in salary when converting from Schedule C to the AD position, back to their original salaries.⁵⁶

IV. Allegations Regarding Improper Use of Official Position

The whistleblowers further alleged that the PSD was using emergency lights and/or sirens at former Administrator Pruitt’s request in non-emergency situations. On February 20, 2018, PIQA received an anonymous complaint alleging misconduct by a senior PSD agent. Specifically, the email alleged that lights and sirens were routinely used when transporting the former Administrator during non-emergency situations. OCEFT management directed PIQA to initiate an investigation into the allegations and to coordinate efforts with the EPA OIG. The OIG reviewed the matter and declined to investigate, referring the matter to PIQA for investigation.

PIQA’s investigation focused on whether the employee in question authorized and/or used lights and sirens in violation of OCEFT’s directives, including OCEFT’s Policy on Government Owned Vehicles and procedures entitled “Requirements for Protective Service Duties.” As part of its investigation, PIQA interviewed fifteen individuals. Through these interviews, PIQA found that that lights and sirens had been used in non-emergency situations. PIQA also found that at the time the interviews were conducted, the employee in question had directed agents to follow OCEFT’s policy on the use of emergency equipment. The employee in question retired from the Agency, and PIQA concluded its investigation in June of 2018. Following the employee’s retirement, no further administrative action was taken, as OCEFT’s policies and procedures prohibit use of lights and sirens in non-emergency situations.

V. Allegations that the EPA OIG violated the IG Act

Part B of your October 4, 2018 letter contains several allegations concerning possible violations by the EPA OIG of the Inspector General Act, and possibly other laws. On December 20, 2018, [REDACTED], Acting Counsel to the EPA’s Inspector General, referred the allegations

⁵² See *id.*

⁵³ See *id.* at 6.

⁵⁴ See *id.*

⁵⁵ See *id.*

⁵⁶ See *id.*

to the Integrity Committee (IC) of the CIGIE.⁵⁷ On December 21, 2018, [REDACTED], IC Program Director, responded to [REDACTED] and stated that the IC had received EPA's submission and that the IC previously reviewed and closed these allegations as IC case numbers 940, 943 and 957. [REDACTED] further explained that IC had received a copy of OSC's October 4, 2018 letter and that IC had notified OSC of IC's previous determinations. Mr. Dahl sent letters to EPA Inspector General Arthur Elkins, Jr., notifying Mr. Elkins about the closure of case numbers 940 and 943 and case number 957 on July 27, 2018 and on August 15, 2018, respectively.⁵⁸ OIG took no further action with regard to the allegations given that IC had reviewed and closed cases concerning those allegations.

CONCLUSION

Thank you for bringing these important matters to our attention. We appreciate the opportunity to investigate these allegations. As noted above, the OIG conducted an extensive travel audit and concluded that EPA's travel policy is sufficiently designed to prevent fraud, waste, and abuse, and is consistent with the FTR. OIG also conducted various investigations into the other allegations, as did EPA. I believe that the remedial measures undertaken by the Agency in response to the investigations evidence the Agency's strong commitment to ensuring that it has strong policies and procedures in place concerning the matters described above. If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Michael D. Molina". The signature is fluid and cursive, with the first name "Michael" and last name "Molina" clearly legible.

Michael D. Molina
Acting Chief of Staff

⁵⁷ See Letter from [REDACTED] to The Honorable Scott Dahl, Chairperson, IC, December 20, 2018.

⁵⁸ See IC Closure Letters, July 27, 2018 and August 15, 2018.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

June 29, 2021¹

OFFICE OF MISSION SUPPORT

The Honorable Henry J. Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036

Re: OSC File Nos. DI-18-3786, DI-18-3820, DI-18-4713, DI-18-4968

Dear Mr. Kerner,

Please accept this letter and the enclosed attachments as the U.S. Environmental Protection Agency's (EPA's) response to your office's May 5, 2021, email communication, which requested that the EPA provide a Supplemental Report to its February 26, 2020, response regarding the above-referenced matters. In your office's May 5, 2021, email communication, you identified the additional requests by topic and allegation. I have quoted each of your requests and provided EPA's responses below.

1. *"Former Administrator Pruitt's travel: EPA's response to OSC states that OIG investigated Mr. Pruitt's travel and produced a May 16, 2019 report titled "Actions Needed to Strengthen Controls Over the EPA Administrator's and Associated Staffs Travel" (Report No. 19-P-0155). At the time of EPA's response to OSC, EPA had not accepted or implemented a number of OIG's 14 recommendations (9 out of 14, according to OIG's SAR to Congress, were "unresolved"); however, as of June 2020, according to OIG, only 4 recommendations (nos. 1, 2, 12, and 14) are "unresolved."*
 - *We request that EPA's supplemental report reflect this update – i.e., that 10 of 14 OIG recommendations have now been resolved – and identify the status of the remaining 4 "unresolved" recommendations and any ongoing discussions with OIG."*

EPA Response: Please see Attachment 1, "Corrective Action Plan for Office of Inspector General Report No. 19-P-0155, 'Actions Needed to Strengthen Controls over the EPA Administrator's and Associated Staff's Travel'" (March 30, 2020) and Attachment 2, "Office of the Chief Financial Officer's Corrective Action Plans for Office of Inspector General Report No. 19-P-0155, 'Actions Needed to Strengthen Controls over the EPA Administrator's and Associated Staff's Travel'" (June 29, 2020). As reflected in these two attachments, the EPA OIG concluded that EPA's corrective actions have resolved all of the OIG's Recommendations related to the May 16, 2019, report except for Recommendations 1, 2, 7, 9, 12, and 14. Thus, there are currently six unresolved OIG recommendations, not four.

¹ This response replicates the EPA's supplemental response that was submitted to the Office of Special Counsel on May 26, 2021 with a different signatory.

With regard to the “unresolved” recommendations, in January 2021, the Office of the Chief Financial Officer contacted the OIG in an effort to reach resolution. Efforts to identify a resolution regarding Recommendation Nos. 1, 2, 12 and 14 are ongoing. For the two unresolved recommendations that have been assigned to the Office of the Administrator (Recommendation Nos. 7 and 9), the Agency has reached a tentative verbal agreement with the OIG and is pursuing efforts to obtain formal agreement on these recommendations.

2. “*Mr. Pruitt’s Security (2017 Italy Trip)*: EPA’s response to OSC states that OIG referred this matter to an “outside [presumably criminal] law enforcement agency” but does not indicate whether EPA or another entity conducted a civil investigation into the alleged \$30,000 in wasted funds during that trip.
 - *Please specify which “outside law enforcement agency” you referred this to, and also please specify whether EPA or another entity conducted any civil investigation into alleged waste by Mr. Pruitt and staff during his 2017 trip to Italy.”*

EPA Response: The “outside law enforcement agency” referenced in EPA’s February 26, 2020, response was the Federal Bureau of Investigation. There was no further civil investigation regarding former Administrator Pruitt’s 2017 trip to Italy.

3. “*Mr. Pruitt’s Security (Security Booth)*: EPA reported to OSC that GAO found in an Oct. 16, 2018 report titled “U.S. Environmental Protection Agency-Installation of Soundproof Privacy Booth” that EPA had violated the Antideficiency Act and that EPA, though it disagreed with this conclusion, made its required report to Congress. (Note that EPA did not attach the report itself to its response to OSC; rather, it attached correspondence outlining its disagreements with GAO’s findings. OSC located the report.)
 - *Please confirm whether EPA took, or plans to take, any additional actions based on GAO’s findings.”*

EPA Response: EPA is coordinating with OMB on reporting an Antideficiency Act violation related to the installation of the soundproof privacy booth.

4. “*Mr. Pruitt’s Security (Security Sweep of Office)*: EPA reported to OSC that PIQA was initially investigating whether the security sweep of Mr. Pruitt’s office was a waste of funds or evidenced other wrongdoing, but PIQA stopped because OIG began investigating.
 - *Did PIQA ever make any findings on this issue? If so, please provide the findings and any related report.”*

EPA Response: PIQA did not make any findings on this issue.

5. “*Mr. Pruitt’s Staff Salaries*: EPA reported to OSC that OIG’s August 21, 2019 report found no wrongdoing when EPA classified certain positions and raised certain employee salaries under the Safe Water Drinking Act, but that EPA did ‘re-lower’ the salaries of two employees in response to the OIG audit.

- *Please provide the names of the two employees whose salaries EPA reduced “back to their original salaries” in response to OIG’s audit. (Note that OSC will redact these names, along with any other PII, from your response before posting it to our public file.)”*

EPA Response: The names of the two employees whose salaries were reduced were [REDACTED] and [REDACTED]. These names are being provided with the understanding that the OSC will redact these names before posting its report to the public file.

6. *“Mr. Pruitt’s Lights and Sirens in Non-Emergencies: EPA reported to OSC that PIQA investigated and substantiated allegations that the PSD had violated policy and protocol by using emergency lights and sirens in non-emergency situations when transporting Mr. Pruitt. EPA further explained that no corrective action was taken because the policies themselves were sufficient and because “the employee in question retired.”*
 - *Who is the employee that EPA is referencing? (Note that OSC will redact this name, along with any other PII, from your response before posting it to our public file.)*
 - *OSC also requests a copy of the PIQA report, in unredacted form. (Note, if OSC determines that this document should become a part of OSC’s public file in this case, which we do not anticipate at this time, OSC will notify EPA and work with the agency to obtain an appropriately redacted version for publication.)”*

EPA Response: The employee that EPA was referencing was [REDACTED] Former PSD SAC. This name is being provided with the understanding that the OSC will redact the name before posting its report to the public file. A copy of the unredacted PIQA report is attached, please see Attachment 3, “PIQA Case Summary Report, 1100-18-008-CI” (June 8, 2018). This unredacted report is being provided with the understanding that if the OSC seeks to make it a part of its public file, OSC will notify EPA and work to obtain an appropriately redacted version for publication.

7. *“OIG Performing Programmatic Functions: EPA’s response to OSC states the CIGIE declined to investigate these allegations. The attachments that EPA produced to OSC, however, contain additional relevant information that EPA does not reference in its response letter to OSC. Specifically, those attachments reference a “pending engagement” by GAO, which apparently was complete by the time EPA reported to OSC and resulted in an Oct. 30, 2019 GAO report titled “EPA: Recent Policy Could Improve Working Relations between EPA’s Office of Inspector General and Office of Homeland Security.” This GAO report makes clear that EPA issued a new order in May 2019 to help clarify OIG’s and EPA OHS’s respective roles. OSC believes this GAO report is responsive and relevant to the allegations OSC referred, and that the EPA order represents potential corrective action by EPA toward remedying future similar issues.*
 - *OSC requests a copy of EPA’s May 2019 “order,” as referenced in GAO’s October 30, 2019 report.*
 - *OSC also requests that EPA incorporate reference to this GAO report and EPA order in its supplemental response to OSC or, alternately, incorporate an explanation as to why EPA declines to do so.”*

EPA Response: Please see Attachment 4, “Approval of Order 3230 Regarding Homeland Security Policies and Procedures” (May 31, 2019). Order 3230 clarifies that EPA’s Office of Homeland Security (OHS) has programmatic responsibility for activities in the intelligence area, and the EPA OIG has oversight responsibility for those activities.

8. “*EPA Relying on OIG’s Threat Memo to Increase the PSD:* OIG produced a report on Sept. 4, 2018 titled “EPA Asserts Statutory Law Enforcement Authority to Protect its Administrator but Lacks Procedures to Assess Threats...” (Report No. 18-P-0239) that directly addresses this allegation, but EPA does not include the report or its findings in its response to OSC. Further, at the time of EPA’s response, a number of OIG’s report recommendations were “unresolved” (8 of 12, according to OIG’s 2019 SAR) but – according to a recent update from OIG – all of these report recommendations have now been resolved by EPA.


- *OSC requests that EPA’s supplemental report to OSC include reference to this report and an update as to whether all recommendations have been resolved or, alternately, an explanation as to why EPA does not consider the report responsive to OSC’s allegations.”*

EPA Response: Please see Attachment 5, “EPA Asserts Statutory Law Enforcement Authority to Protect Its Administrator but Lacks Procedures to Assess Threats and Identify the Proper Level of Protection, Report No. 18-P-0239” (September 4, 2018). The OIG report made twelve (12) recommendations to the Agency based on the findings of this report. All of the report recommendations have been resolved by the Agency (please see Attachments 6-12, EPA Responses to Report and IG Comments on EPA Response from August 29, 2019-November 19, 2020).

Thank you again for bringing these important matters to our attention. The remedial measures undertaken by the Agency in response to the investigations described in our prior response evidence the EPA’s strong commitment to ensuring that it has strong policies and procedures in place concerning the matters described above. If you have any further questions, please do not hesitate to contact me.

Sincerely,

DONNA
VIZIAN

 Digitally signed by
DONNA VIZIAN
Date: 2021.06.29
14:44:06 -04'00'

Donna Vizian
Acting Assistant Administrator
Office of Mission Support
U.S. Environmental Protection Agency

Office of Criminal Enforcement, Forensics and Training
Professional Integrity and Quality Assurance



Case Summary Report
1100-18-008-CI

Prepared by
Special Agent in Charge [REDACTED]
June 8, 2018

Table of Contents

SYNOPSIS..... 2

INTRODUCTION 3

SUMMARY OF INVESTIGATION..... 3

ALLEGATIONS WITH RELEVANT FINDINGS BY PIQA:..... 4

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation Two (Lights and Sirens)..... 9

Interview of Special Agent [REDACTED] 9

Interview of Special Agent [REDACTED] 9

Interview of Special Agent [REDACTED] 9

Interview of Special Agent [REDACTED] 10

Interview of Special Agent [REDACTED] 11

Interview of Deputy Chief of Staff [REDACTED] 11

Consistent Comments from Other Interviewees..... 11

[REDACTED]

Allegation Four (Premium Travel Issues)..... 12

Interview of SA [REDACTED] 12

Interview of SA [REDACTED] 12

Interview of Special Agent [REDACTED] 12

Interview of Special Agent [REDACTED] 13

Interview of Deputy Chief of Staff [REDACTED] 13

Summary of Findings with Supporting Interviews..... 14

EXHIBITS 17

MEMORANDUM

File: 1100-18-008-CI

SUBJECT: Allegations of [REDACTED] Policy Violations by SAC [REDACTED] Former PSD SAC

FROM: [REDACTED], Special Agent in Charge
Professional Integrity and Quality Assurance
Office of Criminal Enforcement, Forensics and Training

TO: [REDACTED], Director
Office of Criminal Enforcement, Forensics and Training

SYNOPSIS

On [REDACTED], PIQA Special Agent in Charge (SAC) [REDACTED] received an email from an anonymous source [REDACTED], alleging misconduct by Protective Services Detail (PSD) SAC [REDACTED] Former PSD SAC (Exhibit 1). The email was also addressed to [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (Identified as Senior Managers in OECA and OCEFT). It is noted that the email address for [REDACTED] and [REDACTED] were both incorrect. It is presumed based on the other addressees, that the "[REDACTED]" email was intended to reach OECA Deputy Assistant Administrator [REDACTED].

The email generally provides five allegations: 1) [REDACTED]
[REDACTED] 2) a sweep of the Administrator's office for unauthorized electronic devices was done at EPA expense without following proper procurement regulations and the sweep was conducted by an individual with close personal ties to [REDACTED] Former PSD SAC 3) [REDACTED]
[REDACTED]; 4) use of lights and sirens has been routine when transporting the Administrator during non-emergency situations; and, 5) [REDACTED] Former PSD SAC misrepresented perceived threats to the Administrator to falsely justify the use of higher-cost premium class travel.

INTRODUCTION

On February 20, 2018, PIQA SAC [REDACTED] spoke with OCEFT Deputy Director [REDACTED] regarding the allegations. Deputy Director [REDACTED] instructed PIQA to initiate an administrative investigation into the allegations against Former PSD SAC [REDACTED] while coordinating efforts with the EPA-OIG.

On February 21, 2018, SAC [REDACTED] received an email from EPA-OIG Assistant IG for Investigations [REDACTED]. The email referred all of the allegations against Former PSD SAC [REDACTED] back to OCEFT for investigation, with the exception of the allegation alleging Former PSD SAC [REDACTED] “steered” a contract to a friend in relation to a sweep of the Administrator’s office for listening devices.

SUMMARY OF INVESTIGATION

The objective of this investigation was to: determine if Former PSD SAC [REDACTED]; authorized and/or used lights and siren in violation of OCEFT Directives; [REDACTED]; or misrepresented threats to the Administrator to justify using premium travel.

To accomplish this objective, PIQA interviewed the following individuals while audio-recording each session:

Name ¹	Title	Interview Date
[REDACTED]	PSD Special Agent	2/27/2018
[REDACTED]	PSD Special Agent	2/27/2018
[REDACTED]	Former EPA Deputy Chief of Staff	2/27/2018
[REDACTED]	PSD Special Agent	2/28/2018
[REDACTED]	PSD Special Agent	2/28/2018
[REDACTED]	PSD Special Agent	2/28/2018
[REDACTED]	PSD Special Agent	2/28/2018
[REDACTED]	PSD Special Agent	2/28/2018
[REDACTED]	PSD Special Agent	3/1/2018
[REDACTED]	PSD Special Agent	3/1/2018
[REDACTED]	PSD Special Agent	3/1/2018
[REDACTED]	CID-Operations	3/13/2018
[REDACTED]	PSD Special Agent	3/16/2018
[REDACTED]	PSD Special Agent	4/4/2018
[REDACTED]	EPA Deputy Chief of Staff (Acting)	4/11/2018

¹ This report summarizes pertinent information relating to the allegations alone, and is not intended to provide a transcript of each interview. Several interviewees did not have any relevant information regarding the allegations due to their limited time on staff with PSD.

ALLEGATIONS WITH RELEVANT FINDINGS BY PIQA:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation Two (Lights and Sirens): *PSD agents routinely used of lights and siren while transporting the Administrator during on-emergency situations*

Interview of Special Agent [REDACTED]

SA [REDACTED] admitted that the PSD had problems with the utilization of lights and sirens in non-emergency situations while transporting EPA Administrators. [REDACTED] described that as of late, there had been a concerted effort to “put that genie back in the bottle”, describing use to simplify traffic navigation and/or tardiness. SA [REDACTED] described Administrator Pruitt as perpetually late and successful in convincing younger agents on the PSD to use lights and sirens inappropriately. [REDACTED] said that [REDACTED] and Former PSD SAC [REDACTED] had recently engaged in writing long overdue SOPs for the PSD, which included the use of lights and sirens for motorcade activity. Former PSD SAC [REDACTED] has sent emails to the PSD with directives about the use of lights and sirens.

Interview of Special Agent [REDACTED]

SA [REDACTED] said that Administrator Pruitt was historically late and the PSD tries to curtail that with earlier departures. SA [REDACTED] recalled one instance where [REDACTED] was [REDACTED] and the Administrator was late for a flight. The Administrator implied using lights and siren to get to the airport more quickly. SA [REDACTED] recalled Administrator Pruitt saying, “Can you guys use that magic button to get us through traffic?” When [REDACTED] started in [REDACTED] 20[REDACTED], [REDACTED] understood the policy to be that emergency equipment could be used when safe to do so to expedite the Administrator’s travel. Ultimately, the driver generally activates the equipment but it is difficult to not follow what the Administrator wants. As of late, as SOPs are being developed, Former PSD SAC [REDACTED] has put out directives to follow OCEFT policy regarding lights and sirens and to not use them to expedite. It is the Shift Leaders responsibility to tactfully address the Administrator regarding OCEFT policy if necessary. SA [REDACTED] said [REDACTED] knows that Former PSD SAC [REDACTED] spoke to Chief of Staff [REDACTED] who advised to obey the Administrator’s direction.

Interview of Special Agent [REDACTED]

SA [REDACTED] said, “we all have used lights and sirens with the Administrator in the car-without question.” [REDACTED] advised that the use was at the direction of the Administrator and the PSD was uncomfortable doing this because they are to be used for emergency situations. SA [REDACTED] went on to say that, “just because the Administrator makes himself late for an appointment, does not constitute us to arbitrarily turn on lights and sirens to get him to his next appointment timely, to make up time”. SA [REDACTED] described how awkward it is in the car when the Administrator is saying “speed it up”, and “we need to get there quicker”; that is direction from the head of the Agency, and it is hard to disobey. SA [REDACTED] said the PSD agents have worked to use them as little as possible over the last two to three months, but may use them to turn left across oncoming traffic or enter a

venue "hot". SA [REDACTED] said the use of lights and sirens is a hot topic with the Administrator's Office and OCEFT policy is explicit that the use is in emergency situations only. Former PSD SAC [REDACTED] has gone to the length of telling PSD agents to disable/unplug the lights and sirens so they wouldn't use them because the Administrator will still instruct they be used, but the Agent can say they don't work.

Interview of Special Agent [REDACTED]

SA [REDACTED] described a situation where [REDACTED] was driving the Administrator and Former PSD SAC [REDACTED] was the Detail Lead. Former PSD SAC [REDACTED] at the direction of the Administrator actuated the lights and siren in the limousine to expedite travel when the Administrator was late to an appointment. [REDACTED] said that [REDACTED] has been present at various times where lights and sirens were used at the direction of the Administrator, either explicitly by saying something, or implicitly through his body language and cues. [REDACTED] recalled a specific instance where [REDACTED] was driving and the Administrator was 35 minutes late to his staff meeting and directed that he be taken to pick up his dry cleaning prior to going to the office. SA [REDACTED] described using lights and sirens, driving contra-flow against oncoming traffic and said [REDACTED] believed it was reckless. SA [REDACTED] said the urgency from the Administrator was palpable and SA [REDACTED] did not believe [REDACTED] could refuse the order.

SA [REDACTED] recalled shortly after [REDACTED] had come on duty and was driving the limo with SAC [REDACTED] as [REDACTED]. The Administrator told SA [REDACTED] that he was running late and mentioned the use of lights to speed up the trip. SAC [REDACTED] told SA [REDACTED] to stay in park and proceeded to explain to the Administrator that the use of lights and sirens was only for emergency situations and it would be against OCEFT policy to use them to expedite because he was late. The Administrator was visibly upset and was silent for an uncomfortable time in the car. The trip was uneventful but SA [REDACTED] said the Administrator was upset and a few days later, SAC [REDACTED] was removed from [REDACTED] position. SA [REDACTED] described that this action sent a clear message to the PSD that if you didn't perform the bidding of the Administrator, you would lose your job. This idea made for many uncomfortable times where PSD agents were directed to use lights and sirens in violation of OCEFT policy and public safety.

SA [REDACTED] said at some point in the last couple of months with the media reporting of scandals involving the Administrator, the use of lights and sirens had scaled-back considerably. [REDACTED] recalled that either SA [REDACTED] or Former PSD SAC [REDACTED] put out the OCEFT policy and reiterated that the use of emergency equipment is reserved for emergency situations only. [REDACTED] further described that this had always been the policy but Former PSD SAC [REDACTED] was saying now that there is no gray area to the policy, even if directed by the Administrator. [REDACTED] said that Former PSD SAC [REDACTED] told the Administrator at one point that the lights were broken to avoid their use.

Interview of Special Agent [REDACTED]

Regarding the use of lights and sirens while transporting the Administrator, SA [REDACTED] said that the use has been for maneuvering and not a standard practice. Former PSD SAC [REDACTED] expects them to be used to help maneuver and expedite traffic flow. SA [REDACTED] recalled

Former PSD SAC saying we're going to use them as needed and in an emergency. [REDACTED] had one experience where [REDACTED] activated the lights and sirens while [REDACTED] was driving and [REDACTED] has heard the same from other PSD agents. [REDACTED] recalled the Administrator saying things like, "hit them" or "get us there" which translates to using lights and sirens.

Interview of Deputy Chief of Staff [REDACTED]

When asked about motorcades executed by the PSD for Administrator Pruitt, DCOS [REDACTED] recalled a fall 2017 trip to Colorado where [REDACTED] described that [REDACTED] had never seen the excessive use of lights and sirens as [REDACTED]'s seen with EPA's PSD. [REDACTED] has a video of this activity from the Colorado trip. Former PSD SAC [REDACTED] was present and directing this activity, to [REDACTED] knowledge. DCOS [REDACTED] described ongoing high speeds and erratic driving, regardless of in DC or outside of the Capitol. DCOS [REDACTED] recalled a DOI event with POTUS wherein extreme speed and lights and sirens were utilized while Former PSD SAC [REDACTED] was in the car with the Administrator. [REDACTED] said the most recent occurrence was local while returning from the White House to EPA which is approximately four blocks. [REDACTED] described the use of lights and sirens as "overly obnoxious, excessive, and more dangerous to everyone". In [REDACTED] opinion, none of the circumstances [REDACTED] witnessed of the use of lights and sirens was an emergency. [REDACTED] talked to Former PSD SAC [REDACTED] about these issues and was told it was none of [REDACTED] business. [REDACTED] understood that [REDACTED] was removed from [REDACTED] position because [REDACTED] would not permit the limo driver to use lights and sirens.

Consistent Comments from Other Interviewees

Lights and sirens have been used at the direction of the Administrator as the agents do not feel comfortable disobeying the agency head. Their use has not been during emergency situations but to ease travel like turning across oncoming traffic, using excessive speed to expedite a trip or to make a path through other motorists. Within the last few months due to increased media scrutiny, Former PSD SAC [REDACTED] has directed the PSD to OCEFT's policy on the use of emergency equipment.

In addition to interviews, an email was provided to SAC [REDACTED] on [REDACTED], from OCEFT Director [REDACTED]. The email forwarded included an email from Former PSD SAC [REDACTED] from [REDACTED], 2018. The email contained the Subject line: Lights and Siren. The email stated "Btw-Administrator encourages the use..." The email was addressed to [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. All were Special Agents working in some capacity on the Administrator's Protective Service Detail, at that time.

[REDACTED]

[REDACTED]

Allegation Four (Premium Travel Issues): Former PSD SAC [REDACTED] *misrepresented threats to the Administrator to justify using premium travel*

Interview of SA [REDACTED]

SA [REDACTED] believes decision-making relating to how the Administrator travels does take into consideration threats and verbal altercations Administrator Pruitt has encountered, but the PSD has no authority relating to how Administrator Pruitt travels. SA [REDACTED] stated Administrator Pruitt has had unprecedented levels of recognition in airports, on airplanes and wherever he visits. SA [REDACTED] has no knowledge of [REDACTED] Former PSD SAC [REDACTED] mischaracterizing threats to justify travel accommodations.

Interview of SA [REDACTED]

SA [REDACTED] said that based on [REDACTED] previous experience with threat assessments, protective intelligence and threat management, [REDACTED] does not believe that the current climate justifies premium travel but [REDACTED] is not in that decision-making process, and is not sure whom makes decisions relating to the Administrator's travel. [REDACTED] said [REDACTED] has read the OIG report, looked at open-source social media reporting and reporting regarding verbal altercations directed at the Administrator. [REDACTED] said that SAs [REDACTED] and [REDACTED] recently, at SAC [REDACTED] Former PSD SAC [REDACTED] direction, developed a current threat assessment. SA [REDACTED] described that some of the Administrator's recent personal travel has been at hotels where the rates exceeded the 300% GSA rate like the Broadmoor in Colorado. [REDACTED] said several agents including himself had to "eat" the overage because they needed to be proximate to the Administrator.

Interview of Special Agent [REDACTED]

SA [REDACTED] is not aware of any misrepresentations made by [REDACTED] Former PSD SAC [REDACTED] relating to the Administrator's travel. [REDACTED] said the Administrator makes unconventional travel arrangements. PSD has no say in what airlines the administrator uses, what times he flies or what category of seat he uses. It is widely known that the Administrator prefers to travel on Delta airlines even when it is not the contract carrier. This causes the PSD to have to violate travel regulations, as well. The PSD is responsible regardless of where the Administrator is sitting to provide a "bubble" around him as best as possible. SA [REDACTED] described the documentation of negative interactions with the citizenry wherein people approach the Administrator and cast aspersions on him. The only time PSD has a say in flights is when they fly internationally due to the necessity of flying on a single carrier to assist with weapons and equipment. SA [REDACTED] said [REDACTED] understanding is that EPA-OHS was supposed to have done a threat analysis but it never happened so two agents on PSD with prior intelligence experience have prepared one recently. SA [REDACTED] said first class travel is allowed in limited circumstances according to the Federal Travel Regulations including flights exceeding 14 hours, a medical necessity or exceptional circumstances. PSD is not flying first class anymore because they don't want to violate the regulations.

Interview of Special Agent [REDACTED]

SA [REDACTED] said [REDACTED] was aware of a travel memo created justifying for safety reasons the Administrator flying first class based on the IG's security/threat assessment. That is all the information [REDACTED] had on the subject.

Interview of Deputy Chief of Staff [REDACTED]

When asked to describe issues relating to first/business class travel, DCOS [REDACTED] said that the PSD had recommended the Administrator travel in business class for safety reasons but [REDACTED] was unaware of any specifics relating to threats. The PSD Detail Lead would travel in the same class as the Administrator. An assistant to Administrator Pruitt named [REDACTED] traveled in business class with him and DCOS [REDACTED] knew this was not allowed either, based on the Federal Travel Regulations. DCOS [REDACTED] said [REDACTED] refused as the DCOS of Operations to sign-off on these expenditures and [REDACTED] being pushed out of the Agency is retaliation for this refusal. [REDACTED] understanding is that DCOS [REDACTED] would have signed off in [REDACTED] stead. Former Agency employee [REDACTED] and others had refused to sign similar requests and [REDACTED] understood that they were forced out because of this. At Administrator Pruitt's direction, DOSA [REDACTED] was looking for a ride-share program for a private aircraft at one point which DCOS [REDACTED] said seemed completely inappropriate. [REDACTED] explained business class waivers only cover limited circumstances for medical or security reasons.

In addition to the above interviews, additional information was obtained by PIQA relating to the topic of premium travel.

On [REDACTED] 2018, SAC [REDACTED] received an email from OCEFT Directory [REDACTED]. The email contained an attachment memorandum dated [REDACTED] from [REDACTED] former PSD SAC [REDACTED] "Acting" Special Agent in Charge to [REDACTED] – Travel Coordinator on the subject of Business/First Class Travel When Protecting the Administrator. The memorandum is attached. **(Exhibit 2)**

SUMMARY OF FINDINGS WITH SUPPORTING INTERVIEWS

The objective of this investigation was to: determine if [REDACTED] [REDACTED]; authorized and/or used lights and siren in violation of OCEFT Directives; [REDACTED]; or misrepresented threats to the Administrator to justify using premium travel. This was accomplished primarily through interviews and reviews of email. On [REDACTED], SAC [REDACTED] sent an email to include OCEFT ALL, in which [REDACTED] states "It has been a tremendous honor to serve as a special agent for the past 23 years and I wish you all a safe journey ahead as you move forward in both your professional and personal lives." SAC [REDACTED] then confirmed that [REDACTED] had retired. After consultation with the OCEFT Director and Deputy Director, PIQA ended any additional investigative activity into the allegations. In addition, as a result of ongoing EPA Office of Inspector General investigations and audits, PIQA conducted limited investigative activity into the allegation that [REDACTED] *misrepresented threats to the Administrator to justify using premium travel.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Summary of Allegation Two (Lights and Sirens): *PSD agents routinely used lights and siren while transporting the Administrator during non-emergency situations*

Lights and sirens have been used at the direction of the Administrator as the agents do not feel comfortable disobeying the agency head. Their use has not been during emergency situations but to ease travel like turning across oncoming traffic, using excessive speed to expedite a trip or to make a path through other motorists. After increased media scrutiny, Former PSD SAC directed the PSD to OCEFT's policy on the use of emergency equipment. There are specific situations that should be highlighted:

SA [REDACTED] recalled a specific instance where [REDACTED] was driving and the Administrator was 35 minutes late to his staff meeting and directed that he be taken to pick up his dry cleaning prior to going to the office. SA [REDACTED] described using lights and sirens, driving contra-flow against oncoming traffic and said [REDACTED] believed it was reckless. SA [REDACTED] said the urgency from the Administrator was palpable and SA [REDACTED] did not believe [REDACTED] could refuse the order.

SA [REDACTED] also recalled shortly after [REDACTED] had come on duty and was driving the limo with SAC [REDACTED] as [REDACTED]. The Administrator told SA [REDACTED] that he was running late and mentioned the use of lights to speed up the trip. SAC [REDACTED] told SA [REDACTED] to stay in park and proceeded to explain to the Administrator that the use of lights and sirens was only for emergency situations and it would be against OCEFT policy to use them to expedite because he was late. The Administrator was visibly upset and was silent for an uncomfortable time in the car. The trip was uneventful but SA [REDACTED] said the Administrator was upset and a few days later, SAC [REDACTED] was removed from [REDACTED] position. SA [REDACTED] described that this action sent a clear message to the PSD that if you didn't perform the bidding of the Administrator, you would lose your job. This idea made for many uncomfortable times where PSD agents were directed to use lights and sirens in violation of OCEFT policy and public safety.

The issue with using lights and siren rose to the level that SA [REDACTED] stated that Former PSD SAC [REDACTED] has gone to the length of telling PSD agents to disable/unplug the lights and sirens so they wouldn't use them because the Administrator will still instruct they be used, but the Agent can say they don't work.

[REDACTED]

[REDACTED]

Summary of Allegation Four (Premium Travel Issues): Former PSD SAC [REDACTED] misrepresented threats to the Administrator to justify using premium travel

Most of the agents interviewed were not familiar with the history of decision making relating to the Administrator's travel accommodations (air/hotel). SA [REDACTED] stated that PSD has no say in what airlines the administrator uses, what times he flies or what category of seat he uses.

SA [REDACTED] described that some of the Administrator's recent personal travel has been at hotels where the rates exceeded the 300% GSA rate like the Broadmoor in Colorado. [REDACTED] said several agents including himself had to "eat" the overage because they needed to be proximate to the Administrator.

As previously stated, as a result of ongoing EPA Office of Inspector General investigations and audits, PIQA conducted limited investigative activity into the allegation that **Former PSD SAC** *misrepresented threats to the Administrator to justify using premium travel.*

List of Exhibits

Exhibit 1 -February 20, 2018, Anonymous Complaint against **Former PSD SAC**



02_20_2018_Compla
int.pdf

Exhibit 2- May 1, 2017, Travel/First Class Memorandum from **Former PSD SAC**



05_01_2017_Perrott
aTravelMemo.pdf



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

October 4, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: OSC File Nos. DI-18-3786, DI-18-3820, DI-18-4713, DI-18-4968

Dear Mr. Wheeler:

Pursuant to my responsibilities as Special Counsel, I am referring to you whistleblower disclosures regarding the Environmental Protection Agency (EPA) and EPA Office of Inspector General (OIG). I have determined that there is a substantial likelihood that the allegations disclose a violation of law, rule, or regulation; gross waste of funds; abuse of authority; gross mismanagement; and substantial and specific danger to public health or safety. We anticipate that you will delegate the responsibility to investigate these allegations to the Inspector General of the EPA, who, in turn, will refer them to the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) for review under Integrity Committee procedures. We expect this will result in a report of findings, per 5 U.S.C. § 1213.

Two whistleblowers consented to disclosure of their names:

[REDACTED]

[REDACTED] Two whistleblowers chose to remain anonymous.¹ Allegations to be investigated include:

- Former Administrator Scott Pruitt, with varying degrees of assistance from EPA staff, engaged in improper and excessive spending of agency funds on travel and security; used his official position for his personal benefit and the personal benefit of some EPA staff members; and endangered public safety.
- In violation of the Inspector General Act of 1978 (IG Act) and possibly other laws, rules, or regulations, EPA-OIG assumed EPA program operating responsibilities including protective intelligence and counterintelligence functions when:
 - EPA-OIG improperly played a role in assessing or reviewing security threats;
 - EPA-OIG was improperly involved in the management of the PSD; and

¹ Each allegation in this referral was made by one or more of the four whistleblowers. To simplify, I use the term "whistleblowers" in this letter, regardless of which of the four whistleblowers made the relevant allegations.

The Honorable A. Wheeler
October 4, 2018
Page 2

- o EPA relied on EPA-OIG's improper security assessments or reviews to justify alleged misspending, including expanding Pruitt's PSD.

A. *Pruitt's improper and excessive spending, abuse of authority, and endangering of public safety.*

The whistleblowers alleged EPA engaged in excessive and improper spending on Pruitt's travel and security. As examples of improper travel expenses, the whistleblowers alleged that Pruitt regularly flew first-class, including to Morocco and Italy, without the proper approval or justification, and allowed his staff to do the same;² and that Pruitt also frequently used EPA time and funds to travel for personal reasons, requesting that staff contrive an official reason for the trip to justify the expense, and routinely flew on his preferred airline—even when that airline cost significantly more than others—so that he could earn airline rewards on his personal account.³

The whistleblowers also alleged the following examples of improper spending on Pruitt's security:

- During a 2017 trip to Italy, EPA paid at least \$30,000 for a private security detail and accommodations for Pruitt when they could have used U.S. embassy-recommended hotels that met the per diem rate and already had security on-site;
- EPA paid approximately \$43,000 to install a soundproof booth in Pruitt's office;⁴ and
- EPA paid for unnecessary security items, including bulletproof vests and weapons, biometric locks, one or more new vehicles, and a security sweep of Pruitt's office.

The whistleblowers further alleged Pruitt improperly used his official position and agency resources, including staff, for his personal benefit and the personal benefit of his staff. Specifically, they alleged that Pruitt abused his authority to secure discounted living space for his daughter from a lobbyist; that he instructed EPA's Director of Scheduling and Advance to spend official work hours contacting real estate vendors and touring potential residential properties; and that he frequently tasked EPA staff members with his personal errands during official work hours. The whistleblowers also alleged that EPA, under Pruitt, made improper personnel and contracting decisions to personally benefit specific EPA employees. For example, they alleged that then-employees [REDACTED] and [REDACTED] received excessive salary increases at Pruitt's request; and that [REDACTED] Former PSD SAC, then-Special Agent in Charge (SAC) of the

² Generally, federal employees traveling on official business must fly coach-class unless doing so would pose a danger to their lives or certain other exceptional circumstances arise. See 41 C.F.R. §§ 301-10.105(b), 301-10.122, 301-10.123(a)(3).

³ See 41 C.F.R. §§ 301-53.2, 301-53.4.

⁴ Section 710 of the Consolidated Appropriations Act sets a \$5,000 limit to furnish, redecorate, purchase furniture, or make improvements to the office.

The Honorable A. Wheeler
October 4, 2018
Page 3

PSD, personally and financially benefitted from EPA's hiring of the private security detail in Italy, and the security sweep of Pruitt's office.⁵

Pruitt and EPA staff members are also alleged to have endangered public safety through Pruitt's request that the PSD use emergency lights and/or sirens in non-emergency situations when transporting Pruitt by vehicle, sometimes at excessive speeds and during inclement weather. The whistleblowers stated that they notified Pruitt that this practice violated EPA policies and endangered public safety, but that he continued to request the use of lights and/or sirens in non-emergency situations, and PSD agents routinely complied.

B. EPA-OIG played an improper role in program operations, including assessing and reviewing security threats.

The whistleblowers alleged that EPA-OIG improperly expanded its role, in violation of the IG Act, as amended, to include programmatic functions of EPA.⁶ Specifically, they alleged that EPA-OIG's then-Assistant Inspector General for Investigations (AIGI) [REDACTED] [REDACTED]⁷ and other EPA-OIG staff members improperly participated in EPA protective intelligence and counterintelligence functions, including reviewing and assessing security threats. The OIG is also alleged to have been involved in the management of the PSD by having discussions with EPA senior management, including [REDACTED] Former PSD SAC [REDACTED], about the daily operations of the PSD, PSD staffing levels, and other decisions related to EPA's security budget. The whistleblowers alleged that EPA-OIG's involvement in program operating responsibilities not only violated the IG Act, as amended, but also resulted in gross mismanagement of those functions and, in some cases, a gross waste of funds.

The whistleblowers asserted that EPA's decision to expand Pruitt's PSD from official work hours ("portal-to-portal") to full 24-hours/seven-days-a-week ("24/7") coverage, and to externally hire approximately 10 more agents as part of that expansion, was not justified by credible security threats at the time.⁸ Instead, they alleged EPA expanded the PSD at Pruitt's request, and justified the larger security presence by relying in part on assessments or reviews improperly conducted by EPA-OIG, including by AIGI [REDACTED], that erroneously inflated the number of credible security threats.

As an example of the inflated security threat assessments, the whistleblowers point to an August 2017 memorandum issued by AIGI [REDACTED] to [REDACTED] Former PSD SAC [REDACTED], then-head of the

⁵ The whistleblowers also alleged EPA may have awarded these security contracts in violation of federal acquisition regulations, such as by not competing the contracts.

⁶ See 5 U.S.C. App. §§ 2, 9(a) ("... there shall not be transferred to an Inspector General . . . program operating responsibilities.").

⁷ OSC learned that AIGI [REDACTED] retired effective July 30, 2018.

⁸ Some of the facts alleged here by the whistleblowers were confirmed by EPA-OIG Report No. 18-P-0239 (September 4, 2018).

The Honorable A. Wheeler

October 4, 2018

Page 4

PSD, entitled "Summary of Pending and Recent Threat Investigations." The memorandum contained multiple statements by individuals that EPA-OIG considered to be "threats" to Pruitt. The whistleblowers alleged many of the statements were First Amendment-protected speech by private citizens critical of Pruitt and his policies, not actual security threats. Rather than classify these statements as protected speech as EPA had done in the past,⁹ according to the whistleblowers, EPA-OIG improperly designated them as security threats and opened criminal investigations into these private citizens. The whistleblowers alleged EPA relied on AIGI ██████'s August 2017 memorandum, and others like it, to help justify the larger PSD presence and other security expenses.¹⁰

The whistleblowers further alleged that AIGI ██████ exceeded and abused ██████ authority by contriving investigations of OHS employees for the purpose of, among other things, obtaining classified and non-classified communications between the Federal Bureau of Investigation (FBI) and OHS, access the FBI previously explicitly denied. The whistleblowers stated that FBI prohibited disclosure of this information by OHS to those without a "need-to-know" basis. The FBI informed AIGI ██████ that EPA-OIG did not fall into this category as to certain matters, yet ██████ persisted in ██████ efforts to access this information through OHS and other EPA employees with access.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation; gross waste of funds; abuse of authority; gross mismanagement; and substantial and specific danger to public health or safety. Please note that specific allegations and references to specific violations of law, rule, or regulation are not intended to be exclusive. As previously noted, we anticipate that you will delegate the responsibility to investigate these allegations to the EPA Inspector General, who, in turn, will refer them to the CIGIE Integrity Committee pursuant to Section 11(d)(4)(A) of the Inspector General Act of 1978 to conduct a review. Per OSC's statutory requirements, I will review any submissions for sufficiency and reasonableness before sending copies of the reports, along with the whistleblowers' comments and any comments or recommendations I may have, to the President and congressional oversight committees, and make these documents publicly available.

⁹ The whistleblowers stated that OHS and other federal law enforcement entities previously reviewed security threats and gave recommendations to the PSD.

¹⁰ The whistleblowers also questioned EPA-OIG's authority to investigate threats made by non-EPA employees.

The Honorable A. Wheeler
October 4, 2018
Page 5

Additional important requirements and guidance on the agency report are included in the Appendix, which can also be accessed online at <https://osc.gov/Pages/DOW.aspx>. If your investigators have questions regarding the statutory process or the report required under section 1213, please contact Elizabeth McMurray, Chief of the Retaliation and Disclosure Unit, at (202) 804-7089 for assistance. I am also available for any questions you may have.

Sincerely,



Henry J. Kerner

Enclosure

cc: The Honorable Arthur A. Elkins, Jr., Inspector General

The Honorable Scott S. Dahl, Chair
Integrity Committee, Council of the Inspectors General on Integrity and Efficiency

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.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- 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.
- 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. See 5 U.S.C. §§ 1213(f), 1219(a)(1).

June 15, 2021

Honorable Henry Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, #300
Washington, DC 20036
Attn: [REDACTED]

Re: OSC File Nos. DI-17-2106, DI-18-3786

Dear Mr. Kerner:

[REDACTED] Whistleblower submits these comments on the Environmental Protection Agency's (EPA) report into [REDACTED] whistleblowing disclosures of illegality, abuse of authority, gross mismanagement, gross waste of funds and substantial and specific danger to public health or safety at the EPA. [REDACTED] Whistleblower's assessment is enclosed as Attachment 1. On May 15, 2018, [REDACTED] disclosed to the Office of Special counsel (OSC) that the EPA engaged in, *inter alia*, the following violations:

- former Administrator Scott Pruitt's excessive spending on travel and security;
- Messrs. Pruitt and agency security chief [REDACTED] Former PSD SAC's using their official positions for their personal benefit and the personal benefit of other staff members;
- Mr. Pruitt and staff endangering public safety through instructing his personal security detail to use lights and/or sirens when traveling by vehicle in non-emergency contexts; and
- EPA Office of Inspector General (OIG) taking on program operating responsibilities, such as reviewing or assessing security threats which the EPA relied on to issue unnecessary security controls.

On October 4, 2018, OSC found a substantial likelihood of wrongdoing based on the information [REDACTED] Whistleblower reported, and it referred those issues for EPA investigation pursuant to 5 USC 1213(b). In a February 26, 2020 letter, the EPA provided an initial response. In July 2020, OSC requested that EPA provide a supplemental report to its February 26, 2020 response. In a letter dated May 26, 2021, the EPA submitted a supplemental report from the agency's acting deputy chief of staff.

Unfortunately, as detailed below, after over two years and seven months from the OSC referral and over three years from [REDACTED] Whistleblower's disclosure, the core issues remain unaddressed. [REDACTED] Whistleblower's disclosures exposed serious wrongdoing that negatively impacted the EPA's mission. The gross waste of public funds was among the serious consequences for United States citizens. Unfortunately, the EPA did not treat these issues with respect.

STANDARD OF REVIEW

These comments apply the statutory requirements of 5 U.S.C. § 1213(d):

“Any report required under subsection (c) shall be reviewed and signed by the head of the agency and shall include—

- (1) a summary of the information with respect to which the investigation was initiated;
- (2) a description of the conduct of the investigation;
- (3) a summary of any evidence obtained from the investigation;
- (4) a listing of any violation or apparent violation of any law, rule, or regulation; and
- (5) a description of any action taken or planned as a result of the investigation, such as—
 - (A) changes in agency rules, regulations, or practices;
 - (B) the restoration of any aggrieved employee;
 - (C) disciplinary action against any employee; and
 - (D) referral to the Attorney General of any evidence of a criminal violation.

OVERVIEW ON AGENCY CHIEFS’ FAILURE TO TAKE RESPONSIBILITY

5 U.S.C. § 1213(d)(1) requires that “[a]ny Report required under subsection (c) shall be reviewed and signed by the head of the agency....: The agency head must include his or her findings from the Report. 5 U.S.C. §1213(c)(1)(B). OSC website guidance further explains,

Should the agency head delegate the authority to review and sign the Report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).

The EPA ignored the law’s mandate that the buck stops with agency chiefs for resolution of whistleblower issues referred by the OSC. The supplemental report came from Acting Deputy Chief of Staff Wesley J. Carpenter without any indication the Administrator read or even received the report.

It is unacceptable that an acting subordinate substitute for agency leadership. Congress explicitly required accountability from agency leads. In the legislative history, Congress explained that the referrals are so agency chiefs have an early warning system and record to exercise leadership. This will not stop, until the Special Counsel flunks reports on grounds that agency chiefs are avoiding and passing the buck.¹

¹ There is no statutory authority under § 1213 for an agency chief to pass the buck to subordinates when responding to an OSC order to investigate after finding a substantial likelihood of illegality or other serious public policy misconduct. Nor is this accountability loophole consistent with legislative intent. In 1978 when Congress passed the bi-partisan Leahy Amendment that created this structure, the point was that agency chiefs must take personal responsibility to clean their own houses of misconduct that betrays the public trust. Congress reasoned that agencies bury problems within bureaucratic ranks. In a 1978 Dear Colleague letter a bi-partisan group of 17 senators explained that the point of their proposed amendment, which was adopted as part of the Civil Service Reform Act -- to ensure that agency chiefs are aware of serious misconduct, and exercise leadership to address it. (Reprinted in 124 *Cong. Rec.* S14302-03. (daily ed. Aug. 24, 1978))

THE EPA'S RESPONSE IS UNREASONABLE

The report's findings must be reasonable under 5 USC 1213(e). Instead of taking responsibility, the EPA delayed this investigation for years. The consequences of such delays resulted in critical witness departures from federal employment and inconclusive reports. The EPA conducted little to no investigations itself, and routinely rewrote the issues to find themselves not culpable. The EPA's response is particularly alarming for allegations of Mr. Pruitt's excessive and improper spending on travel and security. First, the report finds that on February 11, 2019, the EPA's Office of General Counsel (OGC), issued a memorandum redelegating authority to the Controller to retroactively approve the individual trips on grounds that there were valid security concerns during the travel period in question.² The Agency admitted that the OIG disagreed with its position, finding that the Agency had not provided a justification or documentation to show valid security concerns related to the travel exception.³ The OIG recommended that the CFO implement controls to make sure officials have adequate authority *prior* to granting first/business class exceptions, and that upgrades are justified and documented.⁴ The EPA simply disagreed with the OIG, believing it already had sufficient controls.⁵ The facts of Mr. Pruitt's abuse of authority and gross waste of public funds proved the EPA wrong and renders its judgement unreasonable. The OIG emphasized how the EPA contradicts itself by stating that their policy is in accordance with the Federal Travel Regulations (FTR) and that approved justification is required for first and business-class travel before an exception is granted.⁶ This directly contradicts the agency's conclusion there was no misconduct with retroactive approval of Mr. Pruitt's travel – which was clearly done to escape accountability.

Second, the EPA created a straw man by rewriting the issues. The agency accomplished this by addressing an OIG report that was investigated prior to the OSC even issuing it a referral and providing a response to *that* report, *not* the issues identified by the OSC's referral. EPA rewrote the issue to be whether the agency's policies were adequate per the OIG's noted concerns and recommendations in their pre-existing report. The EPA completely skipped over investigating and reaching conclusions based on the specific issue that the OSC referred

The EPA OIG, in its May 16, 2019 Travel Report, recommended that the Chief Financial Officer (CFO) evaluate and determine whether the increased airfare costs estimated at \$123,943 related to Mr. Pruitt's first/business-class travel without sufficient justification and proper approval through March 1, 2017 and December 31, 2017 should be recovered, and if so, direct the responsible officials to recover the funds. Importantly, it also recommended the same for January 1, 2018 through Mr. Pruitt's July 2018 resignation to evaluate justification for Mr. Pruitt's first/business-class travel. The EPA simply asserted that all costs were valid and had

² See Letter from EPA Acting Chief of Staff Michael D. Molina to Special Counsel Henry J. Kerner on February 26, 2020, at 2-3.

³ *Id.* at 3.

⁴ *Id.*

⁵ *Id.*

⁶ See "Actions Needed to Strengthen Controls Over the EPA Administrator's and Associated Staff's Travel," EPA Office of Inspector General, Report No. 19-P-0155, May 16, 2019 (https://www.epa.gov/sites/protection/files/2019-05/documents/epaoig_20190516-19-p-0155.pdf). Hereinafter referred to as "Travel Report." at 25.

sufficient justification. However, the OIG had pointed out that the EPA's determination on 2017 and 2018 costs and the retroactive approval lacks the support and justification for the asserted security concerns.

In its May 26, 2021 supplemental report, the EPA explained that the OIG concluded there are six unresolved OIG recommendations: 1, 2, 7, 9, and 14. The EPA stated that "Efforts to identify a resolution regarding Recommendations Nos. 1, 2, 12 and 14 are ongoing. For the two unresolved recommendations that have been assigned to the Office of the Administration (Recommendation Nos. 7 and 9), the Agency has reached a tentative verbal agreement with the OIG and is pursuing efforts to obtain formal agreement on these recommendations." These responses are vague, unspecific, and inconclusive. They cannot be fairly read as conclusions for the OSC's referral of this matter. More specifically, the recommendations that are unresolved are:

1. Recommendation 1: requests that the OCFO "[e]valuate and determine whether the increased airfare costs estimated at \$123,942 related to former Administrator Pruitt's use of first/business-class travel without sufficient justification and proper approval, for the period March 1, 2017, through December 31, 2017, should be recovered and, if so, from which responsible official or officials, and direct recovery of the funds."
2. Recommendation 2: requests that the OCFO, "[f]or the period January 1, 2018, through [former Administrator Pruitt's] resignation in July 2018, evaluate and determine whether any costs related to former Administrator Pruitt's use of first/business-class travel without sufficient justification and proper approval should be recovered and, if so, from which responsible official or officials, and direct recovery of the funds."
3. Recommendation 7: requests that the Chief of Staff "Implement controls within the Office of the Administrator to include adequate justification to support the use of first/business-class travel and for carrier/flight/airfare selection when there are no contract fares."
4. Recommendation: 9: requests that the Chief of Staff "Implement controls within the Office of the Administrator to confirm that adequate cost comparisons are provided before approving travel authorizations where an alternative travel method is used (i.e., when the direct or usually taken routes are not used)."
5. Recommendation 12: requests that the OCFO "[i]mplement controls to verify that the use of first/business-class travel complies with the requirements of the Federal Travel Regulation and EPA policy in Resource Management Directive System 2550B prior to approval of the travel authorization."
6. Recommendation 14: requests that the OCFO "[i]dentify and review all business-class travel claimed for the staff and Protective Service Detail agents who accompanied the former Administrator on travel from March 2017 through his resignation in July 2018 for proper approval. Where policy was not followed, recover any excess costs claimed for the use of business class."

The OIG's report found the EPA was unresponsive to these recommendations and that they remain unresolved. Interestingly, in his March 30, 2020 letter to Inspector General Charles Sheehan, EPA Acting Chief Financial Officer [REDACTED] admits that proper approvals were not obtained prior to former Administrator Pruitt traveling first/business-class from March 1, 2017 through December 31, 2018. [REDACTED] stated that the Controller provided the approvals. However, agency policy is for the CFO to sign such approvals. Without authority, the CFO delegated [REDACTED] responsibility to the Controller to approve first/business class accommodations. The CFO still maintained, however, that Mr. Pruitt's first/business-class travel was in accordance with FTR based on the OGC's legal opinion dated June 29, 2018 stating that Office of Enforcement, Forensic, and Training's Protective Service Detail agents are authorized to determine when a security risk exists that would endanger an EPA employee's life. However, it is unreasonable to determine this legal opinion let the EPA off the hook because OGC does not have the authority to authorize illegality. This just means OGC was flouting the law in addition to the CFO.

The CFO's letter did conclude that the EPA found \$97,951 worth of Mr. Pruitt and his Protective Security Detail's (PSD) travel expenses *was* unauthorized, but because of the existing security risk during this period his office would not recover any costs from Mr. Pruitt or accompanying agents and it would merely be noted in its 2020 Agency Financial Report.

This is a total breakdown in government accountability. The public expects and deserves more than mere notes in reports that nearly six figure spending was illegal. Such inconsequential results signal to corrupt actors that they can abuse their authority and waste public funds on the same scale as Mr. Pruitt without any consequences.

The EPA's defense for spending at least \$30,000 for a private security detail and accommodations for Mr. Pruitt was that it referred the matter to an outside law enforcement agency. That excuse ignores all civil liability and regulatory controls. Worse, the EPA declared that the employee who was allegedly responsible for arranging the private security detail *retired* from the Agency shortly after the matter was referred to the outside law enforcement agency. This is an irrelevant excuse not to investigate the agency's complicity, or any corrective action to prevent recurrence. This is also insufficient accountability because there is none.

In its May 26, 2021 supplemental report, the EPA clarified that the FBI declined criminal action, and that neither the EPA nor any other entity conducted a civil investigation into the alleged \$30,000 in wasted funds during Mr. Pruitt's 2017 trip to Italy. Essentially EPA's response to the OSC referral is to report that it has not done any factfinding, and it did not announce any plan to do so. It would be irresponsible for OSC to accept a default response as reasonable for resolution.

The agency's responses to other allegations of gross waste of funds was similarly disturbing. On April 16, 2018, the Government Accountability Office (GAO) issued a legal opinion that the EPA violated the Antideficiency Act when it obligated \$43,238.68 from the Environmental Programs Management appropriation account to install a soundproof privacy

booth in the Administrator's office. GAO directed the EPA to report the violation as required by law.

The EPA's response to OSC states that it sent a letter to the Chair and Ranking Member of the Committee on Appropriations "to comply" with the GAO opinion, and to state their own opinion that there was no violation.⁷ In its May 26, 2021 supplemental report, the EPA said it is coordinating with the Office of Management and Budget (OMB) on reporting an Antideficiency Act violation related to the installation of the soundproof privacy booth.⁸ It is quite shocking that since the GAO's finding in 2018 that this matter has gone no further than the vague, contradictory and inconclusive answer that the "EPA is coordinating with OMB on reporting an Antideficiency Act violation related to the installation of the soundproof privacy booth."⁹ OSC referred the misspending issue to resolve it, not to receive a report that it is a work in indefinite progress.

Additionally, it is worth noting that there are other allegations of gross waste of funds that were not investigated or addressed by the EPA at all, such as questionable and over-priced office expenses, or gifts that exceeded the available budget.¹⁰ This may be because the EPA relied on OIG reports addressing investigations into closely related but distinct matters that were already open when the OSC referred the whistleblower disclosures for investigation.

On balance, the EPA responded to OSC's referral on abuse of authority (by using his official position for his personal benefit and the benefit of his staff) by simply referencing the OIG's investigation that was inconclusive, because Mr. Pruitt resigned prior to being interviewed by investigators. There is no excuse why the EPA did not follow through, to establish necessary corrective action whether or not Mr. Pruitt was beyond reach. There has been no justice for the staff who Mr. Pruitt used as personal real estate representatives, spending weeks using federal government resources and time to contact rental and seller agents, touring properties before Mr. Pruitt resigned, or the PSD staff who were ordered to travel to Baltimore, MD on weekends to purchase expensive face cream for Mr. Pruitt from the Ritz-Carlton or pick up his dry cleaning

⁷ See Letter from EPA Acting Chief of Staff Michael D. Molina to Special Counsel Henry J. Kerner on February 26, 2020, at 6.

⁸ See Letter from EPA Acting Chief of Staff Wesley J. Carpenter to Special Counsel Henry J. Kerner on May 26, 2021, at 2.

⁹ *Id.*

¹⁰ Whistleblower disclosed, for example, that Mr. Pruitt:

- Attempted to purchase a \$15,000 desk after Former PSD SAC request for a \$70,000 bulletproof desk was denied, however, there was only a \$5,000 budget for everything for the Administrator's office that Mr. Pruitt already spent. Mr. Pruitt purchased an additional standing desk, paid leases for art on loan from the Smithsonian Institution and framing an 8 x 10-foot United States flag. Because there were insufficient funds in the budget, Mr. Pruitt took funds from elsewhere in the budget to cover expenses for the desk, art frames, framed pictures, framed pens given to him by the President, and a flag.
- Did not like cloth seats and requested that Former PSD SAC order a new Tahoe and one new Suburban vehicle with tinted windows, lights, sirens, leather seats, with bullet proof vests that were ordered and placed over the seats (the vests were \$800-\$1,200 per vest).
- Purchased challenge coins, leather journals, fountain pens that cost \$120 per pen despite pushback from the Ethics Office.

for him. The EPA provided no explanation for what evidence the agency gathered on this issue, as required by section 1213(d). Thus, this matter is also unresolved and unaddressed.

Finally, **Whistleblower** disclosed that the EPA OIG took on program operating responsibilities, such as when it played a role in reviewing or assessing security threats, assessments upon which the EPA relied in making unnecessary security-related decisions, possibly in violation of the Inspector General Act. The EPA's report to OSC explains that this matter was referred to the Council of Inspectors General for Integrity and Efficiency's Integrity Committee, which previously reviewed and closed the matter, so the agency would take no further action on the matter.

The OSC rightly inquired why the EPA did not reference in its response the attachments with additional relevant information, including a Oct. 30, 2019 GAO report titled "EPA: Recent Policy Could Improve Working Relations between EPA's Office of Inspector General and Office of Homeland Security." That report references a May 2019 order to clarify the OIG and EPA Office of Homeland Security's (OHS) respective roles. OSC requested that the EPA reference this GAO report and order in its supplemental response to OSC. The EPA attached the order but did not attach the GAO report. It provided no explanation for why it did not reference the attachment in its response letter to OSC.

- The GAO report, however, is publicly available. It was issued on October 30, 2019 and its audit was conducted between July 2018 (before the OSC's referral) and October 2019.¹¹ The GAO report acknowledges that conflict has existed between the EPA OIG and EPA OHS for seven years.¹² A federal judge characterized prior aspects of the conflict as a "shameful turf war."¹³ The GAO's report found that the OIG and OHS seldom overlap except for investigations and preliminary inquiries related to national security involving agency employee misconduct.¹⁴ Neither the GAO report, nor the EPA report to OSC, however, address the issue in the OSC's referral, which was whether the OIG wrongfully took on program operating responsibilities, such as reviewing or assessing security threats, which the EPA relied on to issue unnecessary security controls. Thus, this matter is also unresolved and unaddressed.

One of the most troubling things regarding the EPA's initial report to the OSC's is that it is largely based on references to investigations that were completed before the OSC referred the distinct evidence and issues in this disclosure, including the following:

1. OIG's Travel Report, dated May 16, 2019 (over 9 before the EPA submitted its initial report to OSC on February 26, 2020), which covers an investigation that began

¹¹ See "Environmental Protection Agency: Recent Policy Could Improve Working Relations between EPA's Office of Inspector General and Office of Homeland Security," GAO, Report No. GAO-20-89R, Oct. 30, 2019 (<https://www.gao.gov/assets/gao-20-89r.pdf>).

¹² *Id.* at 1.

¹³ *Id.*

¹⁴ *Id.* at 2.

in July 2017, over one year before OSC’s §1213 referral on October 4, 2018.¹⁵ Thus, the audit only covered Pruitt’s travel through December 31, 2017.

2. CIGIE’s investigation into wrongdoing at the EPA OIG, which was already previously reviewed and closed. There is no specification for when this investigation took place, or what its scope or findings was. However, the EPA’s initial report states that Mr. Dahl sent letters to EPA Inspector General Arthur Elkins, Jr. on July 27, 2018 and August 15, 2018 notifying him of the closure of the case numbers, thus the matter was closed before the OSC’s §1213 referral.¹⁶

3. The GAO’s letter in December 21, 2017 inquiring about the soundproof booth¹⁷ and its April 16, 2018 legal opinion concerning expenditures associated with the soundproof booth.¹⁸ The GAO opinion was available months before the OSC’s referral on October 4, 2018 and over a year and 10 months before the EPA’s initial report.

4. PIQA’s February 2018 investigation into the security sweep of the former Administrator’s office¹⁹, which started months before OSC’s referral, and the OIG’s November 2019 Semiannual Report to Congress which was available well over three months before the EPA’s initial report to OSC.²⁰

5. The OIG’s Semiannual Report to Congress on November 20, 2018, which summarizes its investigation into disclosures concerning the former Administrator Pruitt’s abuse of authority concerning his living in a lobbyist’s wife’s residence without paying rent and tasking staff with running personal errands for him during official work hours.²¹ This report was available just over a month after the OSC’s October 4, 2018 referral and over a year and three months before the EPA’s initial report.

6. The OIG’s final audit report on August 21, 2019, entitled “EPA’s Use of Administratively Determined Positions Is Consistent with Its Authority Under the Safe

¹⁵ See Travel Report (https://www.epa.gov/sites/protection/files/2019-05/documents/_epaoig_20190516-19-p-0155.pdf).

¹⁶ See Letter from EPA Acting Chief of Staff Michael D. Molina to Special Counsel Henry J. Kerner on February 26, 2020, at 9.

¹⁷ See GAO Letter, December 21, 2017.

¹⁸ See “U.S. Environmental Protection Agency – Installation of Soundproof Privacy Booth,” U.S. Government Accountability Office, April 16, 2018 (<https://www.gao.gov/assets/700/691272.pdf>).

¹⁹ See Letter from EPA Acting Chief of Staff Michael D. Molina to Special Counsel Henry J. Kerner on February 26, 2020, At 6.

²⁰ See Letter from EPA Acting Chief of Staff Michael D. Molina to Special Counsel Henry J. Kerner on February 26, 2020, At 6. Referencing Office of Inspector General Semi-Annual Report to Congress, April 1, 2019 – September 30, 2019 (https://www.epa.gov/sites/production/files/2019-11/documents/epaoig_201911_epa-350-r-19-004.pdf).

²¹ Office of Inspector General Semiannual Report to Congress, April 1, 2018-September 30, 2018 (https://www.epa.gov/sites/production/files/2018-11/documents/_epaoig_20181031-r-18-003_linked.pdf).

Drinking Water Act,” which also was based on an investigation that commenced before the OSC’s referral and was available over 6 months before the EPA’s initial report.²²

The references to these reports are not responses to the OSC referral. They are indications of long-festering accountability breakdowns for which prior corrective action recommendations remain unimplemented or ineffective. It is unreasonable for a referral to act on past failures, merely to reference reports confirming those failures.

Hopefully the OSC’s judgment that the report fails to meet statutory requirements will help highlight the systematic EPA failures that still need to be addressed. The OSC, numerous congressional investigations, investigative journalists, and civil society watchdog organizations have all found [REDACTED] Whistleblower’s charges to be highly credible. But the EPA has neither accepted responsibility for the misconduct, nor taken action to prevent recurrence. Its report violates the minimum standards of the merit system, and section 1213.

Respectfully submitted,

_____/s/_____
Samantha Feinstein
Counsel for [REDACTED] Whistleblower

_____/s/_____
Tom Devine
Senior Counsel for [REDACTED] Whistleblower

²² “EPA’s Use of Administratively Determined Positions is Consistent with Its Authority Under the Safe Drinking Water Act,” EPA OIG, Report No. 19-P-0279, August 21, 2019 (https://www.epa.gov/sites/production/files/2019-08/documents/epaoig_20190821-19-p-0279_0.pdf). The report concluded that the Safe Drinking Water Act does not specify how appointments are to be used and does not require that appointees work on drinking-water related issues, therefore the agency’s use of the Act to promote/hire employees for political appointments is consistent with its statutory authority.

June 14, 2021

Honorable Henry Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, #300
Washington, DC 20036
Attn: [REDACTED]

Re: OSC File Nos. [REDACTED], DI-18-3786, DI-18-3820, DI-18-4713, DI-18-4968

Dear Mr. Kerner:

This letter is in response to the Office of Special Counsel's (OSC) 1213(c) Disclosure Referral to the Environmental Protection Agency (EPA) and its Supplemental Report.

There are several issues with the report that I would like to address. Primarily, they relate to material facts that were not addressed in the report and the lack of meaningful corrective action for wrongdoing.

I disclosed that [REDACTED] Former PSD SAC, the then-head of Mr. Pruitt's Protective Security Detail (PSD), ordered a security sweep of Mr. Pruitt's office utilizing [REDACTED] company, [REDACTED], where [REDACTED] served as the principal, to enrich himself, and that the contract was a conflict of interest. The EPA's supplemental report stated that Professional Integrity and Quality Assurance (PIQA) staff located in EPA's Office of Criminal Enforcement, Forensics, and Training (OCEFT) stopped investigating the matter because the EPA Office of Inspector General (OIG) began investigating it and thus PIQA never made any findings on this issue. In its initial report, the EPA stated that the Federal Bureau of Investigations (FBI) investigated criminal violations and notified the OIG and Department of Justice (DOJ) that they declined the case for prosecution. This does not clearly explain whether there was a criminal violation. The initial report also revealed that the OIG closed its investigation *because* the EPA employee in question retired. If this was acceptable, the OIG would never conclude any investigations. Although the OIG does not have authority to compel or subpoena testimony from former Department employees, including those who retire or resign during the course of an OIG investigation, it is authorized to have timely access to all records, communications, reports, audits, reviews, documents, papers, recommendations, and other materials available to the agency that relate to its programs and operations. I deserve an actual investigation into my disclosures. The EPA has left the matter of whether any employee policy violations occurred when [REDACTED] Former PSD SAC steered a contract to [REDACTED] company to enrich himself, and an apparent a conflict of interest, entirely uninvestigated. This matter is unresolved.

The EPA also admitted to OSC that PIQA investigated and substantiated allegations that the PSD violated policy and protocols by using emergency lights and sirens in non-emergency situations when reporting to Pruitt. However, the EPA completely skipped over the issue that Mr. Pruitt *ordered* his PSD to violate these laws, and the EPA found itself not culpable and incapable of any accountability simply because its policies are adequate and the person concerned, namely [REDACTED] Former PSD SAC, is no longer with the agency. This excuse is especially unsettling because the EPA

took years to respond to my whistleblower disclosures and during that time there was a significant amount of turnover that interfered with the investigation and subsequent justice. This finding sends the message that individuals employed by the federal government who violate the law can escape any and all inquiry and accountability for their violations of federal laws by simply quitting their jobs or retiring upon becoming aware that accusations are looming. This is the fundamental problem with OSC letting the EPA investigate themselves. OSC delegated the responsibilities to those who violated the law or allowed violations to happen unabated. The EPA went to great lengths to avoid and dismiss this investigation and neutralize any consequences for its wrongdoing.

In 2017, the OIG was trying to take power away from EPA Office of Homeland Security (OHS), which has intelligence responsibilities, because it was investigating OHS, as well as Mr. Pruitt and Former PSD SAC. Meanwhile, OHS was looking into wrongdoing in the OIG's office because OIG staff broke into OHS and a physical altercation ensued. OHS was also investigating [REDACTED] and Mr. Pruitt. As I disclosed, the OIG took on program responsibilities it should not have. The conflicts between OIG and OHS over intelligence responsibilities created national security vulnerabilities. There is classified information to support this unclassified summary, and it would provide more insight and context into the violations that occurred. I am willing to help explain to authorized officials at OSC with top secret security clearance how to find it if that would be helpful to OSC. The EPA's supplemental report admits that the OIG has been granted oversight authority over the EPA OHS's intelligence program operating responsibilities. This authority, however, was only granted after my whistleblower disclosures, and after the OSC's referral to the EPA for investigation, in an order dated May 31, 2019, (See: EPA Order 3230).¹ The order reaffirms OHS's role in managing and sharing intelligence across the EPA and coordinating information sharing across the Intelligence Community. More significantly, it also states that the OIG provides oversight of the EPA's intelligence program and maintains responsibility for investigating, or referring for investigation, reports of wrongdoing or misconduct by employees or contractors that involve fraud, waste or abuse within intelligence programs or operations. Moreover, the OIG's oversight over OHS was retroactively granted in its May 31, 2019 order so that the EPA may skip over investigating my disclosures. Additionally, the Government Accountability Office (GAO) report, which states that the order will help clarify the OIG and EPA OHS's roles, was also issued after the date of my disclosure to OSC.² Neither are responsive to the question of whether there was wrongdoing, as I alleged there was. It is apparent, that the EPA did not actually investigate and make any findings about the wrongdoing that I reported. The EPA may issue orders clarifying or correcting things, but that information is irrelevant to whether or not there was a violation when the EPA OIG took over intelligence program operating responsibilities, such as when it played a role in reviewing or assessing security threats, assessments upon which the EPA relied in making unnecessary security-related decisions. I do, however, take such corrective action to be an admission of guilt, for which there ought to be accountability.

¹ Memorandum from EPA Administrator Andrew R. Wheeler to Acting Deputy Administrator, et. al, "Approval of Order 3230 Regarding Homeland Security Policy and Procedures," on May 31, 2019.

² See "Environmental Protection Agency: Recent Policy Could Improve Working Relations between EPA's Office of Inspector General and Office of Homeland Security," GAO, Report No. GAO-20-89R, Oct. 30, 2019 (<https://www.gao.gov/assets/gao-20-89r.pdf>).

I also want to point out that the investigation into the matter of the overpayments made to Mr. Pruitt's PSD remains unresolved by the EPA. The OIG investigated violations that occurred during a limited time period. It did not include the full time period that I alleged the violations took place, therefore the waste of taxpayer funds has still not been fully investigated or addressed by anyone. The OIG, in its 2018 report "EPA Asserts Statutory Law Enforcement Authority to Protect Its Administrator but Lacks Procedures to Assess Threat and Identify the Proper Level of Protection" found \$106,507 in overtime payments for January 1, 2016 through March 4, 2017 that were unauthorized.³ The report stated that there is no requirement to recover overtime payments on the basis of improper approval.⁴ The report misleadingly states that the PSD was actually working their stated overtime hours, however that does not account for the fact that they were self-monitoring their hours, so the accuracy of their timekeeping is unreliable. [Former PSD SAC], who was approving the timesheets reflecting PSD overtime, was also enriching [redacted] self from the overpayments and was in on the scheme for [redacted] self and [redacted] staff. It is the equivalent of having the fox watching the hen house. [Former PSD SAC] also poorly managed the PSD staff time by having all PSD agents securing Mr. Pruitt at the same time, instead of alternating shifts with fewer agents at a time, thus [Former PSD SAC] created the need for overtime hours that was actually avoidable and unnecessary. It is worth noting that OHS has the authority to determine if there is a credible threat that necessitates a sizeable security detail. OHS did not agree that such a credible threat existed. [Former PSD SAC] went around OHS by requesting the OIG's review of the threat, and at that time the OIG agreed with [Former PSD SAC] that there was a credible threat that required a sizeable PSD for Mr. Pruitt. Thus, the role that the OIG played in overseeing OHS's security responsibilities was abused at the time and resulted in a waste of taxpayer dollars. It is also worth noting here that the OIG later determined in a report that the EPA had not provided a justification or documentation to show valid security concerns related to travel exceptions and recommended that the CFO implement controls.⁵

The major issue I have with this process is for the past two and a half years, I have been wanting to disclose countless classified disclosures that relate to my case significantly. These disclosures spread through numerous federal agencies including the EPA, FBI, the White House, the Vice President's Office, State Department and DHS. Basically, more than half the story has not been told yet. And the things that have been disclosed are microscopic in comparison.

There are additional issues I would like to address. To start with, the EPA fraudulently represented that I was fired from my job as Deputy Chief of Staff of Operations for the Administrator, and, to be crystal clear, I definitely have not resigned. I can somewhat understand why the former Administration would want to hide some of my disclosures and not finalize my status as an employee of the federal government, but I have no idea why the current

³ "EPA Asserts Statutory Law Enforcement Authority to Protect Its Administrator but Lacks Procedures to Assess Threat and Identify the Proper Level of Protection," EPA Office of Inspector General, Report No. 19-P-0279, Aug. 21, 2019 (https://www.epa.gov/sites/production/files/2019-08/documents/_epaog_20190821-19-p-0279_0.pdf). at 3.

⁴ *Id.* at 3.

⁵ See "Actions Needed to Strengthen Controls Over the EPA Administrator's and Associated Staff's Travel," EPA Office of Inspector General, Report No. 19-P-0155, May 16, 2019 (https://www.epa.gov/sites/protection/files/2019-05/documents/_epaog_20190516-19-p-0155.pdf) at 24.

Administration is so disinterested in the countless felonies, national security breaches and Department of Labor violations. I was never given the proper venue to make classified disclosures about what happened to me and the retaliation against me that has ultimately cost me my job, career, personal reputation and ultimately leading me to bankruptcy. All for doing the right thing and what I was told to do from the President and Vice President of the United States. The fact that three out of four agents of the EPA Inspector General's office have removed themselves from my case and the last one has told me that ■ wants nothing to do with “all of our shenanigans,” should be a clear indication that something is radically wrong. All I am asking is to be given the proper venue to disclose all the wrongdoing, and either return to work or finalize my job status so I can finally obtain another job, health insurance, security clearances and move on with my life.

I want to conclude by saying that the EPA determined that it cannot do, and/or will not do, anything to hold the wrongdoers accountable. The EPA has left victims in the lurch, without any meaningful corrective action or consequences that can make them whole. This is unacceptable not only for me, but for the American taxpayers. What's worse, is we are left with little reason to believe that enough of the policy solutions now in place are enough to stop someone from attempting the same corrupt schemes to abuse their position in the government to rip off taxpayers. The EPA insisted on multiple accounts that its policies in place were already sufficient. This is unconvincing and unconvincing. For me personally, my role in reporting corruption left me with no income to provide for myself, my wife and our two young children who depend on me, and the blacklisting and libel that ensued has prevented me from finding any work in my field for years, with no end in sight. I may never find meaningful work in my field again. It is a slap in the face to know that I sacrificed everything – my disclosures spurred multiple federal investigations – and yet there has been no justice for the people I sought to protect from corruption. There are other whistleblowers who find themselves in similar situations as me. Others are out there are contemplating whether to do the right thing because they saw what happened to me. More needs to be done to protect all whistleblowers, political and career alike, because the chilling effect will prevent the OSC and others from ever finding out the next scandal.

Sincerely,



Whistleblower