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#### U.S. OFFICE OF SPECIAL COUNSEL

17 10 M Street, N.W., Sulle 300 W. shington, D.C. 20036-4505

www.osc.gov

The Special Counsel

July 17, 2008

The Honorable Preston M. Geren, III Secretary U.S. Department of the Army, Room 3E560 101 Army Pentagon Washington, D.C. 20310-0101

Re: OSC File No. DI-08-2166

Dear Mr. Secretary:

Pursuant to my responsibilities as Special Counsel, I am referring to you a whistleblower disclosure that employees at the Department of the Army, United States Army Corp of Engineers, Louisville Repair Station, Louisville, Kentucky, routinely commit Temporary Duty (TDY) fraud by collecting TDY payments even though they are staying at their personal home or at the home of a friend. The whistleblower, Paul I. Polly, was a former deckhand at the Louisville Repair Station, and believes that this constitutes a violation of law, rule, or regulation. Mr. Polly has consented to the release of his name. Accordingly, I am referring this information to you for an investigation of these allegations and a report of your findings.

The U.S. Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. § 1213(a) and (b). As Special Counsel, if I find, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of my findings, and the agency head is required to conduct an investigation of the allegations and prepare a report. 5 U.S.C. § 1213(c) and (g).

Specifically, Mr. Polly disclosed that employees the property of the Captain, and Mork Leader, have been impermissibly collecting TDY payments while staying with family or at the home of a friend. Mr. Polly alleged that owns a home in Owensboro, Kentucky, which is within the fifty mile travel radius of many of their common work sites. Mr. Polly explained that if a TDY work site is within fifty miles of an employee's home, he is not eligible to collect TDY payments to reimburse him for food or lodging expenses while at that job site. Mr. Polly further asserted that during the April to

Mr. Polly's current contact information is:	Mr. Paul J. Polly,	Telephone
number:		

The Special Counsel

The Honorable Preston M. Geren, III Page 2

November work season personally stated to him nearly once a week that was staying at his home while collecting TDY payments. Mr. Polly estimated that improperly collected TDY payments for up to fifty percent of the work season, and claimed that these improprieties have been occurring for at least four years. Mr. Polly further alleged that impermissibly received TDY payments while staying with his girlfriend. Mr. Polly stated that during the April to November work season disclosed to him nearly once a week that he was residing at his girlfriend's home while collecting the TDY payments. Mr. Polly also estimated that collected improper TDY payments for up to fifty percent of the work season. Mr. Polly asserted that the been receiving improper TDY payments for at least six years.

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I have concluded that there is a substantial likelihood that the information provided discloses a violation of law, rule, or regulation, including but not limited to, a violation of Department of Defense Civilian Personnel, Joint Travel Regulations, Appendix O: Temporary Duty Travel Allowances, T4040(A)(1)(e)(2); a copy of which is enclosed. This provision states that a traveler lodging with a friend or relative can only be reimbursed for additional lodging costs the host incurs in accommodating the traveler if the traveler can substantiate the costs and if the costs are determined to be reasonable. As previously stated, I am referring this information to you for an investigation of the whistleblower's allegations and a report of your findings within 60 days of your receipt of this letter.

By law, the report must be reviewed and signed by you personally. Should you delegate your authority to review and sign the report to the Inspector General, or any other official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5). Without this information, the report may be found deficient. The requirements of the report are set forth at 5 U.S.C. § 1213(c) and (d). A summary of § 1213(d) is enclosed. As a matter of policy, OSC also requires that your investigators interview the whistleblower as part of the agency investigation whenever the whistleblower consents to the disclosure of his or her name.

In the event it is not possible to report on the matter within the 60-day time limit under the statute, you may request in writing an extension of time not to exceed 60 days. Please be advised that an extension of time is normally not granted automatically, but only upon a showing of good cause. Accordingly, in the written request for an extension of time, please state specifically the reasons the additional time is needed. Any additional requests for an extension of time must be personally approved by me.

After making the determinations required by 5 U.S.C. § 1213(e)(2), copies of the report, along with any comments on the report from the person making the disclosure and any comments or recommendations by this office will be sent to the President and the appropriate oversight committees in the Senate and House of Representatives as set forth in 5 U.S.C. § 1213(e)(3).

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The Special Counsel

The Honorable Preston M. Geren, III Page 3

Unless classified or prohibited from release by law or by Executive Order requiring that the information be kept secret in the interest of national defense or the conduct of foreign affairs, a copy of the report and any comments will be placed in a public file in accordance with 5 U.S.C. § 1219(a).

Please refer to our file number in any correspondence on this matter. If you need further information, please contact Cutherine A. McMullen, Chief, Disclosure Unit, at (202) 254-3604. I am also available for any questions you may have.

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Scott J. Bloch

Enclosures

#### Enclosure

#### 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<sup>1</sup> 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 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 criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

<sup>&</sup>lt;sup>1</sup> Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.



### SECRETARY OF THE ARMY WASHINGTON

FEB 0 1 2008

## MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND RESERVE AFFAIRS)

SUBJECT: Delegation of Authority Under Title 5, Sections 1213 (c) and (d)

In accordance with Title 10, United States Code, section 3013(f), I hereby delegate to you certain authority conferred upon me as agency head under Title 5, United States Code, section 1213. Specifically you are authorized to review, sign and submit written reports of investigations of information and related matters transmitted to the Department of the Army by The Special Counsel, in accordance with Title 5, United States Code, sections 1213(c) and (d). The authority delegated herein may not be further delegated.

This delegation shall remain in effect for three years from the date of its execution, unless earlier rescinded in writing by me.

Pete Geren

CF: General Counsel

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#### DEPARTMENT OF THE ARMY OFFICE OF THE GENERAL COUNSEL 104 ARMY PENTAGON WASHINGTON DC 20310-0104

July 25, 2008

MEMORANDUM FOR U.S. Army Criminal Investigation Command, ATTN: Operations (Experimental Section 2006), 6010 6th Street, Fort Belvoir, Virginia 22060-5506
MEMORANDUM FOR U.S. Army Corps of Engineers, Office of the Chief Counsel (CECC-ZA), ATTN: 441 G Street, N.W., Room 3A29, Washington, D.C. 20314-1000.
CITATION THE CALL OF THE CALL OF THE CALL OF THE CALL

SUBJECT: Whistleblower Investigation—U.S. Army Corps of Engineers (COE) Louisville Repair Station (OSC File Number DI-07-2166)

Enclosed for your information and action is a July 17, 2008 letter from the Office of Special Counsel (OSC), requesting an investigation of the noted allegations and a report pursuant to 5 U.S.C.1213(c)(1) and (g).

The Special Counsel has concluded that there is substantial likelihood that information provided by a whistleblower, Mr. Paul Polly, with first-hand knowledge, discloses that there is a substantial likelihood that two employees at the COE's Louisville Repair Station, Louisville, Kentucky, have routinely committed temporary duty (TDY) fraud by collecting TDY payments even though they are staying at their personal home or at the home of a friend, in violation of a law, rule, or regulation. Specifically, Mr. Polly alleges that two employees, free Captain, and Machinist and Work Leader, have been impermissibly collecting TDY payments while staying with family or at the home of a friend. Further, that has been impermissibly collecting such payments for at least four years while has been impermissibly collecting such TDY payments for at least six years.

Because these allegations are criminal in nature, they were referred to the U.S. Army Criminal Investigation Command (CID) for investigation on July 18, 2008. When that investigation is completed, since the Louisville Repair Station is an element under the COE organization, the investigation report will be forwarded to the COE Chief Counsel's Office for the preparation of a draft of the final Army response to OSC that will address, among other things, not only the investigative actions taken to address the OSC referred allegations but also the merits of those allegations. A draft of this final Army report should be prepared for the signature of the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) who has been delegated the authority by the Secretary of the Army to review, sign and submit written reports of investigations of information and related matters transmitted to the Department of the Army by the



SUBJECT: Whistleblower Investigation—U.S. Army Corps of Engineers (COE) Louisville Repair Station (OSC File Number DI-07-2166)

Special Counsel, in accordance with Title 5, United States Code (U.S.C.), § 1213(c), (d) and (g).

Since Army is investigating them as allegations of criminal activity, I have already informally informed OSC of this designation to ensure that they have the opportunity to reconsider the suspense requirements that will be relevant to this particular referral. I will follow up with formal correspondence to OSC advising OSC of this so revised timeframes can be developed for this particular referral. Typically, OSC provides different suspense dates for matters that involve allegations of criminal wrongdoing. Therefore, I will advise both of your offices as to the new suspense date imposed by OSC so your suspenses can be adjusted accordingly.

The Army's response will be available to the public and information contained in the Army response will made public unless 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. Therefore, our response and any supporting investigative report should be prepared in a manner intended to facilitate public understanding of the allegations and Army's response thereto.

The requirements specified in 5 U.S.C. § 1213(d) (copy enclosed) may be used as a guideline and should include findings, conclusions and corrective action. In all cases, please furnish for our review all backup materials supporting the proposed response that will be used to prepare the official response for the Secretary of the Army.

When you forward the COE prepared draft final Army report to me, please do so by providing two hard copies of the complete report, including all backup/supporting documentation. Additionally, by email to me, please provide the electronic version of the report, including the findings, conclusions and corrective action, but not the backup/supporting documentation. The electronic version will facilitate retrieving and incorporating as much of your draft report as possible directly into the final Army report. A sample report will be provided to you to use relative to the appropriate format, approach, and content that should serve as a pattern for your report.

Please note that should you encounter any problems with the inquiry/investigation and preparation of the subject report, kindly call me as soon as possible to discuss. In some instances, ancillary issues that arise during the course of the investigation may require follow up action.

In conducting your investigation into the allegations, please ensure that the methods and process used are compatible with engaging in a fair and open "dialog" with the OSC regarding the subject allegations and that there are no restrictions or limitations placed on the use or disclosure of the information gathered and relied upon to support the final Army report.

SUBJECT: Whistleblower Investigation—U.S. Army Corps of Engineers (COE) Louisville Repair Station (OSC File Number DI-07-2166)

Additionally, the potential use of your reports to support any disciplinary actions against individuals based on misconduct should also be considered when structuring the investigation report and preparing the draft final Army report.

Lastly, note that copies of the final Army report, along with comments on the report from the individuals making the disclosures and any comments or recommendations by the OSC will be sent to the President and the appropriate oversight committees in the Senate and House of Representatives pursuant to 5 U.S.C. § 1213(e)(3). Additionally, the Army's final report and any comments to it will be made available to the public. Accordingly, please structure your report so that no restrictions or limitations are placed on its dissemination or the disclosure of the information upon which it relies.

By statute, the agency has sixty (60) days from receipt of the OSC letter to provide the required report, though in this instance, since we are dealing with allegations of criminal activity, this timeframe may be adjusted by OSC. I will be formally requesting that OSC reconsider its current suspense date accordingly. Should there be a need to request any future adjustments to our suspense date, I will seek an extension of the date for our reply to the Special Counsel. After I provide you with a firmer suspense date, should it becomes apparent that more time beyond that suspense date will be needed to complete your investigation or draft final Army report, you should forward to me an interim response requesting the extension and indicating the reasons for the request and the date by which I can expect to receive the final investigation report (in the case of CID) or the draft final Army response (in the case of COE). As you can understand, once the COE draft Army report is forwarded to me, I will need additional time to staff the proposed response to the OSC and finalize the Army's report.

If you have any questions, please do not hesitate to contact me at Additionally, my email address is

Associate Deputy General Counsel
(Human Resources)

Enclosure

CF: DOD IG, Mr. Thomas Gimble, Principal Deputy Inspector General DAJA-LE, SA IG, COL DACS-ZDV-HR,

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#### U.S. OFFICE OF SPECIAL COUNSEL 17 to M Street, N.W., Suite 300 Wt shington, D.C. 20036-4505

www.osc.gov

The Special Counsel

July 17, 2008

The Honorable Preston M. Geren, III Secretary U.S. Department of the Army, Room 3E560 101 Army Pentagon Washington, D.C. 20310-0101

Re: OSC File No. DI-08-2166

Dear Mr. Secretary:

Pursuant to my responsibilities as Special Counsel, I am referring to you a whistleblower disclosure that employees at the Department of the Army, United States Army Corp of Engineers, Louisville Repair Station, Louisville, Kentucky, routinely commit Temporary Duty (TDY) fraud by collecting TDY payments even though they are staying at their personal home or at the home of a friend. The whistleblower, Paul I. Polly, was a former deckhand at the Louisville Repair Station, and believes that this constitutes a violation of law, rule, or regulation. Mr. Polly has consented to the release of his name. Accordingly, I am referring this information to you for an investigation of these allegations and a report of your findings.

The U.S. Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. § 1213(a) and (b). As Special Counsel, if I find, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of my findings, and the agency head is required to conduct an investigation of the allegations and prepare a report. 5 U.S.C. § 1213(c) and (g).

Specifically, Mr. Polly disclosed that employees for the control of the control o

<sup>&</sup>lt;sup>1</sup> Mr. Polly's current contact information is: Mr. Paul J. Polly, production of the contact information is: Mr. Paul J. Polly, production of the contact information is: Mr. Paul J. Polly, production of the contact information is: Mr. Paul J. Polly, production of the contact information is: Mr. Paul J. Polly, production of the contact information is: Mr. Paul J. Polly, production of the contact information is: Mr. Paul J. Polly, production of the contact information is: Mr. Paul J. Polly, production of the contact information is: Mr. Paul J. Polly, production of the contact information is: Mr. Paul J. Polly, production of the contact information is: Mr. Paul J. Polly, production of the contact information is: Mr. Paul J. Polly, production of the contact information is: Mr. Paul J. Polly, production information infor

The Honorable Preston M. Geren, III Page 2

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I have concluded that there is a substantial likelihood that the information provided discloses a violation of law, rule, or regulation, including but not limited to, a violation of Department of Defense Civilian Personnel, Joint Travel Regulations, Appendix O: Temporary Duty Travel Allowances, T4040(A)(1)(e)(2); a copy of which is enclosed. This provision states that a traveler lodging with a friend or relative can only be reimbursed for additional lodging costs the host incurs in accommodating the traveler if the traveler can substantiate the costs and if the costs are determined to be reasonable. As previously stated, I am referring this information to you for an investigation of the whistleblower's allegations and a report of your findings within 60 days of your receipt of this letter.

By law, the report must be reviewed and signed by you personally. Should you delegate your authority to review and sign the report to the Inspector General, or any other official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5). Without this information, the report may be found deficient. The requirements of the report are set forth at 5 U.S.C. § 1213(c) and (d). A summary of § 1213(d) is enclosed. As a matter of policy, OSC also requires that your investigators interview the whistleblower as part of the agency investigation whenever the whistleblower consents to the disclosure of his or her name.

In the event it is not possible to report on the matter within the 60-day time limit under the statute, you may request in writing an extension of time not to exceed 60 days. Please be advised that an extension of time is normally not granted automatically, but only upon a showing of good cause. Accordingly, in the written request for an extension of time, please state specifically the reasons the additional time is needed. Any additional requests for an extension of time must be personally approved by me.

After making the determinations required by 5 U.S.C. § 1213(e)(2), copies of the report, along with any comments on the report from the person making the disclosure and any comments or recommendations by this office will be sent to the President and the appropriate oversight committees in the Senate and House of Representatives as set forth in 5 U.S.C. § 1213(e)(3).

The Special Counsel

The Honorable Preston M. Geren, III Page 3

Unless classified or prohibited from release by law or by Executive Order requiring that the information be kept secret in the interest of national defense or the conduct of foreign affairs, a copy of the report and any comments will be placed in a public file in accordance with 5 U.S.C. § 1219(a).

Please refer to our file number in any correspondence on this matter. If you need further information, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 254-3604. I am also available for any questions you may have.

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Scott J. Bloch

Enclosures

#### Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the bead 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 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 criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.

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## DEPARTMENT OF THE ARMY U. S. ARMY CRIMINAL INVESTIGATION COMMAND 6010 6<sup>TH</sup> STREET FORT BELVOIR, VIRGINIA 22060-5506

REPLY TO ATTENTION OF

CIOP-CO

S: 25 July 2008 18 July 2008

MEMORANDUM FOR Commander, 3d Military Police Group (ClD), USACIDC, ATTN: CIRC-OP (CW5 ), 4699 N 1<sup>st</sup> Street, Forest Park, GA 30297-5119

SUBJECT: Request for Investigation - 0293-08-C1D001

- 1. On 18 Jul 08, this headquarters received the enclosed letter from the Office of the Secretary of the Army. The letter from the Office of the Special Counsel, Washington DC alleges TDY fraud on the part of USACE employees.
- 2. Request you review the enclosed information and if there is credible evidence that the offense of Fraud and Larceny occurred, initiate an ROI. Request you notify this HQ's with the sequence/ROI number by the above suspense date.
- 3. As noted in the basic correspondence the Secretary of the Army is required to provide a response and supporting documentation, such as the Report of Investigation, in 60 days. Your office will have 45 days to complete their investigation. A copy of the final ROI with all exhibits will be forwarded to this Headquarters. Also, it has been determined that the suspect travel voucher would be processed at the USACE Finance Center in Tennessee.
- 4. This office will notify you when the official tasker has been received.

3. Please direct any question	ons regarding this request to CW4	
email:	, or the undersigned at	email:
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as	CW5. MP	
	Chief, Investigative Operations I	Division

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#### 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<sup>1</sup> 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 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 criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management mitiatives that may result from this review.

<sup>5</sup> Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.



#### DEPARTMENT OF THE ARMY OFFICE OF THE GENERAL COUNSEL 104 ARMY PENTAGON WASHINGTON DC 20310-0104

July 25, 2008

Ms. Catherine A. McMullen Chief, Disclosure Unit U.S. Office of Special Counsel 1730 M Street, N.W., Suite 300 Washington, D.C. 20036-4505

Re: U.S. Army Corps of Engineers (COE)
Louisville Repair Station, Louisville,
Kentucky (OSC File Number DI-07-2166)

Dear Ms. McMullen:

In a letter dated July 17, 2008, the Office of Special Counsel (OSC) forwarded the above captioned case to the Secretary of the Army and requested that he initiate an investigation and forward a report pursuant to 5 U.S.C.1213(c)(1) and (g).

The Special Counsel concluded that there is substantial likelihood that information provided by a whistleblower, Mr. Paul Polly, with first-hand knowledge, discloses that there is a substantial likelihood that two employees at the COE's Louisville Repair Station, Louisville, Kentucky, have routinely committed temporary duty (TDY) fraud by collecting TDY payments even though they are staying at their personal home or at the home of a friend, in violation of a law, rule, or regulation. Specifically, Mr. Polly alleges that two employees, free Captain, and Machinist and Work Leader, have been impermissibly collecting TDY payments while staying with family or at the home of a friend. Further, that has been impermissibly collecting such payments for at least four years while has been impermissibly collecting such TDY payments for at least six years.

Because these allegations are criminal in nature, they were referred to the U.S. Army Criminal Investigation Command (CID) for investigation on July 18, 2008. When that investigation is completed, since the Louisville Repair Station is an element under the COE organization, the investigation report will be forwarded to the COE Chief Counsel's Office for the preparation of a draft of the final Army response to OSC that will address, among other things, not only the investigative actions taken to address the OSC referred allegations but also the merits of those allegations. The COE Chief Counsel was informed of that matter today.



As you are aware, by statute, the agency has sixty (60) days from receipt of the OSC letter to provide the required report. Since the referred allegations concern criminal misconduct, and as such, investigations into such matters usually take longer to conduct than investigations involving non-criminal misconduct, I respectfully request that you consider whether a longer period than the current 60 days to prepare the Army response would be a more appropriate time limit.

Should you grant this suspense adjustment, please advise me as to length of the extension. Within that allotted time, I will either provide you a status update on this pending action or be able to submit the final Department of the Army report to the Special Counsel.

I appreciate your assistance in considering the suspense adjustment request. To advise me as to your decision on this request, you can reach me at

Associate Deputy General Counsel (Human Resources)