



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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FEDERAL PERSONNEL AND  
COMPENSATION DIVISION

B-192698

OCTOBER 22, 1979

H. Patrick Swygert, Special Counsel  
Office of the Special Counsel

~~DLG 00084~~  
DLG 02541  
DLG 00166

Subject: Merit Systems and Employee Protection  
(FPCD-80-15)

Dear Mr. Swygert:

As part of our congressionally mandated oversight activities, we evaluated what actions the Merit Systems Protection Board and particularly the Office of the Special Counsel, have taken in carrying out their responsibilities for protecting Federal employees from prohibited personnel practices. The Civil Service Reform Act directed the Office of the Special Counsel, along with the Board, to be the focal point--receiver, investigator, enforcer, and spokesperson--for insuring the integrity of Federal merit systems and protecting the rights of employees within those systems.

We are aware of the resource problems you have faced in starting up operations. Since the eventual success of your office may be directly attributed, to a great extent, to how you are perceived and accepted by Federal employees, we feel that this startup period is very important. Our observations which follow are directed at improving areas which we feel may negatively affect your operations. Our discussions with officials from the Office of the Special Counsel, 12 selected agency hotlines, and GAO's fraud hotline showed that the Special Counsel had not

- adequately communicated its role and responsibilities to Federal employees;
- established itself as the focal point within the Federal service for receiving and investigating allegations of prohibited personnel practices;
- issued guidance and instructions to hotline officials about the criteria for referring allegations of prohibited personnel practices; and

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--established an efficient and effective system for recording, categorizing, and tracking incoming complaints through the organization.

The Special Counsel had also not established a system for monitoring and determining whether patterns of prohibited personnel practices exist in the Federal service. The complaint tracking system that we believe the Special Counsel needs can be a vital component of such a monitoring system.

It is important that the Special Counsel promptly establish its presence, credibility, and identity with Federal agencies and employees to meet its mandated responsibilities. This will reduce misunderstanding and avoid possible inconsistency in resolving complaints of personnel and merit system abuses. Without active leadership by the Special Counsel the effectiveness and eventual success of merit system protections guaranteed by the Reform Act may be impaired. As mentioned, we are aware of the resource problems faced by the Special Counsel, however, we believe more can now be done to educate and inform Federal employees of the operations of this office and to actively encourage Federal employees to use the total services of the Special Counsel.

In discussing our observations with the Special Counsel, he concurred and told us his office has taken or plans to take action to implement our recommendations. The Special Counsel's comments have been incorporated in this report. A discussion of our work follows.

#### BACKGROUND

The legislative history of the Civil Service Reform Act shows that the Congress intended the Special Counsel, along with the Board, to vigorously protect Federal merit principles and Federal employees from prohibited personnel practices. To do this, the Special Counsel is required by statute to receive and investigate any allegations of a prohibited personnel practice and to refer all whistleblowing allegations to the head of the agency concerned. The statute further requires that the complainant or informant be notified in writing of the termination of the investigation, and the results of any referrals made to agency heads. If the Special Counsel believes there are reasonable grounds that a prohibited personnel practice has occurred, exists, or is to be taken which requires corrective action, the Special Counsel is required to report the determination together

with any findings and recommendations to the Board, the agency involved, and the Office of Personnel Management. If after a reasonable time the agency has not taken the corrective action recommended, the Special Counsel may request the Board to consider the matter. The Board may then order such corrective action as it considers appropriate.

The Special Counsel receives allegations from many sources--individual employees, union representatives, and referrals from Members of Congress. Another potential source of prohibited personnel practice complaints is agency fraud hotlines. Fourteen agencies have established telephone hotlines. Most hotlines were established after a January 16, 1979, directive from the Office of Management and Budget and are intended to enhance communication between employees and agency Inspectors General in reporting complaints of fraud, waste, and mismanagement. In a subsequent September 27, 1979, memo to Federal executive agencies, the Director, Office of Management and Budget reemphasized the importance of agencies' efforts to reduce fraud, waste and mismanagement in Federal programs. In this respect, the Director also reminded agencies to extend their full cooperation to the Office of the Special Counsel in their investigations of whistleblower allegations sent to them by the Special Counsel. The Director said such cooperation is essential to the Special Counsel's success.

In contrast to operations of the Office of the Special Counsel, the hotlines have become a well publicized mechanism for employees to bring their complaints or information about fraud, waste, or mismanagement to the agencies' attention. In addition, many hotlines are receiving personnel related complaints which may be within the investigative and prosecutorial jurisdiction of the Special Counsel. Excluding the GAO hotline, approximately 20 percent of the hotline complaints were characterized as personnel related.

SPECIAL COUNSEL HAS NOT ADEQUATELY  
COMMUNICATED ITS ROLE AS PROTECTOR  
OF FEDERAL MERIT SYSTEMS

The Special Counsel has not taken sufficient steps to inform and encourage Federal employees to report possible prohibited personnel practices and potential merit system abuses. We feel that actions are needed to establish the Special Counsel as the focal point within the Federal service for receiving and responding to allegations of prohibited personnel practices as intended by the Civil Service Reform Act.

In a February 9, 1979, letter to the Special Counsel, the National Federation of Federal Employees recommended that the Special Counsel prepare a notice to all employees which would explain in nonlegalistic terms, the role of the Special Counsel, the procedure for filing a complaint to the Special Counsel, and where to send such a complaint. The Federation believes that if such a notice was posted in every Federal facility, employees would become familiar with the role of the Special Counsel and would have an opportunity to follow the intent of the legislation. The Special Counsel has not however, disseminated such information.

During oversight hearings before the Senate Committee on Governmental Affairs, May 8, 1979, the Special Counsel stated that his office had not disseminated any informational materials concerning the role and responsibilities of his office other than the official notices in the Federal register. He added that such information would probably be helpful, but he did not want to mislead Federal employees and create expectations that cannot be fulfilled because of the office's lack of resources and other limitations.

We feel that the Special Counsel needs to immediately make clear his role and method of operation to Federal agencies and employees. This declaration of role should be based on the responsibilities assigned by the Civil Service Reform Act, and not based on current resources available. We believe this is critical in order for the Special Counsel to carry out its responsibilities as intended under the Civil Service Reform Act.

Lack of guidance to  
agency hotlines

The Office of the Special Counsel, at the time of our study, had not given adequate guidance and information to agency hotlines on handling allegations involving possible prohibited personnel practices. According to a Special Counsel official, hotline officials should call the Special Counsel's office before referring a complaint for a determination of whether the Special Counsel can act in the case. However, most officials we contacted had not received any guidance concerning the criteria or procedures for referring complaints. As a result, these officials either did not know what matters are under the jurisdiction of the Special Counsel and should be referred or did not know how serious the information should be before referring a complaint.

Determining whether an allegation comes under the jurisdiction of the Special Counsel is not an easy process. This difficulty also exists for the Special Counsel's own trained staff. In the May 8, 1979, hearing before the Senate Committee on Governmental Affairs, the Special Counsel stated that his staff must meticulously review each piece of correspondence or telephone call received to determine what the complaint is about, the Special Counsel's jurisdiction in the matter, and what action would be appropriate. He added that this process is difficult and time consuming. If the Special Counsel's own staff finds it difficult to analyze incoming allegations, then the untrained agency hotline officials will be even less capable to make such an assessment particularly if they have little or no guidance from the Special Counsel.

Agency hotline personnel we contacted did not understand the responsibilities and role of the Special Counsel in protecting employees against prohibited personnel practices. Because of this, complaints of personnel and merit systems abuses were not being referred by the hotlines to the Special Counsel for his review and possible investigation.

The absence of any specific guidance from the Special Counsel's office has led to misunderstanding and could involve inconsistency in handling complaints of possible prohibited personnel practices. Although it is the policy of the Office of the Special Counsel to assert the broadest possible jurisdiction under the Civil Service Reform Act, the misunderstanding and general lack of knowledge of the Special Counsel's operations may serve to limit the types of complaints referred rather than encompass all those matters within the jurisdiction of the Special Counsel.

In our view, appropriate guidance to the agency hotlines from the Special Counsel is needed so that potential merit system and personnel abuses can be brought to his attention and acted upon as intended by the Civil Service Reform Act.

The table on the following page provides an approximate number of personnel-related complaints received by the hotlines we reviewed and the number referred to the Special Counsel for the 5-month period ending May 31, 1979.

<u>Agency</u>	<u>Approximate number of personnel-related complaints (note a) received since hotlines inception</u>	<u>Number of complaints referred to Special Counsel</u>
Agriculture	91	0
Commerce	14	0
Energy	1	0
General Accounting Office	b/ 68	0
Health, Education, and Welfare	61	1
Housing and Urban Development	9	0
Interior	16	0
Community Services Administration	0	0
Environmental Pro- tection Agency	2	0
General Services Administration	39	0
National Aeronautics and Space Adminis- tration	2	0
Small Business Admin- istration	10	0
Veterans Administration	<u>65</u>	<u>0</u>
Total	<u>378</u>	<u>1</u>

a/We do not know how many of these complaints were actually prohibited personnel practices. Since several agencies do not maintain statistics on personnel-related complaints, some totals are based on agencies' estimates.

b/As of July 18, 1979.

While almost 400 personnel-related complaints were received, only 1 complaint had been referred to the Special Counsel for action. The percentage of personnel complaints to total complaints vary between each agency, but almost all agencies have received personnel-related complaints. For example, at the Department of Agriculture, as many as 50 percent of its hotline complaints relate to personnel matters.

According to hotline officials, the existing misunderstanding about the Special Counsel's role can be eliminated if guidance on handling complaints of personnel and merit system abuses is provided. Several hotline officials suggested that it would be helpful if the Special Counsel would

disseminate specific guidance in nonlegalistic terms with examples of what types of cases it should receive. We feel this would also enable agency hotline personnel to advise hotline callers on the most appropriate method of reporting their personnel-related complaints.

Although we feel it may be appropriate for agencies to initially investigate personnel or merit system complaints, those that are determined to be of sufficient substance should be referred to the Special Counsel for action. (Such determinations should be based on guidance established by the Office of the Special Counsel.) Without such guidance, there is no assurance that merit system abuses will be pursued with the vigor intended by the Civil Service Reform Act.

In addition, most hotline officials do not, as a matter of practice, inform complainants of the action taken on their allegations. If a complaint were filed with the Special Counsel, they would be required by the Reform Act to investigate the allegation and notify the complainant when the investigation is terminated and why. As a result, when cases are not referred to the Special Counsel that are within its jurisdiction, the investigation and feedback provided by the act is not assured.

We believe that the Special Counsel should take immediate steps to inform and explain to Federal employees and agencies (including agency hotline officials) its role and responsibilities as protector of Federal merit systems.

#### SPECIAL COUNSEL COMMENTS

The Office of the Special Counsel, in commenting on this report, agreed that additional outreach is needed. A number of actions are now being considered by the Office of the Special Counsel to inform and educate Federal employees on its functions and operations. The actions under consideration are:

- Hire a consultant to help develop an approach to inform Federal employees of the function, role, and activity of the Office of the Special Counsel. One current proposal is to develop an informational poster for display in Federal offices.
- Develop an informational booklet for distribution to Federal employees.
- Develop an informational letter and ask agencies to distribute to employees.

--Prepare briefing presentations targeted for employee unions and groups, agency managers, etc.

The Office also has recently designated contact officials with the existing agency fraud hotlines and furnished them with some general guidance and information on its operations and responsibilities. It is too early to tell, however, whether these actions will succeed in obtaining more referrals of possible prohibited personnel practices from the agency hotline programs.

AVAILABLE DATA COULD IMPROVE  
MONITORING OF MERIT SYSTEMS

The Office of the Special Counsel currently has no assurance that all serious personnel and merit system abuses will be brought to its attention. Based on the Special Counsel's limited outreach efforts to Federal employees and its previous lack of guidance to agency hotlines, we feel that it is not receiving as many potential prohibited personnel complaints as it should. In addition, the Special Counsel has not developed a data collection and case tracking system which could be used to identify possible patterns of prohibited personnel practices within the Federal Government. Therefore, it cannot now reasonably monitor or evaluate the significance of the complaints it receives on a Government-wide basis.

The Special Counsel does not have an effective case control and monitoring system and as a result cannot readily determine types of complaints received, agency involved, or other needed information. The present system is a manual system consisting of index cards which include the name of the complainant(s), agencies involved, location, and a brief description of the complaint and action taken. However, since the cards are only filed according to the name of the complainant(s), the Special Counsel cannot easily identify patterns of specific types of allegations or agencies involved. For example, if the Special Counsel wanted to determine the number of prohibited personnel practice complaints relating to promotions or reassignments of employees, it would have to review each case card. With the present case-load and expectations of it exceeding 2,000 by the end of 1979, this process would be costly, time consuming, and totally inadequate.

We believe a case information system which identifies complaints by organization and types of complaints is needed



to assist the Special Counsel and the Merit Systems Protection Board in recognizing merit systems problems. A computerized case monitoring system would be preferred. Without an accurate and comprehensive information system, the Special Counsel cannot perform basic analysis of complaints and determine possible patterns of prohibited personnel practices. A data system containing these elements could also be a useful information source for the Board's Office of Merit Systems Review and Studies. This office is responsible for conducting overall merit system reviews and evaluating various merit systems to insure they are free of prohibited personnel practices. Without a comprehensive information system, we do not believe that adequate, effective, and timely studies can be conducted.

We believe the Special Counsel should place high priority on establishing a case tracking system which will permit controlling cases received and monitoring the types and extent of merit system abuses in the Federal service.

#### SPECIAL COUNSEL COMMENTS

The Office of the Special Counsel agreed that a complaint tracking system and system for monitoring possible patterns of prohibited personnel practices is needed. In this respect, the Office intends to purchase a minicomputer system and is currently developing a complaint tracking and monitoring computer program. The Special Counsel stated that information on patterns of prohibited personnel practices and other systemic problems will be shared with the Board's Office of Merit Systems Review and Studies.

The Board is also currently developing an information/case tracking system for its operations and has stated that the system has potential for involving the Special Counsel should he choose to participate. The Special Counsel did not want to participate in the Board's planned information and case tracking system because the Board's proposal was viewed as too long range and tentative and also because there may be a security problem associated with the Board's planned use of a computer time-sharing system. While we currently have no opinion on separate information/case tracking systems by the Board and the Special Counsel, we feel there needs to be close coordination and communication during the development of these systems to insure that the systems can provide the maximum benefits possible to both organizations.

RECOMMENDATIONS

We have previously reported that the Office of the Special Counsel lacked the resources necessary to adequately implement its functions and responsibilities assigned under the Civil Service Reform Act. Subsequently, the Special Counsel's fiscal year 1979 supplemental and 1980 budget request were approved. We believe the Special Counsel now must provide active leadership and identify itself as the focal point for complaints of prohibited personnel practices.

We recommend that the Special Counsel take immediate action to inform all Federal employees in nonlegalistic or nontechnical terms of the function and role of his office. This employee notification should include the following

- summary of the Special Counsel's responsibilities,
- protection afforded Federal employees,
- description and examples of the types of prohibited personnel practice allegations under the Special Counsel's investigative jurisdiction, and
- information needed by the Office of the Special Counsel from the complainant to perform a preliminary review of the allegation.

We recommend that the Special Counsel give the following guidance to Federal hotline officials:

- Criteria for the types of personnel allegations to refer (this should include an example for each type).
- Suggestions about what questions to ask the complainant and facts to obtain about the alleged prohibited personnel practice.
- Method for referring such allegations to the Office of the Special Counsel.

We recommend that the Office of Special Counsel develop and coordinate with the Board an information/tracking system which would allow it to control the cases received and provide data on the types of prohibited personnel practice cases by agency and by type (Government-wide). This would provide the Special Counsel with a valuable source in determining patterns of prohibited personnel practices in the Federal Government. The data base of cases could also assist the Board's Merit Systems Review and Studies Office in its

studies on processes and systems by which personnel management is conducted in the various agencies. It could also be a valuable source of information in determining potential problem areas that affect the status of merit principles in the Federal services.

As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Senate Committee on Governmental Affairs, the House Committee on Post Office and Civil Service, the Director, Office of Management and Budget and the Chair, Merit Systems Protection Board.

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Sincerely yours,

*H. L. Krieger*

H. L. Krieger  
Director