



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

October 22, 2021

The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
1849 C St., N.W.
Washington, D.C. 20240

Re: OSC File No. DI-21-000866
Referral for Investigation--5 U.S.C. § 1213(c)

Dear Secretary Haaland:

I am referring to you for investigation a whistleblower disclosure that officials at the Department of the Interior (DOI), National Park Service (NPS), Southeast Archaeological Center (SEAC), Tallahassee, Florida, may have engaged in actions that constitute a violation of law, rule, or regulation; gross mismanagement; and an abuse of authority. A report of your investigation of these allegations and any related matters is due to the Office of Special Counsel (OSC) on December 21, 2021.

██████████ an archaeologist, who consented to the release of ██████ name, disclosed that SEAC officials have repeatedly violated statutes governing the protection of Native American cultural resources and engaged in other unethical and prohibited activities. The allegations to be investigated are:

- SEAC Archaeologists Mike Russo and Jeff Shanks violated the Archaeological Resources Protection Act (ARPA) and the Native American Graves Protection and Repatriation Act (NAGPRA)¹ by facilitating the transfer of looted Native American funerary items and human remains from a third party to NPS;
- Mr. Russo's and Mr. Shanks's involvement with the Southeast Archaeology Foundation (SEAF), a "non-profit friends" group they founded, and their promotion of personal ventures using SEAC resources, violate federal regulations and agency policy on ethical conduct;
- Mr. Russo and Mr. Shanks have failed to consult with Native American tribes prior to investigating and excavating burial mounds, in some cases in violation of statutory, regulatory, and policy requirements; and

¹25 U.S.C. § 3001-3013.

- Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

██████████ disclosed that prior to 2018, ██████████ and ██████████ engaged with Herman Jones, a suspected looter, to facilitate the transfer of Native American funerary goods and human remains to NPS possession. Mr. Jones looted the items in the 1960s or 1970s, in violation of the Antiquities Act,² from burial mounds on Bakers Landing, located on Tyndall Air Force Base (TAFB). According to ██████████, ██████████ and ██████████ were aware the items were looted but obtained them for study in coordination with an ongoing NPS archaeological investigation at TAFB. ██████████ alleged that ██████████ and ██████████'s involvement in the transfer of these artifacts constituted a violation of ARPA,³ which prohibits any person from selling, purchasing, exchanging, transporting, or receiving any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of federal law. ██████████ also alleges that ██████████, ██████████ and ██████████ violated NAGPRA, which prohibits the sale, purchase, use for profit, or transport for sale or profit of Native American remains without the right of possession.⁴

██████████ further disclosed that ██████████ and ██████████ use government time and resources to obtain funding for SEAF and are personally involved in financial transactions between SEAF and SEAC. ██████████ alleged that, through SEAF, ██████████ and ██████████ engage in private fundraising and apply for research grant funding not available to federal organizations and use the SEAF-donated funds to support personal research interests. These projects are then supplemented by NPS resources under the label of a “partnership agreement.” According to ██████████, the men also use SEAC funds to reimburse SEAF for questionable expenditures and frequently employ the services of Suzi Goodhope, a human remains detection (HRD) dog handler and their friend, on behalf of NPS-funded projects, while Ms. Goodhope also serves as SEAF Treasurer. ██████████ alleged that these activities create a conflict of interest or the appearance of a conflict of interest in violation of 5 C.F.R. § 2635.402 and § 2635.502.⁵ Their activities may also create the appearance of partiality, violate a prohibition on employee solicitation, and contravene ethical requirements as outlined by agency policy.⁶ ██████████ also alleged that ██████████ has improperly used NPS time and resources and his official position to develop, produce, market, and fundraise for his personal business venture, the Skelos Journal, and to promote a book he edited, although neither project has a connection to NPS.

██████████ further disclosed that ██████████ and ██████████ usso routinely evade compliance with statutory, regulatory, executive order and agency policy requirements to consult

²16 U.S.C § 433 (Repealed).

³16 U.S.C. § 470ee(b)(2).

⁴18 U.S.C. § 1170(a) “Right of possession” is defined as “possession obtained with the voluntary consent of an individual or group that had authority of alienation.” 25 U.S.C. § 301(13). Because the human remains in question were allegedly looted, they were not obtained with voluntary consent.

⁵Section 2635.402 prohibits employees from participating in matters in which they hold a financial interest. Section 2635.502 prohibits employees from participating in matters that create the appearance of a conflict of interest.

⁶Director’s Order #21: Donations and Philanthropic Partnerships, §§ 3.1.1., 3.1.2, and 5.2.2. (December 28, 2016)

with Native American tribes prior to disturbing sensitive burial sites.⁷ [REDACTED] and [REDACTED] have asserted to colleagues that, because they often conduct work for other federal and state agencies or via SEAF, the burden of compliance shifts to these agencies and organizations. [REDACTED] alleged, however, that [REDACTED] and [REDACTED] are considered responsible agents and should ensure compliance with consultation requirements. [REDACTED] disclosed that [REDACTED] and [REDACTED] continue to engage in destructive activities without consultation, including using Ms. Goodhope's HRD dogs to investigate known burial mounds and then later excavating them and removing human remains.

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 mismanagement, and an abuse of authority. Please note that specific allegations and references to specific violations of law, rule or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for a and reasonableness before sending copies of the agency report along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Services/Pages/DU-Resources.aspx>. If your investigators have questions regarding the statutory process or the report required under 5 U.S.C. § 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or cmcmullen@osc.gov for assistance. I am also available for any questions you may have.

Sincerely,



Henry J. Kerner
Special Counsel

Enclosure

cc: The Honorable Mark Lee Greenblatt

⁷43 C.F.R. § 10 (NAGPRA); 40 C.F.R. §§ 1501.5 and 1501.9 (National Environmental Policy Act); 54 U.S.C. § 306108 and 36 C.F.R. Part 800 (National Historic Preservation Act); 43 C.F.R. § 7.7 (Protection of Archaeological Resources); Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and DOI Departmental Manual, Part 512, Chapter 4 (Consultation with Indian Tribes and Alaska Native Corporations).

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).