

OSC ANNUAL REPORTS TO CONGRESS AND REQUIREMENTS OF 5 USC 1218

(Note: Annual Reports 1999 through 2004 are available in the “E-library” section of OSC’s website <<http://www.osc.gov>>. Annual Reports for 1989 through 1998 are available to the public at OSC’s Washington, DC Office and at <<http://whsknox.blogs.com/osc/>>.)

Note: emphasis (and comments) added throughout.

5 USC 1218. Annual report

The Special Counsel **shall** submit an annual report to the Congress on the activities of the Special Counsel, including the:

- 1) number,
- 2) types, and
- 3) **disposition** of allegations of prohibited personnel practices (PPP’s) filed with it,
- 4) investigations conducted by it,

COMMENT: OSC’S Annual Report for years 1989 through 2002 contain tables providing the number and type of PPP complaints filed with it and the number and type of PPP complaints that received field investigations. OSC’s Annual Reports for 2003 and 2004 do not list the number of each type of PPP complaints received, nor, for each type of PPP complaint, how many received field investigations.

No OSC report, from 1989 to 2004, provides the required information on the “disposition of allegations of PPP’s filed with it” which, per 1214(a)(1)(A) and (b)(2)(A)), is “whether there are (or not) reasonable grounds to believe a PPP has occurred, exists, or is to be taken”- clearly evidencing OSC long-standing failure to make these required determinations.

- 5) cases in which it did not make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken within the 240-day period specified in section 1214 (b)(2)(A)(i), and
- 6) actions initiated by it before the Merit Systems Protection Board, as well as

- 7) a **description of the recommendations and reports** made by it to other agencies pursuant to **this subchapter**, and
- 8) **the actions taken by the agencies** as a result of the reports or recommendations.

Table listing OSC reports and recommendations to agencies per 1211 to 1219, and agency responses.

<i>OSC report or recommendation</i>	<i>Agency Response</i>
1213(c)(1)	1213(e)(1)
1213(g)(1)	1213(g)(1)

<i>OSC report or recommendation</i>	<i>Agency Response</i>
<i>1213(g)(2)</i>	<i>1213(g)(2)</i>
<i>1214(b)(2)(B)</i>	<i>none required, OSC issues this report to establish jurisdiction at MSPB to enforce corrective action for a PPP.</i>
<i>1214(e)</i>	<i>1214(e)(1) and (2)</i>
<i>1215(c)(1)</i>	<i>1215(c)(2)</i>

*A review of the annual reports from 1989 through 2004 indicates that OSC provided “a description of **some of the** recommendations and reports made by it to other agencies,” but only, “pursuant to **1213.**” instead of “a description of **the** recommendations and reports made by it to other agencies pursuant to this **subchapter.**” The report’s description of the resulting agency actions is similarly limited.*

In fact, the annual reports do not describe (or even mention) a single report or recommendation made to the agencies per 1214(b)(2)(B), 1214(e), or 1215(c)(1). This clearly evidences OSC’s longstanding failure to comply with its statutory duty to make and report - to the complainant, the agency, and Congress - its positive PPP determinations.

*Every time OSC determines, “there are reasonable grounds to believe a PPP has occurred, exists, or is to be taken,” it **must** make a 1214(e) report to the involved agency, except when it has made 1214(b)(2)(B) report to MSPB (with a copy to the agency) to establish jurisdiction at MSPB to seek corrective action for the PPP. This is to ensure the head of the agency has the information needed to comply with his duties at 2302(c) - to prevent PPP’s - and to ensure Congress is appraised, via OSC’s Annual Reports, with descriptions of these PPP’s and resulting agency actions.*

*Additionally, by 1219, OSC is required to make publicly available its 1214(e) and 1215(c)(1) reports and recommendations, along with the agencies’ responses to 1214(e) reports. These records demonstrate that since 1989, OSC has made **no 1214(e)** reports and **only one 1215(c)(1)** recommendation.*

9) The report required by this section **shall include** whatever recommendations for legislation or other action by Congress the Special Counsel may consider appropriate.

Not a single recommendation for legislation or other Congressional action, regarding the primary purpose of OSC’s existence - protecting federal employees from PPP’s, particularly whistleblower reprisal - is made in the 1989 to 2004 OSC Annual Reports to Congress.