

joseph carson

From: Daniel P. Meyer <DMeyer@fedattorney.com>
Sent: Monday, May 13, 2019 9:17 PM
To: joseph carson
Subject: FW: OSC Final Determination - Carson

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From: Daniel P. Meyer
Sent: Monday, May 13, 2019 9:16 PM
To: Shilling, Sheri S. <sshilling@osc.gov>
Subject: RE: OSC Final Determination - Carson

Thanks Sheri, for your attention to this matter. Can you answer the following with respect to file no. MA-19-1256, which OSC reported closed on March 27, 2019?

There are some relevant non-discretionary statutory close-out items remaining in the record. See the Whistleblower Protection Act of 1989, Pub. L. 101-12, "Congressional Statement of Findings and Purpose" Section (b)(2)(B) (note – the entire Statement can be found in the "notes" of 5 U.S.C. section 1201) which states "the Office of Special Counsel shall act in the interests of employees who seek assistance from the Office of Special Counsel;" also note from the OSC Reauthorization Act of 1994, Pub. L. 103-424 Section 12(b), "Termination Statement" (note – the "Termination Statement" can be found in the "notes" of 5 U.S.C. section 1214):

"The Special Counsel shall include in any letter terminating an investigation under section 1214(a)(2) of title 5, United States Code, the name and telephone number of an employee of the Special Counsel **who is available to respond to reasonable questions** from the person regarding the investigation or review conducted by the Special Counsel, the relevant facts ascertained by the Special Counsel, and the law applicable to the person's allegations."

It is Mr. Carson's position that OSC has always failed or refused to comply with the above statutory duties subsequent to its closing his many whistleblower reprisal complaints over the years. To comply with the

statutory requirements, please answer the following reasonable questions. If you consider MA-19-1256 closed and the above statutory requirements moot, please inform us of that too.

Section 1214 (a)(2) Questions:

- 1) Does Carson have "reasonable belief" in his disclosures? If OSC did not make that determination, why not?
- 2) Does Carson have "reasonable grounds to believe" that his agency ignoring his whistleblower disclosures creates (or can create) "any other significant change in his working conditions"? Why or why not?
- 3) Does OSC have "reasonable grounds to believe," particularly given the new law - 5 U.S.C. section 4302(b) - for federal agency supervisors not to ignore their subordinates whistleblower disclosures, that MSPB will find an agency ignoring an employee's whistleblower disclosures creates or can create "any other significant change in working conditions" due to its chilling effect on other concerned employees? Why or why not?
- 4) Did the Special Counsel confer with other whistleblower programs to ascertain other agency readings on the definition of "significant change in working conditions"?
- 5) Did the Special Counsel apply OSC Directive 57 for those queries in Mr. Carson's 13-Day Response which could not be reviewed by the CEU, IPD, or DU non-senior management staff due to a conflict of interest?
- 6) Did the Special Counsel route to the CIGIE those queries in Mr. Carson's 13-Day Response which could not be reviewed by the Special Counsel or senior leadership due to a conflict of interest?

w/r

Dan

From: Shilling, Sheri S. [<mailto:sshilling@osc.gov>]
Sent: Friday, March 29, 2019 4:05 PM
To: Daniel P. Meyer <DMeyer@fedattorney.com>
Subject: OSC Final Determination - Carson

Dan,

Attached are two letters informing Mr. Carson that OSC has made a final determination to close his prohibited personnel practice complaint and informing him of his appeal rights before the MSPB.

Thanks,
Sheri

Sheri S. Shilling
Attorney
U.S. Office of Special Counsel