

Department of Veterans Affairs

Memorandum

Date: July 23, 2013

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation, Failure to Notify OIG of Possible Felony Criminal Activity and Reprisal, National Cemetery Administration, Washington, DC (2013-00609-1Q-0005)

To: Interim Chief of Staff

1. VA's Office of Inspector General (OIG) Administrative Investigations Division investigated an allegation that National Cemetery Administration (NCA) Senior Officials failed to notify OIG of possible felony criminal activity and that an improper disciplinary action was taken against an NCA employee for her attempts to have NCA Senior Officials notify OIG. To assess these allegations, we interviewed Mr. Steve Muro, Under Secretary for Memorial Affairs; Mr. David Schettler, former (retired) NCA Deputy Under Secretary for Management; Mr. Glenn Powers, NCA Deputy Under Secretary for Field Programs; Mr. Frank Kawulich, Executive Director for the Atlanta Memorial Service Network; Ms. Patricia Tyson, Director of Management and Communications Service; Mr. (b) (7)(C); Ms. (b) (7)(C), and other VA employees. We also reviewed email and personnel records, Federal laws and regulations, and VA policy.

2. We found that Mr. Muro, Mr. Schettler, Mr. Powers, and Ms. Tyson failed to ensure that OIG was notified of possible felony criminal activity occurring on NCA facilities when they mistakenly thought that reporting these activities to the Integrated Operations Center (IOC) fulfilled that requirement. We also found that Mr. Muro, in the past, did not make sufficient effort to ensure NCA employees were aware of this reporting requirement; however, once told of it, he took immediate positive steps to ensure that all NCA leaders and employees understood the need to fulfill the requirement. Further, we found that Ms. Tyson and Mr. Schettler committed a prohibited personnel practice when she issued Ms. (b) (7)(C) an admonishment letter for making a protected disclosure concerning the non-reporting of possible felony criminal activity to OIG and when Mr. Schettler upheld it through the grievance process. However, Mr. Muro, in coordination with the Acting Deputy Under Secretary for Management, later withdrew the letter from Ms. (b) (7)(C) personnel file. We suggest that you take the appropriate administrative action against Ms. Tyson and Mr. Schettler and that you ensure Mr. Muro continues to follow through with his action plan to train NCA leaders and employees on the requirement to immediately notify OIG of possible felony criminal activity. **(Although Mr. Schettler has since retired, there is a current monetary award pending for his past performance.)** We also suggest that you ensure all employees, VA-wide, are reminded of their responsibility to comply with 38 CFR §§ 1.201 and 1.204. **No response is necessary.**

3. Federal law states that any employee who has the authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee because of any disclosure of information by an employee which the employee reasonably believes evidences a violation of any law, rule, or regulation. 5 USC § 2302(b)(8). In a February 13, 2012, VA Memorandum with the subject line "Protection from Reprisal for Whistleblowing," Secretary Shinseki reiterated and reaffirmed VA's commitment to whistleblower protection and to create an environment in which employees felt free to voice their legitimate concerns without fear of reprisal. The Memorandum stated that managers and supervisors were expected to take prompt action on any conduct identified as reprisal based on whistleblowing.

4. Federal regulations state that all VA employees with knowledge or information about actual or possible violations of criminal law related to VA programs, operations, facilities, contracts, or information technology systems shall immediately report such knowledge or information to their supervisor, any management official, or directly to the OIG. It further states that criminal matters involving felonies will also be immediately referred to the OIG Office of Investigations. VA management officials with information about possible criminal matters involving felonies will ensure and be responsible for prompt referrals to OIG. 38 CFR §§ 1.201 and 1.204.

5. VA policy states that VA will establish and operate an Integrated Operations Center (IOC) under the direction of the Assistant Secretary for Operations, Security, and Preparedness, in coordination with Under Secretaries, Assistant Secretaries, and Other Key Officials, in order to provide the Secretary a single office responsible for proactively collecting, coordinating, and analyzing information in order to make recommendations to VA leadership. VA Directive 0322, Paragraph 2a (April 29, 2010). It also requires that Serious Incidents in the VA infrastructure, including incidents that are likely to result in national media or Congressional attention, be reported to the VA IOC as soon as possible but no later than 2 hours after awareness of the incident. It however states that nothing in the policy for reporting serious incidents changes existing reporting requirements under 38 CFR 1.200–1.204. VA Directive 0321, Paragraphs 2a and 2d (June 6, 2012).

6. Mr. (b) (7) told us that cemetery management was required to submit a First Notice of Event (FNOE) via email to the NCA Watch Officer (WO) and NCA Emergency Preparedness Coordinator (EPC) for reportable events and incidents and that it was then vetted through the IOC to the appropriate office for their information. Mr. (b) (7) said that when he received an FNOE, he sent it to the IOC. An August 23, 2010, Memorandum, signed by Mr. Muro, defined an FNOE as any and all events and incidents that met VA's and/or NCA's reportable criteria and that it was to be vetted and reported through the designated NCA process. It stated that NCA Management Officials and Cemetery Directors must ensure an initial notice, via email, was sent to the NCA WO in the IOC and the NCA EPC within 2 hours after awareness of the event. Mr. (b) (7) further said that he was unaware of any process to inform VA police and/or OIG of felonies and that once he submitted a report of a possible felony to the Watch

Desk, he lost track of it. Moreover, he said that the IOC did not treat possible felony crimes any differently than a leaky water pipe.

7. Ms. Tyson told us that she thought the FNOEs went to OIG. Mr. Powers told us that he was aware of a duty to report possible felony crimes to OIG but that he and Field Operations fulfilled their duty by reporting them to the IOC. Mr. Schettler told us that on a daily basis, he received, via email, one or two FNOEs but that he took no action on them, since they were also reported "through the chain of command in Field Operations." He said that if Field Operations needed him to do something, "peripherally" he would do it; however, he said that these events were "usually handled locally through law enforcement" and through "VA police" if there was a facility nearby. Mr. Schettler told us that the responsibility to report felonies to OIG did not apply to him, as it was a VA policy, not an NCA policy.

8. Ms. (b) (7)(C) gave us a list of 27 possible felony crimes committed at NCA facilities between June 2009 and January 2012 that she believed were not reported to OIG. OIG records reflected that VA police reported 2 of the 27 to OIG, one at the Los Angeles, CA, National Cemetery in January 2011 and one at the Fort Logan, CO, National Cemetery in October 2011. Mr. (b) (7) found no records reflecting that the IOC notified OIG of the 27 possible felonies. The following are a few examples of the crimes that were not reported to OIG:

- September 2, 2010 – Ft. Mitchell, AL – \$22,000 Auto Theft, involved in a murder
- December 20, 2010 – Phoenix, AZ – \$44,317 theft of construction equipment
- September 12, 2011 – Houston, TX – \$30,000 theft of construction equipment
- December 19, 2011 – Houston, TX – \$15,000 theft of golf carts, ramps, tools
- November 7, 2012 – Riverside, CA – \$11,000, theft of construction equipment

9. The following are a few examples of FNOEs sent to NCA senior leaders with no notification to OIG:

- In a December 13, 2011, email, the Acting Chattanooga National Cemetery Director told Mr. Muro, Mr. Schettler, Mr. Powers, Ms. (b) (7)(C) and others that someone cut the chain securing the back gate of the cemetery, removed the padlock on a construction conex box, and stole a generator, concrete saw, and a set of cordless tools, all valued at \$2,500. He also said that a report was filed with the Chattanooga Police Department.
- In a November 7, 2012, email, the Riverside National Cemetery Director told Mr. Muro, Mr. Schettler, Mr. Powers, Ms. Tyson, Ms. (b) (7)(C) and others that someone broke into cemetery and contractor storage containers and stole a John Deere gator vehicle and small tools, all valued at about \$11,000. He also said that VA police and the County Sheriff were notified.
- In a November 14, 2012, email, a Richmond National Cemetery Management Analyst told Mr. Muro, Mr. Schettler, Mr. Powers, Ms. (b) (7)(C) and others that

someone stole a John Deere tractor and spreader, valued at about \$18,400. The Analyst said that a report was filed with the Henrico County Police. Two hours later, Ms. (b) (7)(C) told Mr. Schettler in an email, "Dave: This is supposed to be reported to the IG because it is a felony. I do not believe that any of the facilities have been told of this requirement since I first informed senior leaders (including yourself) of this requirement." The next day, Mr. Schettler replied, "Please forward me the previous message where it is stated that the IG must be informed of these type thefts. Field ops and the IOC should be taking care of this."

10. Mr. Muro told us that once Ms. (b) (7)(C) told Mr. Schettler, who was within her chain of command, of the requirement to report the November 14, 2012, crime to OIG, it was Mr. Schettler's responsibility to "number one, make sure it was reported to the IOC" and "number two, make sure that the OIG was called." He said that Mr. Schettler was incorrect when Mr. Schettler told us that he was not responsible for the reporting requirement to OIG. Mr. Muro said that "any employee of the Federal government is responsible once they became aware" of the crime. Further, he said that he was "surprised" when he heard that most of the 27 possible felony crimes committed at NCA facilities between June 2009 and January 2012 were not even reported to VA police, because he said that he "always" asks whether VA police were contacted.

11. The following emails illustrate Ms. (b) (7)(C) informing her superiors of the need to report possible felonies to OIG and their communications:

- In a January 10, 2012, email, Ms. (b) (7)(C) told the IOC Director, "NCA has had several significant incidents where NCA facilities have been broken into... For some reason, NCA senior leaders don't feel the need to report this information to anyone. Thus, the incidents keep occurring." The Director replied, "All info should come to the NCA Watch Officer as well as the VA IOC." Mr. Powers then sent the email chain to Mr. Schettler and Ms. Tyson and said, "Please see where NCA Leadership's actions are being called into question once again in the email from Ms. (b) (7)(C) to [the IOC Director]. Mr. Schettler then sent the email chain to Ms. Tyson and said, "Not sure how we will deal with this."
- In an April 4, 2012, email chain, Ms. (b) (7)(C) told Mr. Schettler and Ms. Tyson, "According to the IG, all felonies are to be reported through appropriate channels to include the IG... How are you going to go about informing senior officials and 41A of their need to report?" In a follow on email, Ms. (b) (7)(C) sent Ms. Tyson and Mr. Schettler copies of Federal regulations 38 CFR 1.203, Information to be reported to VA Police, and 38 CFR 1.204, Information to be reported to the OIG."
- On April 11, 2012, Ms. Tyson emailed Ms. Kimberly Wright, Director of Field Programs, in relation to Ms. (b) (7)(C) assertion that NCA was not properly reporting possible felony criminal activity to OIG, with Mr. Schettler and Mr. Powers on copy. She said, "I am not aware that the IG has been pursuing any investigation or has any issue with NCA procedures for reporting crimes that occur on NCA property."

- On April 18, 2012, in response to a FNOE, Ms. (b) (7)(C) sent an email to Ms. Tyson, Mr. Schettler, and others, and she said, "This incident should also be reported to the IG since this is a felony." Ms. Tyson replied, "Do not direct staff in the Office of Field Programs to undertake law enforcement reporting activities. They are not in your reporting chain. You are not responsible for law enforcement reporting for NCA facilities."
- In an April 18, 2012, email to Ms. (b) (7)(C) with Mr. Schettler on copy, Ms. Tyson said, "You were specifically told on April 5 by Dave Schettler and me, that law enforcement reporting is not in your official duties nor in your Position Description. Furthermore, I directed you to stop spending your time on law enforcement. Do not contact VA offices representing yourself as an NCA employee with responsibility for law enforcement or law enforcement reporting." Ms. (b) (7)(C) replied, "As a the [sic] NCA member on the safety and security council, I am concerned about the level of thefts occurring at NCA facilities...I do believe that I gave you the notice from the IG that talked about failure to report felonies by senior leaders."
- In an April 20, 2012, email to Ms. (b) (7)(C) with Mr. Schettler on copy, Ms. Tyson said, "As the [EPC], you do not have any specific duties related to law enforcement at NCA facilities or specific responsibility for reporting crimes or thefts at NCA facilities...As would any VA employee, you should report crimes and thefts through appropriate channels. This includes reporting through your chain of command or reporting to the [OIG]." Ms. (b) (7)(C) replied, "That was not my request. I requested the procedures for reporting felonies within NCA. NCA has consistently failed to report felonies that occur on federal facilities. On at least three occasions since you have been my supervisor I have informed you of the reporting requirement and the correction actions required. At a minimum, [Ms. Tyson] and [Mr. Powers] have refused to make the proper notification. I informed you again two weeks ago that after speaking with the IG they did reiterate the 'requirement' to report all felonies to the IG. You, Tish Tyson, have insisted that this reporting is not necessary."
- In an August 24, 2012, email to Ms. Tyson, Mr. Schettler, and others, Ms. (b) (7)(C) asked for the dollar amount of a Bobcat mini excavator and mixer motor stolen from the Nashville National Cemetery, which was reported in an FNOE. She also asked for a copy of the police report and said, "someone needs to remind the cemetery of the policy that requires them to notify the IG of any felonies that occur on VA property." A Nashville National Cemetery Program Support Assistant replied that the value was \$20,000. On August 27, Ms. (b) (7)(C) emailed the Assistant, putting Ms. Tyson, Mr. Schettler, and others on copy, saying, "Thank you so much for the update. I understand this was contractor equipment but it still involves a felony. I am sending you the citation from the CFR of the requirement just for future reference." In her email, Ms. (b) (7)(C) included citations for 38 § CFR 1.203, Information to be reported to VA Police, and 38 § CFR 1.204, Information to be reported to the OIG.

- In a September 5, 2012, email to Ms. (b) (7)(C) Ms. Tyson said, "I am not clear why you need information or are directing Field Programs staff about reporting on the theft of contractor equipment. The responsibility is clearly now Mike (b) (7)(C) as the NCA IOC Watch Officer, to review and provide advice to Field Programs staff and the cemetery staff have assured you that [he] was notified... please explain why this is not a simple law enforcement matter outside your duties." On September 7, Ms. (b) (7)(C) replied to Ms. Tyson, with Mr. Muro, Mr. Schettler, Mr. (b) (7) and others on copy, "I have not directed anybody do anything. In my position as the [EPC], I provide advice. If you read what I said, I provided [the Program Support Assistant] with the citation so that she would know her responsibility according to the Code of Federal Regulation. I have asked you and Dave Schettler in the past and I have not received an answer....what is a law enforcement issue and who in NCA handles those (whatever they are)?"

12. On September 26, 2012, Ms. Tyson gave Ms. (b) (7)(C) a memorandum, Subject: Admonishment, Charge 1: Disregard of supervisor's instruction. The memorandum reflected the following:

On Friday, August 24, 2012, [a Program Support Assistant for the] Nashville National Cemetery, sent [an FNOE email] message in which [she] had conveyed that local law enforcement officials had been called to the cemetery due to a reported theft of the contractor's equipment. Although your immediate supervisor, Ms. Patricia (Tish) Tyson, had previously instructed you that it is not within your official job duties to be responsible for receipt of such information or to be the NCA official responsible for reporting thefts of contractor's equipment, you sent an [email] message in which you stated, "I need the dollar amount on this stolen piece of equipment and I need a copy of the police report." On Monday, August 27, 2012, in response to [the Program Support Assistant's email] reminder to you that the stolen equipment was not VA property, you wrote, "I understand this was contractor equipment but it still involves a felony." Your actions demonstrate a disregard of your supervisor's instruction.

The memorandum reflected that the admonishment would be placed in Ms. (b) (7)(C) official personnel folder (OPF) for 2 years or withdrawn and destroyed after 6 months, based on her "future behavior and attitude." It also told Ms. (b) (7)(C) that she could appeal it under VA's administrative grievance procedure. Ms. Tyson told us that at the time she issued the admonishment to Ms. (b) (7)(C) she did not confirm whether the Nashville National Cemetery theft was reported to OIG or whether any possible felony crime occurring on NCA facilities were or were not required to be reported to OIG.

13. On October 3, 2012, Ms. (b) (7)(C) provided Ms. Tyson a letter, Subject: Informal Grievance. In it she said that her intent in her communicating with the Program Support Assistant was to make it clear that management must report all felonies to OIG. She further said that in the state of Tennessee, anything over the amount of \$500 was considered a felony and since the property in the cited incident was \$20,000, it was considered a Class C felony. In her November 5, 2012, response, Ms. Tyson

told Ms. (b) (7)(C) that the admonishment was supported by "preponderant evidence" and the penalty for the charges sustained was "reasonable and warranted" and that her grievance and remedy requested were denied. Ms. (b) (7)(C) then submitted a formal grievance to Mr. Schettler on November 15, 2012. In her memorandum, she told Mr. Schettler that Ms. Tyson told her that there was no requirement to report the felony theft information to OIG, and she cited 38 CFR § 1.204, Information to be reported to OIG. She further said that the dollar value for the stolen equipment met the threshold for a felony and that as of the date of her memorandum, the information still had not been reported to OIG.

14. On January 30, 2013, Mr. Schettler provided Ms. (b) (7)(C) a letter, Subject: Response to Formal Grievance received November 15, 2012. He wrote:

Clear direction was provided to you regarding your duties and responsibilities, particularly in regard to refraining from directing field facilities on the reporting of thefts. You failed to, or refused to, follow your supervisor's instructions, making clear your disregard of supervisor's instruction. After careful review and consideration of your formal grievance and the facts, findings, and documentation included in the grievance examiner's report, I have decided your grievance is without merit and the relief sought is denied. Accordingly, the admonishment issued to you on September 26, 2012, stands.

Correspondence records reflected that throughout the informal and formal grievance procedures, no one conferred with VA's Office of General Counsel or OIG to determine if there was a requirement to report possible felony crimes to OIG. Further, records reflected that no one conferred with IOC to determine whether NCA's reporting procedures complied with the requirement to report possible felony crimes to OIG.

15. Mr. Schettler told us that he did not consider his upholding the admonishment letter as reprisal, because he said that it merely instructed Ms. (b) (7)(C) to focus on her job. Ms. Tyson told us that she did not consider the admonishment letter as reprisal and that she and Mr. Schettler employed progressive disciplinary measures against Ms. (b) (7)(C) from August 2011 to September 2012 with no improvement. She said that Ms. (b) (7)(C) might view the admonishment as reprisal, but Ms. Tyson said that it existed due to her total exasperation about Ms. (b) (7)(C) failure to provide her any communication about where she was, who she was meeting, what her job responsibilities were, how she represented NCA, and a failure to follow instructions. However, the admonishment letter did not address any of this alleged misconduct; it only addressed Ms. (b) (7)(C) disregard of Ms. Tyson's instruction.

16. Mr. Muro told us that he knew Ms. (b) (7)(C) received the admonishment letter, but he thought that it was for her failure to follow her supervisor's instructions. He agreed that with his current understanding of the Federal regulations for reporting possible felony crimes to OIG and finding that numerous crimes occurring on NCA property were not reported to OIG, he did not believe that Ms. (b) (7)(C) should have been given an admonishment letter for her attempts to convey the requirement to report to OIG. In

a May 21, 2013, email, Mr. Muro told us that he would seek guidance from General Counsel concerning the admonishment letter, and In a June 4, 2013, email, he told us that he and the Acting Deputy Under Secretary for Management discussed the decision to rescind the admonishment letter. A memorandum, dated May 31, 2013, Subject: Removal of Letter of Admonishment, addressed to Ms. (b) (7)(C) stated that the Acting Deputy Under Secretary for Management decided to "withdraw the Letter of Admonishment, dated September 26, 2012," from her OPF effective immediately. Further, the letter stated that "any additional 'file' copies that may exist, be destroyed." Ms. (b) (7)(C) signed the memorandum on May 31, 2013.

17. In a June 28, 2013, email, Mr. Muro sent us an updated copy of NCA Handbook 0322 (June 19, 2013). The new handbook reflected that all criminal/police incidents and information about actual or possible violations of criminal laws must be immediately reported to the local VA police and local OIG with jurisdiction over the facility, as required by VA Directive 0321 (Serious Incident Reports). It further stated that if there was no VA police component with jurisdiction over the incident/violation, the information will be reported to the appropriate Federal, State, or local law officials with a copy of the official report forwarded to the NCA Watch Officer as soon as possible and that the NCA Watch Officer will report the incident to OIG and VA IOC. OIG records reflected that after we reminded Mr. Muro of the requirement to report possible felony criminal activities to OIG and that they were not being reported appropriately, there was a significant increase in NCA's reporting of these incidents.

Conclusion

18. We found that Mr. Muro, Mr. Schettler, Mr. Powers, and Ms. Tyson failed to ensure that OIG was notified of possible felony criminal activity occurring on NCA facilities when they mistakenly thought that by reporting these activities to the IOC fulfilled that requirement. We also found that Mr. Muro, in the past, did not make sufficient effort to ensure NCA employees were aware of this reporting requirement; however, once told of it, he took immediate positive steps to ensure that all NCA leaders and employees understood the need to fulfill the requirement. Further, we found that Ms. Tyson and Mr. Schettler committed a prohibited personnel practice when she issued Ms. (b) (7)(C) an admonishment letter for making a protected disclosure concerning the non-reporting of possible felony criminal activity to OIG and when he upheld it through the grievance process. Mr. Muro, with the Acting Deputy Under Secretary for Management, later withdrew the letter from Ms. (b) (7)(C) personnel file. We suggest that you take the appropriate administrative action against Ms. Tyson and Mr. Schettler and that you ensure Mr. Muro continues to follow through with his action plan to train NCA leaders and employees on the requirement to immediately notify OIG of possible felony criminal activity. We also suggest that you ensure all employees, VA-wide, are reminded of their responsibility to comply with 38 CFR §§ 1.201 and 1.204. **No response is necessary.**

19. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents of this memorandum with those named within it, within the bounds of the Privacy Act; however it may not be released to them. If you have any questions, please contact [REDACTED]

(b)

WARNING
5 USC § 552A, PRIVACY ACT STATEMENT

This memorandum contains information subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). Such information may be disclosed only as authorized by this statute. Questions concerning release of this memorandum should be coordinated with the Department of Veterans Affairs, Office of Inspector General. The contents of this memorandum must be safeguarded from unauthorized disclosure and may be shared within the Department of Veterans Affairs on a need-to-know basis only.