



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

February 17, 2012

The Honorable Charles E. Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
152 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Darrell E. Issa  
Chairman  
Committee on Oversight and Government Reform  
United States House of Representatives  
~~2157 Rayburn House Office Building~~  
Washington, DC 20515

Dear Senator Grassley and Congressman Issa:

Thank you for your February 15, 2012 letter, expressing concerns about the Food and Drug Administration's (FDA) covert monitoring of whistleblower disclosures to Congress and the Office of Special Counsel (OSC). OSC is troubled by evidence suggesting that the FDA used covert surveillance as a tool to retaliate against whistleblowers and the pattern of retaliation alleged by the complainants, including unsuccessful efforts to initiate criminal prosecution of whistleblowers. OSC has broadened the scope of an existing reprisal investigation to include new evidence submitted by the complainants in an amended complaint filed on February 14, 2012. This investigation is a high priority for OSC.<sup>1</sup>

OSC is especially concerned about an agency interfering with or impeding federal employees' whistleblowing to the OSC. Even when there is a legitimate basis to monitor email communications, agencies should not monitor or intercept whistleblower disclosures to Congress, the OSC, or Inspectors General. The type of retaliatory surveillance and investigation alleged by the complainants poses a serious threat to the critical whistleblower protections that Congress has enacted and interferes with the secure channels available to federal employees to disclose wrongdoing. As you are well aware, disclosures by employees to OSC, Congress and Inspectors General are vital to promoting accountability and exposing waste, fraud and abuse,

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<sup>1</sup> Please note that OSC's investigation will focus on the prohibited personnel practices that the complainants have alleged. OSC is not authorized to perform criminal investigations, but OSC can make a referral to the Attorney General under 5 U.S.C. § 1214(d)(1).

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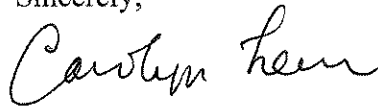
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and whistleblower disclosures have accounted for billions of dollars in recoveries for the U.S. Treasury.

OSC looks forward to working with your offices on this important matter. I hope we can address this issue on a broad level to educate and prevent other agencies from monitoring protected disclosures to Congress, the OSC, or Inspectors General.

Thank you again for providing oversight on this critical issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carolyn Lerner".

Carolyn N. Lerner

cc: The Honorable Patrick Leahy, Chairman  
Committee on the Judiciary  
United States Senate

The Honorable Elijah E. Cummings, Ranking Member  
Committee on Oversight and Government Reform  
United States House of Representatives