

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



KARL A. RACINE
ATTORNEY GENERAL

March 22, 2021

Daniel W. Lucas
Inspector General
District of Columbia
Office of the Inspector General
717 14th Street, N.W., Fifth Floor
Washington, D.C. 20005

Re: Final Report of Review and Audit of Selected Casework of the Firearms
Examination Unit of the Forensic Science Laboratory Division, Department of
Forensic Sciences

Dear Inspector General Lucas:

As you are aware, the Office of the Attorney General for the District of Columbia (OAG) and the United States Attorney's Office for the District of Columbia (USAO) conducted an audit of the Firearms Examination Unit (FEU) of the Department of Forensic Sciences (DFS) in response to concerns about the integrity of its scientific testing. I write to provide the final report of that audit and to provide additional information about OAG's concerns regarding the lab's work and OAG's ability to comply with its constitutional obligations in criminal cases in which the FEU conducted testing.

Concerns about the integrity of the FEU's work first arose when the FEU and an independent examiner hired by the USAO reported conflicting results in tests of evidence in *United States vs. Rondell McLeod*. In that case, the FEU and independent examiners compared cartridges from two different homicide scenes. The FEU determined that the cartridge cases were fired by the same firearm while the USAO's independent examiner reported that they came from two different firearms. Following this, the USAO's Fraud and Public Corruption Section concluded an investigation of the lab, the results of which deepened OAG's concerns. In April 2020, the USAO and OAG asked three forensic science experts¹ to conduct an audit of the Firearms Examination Unit to determine the validity of the results of the testing in the *McLeod* case, the cause of the

¹ Dr. Bruce Budowle, Director of the Center for Human Identification and Professor and Vice Chair in the Department of Microbiology, Immunology, and Genetics at the University of North Texas Health Science Center at Fort Worth, Texas; Todd Weller, Chair of the Organization of Scientific Area Committees' Firearm and Toolmark Subcommittee, and Jim Carroll, Assistant Director of the Los Angeles County Sheriff's Department's Crime Laboratory.

conflicting results, whether DFS acted in accordance with professional practices of a forensic science laboratory in addressing the conflicting results, and whether DFS was reaching reliable conclusions in the work it performed. The audit team detailed its findings in three reports that already have been provided to OIG.² Its final report is attached.³

The audit team concluded that it does not have confidence in the analytical results of the FEU and recommended that the FEU immediately cease performing casework and that OAG not rely on results from the FEU. The audit calls into question the validity of DFS tests, as well as its ability to implement a robust quality assurance program and to properly investigate and address quality assurance matters.

Additionally, we provide further information and context to Dr. Jenifer Smith's March 8, 2021 testimony during DFS' performance oversight hearing before the Council of the District of Columbia's Committee on the Judiciary and Public Safety. Specifically, Councilmember Charles Allen asked Dr. Smith whether USAO was using the FEU. Dr. Smith responded, "as far as I know, they are." She was later asked whether OAG was using FEU's firearms analysis, to which she responded in part, "as far as I know, they are too." In fact, on April 23, 2020, OAG and USAO jointly wrote Dr. Smith and informed her that "[u]ntil further notice, we have decided to retain private firearms examiners to reexamine evidence in currently scheduled trials to protect the viability of our prosecutions, which are being attacked by the defense bar because of perceived problems with DFS, especially in FEU cases." On February 16, 2021, an assistant attorney general requested that DFS perform ballistic testing. Notably, that attorney withdrew, via email, the request for ballistic testing on March 11, 2021. Neither OAG nor USAO has provided notice to DFS that it has resumed using DFS firearms examiners in its cases because we have not resumed using the FEU.

Please note that we are providing a copy of this letter and the auditors' final report to members of the Stakeholders Council, *see* D.C. Code § 5-1501.13, Chief Judge Anita Josey-Herring of the Superior Court of the District of Columbia, and Chief Judge Beryl Howell of the United States District Court for the District of Columbia. To ensure that our offices do not interfere with your investigation, however, we are not providing them with the other attachments and defer to your judgment as to whether those materials should be shared with those agencies. Pursuant to our

² "Interim Report of Review and Audit of the DFS Firearms Examination Unit," May 21, 2020, by Bruce Budowle, James Carroll, and Todd Weller; "Addendum to Interim Report of Review and Audit of Selected Casework of the Firearms Examination Unit of the Forensic Science Laboratory Division, Department of Forensic Sciences, District of Columbia," June 4, 2020, by Bruce Budowle, James Carroll, and Todd Weller, and "Second Interim Report of Review and Audit of Selected Casework of the Firearms Examination Unit of the Forensic Science Laboratory Division, Department of Forensic Sciences, District of Columbia," August 9, 2020, by Bruce Budowle, James Carroll, and Todd Weller.

³ Although DFS refused to cooperate with the audit, the audit team was able to conduct a thorough investigation and reach conclusions. The audit included a review of documentation in the cases in which incongruences between the work of FEU examiners and independent examiners had been identified; interviews with former DFS employees and former FEU examiners; and review of interviews conducted by your office. Because DFS did not cooperate with the audit, the auditors were unable to witness laboratory activities, interview current staff, or review case files on-site.

Daniel W. Lucas, Inspector General

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offices' discovery obligations, however, we will disclose this letter, the auditors' final report, and the attachments in ongoing criminal and juvenile matters involving DFS.

Thank you for your office's commitment to conducting this important investigation. Given the deficiencies highlighted in the auditors' final report, coupled with the evidence revealed in the *McLeod* case and the work done by OIG to date, I urge you to continue your investigation of the DFS laboratory. Do not hesitate to contact me if you have any questions or otherwise wish to discuss.

Sincerely,

/s/ *Karl A. Racine/by JP*
Karl A. Racine
Attorney General for the District of Columbia

Attachments

cc: DFS Stakeholders Council

The Honorable Muriel Bowser
Mayor of the District of Columbia

Eugene Adams
Mayor's Office of Legal Counsel
District of Columbia

Chief Judge Anita Josey-Herring
Superior Court of the District of Columbia

Chief Judge Beryl A. Howell
United States District Court for the District of Columbia