



INSPECTOR GENERAL

U.S. Department of Defense



INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE

PRESENTED BY: DoD OIG WHISTLEBLOWER PROTECTION COORDINATOR Date: _____

**EMPLOYEES OF CONTRACTORS, SUBCONTRACTORS, GRANTEES,
SUBGRANTEES, PERSONAL SERVICE CONTRACTORS**



INSPECTOR GENERAL

U.S. Department of Defense

PRESENTED BY: **KENNETH M. SHARPLESS**

Date

**CONTRACTOR EMPLOYEES AND GRANTEES
THE LAW, RIGHTS, AND FILING PROCEDURES
10 U.S.C. § 4701
[PREVIOUSLY 10 U.S.C. § 2409]**



WHISTLEBLOWER PROTECTION COORDINATOR

“The DoD’s ability to protect our warfighters and safeguard the taxpayer’s money depends on each of us. We rely heavily on our military members, civilian employees, and contractors to freely report issues of fraud, waste, and abuse without fear of retaliation. We all are potential whistleblowers and we should be aware of the protections afforded to us under the applicable statutes. It is a responsibility we can’t afford to dismiss!”

Ken Sharpless, DoD OIG WPC





TITLE 10, U.S.C. § 4701

TOPICS

- Whistleblower Protection History
- DoD OIG Whistleblower Protection Program
- The Law
- Whistleblower and Protected Disclosures
- Personnel Actions and Scenarios
- What's in the Statute
- Anonymity, Sensitive Material, Filing a Complaint
- Intelligence Community Whistleblower Protection Act
- References





TITLE 10, U.S.C. § 4701

WHISTLEBLOWER PROTECTION HISTORY

- Congress wanted Federal employees to report, without fear of retaliation, if they witnessed or otherwise became aware of fraud, misconduct, or other wrongdoing by Federal officials, employees, contractors, or grantees
- Congress initially addressed whistleblower rights and protections for Federal employees as part of the Civil Service Reform Act of 1978
- Protections updated and strengthened in the Whistleblower Protection Act of 1989 (WPA) provided Federal employees very specific rights and protections if they “blow the whistle” on waste, fraud, and abuse in the Federal government and personnel actions are taken against them





TITLE 10, U.S.C. § 4701

WHISTLEBLOWER PROTECTION HISTORY

- [Executive Order 12674](#), as amended, requires Federal employees to, "disclose waste, fraud, abuse and corruption to appropriate authorities."
- The Whistleblower Protection Enhancement Act of 2012 broadened the scope for employee protections, and authorized an Ombudsman position to educate employees of each federal agency on their individual rights, responsibilities, and protections
- Congress passed the Whistleblower Protection Coordination Act in 2018 which renamed the Ombudsman to Whistleblower Protection Coordinator with similar responsibilities





WHISTLEBLOWER PROTECTION PROGRAM

- **Administrative Investigations (AI)**: helps ensure ethical conduct throughout the DoD by conducting investigations and overseeing DoD Component investigations of allegations of misconduct by senior DoD officials, whistleblower reprisal, and Service member restriction from communication with an IG or Member of Congress. AI also manages the DoD Hotline and the Contractor Disclosure Program, provides education and training on whistleblower protections through its Whistleblower Protection Coordinator, and facilitates voluntary resolution of whistleblower reprisal allegations through its Alternative Dispute Resolution program
- **Whistleblower Protection Coordinator (WPC)**: a designated individual who is required to educate agency (DoD) employees about whistleblower rights and protections, however is not an advocate for those who file a complaint
- **Department of Defense Hotline**: provides a confidential, reliable means to report violations of law, rule, or regulation; fraud, waste, and abuse; mismanagement; trafficking in persons; serious security incidents; or other criminal or administrative misconduct that involve DoD personnel and operations, without fear of reprisal. Allegations of reprisal can be reported through the DoD Hotline at: www.dodig.mil





WHISTLEBLOWER PROTECTION PROGRAM CONT.

- **Directorate of Whistleblower Reprisal (WRI)**: a team of specialized investigators and alternative dispute resolution attorneys that review, investigate, and mediate when feasible, reprisal allegations from military service members, employees of contractors and grantees, nonappropriated fund instrumentality employees, employees within the intelligence community and those having access to classified information, and appropriated fund employees. The directorate also has oversight responsibility for reprisal allegations and reports of investigations originating from the service components and defense agencies
- **Alternative Dispute Resolution Program (ADR)**: the Whistleblower Reprisal Investigations Directorate (WRI) offers a voluntary alternative dispute resolution (ADR) for complaints filed by employees of nonappropriated fund instrumentalities employees and Department of Defense employees of contractors, subcontractors, grantees, sub-grantees, and personal services contractors, as well as certain other qualified types of cases in an effort to reach a resolution of a complaint through mediation or facilitated settlement negotiations prior to or during an otherwise lengthy investigation process





TITLE 10, U.S.C. § 4701

THE LAW

An employee of a contractor, subcontractor, grantee, or subgrantee, or personal services contractor may not be discharged, demoted, or otherwise discriminated against as reprisal for disclosing to an authorized recipient that the employee reasonably believes evidences

- gross mismanagement of a Department of Defense contract or grant
- gross waste of Department funds
- an abuse of authority relating to a Department contract or grant
- violation of law, rule or regulation related to a Department of Defense contract (including the competition for or negotiation of a contract) or grant
- a substantial and specific danger to public health or safety

In other words, 10 U.S.C. § 4701 makes it illegal for a DoD Contractor to discharge, demote, or otherwise discriminate against an employee of contractor, subcontractor, grantee, subgrantee, or personal service contractor for making a protected disclosure





TITLE 10, U.S.C. § 4701

AUTHORIZED RECIPIENTS OF PROTECTED DISCLOSURES

When the employee discloses information on the **previous slide** to:

- a member of Congress or a representative of a Committee of Congress,
- an Inspector General
- the Government Accountability Office
- an employee of the DoD who has responsibility for contract oversight or management
- an authorized official of the Department of Justice or other law enforcement agency
- a court or grand jury or
- a management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct

It is a
Protected
Disclosure





TITLE 10, U.S.C. § 4701

WHISTLEBLOWER AND PROTECTED DISCLOSURES

Additionally,

- An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a DoD contract or grant, shall be deemed to have made a disclosure
- A reprisal is prohibited even if it is undertaken at the request of a DoD official, unless the request takes the form of a nondiscretionary directive or is within the authority of the DoD official making the request





TITLE 10, U.S.C. § 4701

PERSONNEL ACTIONS

- Discharge
- Demotion
- Otherwise Discriminated Against as Reprisal





TITLE 10, U.S.C. § 4701

WHISTLEBLOWER RETALIATION SCENARIO

- You are an employee of a major government contractor, FX, INC. and a member of FX team supporting a services contract with a DoD Component and are renegotiating a contract
- You have a reasonable belief that the DoD contracting officer involved in the contract renegotiations was offered a job with FX and is in violation of a law...
- If you report this to an Inspector General, or a management official of the contractor having authority to investigate, discover, or address misconduct you are protected under the Whistleblower Protection Statute (10 U.S.C. § 4701) from reprisal, if the FX employer terminates your employment a week later for your protected disclosure





TITLE 10, U.S.C. § 4701

RIGHTS AND REMEDIES

Remember,

If you make a protected disclosure and believe you have been subjected to reprisal because of that disclosure, the Whistleblower Protection Act (WPA) and Whistleblower Protection Enhancement Act (WPEA) provide you with certain rights and remedies





TITLE 10, U.S.C. § 4701

WHAT'S IN THE STATUTE

- A person who believes they were subjected to a reprisal under 10 U.S.C. § 4701 may submit a complaint to the DoD Inspector General
- According to the statute, a complaint may not be brought forward if more than 3 years after the date on the which the alleged reprisal took place
- Complaint should contain the name of the contractor, the contract number, if known. If not, a sufficient description to identify the contract, what was disclosed and to whom, and the date and description of the reprisal action





TITLE 10, U.S.C. § 4701

WHAT'S IN THE STATUTE

- Unless the Inspector General determines that the complaint is frivolous, or fails to allege a violation of the statute, or it has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General will investigate the complaint
- The outcome of an IG investigation is always based on the facts and evidence collected. There are three potential outcomes for a complaint, (1) dismissal of the complaint without full investigation; (2) complaint is not substantiated based on facts and evidence after an investigation; and (3) complaint is substantiated based on the facts and evidence after investigation
- Once the investigation is completed, the Inspector General will submit a report of the findings of the investigation to the person, the contractor concerned, and the head of the agency





TITLE 10, U.S.C. § 4701

WHAT'S IN THE STATUTE

- Not later than *30 days after receiving the Inspector General report, the head of the agency concerned will determine if there is sufficient basis to conclude that the contractor has subjected the complainant to reprisal
- The head of the agency can either issue an order denying relief or can take one or more of the following actions:
 - Order contractor to take affirmative action to abate the reprisal
 - Order contractor to reinstate the Complainant to the position held before the reprisal, together with compensatory damages (including back pay), employment benefits, etc.,
 - Order contractor to pay complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) reasonably incurred by the complainant

*Time can be considerably longer depending on case complexity and legal reviews





TITLE 10, U.S.C. § 4701

WHAT'S IN THE STATUTE

- Statute of Limitations: A complainant must bring a complaint within three years of the date on which the alleged reprisal took place
- Exhaustion: The complainant has exhausted all administrative remedies with respect to the complaint if the head of an executive agency issues an order denying relief or has not issued an order within 210 days after the submission of a complaint or 30 days after an extension of time, and the delay is not because of the complainant





TITLE 10, U.S.C. § 4701

WHAT'S IN THE STATUTE

DE NOVO ACTION

- The complainant may bring a **de novo action** against the contractor to seek compensatory damages and other relief available in the appropriate district court of the United States. De novo occurs when a court decides all issues in a case, as if, the case was being heard for the first time, without giving deference to a prior decision
- A de novo action, at the request of either party, can be tried by court with a jury; court case must be filed within two years of the date that the complainant exhausted their remedies





TITLE 10, U.S.C. § 4701

EXAMPLES OF SUBSTANTIATED CONTRACTOR INVESTIGATIONS

- The Department of Defense Office of Inspector General (DoD OIG) conducted this investigation in response to whistleblower reprisal allegations against Valiant Integrated Services, Limited Liability Company (VIS). It was alleged that VIS attempted to transfer the Complainant from the U.S. Embassy in Baghdad, Iraq, to Basra, Iraq, and then discharged her on January 29, 2018 in reprisal for her making protected disclosures to various individuals who had oversight responsibility for the contact between VIS and the Department of the Army
- The Department of Defense Office of Inspector General (DoD OIG) conducted this investigation in response to an allegation that on December 22, 2017, Willowheart Limited Liability Company (Willowheart) placed [REDACTED] (the Complainant), Contract Security Guard (CSG), Willowheart, on a temporary administrative leave of absence without pay, in reprisal for reporting violations of North Carolina state law, and for reporting abuse of authority to Inspectors General (IGs) and a contracting officer representative (COR)
- The Department of Defense Office of Inspector General (DoD OIG) conducted this investigation in response to an allegation that (REDACTED Name), U.S. Army (USA), (REDACTED Name), Blue Grass Chemical Activity (BGCA), Richmond, KY, recommended the revocation of the Complainant's access to classified information in reprisal for the protected disclosure to the chain of command and Inspector General

Find and read redacted reports at: www.dodig.mil





TITLE 10, U.S.C. § 4701

ANONYMITY/CONFIDENTIALITY

- You don't have to provide your name when making a protected disclosure. You can elect to remain anonymous or request your name not to be released
- If you remain anonymous, you cannot be contacted for additional information; it may not be possible to investigate your allegations, resulting in dismissal
- If an investigation is conducted, it is always possible your identity will become known during an inquiry or investigation due to the nature of the allegations
- If you provide your name and request it not be released, be aware there may be circumstances, usually related to litigation, when agencies are compelled to identify whistleblowers, or circumstances when identities must be disclosed for compelling reasons of health or safety





TITLE 10, U.S.C. § 4701

SENSITIVE OR CLASSIFIED MATERIAL

- Disclosure of any information subject to specific non-disclosure statutes, orders, and agreements (for example trade secrets or national security and classified information) may only be made in accordance with law and regulations for the disclosure to be covered by Whistleblower protections and remedies
- Use the Secure Internet Protocol Router Network (SIPRNET) for complaints at the SECRET level
- Use the Joint Worldwide Intelligence Communications System (JWICS) for complaints involving TOP SECRET information
- For classified disclosures, go to www.dodig.mil/Hotline/classifiedcomplaint.html to learn how to report them to the DoD Hotline





TITLE 10, U.S.C. § 4701

FILING COMPLAINT WITH DoD HOTLINE

- Report and resolve your complaint within the Inspector General (IG) system; you can notify your local or command IG office
- You can file a complaint with the DoD Hotline: www.dodig.mil
- Phone: 1-800-424-9098 (Call prior to submitting complaints via SIPRNET or JWICS or to ask general questions regarding submitting a complaint)
- Do not report the following through the DoD Hotline:

- 911 Emergencies
- Minor incidents of time and attendance abuse
- Minor incidents of theft of Government resources
- Minor incidents of misuse of Government vehicles
- Department of Defense job opportunities
- DoD Incentive Awards Program suggestions
- Personnel matters involving requests for individual relief
- Employment related grievances and complaints against management officials
- Complaints of EEO discrimination
- Matters relating to the Uniform Code of Military Justice to include Article 15 appeals
- Tricare complaints
- DoD Contractor Compliance and Disclosure requirements
- Locating a military service member
- Obtaining military records
- Child and spousal support matters
- Pay and allowance matters
- Deceptive lending practices and other consumer fraud





TITLE 10, U.S.C. § 4701

IF YOU HAVE QUESTIONS

- Reach out to the DoD OIG Whistleblower Protection Coordinator, who is:
 - Responsible for educating all DoD employees on the right to report fraud, waste, abuse and misconduct to appropriate authorities
 - Educating DoD employees on the roles of agencies investigating allegations of reprisal
 - Educating DoD employees about the rights and remedies against retaliation for protected disclosures under applicable statutes
- The Coordinator is prohibited from acting as the employee's or former employee's legal representative, agent, or advocate

Contact the Coordinator at wpc@dodig.mil





INTELLIGENCE COMMUNITY

WHISTLEBLOWER PROTECTION ACT

- Provides a secure means for employees to report to Congress allegations regarding classified information
- Establishes a process for employees and contractor employees of the four intelligence agencies to report matters of “urgent concern” to the intelligence committees of Congress
- This Act does not grant protection for intelligence community employees; you maybe afforded protections from reprisal while engaging in protected activities via other whistleblower protections, such as PPD-19
- Contact the Coordinator or the DoD Hotline at (800) 424-9098, for advice on filing procedures and timelines





MATTERS OF URGENT CONCERN

Urgent Concern means any of the following:

- A serious or flagrant problem, abuse, violation of law or executive order, or deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information; does not include differences of opinions concerning public policy matters
- A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.
- An action, including a personnel action described in section 2302(a)(2)(A) of title 5, United States Code, constituting reprisal or threat of reprisal prohibited under section 7(c) in response to an employee's reporting an urgent concern in accordance with this section.





Whistleblower Protection References

Other whistleblower protection statutes are:

- Military Service Members, Title 10, U.S.C. § 1034
- Prohibited Personnel Practices, Title 5, U.S.C. § 2302
- Intelligence Community Employees or those Having Access to Classified Information, Presidential Policy Directive 19
- Nonappropriated Fund Instrumentality Employees, Title 10, U.S.C. § 1587
- Review the statutes: click on [me](#)
- Review the guides on how to file: click on [me](#)





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