

Office of the Director of National Intelligence
Washington, DC 20511

MAR 18 2014

Mr. Steven Aftergood
Federation of American Scientists
1725 Desales Street NW
Suite 600
Washington, DC 20036

Reference: ODNI Case # DF-2012-00068

Dear Mr. Aftergood:

This is in response to your email dated 19 April 2012, received in the Information Management Division of the Office of the Director of National Intelligence (ODNI) on 24 April 2012. Pursuant to the Freedom of Information Act (FOIA), you are requesting, "... a copy of the 2009 report of the ODNI Office of Inspector General entitled 'Review on the Use of the Whistleblower Protection Act (ICWPA) in the Intelligence Community.'"

Your request was processed in accordance with the FOIA, 5 U.S.C. § 552, as amended. A thorough search of our records and databases located ten documents responsive to your request. Upon review, it has been determined that the information responsive to your request may be released in segregable form with deletions made pursuant FOIA exemptions (b)(3), and (b)(6).

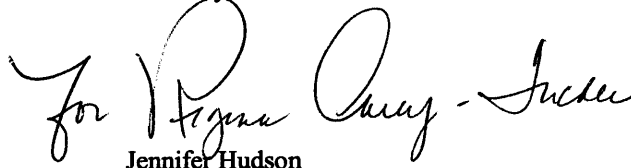
Exemption (b)(3) applies to information exempt from disclosure by statute. The relevant withholding statutes are the National Security Act of 1947, as amended, 50 U.S.C. § 3024(m)(1), which protects, among other things, the names and identifying information of ODNI personnel. Exemption (b)(6) applies to records which, if released, would constitute a clearly unwarranted invasion of the personal privacy of individuals.

You have the right to appeal this determination within 45 days of the date of this letter to:

Office of the Director of National Intelligence
Information Management Office
Washington, DC 20511

Should you decide to do this, please explain the basis of your appeal. If you have any questions, please call the Requester Service Center at (703) 874-8500.

Sincerely,



Jennifer Hudson
Director, Information Management Division

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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
INSPECTOR GENERAL
WASHINGTON, DC 20511

19 October 2009

The Honorable Silvestre Reyes
Chairman
Permanent Select Committee on Intelligence
House of Representatives
Washington, D.C. 20515

The Honorable Peter Hoekstra
Ranking Member
Permanent Select Committee on Intelligence
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman and Ranking Member Hoekstra:

(U) The House Permanent Select Committee on Intelligence (HPSCI) asked the Office of the Director of National Intelligence (ODNI) Office of the Inspector General (OIG) to provide information on the use of the Intelligence Community Whistleblower Protection Act (ICWPA) within the Intelligence Community (IC).

(U) In response to this request, the OIG issued a questionnaire to the Inspectors General for the following Offices of Inspector General:

- Central Intelligence Agency (CIA).
- Defense Intelligence Agency (DIA).
- Department of Defense (DOD).
- Department of Energy (DOE).
- Department of Homeland Security (DHS).
- Department of Justice (DOJ).
- Department of State (DOS).
- Department of Treasury (DOT).
- National Geospatial-Intelligence Agency (NGA).
- National Reconnaissance Office (NRO).
- National Security Agency (NSA), and
- ODNI.

(U) The questionnaire sought information on the ICWPA complaints the OIGs had received between 1 January 1999 (the effective date of the ICWPA) and 14 September 2009. After reviewing the responses, the ODNI OIG also contacted several of the IC

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OIGs for more specific information. This letter summarizes the results of the responses to the questionnaire and provides our additional comments.

(U) The ICWPA requires that, upon receipt of a complaint, an agency OIG must determine within 14 days whether the complaint appears to be a credible "urgent concern," as defined by the statute. If so, the OIG must report the matter to the agency head, who must transmit it to the intelligence committees. An allegation that does not fall within the ICWPA's criteria for an "urgent concern" may still be a credible complaint that is investigated by an OIG, but it would not invoke the specific requirements of the ICWPA, including congressional notification.

(U) According to the questionnaire responses we received, since 1 January 1999, 4 IC OIGs received a total of 10 ICWPA complaints.¹ The CIA and DOD² OIGs received four complaints, and the OIGs for DOJ and ODNI each received one complaint. Of the 10 complaints, 3 were deemed by the CIA and DOD OIGs to be "urgent concerns," as defined by the ICWPA, and all 3 were found to be credible. The CIA and DOD OIGs notified Congress of the three complaints, as required by the statute. Congress also received direct notification of a fourth complaint independently by an individual who had filed the complaint with the ODNI OIG. Although this complaint was 1 of the 10 complaints received during the reporting period, the ODNI OIG determined this complaint did not qualify as an "urgent concern" as defined by the ICWPA.

(U//FOUO) Of the remaining six complaints, all of which were deemed "not credible" by the respective OIGs, four complainants expressed an intent to notify Congress independently of the complaint, but they did not do so. The CIA OIG received three complaints (all by the same complainant), in which the complainant originally expressed an intent to contact Congress, but did not do so. The DOJ OIG received a complaint in 2006 by a Federal Bureau of Investigation (FBI) employee who expressed an intent to furnish information to a particular Senator's staff and to the Senate Judiciary and Commerce Committees, not to the intelligence committees, as required by the ICWPA. The DOJ OIG has no information that the complainant provided the information to Congress.

(U//FOUO) Of the 10 complaints received by the IC OIGs during the 10-year reporting period, 3 of them – 2 from CIA and 1 from DOJ – included allegations of reprisal.³

¹ While 2 of the 10 complaints – from DIA and NRO – were determined to not meet the statutory definition of an "urgent concern," DOD OIG nonetheless processed them as ICWPA allegations because the complainants asserted the ICWPA when initially communicating them to the OIGs. We include them here, but distinguish them from the other eight complaints that were determined to allege "urgent concerns," as defined in the ICWPA.

² (U//FOUO) Complaints received by DOD OIGs were forwarded by the OIGs of DIA, NRO, and NSA.
³ The DOD OIG received an additional reprisal complaint from an NSA employee that is not included in this tally because, upon review, it was determined that the reprisal allegation did not pertain to a reprisal for alleging an "urgent concern." Thus, the DOD OIG believes it does not fit in a tally of ICWPA reprisal allegations. Although the DOD OIG did not determine the reprisal aspect to be part of the ICWPA claim, the DOD OIG investigated the reprisal aspect separately and eventually transmitted the separate reprisal report of investigation (ROI) to Congress along with the ICWPA ROI.

However, the CIA OIG found no evidence of reprisal when it investigated these allegations. The DOJ OIG referred the complaint to the DOJ Office of Professional Responsibility, which investigated the matter and found no evidence of reprisal. The OIGs also reported that none of the complaints submitted to the IC OIGs was deemed fraudulent or made in "bad faith."

(U) In sum, based on the questionnaire responses, the IC OIGs notified Congress of every allegation of an "urgent concern" that was deemed by them to be credible. The data developed is summarized below.

Summary of IC OIG Responses to ODNI OIG ICWPA Questionnaire

AGENCY	NUMBER OF COMPLAINTS	NUMBER OF "CREDIBLE" "URGENT" CONCERNS	CONGRESS NOTIFIED of CREDIBLE URGENT CONCERNS
CIA	2	1	Yes
DEA	0	0	No
DIA	1	0	No
DOE	0	0	No
DIAS	0	0	No
DOJ	0	0	No
DOIT	0	0	No
FBI	1	0	No
NGA	0	0	No
NRO	2	1	Yes
NSA	1	1	Yes
ODNI	1	0	Yes (by complainant)
TOTAL	10	3	4

Period covered by questionnaire: 1 Jan 1997 - 31 Sept 2000

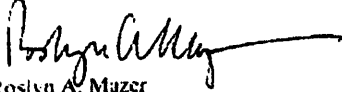
(U) In reviewing responses to the questionnaire, it is evident that IC agencies differ in the manner in which they make information about ICWPA available to the workforce. For example, seven agency OIGs place basic information about the ICWPA and the whistleblower process in an on-line format on agency websites. Four agency OIGs told us that they provide briefings to the workforce, and three OIGs told us they provide hardcopy information in addition to providing the information in other venues.

(U) Based on the results of the questionnaire, we have initiated the development of a special website to inform IC employees about the provisions and authorities of the ICWPA, the process for filing a whistleblower complaint, and links to agency points of contact. The website, which will be hosted on the ODNI OIG webpage, also would serve as a portal to other IC OIGs. We have begun work on this website on the classified network, where the ODNI website resides, and will also examine the feasibility of creating a similar website on the agencies' unclassified networks.

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(U) If you have any questions regarding this report, please contact me or Deputy
Inspector General Scott Dahl [REDACTED] (b)(3)

Respectfully,


Roslyn A. Mazer
Inspector General

Enclosure

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ODNI/IG Questionnaire Related to the Intelligence Community Whistleblower Protection Act of 1998 (ICWPA)

The House Permanent Select Committee on Intelligence has asked ODNI/IG to collect some basic data from reporting the Intelligence Community Whistleblower Protection Act of 1998 (ICWPA). We are seeking information concerning civilian or contractor personnel for which the ICWPA applies. While the ICWPA covers all personnel from the CIA, NSA, DIA, NRO, NGA, and the National Security Branch of the FBI, other IC elements need only provide information relevant to employees of, or contractors to, units having a principal function of conducting foreign intelligence or counterintelligence.

The deadline to submit responses is 14 September 2009.

The project manager for this questionnaire is [REDACTED] Senior Advisor for Oversight and Policy. Please contact [REDACTED] if you have any questions.

(b)(3)
(b)(6)



[REDACTED]

(b)(3)
(b)(6)

AGENCY: _____

NAME OF PERSON PROVIDING RESPONSES: _____

CONTACT INFORMATION:

ICE EMAIL: _____

UNCLASS EMAIL: _____

UNCLASS PHONE: _____

1. How many complaints or allegations, by year, has your agency or department received since January 1999 pursuant to the ICWPA?

Response: _____

2. Of the number identified in Question 1, please provide the following, by year:

(A) How many did the Inspector General find credible?

Response: _____

- (B) How many did the Inspector General find NOT credible?
Response: _____
- (C) How many included an express allegation of reprisal?
Response: _____
- (D) How many did the head of your agency or department transmit to Congress?
Response: _____
- (E) For how many did the complainant exercise the provision of the ICWPA allowing direct submission to Congress in cases where the IG does not transmit the complaint or information, or does not transmit it in accurate form, to the agency or department head?
Response: _____
- (F) For how many did the complainant, if records exist, express a desire to exercise the ICWPA provision allowing direct submission of the complaint or information to Congress, but to your knowledge did not in fact submit the information directly to Congress?
Response: _____
3. In any ICWPA case received by your agency or department since 1 January 1999, has your department or agency head ever put any restrictions on the information that could be shared with Congress? If yes, please describe.
Response: _____
4. What office(s) in your agency or department is authorized to open or conduct an ICWPA investigation?
Response: _____
5. What standard is used by each agency or department in deciding whether to open an ICWPA investigation?
Response: _____
6. How does your agency or department define a "whistleblower" for purposes of the ICWPA?
Response: _____
7. Does your agency or department limit ICWPA cases only to those that involve an "urgent concern" as defined by the ICWPA?
Response: _____

8. Please provide a copy of your agency's written ICWPA-related policies, guidance, and procedures. Indicate the title/dates of the documents you are providing in your response.

Response: _____

9. Are all of the materials identified in Question 7 available to your Intelligence Community (IC) workforce? How are they made available?

Response: _____

10. Please identify and describe all ICWPA training provided by your agency or department, including virtual training, written guidance and in-person training.

Response: _____

11. Please provide a copy of any materials used in your agency or department's ICWPA training or guidance. Indicate the title/dates of the documents you are providing in your response.

Response: _____

12. Under your procedures, how does your agency protect the identity of an ICWPA complainant?

Response: _____

13. Has your agency ever substantiated a reprisal against someone who has submitted a complaint or allegation pursuant to the ICWPA or found evidence of misconduct related to an ICWPA complaint or allegation? If yes, please identify the date, summarize the matter, and describe how the reprisal or misconduct was addressed by your agency or department.

Response: _____

14. If your agency or department were to find an ICWPA allegation to have been made in bad faith, what policies and procedures does your agency or department follow in addressing this misconduct? Please provide a copy of any guidance or instructions with your response.

Response: _____

15. Has your agency or department ever determined that an ICWPA allegation was made in bad faith? If yes, please identify the date, summarize the matter, and describe how the bad faith determination was address by your agency of department.

Response: _____