



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

APR 11 2016

The Honorable Charles E. Grassley
United States Senate
Washington, D.C. 20510

The Honorable Claire C. McCaskill
United States Senate
Washington, D.C. 20510

Dear Senators Grassley and McCaskill:

Thank you for your letter of February 25, 2016, regarding the Department of Defense Office of Inspector General's (OIG) handling of contractor employee reprisal complaints filed under 10 U.S.C. § 2409. I appreciate you bringing this matter to my attention. As discussed below, we have carefully reviewed your letter, the case discussed in it, and the issues you have raised, and I agree that we should have conducted an investigation into the whistleblower's complaint.

I also share your view concerning the importance of whistleblowers to government oversight and the critical requirement that they be protected from reprisal. The OIG needs to ensure that it thoroughly investigates whistleblowers' claims of reprisal in a timely manner. We must review their complaints in full accord with the appropriate standards and ensure that we do not analyze their complaints in a narrow fashion.

As reflected in the enclosure which addresses your three questions, I believe that we erred in our review of the case you brought to our attention and that we should have conducted an investigation. As a result, the OIG will reopen this case, and will also reopen a related case filed by a co-worker, in order to proceed with full investigations. We will notify both whistleblowers directly. Should the whistleblowers provide the necessary Privacy Act waivers authorizing the release of information to you, we will report to you on the outcome of the cases.

Moreover, as a result of your letter and our review of the case, I have directed my staff to institute a more expansive approach to evaluating disclosures by contractor employee whistleblowers and personnel actions alleged to have been taken against them in reprisal.

If you have any questions, please contact me or Ms. Kathie R. Scarrah, Director, Office of Legislative Affairs and Communications, at (703) 604-8324.

Sincerely,

A handwritten signature in cursive script, reading "Glenn A. Fine", is written over the typed name.

Glenn A. Fine
Acting Inspector General

Enclosure:
As stated

DoD OIG
Answers to Questions Posed by
Senators Grassley and McCaskill
Regarding Contractor Whistleblower Reprisal Cases

1. *In the attached case, did the DoD OIG review the underlying complaint for an allegation of gross mismanagement, a gross waste of funds, or an abuse of authority relating to the contract? If not, why not?*

Answer: The DoD OIG erred in our closure letter to the complainant by citing only one category of protected disclosures under the statute instead of all categories of protected disclosures. The template for the closure letter to be used when we find that there was no protected disclosure under the statute includes information reasonably believed to evidence:

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

In this instance, the letter deviated from the template, and the mistake was not caught during our internal review process.

In light of your inquiry, we also reexamined this complaint to determine whether the whistleblower may have had a reasonable belief that his disclosures evidenced:

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

Based on our reexamination, we determined that the whistleblower reasonably believed his disclosure evidenced conduct enumerated in 10 U.S.C. § 2409. As a result, we concluded his disclosure qualified for further analysis under the statute. We also determined that other elements of his complaint, such as the timing of an unfavorable personnel action in relation to his disclosure, were sufficient to require that we reopen his case. As a result, we are reopening this case as well as a related case filed by a co-worker, in order to proceed with full investigations. We will notify both whistleblowers directly that we will conduct a full investigation of their complaints. If the whistleblowers provide the necessary Privacy Act waivers authorizing the release of information to you, we will report to you on the outcome of the cases.

2. *Does the DoD OIG have a policy regarding the analysis required in evaluating contractor employee reprisal complaints pursuant to 10 U.S.C. § 2409? Please provide a copy.*

Answer: DoD OIG analyzes contractor/subcontractor employee reprisal complaints in accordance with 10 U.S.C. § 2409 and Defense Federal Acquisition Regulation (DFAR) Subpart 203.9, "Whistleblower Protections for Contractor Employees" (February 28, 2014), which are included as appendices to the Office of the Deputy Inspector General for Administrative Investigations (ODIG-AI) Investigations Manual.

Additionally, the DoD OIG Whistleblower Reprisal Investigations (WRI) Directorate has issued training materials, desk aids, and templates for use in analyzing 10 U.S.C. § 2409 complaints (see attachments 1-5):

- 1) "Understanding the Contracting Environment in Administrative Investigations"
- 2) "Whistleblower Protection Statutes"
- 3) WRI 2409 Report of Investigation template
- 4) WRI All Hands 2409 Refresher Training
- 5) 10 U.S.C. 2409 Desk Aid

We are reviewing our training materials to ensure that they convey to our investigative staff the importance of taking a more expansive approach to evaluating disclosures by contractor employee whistleblowers and personnel actions alleged to have been taken against them, and we will be conducting refresher training to ensure that full consideration of the appropriate standards are used to evaluate whether disclosures are protected by statute.

3. *How many contractor employee reprisal claims, submitted pursuant to 10 U.S.C. § 2409, alleging gross waste, gross mismanagement, or abuse of authority, has the DoD OIG fully investigated within the past 5 years? How many has the DoD OIG dismissed without investigation?*

Answer: We are currently compiling this data. We must access files that were stored in a prior case management system, including paper records. We must manually review each complaint by the criteria you provided. We will provide an answer to this question when our review is complete.

Attachments:

As stated (two copies each)