

DoD Whistleblower Protection

Military Personnel

“What You Need to Know”



Department of Defense
Inspector General



Patrick Gookin

DoD Whistleblower Protection Ombudsman

Whistleblowerprotectionombudsman@dodig.mil

Message from the Whistleblower Protection Ombudsman (WPO)

*“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. The following information is provided because **we all are potential whistleblowers** and should be aware of the relevant information pertaining to whistleblowing and the protections we are afforded.”*

-Patrick Gookin, DoD WPO

Military Whistleblower Rights & Protection Background

- Congress wanted military personnel to report wrongdoing without fear of retaliation and initially addressed whistleblower rights and protection for military personnel in 1988 with the enactment of the “Military Whistleblower Protection Act” (10 U.S.C. 1034).
- These protections were updated and strengthened throughout the years by broadening the definition of “protected communication” and expanding the universe to whom protected communications can be made.
- 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 of some of these rights and protections for civilian employees, and included the Ombudsman position for most of the larger federal agencies including the Department of Defense.

Whistleblower Rights & Protection Background

- The Whistleblower Ombudsman is required to educate agency employees about the prohibitions on retaliation for protected disclosures and rights and remedies against such retaliation.
- This role complements the existing responsibility of the Secretary to ensure Department of Defense employees are informed of their whistleblower rights and remedies.
- Patrick Gookin, the Director of the DoD Hotline, was designated to serve as Whistleblower Protection Ombudsman for the Department of Defense.
- The Department of Defense Ombudsman may be contacted at –

whistleblowerprotectionombudsman@dodig.mil

DoD Policy on Whistleblowing

- Members of the Armed Forces shall be free to make a protected communication and be free from **reprisal** for making or preparing to make a protected communication.
- No person shall **restrict** a member of the Armed Forces from making lawful communications to a member of Congress or an Inspector General
- No person may take or threaten to take an unfavorable personnel action, or withhold or threaten to withhold a favorable personnel action, in **reprisal** against any member of the Armed Forces for making, preparing, or being perceived as making or preparing a protected communication.

Reprisal & Restriction Defined

Reprisal

- taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making, preparing, or being perceived as making or preparing a protected communication.

Restriction

- preventing or attempting to prevent members of the Armed Forces from making or preparing to make lawful communications to Members of Congress and/or an IG

What are the Elements of Reprisal?

To demonstrate reprisal you must show:

- that you made a protected communication
- a personnel action was taken, withheld, or threatened
- the responsible management official had actual or constructive knowledge of the protected communication prior to taking, withholding, or threatening the personnel action
- the protected communication was a contributing factor in the decision to take the personnel action

What is a Protected Communication?

A communication in which the Armed Forces Member reasonably believes evidences:

- any violation of law or regulation, including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violation of the UCMJ, sexual harassment, or unlawful discrimination
- gross mismanagement
- gross waste of funds
- abuse of authority
- substantial and specific danger to public health or safety
- any threat that indicates a determination or intent to kill or cause serious bodily injury to members of the armed forces or civilians or damage to military, Federal, or civilian property

To Whom Can I Make a Protected Disclosure?

- a member of Congress
- an IG
- a member of a DoD audit, inspection, or law enforcement organization
- any person in the chain of command
- a court-martial proceeding
- any other person designated pursuant to regulations or other established administrative procedures to receive such communications

What Are Personnel Actions?

Any action taken that affects or potentially affects the military member's current position or career:

- promotion
- disciplinary or other corrective action
- transfer or reassignment
- performance evaluation
- decision on pay, benefits, awards or training
- referral for mental health evaluations
- other significant change in duties or responsibilities inconsistent with the military member's grade

Should I Submit a Reprisal Complaint?

If you made a protected communication and believe you were reprimanded against because of the communication, you should consider submitting a reprisal complaint.

Where Do I Submit a Reprisal Complaint?

- **The most efficient means to report and resolve your complaint within the Inspector General (IG) system is by notifying your local or command IG office.**

- They can be located via the following link:

http://www.dodig.mil/Hotline/helpful_links.html

All reprisal complaints receive DoD IG oversight regardless of where they are initially submitted.

- **Secondarily, complaints may be submitted to the DoD Hotline using their on-line complaint form:**

- www.dodig.mil/hotline (Internet)
- www.dodig.smil.mil/hotline (SIPRNet)
- www.dodig.ic.gov/hotline/index.html (JWICS)
- Phone: 1-800-424-9098 (Call prior to submitting complaints via SIPRNet or JWICS or to ask general questions regarding submitting a complaint.)

Military Whistleblower Time Limit

- 1 year after an adverse personnel action was taken or a favorable personnel action was withheld
- The Investigating Officer may still consider an investigation after this period if:
 - there are compelling reasons for the delay or
 - compelling evidence of the reprisal is submitted

Review of the Reprisal Investigation

A military member may obtain a review of the service reprisal investigation by submitting a copy of the investigation to the appropriate Board for Correction of Military Records (BCMR)

- Air Force BCMR: <http://www.afpc.af.mil/afveteraninformation/airforceboardforcorrectionofmilitaryrecords>
- Navy/Marine BCMR: <http://www.donhq.navy.mil/bcncr/bcncr.htm>
- Army BCMR: <http://arba.army.pentagon.mil/>
- US Coast Guard: <http://www.uscg.mil/legal/BCMR.asp>
- Deputy Under Secretary of Defense for Program Integration USD(PI) (within 90 days of BCMR decision) Please see DoDD 7050.06 for further information.

What if I Don't Know What to do?

Contact the DoD Whistleblower Ombudsman!

The Ombudsman's role is to facilitate the reporting of fraud, waste, and abuse by educating all agency employees about the prohibitions on retaliation for protected disclosures, and educate agency employees who have made or are contemplating making a protected disclosure about the rights and remedies against retaliation for protected disclosures.

The Ombudsman is prohibited from acting as an employee's or former employee's legal representative, agent, or advocate.

Contact Patrick Gookin at whistleblowerprotectionombudsman@dodig.mil

Be a Whistleblowing Hero....



...do what's right and protect yourself.