



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
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March 6, 2019

MEMORANDUM FOR THE ARMY INSPECTOR GENERAL
(ATTN: ASSISTANCE DIVISION (WHISTLEBLOWER
INVESTIGATION) (SAIG AC)
INVESTIGATIONS DIVISION (SAIG IN))
THE NAVAL INSPECTOR GENERAL
(ATTN: HOTLINE INVESTIGATIONS DIVISION (N6))
THE AIR FORCE INSPECTOR GENERAL
(ATTN: COMPLAINTS RESOLUTION DIRECTORATE
(SAF/IGQ)
SENIOR OFFICIALS INVESTIGATIONS (SAF/IGS))
THE MARINE CORPS INSPECTOR GENERAL
(ATTN: DIRECTOR, ASSISTANCE AND
INVESTIGATIONS DIVISION)
THE INSPECTOR GENERAL, JOINT STAFF
(ATTN: ASSISTANT INSPECTOR GENERAL)

SUBJECT: Policy Updates Regarding the Military Whistleblower Reprisal Act

This policy memorandum supersedes the June, 15, 2016, Delegation of Responsibility for Certain Case Closures, which is hereby rescinded. This policy memorandum clarifies the process for notifying the Whistleblower Reprisal Investigations (WRI) Directorate, changes the timeframe for notification, and adds another authority to close a case without prior WRI approval. This policy memorandum is effective immediately.

Delegations

Provided the Component IG fulfills the requirements described below, the Component Inspector General (IG) may, without prior WRI approval, in routine cases: (1) grant withdrawal of a whistleblower reprisal complaint; (2) dismiss a whistleblower complaint as untimely; (3) dismiss a whistleblower reprisal complaint for lack of cooperation; or (4) not investigate if the complaint is a duplicate or is intrinsically related to a previously filed complaint and contains no new and compelling information that would warrant the reopening of a closed case or the creation of a new one. As described below, Component IGs must copy WRI on closure correspondence to the complainant for review and inclusion in the case record.

Withdrawals. When a complainant communicates the intent to withdraw a complaint, the Component IG must evaluate whether the withdrawal was voluntary. Although IGs are not obligated to approve withdrawals, particularly if investigative efforts to date indicate wrongdoing may be substantiated, if the Component IG is satisfied that the request was not coerced, he or she may approve the withdrawal, copying WRI on the approval letter, and close the case.

Component IGs must send the copy of the withdrawal approval to WRI for its records, as described below. Upon WRI's receipt of its copy of the withdrawal approval, WRI will close the case as "Withdrawn," with the same closure date as the date the Component IG sent the withdrawal approval letter to the complainant.

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- If the request for withdrawal occurs before initial complaint notification to WRI is made, complete the Notification and Determination forms, may be sent simultaneously, along with the Component IG approval of withdrawal and a copy of the incoming complaint.
- If the request for withdrawal occurs after the initial complaint notification to WRI was made, complete the Determination form and include a copy of the withdrawal letter.

Dismissals for untimeliness of complaint. When, during the intake process, it becomes apparent that the complaint was not filed within one year of the complainant becoming aware of the most recent alleged personnel action, the Component IG will consider whether the untimely complaint filing should be excused based on compelling reasons or circumstances. These circumstances may include situations in which the Service member:

- Was actively misled regarding his or her rights;
- Was prevented in some extraordinary way from exercising his or her rights; or
- Filed the same allegation within the 1 year period with the wrong office or agency.

After consideration of the above factors, if no such circumstances exist, the Component IG may exercise its discretion to dismiss the case as untimely, copying WRI on the dismissal letter. Upon WRI's receipt of its copy of the dismissal letter, WRI will close the case as "Dismissed," with the same closure date as the date the Component IG sent the dismissal letter to the complainant. The following must be sent to WRI together with the copy of the dismissal letter:

- If the dismissal occurs before initial complaint notification to WRI is made, complete the Notification and Determination forms and include a copies of the incoming complaint and the dismissal letter to the complainant.
- If the dismissal occurs after the initial complaint notification to WRI was made, complete the Determination form and include a copy of the dismissal letter.

Unresponsive complainant. In general, complainants understand that investigations require their timely cooperation. In the infrequent case in which, during the intake or investigation process, the complainant becomes unresponsive, the Component IG will make at least 3 attempts to reach the complainant using every available mode of contact. If the complainant remains unresponsive, the IG will advise the complainant in writing that it will not be possible to investigate the alleged reprisal without the complainant's cooperation and that the case will be closed unless a response is received within 10 days.

After allowing a minimum of 10 days for the complainant to respond, if no response is received, the IG may exercise its discretion to dismiss the case for lack of cooperation, copying WRI on the dismissal letter. Upon WRI's receipt of its copy of the dismissal letter, WRI will close the case as "Dismissed," with the same closure date as the date the Component IG sent the dismissal letter to the complainant. The following must be sent to WRI together with the copy of the dismissal letter:

- If the dismissal occurs before initial complaint notification to WRI is made, complete the Notification and Determination forms and include a copies of the incoming complaint, the dismissal letter to the complainant, and documentation of the dates and methods used in attempts to contact the complainant.
- If the dismissal occurs after the initial complaint notification to WRI was made, complete the Determination form and include a copy of the dismissal letter and documentation of the dates and methods used in attempts to contact the complainant.

Duplicate complaint. If it is determined that a complainant has filed a complaint that is a duplicate or is intrinsically related to a previously filed complaint and contains no new and compelling information that would warrant the reopening of a closed case or the creation of a new one, the Component IG may dismiss the case as a duplicate and copy WRI on the determination letter to the complainant.

The following must be sent to WRI together with the copy of the dismissal letter:

- If the dismissal occurs before initial complaint notification to WRI is made, complete the Notification and Determination forms and include a copies of the incoming complaint and the dismissal letter to the complainant.
- If the dismissal occurs after the initial complaint notification to WRI was made, complete the Determination form and include a copy of the dismissal letter.

Forms and Timeframes for Submissions

In all cases, Component IGs are required to use the appropriate notification and determination forms, available on the www.DoDIG.mil website. The notification form must be used for complaints originating from Component IG offices. The determination form, along with all supporting documentation, must be used in all cases to document the Component IG's recommended determination.

Component IGs must notify WRI within 30 days after receiving any allegation that the prohibitions against restriction or reprisal of this directive have been violated. Notwithstanding, the WRI must be notified within 10 days of all complaints alleging whistleblower reprisal for reporting sexual assault, matters of known Congressional interest, or priority senior official complaints. The time frame for notifying WRI commences once the complainant has completed a complaint under the applicable Component IG's filing procedure. Include a copy of the written complaint and any attachments to WRI.

Component IGs must determine if there is sufficient evidence to warrant an investigation within 60 days of receipt of a restriction or reprisal allegation.

If the report cannot be issued within 180 days after initiation of the investigation, and every 180 days thereafter, the Component IG must notify the USD(P&R), IG DoD, the Secretary of the Military Department concerned, and the Service member of the reasons for the delay and an estimate of when the report will be issued.

Component IGs must provide WRI with the report of investigation within 150 days of commencement of investigation.

Nilgun Tolek
Director
Whistleblower Reprisal Investigations