

WHISTLEBLOWER PROTECTION STATUTES DESK REFERENCE (corrected PPD-19 Part B actions)

STATUTE & REGULATION	PROTECTED COMMUNICATION	TO	PERSONNEL ACTIONS
<p>10 U.S.C. 1034 “PROTECTED COMMUNICATION; PROHIBITION OF RETALIATORY ACTIONS”</p> <p>DoD Directive 7050.06</p> <p>A member or former member of the U.S. Armed Forces</p> <p>(text in scarlet describes new statutory protections effective Dec. 23, 2016, NDAA 2017)</p> <p>1 year to file</p> <p>(a) Also prohibits any person from restricting a member of the armed forces in lawfully communicating with a Member of Congress or an IG.</p> <p>180-day letters:</p> <ul style="list-style-type: none"> • 180 days after commencement of investigation and • Every 180 days thereafter 	<p>(b)(1) Making or preparing or being perceived as making or preparing:</p> <p>(A) Any lawful communication to a Member of Congress or an Inspector General (IG)</p> <p>(B) Information reasonably believed to evidence:</p> <ul style="list-style-type: none"> • A violation of law or regulation, including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violation of articles 120 through 120c of the UCMJ, sexual harassment or unlawful discrimination. • Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. • A threat that indicates a member’s or federal employee’s determination or intent to kill or cause serious bodily injury to members or civilians or damage to military, federal or civilian property <p>(C)</p> <ul style="list-style-type: none"> • Testifying or participating in or assisting in an investigation or proceeding related to a PC • Filing, causing to be filed, participating in, or otherwise assisting in an action under this section 	<p>(b)(1)(A) Member of Congress or Inspector General</p> <p>(b)(1)(B)</p> <ul style="list-style-type: none"> • Member of a Department of Defense audit, inspection, investigation, or law enforcement organization • Any person or organization in the chain of command • A court-martial proceeding • Any other person or organization designated pursuant to regulations or other established administrative procedures for such communications. 	<ul style="list-style-type: none"> • Taking an unfavorable personnel action • Threatening to take an unfavorable personnel action • Withholding a favorable personnel action • Threatening to withhold a favorable personnel action • Making or threatening to make a significant change in the duties or responsibilities of a member of the armed forces not commensurate with the member’s grade • The failure of a superior to respond to any retaliatory action or harassment (of which the superior had actual knowledge) taken by one or more subordinates against a member • The conducting¹ of a retaliatory investigation² of a member <p>DoDD 7050.06: Any action that affects, or has the potential to affect, the military member’s current position or career, including:</p> <ul style="list-style-type: none"> • Promotions • Disciplinary/corrective actions • Transfers or reassignments • Performance evaluations • Decisions on pay, benefits, awards, training • Relief or removals • Separations or discharges • Referrals for Mental Health Evaluation • Any other significant changes in duties or responsibilities inconsistent with the member’s grade <p>¹ Affirmative defense: “Nothing in this paragraph shall be construed to limit the ability of a commander to consult with a superior in the chain of command, an inspector general, or a judge advocate general on the disposition of a complaint against a member of the armed forces for an allegation of collateral misconduct or for a matter unrelated to a protected communication.”</p> <p>² “an investigation requested, directed, initiated, or conducted for the primary purpose of punishing, harassing, or ostracizing a member of the armed forces for making a protected communication”</p>

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STATUTE & REGULATION	PROTECTED DISCLOSURE	TO	ACTIONS
<p>10 U.S.C. 2409 “CONTRACTOR EMPLOYEES: PROTECTION FROM REPRISAL FOR DISCLOSURE OF CERTAIN INFORMATION”</p> <p>DFAR Subpart 203.9</p> <p>Defense contractor, subcontractor, grantee, or subgrantee or personal services contractor employee, excluding ICE contractors/subcontractors</p> <p>(text in yellow describes amendment effective 12/19/2014)</p> <p>(Text in green describes amendment effective 12/14/2016. Definition of abuse of authority added to matrix for clarification.)</p> <p>3 years to file</p>	<p>Information reasonably believed to evidence:</p> <ul style="list-style-type: none"> Gross mismanagement of a Department of Defense contract or grant A gross waste of Department of Defense funds A substantial and specific danger to public health or safety A violation of law, rule or regulation <i>related to a Department of Defense contract</i> (including the competition for or negotiation of a contract) or grant Abuse of authority relating to a Department of Defense contract or grant (defined under paragraph (f)(6)(A) as “an arbitrary and capricious exercise of authority that is inconsistent with the mission of the Department of Defense or the successful performance of a Department contract or grant.”) <p>• Providing evidence of contractor or subcontractor misconduct</p>	<ul style="list-style-type: none"> Member of Congress Representative of a committee of Congress Inspector General Government Accountability Office A DoD employee responsible for contract oversight or management The Department of Justice or an authorized official of a law enforcement agency A court, grand jury A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct <p>• When disclosed in the course of initiating or providing evidence to any judicial or administrative proceeding relating to waste, fraud, or abuse on a DoD contract</p>	<ul style="list-style-type: none"> Discharge Demotion Any other action with respect to the employee that might well have dissuaded a reasonable employee from making a protected disclosure

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STATUTE & REGULATION	PROTECTED COMMUNICATION/DISCLOSURE	TO	ACTIONS
<p>PRESIDENTIAL POLICY DIRECTIVE 19 (PPD-19)</p> <p>Directive-Type Memorandum 13-008</p> <p>PART A: DoD employees in DCIPS positions</p> <p>PART B: DoD employees eligible for access to classified information</p>	<ol style="list-style-type: none"> 1. Disclosure of information that the employee reasonably believes evidences <ul style="list-style-type: none"> • a violation of any law, rule, or regulation • gross mismanagement • a gross waste of funds • an abuse of authority • a substantial and specific danger to public health or safety 2. Exercise of any appeal, complaint, or grievance with regard to the violation of Section A or B of PPD-19 3. Lawfully participating in an investigation or proceeding regarding a violation of Section A or B of this directive; or 4. Cooperating with or disclosing information to an Inspector General, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the Inspector General 5. Reporting matters of urgent concern: <ul style="list-style-type: none"> • Serious or flagrant problem, abuse, or violation of law or executive order • Deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information, but does not include differences of opinion on public policy matters • False statement to or willful withholding from Congress on an issue of material fact relating to funding, administration, or operation of an intelligence activity 	<p>1 – 4:</p> <ul style="list-style-type: none"> • a supervisor in the employee’s direct chain of command up to and including the head of the employing agency • the Inspector General of the employing agency or Intelligence Community Element • the Director of National Intelligence • the Inspector General of the Intelligence Community • an employee designated by any of the above officials for the purpose of receiving such disclosures <p>5. To Congress, via the DoD OIG</p>	<p>PART A: Retaliation in the Intelligence Community. Taking or failing to take or threatening to take or fail to take a PA, defined as:</p> <ul style="list-style-type: none"> • Appointment, Promotion • Detail, transfer, or reassignment • Demotion, suspension, or termination • Reinstatement/restoration; reemployment • Performance evaluation • Decision concerning pay, benefits, or awards; or concerning education/training that may reasonably be expected to lead to an appointment, reassignment, promotion, or performance evaluation • Decision to order psychiatric testing or examination • Any other significant change in duties, responsibilities, or working conditions <p><i>Excluding any actions taken prior to July 8, 2013.</i></p> <p>PART B: Retaliation by Affecting Eligibility for Access to Classified Information</p> <ul style="list-style-type: none"> • Any officer or employee of an executive branch agency who has authority to take, direct others to take, recommend, or approve any action affecting an employee’s Eligibility for Access to Classified Information shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, any action affecting eligibility