



OFFICE OF THE INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY
WASHINGTON, D.C. 20511

November 14, 2019

VIA ELECTRONIC TRANSMISSION

The Honorable Gary C. Peters
Ranking Member
Senate Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510

The Honorable Ron Wyden
United State Senate
Washington, D.C. 20510

Dear Ranking Member Peters and Senator Wyden:

(U [REDACTED]) This letter responds to your October 24, 2019, letter to the Office of the Inspector General of the Intelligence Community (ICIG) requesting information regarding, among other things, how the ICIG protects whistleblowers who make protected disclosures. You also express concern that recent public statements harshly criticizing whistleblowers might have a deleterious effect "on individuals' willingness to report wrongdoing through authorized channels." Let me say at the outset that the ICIG shares your concerns and sincerely appreciates your interest in ensuring that the Whistleblower who currently is the subject of public discourse and any individuals who may be similarly situated, now or in the future, have a reliable, lawful whistleblower process to report alleged misconduct involving classified information.

(U) In my view, it is particularly helpful and important during times like these for influential government officials, like yourselves, to unequivocally and publicly validate, through words and deeds, the rights and legal obligations of individuals in the Intelligence Community to report allegations of fraud, waste, and abuse through proper channels, to acknowledge that the American people benefit when such individuals are encouraged to speak up, and to publicly state that those who speak up should not suffer from or fear reprisal. I believe that leaders in the government who speak up on behalf of whistleblowers can have a positive and lasting effect by counterbalancing the words of those who wish to undermine or attack whistleblowing generally or to target specific whistleblowers. The ICIG is grateful to both of you, and for the many Congressional Members, staff, and others, who have lent their unwavering public support to whistleblowers.

(U [REDACTED]) As correctly noted in your letter, the intense public interest in the current Whistleblower's disclosure and other actions related to it has resulted in, among other things, [REDACTED]. The ICIG has taken numerous steps since it received the Whistleblower's disclosure to protect his or her identity, as required by law, and to [REDACTED].

[REDACTED] As necessary, the ICIG remains in contact with [REDACTED] the Whistleblower, and the Whistleblower's counsel related to those measures.

(U [REDACTED]) In response to your question about the steps the ICIG takes to protect the confidentiality of whistleblowers generally, the ICIG takes numerous steps to protect the confidentiality of whistleblowers. As you know, the law permits whistleblowers to protect their identity in reporting alleged misconduct. In this regard, the law requires Inspectors General to protect the whistleblower's identity unless the whistleblowers consent to the disclosure of their identities, the Inspector General determines that such disclosure is unavoidable during the course of the investigation, or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken. Among other things, as part of its intake process, the ICIG informs whistleblowers of their legal right to protect their identities. If whistleblowers opt to remain confidential, the ICIG will not share their identities (or information that might reasonably lead to their identities) during the course of the investigation or in communicating with others about the alleged misconduct. The ICIG will also take other steps, [REDACTED] to protect and limit the disclosure of information in the ICIG's files related to whistleblowers' identities. In addition, in most cases, the ICIG allows whistleblowers to submit their complaints anonymously.¹

(U) I share your hope that recent events will not have a chilling effect on the willingness of individuals within the Intelligence Community to continue to shed light on suspected fraud, waste, abuse, or malfeasance. In your letter, you correctly note that "[w]histleblowers help hold the federal government accountable to the law and to the American people." I agree wholeheartedly. The primary role of Inspectors General is to prevent and detect waste, fraud, corruption, mismanagement, and abuses of authority by U.S. public officials and others related to the programs and activities they oversee. An abuse of authority can take many forms, and Inspectors General are empowered by law to review and investigate such abuses of authority, from the minor to the most serious. In the most egregious matters, abuses of authority may involve U.S. public officials and others disregarding the law. When public officials, in particular, intentionally disregard a law, the rule of law itself can be under attack. In those most egregious matters, I view Inspectors General as among our nation's "first responders."

(U) As you know, Inspectors General must act swiftly and appropriately when – through audits, investigations, inspections, or reviews – possible wrongdoing is revealed. They must identify, stop, or correct the problem, and in the process they may need to alert those who can

¹ (U) The exception are matters submitted under the Intelligence Community Whistleblower Protection Act, which requires the ICIG to determine, among other things, that the whistleblower is an employee, detailee, or contractor in the Intelligence Community.

assist in the response, whether it be Congress, law enforcement authorities, or others. In your letter, you ask about “the importance of confidentiality for whistleblowers, and what impact efforts to violate that confidentiality can have, particularly in the Intelligence Community.” Inspectors General are dependent upon those who first raise an alarm, particularly whistleblowers, who are often the first people on the ground to observe or hear about wasteful practices or possible wrongdoing. Intelligence Community employees, detailees, and contractors collect and analyze information to develop the most accurate and insightful intelligence possible on threats to our national security. These Intelligence Community professionals serve in a classified work environment in which information about intelligence programs and activities is not available for public review, which makes their duty to lawfully disclose information – or sound the alarm – regarding potential wrongdoing that much more critical to the oversight process.

(U) Pursuant to Executive Order, federal government employees have an affirmative legal obligation to disclose waste, fraud, abuse, and corruption to appropriate authorities. As part of that affirmative obligation, one of the core *Principles of Professional Ethics for the U.S. Intelligence Community* states the following:

We are responsible stewards of the public trust; we use intelligence authorities and resources prudently, protect intelligence sources and methods diligently, report wrongdoing through appropriate channels; and remain accountable to ourselves, our oversight institutions, and through those institutions, ultimately to the American people.

(U) As you have stated, the government benefits when individuals who suspect fraud, waste, abuse, or malfeasance in their government are encouraged to speak up. Those who demonstrate the personal ethics and moral courage expected of individuals who have the honor and privilege of working for the American people should not suffer from or fear reprisal when they do speak up. Without the promise of confidentiality, whistleblowers may be less willing to speak up; such a chilling effect would deprive the American people of the benefit of those who are best positioned to sound the alarm on waste, fraud, abuse, or wrongdoing.

(U) In your letter, you also ask what steps supervisors are expected to take to ensure that whistleblowers do not face retaliation. In general, these steps are set forth in, among other materials, Presidential Policy Directive 19 (PPD-19), *Protecting Whistleblowers with Access to Classified Information*, and Intelligence Community Directive 120, *Intelligence Community Whistleblower Protection*. For example, PPD-19, Section D, sets forth the following policy:

- (1) The IC is committed to providing its personnel the means to report violations of law, rule, or regulation; or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety through Protected Disclosures.
 - a. IC elements have a responsibility to ensure, through workforce communications and training, that their personnel are aware of the process for making Protected Disclosures, and are aware of the

protections and review processes available to individuals who make Protected Disclosures, as set forth in PPD-19.

Further, PPD-19, Section H, sets forth the following roles and responsibilities:

The heads of the IC elements shall ensure, through workforce communications upon entry on duty and annually thereafter, that their employees are aware of all applicable protections and review processes available to individuals who make Protected Disclosures. The heads of IC elements shall also make this information easily and readily available to their employees.

Consistent with this policy, the Office of the Director of National Intelligence requires each employee, including supervisors, to participate in web-based training, *Protecting Whistleblowers in the Intelligence Community*, when they enter on duty, and annually thereafter.

(U) These defined policies, roles, and responsibilities are important, as is the annual training requirement, but more than anything the future of whistleblowers' rights and protections in the federal government will depend on integrity. In this sense, integrity means more than being honest. It also signifies that government agencies and the federal workforce must be consistent in word and deed; in other words, we must do what we promise we will do. For example, if we instruct individuals in the Intelligence Community, as part of their core *Principles of Professional Ethics for the U.S. Intelligence Community*, to "report wrongdoing through appropriate channels," then they must do precisely that. And when they do so, their agencies cannot ignore the reports or block the channels. One of the most important responsibilities for any Office of Inspector General is to demonstrate this type of consistency in word and deed. This is particularly important when one of our most significant responsibilities is to ensure that whistleblowers in the federal government are protected from reprisal, or threat of reprisal, when they disclose allegations of wrongdoing in good faith and in an authorized manner.

(U) In your letter, you also asked what steps my office has taken to help ensure that whistleblowers are protected from retaliation. As discussed above, one of the ways the ICIG helps to ensure whistleblowers are protected from retaliation is by protecting their confidentiality, as required by law. In addition, when I appeared before the Senate Select Committee on Intelligence as the nominee to be the Inspector General of the Intelligence Community, I discussed some of the ways I would try to enhance the strength of, and the workforce's trust in, the ICIG's Whistleblower Program. Those actions included providing organizational support to make it easier for persons to make lawful, authorized disclosures; conducting additional workforce training to ensure that whistleblowers understand not only their rights but their responsibilities when disclosing alleged misconduct involving classified information; and taking steps to ensure that the ICIG's Whistleblower Program permits whistleblowers to come forward without fearing retaliation, and with confidence that they will be treated fairly.

(U) Since I had the honor of becoming the Inspector General of the Intelligence Community in May 2018, I have made it my top priority to strengthen the ICIG's Whistleblowing Program. Among other actions, the ICIG has extensively restructured the program and

spearheaded numerous informational and educational outreach events. We created the Center for Protected Disclosures, [REDACTED]

[REDACTED] When developing the new Center for Protected Disclosures, we sought input from the Intelligence Community Inspectors General Forum, Congressional Members and staff, representatives from the Government Accountability Project, Project on Government Oversight, the General Accountability Office, and other interested parties to ensure that we developed a strong program that would provide greater clarity to whistleblowers as they navigate the often confusing and difficult process of bringing their concerns to light. In an effort to strengthen this focus among the Intelligence Community Inspectors General Forum, we established a Whistleblowing Committee to bring together experts from across the Intelligence Community on whistleblowing matters to discuss recent developments, work together to address perceived gaps in existing programs, and increase the Intelligence Community's knowledge about whistleblowing rights and the lawful ways whistleblowers can make protected disclosures.

(U) During my confirmation hearing, when I was asked repeatedly by numerous Senators on both sides of the aisle about my commitment to the ICIG's Whistleblowing Program and to Whistleblowers generally, I testified under oath that I would work with Congress "to encourage, operate, and enforce a program for authorized disclosures within the Intelligence Community that validates moral courage without compromising national security and without retaliation." I said that I would:

enforce a safe program where whistleblowers do not have fear of retaliation and where they're confident that the system will treat them fairly and impartially, so that we can secure national security and allow whistleblowers to make their complaints of unethical or illegal behavior without risking unauthorized disclosures.

(U) I am committed to doing what I said I would do, and living up to and upholding that oath. The ICIG will continue to work on behalf of the American people to ensure that individuals in the Intelligence Community and throughout the federal government have a consistent, authorized, effective, and protected means to report their concerns.

(U) I appreciate the opportunity to answer your questions, and I hope you find this response helpful. I particularly appreciate your continued interest in and dedication to the rights of whistleblowers and whistleblower protections. Please contact me if you have any further questions regarding this matter.

Sincerely yours,



Michael K. Atkinson
Inspector General
of the Intelligence Community

cc: The Honorable Ron Johnson
The Honorable Richard Burr
The Honorable Mark Warner