



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

Your Role in an OSC Investigation

What is the Office of Special Counsel?

The Office of Special Counsel (OSC) is an independent federal executive agency. OSC investigates complaints alleging prohibited personnel practices (PPPs) and violations of the Hatch Act. If OSC finds that a PPP or Hatch Act violation occurred, it pursues appropriate remedies, both informally through negotiated settlements and formally by filing petitions with the Merit Systems Protection Board. These remedies may include corrective action for the person adversely affected, and/or discipline for individuals who violated the law. We encourage you to go to OSC web site at www.osc.gov for information about prohibited personnel practices, the Hatch Act, and OSC's investigation and prosecution policies and procedures.

Why OSC has contacted you.

OSC is conducting an investigation into allegations of PPP or Hatch Act violations that may have occurred in your agency. You have been identified as someone who has or may have information relevant to this matter. In most PPP cases, the OSC investigator obtains relevant documents and interviews the complainant and a number of agency employees who may have knowledge about events relevant to the investigation. These interviews may be conducted in person at the agency facility, at the OSC offices or by telephone. Investigations into Hatch Act and other matters follow a similar pattern.

What to expect if you are contacted by an OSC investigator

Witnesses

Witnesses are individuals who have, or may have, factual information about the events upon which the allegations are based. For example, they may be personnel officials, co-workers of the complainant, or other persons who witnessed events related to the complaint.

Federal regulations require Federal agencies and employees to provide information to OSC in connection with its investigative activities. See 5 C.F.R. § 5.4. You are required to answer all of the investigator's questions and to answer them fully and truthfully. If you do not understand the question, you may ask the investigator to restate it, or clarify it. The investigator will take notes on what you say, and may tape the interview. The investigator may also ask you to sign an affidavit or sworn statement. If so, you will have an opportunity to carefully review the statement and to make changes before signing the document. If you sign a sworn affidavit or if the interview is taped, you may ask for a copy of your statement.

In most cases, the information you provide to OSC will remain confidential. Information in OSC investigative files is protected from disclosure under the Freedom of Information Act (FOIA). Neither the complainant nor the agency will ordinarily have access to the information you provide to the investigator. You can ask the OSC investigator for more information about the confidentiality of your statements.

Witnesses, because they are not the persons responsible for the actions at issue in the complaint, generally do not have any need for legal counsel during an OSC interview, and they seldom request to have a legal representative present. If a witness requests legal representation, OSC will permit the witness to have

personal legal counsel present at the interview. Your agency may not require you to have agency counsel present during your OSC interviews.

Subjects

Subjects are agency officials who had personnel authority with respect to the personnel actions at issue in the complaint, and/or who have been identified as the individuals who may have been responsible for those personnel actions. OSC routinely interviews such agency officials to obtain information about the allegations in the complaint from the agency's perspective.

If OSC finds that an agency official committed a prohibited personnel practice or violated the Hatch Act, under some circumstances that individual may be subject to disciplinary action. For this reason, some, but not all, of the persons OSC designates as subjects obtain legal representation and have counsel present during their interviews. OSC will notify you if it considers you to be a subject. If you are not so notified, you can assume that you do not face possible disciplinary action in the matter under investigation.

Procedures for interviews with subjects are the same as those for other witnesses with one exception. Subjects are generally interviewed under oath and the interviews are usually recorded on tape.

The Role of Agency Counsel

As an independent agency, OSC does not conduct its investigations in conjunction with the agency in which the alleged prohibited personnel practice or Hatch Act violation occurred. Nor does OSC permit agencies to have members of their legal staff present at OSC interviews for the purpose of representing the agency. Agencies do, however, often provide personal legal representation to agency officials who have taken the personnel actions under investigation by OSC in the course of their official duties. Most agencies have procedures in place for requesting and granting employee requests for representation by agency counsel.

Agency Liaisons

Most agencies have staff who have been designated to serve as a liaison with OSC during the OSC investigation. These liaisons may be attorneys in the Office of General Counsel, or employee relations or human resources staff. Liaisons assist the OSC investigator by facilitating responses to requests for documents, arranging for interview rooms, scheduling interviews and engaging in other activities related to the investigation and resolution of the allegations. The liaison will also be able to answer general questions about your rights and responsibilities as a witness in the OSC investigation. When the liaison is an attorney, the liaison should not serve as the personal legal representative of any witness or subject.

Legal Representation

If you decide that you want to have a legal representative present during your OSC interview, you must inform the investigator before the interview and provide OSC with a completed Designation of Representation form. Both you and your legal representative must sign the form. You may get a copy of the form from the OSC investigator or the OSC web site at www.osc.gov. Look under "Publications."