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POLICY STATEMENT ON DISCLOSURE OF INFORMATION ABOUT PROHIBITED PERSONNEL PRACTICE COMPLAINTS¹

Introduction

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system in federal employment by protecting federal employees, former federal employees, and applicants for federal employment from prohibited personnel practices (PPPs), especially reprisal for whistleblowing.²

Given the nature of OSC's enforcement mission, its complaint and litigation files often contain personal or sensitive information – including information from or about complaint filers, and other information made or received by OSC during its investigative and prosecutorial activities. This statement describes OSC's policy on the disclosure of information in its PPP complaint files.³

Consent Statements

To facilitate their understanding and participation in disclosure decisions, complainants are asked to select one of three "consent statements" governing communications during an investigation between OSC and the agency involved. The consent statements appear in the complaint form (Form OSC-11) that filers must use to submit PPP complaints to OSC. The three consent statements are reproduced in the attachment to this policy statement.

As noted on the complaint form, certain uses of information by OSC are permitted by the Privacy Act, regardless of the consent statement selected by a complainant. For example, in certain circumstances, OSC is authorized by law to disclose information to pertinent congressional committees and subcommittees, and to federal law enforcement officials.

¹ Issued pursuant to Public Law 103-424 (1994), codified at 5 U.S.C. § 1212 note. This policy statement (including the attachment) is intended only to provide general guidance to the public about the circumstances under which OSC may disclose information about prohibited personnel practice complaints. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against OSC, or any other person or entity.

² PPPs are listed at 5 U.S.C. § 2302(b).

³ Another OSC issuance, entitled "Policy Statement on Disclosure of Information from OSC Program Files," outlines disclosure criteria applicable to OSC complaint, disclosure, and other program files generally. That policy statement is available on the OSC Web site (at www.osc.gov, under "Forms and Publications"), or by request from OSC.

Disclosure of Information About PPP Complaints

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General Disclosure Policies

When someone files a PPP complaint, it is OSC's policy *not* to reveal the identity of the complainant to the agency involved unless:

- 1) OSC has the complainant's consent to reveal his or her identity; and,
- 2) disclosure of the complainant's identity is necessary to proceed with OSC action.

During an investigation, and any efforts to resolve a complaint, OSC's policy is to disclose only that information deemed reasonable and necessary under the circumstances to the agency involved. If OSC concludes that a PPP may have been committed, it will attempt to obtain corrective action from the agency involved. When appropriate, OSC may also seek disciplinary action against agency officials or employees.

Consistent with law, OSC will attempt to resolve complaints through settlement negotiations with the agency involved before filing corrective action complaints with the U.S. Merit Systems Protection Board (MSPB). It is OSC's policy to engage in such negotiations or litigation only when the complainant has selected Consent Statement 1 in the complaint form. During such negotiations with agencies, OSC discloses only the information deemed reasonable and necessary by OSC to achieve a mutually agreeable settlement of the complaint. If an appropriate settlement agreement is not reached, and OSC concludes that the law was violated, it may, in its discretion, file a complaint with the MSPB seeking corrective and/or disciplinary action.

It is OSC's policy to inform a complainant on a timely basis about the progress of his or her complaint, and to consult the complainant, as needed. Consistent with law, OSC will also send each complainant:

- 1) a letter acknowledging its receipt of the complaint and identifying the agency staff member assigned to the case;
- 2) a status report after 90 days, and a status report every 60 days thereafter while the case is active; and
- 3) a preliminary determination letter, when OSC proposes to close a complaint based on a lack of evidence or insufficient evidence, providing the complainant with one more opportunity for input before OSC makes its final decision.

Background/Reference Checks

As noted above, certain uses of information by OSC are permitted by the Privacy Act, regardless of the consent statement selected by a complainant. Without the consent of a complainant who has filed a PPP allegation, however, OSC is prohibited by law from responding to an inquiry about an evaluation of the work performance, ability, aptitude, general qualifications, character, loyalty, or suitability of the complainant for any personnel action (except in very narrow circumstances involving "exceptionally grave damage to the national security"). So, for example, if an investigator acting on behalf of the Office of Personnel

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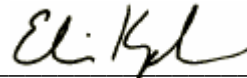
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Management, the Federal Bureau of Investigation, or anyone else asks OSC to evaluate the work performance or suitability of a PPP complainant for any personnel action, OSC will not respond without a signed authorization by the complainant (or a declaration meeting the "national security" criterion mentioned above).

Conclusion

This policy statement replaces and supersedes the previous edition, dated June 14, 2000. It is available on the OSC Web site (at www.osc.gov, under "Forms and Publications"). If you have any questions or comments about this statement, please contact the OSC employee assigned to your case, or OSC's Planning and Advice Division, at (202) 653-8971.

September 9, 2002



Elaine Kaplan
Special Counsel

Attachment

CONSENT STATEMENTS

(From Form OSC-11, "Complaint of Prohibited Personnel Practice / Other Prohibited Activity")

PART 3: CONSENT TO CERTAIN DISCLOSURES OF INFORMATION

OSC asks everyone who files a complaint alleging a possible prohibited personnel practice or other prohibited activity to select one of three Consent Statements shown below. **If we do not receive a signed Consent Statement, we will assume that you have agreed to Consent Statement 1.** Please return the original signed Consent Statement to OSC. Also, please keep a copy of the signed Consent Statement and all documents that you send to OSC for your own records. If you initially choose a Consent Statement that contains restrictions on OSC's use of information, you may later select a less restrictive Consent Statement. If your selection of Consent Statement 2 or 3 prevents OSC from being able to conduct an investigation, an OSC representative will contact you, explain the circumstances, and provide you with an opportunity to select a less restrictive Consent Statement.

You should be aware that the Privacy Act allows the information contained in OSC's files to be used or disclosed for certain purposes, regardless of which Consent Statement you sign. Information about the circumstances under which OSC can use or disclose information pursuant to the Privacy Act appears on the next page.

(Please sign one)

Consent Statement 1

I consent to communications between OSC and the involved agency as deemed necessary by OSC. I agree to allow OSC to disclose my identity as the complainant to the agency involved and information from or about me if OSC decides this is necessary to elicit information from the agency involved, take further action, or obtain corrective or disciplinary action. I understand that regardless of the Consent Statement I choose, OSC may disclose information as allowed by the Privacy Act.

Complainant's Signature for Consent Statement 1

Date Signed

Consent Statement 2

I consent to communications between OSC and the involved agency as deemed necessary by OSC, but I do not agree to allow OSC to disclose my identity as the complainant to the agency involved. I agree to allow OSC to disclose only that information from or about me, without disclosing my name or other individual identifying information, if OSC decides it is necessary to elicit information from the agency involved, take further action, or obtain corrective or disciplinary action. I understand that in some circumstances (for example, if I am complaining about my nonpromotion), it would not be possible for OSC to maintain my anonymity while communicating with the agency involved about a specific personnel action. In such circumstances, I understand that my request for anonymity may preclude OSC from taking further action on my complaint. I understand that regardless of the Consent Statement I choose, OSC may disclose information as allowed by the Privacy Act.

Complainant's Signature for Consent Statement 2

Date Signed

Consent Statement 3

I do not consent to communications between OSC and the agency involved even if OSC decides it is necessary to elicit information from the agency, take further action, or obtain corrective or disciplinary action. I understand that if OSC decides that it is not possible to take further action on my complaint without obtaining additional information from the agency involved, my lack of consent will preclude OSC from taking further action on my complaint. I understand that regardless of the Consent Statement I choose, OSC may disclose information as allowed by the Privacy Act.

Complainant's Signature for Consent Statement 3

Date Signed

PRIVACY ACT NOTICE**(From Form OSC-11, "Complaint of Prohibited Personnel Practice / Other Prohibited Activity")****PART 5: PRIVACY ACT / PAPERWORK REDUCTION ACT STATEMENTS**

Routine Uses. Limited disclosure of information from OSC files is needed to fulfill OSC's investigative, prosecutorial, and related responsibilities. OSC has described 18 routine uses for information in its files in the *Federal Register* (F.R.), at 66 F.R. 36611 (July 12, 2001), and 66 F.R. 51095 (October 5, 2001). A copy of the routine uses is available from OSC upon request. A summary of the routine uses appears below.

OSC may disclose information from its files in the following circumstances:

1. to disclose that an allegation of prohibited personnel practices or other prohibited activity has been filed;
2. to disclose information needed by the Office of Personnel Management (OPM) for inquiries involving civil service laws, rules or regulations, or to obtain an advisory opinion;
3. to disclose information about allegations or complaints of discrimination to entities concerned with enforcement of antidiscrimination laws;
4. to the MSPB or the President, when seeking disciplinary action;
5. to the involved agency, MSPB, OPM, or the President when OSC has reason to believe that a prohibited personnel practice has occurred, exists, or is to be taken;
6. to disclose information to Congress in OSC's annual report;
7. to disclose information to third parties (without identifying the complainant unless OSC has the complainant's consent) as needed to conduct an investigation; obtain an agency investigation and report on information disclosed to OSC's whistleblower disclosure channel; or to give notice of the status or outcome of an investigation;
8. to disclose information as needed to obtain information about hiring or retention of an employee; issuance of a security clearance; conduct of a security or suitability investigation; award of a contract; or issuance of a license, grant, or other benefit;
9. to the Office of Management and Budget (OMB) for certain legislative coordination and clearance purposes;
10. to provide information from an individual's record to a congressional office acting pursuant to the individual's request;
11. to furnish information to the National Archives and Records Administration for records management purposes;
12. to produce summary statistics and work force or other studies;
13. to provide information needed by the Department of Justice for certain litigation purposes;
14. to provide information needed by courts or adjudicative bodies for certain litigation purposes;
15. to disclose information to the MSPB as needed in special studies authorized by law;
16. for coordination with an agency's Office of Inspector General or comparable entity, to facilitate the coordination and conduct of investigations and review of allegations;
17. to news media or the public in certain circumstances (except when the Special Counsel determines that disclosure in a particular case would be an unwarranted invasion of personal privacy); and
18. to the Department of Labor and others as needed to implement the Uniformed Services Employment and Reemployment Rights Act of 1994, and the Veterans' Employment Opportunities Act of 1998.

If OSC officials believe that disclosure may be appropriate in a situation not covered by one of OSC's routine uses, or one of the 11 other exceptions to the Privacy Act's general prohibition on disclosure, OSC will seek written authorization from the complainant permitting the disclosure.