



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535-0001

May 16, 2017

Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to Director Comey dated April 14, 2017, requesting information concerning the FBI's implementation of the Federal Bureau of Investigation Whistleblower Protection Enhancement Act (Pub. L. No. 114-302) signed by President Obama on December 16, 2016.

The FBI shares your commitment to the protection of whistleblowers. We have completed the process of updating our internal policy to establish a single source of policy information for FBI whistleblower protections and the conditions necessary to invoke the special protections afforded under the law. This policy, which is designed to ensure proper management understanding and compliance with applicable federal statutes, regulations, DOJ policy and FBI management practices, was published to the workforce on May 1, 2017.¹ A copy of the policy is enclosed. While the policy is available to all FBI employees through our internal website, it is not intended for public disclosure. It is provided to the Committee in furtherance of its oversight activity. We request that you not disseminate it further without prior consultation with the FBI.

In addition to updating our formal policy, the FBI took steps to inform our workforce of the protections provided by Pub. L. No 114-302. Specifically, on January 23, 2017, through E-Brief, an internal email disseminated to all employees, the Office of Integrity and Compliance (OIC) provided notice of the enhanced whistleblower protections and provided links to documents that included changes as a result of the law. While "Congress" and the "Office of Special Counsel" were inadvertently omitted from the list of designated offices in the initial publication, the correction has been made and was disseminated in the E-Brief published on May 1, 2017. Copies of the current documents are also enclosed. Finally, we are working with our partners in the Office of the Inspector General to update and standardize training and to develop a training implementation plan for the FBI workforce. The FBI also is working with the Department of Justice to finalize the Department's proposed rule revising 28 CFR Part 27, "Whistleblower Protections for Federal Bureau of Investigation Employees," which will incorporate the changes mandated by Pub. L. No. 114-302.

¹ You will note that the updated policy has a "Review Date" of 05/01/2020. The "Review Date" is set at the time of publication in order to trigger regular, internal review of policy. The prior policy had a "Review Date" of February 19, 2017.

Honorable Charles E. Grassley

We appreciate your continued support for the FBI and its mission. Please contact this office if we can be of assistance concerning this or other matters.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gregory A. Brower / zpb". The signature is fluid and cursive, with the last name "Brower" being the most prominent part.

Gregory A. Brower
Assistant Director
Office of Congressional Affairs

Enclosures

① Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

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FEDERAL BUREAU OF INVESTIGATION
POLICY DIRECTIVE

0971D

1. Policy Directive Title.	FBI Whistleblower Policy
2. Publication Date.	2017-05-01
3. Effective Date.	2017-05-01
4. Review Date.	2020-05-01

5. Date of Last Renewal.

N/A

6. Authorities:

6.1. Title 5 United States Code (U.S.C.) Section (§) 2303

6.2. Title 28 Code of Federal Regulations (CFR) Part 27

6.3. 28 CFR Part 45.11

7. Purpose:

The purpose of this policy is to establish a single source of policy information for FBI whistleblower protections and the conditions necessary to invoke the special protections afforded under the law. A whistleblower protection policy is necessary to ensure proper management understanding and compliance with applicable federal statutes, regulations, DOJ policy and FBI management practices.

8. Policy Statement:

This policy sets forth the specific requirements under the law for whistleblower protections to apply to FBI employees, and clarifies the responsibility for reporting allegations of reprisal taken against any FBI whistleblower.

9. Scope:

This policy is applicable to all FBI employees. Persons not falling within this policy (e.g., contractors, persons detailed from other agencies) should seek reporting guidance from a designated authority as defined in Section 11.1.

10. Proponent:

Inspection Division

11. Roles and Responsibilities:

11.1. All FBI Personnel must understand Whistleblower Protection requirements:

11.1.1. If an employee reasonably believes that he/she has evidence of:

- a) gross mismanagement,
- b) a gross waste of funds,

- c) an abuse of authority,
- d) a substantial and specific danger to public health or safety, or
- e) any violation of any law, rule, or regulation,

in order to receive whistleblower protection, the employee must report the allegations to a designated authority, which is defined as and limited to:

- a) Any supervisor in the reporting employee's direct chain of command, up to and including the FBI Deputy Director, FBI Director, Deputy Attorney General, and Attorney General,
- b) DOJ Office of Inspector General (DOJ/OIG),
- c) DOJ Office of Professional Responsibility (DOJ/OPR),
- d) FBI Office of Professional Responsibility (FBI/OPR),
- e) FBI Inspection Division (INSD),
- f) Congress as set forth in 5 U.S.C. section 7211,
- g) The U.S. Office of Special Counsel (OSC), or
- h) An employee designated by any officer, employee, or division of the aforementioned offices or persons for the purpose of receiving such disclosures.

This report to the designated authority must be direct from the reporting employee. Providing allegations to other authorities does not constitute a protected disclosure.

11.1.2. Whistleblowing activity does not relieve any FBI employee from the satisfactory performance of his/her duties, as described in his/her position description.

11.2. An FBI employee who believes that he/she, or another employee or applicant of the FBI, is the subject of reprisal as defined below, may report the alleged reprisal to either the DOJ/OIG, DOJ/OPR, or the FBI INSD, Internal Investigations Section (IIS), so that IIS may promptly coordinate with the DOJ/OIG or DOJ/OPR.

11.3. Assistant Director, INSD is responsible for ensuring all protected disclosures are reported to the DOJ/OIG.

11.4. FBI Headquarters Divisions and Field Offices must ensure that:

11.4.1. Protected disclosures are promptly reported as directed by law and this policy directive.

11.4.2. Allegations of whistleblower reprisal are to be documented by email or other correspondence to INSD/IIS and reported in accordance with this policy.

11.5. All FBI Management must:

11.5.1. Ensure that FBI employees or applicants are not subjected to reprisal for making protected disclosures.

11.5.2. Promptly communicate all protected disclosures and all allegations of whistleblower reprisal as soon as practicable to INSD/IIS, so that IIS may promptly coordinate with either the DOJ/OIG or DOJ/OPR.

12. Exemptions:

None

13. Supersession:

Policy Directive (PD) 0272D, *FBI Whistleblower Policy*

14. References, Links, and Forms:

None

15. Definitions, and Acronyms:

15.1. Definitions

15.1.1. FBI whistleblower - Any FBI employee or applicant who makes a protected disclosure, defined below, to a designated authority, defined in Section 11.1 above. This definition does not include employees whose positions are designated by the Attorney General as positions of a confidential, policy determining, policymaking, or policy-advocating character. When seeking to make a protected disclosure, FBI employees may request that INSD/IIS seek a determination of whether they occupy an excluded position.

15.1.2. Protected disclosure - Information that the employee reasonably believes evidences any violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.

15.1.3. Reprisal - When an FBI employee who has the authority to take, direct others to take, recommend, or approve any personnel action, with respect to such authority, takes or fails to take, or threatens to take or fail to take, a personnel action as defined below, based upon a protected disclosure as defined in this section.

15.1.4. Personnel action - An appointment; promotion; disciplinary or corrective action; detail, transfer, or reassignment; a reinstatement; a restoration; a re-employment; a performance evaluation; a decision concerning pay, benefits, or awards, or concerning education or training if it may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this paragraph; a decision to order psychiatric testing or examination; the implementation or enforcement of any nondisclosure policy, form or agreement; or any other significant change in duties, responsibilities, or working conditions.

15.2. Acronyms

15.2.1. CFR: Code of Federal Regulations

15.2.2. DOJ: Department of Justice

15.2.3. DOJ/OIG: Department of Justice Office of Inspector General

15.2.4. DOJ/OPR: Department of Justice Office of Professional Responsibility

15.2.5. FBI: Federal Bureau of Investigation

15.2.6. FBI/OPR: Federal Bureau of Investigation Office of Professional Responsibility

15.2.7. IIS: Internal Investigation Section

15.2.8. INSD: Inspection Division

15.2.9. OSC: Office of Special Counsel

15.2.10. U.S.C.: United States Code

16. Appendices and Attachments:

None

Sponsoring Executive Approval

Name: Nancy McNamara

Assistant Director

Title: Inspection Division

Stakeholder Approval

Name: Candice Will

Assistant Director

Title: Office of Professional Responsibility

Final Approval

Name: David Bowdich

Title: Associate Deputy Director

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Ethics Issues

A fact sheet from the FBI's Office of Integrity and Compliance



Know Your Rights: Guidance For Potential FBI Whistleblowers

Whistleblowers can serve an important role in keeping the government honest, accountable, and effective. Federal laws and regulations require employees to disclose wrongdoing. Federal laws also protect federal employees from retaliation for disclosing wrongdoing. FBI employees can receive protection as whistleblowers under the Civil Service Reform Act, the Whistleblower Protection Act/Whistleblower Protection Enhancement Act, a Department of Justice rule, and Presidential Policy Directive, and an Intelligence Community Directive if they report misconduct to certain designated authorities.

These rules protect current and former FBI employees and applicants (henceforth "employees") from reprisal for making certain disclosures, and provide a formalized process to investigate and remedy any alleged reprisal. Reprisal is defined as: taking; failing to take; or threatening to take or fail to take, recommend, or approve any personnel action to the detriment of an FBI whistleblower, based upon a protected disclosure. Reprisal can also include denial or revocation of an employee's security clearance.

How do I report wrongdoing?

In order to be considered a whistleblower, an employee must disclose information to a designated authority that the employee reasonably believes shows evidence of:

- A violation 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.

Note: Any FBI office or official receiving a protected disclosure must promptly report such disclosure to the FBI INSD (Internal Investigations Section).

To whom can I report wrongdoing?

An employee can make a protected disclosure, verbally or in writing, to any of the following designated authorities:

- A supervisor in the employee's direct chain of command, up to and including the head of the FBI field office (ADIC or SAC), the FBI Deputy Director and Director, and the DOJ Deputy Attorney General (DAG) and Attorney General (AG)
- DOJ Office of the Inspector General (DOJ OIG)
- DOJ Office of Professional Responsibility (DOJ OPR)
- FBI Office of Professional Responsibility (FBI OPR)
- FBI Inspection Division (FBI INSD)
- Congress or a Member of Congress (5 U.S.C. § 7211)
- The U.S. Office of Special Counsel (OSC)
- An employee designated by any officer, employee, office, or division described above.

Note: To receive whistleblower protection, it is critical that the employee make the disclosure to at least one of the individuals or authorities listed above, to ensure that the reported allegation qualifies as a "protected disclosure" under the applicable regulations.

What can I do if I believe reprisal occurred?

If, after making a report to a designated authority, an employee experiences reprisal, the employee can report the alleged reprisal in writing to:

- DOJ OPR
- DOJ OIG.

These offices are known as the "conducting" offices. Alternatively, the employee may call the OIG Hotline (800-869-4499) to report reprisal. The hotline will advise whether it is appropriate for OIG to investigate.

The **3** most important things:

Whistleblowers MUST

Disclose information to a designated authority.

Whistleblowers MUST

Disclose information that the employee believes is a violation of law, rule, or regulation.

Whistleblowers MUST

Disclose information that the employee believes shows evidence of gross mismanagement, a gross waste of funds, abuse of authority, or substantial and specific danger to health or safety.

Know Your Rights: Guidance For Potential FBI Whistleblowers (cont.)

Investigating the Alleged Reprisal

Either DOJ OPR or DOJ OIG will take responsibility for investigating allegations of reprisal. The conducting office has 240 days to determine whether there are reasonable grounds to believe that reprisal has occurred or will occur.

If the conducting office finds *no reasonable basis* to believe that a reprisal has occurred or will occur:

- The conducting office provides a written draft report to the employee/complainant explaining fact findings and reasons for terminating the investigation, to which the employee/complainant can respond in writing.
- If the final decision is to terminate the investigation, the conducting office must inform the employee/complainant in writing, and provide the reasons for termination, summary of facts, and the employee/complainant's response.

If the conducting office finds a **reasonable basis** to believe that reprisal has occurred or will occur:

- The conducting office reports findings and recommendations to the DOJ Office of Attorney Recruitment and Management (OARM); or,
- The employee/complainant can file a request for corrective action with OARM.

OARM Adjudication of Reprisal Allegations

- If OARM establishes jurisdiction, it serves the adjudicatory role normally played by the Merit Systems Protection Board for most federal employee whistleblower cases.
- OARM can provide a broad range of corrective action to the employee/complainant.

Authorities

- FBI Whistleblower Protection Enhancement Act of 2016, PL 114-302 (12/16/2016) 130 Stat 1516; 5 U.S.C. § 2303.
- 28 C.F.R. § 27.1, Making a Protected Disclosure.
- Presidential Policy Directive 19, Protecting Whistleblowers with Access to Classified Information (10/02/12).
- Intelligence Community Directive 120, Intelligence Community Whistleblower Directive (3/20/14).
- 64 FR 58782
- FBI Policy Directive 0272D, FBI Whistleblower Policy.
- FBI Policy Directive 0693D, Sensitive Compartmented Information (SCI) Access.

Your Appeal Rights

Either party may appeal an OARM finding to the Deputy Attorney General within 30 days of a final determination or corrective action order by OARM.

Alternative Dispute Resolution–DOJ Mediator Corps Program

- An employee alleging retaliation for making a protected disclosure may request mediation at any point during that process. If appropriate, the conducting office or OARM will refer the request to the FBI Office of Equal Employment Opportunity Affairs (OEEOA) for assignment of a specially certified whistleblower mediator.
- Once an employee/complainant elects mediation, the matter is stayed. The mediation process should last less than 90 days from the date of election.
- If no settlement is reached through mediation, the proceedings resume.
- While the DOJ Mediator Corps Program is not formalized in regulations, DOJ expects to include the program when the pertinent regulations are revised.

Questions?

For more information on the Office of Integrity and Compliance visit the [OIC page on BUNET](#) or contact an Ethics Attorney.

WHAT SUPERVISORS SHOULD KNOW ABOUT WHISTLEBLOWERS

1. Who is a “whistleblower”?

A whistleblower is someone who discloses or tries to disclose information that he/she reasonably believes shows a violation of a 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.

2. Who can blow the whistle?

Current and former FBI employees, and applicants for FBI employment can blow the whistle. (Please note that protections for contractors are different from the protections listed here. Contact your contract company for additional information.)

3. What is a “protected disclosure”?

A protected disclosure is a verbal or written communication to a “designated authority,” which discloses information that the employee reasonably believes shows:

- A violation 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.

4. Who are the “designated authorities”?

An employee can only receive statutory whistleblower protection if he/she reports wrongdoing (makes a “protected disclosure”) to one or more of the following designated authorities:

- A supervisor in the employee’s direct chain of command, up to and including the head of the FBI field office (ADIC or SAC), the FBI Deputy Director and Director, and the DOJ Deputy Attorney General (DAG) and Attorney General (AG);
- DOJ Office of the Inspector General (DOJ OIG);
- DOJ Office of Professional Responsibility (DOJ OPR);
- FBI Office of Professional Responsibility (FBI OPR);
- FBI Inspection Division (FBI INSD);
- Congress or a Member of Congress (5 U.S.C. § 7211);
- The U.S. Office of Special Counsel (OSC); and,
- An employee designated by any officer, employee, office, or division described above.

Note: Any office or official receiving a protected disclosure must promptly report such disclosure to the FBI INSD (Internal Investigations Section).

5. What protection does an employee receive by making a protected disclosure?

Under several laws, regulations, and other Federal authorities, current and former FBI employees, as well as applicants for FBI employment, are protected from reprisal for making protected disclosures. Reprisal is defined as: taking, failing to take, threatening to take or not take, recommend, or approve any personnel action, to the detriment of an FBI whistleblower, based upon a protected disclosure. Reprisal can also include denial or revocation of an employee's security clearance.

6. What is my role as a supervisor under the FBI's whistleblower policy?

Protected disclosures or reports of wrongdoing

If you are one of the "designated authorities" listed above, then you may receive a whistleblower complaint, and the reporting employee will consequently receive whistleblower protection for making a protected disclosure. You must document and report the protected disclosure to the FBI Inspection Division immediately. FBI Inspection Division will then report the protected disclosure to DOJ OIG.

If you are not a designated authority (in #4, above), and an FBI employee reports alleged wrongdoing (as described in #3, above), you should direct him/her to submit a written or verbal report to a designated authority and tell him/her that he/she can receive whistleblower protection only by making the report to a designated authority. Until they do so, their disclosure is not protected. You should document the allegations for your records, and you must report the alleged wrongdoing to FBI Inspection Division for further investigation.

Reprisal for making protected disclosures

You must ensure that FBI employees are not subjected to reprisal for making protected disclosures.

You must promptly communicate all allegations of whistleblower reprisal within 24 hours to the FBI's Internal Investigations Section (IIS), Inspection Division, so that IIS may promptly file a report to DOJ OIG or DOJ OPR.

7. Can I investigate the allegations myself?

No, leave that to the investigators. Processes for the appropriate authorities to investigate the underlying alleged wrongdoing, as well as any alleged reprisal for making a protected disclosure, are established by policy and regulation.

8. What do I do if an employee comes to me with a situation that may possibly be a whistleblower matter, but I'm not sure if it is?

If in doubt, you can consult the FBI Office of Integrity and Compliance, Inspection Division, or the Office of the General Counsel for additional guidance.

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9. What if an employee wants to blow the whistle on alleged wrongdoing and remain anonymous?

You may direct the employee to the DOJ OIG Hotline or the OIC Compliance Concern Hotline. You should inform the potential whistleblower that his or her confidentiality will be maintained to the extent possible within the limitations of law and policy, and the need to conduct a competent investigation. However, complete anonymity throughout an investigation may not be possible.

10. What actions should I avoid taking after an employee makes a protected disclosure?

In general, you must avoid taking any action that you would not have taken if the employee had not made the disclosure. Adverse personnel action taken because of an employee's protected disclosure would constitute reprisal, which is unlawful. Examples of adverse personnel actions may include:

- Discharging or demoting the employee
- Denial of overtime, promotions, or benefits
- Formal discipline
- Denial of a transfer
- Changes in hours or work location
- Changes in workload or assignments
- Denial of training opportunities

Likewise, do not shun the employee, isolate him or her, or otherwise treat the employee differently than you would have in the absence of the employee's disclosures.

If you have questions or need assistance, please contact the [Office of Integrity & Compliance](#)