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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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March 4, 2015

**VIA ELECTRONIC TRANSMISSION**

The Honorable Valerie Parlave  
Executive Assistant Director  
Human Resources Branch  
Federal Bureau of Investigation

Dear Executive Assistant Director Parlave:

This past January, a whistleblower at the Federal Bureau of Investigation (FBI) contacted my office with allegations that the FBI assigns surveillance teams based on nepotism and personal preferences – not based on need. This whistleblower claimed that he received a poor performance review in retaliation for notifying his supervisors of this problem.

The whistleblower provided my staff with an e-mail from the FBI Office of Integrity and Compliance that opined that his disclosures would be protected under the regulations, but that “this does not guarantee that you will not be retaliated against, even though retaliation/reprisal for making protected disclosures is illegal.”<sup>1</sup> The Washington Times detailed these allegations in articles released on Monday and yesterday.<sup>2</sup>

Today, the whistleblower alleged to my staff that he may be experiencing retaliation yet again – just as the email predicted. The whistleblower states that his supervisor called him this morning to inquire about the use of his government issued vehicle, which the whistleblower has been using regularly since 2000 as part of his duties to conduct street surveillance. The whistleblower reports that he has been pulled from street surveillance duty and has been instructed to report to the office.

Based on my thirty-year experience of working with whistleblowers, such “idling” of agents and sudden scrutiny of previously sanctioned conduct are hallmarks of retaliation at the FBI. These allegations are also consistent with the Government Accountability Office’s (GAO)

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<sup>1</sup> See attachment.

<sup>2</sup> Kelly Riddell, “FBI surveillance teams frustrated by nepotism and internal politics,” *The Washington Times*, Mar. 2, 2015; see also Kelly Riddell, “FBI email warns whistleblower of retaliation if surveillance program concerns reported,” *The Washington Times*, Mar. 3, 2015.

recent findings of the chilling effects of the FBI's current whistleblower procedures on potential whistleblowers, as reported yesterday by the Washington Post.<sup>3</sup>

Whistleblowers are some of the most patriotic people I know – men and women who labor, often anonymously, to let Congress and the American people know when the Government isn't working so we can fix it. As such, it would be prudent for you to remind FBI management about the value of protected disclosures to Congress and/or Inspectors General in accordance with the whistleblower protection laws. Absent such a clear communication from you, FBI management might be able to intimidate whistleblowers to prevent them from providing information to Congress.

As you may be aware, obstructing a Congressional investigation is a crime.<sup>4</sup> Additionally, denying or interfering with employees' rights to furnish information to Congress is also against the law.<sup>5</sup> Federal officials who deny or interfere with employees' rights to furnish information to Congress are not entitled to have their salaries paid by taxpayers' dollars.<sup>6</sup>

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<sup>3</sup> Joe Davidson, "Report says procedures put a chilling effect on potential FBI whistleblowers," *The Washington Post*, Mar. 4, 2015.

<sup>4</sup> 18 U.S.C. § 1505 states, in pertinent part:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress--

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

<sup>5</sup> 5 U.S.C. § 7211 states:

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

<sup>6</sup> Sec. 713 of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130, (2014), provides, in relevant part, as follows:

No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who . . . prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee.

Finally, FBI personnel have Constitutional rights to express their concerns to Congress under the First Amendment.

Accordingly, please ensure that FBI employees are aware of their rights and whistleblower protections and that FBI managers are accountable for respecting any protected disclosures.

If you have any questions, please contact Jay Lim of my Committee staff at (202) 224-5225. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley  
Chairman  
Senate Committee on the Judiciary

cc: The Honorable Michael E. Horowitz  
Inspector General  
U.S. Department of Justice

The Honorable Eric H. Holder, Jr.  
Attorney General

**Attachment**

[REDACTED]

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From: FBI Attorney-Advisor, Office of Integrity and Compliance  
Sent: Monday, August 04, 2014 1:53 PM  
To: FBI Whistleblower  
Subject: Whistleblower protection

[REDACTED]

Below I've copied and pasted the section from the Code of Federal Regulations section about FBI employees making protected disclosures. Your disclosure will receive "protected" status if:

- You disclose information
- That you reasonably believe
- Shows evidence of:
  - Violation of law, rule, or regulation; or
  - Mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health and safety.
- And you disclose the information to any of the following:
  - DOJ's Office of Professional Responsibility
  - DOJ's Office of Inspector General
  - FBI's Office of Professional Responsibility
  - FBI INSD (Internal Investigations Section)
  - The Attorney General
  - The Deputy Attorney General
  - Director of the FBI
  - The Deputy Director of the FBI
  - The highest ranking official in any FBI field office

So, I believe that according to the regulation, you would receive whistleblower protection for making a report to DOJ OIG. The main question would turn on the reasonableness of your belief; that is, would a reasonable person, in your situation, believe that the conduct at issue demonstrated mismanagement or abuse of authority (or any of the appropriate categories listed above)? In my opinion, yes. I'm sure you know, though, that this does not guarantee that you will not be retaliated against, even though retaliation/reprisal for making protected disclosures is illegal. (One caution about the above advice: I am not authorized to act as your attorney, and none of the above advice should be construed as anything more than my own personal opinion.)

I would be glad to discuss this with you further at your convenience.

Regards,  
[REDACTED]

Effective: January 9, 2008  
28 C.F.R. § 27.1

### § 27.1 Making a protected disclosure. Currentness

(a) When an employee of, or applicant for employment with, the Federal Bureau of Investigation (FBI) (FBI employee) makes a disclosure of information to the Department of Justice's (Department's) Office of Professional Responsibility (OPR), the Department's Office of Inspector General (OIG), the FBI Office of Professional Responsibility (FBI OPR), the FBI Inspection Division (FBI-INSID) Internal Investigations

Section (collectively, Receiving Offices), the Attorney General, the Deputy Attorney General, the Director of the FBI, the Deputy Director of the FBI, or to the highest ranking official in any FBI field office, the disclosure will be a "protected disclosure" if the person making it reasonably believes that it evidences:

- (1) A violation of any law, rule or regulation; or
- (2) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) Any office or official (other than the OIG or OPR) receiving a protected disclosure shall promptly report such disclosure to the OIG or OPR for investigation. The OIG and OPR shall proceed in accordance with procedures establishing their respective jurisdiction. The OIG or OPR may refer such allegations to FBI-INSID Internal Investigations Section for investigation unless the Deputy Attorney General determines that such referral shall not be made.

#### Credits

[Order No. 2492-2001, 66 FR 37904, July 20, 2001; Order No. 2926-2008, 73 FR 1495, Jan. 9, 2008]

SOURCE: Order No. 2264-99, 64 FR 58786, Nov. 1, 1999, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301, 3151; 28 U.S.C. 509, 510, 515-519; 5 U.S.C. 2303; President's Memorandum to the Attorney General, Delegation of Responsibilities Concerning FBI Employees Under the Civil Service Reform Act of 1978; 3 CFR p. 284 (1997).

28 C.F.R. § 27.1

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Attorney/Advisor  
Office of Integrity and Compliance  
(202) ██████████