



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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OCT 22 2014

The Honorable Claire McCaskill
Chairman, Subcommittee on Financial
Management and Contracting Oversight
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman McCaskill:

Thank you for your letter of September 18, 2014, signed by other Chairmen and Ranking Members of House and Senate Committees, requesting that this office review our "interpretation and implementation of all versions of 10 U.S.C. § 2409 to ensure we are consistent with protecting contractor and subcontractor employees from retaliation."

We certainly share your view that whistleblowers serve a critical role in government oversight and must be protected from retaliation. We appreciate the insights provided by your letter and find it very helpful to better understand that Congress' intention was for the phrase "employees responsible for contract oversight or management" to be "interpreted broadly" and should include "not only the contracting officer and COTR who have management roles related to the contract, but also program staff that interact with contractors every day and have substantial knowledge and oversight of the contract's implementation on the ground."

With regard to the broader matter of the whistleblower protection program at the DoD OIG, I assure you that we remain committed to protecting whistleblowers and that maintaining a rigorous and effective whistleblower protection program is a top priority of this agency. Since 2008, the DoD OIG has more than doubled the investigative staff responsible for conducting reprisal investigations, and we have increased the number of investigations we conduct in-house. Under my leadership in fiscal year 2014, DoD OIG completed 38% more reprisal investigations in-house than we did the previous fiscal year. This included a recent contractor reprisal investigation in which we substantiated that a Defense contractor terminated the employment of a senior accountant after the employee reported to the DoD Hotline the contractor committed fraud, submitted falsified documents to government agencies, and reprisal against employees.

I also want to take this opportunity to let you know that I recently approved a legislative proposal to expand 10 U.S.C. § 2409 to broaden whistleblower protections. The proposal, a copy of which was provided to your staff, would extend whistleblower protection to contractor employees who cooperate with or disclose information to this office in the course of whistleblower reprisal investigations. In effect, it would make any communications as a witness a protected disclosure under the statute. This would bring whistleblower protections for Defense contractor and subcontractor employees into closer conformance with protections for Defense Department personnel under the Inspector General Act of 1978, as amended, and with 10 U.S.C. § 1034. I am hopeful the Congress will favorably act on this matter.

Based on the information you have provided relating to our interpretation of a provision 10 U.S.C. § 2409, I have directed my staff to adopt a broader approach when analyzing who qualifies as a Department of Defense "employee responsible for contract oversight or management" authorized to receive a protected disclosure. In addition to current employees who clearly qualify (a contracting officer, COTR, and employee responsible for contract oversight or management in the Defense Contract Management Agency), my staff will also analyze cases to identify and include as authorized recipients other DoD employees with a role in oversight or management of a contract.

My Deputy Inspector General for Administrative Investigations has identified just two 10 U.S.C. § 2409 cases in the past year that were closed, in part, based on determinations that DoD employees who received disclosures were not authorized recipients under the statute. One of those cases has been reopened. With regard to the second case, further review of the complaint revealed that there are insufficient grounds to proceed with a full investigation. The review concluded that the action taken against the complainant occurred immediately following a perceived threat he acknowledged making, referencing a shooting and a bomb, one day after the Navy Yard fatal shootings. Accordingly, even under a broader interpretation of who qualifies as a recipient of a protected disclosure under 10 U.S.C. 2409, the second case presented no reasonable inference of causation between the protected disclosures and the action taken. As requested, we will report on the outcome of the case that was reopened.

A similar response has been sent to the other Members who signed your letter. Should you have any questions regarding this matter, please contact me or Mr. William P. Goehring, Acting Assistant Inspector General for Communications and Congressional Liaison, at (703) 604-8324.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon T. Rymer". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Jon T. Rymer