

GAO

Report to the Chairman, Subcommittee
on the Civil Service, Committee on Post
Office and Civil Service, House of
Representatives

November 1993

WHISTLEBLOWER PROTECTION

Reasons for Whistleblower Complainants' Dissatisfaction Need To Be Explored



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November 15, 1993

The Honorable Frank McCloskey
Chairman, Subcommittee on
the Civil Service
Committee on Post Office
and Civil Service
House of Representatives

Dear Mr. Chairman:

This report discusses how federal employees who have sought whistleblower reprisal protection from the Office of Special Counsel (osc) viewed osc's handling of their cases. We surveyed 945 employees who sought protection from osc under the provisions of the Whistleblower Protection Act of 1989 and whose cases were closed by osc as of September 30, 1992. We received responses from 662—a response rate of 70 percent. Additional details on our objective, scope, and methodology are contained in appendix I.

Background

Congress enacted the Whistleblower Protection Act of 1989 (P.L. 101-12) to strengthen and improve the level of protection for whistleblowers originally offered under the Civil Service Reform Act of 1978 (P.L. 95-454). Although the 1978 act was designed to encourage the disclosure of fraud, waste, and abuse and protect employees from reprisals when they made such disclosures, Congress found that the law was not satisfactorily achieving these objectives.

The 1989 act separated osc from the Merit Systems Protection Board (MSPB) and established osc as an independent agency. osc's primary role became to protect federal employees, especially whistleblowers, from prohibited personnel practices. In fulfilling this role, osc is supposed to act in the interests of federal employees seeking assistance by investigating their complaints of whistleblower reprisal and initiating stays (postponed actions), corrective actions, and disciplinary actions, where appropriate. In addition, the 1989 act allowed employees to file appeals with MSPB if they did not obtain relief through osc.

The Whistleblower Reprisal Complaint Process at OSC

In order to successfully pursue a whistleblower reprisal case, osc said that it must develop sufficient evidence to show that the following four elements exist:

-
- a protected disclosure¹ was made by a covered federal employee;
 - a personnel action was taken, not taken, or threatened after the protected disclosure;
 - the employer had knowledge of the protected disclosure; and
 - a causal connection existed between the personnel action and the protected disclosure.

Complaints of whistleblower reprisals are to be initially analyzed by OSC's Complaints Examining Unit (CEU). Examiners may contact the complainant to get more information to ensure that the complaint is clearly understood. If CEU determines that one or more of the four elements is missing, it may close the case. Complaints that are not closed by CEU are to be referred to the Investigation Division for more extensive examination.

After the Investigation Division completes its examination, the Prosecution Division is required to review the information to determine whether any violation of laws, rules, or regulations has occurred and whether the matter warrants corrective and/or disciplinary action. OSC officials may discuss the matter with agency officials to obtain an early resolution, or the Special Counsel may write to the agency head with a recommendation for action. If the agency declines to take action, OSC may bring the matter before MSPB to order the corrective and/or disciplinary action.

At any time during an investigation, OSC may seek a stay of a personnel action if there are reasonable grounds to believe that the action is a result of whistleblower reprisal. OSC may obtain the stay of action by requesting the agency involved to voluntarily provide the stay or by filing a request with the MSPB for a formal order.

Prior GAO Reports on Whistleblower Protection

This is our fourth report in response to a request by Mr. Gerry Sikorski, the former Chairman of the Subcommittee on the Civil Service, House Committee on Post Office and Civil Service, that we review the federal government's processing of whistleblower reprisal complaints and OSC's effectiveness in protecting whistleblowers from reprisals under the 1989 act. The three reports and one testimony we provided earlier this year are listed at the end of this report.

¹A protected disclosure is the reporting of information that the individual reasonably believes shows violation of any federal law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or acts that are a substantial and specific danger to public health and safety.

Our work has shown that despite the intent of the 1989 act to strengthen and improve whistleblower protection, whistleblower complainants are still having difficulty proving their cases. Also, federal employees are generally unaware of their right to whistleblower protection, and agencies are not informing them of this right.

The lack of agency commitment appears to us to be a major problem in the whistleblower program. There is no explicit requirement in the whistleblower statutes (5 U.S.C. 1201 et seq.) for agencies to inform employees about their right to protection from reprisals or where to report misconduct. If the program is to be successful, agencies' support is critical. Employees should be encouraged to bring improprieties to the attention of management and be assured that such actions will not result in reprisals. All too often in the past, such assurances were absent, and employees did not know how much agency support they would receive.

To address this problem, we recommended that Congress consider amending the whistleblower statutes (5 U.S.C. 1201 et seq.) to require that agencies, with osc's guidance, develop policies and procedures for carrying out the provisions of the whistleblower statutes and inform employees periodically of their right to protection from reprisals and where to report misconduct.

Results in Brief

The vast majority of our survey respondents gave osc low marks for overall performance in the whistleblower complaint process. The small percentage of respondents whose cases reportedly resulted in corrective actions were generally more satisfied with osc's performance, but over a third of them also gave osc low marks.

Most respondents were frustrated with the process. They believed that osc did not act on their behalf and that they needed to obtain the services of a lawyer to protect their interests. Also, most of the respondents did not appear to fully understand the process. After going through the process, most respondents said they wished they had known more about items such as the procedures involved and the probability of success before they filed their complaints.

The responses we received from whistleblower complainants clearly indicated a high level of dissatisfaction with osc. In our view, osc needs to explore the reasons for this dissatisfaction and work with the Subcommittee to address the problems. This survey and our previous

work showed clearly that education about the whistleblower protection process needs attention. Employees need to know about their right to protection from whistleblower reprisals, the four elements needed to demonstrate that reprisal has occurred, the process for seeking corrective action, and the challenges that complainants may encounter in pursuing their cases.

Complainants Have Been Generally Dissatisfied With OSC and the Whistleblower Protection Process

The results of our survey of those individuals who sought whistleblower protection from OSC showed a general dissatisfaction with OSC and agency performance. Many respondents said they did not know about the act and that they got little or no help from their agency management in learning about it. Most respondents did not believe that OSC investigators obtained all of the information needed to investigate their claims. Over half of the respondents told us that they were still employed by the agency they reported against, and many still believed that they were experiencing reprisals. A vast majority of respondents believed that whistleblower protection was inadequate and that their agencies did not support federal whistleblower policy. Specifically

- About 81 percent of respondents gave OSC a generally low to very low rating for overall effectiveness. OSC was consistently rated low for fairness, efficiency, competency, responsiveness, and communications. OSC was rated higher for courtesy.
- About 78 percent of respondents did not believe that OSC investigators obtained all of the information needed to investigate their claims.
- About 83 percent of respondents said they received a generally unfavorable to very unfavorable resolution of their complaints from OSC. About 52 percent appealed their cases to MSPB. For those who did not appeal their cases, the primary reason cited was frustration with the process.
- About 88 percent of the respondents said that reprisals had actually taken place, while 47 percent said there was a threat of reprisals, and about 43 percent said a favorable action had not occurred. About 20 percent of the respondents said they became aware of the reprisals within 24 hours of reporting the alleged misconduct.
- More respondents had contact with OSC in writing or by telephone as opposed to meeting face-to-face. The number of contacts generally ranged from one to five per case. According to about 56 percent of the respondents, the contacts with OSC provided the information they needed to little or no extent.

- While about 45 percent of respondents said that they did not give OSC permission to reveal their communications with OSC to others during the investigative process, about 59 percent of these respondents believed that OSC revealed this information during its investigation. About 32 percent of the respondents were not sure or did not remember whether they gave OSC permission to reveal this information.
- About 57 percent of the respondents said they had obtained the services of a lawyer at some time during the process. The vast majority of these respondents did so before OSC closed their cases. The majority of those who obtained a lawyer did so because they believed they needed independent legal advice to protect their interests (69.1 percent) and deal with their agencies (73.3 percent). Overall, about 76 percent of the respondents believed that OSC generally acted or primarily acted in the interests of the agency, rather than in the interests of the complainants or neutrally, while investigating the cases.
- About 59 percent of the respondents were still employed by the agencies where they had reported misconduct. These respondents reported that various reprisals were still occurring after their cases were closed by OSC and most of the time these actions were a continuation of previous reprisals and not new reprisals. Of the 41 percent of the respondents who were no longer employed, about 83 percent said they were no longer employed at the agency because they reported misconduct.
- Negative events resulting from reporting misconduct were far greater than positive actions reported by the respondents. Negative events included lessened job opportunities, mental anguish, and loss of professional credibility. Positive actions of reporting misconduct for those respondents still employed at the agencies where they reported the misconduct included recognition by peers and awards or bonuses. The positive actions, which were controlled by the agency, were generally not viewed by the respondents as a direct result of reporting misconduct.
- After reporting misconduct and filing a complaint with OSC, about 57 percent of the respondents said they either greatly supported or very greatly supported the idea that employees in their agency should report misconduct. However, about 93 percent of the respondents believed that protection against reprisal was inadequate, and about 90 percent believed that their agency had little or no support for the federal policy of protecting federal employees against reprisals for reporting misconduct.
- Although a majority of respondents said they reported the misconduct to an immediate supervisor or other agency management, over 60 percent of those still employed at the agency would not report any new misconduct to these people.

- Before reporting misconduct, employees sought assistance mainly from an immediate supervisor (66.3 percent) and/or other agency management (79 percent). About 90 percent found these people to be of little or no help. About 42 percent of the respondents said they had little or no knowledge of the provisions of the Whistleblower Protection Act of 1989. About 53 percent were aware that corrective action or settlement of reprisals was potentially available. Fewer were aware that disciplinary actions could be taken against employers and that stays of personnel actions could be requested.
- While at least 60 percent of the respondents said they were aware of one or more of the elements that had to be present to qualify for protection under the 1989 act, about 56 percent greatly or very greatly wished they had known more about all four elements before filing the complaint with osc. Other factors that respondents either greatly or very greatly wished they had known more about before filing a complaint with osc included the investigative process, the probability of success, the emotional costs, the legal process, and the financial cost.

Detailed questionnaire responses are presented in appendix II.

Complainants Whose Cases Resulted in Corrective Action or Were More Extensively Investigated Responded More Positively

During our review, osc provided us with a list of complainants whose cases resulted in corrective actions. Although these complainants (50 of whom responded to our survey) were more satisfied with the process, many of them still gave osc low marks. We also noted that complainants whose cases went through osc's investigative process and were closed without corrective actions (99 respondents) were more satisfied than those complainants whose cases were processed and closed in CEU (513 respondents). Specifically

- About 85 percent of complainants whose cases were closed in CEU rated osc generally low to very low on overall effectiveness in handling their cases. For those complainants whose cases were closed by the Investigation Division, about 68 percent of them rated osc similarly. About 37 percent of those with reported corrective actions rated osc as generally low to very low.
- About 86 percent of complainants whose cases were closed in CEU believed that they had received generally unfavorable to very unfavorable resolutions of their cases, while about 73 percent of those whose cases were more extensively investigated felt the same way. For those complainants whose cases resulted in corrective actions, this percentage fell to 41.

- About 62 percent of those complainants whose cases were closed in CEU believed that OSC provided them with little or no information they needed about their cases. About 38 percent of those whose cases were more extensively investigated felt similarly, as well as 22 percent of those complainants whose cases resulted in corrective actions.
- About 84 percent of those complainants whose cases were closed in CEU believed generally or definitely that OSC did not obtain all the information needed to investigate their cases. About 59 percent whose cases were closed in the Investigation Division felt similarly; however, 58 percent of those whose cases resulted in corrective actions believed that OSC obtained all the information needed to investigate their cases.
- About 79 percent of those complainants whose cases were closed in CEU believed that OSC generally or primarily acted in the interests of their agency while investigating their cases. For complainants whose cases were closed in the Investigation Division, about 66 percent of them felt similarly, as well as about 35 percent of those whose cases resulted in corrective actions.

Conclusions

It is troubling that so many complainants in the whistleblower reprisal complaint process believed that OSC did not adequately represent their interests. Although the level of dissatisfaction was clearly related to the degree of success the complainants had in pursuing their cases, it is important to note that the vast majority of all complainants we surveyed indicated a high level of dissatisfaction with OSC's overall effectiveness in handling their cases.

To help ensure that the whistleblower statutes are being properly implemented, we believe it is essential to determine why whistleblower complainants feel dissatisfied with OSC's process and to develop an appropriate strategy for dealing with their concerns. On the basis of the survey results and our previous work, one element of this strategy should be to improve the education of federal employees about the extent of their rights and protections under the whistleblower statutes and the nature of the complaint process.

Recommendation

We recommend that the Special Counsel explore the reasons for whistleblower complainants' dissatisfaction with OSC's process and work with the Subcommittee to develop an appropriate strategy for addressing these concerns.

Agency Comments and Our Evaluation

The Special Counsel provided written comments on a draft of this report. osc's comments and our specific responses to them are contained in appendix III.

In general, osc's interpretation of our survey results was that complainants were dissatisfied because they were not getting corrective action for their alleged reprisals. osc believed that, in large part, cases brought to their attention were not meeting the requirements of the whistleblower statutes and that the level of dissatisfaction with osc's performance will diminish if agencies better educate employees about their rights and protections under the whistleblower statutes and about osc's role in handling reprisal complaints. osc did not comment on our recommendation that the Special Counsel explore the reasons for whistleblower complainants' dissatisfaction with osc's process.

We agree that there is a need to improve the education provided to employees about the extent of their rights and the nature of the complaint process, but we do not agree that other agencies should do all of the work that needs to be done. We recommended that osc explore the reasons for whistleblower complainants' dissatisfaction because we did not think it would be appropriate to identify those reasons based on conjecture. To use conjecture rather than data based on research runs the risk of misdirecting any educational efforts that are provided. Moreover, the high level of complainant dissatisfaction identified in our survey indicated a need for osc to take an introspective look at its process for dealing with whistleblower complainants. Although our report recognizes that other agencies have an educational role, it is important for osc to know whether its process for dealing with whistleblower complainants is operating as intended. The importance of customer surveys in examining and improving agency operations was given renewed emphasis in the September 1993 report of the Vice President's National Performance Review.

As agreed with the Subcommittee, we plan no further distribution of this report until 30 days after its issue date, unless you publicly announce its contents earlier. At that time, we will send copies to OSC, MSPB, and other interested parties. We will also make copies available to others upon request.

The major contributors to this report are listed in appendix IV. If you have any questions about this report, please contact me on (202) 512-5074.

Sincerely yours,

A handwritten signature in cursive script that reads "Nancy R. Kingsbury". The signature is written in black ink and is positioned below the "Sincerely yours," text.

Nancy Kingsbury
Director
Federal Human Resource Management
Issues

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Abbreviations

CEU	Complaints Examining Unit
MSPB	Merit Systems Protection Board
OSC	Office of Special Counsel

Objective, Scope, and Methodology

The former Chairman of the Subcommittee on the Civil Service, House Committee on Post Office and Civil Service, asked us to review the government's processing of whistleblower reprisal complaints and the Office of Special Counsel's (osc) effectiveness in protecting whistleblowers from reprisals. We addressed several aspects of this request in three previous reports (see Related GAO Products). Our objective in this review was to find out what federal employees who had reported alleged misconduct—and allegedly suffered reprisals—thought about the whistleblower reprisal complaint process at osc. To answer this question, we designed a survey that we sent to federal employees who had sought whistleblower protection from osc. Our analysis included an assessment of responses based on case disposition, that is, whether whistleblower complainants obtained corrective action and whether their cases were closed by the Complaints Examining Unit (CEU) or the Investigation Division. We performed these analyses to determine whether complainants who had more success with osc reacted differently from those whose cases were rejected.

We asked osc to identify federal employees who filed complaints under the Whistleblower Protection Act of 1989 since the effective date of the law on July 9, 1989, and whose cases were closed as of September 30, 1992. osc identified a total of 1,383 such cases and provided us with addresses to contact all except those complainants who wanted to remain anonymous or did not provide their addresses to osc. osc also provided us with the information on the disposition of their cases, including those cases referred to the Investigation Division and those cases that resulted in corrective actions.

We mailed surveys to 1,108 complainants on March 29, 1993, and sent one follow-up mailing on April 29, 1993. Surveys were sent only to those complainants with a single closed complaint with osc during the period under study because complainants with multiple complaints might not be able to isolate their views on individual cases, which the survey was designed to capture. Besides excluding multiple cases, we also excluded cases for overseas claimants, any anonymous or other claimants for whom osc had no mailing addresses, and cases out of osc's jurisdiction regarding whistleblower reprisal.

One hundred sixty-three surveys were returned as undeliverable, leaving 945 claimants as our adjusted universe for study. After excluding responses for those complainants not returning a completed survey or

who incorrectly or insufficiently completed the survey, we had a final number of 662 usable surveys resulting in a response rate of 70 percent.

This report reflects the perceptions and experiences of these 662 complainants. We did a comparative analysis using data from osc's case files and found almost no difference between respondents and nonrespondents in the distribution of gender, state of residence, type of personnel action alleged, timing of complaint identification, initial review disposition code, or disposition of allegation.

We also analyzed the survey responses for those whose cases were closed in CEU (513 respondents) and those cases that were more extensively investigated by the Investigation Division (149 respondents). Of those cases referred to the Investigation Division, we further analyzed those cases that resulted in corrective actions (50 respondents).

We did not review the merits of individual cases nor did we review osc's handling of them to determine if respondents accurately reflected osc's actions. Our work was done between November 1992 and July 1993 in accordance with generally accepted government auditing standards.

Responses to Survey of Federal Employees Who Have Sought Whistleblower Protection From the Office of Special Counsel

United States General Accounting Office



Survey of Federal Employees Who Have Sought Whistleblower Protection from the Office of Special Counsel

Introduction

The U.S. General Accounting Office (GAO), an agency of the U.S. Congress, is gathering information on the Whistleblower Protection Act of 1989.

The Whistleblower Protection Act of 1989 was enacted to strengthen and improve protection of employees' rights, prevent reprisal against employees who have reported misconduct, and help eliminate wrongdoing in government. The Office of Special Counsel (OSC) serves as an independent investigative and prosecutorial agency to protect employees, former employees, and applicants for employment from prohibited personnel practices, especially reprisal for whistleblowing. An employee also has the right to go to the Merit Systems Protection Board (MSPB) in certain circumstances for protection against reprisal.

We are surveying federal employees who have sought protection under the Whistleblower Protection Act of 1989. Such employees have alleged reprisal since July 9, 1989, through OSC and their cases were closed by OSC as of September 30, 1992. Your participation in this survey is completely voluntary. Your frank and honest answers will help GAO advise Congress on employee protection under the act. However, GAO will not assess individual cases.

The questions can be easily answered by checking boxes or filling in blanks. The questionnaire can be completed in about 30 minutes. Space has been provided throughout and at the end of the questionnaire for any comments you may want to make.

Your name will be kept confidential and will not be released outside GAO, unless compelled by law to do so or required to do so by the Congress. While the results are generally provided in summary form, individual answers may be discussed in our report, but they will not include any information that could be used to identify individual respondents.

The questionnaire is numbered only to assist us in our follow-up efforts and will not be used to identify you with your responses in our report to Congress. The link between you and your response will be destroyed after analysis is completed.

Please return your completed questionnaire in the enclosed preaddressed, prepaid envelope within 10 days of receipt. In the event that the envelope is misplaced, our return address is:

U.S. General Accounting Office
Attn: Federal Employee Survey Coordinator
1500 N.E. Irving Street, Room 414
Portland, OR 97232

Thank you for your help.

* * * * *

Definitions

Whistleblower - A commonly used term describing a federal employee who reports misconduct within or related to federal operations.

Misconduct - A summary term used to indicate a violation in federal sector operations of any federal law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or acts that are a substantial and specific danger to public health and safety.

Protected disclosure - The reporting of information that the individual reasonably believes shows misconduct within or related to federal operations.

Reprisal - Taking, not taking, or threatening a personnel action against an employee for reporting misconduct or protected disclosure.

Stay - Temporary stopping of an adverse personnel action.

**Appendix II
Responses to Survey of Federal Employees
Who Have Sought Whistleblower Protection
From the Office of Special Counsel**

Verification

1. Our information indicates that you reported reprisal to OSC for reporting misconduct in your agency.

Is this information correct? (Check one.)

N=662

- | | |
|--|------|
| 1. <input type="checkbox"/> Yes (Continue to Question 2.) | 100% |
| 2. <input type="checkbox"/> No (STOP. Return the questionnaire in the enclosed envelope. Thank you.) | 0% |

- I. Awareness of Provisions in the Whistleblower Protection Act of 1989

Questions 2 through 9 ask for information or knowledge you had before reporting agency misconduct.

2. Before reporting agency misconduct, to what extent, if any, were you aware of the provisions of the Whistleblower Protection Act of 1989? (Check one.)

N=661

- | | |
|---|-------|
| 1. <input type="checkbox"/> Very great extent | 5.6% |
| 2. <input type="checkbox"/> Great extent | 5.7% |
| 3. <input type="checkbox"/> Moderate extent | 18.8% |
| 4. <input type="checkbox"/> Some extent | 28.3% |
| 5. <input type="checkbox"/> Little or no extent | 41.5% |
| 6. <input type="checkbox"/> Don't recall | 0.2% |

3. Before reporting agency misconduct, how aware, if at all, were you that you were entitled to confidentiality of your communication with OSC? (Check one.)

N=662

- | | |
|--|-------|
| 1. <input type="checkbox"/> Very greatly aware | 8.3% |
| 2. <input type="checkbox"/> Greatly aware | 11.6% |
| 3. <input type="checkbox"/> Moderately aware | 19.6% |
| 4. <input type="checkbox"/> Somewhat aware | 18.9% |
| 5. <input type="checkbox"/> Little or no awareness | 40.2% |
| 6. <input type="checkbox"/> Don't recall | 1.4% |

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Who Have Sought Whistleblower Protection
From the Office of Special Counsel**

4. Before reporting agency misconduct, were you aware that each of the following four elements had to be present in order for a complainant to be protected under the Whistleblower Protection Act of 1989? (Check one box in each row.)

ELEMENTS NEEDED FOR WHISTLEBLOWER PROTECTION	AWARE?		
	Yes (1)	No (2)	Don't recall (3)
1. A "protected disclosure of misconduct" was made (see Definitions, page 1.) N=656	60.8%	33.5%	5.6%
2. A personnel action was taken, not taken, or threatened N=657	66.7%	30.0%	3.3%
3. The employer had knowledge of the disclosure of misconduct N=657	65.8%	28.9%	5.3%
4. A causal connection existed between the personnel action and the disclosure of misconduct N=654	61.8%	30.3%	8.0%

5. Before reporting agency misconduct, were you aware that the following remedies were potentially available to you if you were reprisal against? (Check one box in each row.)

REMEDIES	AWARE?		
	Yes (1)	No (2)	Don't recall (3)
1. A stay of the personnel action could be requested N=659	38.7%	56.1%	5.2%
2. Corrective action or settlement could be obtained (the personnel action could be retracted or reversed, or some other favorable disposition could be taken) N=656	52.6%	42.8%	4.6%
3. Disciplinary action could be taken against the employer who threatened, carried out, or failed to carry out the personnel action N=654	50.0%	45.3%	4.7%

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Responses to Survey of Federal Employees
Who Have Sought Whistleblower Protection
From the Office of Special Counsel**

6. Before reporting agency misconduct in your agency, were you aware that each of the following had roles in protecting you from reprisal? (Check one box in each row.)

ROLES		AWARE?		
		Yes (1)	No (2)	Don't recall (3)
1. Agency supervisors or other management	N=650	49.5%	48.6%	1.8%
2. Your agency's Inspector General	N=651	49.6%	46.5%	3.8%
3. Office of Special Counsel	N=656	56.6%	41.8%	1.7%
4. Merit Systems Protection Board	N=654	51.8%	44.8%	3.4%

7. Before reporting agency misconduct, to what extent, if any, did you believe your agency supported the federal policy of ensuring that employees who report misconduct are protected from reprisal? (Check one.)

N=660

- 1. Very great extent 3.2%
- 2. Great extent 6.2%
- 3. Moderate extent 5.9%
- 4. Some extent 8.3%
- 5. Little or no extent 70.9%
- 6. Don't recall/no basis to judge 5.5%

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Responses to Survey of Federal Employees
Who Have Sought Whistleblower Protection
From the Office of Special Counsel**

8. Before you reported the agency misconduct, (A) did you seek assistance from any of the following and (B) in your opinion, how helpful, if at all, was each in attempting to rectify the reported misconduct? (Check one box in each row under "A," and if "yes," check appropriate boxes under "B.")

	A. Did you seek assistance?		B. If "Yes," how helpful?				
	No (1)	Yes (2)	Very greatly helpful (1)	Greatly helpful (2)	Moderately helpful (3)	Somewhat helpful (4)	Little or no help (5)
1. Immediate supervisor N=643	33.7%	66.3%	1.9%	2.9%	2.9%	2.9%	89.5%
2. Agency management other than your immediate supervisor N=649	21.0%	79.0%	0.4%	1.2%	1.2%	4.2%	93.1%
3. Employee relations/ personnel offices within your agency N=640	36.6%	63.4%	0.8%	1.3%	2.3%	7.1%	88.6%
4. Agency's Office of the Inspector General N=640	50.6%	49.4%	2.0%	2.0%	4.7%	12.0%	79.4%
5. Merit Systems Protection Board N=622	69.3%	30.7%	6.1%	3.4%	3.9%	15.6%	70.9%
6. Member of Congress N=635	53.2%	46.8%	10.4%	8.6%	11.8%	24.4%	44.8%
7. General Accounting Office N=614	88.9%	11.1%	-	1.7%	5.1%	22.0%	71.2%
8. Office of Special Counsel N=629	45.9%	54.1%	3.7%	4.3%	5.0%	13.0%	74.0%
9. Government Accountability Project (GAP) N=624	90.2%	9.8%	16.1%	3.6%	14.3%	19.6%	46.4%
10. News media N=618	84.8%	15.2%	6.9%	14.9%	16.1%	21.8%	40.2%
11. Personal lawyer N=636	61.9%	38.1%	24.3%	16.8%	19.0%	21.2%	18.6%
12. Union representative N=633	53.9%	46.1%	14.1%	13.0%	11.9%	14.4%	46.6%
13. Law enforcement official N=619	84.7%	15.3%	8.1%	2.3%	12.8%	15.1%	61.6%
14. Other (Please specify.) N=112	17.9%	82.1%	21.2%	7.1%	7.1%	15.3%	49.4%

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Responses to Survey of Federal Employees
Who Have Sought Whistleblower Protection
From the Office of Special Counsel**

9. When you became aware of misconduct in your agency (as defined on page 1), to whom did you report that misconduct? (Check all that apply.)

N=658

Note: Percentages total to more than 100% due to multiple responses.

- | | |
|---|-------|
| 1. <input type="checkbox"/> Immediate supervisor | 60.2% |
| 2. <input type="checkbox"/> Agency management other than your immediate supervisor | 72.6% |
| 3. <input type="checkbox"/> Employee relations/personnel offices within your agency | 48.5% |
| 4. <input type="checkbox"/> Agency's Office of the Inspector General | 48.8% |
| 5. <input type="checkbox"/> Merit Systems Protection Board | 28.9% |
| 6. <input type="checkbox"/> Member of Congress | 46.0% |
| 7. <input type="checkbox"/> General Accounting Office | 8.7% |
| 8. <input type="checkbox"/> Office of Special Counsel | 54.3% |
| 9. <input type="checkbox"/> Government Accountability Project (GAP) | 7.6% |
| 10. <input type="checkbox"/> News media | 13.2% |
| 11. <input type="checkbox"/> Personal lawyer | 32.8% |
| 12. <input type="checkbox"/> Union representative | 36.2% |
| 13. <input type="checkbox"/> Law enforcement official | 10.9% |
| 14. <input type="checkbox"/> Other (Please specify.) | 23.3% |

II. Reprisal Occurrence and Reporting

10. Which of the following best describes the form the reprisal took? (Check all that apply.)

N=655

Note: Percentages total to more than 100% due to multiple responses.

- | | |
|---|-------|
| 1. <input type="checkbox"/> An adverse action was threatened | 47.0% |
| 2. <input type="checkbox"/> An adverse action took place | 87.6% |
| 3. <input type="checkbox"/> A favorable action did <u>not</u> take place (for example, you did not receive an expected bonus) | 42.8% |

11. About how soon after reporting the misconduct in your agency did you first become aware of any reprisal against you? (Check one.)

N=642

- | | |
|---|-------|
| 1. <input type="checkbox"/> Within 24 hours | 20.2% |
| 2. <input type="checkbox"/> Within 2 to 30 days of reporting it | 37.9% |
| 3. <input type="checkbox"/> 31 days to 6 months of reporting it | 26.6% |
| 4. <input type="checkbox"/> 7 to 12 months of reporting it | 5.3% |
| 5. <input type="checkbox"/> After 12 months of reporting it | 3.1% |
| 6. <input type="checkbox"/> I was not aware of any reprisal until someone told me | 2.3% |
| 7. <input type="checkbox"/> Don't remember | 4.5% |

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12. In your opinion, which, if any, of the following reprisal actions, either threatened or actual, resulted from your reporting the misconduct? (Check one box in each row.)

REPRISAL ACTIONS	N	REPRISAL RESULTED FROM DISCLOSURE?			
		No (1)	Yes, threatened (2)	Yes, actual (3)	Don't know/Not applicable (4)
1. Performance appraisal lowered	N=604	13.4%	9.1%	72.7%	4.8%
2. Denial of expected promotion	N=565	26.5%	6.4%	52.2%	14.9%
3. An award/bonus denied or reduced	N=532	25.4%	4.1%	52.6%	17.9%
4. Grade level demotion	N=502	61.8%	12.2%	13.5%	12.5%
5. Dismissed from agency	N=535	43.7%	19.1%	32.0%	5.2%
6. Involuntary transfer within your agency	N=528	40.5%	7.2%	43.6%	8.7%
7. Suspension from your job	N=523	46.5%	14.1%	31.9%	7.5%
8. Personnel/staff withdrawn	N=492	46.3%	2.0%	36.0%	15.7%
9. Training opportunities denied	N=540	25.9%	6.5%	55.7%	11.9%
10. Duties changed to assure poor performance	N=560	23.8%	7.0%	60.9%	8.4%
11. Relocation of desk or work area in office	N=518	39.0%	4.2%	47.9%	8.9%
12. Imposed access restrictions to offices or other work areas necessary to perform your job	N=532	34.8%	4.5%	51.3%	9.4%
13. Tighter scrutiny of daily activities by management	N=583	14.1%	4.8%	77.7%	3.4%
14. Security clearance withdrawn	N=496	60.9%	5.4%	15.1%	18.5%
15. My professional reputation was harmed	N=624	5.9%	5.9%	85.4%	2.7%
16. Withholding of information needed to successfully perform job	N=549	25.0%	3.6%	60.8%	10.6%
17. Social isolation/harassment by management	N=612	6.9%	5.7%	85.6%	1.8%
18. Social isolation/harassment by peers	N=549	30.4%	4.4%	57.7%	7.5%
19. Required to take a fitness-for-duty exam	N=494	68.2%	5.3%	14.2%	12.3%
20. Other (Please specify.)	N=130	3.8%	5.4%	88.5%	2.3%

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13. At any time during this case, did you have the services of a personal lawyer? (Check one.)

N=661

- 1. Yes (Continue to Question 14.) 56.9%
- 2. No (Skip to Question 16.) 43.1%

14. During which of the following time periods did you have the services of a personal lawyer on this case? (Check all that apply.)

N=368

Note: Percentages total to more than 100% due to multiple responses.

- 1. After noticing the misconduct and before reporting it 16.6%
- 2. After reporting misconduct and before going to OSC 53.8%
- 3. After going to OSC and before OSC closed the case 37.5%
- 4. After OSC closed your case 35.3%
- 5. I cannot remember when I retained my personal lawyer 5.4%

15. Which of the following best describes why you sought the services of a personal lawyer? (Check all that apply.)

N=375

Note: Percentages total to more than 100% due to multiple responses.

- 1. I believed I needed independent counsel to protect my interests 69.1%
- 2. I believed I needed independent counsel in dealing with my agency 73.3%
- 3. I believed I needed independent counsel in dealing with OSC 33.3%
- 4. I believed I needed independent counsel in dealing with MSPB 45.9%
- 5. Other (Please specify.) 22.7%

III. Handling of Your Complaint

16. The Whistleblower Protection Act of 1989 requires OSC to maintain confidentiality of a claimant's communications, unless the claimant has given written permission to reveal such information.

Did you give OSC permission to reveal any of this information? (Check one.)

N=658

- 1. Yes (Skip to Question 18.) 23.4%
- 2. No (Continue to Question 17.) 44.8%
- 3. Not sure/don't remember 31.8%
(Skip to Question 18.)

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17. Do you believe OSC revealed any of this information during the investigation (for example, to agency officials)? (Check one.)

N=291

- | | |
|---|-------|
| 1. <input type="checkbox"/> Definitely no | 1.4% |
| 2. <input type="checkbox"/> Probably no | 12.0% |
| 3. <input type="checkbox"/> Uncertain | 19.2% |
| 4. <input type="checkbox"/> Probably yes | 27.8% |
| 5. <input type="checkbox"/> Definitely yes | 31.6% |
| 6. <input type="checkbox"/> No basis to judge | 7.9% |

The Whistleblower Protection Act of 1989 requires that OSC keep you abreast of the status of your case at certain time intervals and provide you with a point of contact in OSC. We want to know about the number of these communications and whether you or the OSC "took the lead" in communicating. The following two questions address these issues.

18. Did OSC provide you with a point of contact? (Check one.)

N=651

- | | |
|---------------------------------|-------|
| 1. <input type="checkbox"/> Yes | 76.8% |
| 2. <input type="checkbox"/> No | 23.2% |

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19. Other than your initial report of reprisal to OSC, approximately how many face-to-face, telephone, and/or written contacts did you have with OSC, and about how much of the time were these contacts initiated by you? (Check boxes, as appropriate, in each row. If you have any comments, please use the space provided.)

COMMUNICATIONS	Approximate number of contacts you had with OSC				
	0 contacts (1)	1 to 2 contacts (2)	3 to 5 contacts (3)	6 to 10 contacts (4)	Over 10 contacts (5)
1. Face-to-face N=497	71.2%	21.9%	6.0%	0.4%	0.4%
2. Telephone N=605	10.6%	33.6%	33.7%	13.6%	8.6%
3. Written N=534	9.2%	43.8%	34.6%	7.5%	4.8%

	Approximately how much of time was contact initiated by you					
	None of the time (6)	Some of the time (7)	About half of the time (8)	Most of the time (9)	All of the time (10)	Do not remember (11)
N=247	46.6%	7.3%	10.5%	13.4%	16.2%	6.1%
N=540	10.6%	16.1%	17.0%	29.4%	22.4%	4.4%
N=493	11.0%	18.5%	25.4%	21.1%	18.5%	5.7%

Comments: N=342 _____

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20. To what extent, if any, did communications with OSC provide you with the information you needed? (Check one.)

N=659

- | | |
|---|-------|
| 1. <input type="checkbox"/> Very great extent | 2.0% |
| 2. <input type="checkbox"/> Great extent | 6.1% |
| 3. <input type="checkbox"/> Moderate extent | 13.7% |
| 4. <input type="checkbox"/> Some extent | 18.8% |
| 5. <input type="checkbox"/> Little or no extent | 56.4% |
| 6. <input type="checkbox"/> No basis to judge | 3.0% |

21. Do you believe OSC investigators obtained all the information needed to investigate your claim (that is, collected relevant data and/or addressed all aspects of your complaint), or not? (Check one.)

N=656

- | | |
|---|-------|
| 1. <input type="checkbox"/> Definitely yes | 5.0% |
| 2. <input type="checkbox"/> Generally yes | 5.8% |
| 3. <input type="checkbox"/> Uncertain | 7.8% |
| 4. <input type="checkbox"/> Generally no | 11.3% |
| 5. <input type="checkbox"/> Definitely no | 67.1% |
| 6. <input type="checkbox"/> No basis to judge | 3.0% |

22. Based on your experience, how high or low a rating would you give OSC on handling your complaint, for each of the following factors? (Check on box in each row.)

FACTORS IN OSC RATING	Very high (1)	Generally high (2)	Neither high nor low (3)	Generally low (4)	Very low (5)	No basis to judge (6)
1. Fairness (impartiality) N=654	4.9%	4.6%	8.9%	11.9%	62.1%	7.6%
2. Efficiency (timeliness of OSC's actions) N=654	4.4%	9.0%	20.2%	15.1%	46.0%	5.2%
3. Competency (knowledge or skills) N=649	5.9%	8.3%	14.6%	12.5%	45.6%	13.1%
4. Responsiveness (willingness to listen to/help client) N=651	5.8%	7.8%	11.4%	15.5%	56.2%	3.2%
5. Courtesy (consideration, politeness) N=652	11.7%	23.0%	29.6%	10.7%	20.6%	4.4%
6. Communications (clear, understandable) N=652	8.3%	18.4%	25.6%	16.7%	27.8%	3.2%
7. Overall effectiveness N=651	3.4%	4.6%	8.1%	12.1%	68.7%	3.1%

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23. OSC's mission is to protect federal employees from prohibited personnel practices and to act in the interest of employees in seeking corrective or disciplinary actions when warranted.

In your opinion, did OSC act in your interest, in the interest of your agency, or neutrally, while investigating your complaint? (Check one.)

N=653

- | | | |
|-----------------------------|--|-------|
| 1. <input type="checkbox"/> | Primarily acted in my interest | 2.9% |
| 2. <input type="checkbox"/> | Generally acted in my interest | 1.7% |
| 3. <input type="checkbox"/> | Acted neutrally | 11.8% |
| 4. <input type="checkbox"/> | Generally acted in the agency's interest | 23.4% |
| 5. <input type="checkbox"/> | Primarily acted in the agency's interest | 52.8% |
| 6. <input type="checkbox"/> | No basis to judge | 7.4% |

24. In the space provided below, please explain your response to Question 23.

N=558

25. In your opinion, did you receive a favorable or unfavorable resolution of your complaint from OSC? (Check one.)

N=655

- | | | |
|-----------------------------|-----------------------------------|-------|
| 1. <input type="checkbox"/> | Very favorable | 2.4% |
| 2. <input type="checkbox"/> | Generally favorable | 4.1% |
| 3. <input type="checkbox"/> | Neither favorable nor unfavorable | 7.3% |
| 4. <input type="checkbox"/> | Generally unfavorable | 12.7% |
| 5. <input type="checkbox"/> | Very unfavorable | 70.5% |
| 6. <input type="checkbox"/> | No basis to judge | 2.9% |

IV. Actions Since OSC's Decisions

26. A complainant may file an appeal with the Merit Systems Protection Board in certain reprisal cases. Did you appeal your case to the MSPB?

N=653

- | | | |
|-----------------------------|-------------------------------|-------|
| 1. <input type="checkbox"/> | Yes (Skip to Question 28.) | 51.6% |
| 2. <input type="checkbox"/> | No (Continue to Question 27.) | 48.4% |

27. If you did not file an appeal with the Merit Systems Protection Board, which of the following, if any, best explains why? (Check all that apply.)

N=315

Note: Percentages total to more than 100% due to multiple responses.

- | | | |
|-----------------------------|--|-------|
| 1. <input type="checkbox"/> | Satisfaction with OSC's resolution of the case | 7.0% |
| 2. <input type="checkbox"/> | I did not feel I would win my case at MSPB | 21.6% |
| 3. <input type="checkbox"/> | Frustration with the complaint process | 65.1% |
| 4. <input type="checkbox"/> | Financial cost involved in bringing a case before MSPB | 41.3% |
| 5. <input type="checkbox"/> | Emotional cost involved in bringing a case before MSPB | 47.3% |
| 6. <input type="checkbox"/> | Other (Please explain.) | 42.9% |

28. Are you currently employed by the agency about whom you reported misconduct? (Check one)

N=660

- | | | |
|-----------------------------|-------------------------------|-------|
| 1. <input type="checkbox"/> | Yes (Skip to Question 30.) | 58.6% |
| 2. <input type="checkbox"/> | No (Continue to Question 29.) | 41.4% |

29. If you are no longer employed by the agency about whom you reported misconduct, is this the result of your reporting misconduct? (Check one.)

N=268

- | | | | |
|-----------------------------|------------|--------------------------|-------|
| 1. <input type="checkbox"/> | Yes | } (Skip to Question 31.) | 82.5% |
| 2. <input type="checkbox"/> | No | | 11.6% |
| 3. <input type="checkbox"/> | Don't know | | 6.0% |

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30. Since your case was closed by OSC, have the following reprisals occurred and, if "Yes," are these new or continuing reprisals? (Check one box under "Reprisals" in each row. If "Yes," check boxes under "New or Continuing," as appropriate.)

Note: Results in this question only apply to respondents who are currently employed by the agency about whom they reported misconduct.

REPRISAL ACTIONS		REPRISALS RESULTED FROM DISCLOSURE?			IF "YES," ARE THESE NEW OR CONTINUING REPRISALS?	
		Not applicable (1)	No (2)	Yes (3)	New (4)	Continuing (5)
1. Performance appraisal lowered	N=349	7.4%	34.1%	58.5%	13.5%	86.5%
2. Denial of expected promotion	N=338	17.2%	32.0%	50.9%	13.4%	86.6%
3. An award/bonus denied or reduced	N=338	15.7%	38.2%	46.2%	12.5%	87.5%
4. Demotion, reduction in grade	N=324	19.1%	71.6%	9.3%	14.8%	85.2%
5. Dismissed from agency	N=312	15.7%	78.8%	5.4%	26.7%	73.3%
6. Involuntary transfer within your agency	N=339	10.9%	55.2%	33.9%	21.0%	79.0%
7. Suspension from your job	N=329	12.2%	66.9%	21.0%	37.2%	62.8%
8. Personnel/staff withdrawn	N=325	19.1%	49.2%	31.7%	10.6%	89.4%
9. Training opportunities denied	N=337	9.8%	42.1%	48.1%	14.7%	85.3%
10. Duties changed to assure poor performance	N=337	7.7%	44.8%	47.5%	19.5%	80.5%
11. Relocation of desk or work area in office	N=332	13.0%	53.9%	33.1%	22.4%	77.6%
12. Imposed access restrictions to offices or other work areas necessary to perform your job	N=329	6.7%	54.7%	38.6%	19.8%	80.2%
13. Tighter scrutiny of daily activities by management	N=345	5.8%	33.9%	60.3%	12.0%	88.0%
14. Security clearance withdrawn	N=315	20.3%	68.9%	10.8%	20.7%	79.3%
15. My professional reputation was harmed	N=366	2.5%	15.6%	82.0%	8.3%	91.7%
16. Withholding of information needed to successfully perform job	N=339	7.1%	44.0	49.0%	14.0%	86.0%
17. Social isolation/harassment by management	N=353	3.1%	24.6%	72.2%	10.8%	89.2%
18. Social isolation/harassment by peers	N=331	5.7%	47.1%	47.1%	17.3%	82.7%
19. Required to take a fitness-for-duty exam	N=315	18.4%	71.4%	10.2%	27.3%	72.7%
20. Other (Please specify.)	N=57	5.3%	10.5%	84.2%	35.0%	65.0%

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31. Since your case was closed, (1) have you experienced any of the following positive actions, and, if "yes", (2) was this action a direct result of your disclosure? (Check one box under "Experienced" in each row, and if "Yes," check boxes under "Direct Result," as appropriate.)

Note: Results in this question only apply to respondents who are currently employed by the agency about whom they reported misconduct.

POSITIVE ACTIONS	N	HAVE YOU EXPERIENCED?			IF "YES," AS A DIRECT RESULT OF YOUR DISCLOSURE?	
		Not applicable (1)	No (2)	Yes (3)	Yes (4)	No (5)
1. Promoted	N=370	4.6%	82.7%	12.7%	30.2%	69.8%
2. Transferred voluntarily within agency	N=366	6.3%	78.4%	15.3%	65.4%	34.6%
3. Received any type of an award or bonus	N=375	1.6%	70.4%	28.0%	12.2%	87.8%
4. Received media coverage	N=365	6.0%	85.8%	8.2%	70.4%	29.6%
5. Was reinstated to my prior job	N=364	23.1%	65.7%	11.3%	45.9%	54.1%
6. Received positive recognition by peers	N=367	6.0%	64.6%	29.4%	53.1%	46.9%
7. Received positive recognition by management	N=376	2.4%	83.0%	14.6%	24.5%	75.5%
8. Other (Please specify.)	N=24	8.3%	16.7%	75.0%	76.5%	23.5%

32. Now, after reporting misconduct in your agency and going to OSC, to what extent, if any, do you believe your agency supports the federal policy of ensuring that employees who report misconduct are protected from reprisal? (Check one.)

N=659

- 1. Very great extent 0.6%
- 2. Great extent 0.3%
- 3. Moderate extent 1.7%
- 4. Some extent 3.8%
- 5. Little or no extent 90.3%
- 6. Don't know/No basis to judge 3.3%

33. To what extent, if any, do you support the idea that employees at your agency should report misconduct if they become aware of it? (Check one.)

N=651

- 1. Very great extent 49.8%
- 2. Great extent 7.5%
- 3. Moderate extent 3.4%
- 4. Some extent 4.3%
- 5. Little or no extent 34.1%
- 6. No basis to judge 0.9%

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OPTIONAL QUESTION -- Please consider Question 34 as optional; however, we would appreciate your response since we are very interested in your assessment regarding the following matters.

34. To what extent, if any, have you experienced the following negative personal events as a result of your reporting agency misconduct? (Check one box in each row.)

NEGATIVE PERSONAL EVENTS		Very great extent (1)	Great extent (2)	Moderate extent (3)	Some extent (4)	Little or no extent (5)	Not Applicable/ No basis to judge (6)
1. Loss of income	N=622	48.1%	11.9%	11.3%	9.2%	13.3%	5.8%
2. Lowered sense of pride	N=630	48.3%	15.2%	8.4%	8.7%	17.1%	2.2%
3. Depression	N=640	51.3%	14.2%	13.0%	12.5%	7.7%	1.4%
4. Loss of professional credibility	N=628	53.2%	15.6%	10.2%	8.1%	10.2%	2.7%
5. Separation/divorce	N=563	11.0%	2.1%	2.8%	5.2%	33.0%	45.8%
6. Deterioration of domestic relationships	N=598	25.4%	9.7%	13.0%	14.5%	19.9%	17.4%
7. Mental anguish	N=644	61.5%	16.3%	10.1%	6.7%	4.2%	1.2%
8. Loss of real property (such as your home)	N=565	13.6%	3.5%	4.2%	6.4%	34.5%	37.7%
9. Financial burden (such as additional debt to pay lawyer)	N=612	41.3%	10.1%	12.1%	7.7%	14.9%	13.9%
10. Physical illness or injury	N=613	39.5%	10.8%	9.6%	9.3%	17.9%	12.9%
11. Lessened job opportunities	N=637	68.6%	11.8%	6.0%	4.2%	5.2%	4.2%
12. Other (Please specify)	N=110	80.9%	9.1%	0.9%	0.9%	4.5%	3.6%

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35. If you are still employed with the agency about whom you reported misconduct, would you be likely to report any new agency misconduct to those listed below? (Check one box in each row. If you are not currently employed with the same agency, check box immediately below and go to Question 36.)

NOT CURRENTLY EMPLOYED BY AGENCY (Go to Question 36.) N=266

		Definitely yes (1)	Probably yes (2)	Uncertain (3)	Probably no (4)	Definitely no (5)	Don't know/No basis to judge (6)
1. Immediate supervisor	N=375	17.3%	11.5%	8.8%	15.2%	46.1%	1.1%
2. Agency management other than your immediate supervisor	N=378	16.7%	11.4%	10.1%	13.5%	47.1%	1.3%
3. Employee relations/personnel offices within your agency	N=377	10.9%	6.6%	11.9%	13.8%	55.7%	1.1%
4. Agency's Office of Inspector General	N=373	15.5%	14.5%	13.4%	14.2%	39.7%	2.7%
5. Merit Systems Protection Board	N=368	16.0%	15.8%	21.2%	14.1%	29.3%	3.5%
6. Member of Congress	N=372	34.1%	21.5%	16.9%	9.9%	14.0%	3.5%
7. General Accounting Office	N=361	20.8%	13.9%	27.4%	10.5%	19.7%	7.8%
8. Office of Special Counsel	N=373	17.4%	14.7%	19.3%	14.7%	32.2%	1.6%
9. Government Accountability Project (GAP)	N=362	18.0%	10.8%	24.6%	11.3%	18.2%	17.1%
10. News media	N=362	26.5%	16.6%	17.4%	15.7%	18.5%	5.2%
11. Personal lawyer	N=374	33.4%	19.3%	17.4%	11.0%	13.4%	5.6%
12. Union representative	M=365	23.8%	9.0%	12.9%	11.2%	27.4%	15.6%
13. Law enforcement official	N=363	20.7%	11.3%	21.2%	13.5%	20.9%	12.4%
14. Other (Please specify.)	N=34	58.8%	14.7%	2.9%	2.9%	14.7%	5.9%

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36. Now that you have filed a complaint with OSC and it has been closed, to what extent, if any, do you wish you had known more about the following factors prior to filing that complaint? (Check one box in each row.)

FACTORS	Little or no extent (1)	Some extent (2)	Moderate extent (3)	Great extent (4)	Very great extent (5)	No basis to judge (6)
1. The four elements needed to prove a case of reprisal (as noted in Question 4) N=618	20.2%	7.6%	14.4%	14.1%	41.4%	2.3%
2. The probability of success in bringing a case before the OSC N=629	8.9%	5.9%	8.9%	17.8%	55.3%	2.7%
3. The process OSC uses to investigate claims N=630	8.7%	4.0%	7.9%	17.0%	59.7%	2.7%
4. The emotional costs of bringing a reprisal case before the OSC N=633	8.5%	4.4%	10.9%	13.1%	60.2%	2.8%
5. How much money this case was going to cost me N=622	15.1%	6.9%	10.0%	12.4%	46.3%	9.3%
6. The legal process involved in pursuing a case N=626	10.1%	4.0%	8.9%	15.0%	57.0%	5.0%
7. Other (Please specify.) N=85	1.2%	-	1.2%	3.5%	89.4%	4.7%

37. Overall, in your opinion, how adequate or inadequate is the protection against reprisal for federal employees who report misconduct? (Check one.)

N=658

- 1. Very adequate 0.8%
- 2. Generally adequate 2.6%
- 3. Neither adequate nor inadequate 2.3%
- 4. Generally inadequate 12.5%
- 5. Very inadequate 80.1%
- 6. Don't know/no basis to judge 1.8%

V. Employment

38. At the time of reporting misconduct, how long had you been employed at the agency? (Check one.)

N=655

- 1. Less than a year 8.1%
- 2. 1 to 5 years 25.6%
- 3. 6 to 10 years 17.1%
- 4. 11 to 15 years 17.4%
- 5. 16 to 20 years 15.1%
- 6. 21 to 25 years 9.2%
- 7. 26 to 30 years 5.5%
- 8. Over 30 years 2.0%

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VI. Comments

39. Please use the space provided below to record any comments about OSC and the way it handled your complaint that you believe are important and were not covered in this questionnaire.

N-546

Thank you for your assistance. Please enclose the questionnaire in the accompanying prepaid envelope and mail it to us today.

OGD/MS/3-93
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Comments From the Office of Special Counsel

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

September 21, 1993

The Special Counsel

Ms. Nancy Kingsbury
Director
Federal Human Resource
Management Issues
U.S. General Accounting Office
441 G Street, N.W., Room 3858A
Washington, D.C. 20548

Dear Ms. Kingsbury:

Thank you for the opportunity to submit The Office of Special Counsel's comments on the draft General Accounting Office (GAO) report entitled Whistleblower Protection: Reasons for Whistleblower Complainants' Dissatisfaction Need To Be Explored. Our comments below are divided into two categories. First, we address some general observations about the draft report. Second, we have several specific comments about the findings of the draft report.

As a preliminary point, I note that the survey encompasses only cases that were closed on or before September 30, 1992. Thus, the survey does not gauge the effectiveness of several changes that have been made here at the Office of Special Counsel (OSC) during the course of my term. If you wish, I would welcome the opportunity to inform you of the new procedures that have been implemented and those that are currently being planned.

GENERAL OBSERVATIONS

The Need for Education and Training

OSC is in agreement with the conclusion on page 4 of the draft report that employees are generally unaware of their right to protection for whistleblower disclosures, and agencies are not informing them of this right. Previous GAO reports have found that few federal agencies engage in comprehensive efforts to educate their employees about whistleblower protections and about OSC. In addition, as we have stated previously, we agree with the recommendation on page 5 of the draft report that Congress amend the whistleblower statutes to require agencies, with OSC's guidance, to develop policies and procedures for carrying out the whistleblower statutes and to inform employees periodically of their right to protection from reprisal and where to report misconduct.

See comment 1.

Now on p. 3.

Now on p. 3.

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The ramifications of the lack of education and training for federal employees are two-fold. First, federal whistleblowers who have faced reprisal do not know the avenues of relief available to them. Second, when federal employees do come to OSC without knowing its mission and authority, they (1) do not understand that OSC is an agency of limited jurisdiction, and (2) rarely recognize that there are specific statutory requirements that must be satisfied in order for OSC to pursue their cases.

OSC is already engaged in several efforts to address this lack of training by the agencies. In response to a House Subcommittee request, OSC has provided technical assistance on legislation which would require all of the agencies to engage in regular training efforts. Similarly, OSC has been involved in an executive branch initiative that would accomplish the same end. Finally, we are considering several methods for providing more information to complainants at the early stages of their contacts with OSC. For example, we are developing supplements to the letters that OSC's Complaints Examining Unit (CEU) sends to complainants. These supplements would: (1) explain the criteria for finding a violation of each subsection of 5 U.S.C. § 2302(b) (the prohibited personnel practices); (2) explain the OSC process and the need for the complainant to provide all relevant information; and (3) explain the limits of corrective action.

Correlation Between Dissatisfaction and Corrective Actions

The draft report noted a close correlation between a complainant's dissatisfaction with OSC and the fact that the individual did not receive corrective action. For example, GAO reported that about 85 percent of the complainants whose cases were closed in CEU gave OSC a low or very low rating in effectiveness, a figure which dropped to 37 percent for those who received corrective action.

This correlation between dissatisfaction and lack of corrective action is hardly surprising. Complainants who do not receive the redress they think they deserve are simply unlikely to respond favorably to OSC. This is especially true with an issue as personal and as important as an individual's livelihood. In fact, it is surprising that 15 percent of the respondents gave OSC higher marks even when OSC had to close their cases. The fact that some of the people who obtained corrective action were still dissatisfied does not detract from this point, as complainants often seek greater corrective action than they are legally entitled to receive or OSC is authorized to request. Inevitably, some of these people will feel dissatisfied with our performance.

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Dissatisfaction with OSC Confused with Dissatisfaction with Whistleblower
Protections

See comment 2.

The draft report does not make the important distinction between complainant dissatisfaction with OSC's investigative and decision-making process and complainant dissatisfaction with the statutory protections and procedures available to whistleblowers generally. For example, the report states that 83 percent of the respondents thought they received unfavorable resolutions of their complaints. This figure is just as likely to be a comment on respondent dissatisfaction with the whistleblower protections, as a comment on the quality of OSC's work. As stated above, we believe the high level of dissatisfaction with the resolution of complaints reflects the high number of respondents who came to OSC with complaints that we were unable to pursue under the Whistleblower Protection Act of 1989 (WPA).

See comment 3.

It would have been useful for GAO to have conducted additional analysis of the complaints filed by the respondents, looking at whether they were properly closed and whether the respondents were seeking legitimate corrective action. It should be noted that in its only past study along these lines, GAO analyzed OSC's determinations and investigative process in specific cases. The very significant result was that GAO concluded that OSC had reasonable grounds for its determinations in every case reviewed.

While OSC is always looking for new legal theories which we can use to explore the boundaries of the Whistleblower Protection Act, it would be inappropriate for us to pursue cases which are clearly outside the bounds of the statutory protections or cases which lack evidentiary support. To the extent that this results in dissatisfaction among complainants, the reasons for that dissatisfaction lie outside of OSC's control.

Moreover, as indicated above, we believe that there is a direct correlation between federal employees' lack of knowledge and understanding of OSC and the reported rate of dissatisfaction. We specifically attribute this to the (1) gap between federal employees' perception of what OSC can do for a complainant and OSC's actual authority, and (2) the divergence between the everyday understanding of the term whistleblower "disclosure" and the strict statutory meaning of what constitutes such a "disclosure."

Dissatisfaction is a natural result in any situation in which expectation does not coincide with the actual circumstances. This is particularly true when persons come to OSC, often as a last resort, with issues that affect their livelihoods, and they anticipate that OSC will be able to obtain relief on their behalf, regardless of the

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circumstances. While their dismay is understandable, I would not want people to draw the conclusion that OSC is deficient in its duties.

The Draft Report's Objectives and Methodology

The draft report suffers from several difficulties with respect to objectives and methodology. Admittedly, the draft report's articulated objective is quite narrow, (*i.e.*, "to find out what Federal employees who had reported misconduct -- and allegedly suffered reprisals -- thought about the whistleblower reprisal complaint process at OSC"). Thus, if the draft report is used for the limited purpose of highlighting the need for greater efforts to educate federal employees about their rights as whistleblowers, then the methodology chosen would appear to be adequate. However, if the inference that one is to draw is that OSC is deficient in its investigative and prosecutorial responsibilities, then it bears emphasis that these findings do not support such a conclusion.

These survey results would become far more meaningful if an effort could be made to determine the validity of the complaints and the reasonableness of the complainants' expectations. Such a survey would include face-to-face interviews with the opportunity for follow-up questions. It would also have to include questions about what the respondents initially expected OSC to do for them so that expectations could be accurately compared to the degree of relief that was reasonable in specific cases. With face-to-face questioning, the opportunity to explain questions and further probe answers would ultimately provide a more meaningful result.

An additional concern is that while the focus of the analysis is the degree of complainant dissatisfaction with OSC, most of the questions in the survey do not address the complainants' interactions with OSC. For example, approximately 15 questions address issues of knowledge about whistleblower protection in general, before disclosures were made and the respondents had contact with OSC personnel. Another 14 questions address matters which occurred after OSC closed the case. Thus, only ten questions address OSC's handling of complaints.

Also, the title of this draft report presumes that the respondents were bona fide whistleblowers (*i.e.*, that they satisfied the criteria of the Whistleblower Protection Act of 1989). In fact, the survey made no effort to isolate bona fide whistleblowers, but rather included all people who identified themselves as whistleblowers regardless of whether they satisfied the statutory criteria.

See comment 4.

See comment 5.

See comment 6.

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ADDITIONAL COMMENTS ON SPECIFIC FINDINGS

OSC has several additional comments about specific findings in the draft report. As an initial matter, several of the responses suggest that many of the respondents may not have fully understood what they were being asked. For example, the response to question 8 states that 54.1 percent of the respondents sought assistance from OSC before they reported the agency misconduct. This response is highly questionable because our experience demonstrates that few, if any, respondents seek help from OSC before they make a disclosure of misconduct within their agencies. The validity of this observation is bolstered by the fact that only 56.6 percent even knew that OSC had a role in protecting federal employees from reprisal before they disclosed the misconduct.

Several of the responses would appear to reflect confusion between OSC's responsibilities in receiving whistleblower disclosures of agency misconduct and our responsibilities in investigating and prosecuting allegations of whistleblower reprisal. For example, the responses to question 9 indicate that 54.3 percent of the respondents (359 persons) made their initial disclosure of agency misconduct to OSC. However, OSC only identified for GAO complainants who filed complaints for reprisal for whistleblowing under Section 2302(b)(8). We did not identify any persons who made whistleblower disclosures to OSC's disclosure unit. Moreover, from FY 1990 through FY 1992 there were only 335 disclosures submitted to the disclosure unit. Even assuming some degree of variance in the responses, it is a virtual impossibility that this survey encompassed every person who has made a disclosure to OSC during that three year period. In fact, for the reported statistic to be correct, every person who submitted a whistleblower disclosure to OSC's disclosure unit, would have to have also filed a (b)(8) complaint. Our records reflect almost no overlap between these two categories.

Similarly, the responses to question 19 reflect an almost impossible result. The draft report indicates that 9.2 percent of the respondents stated that they had no written contact from OSC. However, it is a firm OSC practice that every complainant receives an acknowledgement letter and, when OSC has finished its work on a given case, a completion letter. Many complainants will also receive several interim letters apprising them of the status of the case. In addition, the finding that 22.4 percent of the respondents reported that all telephone contacts were initiated by them cannot be accurate. CEU almost always initiates contacts with complainants by telephone after receiving the completed complaint forms.

See comment 7.

See comment 8.

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RESPONSE TO RECOMMENDATION

We agree with the conclusion of the draft report that agencies must make greater efforts to educate their employees about whistleblower rights and protections. We believe that this step will enable federal employees to know both the responsibilities and authority of OSC. This, in turn, should affect the level of satisfaction that they have with OSC's efforts. Though we do have concerns with certain findings of the draft report, we look forward to working with the Subcommittee, as we have in the past, to address these important issues.

Thank you for providing me with this opportunity to comment on the draft report. If there are any questions about these comments, or if any additional OSC comments are needed, please contact Michael G. Lawrence, Director of Congressional Affairs, at (202) 653-9001.

Sincerely,



Kathleen Day Koch

Enclosure

The following are GAO's comments on OSC's September 21, 1993, letter.

GAO Comments

1. The cutoff date of September 30, 1992, was necessary because of the lead time needed to obtain the data on whistleblower complainants from OSC and to finalize the mailing list for the survey. Our objective was to assess federal employees' views on the whistleblower complainant process at OSC during the period their complaints were processed through OSC. The results of this survey should provide a good baseline for OSC to use in assessing the effectiveness of any changes that it plans to make or that have been made since the Special Counsel's 5-year term began on December 21, 1991.
2. We disagree with OSC and think that there is a sufficient number of questions in the survey to enable us to draw conclusions about what complainants think of OSC's investigative process. Our survey solicited complainants' views on items that clearly pertained to the OSC investigative process (see questions 16, 17, 18, 19, 20, 21, 22, 23, and 36). The complainants generally expressed dissatisfaction with the OSC process.
3. As stated in appendix I, our objective was to find out what federal employees who had allegedly suffered whistleblower reprisals thought about the whistleblower reprisal complaint process at OSC. We also stated that we did not review the merits of individual cases nor did we review OSC's handling of the cases.
4. Our stated objective was to find out what federal employees thought about the whistleblower reprisal complaint process at OSC, and it is clear that the federal employees were dissatisfied with OSC's process. We did not evaluate the extent to which OSC is meeting its investigative and prosecutorial responsibilities.
5. The report summarizes almost all of the survey responses, and the results of the entire survey are included in appendix II of the report. It is true that the report summarizes the complainants' views of the entire process, both before and after the complainants' involvement with OSC. We believe the before and after questions provide a more complete picture of the complainants' views of the whistleblower reprisal complaint process. Also, we point out that complainants were dissatisfied with OSC and agency performance, not just with OSC.

6. We disagree that the title of the report implies that the respondents are bona fide whistleblowers. In fact, we used OSC's terminology to identify those federal employees who went to OSC claiming whistleblower reprisals. Throughout the report, as in the title, we identify these individuals as whistleblower complainants. It should be noted that neither we nor OSC could isolate bona fide whistleblowers, and we reached agreement with OSC officials in the design phase of this assignment to analyze the survey results based on how far complainants' cases proceeded within the OSC process. Thus, our further analysis of the survey results differentiated between those complainants whose cases were closed in CEU, those who went through OSC's more extensive investigative process, and those who received corrective action.

7. With respect to OSC's assertion that many of the survey respondents may not have fully understood what they were being asked, we took every reasonable precaution to ensure the validity of the responses. In addition to having the survey designed internally by survey methodologists with experience in survey design, we pretested the survey with respondents from the universe of complainants who had gone to OSC to better assure ourselves that respondents would understand the questions and not have difficulty answering them. We also solicited the views of OSC officials to ensure that the questions were being asked fairly, accurately, and in an unbiased manner. The OSC officials' only comment on the survey was that we separated the responses by those complainants who received corrective action and those who did not. Such an analysis is included in the report.

OSC cited three instances where it said that many of the respondents may not have fully understood what they were being asked. In questions 8 and 9, some respondents may have interpreted the wording of agency misconduct to have included whistleblower reprisal, which is in fact misconduct. Regardless of how misconduct was perceived, the fact remains that most employees sought assistance within their own agencies before reporting misconduct and that most of those who reported misconduct did so within their own agencies.

8. OSC states that the responses to question 19 reflect an almost impossible result. OSC states it is its firm practice that every complainant receives an acknowledgement letter and a completion letter and that others may receive interim letters. OSC also stated that CEU almost always initiates contact with the complainants by telephone. Although OSC is noting what should be done based on what is stated in its Complaints Examiner's

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Manual, there is no evidence offered to show that these procedures were actually being implemented in all cases.

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Related GAO Products

Whistleblower Protection: Employees' Awareness and Impact of the Whistleblower Protection Act of 1989 (GAO/T-GGD-93-19, Mar. 31, 1993).

Whistleblower Protection: Agencies' Implementation of the Whistleblower Statutes Has Been Mixed (GAO/GGD-93-66, Mar. 5, 1993).

Whistleblower Protection: Determining Whether Reprisal Occurred Remains Difficult (GAO/GGD-93-3, Oct. 27, 1992).

Whistleblower Protection: Survey of Federal Employees on Misconduct and Protection From Reprisal (GAO/GGD-92-120FS, July 14, 1992).

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