



Truth-Telling in Government

A Guide to Whistleblowing for Federal Employees, Contractors, and Grantees

2ND EDITION



GOVERNMENT
ACCOUNTABILITY
PROJECT

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CONTENTS

01 Introduction

- 01 Truth-Telling in Government
- 04 A Resource for Employees of Conscience
- 06 Whistleblowers Who Made a Difference

08 What is Whistleblowing?

- 08 Whistleblowing: Employee Disclosures of Abuses of Public Trust
- 08 Not Whistleblowing: Disclosures of “Lesser” Misconduct and Policy Disagreements
- 09 The Truth About Whistleblowers: Tackling Misperceptions

13 Federal Employee, Contractor, and Grantee Whistleblower Rights and Remedies

- 13 Whistleblower Protections for Federal Employees
- 22 Whistleblower Protections for Federal Contractors and Grantees
- 23 Other Speech Protections for Federal Employees and Contractors
- 27 Whistleblower Protections for Intelligence Community (IC) Workers
- 29 Whistleblower Protections for Military Personnel
- 30 Whistleblower Rights Supersede Non-Disclosure Policies

32 Survival Tips: How to Report Wrongdoing Safely & Effectively

- 32 Pre-Disclosure Precautions & Practices
- 34 Avenues for Reporting
- 39 A Note on Anonymity
- 41 Best Practices for External Whistleblowing

43 Resources

- 43 Contact Government Accountability Project
- 43 Government Resources
- 44 Other Whistleblower Support Organizations
- 45 Books/Articles on Whistleblowing
- 45 Information Security



Introduction

Truth-Telling in Government

The job of government to serve the public's interests depends on the commitment and effort of millions of federal employees, contractors, and grantees around the world. Those same workers are in the best position to learn when decisions and actions deviate from the core mission and responsibilities of government, be it through corruption, failing to comply with laws and regulations, wasting taxpayer money, jeopardizing public health and safety, or politically motivated abuses of authority.

Whistleblowers are employees who use free speech rights to challenge abuses of power that betray the public trust. Whistleblowers have exposed problems across every issue of public concern: dangerous food, water and pharmaceuticals; banking fraud; illegal electronic surveillance; immigration policies and practices that knowingly harm women and children; censorship of climate science information; risks of nuclear contamination; unsafe airplanes; foreign interference in our elections; flawed responses to the coronavirus outbreak; and the inappropriate politicization of federal agencies.

As concern about corruption, wrongdoing, and abuses in government increases, so does our dependence on employees' willingness to speak up as a mechanism to promote accountability and protect the public's interest.

Employees are one of the most powerful mechanisms for promoting accountability, averting or mitigating tragedy, and protecting the health of democracy itself. Whistleblowers, through the power of information about abuses

of public trust, catalyze our democratic system of checks and balances, fueling accountability through the press, the courts, inspectors general and other oversight bodies, Congress, civil society groups, and citizens.

Whistleblowing as a public service is increasingly supported by the public. A 2020 [Marist poll](#) found that 86% of Americans strongly believe that whistleblowers who report corporate or government fraud deserve protection from harm. In addition, 82% of Americans say that passing stronger laws that protect employees who report corporate fraud should be a priority for Congress.

However, despite increasing support and the fact that most employees who choose to speak out feel compelled by an ethical and professional duty to do so, it is a choice fraught with risk.

The now-infamous “Ukraine whistleblower” graphically demonstrated both the power and risk of blowing the whistle. This employee (reportedly with the Central Intelligence Agency) disclosed through existing legal channels that President Trump sought to pressure the president of Ukraine to announce an investigation into a political rival. That information catalyzed a Congressional investigation, which then compelled other civil servants to testify as witnesses in the ensuing hearing that resulted in the impeachment of the former president. The whistleblower’s disclosures, supported by other employee truth-tellers, turned the gears of our democratic system of checks and balances.

Unfortunately, the more significant the disclosures’ impact, the more the risk of serious retaliation increases. This whistleblower, largely recognized as a patriot for exercising their duty of loyalty as a federal employee to the Constitution and the rule of law, faced relentless threats to their safety in reprisal for disclosing corruption at the highest level. Even the whistleblower’s lawyers faced death threats. Long-standing public servants who testified before Congress validating the whistleblower’s initial disclosures were publicly disparaged by President Trump and his supporters and suffered retaliatory transfers for telling the truth.

While this may be an extreme case study, it puts in high relief the potential risk involved with blowing the whistle.

Many in government service have chosen to be silent observers of misconduct, enduring affronts to institutional integrity while censoring themselves, because of the legitimate fear of reprisal and/or fear of futility—cynicism that speaking out won’t make a difference.¹

¹ Research consistently identifies fear of retaliation and cynicism as the primary reasons employees

Others, however, use different strategies to fulfill their duty as public servants and protect the public trust. Some employees question their superiors in constructive ways as problem solvers and are able to effect positive change from within their organizations. Some keep careful records, documenting concerns about activities that compromise an agency's public interest mission. Some in government service choose to exit, yet do so revealing and decrying the abuses they witnessed on the job.

Then there are the courageous employees who decide to blow the whistle on illegality and other serious wrongdoing while remaining in their workplace. They may do this by giving information to managers they believe might respond with integrity, to an agency Inspector General, to a member of Congress, or to a journalist or advocacy group.

And indeed, not all whistleblowers' experiences follow the narrative arc of making a significant disclosure only to suffer terrible retaliation. Some employees are able to make disclosures and effectively preempt reprisal through campaigns that marshal legal rights, media coverage, congressional action, and public support for their whistleblowing. Others who do suffer reprisal often achieve vindication both in judicial court and in the court of public opinion. And many see the problems they disclosed addressed—which is what motivated them to blow the whistle in the first place—through public pressure, court verdicts, regulatory reforms, and executive agency course correction.

Whistleblowers are often the best, and sometimes the only, path toward holding government institutions accountable, ensuring regulatory compliance, and protecting the public's interests and democracy itself. Even in the most factious periods of Congress, whistleblower protection is a policy issue that has historically garnered unanimous, bipartisan support, because fighting waste, fraud and abuse is a non-partisan concern. Whistleblowers themselves cross the political spectrum, yet all share one thing in common: a professional, ethical and/or legal duty to report evidence of serious betrayals of public trust through abuses of power, propelled by hope that speaking up will make a difference or by belief that their silence would feel like complicity. This guide is for them—maybe indeed for you—and for all of us who benefit from whistleblowers' acts of conscience.

stay silent despite witnessing wrongdoing. See, e.g., E.W. Morrison, "Employee Voice and Silence," Annual Review of Organizational Psychology and Organizational Behavior, Vol. 1 (2016): 173-197; David Mayer, et al, "Encouraging employees to report unethical conduct internally: it takes a village," Organizational Behavior and Human Decision Processes 121 (2013):89-103.

A Resource for Employees of Conscience

Government Accountability Project is the nation's leading whistleblower protection and advocacy organization, having assisted over 8,000 whistleblowers since its founding in 1977. We help whistleblowers hold government and corporate institutions accountable by presenting their verified concerns to public officials, advocacy groups, and journalists, and seeking justice when they suffer reprisal. Government Accountability Project has drafted, spearheaded the campaigns to pass, or helped defend all the federal whistleblower protection laws that exist today. We have unique expertise, earned over 40 years, in minimizing the risk and maximizing the effectiveness of whistleblowing.

In light of unprecedented assaults on democracy and truth during the Trump administration, in 2020 Government Accountability Project launched the **Democracy Protection Initiative** to support and protect employees wanting to blow the whistle on threats to election integrity and a peaceful transfer of power, and to support workers in the next administration who wish to report information about past and new abuses in order to strengthen democracy going forward. By offering "know your rights" resources and pro bono representation to employees most likely to witness wrongdoing, Government Accountability Project stands ready to counter disinformation through the power of truth-telling, helping employees exercise their rights to blow the whistle, defending against unlawful retaliation, and ensuring their disclosures promote change. We are joined by an army of partners and lawyers committed to supporting and protecting whistleblowers, including the American Constitution Society, American Oversight, Citizens for Responsible Ethics in Washington, Georgetown Law's Institute for Constitutional Advocacy and Protection, Protect Democracy, Public Citizen, We The Action, and 23 other organizations.

Journalists and other advocacy organizations are increasingly encouraging employees to come forward with information, a welcome recognition of the important role whistleblowers play in promoting accountability and protecting democracy. However, unlike an experienced attorney, who will both understand how to protect the whistleblower while assessing safe avenues and strategies for disclosing concerns, a reporter or public interest group may place a premium on securing valuable information while failing to fully appreciate the potential risks to their source, inadvertently causing them harm. Given

that most employees are neither activists nor media-savvy, consulting with an experienced attorney about how to raise concerns safely and effectively is always a wise first step.

Government Accountability Project attorneys have prepared this guide for federal employees, contractors, and grantees who have observed wrongdoing and want to take action, but who are unfamiliar with the complex terrain of whistleblowing and wish to get a better sense of available protections and avenues for disclosing misconduct. While this guide is neither comprehensive nor should be construed as offering legal advice, it offers some basic guidance as a starting point for employees who seek information regarding their legal rights to report serious abuses that undermine public integrity. Information is power, and employees who are better informed of their rights, risks, and options around disclosing wrongdoing will also be better able to answer the call of professional integrity and civic duty by reporting serious abuses of public trust.

Whistleblowers Who Made a Difference

IMMIGRATION

Dawn Wooten, a nurse at ICE's (Immigration and Customs Enforcement) Irwin County Detention Center (ICDC) in Ocilla, Georgia, shined the light in 2020 on inadequate medical care at the facility, including failures to comply with COVID-19 guidelines to control the spread of the virus and hysterectomies performed on immigrant women with dubious consent. Wooten suffered a demotion and ultimately no work assigned after raising concerns internally; she subsequently filed a complaint with the Department of Homeland Security's Office of Inspector General (OIG), and shared her concerns with the press and Congress. Her disclosures generated an avalanche of media coverage, congressional calls for investigations and multiple Hill briefings, organizing by the immigration justice community, multiple agency investigations, and a class action lawsuit of immigrant women seeking justice for being victims of unwanted medical procedures.

POLITICIZED ABUSE OF AUTHORITY

Multiple employees at the U.S. Agency for Global Media (USAGM's) Voice of America (VOA), the U.S.'s largest international broadcaster, blew the whistle on Chief Executive Officer Michael Pack's politically motivated abuse of authority, including violating the VOA legal firewall that protects VOA journalists' independence, terminating the presidents of all of the USAGM-funded networks, and removing critical senior staff and/or revoking their security clearances, replacing them with political appointees that undermined the independence of USAGM reporters to promote political propaganda. They filed a complaint with the Office of Special Counsel (OSC) which found a substantial likelihood of wrongdoing and ordered an investigation. Pack was terminated on the first day of President Biden's term and replaced with one of the whistleblowers he had reassigned, with others restored to their posts.

WASTE & CORRUPTION

Kevin Chmielewski began serving in May 2017 as the deputy chief of staff for operations under then-EPA Administrator Scott Pruitt. After he and other senior officials internally challenged Pruitt's spending and management practices, Chmielewski was put on administrative leave without pay, and others were reassigned or demoted. The personnel actions triggered New York Times coverage in April 2018; Congressional inquiries swiftly followed based on Chmielewski's disclosures, which included extravagant spending on a private phone booth, an excessive security detail, first-class air travel, and personal vacations. Administrator Pruitt ultimately resigned in July 2018, facing widespread public criticism and at least thirteen federal investigations.

PUBLIC HEALTH

Dr. Rick Bright, the former director of the Biomedical Advanced Research and Development Authority, blew the whistle on the Trump administration's unwillingness to prepare for the coronavirus pandemic and promotion of bogus drug therapies.

In response, he was assigned to a lesser position in the National Institute of Health (NIH), prompting him to file a whistleblower retaliation complaint with the Office of Special Counsel. Even in his diminished role, Bright proposed a robust national testing infrastructure, which his supervisor declined to support because of political considerations and fear of reprisal. He resigned from the NIH after receiving no meaningful work assignments for six months. Soon after, he was awarded the Ridenhour Prize for Truth-Telling and was appointed by President-elect Biden to serve on the COVID-19 Task Force.

CLIMATE SCIENCE CENSORSHIP

Maria Caffrey was a climate scientist with the National Park Service who pushed back internally on repeated and aggressive attempts to censor references to human-caused climate change in a report she wrote on the impacts of sea level rise on coastal parks. The report was ultimately published with the references to anthropogenic climate change intact after press coverage and intervention by members of Congress. She filed a scientific integrity complaint in June 2018 about the censorship attempts, but was eventually forced out of her job. Caffrey filed a whistleblower complaint and shared her ordeal with Congress and the press; the story of the cost of her refusal to bend to politically motivated science censorship has supported new reform efforts to protect federal science and scientists.

FOOD SAFETY

Jill Mauer, a USDA Food Safety and Inspection Service inspector of more than 20 years, became concerned about changes to the pork inspection program, including line speeds being too fast to properly inspect the meat, which can result in contaminants reaching consumers. She and fellow inspector Anthony Vallone filed disclosures in 2019 with the Office of Special Counsel and also shared their concerns with the USDA Inspector General, Congress, and the press. Their disclosures have prompted federal investigations and are fueling congressional action to address food safety risks.

AVIATION SAFETY

Jay Brainard, the Federal Security Director in Kansas for the Transportation Security Administration, sounded the alarm internally in spring 2020 on gross mismanagement in TSA's response early on in the coronavirus pandemic. As TSA continued to withhold protective equipment from workers and refused to mandate that agents wear masks and change gloves often, Brainard filed a disclosure in June 2020 with the Office of Special Counsel and went to the press to raise the alarm about airports being vectors for the spread of COVID-19. His disclosures, once public and validated by the OSC, prompted TSA in early July to update its safety protocols to address the concerns.

What is Whistleblowing?

Whistleblowing: Employee Disclosures of Abuses of Public Trust

Whistleblowers are those who witness wrongdoing in the workplace and decide to speak up to expose serious violations of public trust.

While there is no single law that protects all whistleblowers, the Whistleblower Protection Act, which is the primary law that applies to most federal employees, defines a whistleblower as an employee who discloses information that he or she reasonably believes evidences:

- a violation of law, rule, or regulation;
- gross mismanagement;
- a gross waste of funds;
- abuse of authority; or
- a substantial and specific danger to public health or safety.²

This definition captures two key points about whistleblowers. First, whistleblowers typically are current or former employees with information about wrongdoing. Second, the concerns are serious and their disclosure promotes legal compliance or protects the public interest.

Not Whistleblowing: Disclosures of “Lesser” Misconduct and Policy Disagreements

If the misconduct does not fall into a category of concern as outlined above, it does not mean that the concern isn't important, valid, or even corrosive to workplace integrity. Likewise, an employee may have a legitimate dispute about a decision of management.

2 See Whistleblower Protection Act of 1989 (“WPA”), 5 U.S.C. § 2302(b)(8) & (b)(9). In the Whistleblower Protection Enhancement Act of 2012, Congress unanimously expanded whistleblowing to shield disclosures of scientific censorship that would result in one of the aforementioned types of misconduct. Whistleblower Protection Enhancement Act of 2012, Pub. L. No. 112-199, § 110(b) (“WPEA”). The WPA, WPEA and other laws that give federal employees the right to blow the whistle are covered in more detail later in this Guide.

However, if an employee's concern is not about legal violations, gross mismanagement, a gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety, **the disclosures would not rise to a level that would meet the standard of "whistleblowing" protected under the WPA or most other whistleblower protection laws.** This does not mean the employee is gagged, however. For any matter of public concern, the First Amendment to the U.S. Constitution prohibits prior restraint, and in some cases will shield speech outside the whistleblower laws. But these rights are far less clear, difficult to prove, and allow inadequate remedies.

Similarly, if an employee's disagreement with a policy decision is rooted in a difference of opinion, rather than about the specific **consequences** of the policy decision that the employee reasonably believes would result in legal violations, gross mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to public health or safety, **that policy disagreement would not constitute protected whistleblowing under the WPA.** The flip side is reassuring, however, and a lesson for how to frame a disclosure to secure legal protection under the WPA, which is to **articulate the illegal or dangerous consequences of a policy's implementation.**³ While an employee may have First Amendment rights to express dissent with policy, these rights are more uncertain.

The Truth About Whistleblowers: Tackling Misperceptions

While whistleblowers are increasingly recognized as ethical heroes essential to exposing and addressing government abuses and corporate misconduct, the term still carries negative connotations. Cultural biases, combined with natural resistance to those who challenge the behavior of their employers, have generated several common misperceptions about whistleblowers. Government Accountability Project's experience working with thousands of employees of conscience refutes these beliefs with several important truths:

TRUTH #1: Almost all whistleblowers raise concerns internally first.

First, it is important to note that employees who raise serious concerns internally

³ 5 U.S.C. § 2302(a)(2)(D).

to managers or through other internal channels are considered whistleblowers under nearly all whistleblower protection laws.

The vast majority of whistleblowers—over 95%—try to report wrongdoing internally before going outside of their organization.⁴ Most employees have faith that raising legitimate concerns to their supervisors, an ombudsman, or through another internal mechanism will resolve the issue. Some employees spend months in frustration while diligently attempting to achieve corrective action in-house. Typically, it is only after attempts to address a problem are met with inadequate action or reprisal does an employee decide to “blow the whistle” externally.

TRUTH #2: Whistleblowers are motivated by a strong sense of professional, civic, ethical and/or legal duty influenced by the seriousness of the misconduct or degree of harm.

When employees do speak up, it is most often because they feel they are just doing their job.

Contrary to popular belief, the majority of whistleblowers do not typically speak up for self-preservation, enrichment or because they have an axe to grind. They speak out because they have witnessed misconduct they feel must be addressed, such as dangerous safety problems at nuclear weapons facilities, drugs that should be recalled because they are causing deaths, or gross waste of taxpayer dollars on defense contractor boondoggles.

Some whistleblower laws, like the False Claims Act and the Dodd-Frank Act, do offer whistleblowers a percentage of the portion of money recovered by the government as an incentive for reporting fraud. While these laws have been very successful in encouraging reports of fraud, not only are the chances of winning an award very small, they are also not the norm and have resulted in increased retaliation. Most whistleblower laws do not have award provisions, yet thousands of employees annually report forms of misconduct other than fraud—such as public safety threats, environmental violations, and other abuses—each year.

In our experience, most employees who feel compelled to speak out about wrongdoing explain that they had to act in order to remain true to themselves. As one explained, “I have to keep looking at myself in the mirror.”

⁴ See Ethics Resource Center, “Inside the Mind of a Whistleblower: A Supplemental Report of the 2011 National Business Ethics Survey” (2012).

TRUTH #3: Disclosing evidence of wrongdoing is not a crime. It is a legally protected right.

As a rule, unless public release is specifically barred by statute, whistleblowers who disclose evidence of illegality, financial fraud, environmental violations, or public health and safety threats are engaging in legally protected activity. Disclosures are protected whether as dissent or part of job duties.

Whether or not you agree with the actions taken by whistleblowers Edward Snowden, Reality Winner, or Chelsea Manning⁵, national security employees who have released classified information often dominate the public narrative about whistleblowing. Like Daniel Ellsberg, the defense analyst who famously released to the New York Times the Pentagon Papers showing the Johnson administration had deceived the American public and Congress about the nation's involvement in the Vietnam war, these were civil disobedience whistleblowers who, because of what they believed to be ineffective internal avenues for disclosure and limited legal protections available for intelligence community (IC) employees and contractors, chose to commit a crime—revealing classified information—in order to report what they believed were more significant abuses. Further, because currently there is no public interest defense available to whistleblowers charged with releasing classified information, prosecutions typically result in convictions of IC employees even if their disclosures exposed serious matters of public concern, such as the NSA's mass electronic surveillance of US citizens.

Intelligence community whistleblowers are unique, as they have different legal protections with more vulnerabilities. Indeed, the Ukraine whistleblower, a federal employee, used existing legal channels available to IC whistleblowers to report concerns about the Trump administration's pressure on Ukraine's President to announce an investigation of Trump's political rival by withholding aid. Nonetheless, the whistleblower's disclosure, vindicated by a preliminary review from the IG, almost wasn't shared with Congress despite a statutory mandate. Additionally, the whistleblower's right to anonymity has been threatened repeatedly, along with the whistleblower's own safety. These events spotlight the real risks of retaliation for exposing abuses of the powerful even when reporting is done by the books.

⁵ Edward Snowden, an NSA contractor, disclosed to The Guardian in 2013 the NSA's warrantless mass surveillance of U.S. citizens; Reality Winner, also an NSA contractor, disclosed to The Intercept Russian attempts in 2016 to hack state election systems; Chelsea Manning, and Army private and intelligence analyst, released to Wikileaks a 2007 video, among thousands of other documents, of a U.S. helicopter crew firing on civilians, wounding two children and killing two Reuters journalists in Baghdad.

The majority of whistleblowers, however, do not risk breaking the law by improperly disclosing classified information to expose wrongdoing. **Only a small percentage of whistleblowers work in the intelligence community.** Even then, protections have been granted to intelligence contractors who make lawful disclosures in the time since Edward Snowden and Reality Winner came forward.⁶

Unfortunately, public prosecutions of national security whistleblowers have emboldened new efforts to criminalize whistleblowing in non-intelligence contexts. “Ag-Gag” legislation exists in some states that criminalizes the publication of photo and video documentation at industrial agricultural facilities, though courts have found some of these laws unconstitutional. Corporate employers seek, and occasionally secure, criminal prosecution of employee whistleblowers for “theft” of company property which proves the company’s crime. Firms on occasion threaten to or even file multi-million dollar “SLAPP” suits against whistleblowers for violations of non-disclosure agreements or alleged defamation. Government agencies are increasingly referring employees for criminal investigations and prosecutions when they engage in protected whistleblowing activity. The consequences of these aggressive harassment strategies can be far more destructive, and effective, at terrifying employees into silence than conventional employment reprisals like termination.

The misbelief that whistleblowing is sometimes rogue rather than legal activity is further exacerbated by government attempts to suppress employee speech. These include illegal gag orders, over-reaching non-disclosure agreements, bans on using certain words in government documents, and mandatory “anti-leak” trainings. Aimed to prevent “unauthorized disclosures” even when those disclosures are made lawfully (indeed, most whistleblowing to external sources is inherently “unauthorized”), these efforts create a dangerous chilling effect on employees who are often unclear about their legal rights to blow the whistle.

The good news is that the ongoing proliferation of gag orders is a legal bluff, as brazen as it is unlawful. The Whistleblower Protection Enhancement Act and the Consolidated Appropriations Act passed each year both provide protection against repressive gag orders that would violate the whistleblower rights of federal employees and contractors.⁷ The bad news is that, despite the law, sweeping gag orders are more prevalent than in previous decades.

6 50 U.S.C. § 3234(a)(3).

7 Illegal non-disclosure policies are discussed in further detail on pp. 31.

Federal Employee, Contractor, and Grantee Whistleblower Rights and Remedies

While various rights and remedies exist to encourage workers in the federal government system to blow the whistle on serious abuses, the legal landscape is complicated. Each law has different remedies, different procedural steps, and different paths for enforcement. Not only can it be difficult to evaluate available legal options depending on each unique set of facts—analysis requires assessing, among other factors, the type of worker one is, which agencies are involved, the content of the disclosure, to whom the disclosure should be (or was) made, and what kind of reprisal was suffered. It can also be difficult to navigate the legal process once a particular path is chosen.

Below we highlight the primary laws that support the rights of federal employees, contractors, and grantees to report serious misconduct they witness on the job; later sections detail various avenues for reporting and things to consider before making disclosures about misconduct. The list is not comprehensive, and we strongly encourage anyone thinking about blowing the whistle to seek advice from an attorney experienced in representing whistleblowers.

Whistleblower Protections for Federal Employees

The Whistleblower Protection Act

The Whistleblower Protection Act of 1989, amended by the Whistleblower Protection Enhancement Act of 2012,⁸ is the primary law that gives most federal employees the right to blow the whistle—to report serious wrongdoing—free from reprisal.

⁸ See Whistleblower Protection Act of 1989, 5 U.S.C. § 2302(b)(8) & (b)(9); Whistleblower Protection Enhancement Act of 2012, Pub. L. No. 112-199, § 110(b).

Protected Activity

The WPA gives most federal employees⁹ the right to disclose information, both internally (to co-workers, managers, organizational hotlines, an agency Inspector General, etc.) and externally (to Congress, regulators, the media, watchdog organizations, etc.), that he or she **reasonably believes evidences**:

- a violation of law, rule or regulation;
- gross mismanagement;
- a gross waste of funds;
- abuse of authority;
- a substantial and specific danger to public health or safety; or
- censorship related to research, analysis or technical information that is, or will cause, any of the above forms of misconduct.

In addition, federal employees are protected from retaliation if they:

- file a complaint, grievance or appeal;
- testify or help another person with exercising any of their rights;
- cooperate with or disclose information to the Office of Special Counsel (OSC), an agency Inspector General (IG), or Congress;¹⁰ or
- refuse to obey an order that would require the individual to violate a law, rule or regulation.¹¹

A disclosure is protected:

- if the employee is mistaken about the concerns but has a “reasonable belief” that the disclosure evidences serious wrongdoing;
- if it is made orally or in writing;
- if the disclosure is made to a supervisor or person who participated in the wrongdoing;
- if it reveals information that was previously disclosed;
- no matter the employee’s motives for making the disclosure;
- if it is made when the employee is off duty;
- if it concerns events that occurred in the past;

⁹ Law enforcement, military and intelligence agencies are exempted from the WPA, as are U.S. Postal Service employees, Government Accountability Office (GAO) employees, and federal contractors.

¹⁰ Under the Lloyd Lafollette Act, federal employees have had since 1912 an unqualified right to safely communicate with Congress. 5 USC § 7211. This right has also been embedded into the WPA.

¹¹ Employees are safest if they first carry out what they believe to be an illegal order and then report the problem internally or externally, unless the order would violate a statute, rule or regulation; physically endanger the employee; or cause irreparable harm.

- if it is made in the normal course of an employee's duties.¹²

A disclosure is NOT PROTECTED under the WPA:

- if it reflects only a disagreement with a policy or a decision that is not otherwise unlawful or would not constitute or result in gross mismanagement, a gross waste of funds, an abuse of authority, a substantial and specific danger to public health or safety, or scientific censorship that would result in such misconduct;
- if, for public disclosures, an executive order mandates that the information be kept secret in the interest of national defense or the conduct of foreign affairs;
- if, for public disclosures, disclosing the information is prohibited by law (e.g., if public release of the information is barred by a statute, such as the Trade Secrets Act or the Privacy Act).¹³ Significantly, an agency rule or regulation does not qualify as a bar to disclosure.¹⁴

Disclosures of classified or other information barred from public release may be made through alternative, lawful channels, including the Office of Special Counsel or an agency Inspector General. But disclosing such information outside of those channels, such as to the press or a non-profit organization, could result in termination and prosecution.

“Duty Speech” Is Protected

Most whistleblowers do not think of themselves as people who act courageously to report wrongdoing; they view themselves as simply doing their jobs. Many employees are expressly charged with investigating and disclosing wrongdoing as part of their job duties, such as an employee responsible for performing research and analysis that could obstruct a politically motivated project or policy, or one charged with inspecting industry operations to ensure compliance with

¹² 5 U.S.C. § 2302(f).

¹³ 5 U.S.C. § 2302(b)(8)

¹⁴ Department of Homeland Security v. MacLean, 574 U.S. 383 (2015).

environmental or safety laws, or one tasked with preparing accurate scientific reports intended for Congress.

The Whistleblower Protection Enhancement Act corrected case law that previously exempted from protection disclosures of misconduct made in the course of performing one's duties.¹⁵ Now "duty speech"—concerns about illegality, gross mismanagement, gross waste of funds, abuse of authority, a substantial and specific danger to public health or safety, or censorship of research, analysis of technical information that would result in such abuses raised in the course of doing one's job—is considered protected whistleblowing. However, there is a slight, but significant catch. For duty speech, a WPA violation requires retaliation, which includes proving animus, or intent to harm because the employee blew the whistle. For all other disclosures, a mere causal link between the protected disclosure and the personnel action means rights have been violated. For duty speech, the "nothing personal, just business" explanation could cut off a whistleblower's rights.

Personnel Actions Against Whistleblowers are Prohibited

While some managers respond appropriately when employees raise concerns, attacking the messenger rather than addressing the problem that has been disclosed is a frequent enough response by employers to have warranted legislation prohibiting reprisal for whistleblowing. The Whistleblower Protection Act prohibits employers from taking, failing to take, or threatening to take, personnel actions against an employee because of whistleblowing activity described above.¹⁶ Prohibited personnel actions include:

- a promotion or failure to promote;
- disciplinary or corrective action;¹⁷
- a detail, transfer or reassignment;
- a poor performance evaluation;
- a change in pay, benefits, or awards;
- a decision regarding training or education if it would lead to a personnel action such as an appointment, promotion, or personnel action;
- a change in duties, responsibilities, or working conditions;

¹⁵ 5 USC § 2302(f)(2).

¹⁶ 5 USC § 2302(b)(8).

¹⁷ Disciplinary actions recognized under the WPA include a demotion; a reduction in pay or grade; a furlough; removal from federal employment; a suspension; being put on administrative leave; a warning letter; a reduction in force; a reprimand.

- ordering a psychiatric exam;
- gag orders or non-disclosure agreements that do not include an exception for whistleblower rights and protections under the WPA;¹⁸
- threatening an employee with any of the above.

The law protects against passive aggression, as well as overt attacks. It is equally illegal to take or fail to take a personnel action because of whistleblowing. In addition to retaliation being prohibited, recently enacted legislation, the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017,¹⁹ mandates that supervisors found to have committed a prohibited personnel action be disciplined, with a two-day suspension for the first offense and with proposed removal for a second offense.

Remedies for Retaliation

A federal employee who has experienced any of the prohibited personnel actions listed above as a result of a **disclosure, participating in an investigation** involving an Office of Inspector General, the Office of Special Counsel or other law enforcement office, or Congress, or **refusal to disobey a law**, can file a reprisal claim.

To prove a reprisal claim for whistleblowing, an employee must establish by a preponderance of the evidence that:

- they engaged in protected activity (i.e., disclosure of information he or she reasonably believed evidenced a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; a substantial and specific threat to public health or safety; or censorship of research, analysis or technical information that would result in any of these forms of misconduct);
- a personnel action was taken, threatened, or not taken after the protected activity;
- the employer had knowledge of the protected activity;
- that the protected activity was a relevant, or "contributing factor," that prompted the retaliatory personnel action.²⁰

If the employee can establish these elements of a reprisal claim, the burden shifts

18 5 USC § 2302(a)(2)(A).

19 Public Law No: 115-73, S. 585, Section 104 (2017).

20 5 USC § 1221(e). This is an extremely low bar. A contributing factor is "any factor which alone or in combination with other factors tends to affect the outcome in any way." In essence, this is a mere relevance standard.

to the employer to prove by clear and convincing evidence (a high standard of proof) that it would have taken the personnel action against the employee even if the employee had not blown the whistle.²¹

Who to Contact About Retaliation

Below are the primary entities available to federal employees for addressing retaliation. We strongly encourage consulting with an attorney experienced in representing government whistleblowers for strategic advice and counsel about which paths to pursue for relief.

Office of the Special Counsel (OSC)

Employees who have experienced **retaliation on a smaller scale**, such as a change in responsibilities or a suspension of 14 days or less, must go to the OSC before utilizing the resources of the Merit Systems Protection Board (MSPB). Employees also may initiate a reprisal claim with the OSC for severe retaliation such as termination, demotion, or suspension of two weeks or more. The OSC will conduct an independent investigation, using best efforts to maintain confidentiality if requested by the employee. If the OSC finds that the agency engaged in reprisal, it can seek a stay of the adverse action, or it may seek to use mediation to resolve the claim (which has a very high success rate for resolution). These actions often spark negotiated settlements, the most common successful outcome in OSC complaints. If the OSC decides to take no action, finds against the employee, or delays issuing a finding, the employee can request a hearing with the MSPB by filing an individual right of action (an "IRA") either 60 days after receiving a determination by the OSC or 120 days after filing a complaint if no action has been taken. A case that has moved before the MSPB allows for discovery (but within very strict deadlines), a hearing before an administrative judge, and a written decision that can be appealed to the full board and then to the U.S. Court of Appeals.

Merit Systems Protection Board (MSPB)

Employees who experience **retaliation on a larger scale**, such as suspension for over 14 days, demotion or termination of employment—or certain tenured federal employees with additional civil service protections—may go directly to the MSPB for expedited discovery and a hearing before an administrative judge. The case

21 Ibid. In practical terms, this requires the employer to demonstrate a "substantial probability," or 70-80% of the evidence. Critically, the employer cannot prevail by showing that it "could have" take the action for innocent reasons; It must show it "would have" taken the same action absent the employee's whistleblowing activity.

will go before an administrative judge, and, if appealed, to the full board, and then before the Federal Circuit Court of Appeals judge or other circuit court of appeals with jurisdiction. Unfortunately, MSPB administrative judges **typically rule against whistleblowers**, deciding against them in over 90% of decisions on the merits. Administrative appeals to the full board also drag out for years. As of March 2021, there was a backlog of more than 3,000 cases. In large part this is due to a political impasse that has blocked confirmations and left the board without a quorum since January 2017. In fact, due to the vacuum of any board members, after a recent Supreme Court constitutional ruling,²² some administrative judges are deciding they cannot even conduct due process hearings until Congress confirms a presidentially-nominated board member.

Union Representative

For employees who belong to a federal employee union, all collective bargaining agreements offer a distinct process for resolving whistleblower retaliation claims through independent, binding arbitration. Exercising one's rights through your union can offer a more expedited, favorable, and less costly path for resolution than pursuing WPA rights and remedies, but the optimal path to pursue depends on the facts of each case. Further, employees must **choose only one venue** (i.e., the OSC, MSPB, or the union grievance procedure) to pursue a claim.

The deadlines and rules for filing are different for each path, so it is always wise to seek advice from an experienced whistleblower attorney as soon as you suffer an adverse personnel action for engaging in protected activity so they can help assess your case and advise you on the best path for seeking a remedy for reprisal. Union members may also want to seek advice from union representatives as well. Some unions can assist not only with filing an internal grievance, but also assist with legislative and media outreach.

Collective Bargaining Agreements (CBAs) differ between the various agencies and unions. Some may be more, and some less, helpful depending upon the agreed to language that may apply. Not all grievances are advanced to arbitration by the union, just as the OSC does not take all cases to the MSPB. Every case has to be viewed through the lens of its specific facts. If you have worked with the union on the underlying disclosure, it can be an extra set of eyes helping from the beginning. The same is true with an experienced whistleblower attorney.

22 Lucia v. Securities and Exchange Commission, 138 S. Ct. 2044. (2018)

Office of Inspector General

Federal employees can file complaints of retaliation for making protected disclosures with the Office of Inspector General of the agency for which they work. The OIG will review the allegation and either decide to investigate or refer the retaliation complaint to the suitable agency, which may be the Office of Special Counsel or the Merit Systems Protection Board, both of which have authority to enforce the rights of federal employees to blow the whistle under the Whistleblower Protection Act. IG's can issue recommendations to agency heads for corrective action against retaliation, but cannot enforce them, leaving this option inherently inferior.

The Whistleblower Protection Act and the merit system as a whole are in need of significant reform to effectively protect federal workers who report serious abuses of public trust. Government Accountability Project is joined by more than 200 organizations calling for strong whistleblower protection laws that would meet global best practice standards, including the following four cornerstones:

- the right to a jury trial in federal court;
- the right to challenge retaliatory investigations;
- temporary relief to whistleblowers whenever they prove a prima facie case of retaliation; and
- rights beyond protection from workplace retaliation, and like the European Union, giving whistleblowers a legal defense against civil or criminal liability.

We are hopeful that Congress will soon pass legislation to modernize the Whistleblower Protection Act to provide safeguards that adequately protect courageous whistleblowers whose disclosures promote accountability and protect democracy. At the time of this publication, however, federal employees must, for the most part, work within a flawed legal system. Expert legal support and solidarity, essential no matter how good the law, is that much more important for federal workers to successfully both the whistle in a way that minimizes risk of retaliation and maximizes the impact of the disclosure.

The First Amendment

The First Amendment protects federal employees' ability to speak in their private

capacities, on their own time, about matters of public concern.²³ For speech to be protected under the First Amendment, courts must determine that the public benefit of the speech outweighs the government's interest in efficient operations free from disruption.²⁴ Generally speaking, public employees are covered by the First Amendment when engaging in public discourse about political, social, or community concerns as private citizens, such as writing a letter to the editor critical of policy choices or speaking at a public meeting about climate science as a concerned citizen.

The First Amendment has also been effective as a protection against prior restraint, or efforts by the government to require employees to seek approval before communicating in their private capacities.

The First Amendment affords very limited protection for employee speech when it touches on matters relating to the internal operations of their workplace, such as office morale or administrative policies, since such speech would be of limited public concern and highly disruptive to government operations.

The balancing test applied by a court—whether the employee's interest in free speech outweighs the government employer's interest in orderly operations—can be complicated and difficult for an employee to prevail. For example, if there are agency rules that mandate that all press interviews must be pre-approved by the communications office, an employee who speaks to the press as an agency representative in violation of this policy would likely be deemed disruptive. It is necessary to be explicit that the employee is speaking as a private citizen, not an agency spokesperson. Similarly, even off-duty speech as a private citizen may fall outside of constitutional protection if the speech discloses classified information, compromises an ongoing investigation, or violates confidentiality laws, thus disrupting the efficient operation of the agency.

Finally, duty speech—speech undertaken as part of one's job responsibilities—is not afforded constitutional protection.²⁵ This protection exists under the WPA and only if management has retaliatory intent.

This is why the statutory rights created by the WPA that enumerate specifically the types of speech that benefit the public—disclosures that evidence potential

23 *Pickering v. Board of Education*, 391 U.S. 563 (1968).

24 *Ibid.*

25 *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

or actual illegality, gross waste, gross mismanagement, abuse of authority, or substantial and specific danger to public health or safety—avoid the uncertainty inherent to constitutional protections. For that type of misconduct, Congress has legislated that the public benefits outweigh agency disruption. The legal burdens of proof and available remedies provided by the WPA also are far more favorable to federal employees than those with constitutional claims. Rather than the contributing factor relevance standard, the employee must prove that retaliation was the “dominant, motivating factor.” And instead of having to prove an innocent reason for taking adverse action by clear and convincing evidence, the employer only must have a preponderance of the evidence (over 50%).²⁶

Whistleblower Protections for Federal Contractors and Grantees

Government contractor employees and federal grant recipients who work for non-intelligence federal agencies also have whistleblower protections. The National Defense Authorization Act (NDAA) for FY 2013 essentially extends with better due process the Whistleblower Protection Act (WPA) rights for federal civil service employees. The NDAA rights cover all individuals performing work on a government contract or grant, including personal services contractors and employees of contractors, subcontractors, grantees, or subgrantees.²⁷ They can file a whistleblower retaliation claim if they experience reprisal for disclosing information that the employee reasonably believes is evidence of:

- gross mismanagement of a federal contract or grant;
- a gross waste of federal funds;
- an abuse of authority relating to a federal contract or grant;
- a violation of law, rule, or regulation related to a federal contract or grant;
- a substantial and specific danger to public health or safety.²⁸

Protection is explicit for disclosures to specified bodies enumerated in the statute: Congress, an Inspector General, the Government Accountability Office

26 Mt. Healthy v. Doyle School District, 429 U.S. 274 (1977).

27 Section 827 of the NDAA protects Department of Defense (DoD) and National Aeronautics and Space Administration (NASA) contractors (10 U.S.C. § 2409(a)(1)), and Section 828 applies to all other federal non-intelligence contractors (41 U.S.C. § 4712(a)(1)). See §§ 827 and 828, Pub. L. No. 112-239 Stat 1632 (2013), as amended by Pub. L. No. 114-261, 1301 Stat. 1363 (2016).

28 Unlike in the WEPA for federal employees, disclosures of scientific censorship that would result in these forms of misconduct are not protected under the NDAA.

(GAO), the Department of Justice or other law enforcement agency, a federal employee responsible for contract or grant oversight at the relevant agency, or a management official of the contractor who has the responsibility to investigate, discover, or address misconduct. This is consistent with most corporate whistleblower shields, which are witness protection laws. But since these agencies gather much of their information from the public record, the laws in practice generally cover disclosures to NGOs or the media.

To seek relief for whistleblower retaliation—which includes discharge, demotion, or other discrimination against an employee for making a protected disclosure—an employee must file a complaint within three years of the date of reprisal with the Office of Inspector General (OIG) of the agency that awarded the contract or grant. The OIG is charged with investigating the complaint and submitting a report to the agency head within 180 days of receiving the complaint. The agency head, within 30 days of receiving the OIG report, must issue an order either denying relief or ordering the contractor to abate the reprisal, offer reinstatement, pay the whistleblower back pay or compensatory damages, and/or pay attorney fees and costs.

If an employee is either denied relief after going to the OIG or has not obtained relief within 210 days of filing the original complaint, they may go to federal court and seek justice through a jury trial, an option not available for federal civil service employees. The NDAA is an important new law that expands whistleblower protections and offers meaningful rights to millions of federal contractors and grantees.

Other Speech Protections for Federal Employees and Contractors

While this guide focuses predominantly on the rights of federal employees, contractors, and grantees to report wrongdoing they witness in the workplace, other speech protections exist as well. The list below is not comprehensive but seeks to offer some additional insight into the patchwork of whistleblower protections that may also apply to federal employees and contractors.

Whistleblower Protection Provisions in Environmental, Health, Safety, Consumer, and Investor Protection Laws

Twenty-three federal statutes, all enforced by the Department of Labor (DOL), contain whistleblower protection provisions that protect employees from reprisal

for making disclosures that further the laws' enforcement or administration. These laws, which regulate issues including environmental protection, nuclear safety, transportation safety, worker and consumer health and safety, and investor protection, prohibit most forms of reprisal taken against an employee for disclosures that further the specific statute, recognizing that employees are the most effective mechanism to ensure compliance with the goals and provisions of the acts.²⁹

While all of the laws offer whistleblower protection to corporate employees, many of whom are federal contractors, a few also offer protection to federal employees as well, including five of the "Big Seven" environmental statutes.³⁰

Unfortunately, the whistleblower protection provisions are not the same for each statute. For example, there are significant differences in statutes of limitations for filing an initial retaliation claim (e.g., the Clean Air Act (CAA) has a 30-day statute of limitations while the Energy Reorganization Act (ERA), which applies to nuclear safety, has a 180-day window). Remedies available are also different, with a few laws offering punitive damages, but most only offering "make whole" relief (back pay, compensatory damages, and attorney fees and costs).

For most of the laws, an employee seeking relief for retaliation suffered because they blew the whistle on compliance failures with one of these laws does so by first filing a complaint with the DOL's Occupational Health and Safety Administration's (OSHA) Whistleblower Protection Program. OSHA must complete an investigation of the violation within 30, or in some cases 60, days from the time the complaint is filed. Unfortunately, a tremendous backlog of cases (as well as a relatively poor track record of finding in favor of whistleblowers) routinely keeps employees in a limbo stage for years waiting for a ruling that will permit them to have a due process hearing. Equally distressing, OSHA only finds that whistleblowers' rights are violated in less than 2% of cases.

29 For a list of all of the statutes that include whistleblower protection provisions, visit <https://www.whistleblowers.gov/statutes>.

30 The five of the "Big Seven" environmental statutes with whistleblower protection provisions that give rights to federal employees in addition to private sector workers are the Clean Air Act (CAA), 42 U.S.C. § 7622, the Energy Reorganization Act (ERA) (also encompassing the Atomic Energy Act), 42 U.S.C. § 5851, the Resource Conservation and Recovery Act (RCRA) (also encompassing the Solid Waste Disposal Act (SWDA)), 42 U.S.C. § 6901, the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300j-9(i), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (a.k.a. Superfund), 42 U.S.C. § 9610. The other two major environmental statutes that do not provide a right of action to federal employees for whistleblower retaliation are the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2622 and the Federal Water Pollution Control Act (FWPCA) (a.k.a. Clean Water Act), 33 U.S.C. § 1367.

Either side may appeal the finding de novo (with a fresh start) to a DOL administrative law judge, with full discovery rights and a hearing. The judge's recommended decision can be appealed to an Administrative Review Board, which has the Secretary of Labor's delegated authority to issue final orders or decisions. Even then, an aggrieved party may appeal the Secretary's decision to the U.S. Court of Appeals with jurisdiction, with final appeal to the U.S. Supreme Court.

While most of these whistleblower protection laws apply to private sector employees, many of whom may be federal contractors rather than federal workers, those few that do extend coverage to federal workers offer an alternative process to the primary path for relief provided to federal employees by the Whistleblower Protection Act.

Fourteen statutes covering nearly all the private sector since enactment of SOX in 2002 allow an employee to file a de novo claim in federal district court, for a jury trial, if there is no final agency decision within the amount of time prescribed in the statute (180, 210 or 365-day timeframes).³¹

Government Accountability Project is engaged in ongoing efforts to strengthen the WPA so that it offers the same opportunities to federal workers for jury trials offered to federal contractors and many of the statutes administered by the DOL. Another long-term goal is to consolidate and align the whistleblower protection provisions found in these issue-specific statutes so they are consistent in terms of who is covered, the statutes of limitations for filing complaints, the relief available, and the right to remove to federal district court. The most fundamental breakthrough will be expanding whistleblower rights to protect against civil and criminal liability. Until that day, however, this patchwork of statutes can offer additional protections to some federal employees who exercise integrity to speak about violations that undermine the public interest goals of these laws.

The False Claims Act

The False Claims Act (FCA), or the "Lincoln Law," was enacted in 1863 to combat fraud against the government during the Civil War. Today, the FCA, amended in 1986, recovers billions of dollars stolen by federal contractors through fraud

³¹ For a list of the statutes with whistleblower protection provisions, along with notes about who is protected, the statutes of limitations for filing claims, rights of removal to federal court, and remedies available, see https://www.whistleblowers.gov/whistleblower_acts-desk_reference.

each year, and the success of this law depends on whistleblowers.³² While many FCA cases involve evidence of direct financial fraud—such as Medicare fraud or overcharging of government agencies for goods and services—others include more “creative” but equally damaging forms of fraud, such as the use of sub-standard materials in the nation’s nuclear weapons complex, fraudulently obtained oil and gas permits, and failures to report hazardous discharges to the environment as required by law. This law has not only recovered \$64 billion dollars for taxpayers since 1987,³³ but it has protected other public interests as well.

The False Claims Act allows individuals, including federal employees, with original knowledge of fraud against the government to file a *qui tam* suit on behalf of the government. To state a claim under the FCA, a plaintiff must allege (1) a false statement or fraudulent course of conduct; (2) made or carried out knowingly, (3) that was material, and (4) that is presented to the federal government.³⁴ A whistleblower who is the first to file a claim as an original source, otherwise known as a “relator,” can be entitled to a bounty award of 15-30% of the funds recovered by the government. Contractors found liable for fraud under the FCA can owe three times the amount of damages incurred by the government as a result of the fraud, plus penalties and costs.

To file a claim under the False Claims Act, a whistleblower/relator must first file a complaint with the Department of Justice (DOJ), which remains “under seal” (confidential) for at least 60 days while the DOJ investigates and decides whether or not to intervene in (join) the case. The seal is typically extended. If the DOJ decides not to intervene in the case, the whistleblower can proceed independently against the contractors to prove the fraud.

The FCA, in addition to providing a private right of action for an individual to challenge fraud against the government even if the DOJ declines to intervene, also contains anti-retaliation protections to relators who disclose fraud and suffer reprisal. An employee can bring a FCA retaliation claim in federal district court within three years after the date of retaliation, and if successful, is entitled to “make whole” remedies that include reinstatement, compensatory damages, and two times any back pay owed plus interest.³⁵

32 31 U.S.C. § 3729.

33 See Press Release, Office of Pub. Affairs, U.S. Dep’t of Justice, Justice Department Recovers Over \$2.2 Billion from False Claims Act Cases in Fiscal Year 2020 (Jan. 14, 2021), <https://www.justice.gov/opa/pr/justice-department-recovers-over-22-billion-false-claims-act-cases-fiscal-year-2020>

34 E.g., *United States ex rel. Steury v. Cardinal Health, Inc.*, 625 F.3d 262, 267 (5th Cir. 2010). 33

35 31 U.S.C. § 3730(h).

Although the FCA has anti-retaliation provisions, these **do not** apply to federal employees because of sovereign immunity. However, because FCA claims are filed under seal while the Department of Justice investigates and decides whether to file an enforcement action, the identity of federal employees who report fraud against the government is inherently protected during the confidential investigative process.

Whistleblower Protections for Intelligence Community (IC) Workers

A separate legal patchwork allows Intelligence Community (IC) employees and contractors to lawfully report wrongdoing and receive protection from retaliation. Created to safeguard classified information while allowing oversight from both internal and external federal watchdogs, the system requires workers, whether they be case officers or analysts or support staff, to follow the disclosure process outlined in the Intelligence Community Whistleblower Protection Act (ICWPA) of 1998³⁶ in order to obtain protections from retaliation.

The ICWPA allows intelligence employees to make “protected disclosures” of “urgent concerns” to either their agency’s Inspector General or the Inspector General of the Intelligence Community.³⁷ Urgent concerns may include serious or flagrant violations of laws, gross waste, or improper administration relating to an intelligence program. Urgent concerns may also include lying to or willfully withholding information from Congress, as well as certain retaliation or threats of retaliation for making a protected disclosure of an urgent concern.

When an Inspector General receives a protected disclosure alleging an urgent concern, they are afforded 14 days to conduct a preliminary review of the disclosure. If it is substantiated as a credible and urgent concern, then the Inspector General must transmit the disclosure and supporting evidence to the head of their intelligence element, who has seven days to furnish this report to the congressional intelligence committees. At this point either the Inspector General or the congressional intelligence committees may investigate the whistleblower’s protected disclosure.

³⁶ Title VII of the Intelligence Authorization Act for Fiscal Year 1999, P.L. 105-272 §§ 701-702, codified in 5 U.S.C. § 8H, 50 U.S.C. § 3033, and 50 U.S.C. § 3517.

³⁷ Whistleblowers may also make disclosures of classified information directly to the congressional intelligence committees—the while the law’s intent is clear on this subject, it is untested. Professional staff members or lawyers from these committees may in fact advise you to make your disclosure through the ICWPA process to ensure your protections are as firm as the system allows.

If a whistleblower suffers retaliation for making a disclosure either protected through this system or informally in other limited cases (e.g. to one's supervisor), then they are protected under Presidential Policy Directive-19 (codified in part by the Intelligence Authorization Acts of FY 2014 and FY 2018, 2019, and 2020).³⁸ PPD-19 offers IC employees protections from retaliation by tying their system to the Whistleblower Protection Act that applies to most other federal whistleblowers.

It is important to understand that no protections are written in statute or regulation that would allow intelligence whistleblowers who make external disclosures of either classified or unclassified information to challenge any retaliation they suffered. The system protecting intelligence whistleblowers is solely internal to the Intelligence Community and its relevant overseers in Congress, and whistleblowers who choose not to follow this prescribed disclosure process may be criminally liable for the unauthorized release of this information. Further, no "public interest" defense exists to challenge prosecutions of whistleblowers who have released classified information outside authorized channels. These individuals may—in extreme cases—be protected under the First Amendment to the United States Constitution, but no whistleblower has prevailed using that argument.

The intelligence whistleblowing system, through PPD-19 Part C, offers expanded internal reviews in lieu of external appellate rights. Whistleblowers wishing to challenge an Inspector General's determination on their retaliation case may submit a request to the Intelligence Community Inspector General for an External Review Panel, chaired by the Intelligence Community Inspector General and staffed by two other Inspectors General from the Intelligence Community. The panel may conduct a new review of the whistleblower's claims, reverse or remand the local agency's review, or decline to hear the case.

Intelligence Community whistleblowers may make protected disclosures confidentially. The confidentiality provision of the Inspector General Act of 1978 requires Inspectors General and their staff to maintain whistleblowers' confidentiality "unless otherwise unavoidable" (e.g. a court order to testify in a grand jury indictment resulting from the whistleblower's disclosure) or unless they obtain the consent of the whistleblower.

38 Presidential Policy Directive (PPD)-19, Protecting Whistleblowers with Access to Classified Information, The White House, October 10, 2012, at <https://www.opm.gov/our-inspector-general/whistleblower-protection-information/ppd-19.pdf>. PPD-19, implemented by Intelligence Community Directive 120, was issued by President Barack Obama in the wake of the Wikileaks scandal that rocked the Intelligence Community in 2012, hoping to encourage internal dissent while safeguarding our nation's secrets.

However, whistleblowers should rarely assume any anonymity shield is fireproof. Only Inspectors General and their staff are beholden to this confidentiality provision; it does not bind agency-heads, supervisors, or fellow employees aware of a whistleblower's disclosure from revealing that whistleblower's identity. Other statutes, such as those which make threatening witnesses in administrative proceedings or protecting the identities of certain covered employees, may still apply in such cases—but they are notoriously hard to enforce.

It is important that any intelligence worker considering blowing the whistle discuss their options for disclosure and the risks they will face with one of the few attorneys experienced in this area. Any whistleblower who has made a protected disclosure and suffered retaliation, similarly, should consult a national security attorney experienced in whistleblowing to ensure they challenge this retaliation in the most effective way possible.

Whistleblower Protections for Military Personnel

Civilian members working within the Department of Defense enjoy whistleblower rights for civil service employees and contractors outlined in the various laws referenced above. For active servicemembers, the Military Whistleblower Protection Act (MWPA)³⁹ protects military personnel from reprisal when reporting serious wrongdoing. Under the MWPA, servicemembers can lawfully communicate information concerning a violation of law or regulation, gross management, a gross waste of funds, abuse of authority, a substantial and specific danger to public health or safety, and certain threats by another member of the armed forces or employee of the federal government.

For whistleblower disclosures to be protected under the MWPA, they must be made to a Member of Congress; an Inspector General; a member of a Defense Department audit, investigation, or law enforcement organization; or a person in the service member's chain of command. Reports of retaliation are made to the Defense Department Inspector General or the inspector general for the relevant branch of the military, which is required to investigate the retaliation claim "expeditiously" under law. The burden of proof is placed differently in military whistleblower retaliation cases than it is in civilian cases. Essentially, military whistleblowers must prove that they were illegally retaliated against, whereas in civilian cases the agency must prove that they did not retaliate.

39 10 U.S.C. § 1034.

In the course of investigating the retaliation claim, the IG must also investigate your underlying disclosure of misconduct if an investigation isn't already taking place, or if the investigation is inadequate. Within 180 days, the IG must report the status of your retaliation claim to you, to the Secretary of Defense, and the secretary of the relevant military branch. The IG must continue to send updates every 180 days until the investigation is complete.

The MWPB process for investigating disclosures and claims of retaliation is exceedingly complex, with specific processes and timelines at each step. Servicemembers who observe wrongdoing or who suffer reprisal for lawfully reporting wrongdoing are encouraged to reach out to expert attorneys at Government Accountability Project who will help to minimize the risk of reprisal while maximizing the power of the information.

Whistleblower Rights Supersede Non-Disclosure Policies

The Whistleblower Protection Enhancement Act (WPEA) and the anti-gag provisions in the FY 2020 Consolidated Appropriations Act (CAA) (passed annually since FY 1988) all make it illegal to gag federal employees and contractors from blowing the whistle. Indeed, impeding communications with Congress can lead to a salary cutoff.

These provisions seek to prevent federal government agencies and contractors from silencing employees by mandating that any policy, directive or form limiting employee speech must include explicit language that informs employees that their rights to blow the whistle supersede the terms and conditions of the nondisclosure agreement or policy. Both the WPEA and CAA also contain language prohibiting Congress from funding agencies that "implement or enforce" any "non-disclosure policy, form, or agreement if such policy, form, or agreement does not contain" a congressionally drafted addendum reaffirming that employee whistleblower rights supersede any non-disclosure restrictions.⁴⁰

40 5 USC § 2302(b)(13); Consolidated Appropriations Act, 2020, Public Law No: 116-94, §§ 713 and 743.. Any non-disclosure policy must include the following language: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."

The Office of Special Counsel has interpreted “non-disclosure policy, form, or agreement” to include management communications broadly. Examples of non-disclosure edicts that would violate the anti-gag provisions of the WPEA or appropriations acts, if issued without explicitly noting the primacy of whistleblower protection rights, include:

- posters that encourage employees to “Report Possible Insider Threat Indicators;”
- policies that bar media correspondence;
- directives that mandate pre-screening communications through legal departments or public information officers;
- employment contracts with non-disclosure agreements.

When an agency unlawfully gags its employees, it threatens Congress’ ability to engage in oversight, hampers citizens’ right to know about illegality, abuses of authority, and threats to public health, safety and the environment, and undermines policy making. These efforts also create a chilling effect on the many federal employees committed to exercising professional integrity.

Non-disclosure policies which do not contain explicit language affirming that whistleblower rights supersede any communication restrictions are unenforceable and unlawful.

Survival Tips: How to Report Wrongdoing Safely & Effectively

No matter how right you may be about the wrongdoing you observed, and even though retaliation for blowing the whistle is prohibited, employees who speak out often suffer reprisal rather than receive thanks. Weighing the most effective legal options can be complicated and confusing, making it all the more important to secure case-specific legal advice.

Pre-Disclosure Precautions & Practices

Before making any type of disclosure, it is wise to take the following precautions:

1. **Consult with a lawyer**, specifically one who has experience helping whistleblowers. Most lawyers aren't well-versed in whistleblower law, which is extremely complicated. No single law protects all whistleblowers; instead, a patchwork of more than 60 federal statutes and numerous state and local laws provide redress. Determining the legal remedies and strategies which are best in each situation is complicated. The attorney-client privilege will also ensure that your communications will remain protected and confidential.⁴¹
2. **Create a detailed, contemporaneous paper trail**. Keep a log that is a timeline of all relevant developments: what happened, when and to whom you complained, and any resulting retaliation. Record all dates and note the details of any supporting emails, memos, or other documentary evidence.
3. **Print or save any relevant documents** you possess such as meeting notes, memos, or emails. One can also record meetings secretly in one-party consent states (including 39 states and Washington, DC), though secret recording usually violates personnel rules.
4. **Keep evidence in a safe place**. Authorities usually are not limited in access to the whistleblower's workplace, but home storage of documents can also be risky, subjecting a whistleblower to pretextual discipline or a retaliatory investigation for theft of documents. Before taking actual documents, you should make sure they are your documents to take. If it is not clear, it is better

⁴¹ Employees have the right to seek legal counsel for guidance about their confidentiality obligations and whistleblower rights. See, e.g., *Denius v. Dunlap*, 209 F.3d 944, 953 (7th Cir. 2000) ("The right to hire and consult an attorney is protected by the First Amendment's guarantee of freedom of speech, association and petition.")

to photograph or lawfully reproduce the documents, but leave originals in the office. If they are classified, they are not yours to take or reproduce, so doing so is essentially an act of civil disobedience. If you have questions, it is best to consult with counsel before taking action. Regardless, it is advisable to store your evidence with your attorney, where it is shielded by attorney-client privilege.

5. Be careful to **avoid being accused of stealing** any documents. In instances where it is not practical to take evidence home, tactics such as mislabeling and misfiling records in your office, to be found later, can prevent their destruction. The strategy means keeping careful notes on a document's substance, but "burying" copies of the actual record in an archive file or an electronic folder with an innocuous name. Be prepared to serve as navigator for law enforcement or other outside investigators to trace where to find copies of the documents that an agency acting in bad faith will claim do not exist.
6. Before doing anything, **make a plan**. For example, decide whether and when to blow the whistle internally or externally. When does it make sense to give up on internal channels? What documents, if any, should be shared with whom? Try to predict how those in the agency or department will react and respond to a disclosure.
7. **Converse with family members and loved ones** before blowing the whistle. The old adage applies here: plan for the worst and hope for the best. Consider the impact on family members and friends should retaliation occur. This is a decision you must make together, or you may find yourself alone. Develop alternate employment options before drawing attention to yourself.
8. **Avoid creating any other reason to be fired for cause**. Maintain good job performance and follow workplace rules, and if suspected be careful not to take the bait in pretextual confrontations.
9. **Test the waters with work colleagues and attempt to garner their support**, if possible. Determine which colleagues would corroborate your observations or possibly even participate actively in blowing the whistle, although be discreet and start with trusted contacts.
10. **Seek outside help**, including journalists, politicians, and public interest organizations, judiciously. Solidarity is essential to both making a difference from blowing the whistle on misconduct and surviving the experience.

Avenues for Reporting Wrongdoing

At Government Accountability Project we frequently turn individual legal cases into public interest campaigns which will not only benefit that client, but the larger society. This involves having information matchmaking between whistleblowers and all the stakeholders who should be benefiting from their knowledge. The strategy is to replace isolation with solidarity, so that instead of a corrupt bureaucracy surrounding the whistleblower, society is surrounding the bureaucracy. We believe, and know from decades of experience supporting whistleblowers, that this is how to turn information into power.

Below are some considerations about possible avenues for reporting information about serious abuses. Reporting serious violations and abuses to entities authorized to receive such disclosures perfects your whistleblower rights, and thus at least offers legal, if not practical, protection from reprisal for blowing the whistle.

Reporting Internally

Management and Agency Officials

This is usually the first place whistleblowers turn, attempting to solve the problem in house for the good of their organization. While legally protected, in some cases, whistleblowers often face retaliation after they go to their supervisors rather than having the problem corrected. If you take this route, document any actions and management responses to your disclosures. To prevent backlash, whenever possible disclose your concerns constructively as problems to solve, rather than finger-pointing allegations.

The Office of the Inspector General (OIG)

Each agency has an Inspectors General office that investigates complaints by both federal employees and contractors of fraud, waste, and abuse internally. You have a right to report problems confidentially as well as anonymously. IGs are more reactive than proactive. They are more likely to investigate based on external controversy than an internal whistleblower's disclosure.

When it comes to whistleblower complaints, Inspectors General offices have not always respected confidentiality rights or acted transparently. They also operate without deadlines and frequently ignore complaints. There are significant exceptions, but the IGs first priority is to investigate management referrals, which

often are against whistleblowers. As a practical matter, even OIGs with statutory independence are vulnerable to pressure from the head of the agency of which they are a part, meaning they can be compromised by office politics. Like OSC, they only have power to offer recommendations. While some OIGs are strong and principled, in worst case scenarios, they can be used as a tool of retaliation against whistleblowers, investigating them instead of their disclosures.

Reporting Externally

The Office of the Special Counsel (OSC)

In addition to reviewing claims of reprisal, the OSC also accepts disclosures by federal employees unattached to a complaint of retaliation. The OSC will review submitted disclosures from current and former federal employees to determine if there is a “substantial likelihood” that a validly disclosable violation occurred. If so, they will require the agency head to conduct an investigation into the matter and issue a report regarding the issue investigated and what steps were taken, or will be taken, to address the problem. The whistleblower then gets the last word to comment on the report’s adequacy and provide further evidence. The OSC finishes the cycle by grading the report pass or fail, and submitting the entire package to the President, congressional leadership, and appropriate congressional committees.

The OSC attempts to keep your identity confidential, but if your disclosure is judged to be an imminent threat to public health or safety, your anonymity may be compromised. Another weakness is that the OSC often doesn’t meet deadlines. It is supposed to review a whistleblower’s disclosure within 15 days, but a backlog of cases often prevents this from happening for months or years. Finally, the OSC lacks enforcement authority. It can evaluate an agency report as unacceptable, but can’t force a government agency to do anything. As a result, it is an excellent outlet to complement other disclosure channels and forces agencies to deal with a whistleblower’s concerns. But in isolation it is unlikely to spark change.

Congress

Whistleblowers may disclose information to a member of Congress or a congressional committee. In fact, all communications with Congress are legally protected, not just those with a reasonable belief of misconduct.⁴² Be aware there is no guarantee of anonymity when disclosing to a member of Congress, and a single member of Congress has no direct authority over the executive branch.

⁴² The Lloyd Lafollette Act of 1912, 5 USC § 7211, enforced through the Civil Service Reform Act at 5 USC § 2302(b)(12), protects the right of all federal employees to communicate with Congress without interference.

Complaints sent to congressional members usually are sent back to the agency with questions, which could alert them to a whistleblower in their midst who prompted the inquiry.

On the other hand, members of Congress can bring powerful attention to an issue, creating momentum for change and offering a shield for whistleblowers against retaliation.

Congress isn't primarily an investigative institution, but through its oversight duties has some investigatory powers. The Government Accountability Office (GAO) is a formal investigative arm, and a member of Congress can request a GAO probe into misconduct. Individual congressional members can request information from agencies and publicize it. Individual members of Congress and their staff have various levels of expertise and interest in investigating concerns.

Combined with other channels such as the Office of Special Counsel or an Inspector General, a congressional champion can be a powerful reinforcement. This is particularly true when a member has significant legislative, oversight, or appropriations authority. Whistleblower advocacy organizations can help you determine which members of Congress to reach out to, taking into account their interests, expertise, and whether you are their constituent.

The Press

Federal employees can legally work with reporters to publicize wrongdoing as long as the information is not marked classified or specifically barred by statute from public disclosure. Coverage of the issues by the press can help fix wrongdoing by building public pressure and shaming the agency into doing the right thing. Active partnerships with media can create a powerful incentive for both law enforcement investigators and politicians to be more aggressive.

Press attention can also sometimes help prevent retaliation because the spotlight will be on you, and your employer would understand that retaliation would make the news. It can also help establish that the employer was aware of the employee's disclosure, critical to proving the "knowledge" element of a whistleblower reprisal claim if retaliation does occur.

Make sure you research the reporter you intend to provide information to so that you know that they're serious and have expertise in the subject matter. Figure out if they're a beat reporter, who might have more subject matter expertise, or an investigative reporter, who will have more leeway to pursue a long investigation.

Journalists will also have to vet you and verify your concerns. Having documentation of what happened will help this process.

Be aware that journalism, especially investigative journalism, is often slow, and big stories can take journalists months or even years. Journalists should be transparent about whether they're still pursuing the story, but you shouldn't undermine a journalist by going to a different one simply because you feel they're taking too long. You should just check in with them and see where they are.

If there is a deadline before which you believe the disclosure needs to be made public, let the reporter know. However, understand that they may not judge the same things important that you do and may be unable to meet your deadlines. In fact, the article may not turn out exactly as you expect because journalists will have different judgment than you do.

If you do seek anonymity, be sure you trust the journalist and the news organization to protect your identity. Work out an agreement with the reporter as early as possible; it is essential to **work out the ground rules in advance**. Otherwise, once you have shared information with a reporter, it's fair game for anything. "On the record" means there are no restraints on reporting the contents of discussion or your identity—and unless you explicitly clarify that you are not speaking on the record, the presumption is that you are. "Off the record" means neither the information provided to the reporter nor identifying information can be used for publication or traced back to you, though the information can be used without attribution to verify it with another source. "On background" means the information can be used by the reporter but without naming or identifying the source, so essentially conferring anonymity. "Not for attribution" means the reporter can publish quotes but only by identifying the source in general terms (e.g., "a government official"), with the source's agreement on the identification.

These rules of attribution are frequently confused even by journalists, and are not legally binding—they are rooted in trust and the journalistic honor code of source protection. The key is to be sure to establish a shared agreement about the rules of communication in advance. As a general rule, unless retaliation has begun, it is best to communicate either off the record or on background until a partnership of mutual trust has been earned.

While reporters as professionals are committed to protecting their sources, with many who are willing to go to jail rather than divulge a source in response to a subpoena, there is no federal shield law or reporter's privilege that applies to all journalists' communications; limited protections vary state by state.

Further, even with a reporter's willingness to defy a subpoena to reveal his or her source, often the identity of a source can be inferred by an employer, either because of the likelihood that the employee first informally raised concerns internally, because of the nature of the information disclosed that would point to job responsibilities and expertise, or because the employee may have used work equipment for communications.

Public Interest Organizations

Non-profit public interest watchdog organizations may have experience with the issue about which you are concerned or your agency. They can be important allies in ensuring that information about corruption and wrongdoing is used effectively to address abuses of power and protect public interests. Environmental, food safety, science integrity, immigration, fiscal responsibility, and other social and economic justice groups are knowledgeable and influential advocates for reform. Solidarity is the magic word for whistleblowers to make a difference and minimize harassment. These organizations have accumulated credibility, know the territory for political or media partnerships, and represent a political constituency that can magnify the whistleblower's voice. Once a whistleblower has been identified, they can be indispensable partners, both as a lifeline for survival and to have an impact by getting evidence into the right hands.

However, while a few organizations like Government Accountability Project represent whistleblowers, most do not. **Non-profit advocacy organizations typically have limited experience working with whistleblowers and do not understand the complicated legal landscape and risks involved with disclosing serious concerns.** Well-meaning but inexperienced non-profit organizations may appreciate the value of inside information and promise to keep their sources anonymous. But, like with journalists, because most employees have either raised concerns internally before going outside of their agency, or because their job responsibilities and expertise would associate them with the disclosure, these promises may be impossible to keep.

Further, unless the organization can explicitly offer legal advice about whistleblowing, your communications will not be protected by the attorney-client privilege. That can be dangerous when their agendas diverge from yours.

Working with a lawyer who is sympathetic to your public interest goals or a non-profit organization like Government Accountability Project that focuses both on

protecting the employee and promoting accountability offers employees the best of both worlds: legal support in navigating internal and external avenues for disclosure and to address retaliation as well as effective matchmaking with journalists, public interest organizations, and elected officials to afford the safest and most effective opportunities to address the underlying problems.

A Note on Anonymity

Many whistleblowers want to disclose information while maintaining their anonymity. However, anonymity, as mentioned earlier, is not always possible to ensure if the information is used in public ways or through strategic discussions with government investigators, other whistleblowers, or advocacy groups. Indeed, because most employees raise concerns internally first, or because the information can be connected to an employee's job duties and expertise, a hostile employer may be able to identify the source of the information even if not named. Information described by the press, or a document sought in a Freedom of Information Act (FOIA) request with too much specificity filed by a journalist or a public interest organization, can tip off employers to likely sources.

Remaining anonymous may also not be the best strategy. For instance, trying to remain anonymous while the disclosure's information is public can make a legal case of reprisal more difficult, if not impossible. Under all whistleblower laws, an employee must show that the employer had knowledge of their whistleblowing. Therefore, going public, with the whistleblower serving as a human interest focal point for news stories, can sustain the whistleblower's viable legal rights.

Whistleblowers who choose to make disclosures publicly may even be able to preempt reprisal by putting the employer on notice that the employee is engaging in protected whistleblowing. When a whistleblower experiences solidarity with a team of allies—advocacy groups, journalists, champions in Congress, a lawyer—focus can more easily be put on the wrongdoing exposed by the whistleblower, undermining efforts to vilify the messenger. Surrounding the whistleblower with support not only can insulate the employee from retaliation, but it also can amplify awareness of the underlying problems to demand reform.

Going public, however, may burn professional bridges, creating a scorched earth, no-prisoners conflict that may prompt the employer to go on the attack against, or isolate, the whistleblower, which could effectively cut off access to information that would be valuable to further prove misconduct. Whistleblowers accordingly should try to maintain anonymity as long as possible, disclosing publicly when there are imminent consequences or when it is clear they already are suspected or blamed.

Be aware, even with strong efforts at protecting a whistleblower's identity, the whistleblower is still at risk while an employer searches for the internal source. Harassing and expensive-to-defend defamation suits can be lodged against journalists and advocacy organizations to force divulgence of sources. Because of limited privileges afforded to journalists and public interest groups, whistleblowers should be wary of unqualified promises of absolute anonymity because it simply cannot be guaranteed. Brokering communications with external parties through an attorney with whom a whistleblower's communications are privileged can offer an important layer of protection for a whistleblower.

The first impeachment hearings and trial of President Trump highlight some of the costs associated with anonymity. The intelligence community employee who blew the whistle on possible solicitation of Ukraine's interference by President Trump in the 2020 election faced enormous backlash and public threats to their life after submitting a whistleblower complaint to the Intelligence Community Office of the Inspector General. After the public became aware of the complaint, the typical bipartisan consensus surrounding whistleblowing in Congress evaporated as multiple members of Congress attempted to identify the whistleblower in print, television and social media. The case of the Ukraine whistleblower illustrates a key weakness of anonymous whistleblowing: first and foremost, anonymity can never be guaranteed, even when the law offers protection against whistleblower retaliation.

Best Practices for External Whistleblowing⁴³

1. Before you begin working with a reporter or an advocacy group, negotiate the scope of what you're willing to disclose, whether you need anonymity, and any other protections or concerns. It is easier for everyone to be clear on the rules from the beginning.
2. If maintaining confidentiality and anonymity is critical, use secure, encrypted means to communicate, including [Secure Drop](#) for document exchange, [Signal](#) or [WhatsApp](#) for texts and calls, [ProtonMail](#) or another email platform that uses Pretty Good Privacy (PGP) encryption, or snail mail with no return address.
3. Don't communicate with your contacts during your work hours or use office equipment like office phones, computers, or even paper.
4. Be aware that the best option for your safety may not necessarily be to remain anonymous, but to instead blow the whistle publicly with the help of a lawyer. Public disclosure can help an employee prove that the employer had knowledge of the whistleblowing, a necessary element in a reprisal case. It can also preempt reprisal, particularly when you are supported by a team of allies.
5. If you intend to leak documents anonymously, make sure that you are not the only person who possesses these documents so they can't be traced back to you. If possible, send them out innocuously attached to legitimate listserv emails or upload them to an agency server or archiving system. Check whether any traceable marks are encrypted for electronic communications. Above all, unless you want to leave legal rights behind and be a civil disobedience whistleblower, do not make external disclosures with any information marked classified, or whose release is specifically prohibited by a federal statute. Those only can be disclosed internally, to the Office of Special Counsel or an Inspector General.
6. Rather than printing secure documents, take pictures of them on your personal secured phone. Your access to the documents may be able to be

⁴³ For more detailed advice about external reporting and maintaining anonymity, see [Caught Between Conscience & Career: Expose Abuse Without Exposing Your Identity](#) (2019), published by Government Accountability Project, Project on Government Oversight, and Public Employees for Environmental Responsibility.

tracked, and printing will narrow the pool of potential people who have accessed the documents.⁴⁴ If you can't take a photo, make written notes. Again, however, do not take photographs of information for which public disclosure is unprotected. If your phone or camera is seized, you will be blamed for the illegal disclosure and lose your whistleblower rights.

7. **Instead of providing documents, consider guiding reporters or NGOs in making a Freedom of Information Act (FOIA) request.** To do this, make sure problematic policies or practices are in writing. Try to get your agency to spell them out, or do it in your own emails. Be careful that the FOIA isn't so specific that it tips off the agency that there is a whistleblower. If the agency denies their existence and you have "buried" copies of the records in camouflaged locations, teaming with the requester to expose that cover-up can be a significant development when challenging broader misconduct.
8. **Make sure that any documents you send are stripped of meta data** such as photo locations, watermarks, or tracked changes.

⁴⁴ Mishandling and disclosure of classified information can result in criminal prosecution, and there is no public interest defense for whistleblowers charged under the Espionage Act for possessing and releasing classified information.

Resources

Contact Government Accountability Project

Government Accountability Project is the international leader in whistleblower protection and advocacy. A non-partisan, public interest group, Government Accountability Project actively promotes government and corporate accountability by providing legal representation to whistleblowers and ensuring their disclosures make a difference. Our longstanding work with more than 8,000 whistleblowers has involved working for decades to promote accountability in the areas of public health, food safety, national security, human rights, immigration, energy and the environment, scientific integrity, finance and banking, and international institutions, as well as expanding whistleblower protections domestically and internationally.

Government Accountability Project offers pro bono legal and strategic advice and support to employees considering reporting, or who have already reported, misconduct. We also offer advice to public interest organizations and journalists, as well to their whistleblower sources.

Contact us by email

info@whistleblower.org

Contact us by phone

202.457.0034

Government Resources

Office of Special Counsel

<https://osc.gov> (800) 572-2249

How to file an OSC disclosure claim:

<https://osc.gov/Services/Pages/DU-FileClaim.aspx>

Merit Systems Protection Board

<https://www.mspb.gov> (202) 653-7200

Inspectors General Directory (includes all OIGs for federal agencies)

<https://www.ignet.gov/content/inspectors-general-directory>

Other Whistleblower Support Organizations

These organizations either offer direct legal representation of whistleblowers or have extensive experience working with whistleblowers and can offer referrals to experienced attorneys.

ExposeFacts - <https://whisper.exposefacts.org>

ExposeFacts is a journalism organization that aims to shed light on concealed activities that are relevant to human rights, corporate malfeasance, the environment, civil liberties, and war. They offer legal support to national security whistleblowers as well through their Whistleblower and Source Protection Program (WHISPeR).

National Whistleblower Center (NWC) - <https://www.whistleblowers.org>

The National Whistleblower Center (NWC) assists whistleblowers by finding whistleblower attorneys to represent them, advocating for policies that protect and reward whistleblowers, and educating potential whistleblowers about their rights under U.S. whistleblower law.

Project On Government Oversight (POGO) - <http://pogo.org>

POGO is a nonpartisan, independent watchdog organization that promotes good government reforms by investigating and exposing corruption, misconduct, and conflicts of interest. POGO frequently works with government whistleblowers and other inside sources to document evidence of corruption, waste, fraud, and abuse.

Public Employees for Environmental Responsibility (PEER) - <https://peer.org>

Public Employees for Environmental Responsibility (PEER) is a national alliance of local, state, and federal government scientists, land managers, environmental law enforcement agents, field specialists, and other resource professionals committed to responsible management of America's public resources. PEER provides advocacy and legal support to employees who speak up for environmental ethics and scientific integrity within their agency.

Taxpayers Against Fraud - <https://taf.org>

The Taxpayers Against Fraud Education Fund is a public interest non-profit dedicated to fighting fraud against the government by incentivizing integrity. Through public-private partnerships, TAFEF advances the effectiveness of the False Claims Act and federal whistleblower programs to promote and protect the efficient use of taxpayer dollars.

Whistleblower Aid - <https://whistlebloweraid.org>

Whistleblower Aid is a new non-profit legal organization that supports individuals who report government and corporate misconduct through legal channels, with a particular focus on whistleblowers whose disclosures involve national security and classified information.

Whistleblowers of America - <https://whistleblowersofamerica.org>

Whistleblowers of America (WoA) is a nonprofit organization assisting whistleblowers through education and peer-to-peer support who have suffered retaliation after having identified harm to individuals or the public.

Books/Articles on Whistleblowing

Congressional Research Service, "[Intelligence Community Whistleblower Protections](#)," (PDF) (Sept. 23, 2019)

Devine, Tom and Tarek F. Maassarani. [The Corporate Whistleblower's Survival Guide: A Handbook for Committing the Truth](#), Berrett-Koehler (2011).

Government Accountability Project, Project On Government Oversight, & Public Employees for Environmental Responsibility, [Caught Between Conscience and Career: Expose Abuse Without Exposing Your Identity](#), (PDF) (2019).

Government Accountability Project, "[Working with Whistleblowers: A Guide for Journalists](#)," (PDF) (2019).

Kenny, Kate and Marianna Fotaki, "[Post-Disclosure Survival Strategies: Transforming Whistleblower Experiences](#)" (PDF), Whistleblowing impact (2019).

Kohn, Stephen, [The New Whistleblower's Handbook: A Step-By-Step Guide To Doing What's Right and Protecting Yourself](#), Lyons Press; 3rd Ed. (2017).

Mueller, Tom, [Crisis of Conscience: Whistleblowing In An Age of Fraud](#), Riverhead Books (2019).

Schwellenbach, Nick, "[Survivor's Guide to Being a Successful Whistleblower in the Federal Government](#)," Just Security (Feb. 22, 2017).

Stanger, Allison, [Whistleblowers: Honesty in America from Washington to Trump](#), Yale University Press (2019)

Vaughn, Robert, [Whistleblowing Law](#), Robert Vaughn, ed., Edgar Elgar (2015).

Zuckerman, Jason and Eric Bachman, "[The Whistleblower Protection Act: Federal Employees to Root Out Waste, Fraud and Abuse](#)" (PDF), Zuckerman Law (2017).

Information Security

Freedom of the Press Foundation, [Guides and Training](#)



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www.whistleblower.org

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