47 Four Oaks Road
Bedminster, New Jersey 07921
July 8, 2015

Mary L Kendall
Deputy Inspector General
Office of Inspector General/Department of the Interior
1849 C Street, N.W., MS 4428
Washington, D. C. 20240

Dear Ms. Kendall:

In response to your letter of June 8, 2015, let me simply say you have responded to my letters three times, but you have *never* addressed my primary concerns and complaint.

In my first letter to you on **January 14, 2013**, I indicated that my primary concerns and complaints were that

- the Department of Interior was not doing enough *to punish and discipline* violators of the Whistleblower Protection Act unless required to do so by other judicatories, and
- the Department was not following the guidelines of the OPM's "Disciplinary Best Practices and Advisory Guidelines Under the No Fear Act" nor a number of other federal guidelines for corrective action and *disciplinary action* when violations of the Whistleblower Protection Act occur (or when Prohibited Personnel Practices occur),

and consequently,

- it has ignored it's responsibility to "be accountable for violations of antidiscrimination and whistleblower protection laws" (as stated in the DOI's own website); and
- it has failed to protect it employees from illegal retaliation and discrimination.

Specifically, my concerns and complaint were focused on the DOI's failure to enforce the letter and spirit of Whistleblower Protection Act by failing to punish and discipline DOI employees who retaliate against Whistleblowers.

And the Office of Inspector General has participated in this failure by not aggressively investigating cases of illegal retaliation –even very simple and irrefutable ones---and by not recommending disciplinary action regularly and routinely when appropriate.

In your response of February 27, 2013 to my letter of January 14, 2013, you never answered my complaint, and you never addressed my basic concerns and complaint. You simply ignored them and danced around them.

For instance, you wrote that "as a threshold matter, the OIG has no authority to punish or discipline DOI employees and it properly exercises its authority by referring whistleblower reprisal complaints to the OSC." Technically everything you stated in that sentence is true, but that response was just playing legal dodge ball, and avoiding the real issue….because in fact, you don't have the authority to punish or disciple DOI employees, but you do have the authority to investigate cases and to recommend punishment and discipline or to recommend further investigation to an appropriate agency of the DOI or to other agencies of the federal government like Department of Justice.

You also wrote that "The AIG advised you that the OIG lacks the authority the OSC has to prosecute, order corrective action, and to recommend disciplinary action, and that the OSC or Merit Systems Protections Board is the final authority on whether reprisal occurred." That statement also is partially true---but not completely true.

Some might consider it a smokescreen…. because the OIG does have the authority to investigate cases of wrong-doing and to recommend corrective action and disciplinary action to the appropriate agency.

In fact, that's exactly what the Office of the Inspector General did when I reported instances of waste, fraud and abuse in 2009, and also what you as Deputy Inspector General did in a 2013 Fish and Wildlife Service case:

1-After I wrote a letter to your Office reporting waste, fraud, and abuse at Mesa Verde NP, the IG's office did investigate, and eventually it sent a summary of the investigation to the Colorado Office of the United States Attorney for review and prosecutorial consideration.

2-On July 11, 2013, you wrote a very strong letter requesting "immediate action be taken to address an unreasonable and inappropriate response regarding the discipline of two Fish and Wildlife Service supervisors."

Obviously, your Office does have the statutory and legal authority to investigate violations of law, ethics, and federal regulations, and to recommend corrective and disciplinary action and possible prosecution to the appropriate agency.

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In my second letter to you dated **August 24, 2013**, I restated my basic concerns and complaint. In that letter I wrote,

> "The federal laws and guidelines I have mentioned all mandate that victims of retaliation and discrimination should be protected….**and** that violators should be disciplined and punished. You outlined what your Office did to help victims of retaliation and discrimination but you skirted the question of whether the DOI or any of its bureaus and offices should be disciplining and punishing those who violate whistleblower laws and regulation. The lack of any administrative discipline and punishment of violators within the DOI…and the unwillingness of your Office and the NPS to investigate violators administratively without intervention by the OSC… are why you and I disagree on what the intent and letter of what the No-Fear Act requires, what the OPM recommends, and what is possible and not being practiced by the DOI and the National Park Service" more often.

In that second letter to you, I listed a number of statues and regulations which all require and recommend the need to not only protect whistleblowers, but also to punish and/or discipline those who engage in prohibited personnel practices (PPP).

In response---in your letter to me dated **August 27, 2013---**you again **did not address my primary concerns**, namely why the DOI is not regularly disciplining those who engage in PPP, and why the OIG and its AIG are not investigating whistleblower complaints---even very blatant and irrefutable ones--- and why the Office of the Inspector General is not recommending discipline for those who engage in PPP. And sadly, you tried to pass all my concerns onto the OSC----not unlike what Laurie Larson-Jackson did when we contacted her after suffering retaliation and a PPP at Mesa Verde NP in 2011.

Then this year, in my letter to you dated **May 9, 2015**, I restated my basic concerns and complaint, and concluded by filing a formal complaint against your AIG for Whistleblower complaints, Laurie Larson-Jackson, for not fulfilling her responsibilities as the OIG's primary contact in whistleblower cases and the one responsible for adjudicating cases of retaliation.

Once again, your response to me dated **June 8, 2015**, avoids the basic issues, skirts all the serious complaints, and tries to suggest that you dealt with those concerns and complaints in your previous responses. Simply stated, you didn't and you never have.

If you read my letters to you and your responses carefully, you can see that you never addressed my concerns; in fact, you never have, and you're doing a disservice to yourself and to your Office if you continue maintaining that you have responded to my basic concerns.

What's very interesting is that in 2013 during the same time period when you wrote your responses to me, you also wrote the Secretary of the Department of Interior that letter dated July 11, 2013, related to a FWS case (FWS). In that letter, you describe how your office responded to three separate reprisal complaints from FWS employees and monitored the investigations of those complaints; and then you complained that there had not been "any formal and permanent action against the offending supervisors…." You go on to write, "I request that you require appropriate action to be taken promptly."

Obviously when you wrote that letter of July 11, 2013, you were not violating any statues or laws, and as a "threshold matter" you did have the authority to do what you did. **And what you wrote in that letter is exactly what I think your Office and your AIG, Laurie Larson-Jackson, should be doing more often----in fact, in should be doing it regularly in whistleblower cases and prohibited personnel practice cases.** Furthermore, to the extent allowable by law, you should publicize what you are doing in these cases in the hope of creating disincentives for those who are tempted to retaliate against whistleblowers.

To be sure, what you did in that letter to the FWS clearly was in keeping with the letter and intent of the Code of Federal Regulations Part 2635 when it outlines the "Standards of Ethical Conduct for Employees of the Executive Branch."

> **§2635.106 Disciplinary and corrective action.**
>
> (a) Except as provided in §2635.107, a violation of this part or of supplemental agency regulations may be cause for appropriate corrective or disciplinary action to be taken under applicable Government wide regulations or agency procedures. Such action may be in addition to any action or penalty prescribed by law.
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> (b) **It is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases.** However, corrective action may be ordered or disciplinary action recommended by the Director of the Office of Government Ethics under the procedures at part 2638 of this chapter.

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Finally, let me address again **my complaint against Laurie Larson-Jackson.** It is predicated on my belief that

1. **Laurie Larson-Jackson** simply doesn't seem to be well versed in the Whistleblower Protection Act, who it covers and protects, and the requirements for filing a basic whistleblower case. She also acts as though she lacks an understanding of some basic principles of law,

    - For example, when we first contacted her, she acted as if she was totally unfamiliar with "seasonal employees" of the federal government (like seasonal Park Rangers) and with whether they are covered by the WPA. She kept asking again and again whether seasonals were federal employees, and whether we really received SF-50's at the end of each season, and she wanted us to send her copies of our SF-50's--- essentially to prove we had been "real" federal employees and had legal "standing" to file a Whistleblower complaint. To be sure, shouldn't she have

known about seasonal employees of the federal government? And as a Whistleblower specialist, shouldn't Laurie Larson-Jackson---the AIG for Whistleblower cases and the primary and first contact in Whistleblower cases---have known that all employees and former employees of the government---whether full time permanent or temporary and seasonal---are covered by the WPA? At the end of one phone call, she even suggested that we might want to just wait and put our entire cases on hold while she looked more carefully into the "global" question of whether and how seasonals are protected by the WPA.

- Or another example, Laurie kept raising questions of whether the FOIA disclosures I mentioned would qualify for a Whistleblower case. Or, as you wrote in your response to me of February 27, 2013, "the AIG advised you that there were some impediments to your case to include: your statement your protected disclosure was a FOIA request".

  In point of fact, we did mention the FOIA disclosures, **but** we also mentioned our letter to your office—the Office of the Inspector General---and the subsequent investigation. In fact, in the "Chronology of Events" which I sent Laurie right after our first phone call as a summary of our conversation, there is this section:

  > *October 1, 2009: The sudden and unexpected retirement of Larry Wiese seemed suspicious.* ***And so I wrote the Office of the Inspector General to report what I believed had been "significant and regular instances of waste, fraud, and abuse and basic mismanagement by Larry Wiese." An investigation by the DOI's OIG was started with the case number: PI-PI-10-0044-I***

  Why did Laurie focus on the FOIA disclosures instead of immediately recognizing that my letter to your office and the subsequent investigation at Mesa Verde by your Office was as an obvious and almost prima facie element for a Whistleblower case? How could she have not have noticed the significance of my letter to the IG's Office vis-à-vis the FOIA disclosures?

- You wrote that Laurie thought another impediment to our case might be "whether we had suffered a harmful personnel action given that we were hired at the Statue of Liberty Monument National Park which you acknowledge is a premier park and one you desired to work in….."

  As you know, there is nothing in the WPA which in any way suggests a WPA violation doesn't occur if the victim of retaliation gets another job…on their own and with no help from the agency.

  Legally, challenging whether we had standing to file a case simply because we were re-hired by the Statue of Liberty is like saying a raped women who gets married a few days later must not have suffered or been harmed because she apparently felt good enough to go ahead with her wedding, or that a man who has been robbed one day but wins the lottery the next wasn't really the victim of a crime.

  After being told by our supervisor at Mesa Verde that she had been ordered not to re-hire us by the new Superintendent at MVNP, we were able to get re-hired immediately at the Statue of Liberty where we had worked the year before. And instead of seeing that as a possible impediment to a successful Whistleblower case, Laurie Larson-Jackson should have recognized that as confirmation that we were good Park Rangers and obviously had "re-hire" status at other parks---even a much larger and well-known icon like the Statue of Liberty and Ellis Island.

2. **Laurie Larson-Jackson** didn't seem to be familiar with some classic WPA court cases like the Bruno-Robinson case in 1999, or recent court decisions like the Supreme Court's decision on Whistleblower protections e.g. the Thompson v. North American Stainless LP case of January 2011.

   - You confirmed in the first response to me (February 27, 2013) that the AIG advised us that another impediment to our case was "whether nexus could be proven."

     In fact, that is another reason why I believe Laurie Larson-Jackson either doesn't understand the WPA and several significant cases related to it, or simply didn't bother to read the "Chronology of Events" and the "Basis of our Complaint" which I sent her right after our initial phone call. In those documents she had all the information she needed to recognize a prima facie Whistleblower case. Specifically,
     - we were **covered employees**, who had made a
     - **protected disclosure**---**Protected Disclosures**:*..."**Any** disclosure of information" that a covered employee "reasonably believes" evidences "a violation of any law, rule, or regulation" or evidences "gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety" is protected.... Moreover, "**any** disclosure" made to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures.....is also protected." "The WPA protects "any" disclosure evidencing a reasonable belief of specified misconduct..."*
     - and we had suffered "**personal action**" e.g. our supervisor, Linda Martin, was ordered by the new Superintendent not to re-hire us.

     Furthermore, I gave Laurie Larson-Jackson the name of our supervisor at Mesa Verde, Linda Martin, who had intended to re-hire us, and who would have been willing to verify all our statements and the facts surrounding our case.

     In the final analysis, how could there have been any question about whether a "nexus could be proven"? To everyone who hears about our case or reads about it--- including the Office of Special Counsel--- it was a simple case: the new Superintendent at Mesa Verde simply didn't want me to be re-hired because I had filed a FOIA request which "encouraged" a former Superintendent to retire and I had written the IG's Office disclosing suspected waste, fraud, and abuse which resulted in an investigation by the IG's Office. And the new Superintendent didn't want me to return even though I had received only excellent recommendations and evaluations. That was clear retaliation. And then to make matters worse, the guilty Superintendent ordered Linda Martin not to re-hire Sara----for no reason except that she was married to me.

   - In Sara's case that was a violation of Title VII of the Civil Rights Act. Again, in the "Basis of our Complaint" I sent Laurie information about a unanimous Supreme Court decision that had been rendered ten days after we were notified by Linda Martin that couldn't re-hire us. (See the Thompson v. North American Stainless LP case of January 2011).

     Was Laurie Larson-Jackson not aware of this decision? And if so, or if after reading what I sent her, why didn't she react, or do something?

3. **Laurie Larson-Jackson** doesn't seem to be willing to quickly and efficiently resolve retaliation cases.

- Quite honestly, what she did in our case--- and from what I hear she does in many if not most other cases--- is no more than what a new and untrained assistant or intern could do. Even worse, she raised possible impediments which were not impediments or based in law, she seemed disinclined to pursue a clear and blatant retaliation case even though she had access to everything she needed for a case, and she did nothing more than recommend the CORE PLUS process, and finally confirmed---somewhat reluctantly--- that we also could contact the OSC.

In the end, we did win our case rather easily through the Office of Special Counsel, and we won a settlement Agreement which reimbursed us for the $220.58, gave us the choice to work in any National Park we wanted (we worked in Yellowstone NP during the summer of 2014), and gave notice to everyone that the Superintendent at Mesa Verde NP had committed a prohibited personnel practice. And even though the case was hampered by a number of delays (like the prosecutor's maternity leave and the shut-down of the government), it was resolved much quicker than most cases….in part, because it was such a simple, blatant, and irrefutable case.

And yet, in our case and in many others, Laurie Larson-Jackson did virtually nothing.

Obviously, I feel that a lot more has to be done before the Whistleblower Protection Act actually begins to work. And a lot more has to be done before employees of the Department of Interior can really work without fear of retaliation or feel they can report waste, fraud, and abuse without fear of reprisal or retaliation. And a critical step has to be a change in how Laurie Larson-Jackson responds to whistleblower complaints…..because right now she isn't doing enough, she is fulfilling only part of her responsibility, and she isn't reacting the way you did in your letter to the Secretary of the Department of Interior when you wrote about problems at the FWS!

I look forward to your response and hope you will respond to my primary concerns and complaints!

Bruce E. Schundler

cc: Secretary Sally Jewell
Department of the Interior

cc: U.S. Office of Government Ethics
Washington, D.C.

P.S. For easy access, all of these letters have been posted on my web site at
http://www.schundler.net/OIGandDiscipline.htm