



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

FEB 27 2013

Mr. Bruce E. Schundler
47 Four Oaks Road
Bedminster, NJ 07921

Dear Mr. Schundler:

This is in response to your January 14, 2013 letter, received by this office on January 25, 2013, in which you request information on where to file a formal complaint against the Department of the Interior (DOI) and Office of Inspector General (OIG). You say that the basis for your complaint is that the DOI and OIG are “not complying with the letter and intent of the No-Fear Act, the former Whistleblower Protection Act and the new Whistleblower Protection Enhancement Act, and various parts of the Civil Rights Act, and the guidelines of the Office of Personnel Management as they pertain to the protection of whistleblowers and the application of “Disciplinary Best Practices” to violators of the WPA (or the new WPEA).” You alleged that the OIG has “failed to meet its obligation under the law” by recommending that you file your reprisal complaint with the Office of Special Counsel (OSC) and by failing to “punish and discipline” violators of these laws.

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. The OIG could be deemed in violation of the law if a referral was not made. The WBPEA requires OIGs to educate employees on whistleblower protection and anti-retaliation but cautions OIG’s against legal representation, advocacy or serving as an agent of the whistleblower.

The OIG Whistleblower Protection Program (WBPP) provides whistleblower protection education and training to all current DOI employees as well as former employees and applicants for employment as needed. You acknowledge that education is accomplished. The WBPP *may* also respond to complaints in several different ways, but complaints are always evaluated case by case.

In your case, the Associate Inspector General (AIG) for the WBPP provided you with information on whistleblower protection law, process and formal venues for relief. Based on the information you provided to the OIG, the AIG advised you of your immediate right to file a complaint with the Office of Special Counsel (OSC) based on: (1) your facts; (2) your desire to ensure the alleged retaliator(s) were disciplined to include public censure; and (3) your statement that time was of the essence as you were planning your final seasonal employment with the National Park Service before retirement.

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 Protection Board is the final authority on whether reprisal occurred.

At the same time, the AIG advised you that there were some impediments to your case to include: (1) your statement that your protected disclosure was a FOIA request; (2) whether you had suffered a harmful personnel action given that you were hired at the Statue of Liberty Monument National Park which you acknowledged is a premier park and one you desired to work in; and (3) whether nexus could be proven.

Finally, the AIG advised that you could seek facilitation or mediation through the DOI's Office of Collaborative Action Dispute Resolution (CADR/CORE) concurrent with filing your OSC complaint. You were advised that mediation involves compromise. The AIG offered to answer any questions you had regarding process, purpose and procedure going forward.

You filed a formal complaint with the OSC and sought mediation through CORE. CORE mediation is confidential and the OIG has no further information on what transpired other than what you have shared. You indicated that mediation was unsuccessful because you could not agree on a "gag-order" relating to discipline and public censure of the alleged retaliators.

You now wish to file formal complaints against the OIG, CORE and Solicitor's Office employees for failing to take action outside of their authority or discretion. While you may disagree with how they performed their jobs you do not identify any action on their part that was improper. You simply disagree with their approach and with the whistleblower process Congress designed. You are seeking a remedy not recognized under the law.

I can only recommend that you continue to pursue your whistleblower complaint with the OSC or the MSPB through an individual right of action appeal. If you have questions please visit the OSC and MSPB websites at www.osc.gov and www.mspb.gov.

Sincerely,



Mary L. Kendall
Deputy Inspector General

cc: Office of the Attorney General
U.S. Department of Justice
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