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January 14, 2013

Department of the Interior
Office of Inspector General
1849 C Street, NW, MS 4428
Washington DC 20240

Dear Inspector General:

I don't know if I should be addressing this to you---or to the Attorney General's Office---since I am writing to file a formal complaint against the Department of Interior and its own Office of Inspector General.

Specifically, I believe the Department of Interior and the Office of the Inspector General 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.)

Simply stated, the DOI has complied with the training and educational requirements of the No-Fear Act and the Whistleblower Protection Act and its various departments and agencies offer the mandated training programs; but it has done nothing to enforce the Whistleblower Protection Act within the Department itself or to punish and discipline violators of these laws unless required to do so by other judicatories; it hasn't followed the guidelines of the Office of Personnel Management's "Disciplinary Best Practices and Advisory Guidelines Under the No Fear Act"; it has ignored its responsibility to "be accountable for violations of antidiscrimination and whistleblower protection laws" (as stated in the DOI's own website); or to protect its employees from illegal retaliation and discrimination.

For instance, according to the OIG's own website two years ago, "the Inspector General may respond to possible WPA complaints in several ways. It can:

1. Conduct an informal or formal inquiry to determine if reprisal is taking place;
2. Advise the appropriate Assistant Secretary or Bureau Director to intervene if reprisal is occurring or threatened; and
3. Assist the employee in seeking relief through the U.S. Office of Special Counsel or other appropriate authority if the reprisal continues. "

But in reality, the Office of the Inspector General ignores steps 1 and 2, and just passes legitimate Whistleblower cases onto the Office of Special Counsel; and in the past, the OSC did nothing; more recently it has tried but it is overwhelmed and back-logged, and basic investigations can take over two years.

For a typical account of what happens with the Department of Interior, and in the spirit of openness and transparency, my own experiences have been chronicled at <http://schundler.net/Whistleblower.htm>).

Specifically what could have been done differently and why am I filing this formal complaint?

1. When I first contacted the Office of Inspector General's division on Whistleblower Protection, a formal or informal investigation should have been conducted immediately. And then, after a brief review of the case, why didn't the OIG's office contact both Cliff Spencer and the Regional Director of the Intermountain Region (NPS), John Wessel, and inform them that a possible Whistleblower Protection Act violation had occurred? If supervisors and/or superintendents are called by the IG's office and asked to "justify" their actions or told that they may be in violation of the Whistleblower Protection Act, and if supervisors and/or superintendents know this will happen when apparent violations of the law have occurred, fewer violations will happen. In our case, for instance, if our superintendent had been called quickly, if he had been apprised of the fact that he may have violated the WPA, and that the IG's office was investigating and that the case could be forwarded to the Office of Special Counsel, he might have reconsidered, and he might have told our supervisor that she could rehire us, and the case would have been closed quickly and never gone to the OSC.
2. In addition, if the IG's Whistleblower section felt a whistleblower violation had occurred in our case, or if--- as a lawyer--- Laurie Larson-Jackson had reviewed cases and determined that our case had merit, why didn't she contact the Regional Director informing him that a complaint had been filed, that it appears to be legitimate, and that the complaint may be filed with the OSC. If every supervisor and/or superintendent knew that their immediate supervisor would be informed of any and all formal whistleblower complaints, I suspect supervisors would be more careful about their decisions, and fewer cases would eventually be filed.
3. Why didn't the DOI's OIG or its Solicitor Matthew Wheeler pursue the case internally? According to the federal "No Fear Act," each and every agency of the government is supposed to do what is necessary to enforce the Whistleblower Protection Act. Each agency is supposed to ensure that the WPA is not ignored or violated. In "passing the buck" quietly to the OSC, wasn't the DOI's Office of Inspector General failing to meet its obligations under the law?
4. After we entered the DOI's CORE process, it became apparent that everyone in the program wanted to demand a complete and lasting gag-order.....which is not required by the government's own ADR regulations (5 USC Sec. 571). Why? How will supervisors behave properly if they never hear of adjudicated cases or of cases where violators are being punished? How can you create an awareness that the WPA is being enforced if no one is allowed to talk about cases have been filed and adjudicated? And why during the CORE process was the demand for a lasting "gag order" required....when the federal ADR regulations do allow the final decision or determination to be made public?
5. During the CORE process, we became very aware that the DOI's regional Solicitor's Office seemed to be far more interested in defending, Cliff Spencer, the alleged violator of the Whistleblower Protection Act and Title VII of the Civil Rights Actthan in prosecuting the enforcement of these federal laws or in protecting the our rights as the victims? To be sure, how can victims of retaliation or discrimination feel they are being protected if they very quickly feel the government has no interest in prosecuting or punishing blatant violators of the WPA or the Civil Rights Act, or in defending their interest as victims?

Simply stated, my complaint is based on the fact that I believe the Department of Interior has not been 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.) Specifically,

- Violations of are not being investigated unless the victims take the initiative.
- Enforcement through compliance with the OPM’s guidelines and several federal regulations tends to be ineffectual or nonexistent.
- Disincentives not to violate these laws are neither apparent nor effectual.
- And it seems only the Office of Special Counsel is prosecuting violations—even when those violations are obvious and blatant violations of federal law.

I look forward to hearing from you and to hearing if a formal complaint should be filed in some other format.

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cc:

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