U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Washington, DC 20548

Accessible Version

November 12, 2024

Mr. Michael E. Horowitz
Inspector General
Department of Justice

Whistleblower Protection: Department of Justice Office of the Inspector General Needs to Improve Awareness of FBI Employee Rights

Dear Inspector General Horowitz:

We are concurrently issuing this management report and our report on Federal Bureau of Investigation (FBI) whistleblower retaliation protections.[1] That report discusses the timeliness and outcomes of FBI whistleblower retaliation complaints, progress the Department of Justice (DOJ) made to address new FBI whistleblower protections, and DOJ and FBI processes for reviewing retaliatory security clearance and access determinations.

Among the report's findings, we found that the DOJ Office of the Inspector General did not consistently meet regulatory notification requirements to contact FBI whistleblower retaliation complainants within 15 days of receiving the complaint.[2] We also found that mandatory training co-sponsored with the FBI did not communicate that FBI whistleblower retaliation complainants may seek additional review by DOJ's Office of the Inspector General if they believe a retaliatory security clearance or access determination has been taken in retaliation for a protected disclosure.[3]

Objectives, Scope, and Methodology

This management report describes the findings and recommended actions related to the DOJ Office of the Inspector General. These findings relate to (1) timeliness of DOJ's Office of the Inspector General notifications to complainants and (2) whether mandatory training clearly

[1]Although retaliation is generally a broader term that can encompass other actions such as harassment, in this report, we use the term retaliation to refer to prohibited actions taken in reprisal for a protected disclosure. See 5 U.S.C. § 2303(a) (citing the enumerated list of personnel actions); 50 U.S.C. § 3341(j)(1) (concerning security clearance and access determinations). GAO, *Whistleblower Protection: DOJ and FBI Need to Improve* Employees' *Awareness of Rights*, GAO-25-106547, (Washington, D.C.: Nov. 12, 2024).

[2]DOJ's Office of the Inspector General and Office of Professional Responsibility are referred to as the investigating offices. 28 C.F.R. § 27.3(a)(1). The Office of the Inspector General is a statutorily created independent entity with jurisdiction to review programs and personnel in all DOJ components, including whistleblower retaliation complaints and security clearance and access determinations. The Office of Professional Responsibility is part of DOJ and has jurisdiction to investigate complaints alleging professional misconduct against DOJ attorneys.

[3]DOJ and FBI have separate processes to review FBI whistleblower retaliation complaints alleging personnel actions and security clearance and access determinations. This is because the processes are governed by two different statutes. 5 U.S.C. § 2303(a) prohibits FBI retaliatory personnel actions and 50 U.S.C. § 3341(j)(1), Presidential Policy Directive-19(B), and Security Executive Agent Directive 9 prohibit FBI retaliatory security clearance and access determinations.

communicates that complainants may seek review of retaliatory security clearance and access determinations by DOJ's Office of the Inspector General.

As part of our review, we reviewed case files for FBI whistleblower retaliation complaints closed from 2018 through 2022 by DOJ's Office of the Inspector General and Office of Professional Responsibility (investigating offices). We focused on this time frame because it was the most complete and recent data available at the time of our review. Specifically, we examined a generalizable sample (119 of 272) of complaints closed by DOJ's Office of the Inspector General and the Office of Professional Responsibility.[4] We also reviewed summary-level information on complaint timeliness for complaints opened in 2023, after the investigating offices made changes to their processes. We compared the timeliness and outcomes, among other things, of the complaints we reviewed against selected required time frames in DOJ's regulations. We also compared them to the findings from our 2015 report, which assessed complaints closed from 2009 through 2013, to determine if DOJ timeliness has improved and how case outcomes have changed.[5]

In addition, we reviewed DOJ roles and responsibilities, policies, and procedures for handling FBI whistleblower retaliation complaints and interviewed senior DOJ officials responsible for handling these complaints. When reviewing complaint timeliness and outcomes, we did not re-adjudicate complaints. We also compared DOJ and FBI policies and procedures to relevant statutes, regulations, and directives.[6] We reviewed all four complaints that the DOJ Office of the Inspector General closed from 2018 through 2023 involving allegedly retaliatory security clearance and access determinations.[7]

The performance audit upon which this report is based was conducted from January 2023 to November 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

DOJ Investigating Offices Continue to Not Meet 15-Day Time Frame for Acknowledging Receipt of FBI Whistleblower Retaliation Complaints

[4]Closed refers to complaints terminated by DOJ's Office of the Inspector General and the Office of Professional Responsibility.

[5]GAO, *Whistleblower Protection: Additional Actions Needed to Improve DOJ's Handling of FBI Retaliation Complaints*, GAO-15-112 (Washington, D.C.: Jan. 23, 2015).

[6]5 U.S.C. § 2303. 50 U.S.C. § 3341. 28 C.F.R. pt 27. Presidential Policy Directive-19 (PPD-19) (Washington, D.C.: Oct. 10, 2012). Office of the Director of National Intelligence, *Security Executive Agent Directive 9: Appellate Review of Retaliation Regarding Security Clearance and Access Determinations* (Washington, D.C.: May 28, 2022). Whistleblower Protection for Federal Bureau of Investigation Employees, 89 Fed. Reg. 7,277 (Feb. 2, 2024). Department of Justice, *Department of Justice Instruction 1700.00.01: Department of Justice Appeal Process for Denial or Revocation of Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (Mar. 7, 2018) (updated July 2024). Federal Bureau of Investigation, *FBI Policy Directive 0971D: FBI Whistleblower Policy* (May 1, 2017). Federal Bureau of Investigation, Electronic Communication: *Approval and Request to Launch Updated Whistleblower Protection Course* (Sept. 9, 2021).

[7]We reviewed complaints involving alleged retaliatory security clearance and access determinations that DOJ's Office of the Inspector General reviewed from 2018 through 2022 and closed. The last complaint was closed in January 2023.

DOJ regulations prohibit DOJ from taking, or failing to take, or threatening to take or fail to take a personnel action against an FBI employee as retaliation for a protected disclosure (i.e., retaliation).[8] DOJ regulations provide the investigating offices responsibilities for reviewing FBI whistleblower retaliation complaints. For example, DOJ's Office of the Inspector General and Office of Professional Responsibility (investigating offices) have 15 days to acknowledge that the complaint has been received, among other things.[9]

Since our 2015 report, the investigating offices continue to not meet the required time frame to acknowledge FBI whistleblower retaliation complaints. In reviewing the complaints closed from 2018 through 2022, we estimate that the investigating offices did not meet the 15-day requirement in 46 percent of complaints.[10] Our prior work found that in 65 percent of the complaints closed from 2009 through 2013 that we reviewed (37 of 57)[11], the investigating offices did not consistently comply with the 15-day regulatory requirement.[12]

The investigating offices have identified some challenges in timely routing and review of complaints that can contribute to delays in acknowledging receipt of complaints. In particular:

- According to a senior official at the DOJ Office of the Inspector General, their office receives approximately 14,000 complaints per year, including whistleblower complaints. The official noted that the overall complaint volume poses a challenge.
- Additionally, there can be delays if the office responsible for acknowledging receipt of the complaint is not the same office that initially received the complaint. For example, there can be delays if the DOJ Office of the Inspector General routes complaints to the Office of Professional Responsibility. A senior Office of Professional Responsibility official noted that sometimes the DOJ Office of the Inspector General does not assign a complaint to the Office of Professional Responsibility until after the 15 days have passed so it cannot meet the requirement.

The investigating offices said they have taken some steps to address delays we previously identified in 2015.[13] For example, an Office of the Inspector General official noted that the Hotline Operations Branch established timeliness metrics in November 2021 to ensure complaints were accurately and timely entered in the case management system. However, according to data reported by the Office of Professional Responsibility on complaints opened in 2023, the Office of the Inspector General routed 19 percent (9 of 47) of the complaints to the Office of Professional Responsibility after 15 days. The Office of the Inspector General official

[8]Any employee of the FBI, or of any other component of the Department, who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, a personnel action, as defined in 5 U.S.C. § 2302(a)(2)(A), with respect to any FBI employee as retaliation for a protected disclosure. 28 C.F.R. § 27.2. For purposes of this report, "employees" includes applicants for employment unless otherwise specified. See 5 U.S.C. § 2303(a) (prohibiting retaliatory personnel actions against FBI employees and applicants).

[9]The office that will investigate the complaint must provide written notice to the complainant acknowledging receipt of the complaint within 15 calendar days of the date either of the investigating offices receives the complaint. In addition, the written notice must state the name of the person within the office who will serve as the point of contact for the complainant. 28 C.F.R. § 27.3(c).

[10]This estimate has a margin of error of plus or minus 6 percent, at the 95 percent confidence level.

[11]In some complaints, the office may have met the requirement but not retained documentation in the case file.

[12]GAO-15-112.

[13]GAO-15-112.

acknowledged delays in the intake processing of complaints. Delays at the Office of the Inspector General, which routes the complaints, can in turn cause delays for the Office of Professional Responsibility.

The offices have not addressed the identified delays that can occur if the office responsible for acknowledging receipt of the complaint is not the same office that initially received the complaint. Specifically, the offices have not analyzed time frames for their respective roles in the process to identify issues that affect timely communication with complainants. By identifying and addressing issues with meeting the regulatory notification requirements, the Office of the Inspector General and Office of Professional Responsibility can better ensure complainants receive information and the investigating offices make decisions in a timely manner.[14]

Mandatory Training Does Not Clearly Communicate that FBI Whistleblower Complainants May Seek Office of the Inspector General review of Retaliatory Security Clearance and Access Determinations

Individuals at the FBI may seek review by the DOJ Office of the Inspector General when they believe a security clearance or access determination was taken in retaliation for a protected disclosure they made.[15] DOJ's Office of the Inspector General closed four complaints from 2018 through 2023 in which an FBI complainant alleged a security clearance or access determination, such as revoking a security clearance, occurred in retaliation for making a protected disclosure.[16]

Based on our analysis, we found that individuals at the FBI alleging retaliation do not always know they can pursue review by the Office of the Inspector General if they allege experiencing retaliatory security clearance and access determinations. FBI whistleblower retaliation complainants may allege that both a retaliatory personnel action and retaliatory security clearance and access determination occurred in response to their protected disclosure.[17] For example, complainants may only be pursuing DOJ's review of retaliatory personnel actions

[14]We are making one recommendation for DOJ's Office of Professional Responsibility to address this issue in GAO-25-106547.

[15]In addition, if an individual undergoes a security clearance review and the DOJ Office of the Inspector General determines retaliation has not occurred, the individual may appeal to the Intelligence Community Inspector General or the Director of National Intelligence. Department of Justice, Department of Justice Instruction 1700.00.01: *Department of Justice Appeal Process for Denial or Revocation of Eligibility For Access to Classified Information or Eligibility to Hold a Sensitive Position* (July 30, 2024).

[16]We reviewed complaints involving alleged retaliatory security clearance and access determinations that DOJ's Office of the Inspector General received from 2018 through 2022 and closed. The last complaint was closed in January 2023. Additionally, DOJ's Office of Professional Responsibility reviewed one individual's allegations of retaliatory personnel actions, and that individual attempted to file a complaint alleging a retaliatory security clearance suspension. However, according to DOJ's Office of the Inspector General, it did not have jurisdiction to investigate the complaint because the individual attempted to appeal a security clearance suspension within 1 year, where that suspension was made for the purposes of conducting an investigation. See 50 U.S.C. § 3341(j)(4)(A). According to DOJ's Office of the Inspector General, the FBI fully reinstated the individual's security clearance within 1 year.

[17]In addition to DOJ's processes for handling FBI whistleblower retaliation complaints alleging a retaliatory personnel action, DOJ and FBI have separate processes for complaints that allege a retaliatory security clearance or access determination. Adverse retaliatory security clearance and access determinations are not retaliatory personnel actions under 5 U.S.C. § 2303. Retaliatory security clearance and access determinations are prohibited under a different statute and directives, including PPD-19. 50 U.S.C. § 3341(j)(1) (concerning security clearance and access determinations); The White House, Presidential Policy Directive 19 (PPD-19), ¶ (B) (Washington, D.C.: Oct. 10, 2012). Office of the Director of National Intelligence, *Security Executive Agent Directive 9: Appellate Review of Retaliation Regarding Security Clearance and Access Determinations*, ¶ (E)(1) (Washington, D.C.: May 28, 2022).

when they could also pursue DOJ's Office of the Inspector General review of retaliatory security clearance and access determinations.

We found one complainant who reported both kinds of retaliatory actions but only pursued DOJ's review of retaliatory personnel actions. This complainant alleged retaliatory personnel actions (i.e., reassignment and lower performance appraisals) and a retaliatory security clearance or access determination (i.e., security clearance revocation) under DOJ's process for reviewing retaliatory personnel actions only.

In addition, another FBI whistleblower retaliation complainant misfiled their complaint involving an alleged retaliatory security clearance or access determination. The complainant sought review of a security clearance revocation under DOJ's process for reviewing complaints alleging retaliatory personnel actions. The complainant did not seek review of their complaint through DOJ's process for reviewing retaliatory security clearance or access determinations. Accordingly, the office adjudicating the complaint as part of the retaliatory personnel review process, dismissed the allegations. Further, this complainant argued that DOJ's Office of Attorney Recruitment and Management[18] should apply 50 U.S.C. § 3341(j) and PPD-19(B)—which govern review of retaliatory security clearance and access determinations—to the complaint, and alleged DOJ did not provide notice about the route to appeal such retaliatory actions, as required by PPD-19.[19] The Office of Attorney Recruitment and Management does not have jurisdiction over 50 U.S.C. § 3341(j) or PPD-19(B) appeals and therefore cannot apply this legal framework to complaints they review.

According to FBI policy, FBI personnel must understand whistleblower protection requirements.[20] To ensure personnel are aware of and understand these protections, FBI whistleblower protection training is used to educate all employees concerning their rights and responsibilities under 5 U.S.C. § 2303. The policy notes that the training is mandatory as specified by regulations.[21]
However, the FBI whistleblower protection mandatory training, currently sponsored by the FBI, the Office of Equal Employment Opportunity Affairs, and DOJ's Office of the Inspector General, does not mention the review by DOJ's Office of the Inspector General of alleged retaliatory security clearance and access determinations.[22]

Updating mandatory training to communicate that complainants may seek review by DOJ's Office of the Inspector General if they believe a retaliatory security clearance or access determination has been taken in response to a protected disclosure can help provide assurance that complainants know that they may utilize this process to seek corrective action.[23]

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[18]Among other responsibilities, DOJ's Office of Attorney Recruitment and Management reviews FBI whistleblower complaints alleging retaliatory personnel actions. 28 C.F.R. § 27.4(e).

[19]As noted earlier in the report, 50 U.S.C. § 3341(j) and PPD-19 contain provisions prohibiting retaliatory security clearance or access determinations taken against employees for reporting waste, fraud, and abuse. PPD-19 states that it ensures that employees serving in the Intelligence Community or who are eligible for access to classified information can effectively report waste, fraud, and abuse while protecting classified national security information.

[20]Federal Bureau of Investigation, *FBI Policy Directive 0971D: FBI Whistleblower Policy* (May 1, 2017).

[21]Federal Bureau of Investigation, Electronic Communication: *Approval and Request to Launch Updated Whistleblower Protection Course* (Sept. 9, 2021) (citing 5 C.F.R. § 724.203(a), (c)).

[22]According to a senior DOJ Office of the Inspector General official, the FBI consults with the DOJ Office of the Inspector General on the training for FBI employees but the DOJ Office of the Inspector General does not administer the training.

[23]We are making one recommendation for the Director of the FBI to address this issue in GAO-25-106547.

Conclusions

Since our 2015 report, DOJ has made changes to its process for handling FBI whistleblower retaliation complaints. However, areas for improvement remain. The DOJ Office of the Inspector General does not consistently meet requirements to contact complainants within time frames specified by DOJ's regulations. Identifying and addressing issues with meeting these requirements will help ensure complainants receive information and investigating offices make decisions in a timely manner. Further, few FBI whistleblower retaliation complainants alleged retaliatory security clearance and access determinations, and individuals at the FBI may not know where to pursue complaints involving alleged retaliatory security clearance and access determinations. Updating mandatory training to communicate that employees may seek review by DOJ's Office of the Inspector General would help provide assurance that complainants know that they may utilize this process to seek corrective action. It is important that DOJ's Office of the Inspector General consults with the Office of Professional Responsibility and the FBI to ensure the issues in this report are addressed.

Recommendations for Executive Action

We are making the following two recommendations to DOJ's Office of the Inspector General. Specifically:

The Inspector General, in consultation with the Counsel for the Office of Professional Responsibility, should identify and address issues with meeting regulatory notification requirements to contact the complainant within 15 days of receiving the complaint. (Recommendation 1)

The Inspector General, in consultation with the Director of the FBI, should update mandatory training to communicate that FBI complainants may seek additional review by the Office of the Inspector General if they believe a retaliatory security clearance or access determination has been taken in retaliation for a protected disclosure. (Recommendation 2)

Agency Comments on Our Evaluation

We provided a draft of this report to DOJ's Office of the Inspector General for review and comment. DOJ's Office of the Inspector General concurred with our recommendations and provided technical comments, which we incorporated as appropriate. The DOJ's Office of the Inspector General written comments are reproduced in the enclosure.

In its letter, the DOJ Office of the Inspector General requested that we acknowledge that its office has already analyzed time frames and took steps during the course of our work, including hiring additional staff and defining timeliness metrics, to address delays related to meeting requirements to contact complainants within 15 days of receiving the complaint. The letter indicates that the office is meeting the 15-day regulatory requirement for cases received thus far in 2024. While we are encouraged by the reported improvements in time frames and look forward to receiving data to confirm the outcomes of the actions taken and the specific causes they address, we continue to believe that additional action is needed. For example, DOJ's Office of the Inspector General should review its process for routing complaints to the Office of Professional Responsibility to ensure that complainants are notified within 15 days of DOJ receiving the complaint.

In its comments on our second recommendation, the letter specified that DOJ's Office of the Inspector General did not administer or update mandatory FBI whistleblower protection training. A senior official within the DOJ Office of the Inspector General noted that in practice the office reviews the training material and provides feedback to the FBI, which the FBI incorporates as appropriate. Even if DOJ's Office of the Inspector General does not administer or update the training, we continue to believe that the DOJ Office of the Inspector General plays an important role in consulting with the FBI and providing feedback on the content of its training material. For example, in its response to our 2015 report, DOJ's Office of the Inspector General noted its ongoing work with the FBI to create a specialized training program that highlights the specific requirements and procedures for FBI employees. Updating mandatory training to communicate that employees may seek review by DOJ's Office of the Inspector General would help provide assurance that employees know that they may utilize this process to seek corrective action.

We are sending copies of this report to the appropriate congressional committees and the Inspector General of the Department of Justice. In addition, this report is available at no charge on the GAO website at https://www.gao.gov.

If you or your staff have any questions regarding this report, please contact me at (202) 512-8777 or McNeilT@gao.gov. GAO staff members who made key contributions to this report include Kevin Heinz (Assistant Director), Khaki LaRiviere, and Keira Dembowski.

Sincerely yours,

Triana McNeil
Director, Homeland Security and Justice
Enclosure - 1

Enclosure I: Comments from the Department of Justice Office of the Inspector General

DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

October 18, 2024

VIA ELECTRONIC MAIL

Triana McNeil
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street NW
Washington, D.C. 20548

Re: GAO Report 25-107794 – "Whistleblower Protection: Department of Justice Office of the Inspector General Needs to Improve Awareness of FBI Employee Rights"

Dear Director McNeil:

The Department of Justice (Department) Office of the Inspector General (OIG) has reviewed your September 2024 draft report entitled "Whistleblower Protection: Department of Justice Office of the Inspector General Needs to Improve Awareness of FBI Employee Rights." We appreciate the work your team performed and concur with the report's two recommendations:

(1) The Inspector General, in consultation with the Counsel for the Office of Professional Responsibility, should identify and address issues with meeting regulatory notification requirements to contact the complainant within 15 days of receiving the complaint.

(2) The Inspector General, in consultation with the Director of the FBI, should update mandatory training to communicate that FBI complainants may seek additional review by the Office of the Inspector General if they believe a retaliatory security clearance or access determination has been taken in retaliation for a protected disclosure.

We request that the final report acknowledge the fact that the OIG has already, over the past several years, "analyzed [15-day-letter] time frames" and taken several steps to eliminate the historical delays associated with transmitting 15-day letters to complainants. As you know, thus far in 2024, the OIG has issued 100% of such letters within 15 days—generally about 6 days after receiving each complaint.

Separately, as we have discussed with the U.S. Government Accountability Office (GAO), we concur with the intent of Recommendation 2 but note that the OIG does not administer training to Federal Bureau of Investigation (FBI) employees, and, therefore, is not in a position to update the FBI's training for its employees. We will, however, consult with the FBI on its training to ensure it has the language required in

Recommendation 2. As you know, the OIG identified significant shortcomings in the Department's compliance with 50 U.S.C. § 3341 in a May 2024 Management Advisory Memorandum, including that the Department's then-existing policy on security clearance appeals did not provide the right for employees to file a retaliation complaint with the OIG if their clearance had been suspended for longer than 1 year. In response to our memorandum and recommendations, the Department updated its policy to ensure that employees had this right. Accordingly, we appreciate GAO's efforts to reinforce the OIG's ongoing oversight in this important area.

Sincerely,

M. Sean O'Neill

M. Sean O'Neill
Assistant Inspector General
Oversight and Review Division

Accessible Text for Enclosure I: Comments from the Department of Justice Office of the Inspector General

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OFFICE OF THE INSPECTOR GENERAL

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recommendations, the Department updated its policy to ensure that employees had this right. Accordingly, we appreciate GAO's efforts to reinforce the OIG's ongoing oversight in this important area.

Sincerely,

M. Sean O'Neill
Assistant Inspector General
Oversight and Review Division