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## POLICY STATEMENT ON DISCLOSURE OF INFORMATION FROM OSC PROGRAM FILES

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### I. Statutory Mandate

OSC issues this updated Policy pursuant to Section 12(a) of Public Law 103-424 (1994), codified at 5 U.S.C. § 1212 note, that provides:

. . . . the Special Counsel shall issue a policy statement regarding the implementation of the Whistleblower Protection Act of 1989 . . . .Such policy statement shall be made available to each person alleging a prohibited personnel practice described under section 2302(b)(8) of title 5, United States Code, and shall include detailed guidelines identifying specific categories of information that may (or may not) be communicated to agency officials for an investigative purpose, or for the purpose of obtaining corrective action under section 1214 of title 5, United States Code, or disciplinary action under section 1215 of such title, the circumstances under which such information is likely to be disclosed, and whether or not the consent of any person is required in advance of any such communication."

### II. OSC's Process Requires the Consent of the Individual Who Files a Prohibited Personnel Practices Complaint Before OSC Can Disclose Information to the Employing Agency

OSC's Complaint Form/Portal requires individuals who file complaints alleging prohibited personnel practices ("PPP complainants") to designate one of the following three "consent statements" to indicate how much information the PPP complainant agrees OSC may release to the agency that employs the complainant and under what circumstances:

#### ***Consent Statement 1***

I consent to OSC's communication with the agency involved in my complaint. I agree to allow OSC to disclose my identity and information about my complaint if OSC decides that such disclosure is needed to investigate my complaint (for example, to request information from the agency, or seek a possible resolution).

#### ***Consent Statement 2***

I consent to OSC's communication with the agency involved in my complaint, but I *do not agree* to allow OSC to disclose my identity to that agency. I agree to allow OSC to disclose only information about my complaint, without disclosing my name or other identifying information, if OSC decides that such disclosure is needed to investigate my complaint (for example, to request information from the agency, or seek a possible resolution). I understand that in some circumstances, OSC could not maintain my anonymity while communicating with the agency involved about a specific personnel action. In such cases, I

understand that my request for confidentiality may prevent OSC from taking further action on the complaint.

**Consent Statement 3**

I do not consent to OSC's communication with the agency involved in my complaint. I understand that if OSC decides that it cannot investigate my complaint without communicating with that agency, my lack of consent will probably prevent OSC from taking further action on the complaint.

**III. OSC's Statute Controls the Release of Information in Suitability Investigations**

Unless a PPP complainant consents, OSC is prohibited from responding to an inquiry about an evaluation of the work performance, ability, aptitude, general qualifications, character, loyalty, or suitability of that complainant for any personnel action. *See* 5 U.S.C. § 1212(g)(2). OSC does not need the PPP complainant's consent if the investigating entity informed OSC that the evaluation is necessary for the investigating entity to make a determination about the complainant's access to information, the unauthorized disclosure of which could cause exceptionally grave damage to national security. *See id.*

**IV. The Privacy Act also Governs the Information OSC Withholds and Releases**

Information collected in OSC's files, including information collected for investigating PPP complaints, Hatch Act complaints, or other matters pursuant to which OSC may pursue disciplinary action under 5 USC § 1216, is covered by the Privacy Act, 5 U.S.C. § 552a, which generally prohibits OSC from disclosing a record about a person without that person's written consent. However, the Privacy Act includes 12 exceptions that allow disclosure when deemed appropriate or necessary. The most common exceptions allowing OSC to release information from its files without the complainant's consent are:

1. to those OSC officers and employees who have a need to know;
2. when the Freedom of Information Act requires disclosure;
3. to federal law enforcement agencies for civil or criminal law enforcement activity;
4. to a congressional committee or subcommittee with jurisdiction over the matter covered in the program file;
5. to anyone showing compelling circumstances affecting an individual's health or safety;
6. for a routine use published by OSC in the *Federal Register*, discussed below.

*Routine Uses.* The Privacy Act authorizes agencies to disclose information from their files without consent for purposes beyond the 12 statutory exceptions, once the agency has published a

description of what are called the “routine uses” of information in their records. OSC’s 25 published “routine uses” of information can be found [here](#). See 82 Fed. Reg. 45,076 (September 27, 2017).

OSC’s publication of the routine uses does not *require* OSC to disclose information – it merely *permits* OSC to disclose information. OSC carefully considers the totality of the circumstances in deciding whether it is appropriate or necessary to disclose information under a routine use.

If OSC believes that disclosure of information protected by the Privacy Act is appropriate or necessary in a situation not covered by a routine use, or by any other exception to the Privacy Act’s general prohibition on disclosure, OSC will seek written consent for the disclosure from the person to whom the record pertains.

#### **V. Disclaimer**

This Policy is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against OSC, or any other person or entity.

#### **VI. Superseded Issuances**

This statement combines and replaces the previous policy statements, *Disclosure of Information About Prohibited Personnel Practice Complaints*, and *Disclosure of Information from OSC Program Files*, both dated January 16, 2004.

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