



U.S. OFFICE OF SPECIAL COUNSEL

Your Role in an OSC Investigation

What is U.S. Office of Special Counsel?

The U.S. Office of Special Counsel (OSC) is an independent federal executive agency. OSC investigates complaints alleging, among other things, prohibited personnel practices (PPPs) and violations of the Hatch Act. If OSC finds that a PPP or Hatch Act violation occurred, it pursues appropriate remedies, both informally through negotiated settlements and formally by filing petitions with the Merit Systems Protection Board. These remedies may include corrective action for the person adversely affected, and/or discipline for individuals who violated the law. We encourage you to visit OSC's website at www.osc.gov for information about PPPs, the Hatch Act, and OSC's investigation and prosecution policies and procedures.

Why OSC has contacted you?

OSC is conducting an investigation into a complaint alleging PPP or Hatch Act violations that may have occurred in your federal agency. You have been identified as someone who has or may have information relevant to the matter under investigation. In most PPP and Hatch Act cases, OSC obtains relevant documents and interviews the complainant, the subject, and a number of employees who may have knowledge about the allegations in the complaint. These interviews may be conducted in person at the agency facility, at OSC's offices, or by telephone.

What can you expect if you are contacted by OSC?

Federal agencies and employees must provide information during OSC's investigations. *See* 5 U.S.C. § 1212(b)(5)(A); 5 C.F.R. § 5.4. You are required to answer fully and truthfully all of the investigator's questions. A claim of common law privilege, such as attorney-client privilege, does not prevent OSC from obtaining information with respect to your agency. *See* 5 U.S.C. § 1212(b)(5)(C). If you do not understand a question, you may ask the investigator to restate it, or clarify it. The investigator will take notes on what you say, and may record the interview. The investigator also may ask you to sign an affidavit or sworn statement. If so, you will have an opportunity to review and make changes to the document before signing it. If you sign a document or if the interview is recorded, you may ask for a copy of the document or recording at the close of the case.

Generally, the information you provide to OSC will remain confidential. The Privacy Act and the Freedom of Information Act protect information in OSC investigative files from public disclosure by OSC. Neither the complainant nor the agency will ordinarily have access to information provided to OSC. In a limited number of cases where OSC determines that a violation has occurred, OSC may include the information gathered in an investigation in a report to your agency, the Merit Systems Protection Board, and the Office of Personnel Management. You can ask the investigator for more information about the confidentiality of the information you provide to OSC.

Witnesses

Witnesses are individuals who have or may have information about the matter under investigation. For example, they may be personnel officials, co-workers of the complainant, or other persons who have knowledge of events related to the complaint. Witnesses seldom request to have legal representation because they are not the persons responsible for the actions at issue in the complaint. If a witness requests such representation, OSC will permit the witness to have a personal legal representative present at the interview. Your agency may not require you to have agency counsel represent you or be present during your interview.

Subjects

Subjects are agency officials or employees who are responsible for the personnel action(s) or other prohibited activity at issue in the investigation. OSC routinely interviews such officials to obtain information about the allegations in the complaint. If OSC finds that an agency official or employee committed a PPP or Hatch Act violation, that individual may be subject to disciplinary action. For this reason, some, but not all, of the persons OSC designates as subjects request legal representation during their interviews. OSC will notify you if it considers you to be a subject. Subjects are generally interviewed under oath and the interviews are usually recorded.

May I have legal representation during the OSC interview?

If you decide that you want to have a legal representative present during your OSC interview, you must inform the investigator before the interview and provide OSC with a completed *Designation of Personal Legal Representative* form. Both you and your attorney must sign the form. You may get a copy of the form from the OSC investigator or on OSC's website at www.osc.gov.

What is the role of Agency Liaisons and Points of Contact?

Most federal agencies have staff designated to serve as liaisons or points of contact during OSC investigations. These individuals may be attorneys, employee relations specialists, or human resources staff. They often facilitate responses to document requests, help to schedule interviews, and engage in other activities related to the investigation or resolution of complaints. They also may answer general questions about your rights and responsibilities during investigations. When a liaison or point of contact is an attorney, the individual should not also serve as the personal legal representative of any witness or subject. Additionally, agency employees who worked substantively on the specific personnel actions or allegations that OSC is investigating are potential witnesses and should not serve as liaisons or points of contact in those matters. To illustrate, employees who drafted, reviewed, or approved the personnel actions at issue have worked substantively on the matter.