

OPEN GOVERNMENT PLAN  
—*for the*—  
U.S. OFFICE OF SPECIAL COUNSEL



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**OSC.GOV**  
OFFICE OF SPECIAL COUNSEL

# INTRODUCTION

The U.S. Office of Special Counsel (OSC) is a small, independent federal agency with significant missions to foster accountability, integrity, and fairness in the government. OSC's jurisdiction is rooted in four federal laws: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC uses its authority to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. We provide current and former federal employees and applicants for federal employment a safe and secure channel to disclose wrongdoing that occurs within the federal government. We also enforce the Hatch Act, which keeps partisan politics out of the federal workplace. Finally, OSC enforces the reemployment rights of returning service members and reservists under USERRA.

OSC seeks to leverage its limited resources to create a more transparent and accountable federal workplace. OSC seeks to educate the workforce to prevent prohibited personnel practices as well as Hatch Act and USERRA violations from occurring in the first place. A public spotlight on whistleblower disclosures of wrongdoing makes the government more vigilant in protecting public health and safety, curbing the waste of public resources, and improving accountability. However, openness must be balanced with protecting individuals' privacy rights, the integrity of investigations, and other factors.

This document describes many of OSC's current efforts and initiatives to promote openness within our agency and the federal government. It provides a foundation for dialogue around new and better ways for OSC to serve federal employees and the public.

Open government fosters accountability, integrity, and fairness – all necessary ingredients for a robust and true merit system. OSC strives to help agencies create an environment that embraces whistleblowers and responds effectively to employee disclosures.

# PARTICIPATION AND COLLABORATION WITH STAKEHOLDERS, THE PUBLIC, OTHER AGENCIES, AND ACADEMIA

OSC has actively sought to engage with numerous stakeholders since Carolyn Lerner became Special Counsel in June 2011. These efforts include hosting events with a variety of agency and organizational representatives to learn about their concerns, improve collaboration, and solicit feedback on how OSC can improve its mission and better serve federal employees and the public. Some of the groups we have worked with in the past few years are:

- Non-governmental organizations representing the whistleblower and open government community, including the National Taxpayers Union; Public Employees for Environmental Responsibility; Liberty Coalition; American Civil Liberties Union; Project On Government Oversight; Union of Concerned Scientists; Government Accountability Project (GAP); and National Whistleblower Center;
- Federal managers, including the Senior Executives Association; Federal Manager Association; Small Agency Council; FAA Managers Association; and National Council of Social Security Management Associations;
- Government sector unions, including the National Treasury Employees Union; American Federation of Government Employees; and American Federation of State, County & Municipal Employees;
- Veterans groups, including the National Guard Association; National Committee for Employer Support of the Guard and Reserves; Enlisted Association of the National Guard; Service Members Law Center Reserve Officers Association; American Legion; Vietnam Veterans for America; Paralyzed Veterans of America; Veterans of Foreign Wars; Military Officers Association of America; Disabled American Veterans; AMVETS; Reserve Officers Association; Iraq and Afghanistan Veterans of America; Wounded Warrior Project; Student Veterans of America; and National Veterans Organization; and
- Lesbian, gay, bisexual, and transgender (LGBT) advocacy organizations and agency points of contact, including the National Gay and Lesbian Task Force; Lambda Legal; Servicemembers Legal Defense Network; Pride at Work, AFL-CIO; ACLU LGBT and AIDS Project; National Center for Transgender Equality; National Center for Lesbian Rights; Family Equality; Human Rights Campaign; Department of Justice; Department of Agriculture; Equal Employment Opportunity Commission (EEOC); Department of Homeland Security; Office of Personnel Management (OPM); and the

law firms of Katz, Marshall & Banks; Kator Parks; Alden Law Group; and Outten & Golden.

OSC's extensive outreach has resulted in significant input from stakeholders. For instance, OSC received valuable suggestions on its website design—recommendations that were used in the re-launch of OSC's website in July 2014. Moving forward, OSC intends to utilize resources offered by the General Services Administration's Center for Excellence in Digital Government, especially its DigitalGov User Experience program, to make further improvements to our website and to enhance our digital outreach generally. An easily accessible website is crucial not only to successfully educate the public and the federal employees we serve, but also to accept complaints, disclosures, requests under the Freedom of Information Act, and other inquiries. Harvard's Negotiation and Mediation Clinical Program provided in-depth reports on how OSC can improve its alternative dispute resolution program and its program areas.

OSC is increasing collaboration with other federal agencies. We were an early participant, and remain active, in fostering whistleblower ombudsman programs in Offices of Inspectors General across the federal government. The Whistleblower Protection Enhancement Act of 2012 requires Inspectors General to create a specific office to handle disclosures and protect employees who blow the whistle. In January 2014, we signed a memorandum of understanding with the EEOC, promoting coordination in the enforcement of anti-discrimination laws. OSC has also increased its collaboration with the EEOC and OPM on training, outreach, and cases involving LGBT issues. OSC held a stakeholder meeting with federal partners on this issue in September 2014, a follow-up to a similar meeting in 2012.

In the months leading up to the issuance of this Open Government plan, OSC held meetings with a number of our non-profit stakeholders to solicit input. In 2015, we intend to continue these meetings.

OSC's open government portal—[www.osc.gov/open](http://www.osc.gov/open)—will be a dynamic page where our latest publicly available documents and other information will be highlighted.

Suggestions can be sent to [open@osc.gov](mailto:open@osc.gov).

# FLAGSHIP INITIATIVE—

## 2302(C) CERTIFICATION PROGRAM

Better education and outreach can help prevent retaliation from occurring in the first place. Recognizing this, the White House's [Second Open Government National Action Plan](#), released in December 2013, mandated that all federal agencies become certified under [OSC's 2302\(c\) Certification Program](#) every three years.

Congress enacted 5 U.S.C. § 2302(c) in response to reports that many federal employees were unaware of their right to be free from prohibited personnel practices (5 U.S.C. § 2302(b)), especially retaliation for whistleblowing (§ 2302(b)(8)). Section 2302(c) requires agency heads to ensure, in consultation with OSC, that employees are informed of the rights and remedies available to them under the Whistleblower Protection Act and related laws.

The certification program requires that agencies:

- Place informational posters at agency facilities on whistleblower disclosures, whistleblower retaliation, and all 13 prohibited personnel practices;
- Provide information about the Whistleblower Protection Act and Whistleblower Protection Enhancement Act to new employees as part of their orientation process as well as to current employees and supervisors; and
- Include a link to OSC on the agency's website or intranet.

In addition to the above requirements, OSC's training staff encourages agencies to maintain compliance with the WPEA's provision on the use of nondisclosure agreements. 5 U.S.C. § 2302(b)(13). The WPEA requires that all agency nondisclosure policies, forms, or agreements include an explicit statement notifying employees that they may nonetheless engage in protected whistleblowing. For more information on section 2302(b)(13), including the text of the statement and other agency requirements, please see OSC's March 2013 [memorandum](#) on this issue.

We are encouraged that large agencies like the Department of Energy, the Department of Health and Human Services, and National Aeronautics and Space Administration (NASA) have taken steps to begin the certification progress, and the Departments of Veterans Affairs has become certified. Numerous other agencies and offices have either become certified or are in the process of doing so. On its website, OSC maintains an updated list of agencies that are [certified](#) or [registered](#) to become certified.

Overall, OSC has increased its training efforts. In fiscal year 2014, OSC conducted 90 training sessions throughout the federal government. This compares with 33 sessions just three years ago.

OSC also plans on using the Office of Management and Budget's MAX Information System as well as social media to better distribute educational and training materials throughout the federal government.

## IMPROVING TRANSPARENCY

### New Website

In July 2014, OSC launched a new [website](#) after considering input provided by external stakeholders and staff. The new website is intended to be more informative and user friendly for federal workers, the media, and the public seeking information on OSC and the laws it enforces. Several sections of the website were revised for clarity and to reflect changes in the law. In fiscal year 2015, OSC will continuously improve its website, notably by unveiling a new e-filing system for complainants, which will be easier to use, and improve the organization and accessibility of the available content.

OSC is also developing an online quiz to help educate and train federal employees on whistleblower protection rights, remedies, and responsibilities, as well as other prohibited personnel practices. This will supplement OSC's in-person trainings and allow OSC to reach more of the federal workforce. Similarly, OSC is exploring how to harness social media to increase our visibility in the federal government.

### Proactive Disclosures

OSC regularly issues press releases with details about its work, including corrective and disciplinary actions we have obtained. OSC proactively posts on its website [congressional testimony](#), investigative reports and other materials related to [whistleblower disclosures](#), [budget justifications](#), [annual reports](#), [training materials](#), [policy documents](#), [Hatch Act advisory opinions](#), and other information. The Merit Systems Protection Board (MSPB) also posts information when OSC filings lead to official [orders](#).

OSC is in a dialogue externally with stakeholders and internally with staff on ways it can provide more information on its enforcement efforts, consistent with the need to protect the integrity of investigations and the privacy rights of individuals.

OSC has recently begun an initiative, in response to commitments made in the White House's second Open Government National Action Plan and requests from federal agencies and non-profit groups, to publish redacted versions of select prohibited personnel practice (PPP) reports with broad educational value. This transparency initiative will enhance education and understanding of PPPs within the federal government. Under this initiative, OSC released the first redacted PPP report on [October 23, 2014](#).

In fiscal year 2015, OSC will also begin making logs of Freedom of Information Act requests available to the public on OSC's website.

## Freedom of Information Act

OSC is committed to improving its compliance with the Freedom of Information Act (FOIA). The agency recently added an experienced FOIA officer to process FOIA and Privacy Act (PA) requests. Additionally, other OSC employees have received FOIA training from the Department of Justice. This staffing increase will improve our responsiveness and enable us to reduce our backlog of requests. We have begun transitioning to a new electronic system for processing FOIA and PA requests called FOIAXpress, which will increase our response rate, reduce delays and backlogs, and improve the public experience with FOIA. In addition, in fiscal year 2015, OSC will implement a Public Access Link (PAL) web portal that will provide the public with a secure way to submit FOIA requests, track progress of the FOIA responses, and receive responsive records.

Members of the public can make FOIA requests by mail, fax, or email. FOIA requests should be clearly marked "FOIA Request" and should be addressed to:

FOIA Officer  
U.S. Office of Special Counsel  
1730 M St., N.W., Suite 218  
Washington, DC 20036-4505

Or by email to: [FOIArequest@osc.gov](mailto:FOIArequest@osc.gov)

Or by fax, with a cover sheet marked, "FOIA Request," to: (202) 254-3711.

OSC's online [FOIA Handbook](#) contains more information.

## Congressional Requests

Congressional requests for information should be directed to Deputy Special Counsel for Policy and Congressional Affairs Adam Miles. Mr. Miles coordinates OSC's responses to requests from congressional committees, members' offices, congressional staff, and legislative branch agencies, such as the Government Accountability Office. He can be reached at [amiles@osc.gov](mailto:amiles@osc.gov).

## OSC's Use of Government-Wide Transparency Tools

OSC participates in [USAspending.gov](http://USAspending.gov), where our reported contract actions can be found by searching for OSC as the "funding agency." In addition, OSC uses [Regulations.gov](http://Regulations.gov) to solicit input as part of the eRulemaking process.

In response to the White House's 2009 Open Government Directive, OSC made three data sets available on Data.gov and is reevaluating its data and plans for making new data available on [Data.gov](http://Data.gov) in 2015.

## Open Data and Enterprise Data Inventory

To structure information in an efficient and organized manner and better capture and process new data, OSC is using a new enterprise content management system. The new format, which includes a redesigned intranet and public-facing website, will both establish a more user friendly platform to access information and help consolidate information into a centralized location.

This new system will improve OSC's ability to identify data sets that could be made available to the public. In fiscal year 2014, we made published data and reports more accessible on our new public website, which is an extension of the enterprise content management system. These data and reports include OSC's [public file](#), which contain OSC's letters to the White House when a disclosure case is closed, as well as agency investigative reports and whistleblower comments on the agency investigation.

## Privacy and Information Security

The Federal Information Security Management Act requires OSC to create an agency-wide information security program that will serve as the platform for sensitive information exchange and storage. The program is implemented in the agency's enterprise architecture and internally managed servers that allow the documentation of sensitive information. For example, information technology project managers enforce separation of duties and need-to-know policies and procedures when requiring vendors' assistance, so vendors are not given access to the internal system resources.

OSC does not participate in or house any systems that participate in data mining or computer matching programs.

### List of Privacy Reports

*Report:* Senior Agency Official for Privacy Section of the Annual FISMA Report

*Recipient:* Office of Management and Budget and Congress

*Report:* [Notices Regarding Privacy Act Systems of Records](#)

*Recipient:* Office of Management and Budget and Congress



# Records Management

OSC's records manager is certified by the National Archives and Records Administration (NARA).

We drafted a new SF 115 in 2012 that is currently being reviewed by NARA. This revised SF 115 corrected several disposition periods that were too short (though OSC has been implementing the correct disposition period). Additionally, OSC developed an internal program to identify all records eligible for transfer to Washington National Records Center. Similarly, OSC developed a program to update our internal case file management system to memorialize when records have been destroyed pursuant to the agency records disposition schedule. As part of OSC's ongoing Continuity of Operations Plan (COOP) development, vital or essential records are being identified and will be included in our finalized COOP. As of September 2014, no permanent records have been transferred to the National Archives. Based on our disposition instructions, only a small volume of permanent records is eligible for transfer.

Permanent electronic records of the Special Counsel and Principal Deputy Special Counsel are securely preserved. In fiscal year 2015, OSC plans to begin transitioning to and managing permanent electronic records through a SharePoint platform.

Finally, our records manager developed an agency-wide records management training presentation. The training session was recorded and is available on the agency's internal webpage. Additionally, we host periodic records management briefings, with the next one scheduled for December 2014.