



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505

POLICY STATEMENT
ON
DISCLOSURE OF INFORMATION ABOUT
PROHIBITED PERSONNEL PRACTICE COMPLAINTS¹

Introduction

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system in federal employment by protecting federal employees, former federal employees, and applicants for federal employment from prohibited personnel practices (PPPs), especially reprisal for whistleblowing.²

Given the nature of OSC's enforcement mission, its complaint and litigation files often contain personal or sensitive information – including information from or about complaint filers, and other information made or received by OSC during its investigative and prosecutorial activities. This statement describes OSC's policy on the disclosure of information in its PPP complaint files.³

Consent Statements

When a PPP complaint is filed with OSC, complainants are asked to designate their preference about communications between OSC and the agency involved by selecting and signing one of three "consent statements." The consent statements appear in the complaint form (Form OSC-11) that filers must use to submit PPP complaints to OSC. All three consent statements are reproduced in the attachment to this policy statement.

As noted on the complaint form, certain uses of information by OSC are permitted by the Privacy Act, regardless of the consent statement selected by a complainant. For example, in certain circumstances, OSC is authorized by law to disclose information to certain congressional committees and subcommittees, and to federal law enforcement officials.

¹ Issued pursuant to § 12(a) of Public Law 103-424 (1994), and codified in the United States Code (U.S.C.) at 5 U.S.C. § 1212 note. This policy statement (including the attachment) is intended only to provide general guidance to the public about the circumstances under which OSC may disclose information about prohibited personnel practice complaints. It 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.

² PPPs are listed at 5 U.S.C. § 2302(b).

³ Another OSC issuance, entitled "Policy Statement on Disclosure of Information from OSC Program Files," outlines disclosure criteria applicable to OSC complaint, disclosure, and other program files generally. That policy statement is available on OSC's Web site (at www.osc.gov, in the "E-Library" section, under "Policies and Procedures"), or by request from OSC.

Disclosure of Information About PPP Complaints

Page 2 of 4

General Disclosure Policies

When someone files a PPP complaint, it is OSC's policy *not* to reveal the identity of the complainant to the agency involved unless:

- 1) OSC has the complainant's consent to reveal his or her identity; *and*
- 2) disclosure of the complainant's identity is necessary to proceed with OSC action.

During an investigation and any efforts to resolve a complaint, OSC's policy is to disclose only that information deemed reasonable and necessary under the circumstances to the agency involved. If OSC concludes that a PPP may have been committed, it will attempt to obtain corrective action from the agency involved. When appropriate, OSC may also seek disciplinary action against agency officials or employees.

Consistent with law, OSC will attempt to resolve complaints through settlement negotiations with the agency involved before filing corrective action complaints with the U.S. Merit Systems Protection Board (MSPB). It is OSC's policy to engage in such negotiations or litigation only when the complainant has selected Consent Statement 1 in the complaint form. During such negotiations with agencies, OSC discloses only the information deemed reasonable and necessary by OSC to achieve a mutually agreeable settlement of the complaint. If an appropriate settlement agreement is not reached, and OSC concludes that the law was violated, it may, in its discretion, file a complaint with the MSPB seeking corrective and/or disciplinary action.

It is OSC's policy to inform a complainant on a timely basis about the progress of his or her complaint, and to consult with him or her as needed. Consistent with law, OSC will also send each complainant:

- 1) a letter acknowledging its receipt of his or her complaint, and identifying the OSC staff member assigned to the case;
- 2) a status report after 90 days, and a status report every 60 days thereafter while the case is active; and
- 3) a preliminary determination letter, when OSC proposes to close a complaint based on a lack of evidence or insufficient evidence, providing the complainant with one more opportunity for input before OSC makes its final decision.

Background/Reference Checks

As noted above, certain uses of information by OSC are permitted by the Privacy Act, regardless of the consent statement selected by a complainant. Without the consent of a complainant who has filed a PPP allegation, however, OSC is prohibited by law from responding to an inquiry about an evaluation of the work performance, ability, aptitude, general qualifications, character, loyalty, or suitability of the complainant for any personnel action. So, for example, if an investigator acting on behalf of the Office of Personnel Management, the

Disclosure of Information About PPP Complaints

Page 3 of 4

Federal Bureau of Investigation, or anyone else asks OSC to evaluate the work performance or suitability of a PPP complainant for any personnel action, OSC will not respond without a signed authorization by the complainant. By law, the only exception to this rule would be if an agency informed OSC that it required an evaluation to make a determination about an individual's access to information, the unauthorized disclosure of which could cause exceptionally grave damage to national security.⁴

Conclusion

This policy statement replaces and supersedes the previous edition, dated September 9, 2002. It is available on the OSC Web site (at www.osc.gov, in the "E-Library" section, under "Policies and Procedures"). If you have any questions or comments about this statement, please contact the OSC employee assigned to your case, or OSC's Legal Counsel and Policy Division, at (202) 254-3690.

January 16, 2004



Scott J. Bloch
Special Counsel

Attachment

⁴ 5 U.S.C. § 1212g(2)(B).

CONSENT STATEMENTS

(From Form OSC-11, "Complaint of Prohibited Personnel Practice / Other Prohibited Activity")

PART 3: CONSENT TO CERTAIN DISCLOSURES OF INFORMATION

OSC asks everyone who files a complaint alleging a possible prohibited personnel practice or other prohibited activity to select one of three Consent Statements shown below. ***IF YOU DO NOT SELECT ONE OF THE THREE CONSENT STATEMENTS BELOW, OSC WILL ASSUME THAT YOU HAVE SELECTED CONSENT STATEMENT 1.*** Please: (a) select and sign (or check, if using E-filing) one of the Consent Statements below; and (b) keep a copy of the Consent Statement you select (as well as a copy of all documents that you send to OSC) for your own records.

If you initially select a Consent Statement that restricts OSC's use of information, you may later select a less restrictive Consent Statement. If your selection of Consent Statement 2 or 3 prevents OSC from being able to conduct an investigation, an OSC representative will contact you, explain the circumstances, and provide you with an opportunity to select a less restrictive Consent Statement.

You should be aware that the Privacy Act allows information in OSC case files to be used or disclosed for certain purposes, regardless of which Consent Statement you sign. See 5 U.S.C. § 552a(b). Information about certain circumstances under which OSC can use or disclose information under the Privacy Act appears on the next page.

(Please sign one)

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 as the complainant, and information from or about me, to the agency if OSC decides that such disclosure is needed to investigate the allegation(s) in my complaint (for example, to request information from the agency, or seek a possible resolution through mediation or corrective action). I understand that regardless of the Consent Statement I choose, OSC may disclose information from my complaint file when permitted by the Privacy Act (including circumstances summarized in Part 5, below).

Complainant's Signature for Consent Statement 1

Date Signed

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 as the complainant to that agency. I agree to allow OSC to disclose only information from or about me, without disclosing my name or other identifying information, if OSC decides that such disclosure is needed to investigate the allegation(s) in my complaint (for example, to request information from the agency, or seek a possible resolution through mediation or corrective action). I understand that in some circumstances (for example, if I am complaining about my failure to receive a promotion), OSC could not maintain my anonymity while communicating with the agency involved about a specific personnel action. In such cases, I understand that this request for confidentiality might prevent OSC from taking further action on my complaint. I also understand that regardless of the Consent Statement I choose, OSC may disclose information from my complaint file when permitted by the Privacy Act (including circumstances summarized in Part 5, below).

Complainant's Signature for Consent Statement 2

Date Signed

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 the allegation(s) in my complaint without communicating with that agency, my lack of consent will probably prevent OSC from taking further action on the complaint. I understand that regardless of the Consent Statement I choose, OSC may disclose information from my complaint file when permitted by the Privacy Act (including circumstances summarized in Part 5, below).

Complainant's Signature for Consent Statement 3

Date Signed