

1998

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN, JOINT CHIEFS OF STAFF
UNDER SECRETARY OF DEFENSE (PERSONNEL AND
READINESS)

SUBJECT: Expanded Military Whistleblower Protection

This directive-type memorandum assigns responsibilities and prescribes procedures to implement recent amendments to Title 10, United States Code, Section 1034 (10 U.S.C. 1034), "Military Whistleblower Protection Act," as implemented by DoD Directive 7050.6, "Military Whistleblower Protection."

Section 933 of the Strom Thurmond National Defense Authorization Act for FY 1999, effective October 16, 1998, amends 10 U.S.C. 1034 to improve the timeliness of investigations conducted under the Statute and reduce associated administrative burdens. Most significantly, the amendment expands the coverage of the Statute to include allegations of whistleblower reprisal made by members of the Armed Forces to Inspectors General within the Military Departments.¹ The amendment also imposes reporting requirements to the Inspector General of the Department of Defense in connection with the expanded statutory coverage.

The Military Department Inspectors General (the Inspector General of the Army; the Naval Inspector General; the Inspector General of the Air Force; and the Deputy Naval Inspector General for Marine Corps Matters) shall establish internal procedures for receiving, reporting, and investigating allegations of whistleblower reprisal under 10 U.S.C. 1034. The following procedures are established to comply with subsection (c)(5) of 10 U.S.C. 1034, which provides the Inspector General of the Department of Defense shall ensure the independence of the investigation of reprisal allegations under the Statute, and to minimize any duplication of investigative effort.

A. Notification to the Inspector General of the Department of Defense

Inspectors General within the Military Departments receiving a reprisal allegation shall notify the Inspector General of the Department of Defense and provide a copy of the written complaint, or detailed summary of the allegation, within 10 working days of receiving the allegation. This notification to the Inspector General of the Department of Defense shall be made according to procedures established by the Military Department Inspector General concerned.

B. Determination of whether an Investigation under 10 U.S.C. 1034 is Warranted

¹The term "Inspectors General within the Military Departments" means the Inspector General of the Army; the Naval Inspector General; the Inspector General of the Air Force; the Deputy Naval Inspector General for Marine Corps Matters; and an officer of the Armed Forces assigned or detailed under regulations of the Secretary concerned to serve as an Inspector General at any command level in one of the Armed Forces.

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1. When Inspectors General within the Military Departments receive a reprisal allegation, the Military Department Inspector General concerned shall expeditiously determine whether there is sufficient evidence to warrant investigation under 10 U.S.C. 1034. This applies to all reprisal allegations received by Inspectors General within the Military Departments, except when: the Inspector General of the Department of Defense elects to retain the allegation to determine whether investigation under 10 U.S.C. 1034 is warranted; the Inspector General of the Department of Defense receives a concurrently filed allegation as described in paragraph B.2. below; or, the allegation is made more than 60 days after the date the member first became aware of the personnel action that is the subject of the reprisal allegation. If the Inspector General of the Department of Defense elects to retain the allegation, the Inspector General of the Department of Defense shall notify the Military Department Inspector General concerned as soon as possible.

2. When a member of the Armed Forces files concurrent reprisal allegations with the Inspector General of the Department of Defense and Inspectors General within the Military Departments, the Inspector General of the Department of Defense shall determine whether there is sufficient evidence to warrant investigation under 10 U.S.C. 1034.

3. When the Military Department Inspector General concerned determines there is not sufficient evidence to warrant investigation of a reprisal allegation under 10 U.S.C. 1034, the matter shall be forwarded to the Inspector General of the Department of Defense for review.

4. If the Inspector General of the Department of Defense concurs with the determination of the Military Department Inspector General concerned that there is not sufficient evidence to warrant investigation of the reprisal allegation under 10 U.S.C. 1034, the Military Department Inspector General shall notify the member making the reprisal allegation.

5. If the Inspector General of the Department of Defense believes there is sufficient evidence to warrant investigation under 10 U.S.C. 1034, the Inspector General of the Department of Defense may delegate responsibility for the investigation of the reprisal allegation to the Military Department Inspector General concerned.

C. Military Department Inspector General Investigation of Reprisal Allegations

1. According to procedures established by the Military Department Inspectors General, allegations of reprisal shall be investigated expeditiously upon determination that there is sufficient evidence to warrant investigation under 10 U.S.C. 1034. If the underlying allegation contained in the member's protected communication was not investigated, or the Military Department Inspector General concerned determines the investigation of such allegation was inadequate, the Military Department Inspector General shall conduct a separate investigation of the underlying allegation.

2. When a Military Department Inspector General determines a report of investigation cannot be submitted within 180 days after receipt of the reprisal allegation being investigated, the Military Department Inspector General shall provide the Secretary of Defense, the member making the allegation, and the Inspector General of the Department of Defense, notice of that determination (including the reason for the delay) and the date when the report will be submitted.

D. Inspector General of the Department of Defense Oversight of Investigations of Reprisal Allegations under 10 U.S.C. 1034

All reports of investigation conducted by the Military Department Inspectors General under 10 U.S.C. 1034 shall be submitted to the Inspector General of the Department of Defense for approval.

E. Reports of Investigation

1. The report on the results of investigation shall contain a thorough review of the facts and circumstances relevant to the reprisal allegation and shall include the supporting documents and summaries of interviews conducted.

2. Within 30 days after the Inspector General of the Department of Defense approves the report of investigation, the Military Department Inspector General shall submit a report on the results of the investigation to the Office of the Secretary of Defense, and shall transmit a copy of the report to the member making the reprisal allegation.

3. A copy of the documents acquired during the investigation and summaries of witness testimony shall be transmitted to the member making the reprisal allegation if the member requests them. The copy of the report, and the supporting documents, if requested, shall include the maximum disclosure of information possible except what is not required to be disclosed under 5 U.S.C. 552.

This memorandum is effective immediately and applies to all military whistleblower reprisal allegations received by Inspectors General within the Military Departments. All other provisions of DoD Directive 7050.6, not modified by this memorandum, continue to apply. DoD Directive 7050.6 shall be revised, and a DoD Instruction shall be issued within 90 days.

Eleanor Hill
Inspector General