



# U.S. OFFICE OF SPECIAL COUNSEL

## Fact Sheet

### ***How Complaints are Investigated and Prosecuted***

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Your complaint alleging a prohibited personnel practice or other prohibited activity to the U.S. Office of Special Counsel (OSC) has been referred by the Complaints Examining Unit to an investigator in the Investigation and Prosecution Division (IPD) for investigation and legal review.

#### ***Initial Contact***

- The investigator will call you and provide you with his or her contact information. If OSC has not received your signed consent form (blank form was enclosed with the letter acknowledging receipt of your complaint), the investigator will verify that you have agreed to the disclosure of your name, and the information you provided to OSC, to the extent necessary to investigate your complaint. The investigator also will ask you to complete the consent form and return it to OSC.
- In the initial call, the investigator may briefly discuss some of the issues in your complaint, and ask about any changes in your status and the corrective action you are seeking. The investigator will ask you to notify him or her whenever there are any important changes in your situation, and to provide any additional information you may get during the investigation. While your complaint is pending, the investigator will contact you at least every 60 days to tell you the status of your complaint.
- You may send additional documents and leave voice mail messages at any time to update or add information to your case file. If you have asked the investigator to contact you but do not receive a prompt response, the investigator may be out of the office or working on another case. Be assured that you will be contacted as soon as possible. Please be sure to provide a current email address.

#### ***Investigation***

- The investigator will contact you again when it is time to conduct interviews. Your interview may be in person or by telephone, depending on your location and the nature of the case. You should be prepared to tell the investigator about significant events leading to and after the allegations in your complaint, and your reasons for believing there is a violation. The investigator will go over the facts related to the issues that were referred for investigation to clarify timing and events, and discuss the investigative process.
- The investigator also may ask you for the names and telephone numbers of potential witnesses and for the information that each witness may be able to provide. The investigator may interview witnesses who have information relevant to your allegations in your complaint. These include persons who have firsthand knowledge of the issues and events, participated in the decisions, observed interactions, or have other knowledge necessary to a full understanding of the alleged violations being investigated.

#### ***Legal Review***

- After the investigation is completed, OSC will conduct a legal review of your complaint. An attorney (who also may have served as the investigator) will review the evidence and law applicable to your case and prepare a recommendation for approval by the Chief, IPD, and in some cases, the Associate Special Counsel. After reviewing the recommendation and the case file, OSC will either (1) make an initial decision to close your complaint because no further action is warranted; or (2) refer the complaint to the Special Counsel with a recommendation to pursue corrective and/or disciplinary action.

- If OSC's initial decision is to close your complaint, you will receive a "preliminary determination letter" that explains the reasons for that decision. You will have at least 10 days to respond to the letter in writing and to provide additional information. If you do not timely respond, or if you do not provide a sufficient basis to change OSC's initial decision, OSC will notify you in writing that your complaint has been closed, and describing any other remedies, if any, that may be available to you.

### ***Stays***

- In some instances where there are reasonable grounds to believe that a prohibited personnel practice or other prohibited activity occurred, OSC may seek a temporary stay of the personnel action at issue until the investigation is completed or a determination can be made on whether a violation occurred. A stay may be agreed to by an agency, or ordered by the Merit Systems Protection Board (MSPB). As a general rule, OSC will only seek a stay of a personnel action that would cause immediate and substantial harm, such as removal from your position or a geographical reassignment.

### ***Settlement***

- In some instances where there is evidence that supports the allegations in your complaint, the investigator or attorney may attempt to settle your complaint with the agency or refer your case to OSC's mediation program. See *Fact Sheet on How OSC's Mediation Program Works*. Any such effort to resolve your complaint will be discussed with you, and you will be kept informed of the progress of any negotiations. OSC will not settle your complaint with the agency without your consent. If, however, the agency offers complete corrective action (that is, all of the relief we could obtain for you in litigation), and you do not accept the settlement offer, OSC may end its settlement efforts and close your complaint.

### ***Corrective Action***

- If OSC decides to prosecute your complaint, we will send a letter to the agency to request corrective action, as required by law. For example, if your complaint involves a 30-day suspension, OSC might request that the suspension be rescinded, and that you receive appropriate back pay. In most cases, agencies agree to take the corrective action requested and a settlement agreement resolves the matter.

### ***Disciplinary Action***

- In some cases in which OSC determines that an agency official has committed a prohibited personnel practice or other prohibited activity, OSC will seek disciplinary action against that official. OSC may attempt to obtain disciplinary action through the agency involved, or may file a petition for disciplinary action with the MSPB. Whether or not disciplinary action will be sought against the subject of your complaint is wholly within OSC's prosecutorial discretion.

### ***Litigation before the MSPB***

- If the agency does not take the corrective or disciplinary action requested within a reasonable period of time, OSC will ordinarily file a petition for corrective or disciplinary action with the MSPB. If OSC initiates corrective active litigation on your behalf, you will be consulted throughout the process. You also will likely be asked to testify at a hearing before the MSPB.