

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

April 9, 2018

Robert M. Lightfoot, Jr.
Acting Administrator
National Aeronautics and Space Administration
300 E. Street SW, Suite 5R30
Washington, DC 20546

Dear Mr. Lightfoot:

In March, the Government Accountability Office (GAO) released a report, at my request, regarding the National Aeronautics and Space Administration (NASA) and its implementation of whistleblower protections for contractor and grantee employees.¹ In its report, GAO explored the extent to which NASA's Inspector General investigated contractor and grantee whistleblower reprisal complaints. GAO also reviewed whether NASA's Administrator reviewed reprisal complaints in a timely manner, and the extent to which NASA communicated the applicable whistleblower reprisal protections to contractors.²

GAO identified several deficiencies in NASA's whistleblower reprisal review process. According to 10 U.S.C. § 2409, the NASA Administrator has up to 30 days to determine whether reprisal occurred after the case is referred from the NASA Inspector General. GAO found that the NASA Administrator did not meet the required time frame for reprisal complaint review.³ Between 2008 and 2017, 48 reprisal cases were reviewed by the NASA Inspector General. Of those 48 cases, six investigations were forwarded to the NASA Administrator; in five of the six cases, the Administrator took well over 50 days to make a final determination of reprisal, with some cases extending past 100 days and 250 days.⁴ In one case, the Office of General Counsel had no documentation that it ever took action.

In addition to not meeting time requirements, GAO found that NASA does not have a standard process for the Administrator to review reprisal cases.⁵ Without a formal process in place to ensure that NASA issues an order of final determination of reprisal within statutory

¹ U.S. Government Accountability Office, *NASA Contractor Whistleblowers: Steps Taken to Implement Program but Improvements to Timeliness and Guidance Needed* (GAO-18-262) (Mar. 2018).

² *Id.*

³ *Id.*

⁴ Of the six cases, one did not require a response within the 30-day timeline because it fell under a pre-2008 version of the statute. *Id.*

⁵ *Id.*

requirements, future whistleblowers may be discouraged from making disclosures. GAO also found that NASA's internal guidance between centers, the Inspector General, and headquarters is unclear and has led to inconsistent interpretations of protections under 10 U.S.C. § 2409.⁶ Inconsistent interpretation could lead to inconsistent application of protections for employees.

GAO also found that NASA has not established a mechanism to communicate whistleblower protections to grantees.⁷ Without additional communication about the protections provided by the statute, grantees may not fully understand the significance of employee whistleblower rights, and grantee employees may not be aware of their whistleblower reprisal protections—all of which could inhibit and discourage employees from reporting observations of waste, fraud, and abuse.

Notably, the Administrator determined that none of the complaints it reviewed qualified for protection under 10 U.S.C. § 2409. Between 2008 and June 2017, NASA OIG completed six reprisal investigations. NASA OIG substantiated three of the six complaints and reported its findings to the NASA Administrator for a final determination of reprisal.⁸ The Administrator ultimately determined that none of the complainants qualified for protection under the law; two of the complainants were not protected because the Administrator found that they fell under the 2008 version of 10 U.S.C. § 2409 because contracts had not been updated to reflect the most current statutory language and did not meet a more narrow disclosure of a violation specific to public health and safety.⁹ The remaining complainant was not protected because the Administrator found that the disclosure did not meet the standards of evidence under the statute.¹⁰

As a result of its review, GAO made three recommendations for NASA. First, the Administrator should monitor, evaluate, and make appropriate corrective actions, such as a documented process, to ensure it reviews reprisal complaints in a timely manner. GAO also recommended that the Administrator should review NASA's guidance to clarify how whistleblower protections are communicated, understood, and interpreted throughout NASA headquarters, centers, general counsel and OIG. Finally, GAO recommended that the

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ NASA Office of Inspector General, *Report of Findings Mark Javery/Lockheed Martin Services Inc., Case No. O-ST-14-0278-HL-S and Brian Dejan/Camgian Microsystems Inc, Case No. O-ST-15-0018-HL-S* (Oct. 15, 2015).

¹⁰ U.S. Government Accountability Office, *NASA Contractor Whistleblowers: Steps Taken to Implement Program but Improvements to Timeliness and Guidance Needed* (GAO-18-262) (Mar. 2018).

Administrator should communicate whistleblower protections to grantees and sub-grantees and their employees.¹¹

In order to better understand how NASA plans to implement recommendations made by GAO and effectively implement and improve whistleblower reprisal protections for contractor and grantee employees, please provide a written response to the following questions no later than April 30, 2018:

1. Please provide documentation of NASA's plan to implement a process to ensure that the Administrator reviews reprisal complaints in a timely manner. Please also provide a timeline for implementation.
2. Please provide documentation of all guidance NASA headquarters currently provides to NASA centers and the Inspector General regarding whistleblower protections for contractor and grantee employees.
3. Please describe how NASA will promote consistency in how contractor protections for whistleblowers are communicated, understood, and interpreted throughout NASA headquarters, centers, general counsel, and OIG.
4. Does NASA plan to improve communications to grantees and sub grantees regarding whistleblower protections for their employees? If so, please describe, provide relevant documentation, and include a timeline of implementation. If not, please explain.
5. What steps is NASA taking to ensure that the most updated whistleblower-related clauses are included in all new contracts and modifications?
6. In what ways will NASA work with GAO to follow-up on implementation of GAO's recommendations?

If you have any questions related to this request, please contact Saundra Shropshire with my committee staff at Saundra_Shropshire@hsgac.senate.gov. Please send any official correspondence related to this request to Rina_Patel@hsgac.senate.gov.

Sincerely,



Claire McCaskill
Ranking Member

¹¹ *Id.*

Robert M. Lightfoot
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cc: Ron Johnson
Chairman