

United States Senate

WASHINGTON, DC 20510

October 16, 2019

The Honorable Michael K. Atkinson
Inspector General of the Intelligence Community
1500 Tysons McLean Drive
McLean, VA 22102

Dear Inspector General Atkinson:

We have reviewed your October 8, 2019 response to our letters on September 30, 2019 and October 2, 2019, regarding the “Disclosure of Urgent Concern” form and the “Background Information on ICWPA Process” informational sheet.¹ Your response mostly repeated information from your press release and failed to answer the vast majority of the questions that we posed. In particular, we are concerned that you are “unable to explain how or why the language [about how the IC IG must be in possession of reliable, first-hand information] was included, or how it came into use” in the informational sheet.² We request that you examine further the drafting, issuance, and use of this “Background Information on ICWPA Process” sheet and answer our questions completely.

The information we seek and the questions we are asking should be easily obtained or answered especially in light of your testimony before the intelligence committees. We expect that this — our third request — will be the final time that we have to request that you provide full and complete answers to the Committees.

Unanswered questions from the September 30, 2019 letter:

1. Please provide all previous versions of the “Disclosure of Urgent Concern” form and indicate the dates when each version was in use.
2. Why did the IC IG initially require first-hand information in its May 2018 disclosure form?
3. Prior to May 2018, did any intake form or practice require first-hand information?
4. How many whistleblower complaints has the IC IG dismissed or prevented from following the ICWPA process because they did not contain first-hand information? How many complaints have been filed since the August 2019 form change?
5. Who is authorized to make revisions to the form?

¹ Letter from Michael K. Atkinson, to Chairman Ron Johnson, Chairman Charles Grassley, and Senator Mike Lee (Oct. 8, 2019). Letter from Senators Ron Johnson, Charles E. Grassley, and Mike Lee, to Inspector General of the Intelligence Community Michael K. Atkinson (Sept. 30, 2019 and Oct. 2, 2019).

² Letter from Michael K. Atkinson, to Chairman Ron Johnson, Chairman Charles Grassley, and Senator Mike Lee (Oct. 8, 2019).

6. Who initiated a) the approval process for the May 2018 form and b) the August 2019 revision concerning the first-hand versus second-hand information requirement on the form?
7. Please list all personnel who were involved in and approved both the May 2018 and August 2019 versions of the form.
8. Did the administrative processes by which the most recent version of the form was approved differ in any way from the processes used to approve prior forms? Please explain.
9. Please provide all records³ discussing the creation of the May 2018 form as well as the change in reporting standards found on the August 2019 form.

Unanswered questions from the October 2, 2019 letter:

1. Your press release acknowledged that the ICIG changed the “Disclosure of Urgent Concern” form,⁴ which is now marked “Rev: August 2019,” but offers no information on the specific date or substance of any changes. The press release also stated that the complainant submitted “the same form the ICIG has had in place since May 24, 2018.”⁵ In addition to responding to our first (requesting all versions of the form) question, please also explain the standard of review applied by the ICIG to determine whether a complaint qualifies as an “urgent concern,” and whether that standard of review changed over time, either along with changes to the form or independently. Please also describe the specific investigative steps the ICIG takes to evaluate complaints as potential “urgent concerns,” from initial intake to the determination of whether to refer the allegations to the ODNI.
2. Your press release stated, “[i]n 2018, the ICIG formed a new Center for Protected Disclosures, which has as one of its primary functions to process complaints from whistleblowers under the ICWPA. In early 2019, the ICIG hired a new Hotline Program Manager as part of the Center for Protected Disclosures to oversee the ICIG’s Hotline. In June 2019, the newly hired Director for the Center for Protected Disclosures entered on duty.” Please provide the exact dates for each year referenced.
3. Your press release states, “Since Inspector General Atkinson entered on duty as the Inspector General of the Intelligence Community, the ICIG has not rejected the filing of an alleged urgent concern due to a whistleblower’s lack of first-hand knowledge of the allegations.”⁶ We appreciate that information, in light of our third question in the

³ Records” include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (emails, email attachments, and any other electronically-created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts (whether or not they resulted in final documents).

⁴ News Release at 3 (“The ICIG’s Center for Protected Disclosures has developed [] new forms entitled ... “Disclosure of Urgent Concern Form-Unclassified’[.]”).

⁵ *Id.* at 2.

⁶ *Id.* at 2.

September 30 letter (asking how many whistleblower complaints the IC IG has dismissed or prevented from following the ICWPA process because they did not contain first-hand knowledge). Nevertheless, although (as you stated) the law makes no distinction between first and second-hand information, varying form versions have made that distinction. Accordingly, to gain a better understanding of how different forms may have impacted IC whistleblower complaints over time, in the past 5 years how many “urgent concern” disclosures has the ICIG deemed credible based on “first-hand” and “second-hand” knowledge? How many were rejected? How does or did this distinction factor into the steps the IC IG takes to evaluate whistleblower complaints under the ICWPA, as described in question 1 here?

4. Your press release stated that the complainant checked two boxes on the disclosure form, indicating both “I have personal and/or direct knowledge of events or records involved” and “Other employees have told me about events or records involved.”⁷ You determined “there were reasonable grounds to believe the urgent concern appeared credible”⁸ and you “did not find that the Complainant could ‘provide nothing more than second-hand or unsubstantiated assertions’.”⁹ You further stated that, “although the complainant’s letter acknowledged that the complainant was not a direct witness to the President’s July 25, 2019, telephone call with the Ukrainian President, the ICIG determined that other information obtained during the ICIG’s preliminary review supported the complainant’s allegations.”¹⁰ What information did you review or consider to make that determination?

Additional question:

A recent report indicates that you told a House Committee that the complainant did not disclose to the ICIG his/her contact with Congress prior to the filing of the complaint.¹¹ Is this accurate?

Please respond to these questions no later than October 18, 2019.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.”¹² Additionally, Senate Resolution 70 (116th Congress) authorizes the Committee to examine “the efficiency and economy of operations of all branches and functions of the Government with particular reference to ... the effectiveness of present national security methods, staffing, and processes[.]”¹³

⁷ *Id.*

⁸ *Id.* at 1.

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ Catherine Herridge and Adam Shaw, *Whistleblower did not disclose contact with Schiff’s committee to inspector general, sources say*, Fox News, Oct. 4, 2019, Accessed at: <https://www.foxnews.com/politics/ukraine-whistleblower-did-not-disclose-contact-with-schiffs-committee-to-intel-inspector-general-sources-say>.

¹² S. Rule XXV(k); see also S. Res. 445, 108th Cong. (2004).

¹³ S. Res. 70, 116th Cong. § 12(c)(1)(E) (2019).

We anticipate that your written reply and most responsive documents will be unclassified. Please send all unclassified material directly to the Committees. In keeping with the requirements of Executive Order 13526, if any of the responsive documents do contain classified information, please segregate all unclassified material within the classified documents, provide all unclassified information directly to the Committees, and provide a classified addendum to the Office of Senate Security. Although the Committees comply with all laws and regulations governing the handling of classified information, they are not bound, absent their prior agreement, by any handling restrictions.

Should you have any questions, please contact Brian Downey and Scott Wittmann of Chairman Johnson's staff at (202) 224-4751, DeLisa Ragsdale and Joshua Flynn-Brown of Chairman Grassley's staff at (202) 224-4515, or Wendy Baig of Senator Lee's staff at (202) 224-5444.

Sincerely,



Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs



Charles E. Grassley
Chairman
Committee on Finance



Mike Lee
Member
Committee on the Judiciary