Protecting Whistleblower Information
ENIGMA 2023
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Twitter Whistleblowing

“I'm here today because Twitter’s leadership is misleading the public, lawmakers, regulations, and even its own board of directors. What I discovered when I joined Twitter was that this enormously influential company was over a decade behind industry security standards. The company’s cybersecurity failures make it vulnerable to exploitation, causing real harm to real people.” – Peter “Mudge” Zatko
HOUSE OFFICE OF THE WHISTLEBLOWER OMBUDS

• Independent, nonpartisan support office

• Provide best practices for working with public and private sector whistleblowers

• Not an intake office
SERVICES

• Trainings on best practices for working with whistleblowers
• Developing guidelines and procedures for whistleblower intake
• Confidential consultations to assist staff in responding to whistleblowers
• Technical expertise for whistleblower legislation
Who Are Whistleblowers?

- Expose abuses of power that betray public trust
- Protections vary across sectors
- Distinct from traditional casework/witnesses
Why Come Forward?

• Believe they are doing their jobs

• “Employees shall disclose waste, fraud, abuse, and corruption”

• At professional crossroads
Profiles in Courage
Why Don’t Come Forward?

• Fear of *futility*

• Fear of *retaliation*
Principles For Working With Whistleblowers

- Do no harm
- Establish ground rules
- Manage expectations
Principles For Working With Whistleblowers

• Honor commitments
• Partner on oversight
• Stand by your sources
CONGRESS’ OBLIGATIONS WHEN WORKING WITH WHISTLEBLOWERS

This document addresses common questions House offices may have when working with whistleblowers on sensitive matters, including requirements and best practices for handling restricted information. The Office of the Whistleblower Ombuds is available for case-specific confidential consultations as well as private trainings on related best practices. For legal advice, contact the House Office of General Counsel.

APPROACHES TO MITIGATE RISK

Congress cannot provide legal advice to whistleblowers. However, it is appropriate to recommend that the whistleblower consult knowledgeable counsel before sharing restricted documentation.

As a rule, whistleblowers are bringing forward information that needs to be handled with caution. To mitigate potential risk to the whistleblower and your office, avoid requesting documentary evidence. Rather, first ask the whistleblower for a summary of the underlying issue they want to disclose and how they learned about it. Ask follow-up questions to help verify their allegations, including how you can safely obtain supporting evidence. Consult with the whistleblower, in writing, obtaining their consent before acting on information that they have shared to avoid exposing them to unintended risks.

Due to limited legal protections, the whistleblower could still face forms of retaliation for sharing evidence with your office (e.g., an employer may claim “theft” of their documents). Private sector whistleblowers may also be targets of civil intimidation (e.g., expensive defamation suits or “SLAPP” suits). Even where these retaliatory lawsuits are merited, they can greatly disrupt the whistleblower’s career and personal lives. Congressional offices that engage with a whistleblower could potentially have staff called as witnesses or otherwise be required to produce documents or other records in connection with either a related criminal proceeding or related civil litigation. There may be alternative methods to confirm the whistleblower’s allegations without associating them. When in doubt, consult respective legal counsel for guidance.

COMPLIANCE WITH THE HOUSE CODE OF CONDUCT

The House Code of Official Conduct includes requirements for working with whistleblowers from the public and private sectors.


case intake workflow

INTAKE

Web-based form
Email
In-person
Hotline/Phone

AUTO REPLY OR FRONT LINE INTAKE/CASERWORKER

Acknowledge receipt and provide timeline for expected follow up

ENSURE YOU HAVE KEY FACTS

1. Name
2. Contact information
3. Issue being disclosed
4. Type of assistance sought
5. Confidentiality desired
6. Employment status & employer
7. Represented by a lawyer
8. Goals in working with Congress

UPDATE SECURE TRACKING SYSTEM

Restrict access to those with need-to-know

INITIAL SCREENING?

Within office/Civilian

COULD THIS MATTER BE AN OFFICE PRIORITY?

YES

NO

INVESTIGATE FURTHER

How was evidence obtained?
Limitations on further use?

YET THE ALLEGATIONS

• Homework assignments for potential whistleblower’s potential
• Detailed summaries of key allegations
• Consider alternate ways to take get evidence
• Are these corroborating sources?
• Disclosures to others?”
• Any investigative reports for review?

DISCLAIMERS

• Right to communicate with Congress
• Risk of retaliation, consult experienced counsel
• Know the whistleblower’s new time with other resources
• Your office’s jurisdiction
• No classified information over unsecured channels
• Office confidentiality practices, right to confidentiality

DETAILS TO KEEP IN MIND

• Do not provide legal advice
• Deemed confidentiality
• Boundaries around further unauthorized communication
• Close communication prior to any sharing
• Provide valuable tips on government and non-government external options, advise them to obtain experienced counsel
• Refrain from accepting documentary evidence until you feel sure that the whistleblower’s privacy is protected

LEGAL DISCLAIMER: This document is for general informational purposes only. Its contents are not legal advice.

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Sample Whistleblower Confidentiality Policy

Purpose: The purpose of this document is to ensure sufficient protections for the confidentiality of sensitive whistleblower information as the [Member office or Committee] (hereinafter, "Office") engages with whistleblowers from the public and private sectors to support the Office's oversight work and constituent support functions.

Requirements: The House Code of Official Conduct mandates confidentiality protections for whistleblower information, and House Information Security Policy requires heightened security protections for information provided in confidence or with restrictions on its use.*

Information provided to the Office by a constituent, source, or whistleblower (hereinafter, "Whistleblower") may fall within the ambit of this policy. As a best practice, the Office will assume that whistleblower information is sensitive and should be handled and used with caution.

Note: This Information Security Policy relates solely to information that is not classified. Policy and procedures for matters relating to classified material or communications are not contained in this document. Consult the Office of House Security for specific guidance concerning the lawful handling of classified information. Consult the Office of the Whistleblower Ombuds for guidance on the laws and processes that protect classified whistleblowing disclosures.

1. Decision maker(s).
   The [Member/Chair/Ranking Member] has responsibility for making the key decisions affecting the Office's collection, retention, and use of all information related to whistleblower matters.

2. Principal contact.
   The principal contact for overseeing and implementing this policy is the Office's [insert title].

3. Office staff cybersecurity training requirements.
   Personnel handling sensitive information are responsible for meeting all minimum cybersecurity training requirements in accordance with House Information Security policies.
Notice and Consent aka “Ground Rules”

• Right to confidentiality
• Right to have their information protected
• Right to review
• Right to object to use/sharing
WHISTLEBLOWER SURVIVAL TIPS

The Office of the Whistleblower Ombuds is an independent, non-partisan support office that identifies and assists whistleblowers with their work and helps them maintain a healthy balance between their work and personal lives. The office is committed to high standards of integrity and ethical behavior, and it provides confidential, independent, and impartial assistance to those who come forward with information about potential wrongdoing.

Whistleblowers can take key steps to protect themselves while having an impact. The following tips were recommended by whistleblowers to attorneys and experts who have worked with whistleblowers to provide valuable lessons learned.

Seek legal and other expert advice early:
Before you make a disclosure or early in your process, seek out legal advice from an experienced attorney who specializes in representing whistleblowers. This can help you protect your communications through the attorney-client privilege and help to shield you from legal liability. Also, consider contacting an organization that specializes in working with whistleblowers, to help guide you through the process and provide support.

Consult your loved ones:
The whistleblowing process can be stressful for you and your loved ones. It is important to keep them informed and to discuss the decision with them in advance, including the risks and benefits of exercising your rights.

Carefully weigh the options of being anonymous, confidential, or public:
There are risks and benefits to being anonymous, confidential, or public: whistleblowing. For instance, if you remain anonymous, the recipient of your disclosure cannot follow up on the information you have provided. Alternatively, if you choose to go public, you can potentially receive support and resources from a variety of organizations, but it may also create additional risks for you.

Create a contemporaneous paper trail or journal:
Document key facts and developments surrounding your whistleblowing through a paper trail or journal to maintain an accurate record. This can help you organize your thoughts and provide evidence in case future actions are taken.

Carefully secure and protect evidence before disclosing your suspicions:
Secure and protect evidence before disclosing your suspicions to your superior. If you disclose your suspicions before taking action to disclose evidence, you may lose the opportunity to bring forward your concerns. Consider maintaining copies of any documentation that may be relevant to your case, and be cautious about sharing sensitive information.

Work within your workplace for as long as possible without removing suspicions:
Working within your workplace for as long as possible without removing suspicions will help to maintain access to early evidence and provide opportunities to seek support from your colleagues. However, if you continue to experience adverse actions, you may need to seek legal advice to determine the appropriate course of action.

Stick to the facts and don’t embellish:
Your credibility is the greatest asset, and to build your case, it is important to provide accurate information. If you embellish your claims, it may be difficult to verify your statements, which can affect your credibility.

Provide enough information to help build a case:
It is important to provide as much information as possible to help build a case. This includes providing details about the misconduct, the relevant parties involved, and any evidence or documentation that may support your claims.

Engage in whistleblowing on your own time:
Unless you have advance permission (e.g., from a collective bargaining agreement) or prohibited from using whistleblowing processes (e.g., sharing classified information), engagement is whistleblowing, and whistleblowing can help you protect your rights.

Test the waters with trusted colleagues:
It is important to consider the potential impact of your disclosure on your colleagues and to ensure that you have a plan in place to protect your rights.

Engage in self-care:
Whistleblowers often experience stress, anxiety, and other mental health concerns as a result of their work. It is important to prioritize self-care and seek support when needed.
Publicly Accessible Resources

Organized for

• Congressional Audience

• Whistleblower Audience
Vision

To be a valuable, nonpartisan resource for every House office, by institutionalizing safe, effective, and consistent practices for working with whistleblowers.
Thank You USENIX!

Questions?

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