



## DoD INSTRUCTION 7050.09

# UNIFORM STANDARDS FOR EVALUATING AND INVESTIGATING MILITARY REPRISAL OR RESTRICTION COMPLAINTS

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**Originating Component:** Office of Inspector General of the Department of Defense

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**Approved by:** Sean W. O'Donnell, Acting Inspector General of the Department of Defense

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**Purpose:** In accordance with the authority in DoD Directive (DoDD) 5106.01, this issuance establishes policy, assigns responsibilities, and prescribes procedures for evaluating and investigating complaints of military whistleblower reprisal and restriction pursuant to Section 1034 of Title 10, United States Code (U.S.C.) and DoDD 7050.06.

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## **SECTION 1: GENERAL ISSUANCE INFORMATION**

### **1.1. APPLICABILITY.**

This issuance:

a. Applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

b. Does **not** apply to the DoD Intelligence Component heads and DoD Intelligence Component inspectors general (IGs), as defined in DoDD 7050.06.

### **1.2. POLICY.**

It is DoD policy to evaluate, investigate, and report allegations of whistleblower reprisal and restriction made by Service members in accordance with Section 1034 of Title 10, U.S.C.; DoDD 7050.06; and the uniform standards and processes established in this issuance.

## SECTION 2: RESPONSIBILITIES

### 2.1. IG DoD.

The IG DoD:

- a. Evaluates complaints and investigates allegations of reprisal or restriction in accordance with Section 1034 of Title 10, U.S.C.; DoDD 7050.06; and Section 3 of this issuance.
- b. Ensures that complaint evaluation and investigation into allegations of reprisal or restriction conducted by the DoD Component IGs are conducted in accordance with Section 1034 of Title 10, U.S.C.; DoDD 7056.06; and Section 3 of this issuance.
- c. Monitors the case progress of reprisal and restriction complaint evaluations and investigations conducted by DoD Component IGs.
- d. Reviews each DoD Component IG report on the results of an investigation using criteria that are derived from this issuance. If the IG DoD finds a significant deficiency or multiple deficiencies in a report that adversely impact the outcome or adequacy of an investigation, the IG DoD will return the investigation to the DoD Component IG concerned for correction of the deficiencies.
- e. Performs periodic quality assurance reviews of the investigative operations of DoD Component IGs for compliance and consistency with Section 1034 of Title 10, U.S.C.; DoDD 7050.06; Section 3 of this issuance; and DoD and Service regulations.

### 2.2. DOD COMPONENT HEADS.

The DoD Component heads ensure that their respective IGs:

- a. Establish internal procedures for receiving, evaluating, reporting, and investigating allegations that the prohibitions of reprisal and restriction have been violated, pursuant to Section 1034 of Title 10, U.S.C.; DoDD 7050.06; and Section 3 of this issuance.
- b. Evaluate a complaint of reprisal or restriction to determine whether it is supported by evidence and, within 60 days after receipt of the complaint, recommend either to close it or to initiate an investigation.
- c. Forward to the IG DoD any recommended determination that the complaint is not supported by evidence and should be closed. If the IG DoD agrees with the determination, the DoD Component IG will inform the Service member making the allegation.
- d. Initiate an investigation when it has been determined that initiating an investigation is warranted or upon the request of the IG DoD. Forward the report on the results of the investigation to the IG DoD for approval.

e. Evaluate or investigate complaints of reprisal or restriction in accordance with Section 1034 of Title 10, U.S.C.; DoDD 7050.06; and Section 3 of this issuance.

f. Monitor the status of investigations conducted by subordinate IGs within their purview, including the timeliness of notifications, recommended determinations, complaint evaluations, and investigations required by Section 1034 of Title 10, U.S.C.; DoDD 7050.06; and Section 3 of this issuance.

g. Ensure the training of their staffs performing such investigative work includes instruction on the proper conduct of complaint evaluations and investigations as described in Section 3 of this issuance. This requirement is effective 180 days after the date of this issuance.

## **SECTION 3: UNIFORM STANDARDS FOR EVALUATING AND INVESTIGATING MILITARY REPRISAL OR RESTRICTION COMPLAINTS**

### **3.1. ADHERENCE TO TWO STANDARDIZED INVESTIGATIVE STAGES AND PROFESSIONAL STANDARDS.**

#### **a. Two Standardized Investigative Stages.**

In handling military reprisal and restriction complaints, the IG DoD and the DoD Component IGs will follow the two standardized investigative stages: complaint evaluation and investigation. The first step upon receipt of an incoming allegation of reprisal or restriction is to begin a complaint evaluation. The complaint evaluation is followed, where appropriate, by investigation. When submitting a case for closure, DoD Component IGs will ensure that the case documentation either fully complies with complaint evaluation standards or fully complies with investigation standards. These uniform standards are effective 180 days after the date of this issuance.

#### **b. Confidentiality and Privacy.**

The IG DoD and the DoD Component IGs will not disclose the identity of Service members alleging reprisal or restriction and sources of information without the consent of the individual unless such a disclosure is determined to be unavoidable during the course of the investigation. Information relating to any investigative stage must be safeguarded as required by Section 552a of Title 5, U.S.C., also known as the “Privacy Act of 1974.”

### **3.2. COMPLAINT EVALUATION STAGE.**

#### **a. General.**

During the complaint evaluation stage, the investigator expeditiously evaluates the complaint to determine whether it is supported by evidence so that the investigator may recommend either to close it or to initiate an investigation in compliance with DoDD 7050.06. The level of effort necessary to evaluate an incoming complaint may depend on multiple factors, including the clarity of the complaint, the number and type of alleged protected communications (PCs) and personnel actions (PAs), the number of alleged subjects, and the overall complexity of the complaint allegations. This stage culminates in a recommendation from the DoD Component IG to the IG DoD to either close the case without conducting an investigation or to conduct an investigation.

##### **(1) Complaints Alleging Reprisal.**

This stage requires the investigator of a reprisal complaint to evaluate:

(a) Whether the complaint alleges the existence of a qualifying actual or perceived PC made or prepared by the Service member.

(b) Whether one or more subjects took or threatened a qualifying unfavorable PA against the Service member, or withheld or threatened to withhold a favorable PA from the Service member.

(c) Whether the evidence presented supports an inference that one or more subjects had knowledge of the PC and whether it is possible to infer that the PC could have been a factor in the PA.

## (2) Complaints Alleging Restriction.

This stage requires the investigator of a restriction complaint to evaluate whether the complaint alleges that the subject said or did something that, if true, would have deterred a similarly situated Service member from lawfully communicating with a Member of Congress or an IG. The subject's words or actions are evaluated from the perspective of a reasonable Service member; that is, an objective third person with knowledge of the essential facts known to and readily ascertainable by the Service member.

### **b. Initial Review upon Receipt of a Complaint.**

The investigator should review the complaint and supporting documents provided by the Service member to:

(1) Consider whether the organization evaluating the complaint has jurisdiction over the parties involved in accordance with Section 1034 of Title 10, U.S.C.; DoDD 7050.06; and any applicable DoD Component IG regulations. The investigator should consult with a supervisor or seek legal advice in the case of potential jurisdictional concerns.

(2) Discern whether any additional or clarifying information may be needed to evaluate the complaint. The investigator should make such information requests as appropriate.

### **c. Complaint Receipt Acknowledgement to the Service Member.**

As soon as practicable, the Service member alleging reprisal or restriction should be informed that the complaint was received. In many circumstances, it is appropriate to interview the Service member during the complaint evaluation stage to clarify the complaint allegations. If an interview is deemed unnecessary at the complaint evaluation stage because the written complaint is sufficiently clear, receipt of the complaint still must be promptly acknowledged.

### **d. Complaint Receipt Notification to the IG DoD.**

In accordance with DoDD 7050.06, the DoD Component IG should promptly notify the IG DoD of having received any allegation that the prohibitions against reprisal or restriction have been violated. The DoD Component IG will include in the complaint receipt notification only unclassified information as follows:

#### (1) The Complaint.

A copy of the entire incoming complaint, including attachments.

(2) Case Information.

- (a) Relevant case tracking numbers.
- (b) Classification level of complaint materials.
- (c) Date the allegation was filed with an IG.
- (d) Date the Service member completed the applicable complaint filing procedure with the IG.

(3) Service Member Information.

- (a) Full name.
- (b) Current rank and duty position.
- (c) Duty title and rank, location, and Component or Service at the time of events.
- (d) Summary of the complaint, describing what is alleged to have happened, which actions were taken by whom, who was impacted by those actions, and why the Service member believes each action was taken, threatened, withheld, or threatened to be withheld in reprisal; or why the Service member alleges to have been restricted from communicating with an IG or Member of Congress.

(4) Subject Information.

Regarding all alleged subjects:

- (a) Full name.
- (b) Duty title and rank, location, and Component or Service at the time of events.
- (c) Professional relationship to the Service member.

(5) Notifying IG Information.

- (a) Full name.
- (b) Rank and organization.
- (c) Contact information, specifically an e-mail address and telephone number.

**e. Evaluation and Closure of Certain Complaints without IG DoD Consultation.**

(1) General Information.

DoD Components may close certain complaints without prior IG DoD approval, provided that the DoD Component IG fulfills the requirements as described in the four exception scenarios



described in Paragraphs 3.2.e.(2)(a)–(d). In addition to any information or document specified therein:

(a) If the DoD Component IG’s decision to close occurs before complaint receipt notification is made to the IG DoD, submit that notification to the IG DoD, as detailed in Paragraph 3.2.d., simultaneously with submission of the appropriate closure letter.

(b) If the DoD Component IG’s decision to close occurs after complaint receipt notification was made to the IG DoD, copy the IG DoD on the actual closure letter transmission.

(2) Four Exception Scenarios.

(a) Acknowledge Withdrawal of and Close a Whistleblower Complaint.

When a Service member communicates the intent to withdraw a complaint, the communication must be in writing and the DoD Component IG must evaluate whether the withdrawal was voluntary. IGs are not obligated to accept a withdrawal, particularly if investigative efforts to date indicate that alleged violations may be substantiated. If the DoD Component IG is satisfied that the communicated intent to withdraw was not coerced, it may acknowledge the withdrawal by issuing a withdrawal acknowledgement and closure letter, copying the IG DoD on the letter transmission, and close the case.

(b) Evaluate and Close a Whistleblower Complaint as Untimely.

When, during the intake process, it becomes apparent that the complaint was not filed within 1 year of the Service member becoming aware of the most recent alleged PA, the DoD Component IG considers whether the untimely complaint filing should be excused based on compelling reasons or circumstances. After consideration, if no such compelling reasons or circumstances exist, the DoD Component IG may exercise its discretion to close the case as untimely by issuing the appropriate closure letter and copying the IG DoD on the letter transmission. These circumstances may include, but are not limited to, situations in which Service members:

1. Were actively misled regarding their rights;
2. Were prevented in some extraordinary way from exercising their rights; or
3. Filed the same allegation within the 1-year period with the wrong office or agency.

(c) Evaluate and Close a Whistleblower Complaint for Lack of Cooperation.

1. In general, Service members alleging reprisal or restriction understand that investigations require their timely cooperation. In the event the Service member becomes unresponsive during either the complaint evaluation or investigation stage, the DoD Component IG will make at least three attempts to reach the Service member using appropriate methods of contact. If the Service member remains unresponsive, the DoD Component IG will advise the Service member in writing that it will not be possible to further evaluate the alleged reprisal or

restriction without the Service member's cooperation and that the case will be closed unless a response is received within 10 days from the date of this advisement.

2. After allowing a minimum of 10 days for the Service member to respond, if no response is received, the DoD Component IG may exercise its discretion to close the case for lack of cooperation by issuing the appropriate closure letter, copying the IG DoD on the letter transmission, and closing the case. The Component IG will maintain documentation of the dates and methods used in attempting to contact the Service member.

(d) Evaluate and Close a Duplicative Whistleblower Complaint.

DoD Component IGs may cease evaluation if the incoming complaint is a duplicate or is intrinsically related to a previously filed complaint and contains no new and compelling information that would warrant the reopening of a closed case or the creation of a new one. If a DoD Component IG determines that a complaint meets these criteria, it may exercise its discretion to close the case as a duplicate.

**f. Analysis.**

In the evaluation of whether there is sufficient evidence to warrant an investigation, investigators consider different factors depending on whether they are analyzing an allegation of reprisal or restriction.

(1) Analysis of Reprisal.

Regarding an allegation that the prohibitions against reprisal have been violated, the investigator should analyze four elements:

(a) PC.

Determine if the complaint alleges that the Service member alleging reprisal made or was preparing to make a PC, or that the Service member was perceived as having made or prepared to make a PC.

(b) PA.

Determine if the complaint alleges that an unfavorable PA was taken or threatened against the Service member, or that a favorable PA was withheld or threatened to be withheld from the Service member.

(c) Knowledge.

Determine if the complaint supports an inference that the subject had knowledge of the PC being made or prepared, or perceived the Service member as making or preparing to make, a PC.

(d) Causation.

Determine if the complaint supports an inference of reprisal. Evaluate whether the facts in the complaint suggest that the PC could have been a factor in the decision to take, threaten, withhold, or threaten to withhold the PA.

(2) Analysis of Restriction.

Regarding an allegation that the prohibitions against restriction have been violated, the investigator should analyze whether the Service member alleges that the subject said or did something that a reasonable person could believe, if true, would have deterred a similarly situated Service member from lawfully communicating with a Member of Congress or an IG. Allegations of restriction are not subject to the 1-year filing deadline.

**g. Recommendations to Close without Investigation.**

Once a DoD Component IG determines that a complaint is not supported by evidence and should be closed, it must forward its recommended determination to the IG DoD for review. If the IG DoD agrees with the determination to close, the DoD Component IG should inform the Service member as soon as is practicable that the case is being closed and provide an explanation. When forwarding the matter to the IG DoD, the DoD Component IG should cite and provide access to supporting evidence and include:

(1) Case Information.

- (a) Relevant case tracking numbers.
- (b) Classification level of complaint materials.
- (c) Date the allegation was filed with an IG.
- (d) Date the Service member completed the applicable complaint filing procedure with the IG.

(2) Service Member Information.

- (a) Full name.
- (b) Current rank and duty position.
- (c) Duty title and rank, location, and DoD Component or Military Service at the time of alleged events.
- (d) Summary of the complaint, describing what is alleged to have happened, which actions were taken by whom, who was impacted by those actions, and why the Service member believes each action was taken, threatened, withheld, or threatened to be withheld in reprisal; or why the Service member alleges to have been restricted from communicating with an IG or Member of Congress.

- (e) A copy of the entire incoming complaint, including attachments.
- (f) Date of the Service member clarification interview, if applicable.

(3) Subject Information.

Regarding all alleged subjects:

- (a) Full name.
- (b) Duty title and rank, location, and Component or Service at the time of events.
- (c) Professional relationship to the Service member.

(4) Notifying IG Information.

- (a) Full name.
- (b) Rank and organization.
- (c) Contact information, specifically an e-mail address and telephone number.
- (d) An attestation by notifying IGs that:
  - 1. They meet the requirements of DoDD 7050.06.
  - 2. They are free of personal, financial, or other interests that could influence or be perceived as influencing the handling of the matter at hand.
  - 3. No one interfered with or duly influenced their handling of the matter at hand.
  - 4. They have not had a conflict of interest with any witness, the Service member, or any subject during the conduct of the matter at hand.

(5) Reasoning for Determining to Close the Complaint.

As applicable, include an analysis of the alleged facts against either the elements of reprisal as described in Paragraph 3.2.f.(1) or the definition of restriction. The reasoning should include:

(a) A concise chronological summary of each PC, explaining whether the Service member made or prepared to make a PC, or was perceived as making or preparing to make a PC; to whom the PC was made; the date of the PC; and whether the alleged PC is protected in accordance with DoDD 7050.06; if not protected, explain the reason.

(b) A concise chronological summary of each unfavorable PA that was taken or threatened to be taken against the Service member and each favorable PA that was withheld or threatened to be withheld from the Service member. Identify the subject responsible for such PAs—including the Service member's full name, rank, and duty position; the date of the PA; and

whether the alleged PA qualifies as a PA in accordance with DoDD 7050.06—if not, explain the reason.

(c) An explanation of a possible inference of knowledge—whether the subject could likely have known of the PC or perceived that the PC was being prepared or made by the Service member.

(d) An explanation of a possible inference of causation, including concise analysis indicating whether a causal connection could exist between the PC(s) and PA(s). If the recommended determination is to close the case due to no inference of causation, provide the analysis that the evidence indicates no causal connection could exist between the PC(s) and PA(s) due to:

1. Timing and sequence between the PCs and PAs, indicating whether the sequence of events indicates a PC could have been a factor in a PA;

2. Disparate treatment with evidence showing whether an individual was treated consistently with other similarly situated non-whistleblowers;

3. Motive on the part of the subject to retaliate, particularly whether the evidence indicates that PCs may involve or reflect on the individual(s) or organization(s) in a manner that could create motive or animus for reprisal, testing the subject's assertions regarding motive against the evidence, and considering the totality of the circumstances surrounding each PA; or

4. The subject's stated reason for a PA, if supported by evidence indicating that the basis for that action was unrelated to PCs.

### **3.3. INVESTIGATION STAGE.**

Investigations should adhere to these standardized guidelines.

#### **a. Initiation.**

The investigating office is responsible for both informing the Service member alleging reprisal or restriction that an investigation has commenced as soon as is practicable and notifying the IG DoD of the date of initiation of the investigation. Investigations involving senior officials must also be handled in accordance with DoDD 5505.06.

#### **b. Investigative Plans.**

Investigative staff should prepare a written investigative plan and document it in the case file. This plan should identify the information and sources essential to obtaining relevant documentation of the PC(s) and PA(s) raised in the complaint and to completing a thorough and expedient investigation. This should include records to obtain and review, as well as a list of all Service members alleging reprisal or restriction, witnesses, and subjects to be interviewed.

**c. Interviews.**

Investigators should:

(1) Conduct interviews of the Service member alleging reprisal or restriction, knowledgeable witnesses, and the subject. Interviews should be both under oath and recorded.

(2) Allow any interviewee to have an attorney present during administrative interviews; this includes a private attorney not at government expense or military-appointed counsel if authorized and appointed under the applicable Service regulation. DoD agency attorneys or military attorneys assigned as staff judge advocates should not represent the interests of an individual during investigative interviews since their responsibility is to represent the U.S. Government's interests.

(3) Consider consulting with their servicing legal office as appropriate concerning rights advisements.

**d. Legal Sufficiency Reviews.**

Investigative staff must obtain a legal review of the report on the results of the investigation; reports must be found to be legally sufficient. The case file should include evidence that this review was conducted, the review's findings, and the identity of the reviewer.

**e. Reports of Investigations and Supporting Documentation.**

(1) A report on the results of an investigation related to allegations of reprisal must analyze the alleged facts against the four elements of reprisal as detailed in Section 1034 of Title 10, U.S.C.; DoDD 7050.06; and Paragraphs 3.2.f.(1) and 3.2.g.(5) of this issuance. The four-part analysis is a conjunctive standard; if one of the elements cannot be met (for example, if investigation reveals there was no PC made or no knowledge of the PC), it is typically unnecessary to address the subsequent elements.

(2) A substantiated report must recommend appropriate remedies for the Service member. The report must also make a recommendation that the Secretary of the Military Department concerned determine whether corrective or disciplinary action should be taken. A report with non-substantiated allegations may, in most cases, be written in a summary report format.

(3) A report related to allegations of restriction must analyze the alleged facts against the definition of restriction.

(4) Evidence relied upon in the report must be included in the case file. All supporting evidence is to be cataloged, labeled, and sequenced in a manner consistent with the report's presentation and analysis.

**f. Hardship Determinations.**

After making a preliminary determination in an investigation that, more likely than not, a prohibited PA occurred that will result in an immediate hardship to the Service member, the responsible IG must promptly notify the Secretary of the Military Department concerned of the hardship.

## GLOSSARY

### G.1. ACRONYMS.

ACRONYM	MEANING
DoDD	DoD directive
IG	inspector general
IG DoD	Inspector General of the Department of Defense
PA	personnel action
PC	protected communication
U.S.C.	United States Code

### G.2. DEFINITIONS.

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
PA	Defined in DoDD 7050.06.
PC	Defined in DoDD 7050.06.



## **REFERENCES**

- DoD Directive 5106.01, “Inspector General of the Department of Defense (IG DoD),” April 20, 2012, as amended
- DoD Directive 5505.06, “Investigations of Allegations Against Senior DoD Officials,” June 6, 2013, as amended
- DoD Directive 7050.06, “Military Whistleblower Protection,” April 17, 2015, as amended
- United States Code, Title 5, Section 552a (also known as the “Privacy Act of 1974,” as amended)
- United States Code, Title 10, Section 1034 (also known as the “Military Whistleblower Protection Act,” as amended)