

READING MATERIALS  
FOR  
CLASS IV  
&  
CLASS V

# Whistleblower

From Wikipedia, the free encyclopedia

A **whistleblower** (**whistle-blower** or **whistle blower**)<sup>[1]</sup> is a person who tells the public or someone in authority about alleged dishonest or illegal activities (misconduct) occurring in a government department, a public or private organization, or a company. The alleged misconduct may be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations, and corruption.

Whistleblowers may make their allegations internally (for example, to other people within the accused organization) or externally (to regulators, law enforcement agencies, to the media or to groups concerned with the issues).

One of the first laws that protected whistleblowers was the 1863 United States False Claims Act (revised in 1986), which tried to combat fraud by suppliers of the United States government during the Civil War. The act encourages whistleblowers by promising them a percentage of the money recovered or damages won by the government and protects them from wrongful dismissal.<sup>[2]</sup>

Whistleblowers frequently face reprisal, sometimes at the hands of the organization or group which they have accused, sometimes from related organizations, and sometimes under law.

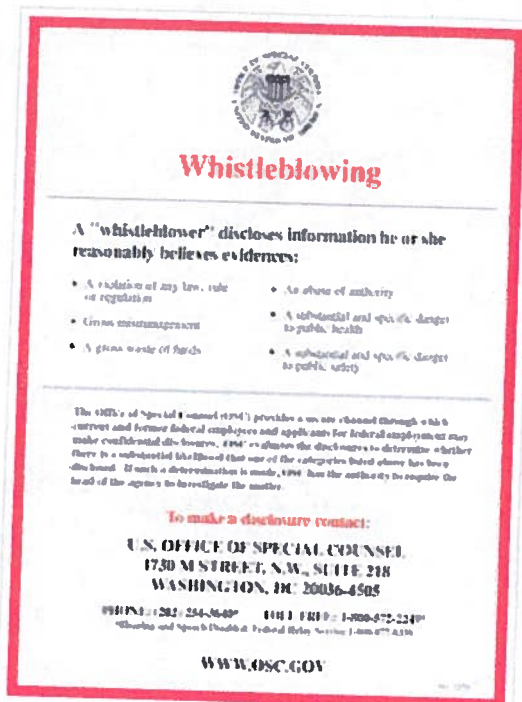
## Overview

### Origin of term

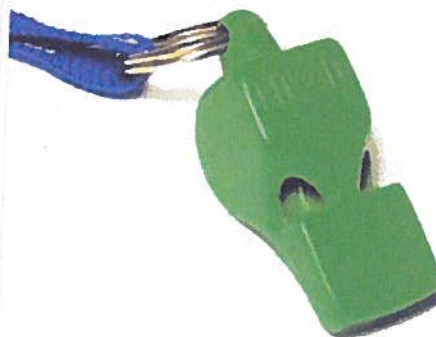
The term *whistleblower* comes from the phrase "blow the whistle," which refers to a whistle being blown by a police officer or a referee to indicate an activity that is illegal or a foul.<sup>[3][4]</sup>

### Definition

Most whistleblowers are *internal whistleblowers*, who report misconduct on a fellow employee or superior within their company. One of the most interesting questions with respect to internal whistleblowers is why and under what circumstances people will either act on the spot to stop illegal and otherwise unacceptable behavior or report it.<sup>[5]</sup> There is some reason to believe that people are more likely to take action with respect to unacceptable behavior, within an organization, if there are complaint systems that offer not just options dictated by the planning and control organization, but a *choice* of options for individuals, including an option that offers near absolute confidentiality.<sup>[6]</sup>



Federal Government's whistleblower awareness poster



A Fox 40 whistle from the late 1980s

*External whistleblowers*, however, report misconduct on outside persons or entities. In these cases, depending on the information's severity and nature, whistleblowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or other local, state, or federal agencies. In some cases, external whistleblowing is encouraged by offering monetary reward.

Under most US federal whistleblower statutes, in order to be considered a whistleblower, the federal employee must have reason to believe his or her employer has violated some law, rule or regulation; testify or commence a legal proceeding on the legally protected matter; or refuse to violate the law.

In cases where whistleblowing on a specified topic is protected by statute, US courts have generally held that such whistleblowers are protected from retaliation.<sup>[7]</sup> However, a closely divided US Supreme Court decision, *Garcetti v. Ceballos* (2006) held that the First Amendment free speech guarantees for government employees do not protect disclosures made within the scope of the employees' duties.

## Common reactions

Ideas about whistleblowing vary widely. Whistleblowers are commonly seen as selfless martyrs for public interest and organizational accountability; others view them as "tattle tales" or "snitches," solely pursuing personal glory and fame. Some academics (such as Thomas Alured Faunce) feel that whistleblowers should at least be entitled to a rebuttable presumption that they are attempting to apply ethical principles in the face of obstacles and that whistleblowing would be more respected in governance systems if it had a firmer academic basis in virtue ethics.<sup>[8][9]</sup>

It is probable that many people do not even consider blowing the whistle, not only because of fear of retaliation, but also because of fear of losing their relationships at work and outside work.<sup>[10]</sup>

Because the majority of cases are very low-profile and receive little or no media attention and because whistleblowers who do report significant misconduct are usually put in some form of danger or persecution, the idea of seeking fame and glory may be less commonly believed.<sup>[citation needed]</sup>

*Persecution of whistleblowers* has become a serious issue in many parts of the world. Although whistleblowers are often protected under law from employer retaliation, there have been many cases where punishment for whistleblowing has occurred, such as termination, suspension, demotion, wage garnishment, and/or harsh mistreatment by other employees. For example, in the United States, most whistleblower protection laws provide for limited "make whole" remedies or damages for employment losses if whistleblower retaliation is proven. However, many whistleblowers report there exists a widespread "shoot the messenger" mentality by corporations or government agencies accused of misconduct and in some cases whistleblowers have been subjected to criminal prosecution in reprisal for reporting wrongdoing.

As a reaction to this many private organizations have formed whistleblower legal defense funds or support groups to assist whistleblowers; two such examples are the *National Whistleblowers Center*<sup>[11]</sup> in the US and *Public Concern at Work*<sup>[12]</sup> in the UK. Depending on the circumstances, it is not uncommon for whistleblowers to be ostracized by their co-workers, discriminated against by future potential employers, or even fired from their organization. This campaign directed at whistleblowers with the goal of eliminating them from the organization is referred to as mobbing. It is an extreme form of workplace bullying wherein the group is set against the targeted individual.

## Legal protection

*See also: Whistleblower protection (disambiguation)*

Legal protection for whistleblowing varies from country to country and may depend on any of the country of the original activity, where and how secrets were revealed, and how they eventually became published or publicized. *For purposes of the English Wikipedia, this section emphasizes the English-speaking world and covers other regimes only insofar as they represent exceptionally greater or lesser protections.*

### USA

Whistleblowing is complex patchwork of contradictory laws within the US, and a list can be found at **Whistleblower protection in United States**.

In the United States, legal protections vary according to the subject matter of the whistleblowing, and sometimes the state in which the case arises.<sup>[13]</sup> In passing the 2002 Sarbanes–Oxley Act, the Senate Judiciary Committee found that whistleblower protections were dependent on the "patchwork and vagaries" of varying state statutes.<sup>[14]</sup> Still, a wide variety of federal and state laws protect employees who call attention to violations, help with enforcement proceedings, or refuse to obey unlawful directions.

Personnel Board; and Ohio public employees to file appeals with the State Personnel Board of Review). It is 30 days for environmental whistleblowers to make a written complaint to the Occupational Safety and Health Administration (OSHA). Federal employees complaining of discrimination, retaliation or other violations of the civil rights laws have 45 days to make a written complaint to their agency's equal employment opportunity (EEO) officer. Airline workers and corporate fraud whistleblowers have 90 days to make their complaint to OSHA. Nuclear whistleblowers and truck drivers have 180 days to make complaints to OSHA. Victims of retaliation against union organizing and other concerted activities to improve working conditions have six months to make complaints to the National Labor Relations Board (NLRB). Private sector employees have either 180 or 300 days to make complaints to the federal Equal Employment Opportunity Commission (EEOC) (depending on whether their state has a "deferral" agency) for discrimination claims on the basis of race, gender, age, national origin or religion. Those who face retaliation for seeking minimum wages or overtime have either two or three years to file a civil lawsuit, depending on whether the court finds the violation was "willful."

Those who report a false claim against the federal government, and suffer adverse employment actions as a result, may have up to six years (depending on state law) to file a civil suit for remedies under the US False Claims Act (FCA).<sup>[20]</sup>

### Wall Street

Securities whistleblowers are provided incentives and protection by the Dodd–Frank Wall Street Reform and Consumer Protection Act (2010).<sup>[22]</sup> The Dodd-Frank Act offers whistleblowers significant incentives and increases protection for whistleblowers in the SEC whistleblower program. This legislation authorizes the SEC to reward those who provide information concerning violations of the federal securities laws at companies that are required to report to the SEC.

Further, the Dodd-Frank Act strengthens the whistleblower protection provisions of the False Claims Act, and contains one of the strongest confidentiality provisions for whistleblowers ever enacted. For the first time, whistleblowers will be allowed to initially report fraud anonymously by filing a claim through an attorney.

Additionally, the law prohibits employers from retaliating against whistleblowers. Employers may not fire, demote, suspend, threaten, harass, or discriminate against a whistleblower.

# National Archives and Records Administration Freedom of Information Act (FOIA)

## Reference Guide

### I. Introduction

The Freedom of Information Act, or FOIA (5 U.S.C. 552, as amended), generally provides any person with the statutory right to obtain access to Government information in executive branch agency records. This right of access is limited to the extent information is protected from disclosure by one of FOIA's nine statutory exemptions. This right of access is enforceable in court and is supported at the administrative agency level by transparency and open government initiatives mandated by President Obama and Attorney General Holder.

The FOIA does not, however, provide access to records of the Congress or the federal courts, records of state or local government agencies, or records of private businesses or individuals. All states have their own statutes governing public access to state and local government records; state agencies should be consulted for further information about them.

The goal of this Reference Guide is to familiarize you with the specific procedures for making a FOIA request to the National Archives and Records Administration (NARA). Following the information in this Guide will make it more likely that you will receive the information that you are seeking in the shortest amount of time possible. This Reference Guide also includes descriptions of the types of records maintained by different parts of the agency, some of which are readily available through means other than the FOIA.

Initially, it is important to understand that there is no central office in the government that processes FOIA requests for all federal agencies. Each agency responds to requests for its own records. Therefore, before sending a request to NARA, you should determine whether this agency is likely to have the records you are seeking. Each agency should have its own FOIA reference guide, so if the records you are interested in are kept by another agency you may wish to request a copy of that agency's guide.

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## Request Determinations

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When we have completed the search and review process in response to your request, we will inform you of our decision in writing. Our response will tell you how much material we found and the charges due. If the records are being released only in part, we will estimate the amount of the withheld information and cite any exemptions that apply. If we deny any part of your request, we will explain the reasons for the denial, which FOIA exemptions apply, and your right to appeal our decisions.

NARA will deny a FOIA request in whole or in part only when we determine that information may be withheld under one or more of nine exemptions:

- 5 U.S.C. 552(b)(1): National security classified information.
- 5 U.S.C. 552(b)(2): Related solely to the internal personnel rules and practices of an agency.
- 5 U.S.C. 552(b)(3): Information specifically exempted from disclosure by statute.
- 5 U.S.C. 552(b)(4): Trade secrets and commercial or financial information obtained from a person that is privileged or confidential.
- 5 U.S.C. 552(b)(5): Inter- or intra- agency memoranda protected by either the deliberative process privilege or the attorney work-product privileges.
- 5 U.S.C. 552(b)(6): Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- 5 U.S.C. 552(b)(7): Records or information compiled for law enforcement purposes, to the extent that the production of these records could:
  - (b)(7)(A) could reasonably be expected to interfere with enforcement proceedings;
  - (b)(7)(B) would deprive a person of a right to a fair trial or an impartial adjudication;
  - (b)(7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy;
  - (b)(7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source;
  - (b)(7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions; or.
  - (b)(7)(F) could reasonably be expected to endanger the life or physical safety of any individual.
- 5 U.S.C. 552(b)(8): Information relating to the supervision of financial institutions.
- 5 U.S.C. 552(b)(9): Geological and geophysical information and data, including maps, concerning wells.

Most of these exemptions apply to only a few of the archival records in our custody. In addition if only part of a record must be withheld, the National Archives will provide access to the rest of the record.

Presidential records subject to the PRA may also be withheld under six PRA restrictions during the first twelve years after the end of an administration; however FOIA exemption 5 U.S.C. 552(b)(5) does not apply to Presidential records:

- 44 U.S.C. 2204(a)(1): National security classified information.
- 44 U.S.C. 2204(a)(2): Relating to appointments to Federal office.
- 44 U.S.C. 2204(a)(3): Information specifically exempted from disclosure by statute.

- 44 U.S.C. 2204(a)(4): Trade secrets and commercial or financial information obtained from a person that is privileged or confidential.
- 44 U.S.C. 2204(a)(5): Confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers.
- 44 U.S.C. 2204(a)(6): Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

## **Judicial Review**

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If you believe that the National Archives has not handled your FOIA request in accordance with the law, you have the right to challenge the agency's action in a lawsuit filed in federal court. Ordinarily, you must first have filed an administrative appeal and received a response. If the National Archives fails to respond to either your initial request or your appeal within the statutory time limits, however, you may file suit.

If you do bring a court action, you may file your suit in a federal district court in any of the following places:

- where you reside;
- where you have your principle place of business (if any);
- in the District of Columbia; or
- where the records are located if they are not located in the District of Columbia.

You have six years from the date of NARA's final decision to file a suit under the FOIA.