

UNCLASSIFIED  
**Congress of the United States**  
**Washington, DC 20515**

September 30, 2019

The Honorable Michael K. Atkinson  
Inspector General of the Intelligence Community  
Office of the Inspector General of the Intelligence Community  
Washington, D.C. 20511

Dear Inspector General Atkinson:

According to your August 26, 2019 letter to Acting Director of National Intelligence Joseph Maguire, you determined that the whistleblower complaint filed with your office on August 12, 2019 using the “urgent concern” process established by the Intelligence Community Whistleblower Protection Act (ICWPA) appeared credible.<sup>1</sup> Every allegation contained in this complaint, which was publicly released in redacted form on September 25, 2019, is based on press reporting, speculation, or the complainant’s second-hand knowledge of the alleged misconduct. You specifically addressed this issue when explaining your credibility determination in the August 26 letter, stating:

The Complainant’s Letter acknowledges that the Complainant was not a direct witness to the President’s telephone call with the Ukrainian President on July 25, 2019. Other information obtained during the [Intelligence Community Inspector General] ICIG’s preliminary review, however, supports the Complainant’s allegation that, among other things, during the call the President “sought to pressure the Ukrainian leader to take actions to help the President’s 2020 reelection bid.”<sup>2</sup>

At no point in your letter, or in any following information provided to the House Intelligence Committee related to this issue, did you indicate that your office found any of the whistleblower’s allegations to be based on first-hand knowledge during the preliminary review you undertook to determine whether the complaint appeared credible and met the statutory definition of urgent concern.

This demonstrated lack of first-hand knowledge is why we are sending this letter. Until very recently, urgent concern disclosures were submitted to the ICIG using a form titled “Intelligence Community Whistleblower and Source Protection Program Urgent Concern Disclosure Form [ICWSP Form 401],” published on May 24, 2018. Form 401 clearly states that a whistleblower must be in possession of reliable, first-hand information to be deemed “credible” by the ICIG. Specifically, Form 401 states:

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<sup>1</sup> Letter from Michael K. Atkinson, Inspector General of the Intelligence Community, to Joseph Maguire, Acting Director, Office of the Director of National Intelligence (Aug. 26, 2019).

<sup>2</sup> *Id.* at 5.

**FIRST-HAND INFORMATION REQUIRED**

In order to find an urgent concern “credible,” the ICIG must be in possession of reliable, first-hand information. The ICIG cannot transmit information via the ICWPA based on an employee’s second-hand knowledge of wrongdoing. This includes information received from another person, such as when a fellow employee informs you that he/she witnessed some type of wrongdoing. (Anyone with first-hand knowledge of the allegations may file a disclosure in writing directly with the ICIG.) Similarly, speculation about the existence of wrongdoing does not provide sufficient legal basis to meet the statutory requirements of the ICWPA. If you think that wrongdoing took place, but can provide nothing more than second-hand or unsubstantiated assertions, ICIG will not be able to process the complaint or information for submission as an ICWPA.

Based on the language on this form, it appears that the requirement for first-hand information has been an ICIG policy regardless of how a whistleblower makes an urgent concern report. That is, the policy requiring first-hand knowledge applies to the credibility determination even if the complaint is received over the hotline or via hard copy letter instead of using the form.

Curiously, the urgent disclosure form that now appears on the Office of the Director of National Intelligence website has recently changed and no longer contains this explicit first-hand information requirement. The new form, labeled “Disclosure of Urgent Concern Form,” shows a revision date of August 2019 – but the specific date of revision, unlike the previous Form 401, is not listed. Further, the internal document properties of this new form appear to show that the document was created on September 24, 2019 at 4:25 pm.

When this revised form was published, and whether the whistleblower received a copy of this form when making the disclosure on August 12, 2019, are both unknown to the House Intelligence Committee. However, the timing of the removal of the first-hand information requirement raises questions about potential connections to this whistleblower’s complaint. This timing, along with numerous apparent leaks of classified information about the contents of this complaint, also raise questions about potential criminality in the handling of these matters.

The ICIG should view this letter as a preservation order for all documents and communications from your office related to the matters discussed herein. We request you provide documents and the information listed below, as well as written responses to the following questions:

- How many times was the ICWSP Form 401 (May 24, 2018 version) revised since May 24, 2018?
  - a. On what dates was it revised and by whom?
  - b. Who reviewed and/or approved each of the revisions to the May 24, 2018 version of the form?

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- c. Provide each revised version of the ICWSP form starting from May 24, 2018 to present, including all versions that show Tracked Changes and the identity of personnel who made each change.
  - d. Identify which, if any, of the revised versions were posted to the ICIG website, and on what dates.
- Specifically, what date was ICWSP Form 401 (May 24, 2018) revised and reissued as the Disclosure of Urgent Concern Form (August 2019)?
  - When was the ICWSP Form 401 (May 24, 2018) removed from the ICIG website?
  - When was the Disclosure of Urgent Concern Form (August 2019) uploaded to the ICIG website?
  - When was the ICWSP Form 401 (May 24, 2018) removed from any other internal or external resources provided to Intelligence Community employees?
  - When was the Disclosure of Urgent Concern Form (August 2019) made available to Intelligence Community employees?
  - Was the Intelligence Community workforce informed of this revision? If so, please provide the date, time, and substance of this notification.
  - Were the congressional intelligence committees notified of this revision? If so, please provide the date, time, and substance of this notification.
  - Who requested discussions about making this revision?
  - What was the rationale for the revision?
  - When did discussions about the revision begin and conclude?
  - Who was involved in discussions about the revision?
  - Who was involved in drafting the revised form, and who was consulted in the approval process?
  - Did you approve this revision? If so, please provide the date of your approval.
  - Are you re-examining disclosures that were previously not deemed credible prior to this policy change?
  - Understanding that a complaint of urgent concern may be made to your office by various means, e.g., hotline, e-mail, hard copy mail, has it been your office's practice to follow-up with a whistleblower and request that the whistleblower complete an ICWSP Form 401 or similar form?
    - a. If not, or if a whistleblower declines to complete the form, has it been your office's practice to complete the form based on the information provided to you by the whistleblower?
    - b. If so, is this done for record keeping purposes or some other purpose?

- Was any version of the form provided to the whistleblower in this case or his/her representatives, and if so, which version(s) and on what date(s)?
  - a. Did the whistleblower in this case or his/her representatives submit any version(s) of this form to your office?
  - b. If so, which version(s) and on what date(s)?
  - c. Please provide the completed form(s).
- Did your office complete any version(s) of this form on behalf of the whistleblower in this case?
  - a. If so, which version(s) and on what date(s)?
  - b. Please provide the completed form(s).
- Provide all internal ICIG's written policy guidance to ICIG personnel concerning the criteria for making a credibility determination in the case of an alleged "urgent concern" complaint, whether that guidance is in a formal memorandum or less formal form such as emails, since January 1, 2019 to present.
- During your tenure as ICIG, how many other disclosures to the ICIG were solely based on second-hand knowledge, and when were those disclosures received?
  - a. Were any of those disclosures deemed credible by your office?

Our roles in the House of Representatives place us in the forefront of the impeachment crisis manufactured by Congressional Democrats. Given the unprecedented actions that have taken place in recent weeks, we require your response to these questions no later than October 3, 2019 at noon. If you have any questions, please contact Republican staff for the Permanent Select Committee on Intelligence at (202) 225-4121.

Sincerely,



Kevin McCarthy  
Republican Leader



Devin Nunes  
Ranking Member  
House Permanent Select  
Committee on Intelligence



Jim Jordan  
Ranking Member  
House Committee on Oversight and Reform