

May 7, 2013

U.S. Attorney General Eric Holder
Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Subject: Protected disclosure alleging violations of civil service law by President Obama that put American public health, safety and welfare at unnecessarily increased risk

Dear Attorney General Holder,

Background

I am a licensed professional engineer (PE), employed by the Department of Energy (DOE) in a position with nuclear safety responsibilities. I am a long-time member of several engineering professional societies that require adherence to a code of ethics for engineers as a condition of membership. As a PE, I have a positive legal obligation to make public statements as this in a truthful and objective manner. I also have a positive legal obligation to “blow whistles,” when necessary to “hold paramount” public health, safety and welfare related to my professional duties, regardless of possible employment retribution. Since relatively few engineers are PE’s, most engineering professional societies have created, via codes of ethics, similar requirements for their membership.

Between 1994 and 2001, I “prevailed” in no fewer than eight separate whistleblower-related decisions against DOE, related to its unlawful reprisal against me for being so foolhardy to put my legal and ethical duty as a PE to protect others before my economic self-interest.¹ I came to realize that DOE’s unlawful reprisal was enabled by OSC, but that OSC had not singled me out, unlike DOE. After 9/11, I made it my personal mission to get to bottom of it, via rule of law, because my reaction to 9/11 was relief as much as anything else - relief it was not nuclear, knowing as I do the corruption and dysfunction in DOE, custodian of America’s nuclear stockpile and nuclear secrets - and the lead federal agency for securing nuclear stockpiles around the world.

¹ See www.carsonversusdoe.com for these decisions. As best I can tell, I have “prevailed” in more whistleblower related litigation than anyone in history of Federal Civil Service, from its creation in 1883.

My efforts also played a positive, perhaps significant, role in the passage of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 by which about 100,000 disabled, diseased, or prematurely deceased DOE workers (or survivors) have received about 10 billion dollars in compensation for being put in “harms’ way” in DOE facilities during the Cold War, without their knowledge or adequate protection.

Mr. Holder, I would much rather you file professional misconduct complaints against me with my state licensing authority or the engineering professional societies to which I belong, or even seek to have me removed from my position in the federal civil service, than ignore me.² That way, I'll actually get a chance to make my case, something I have spent many years now trying to do - in DOE, in about a dozen federal cases (twice going to Supreme Court), and in Congress - in near-absolute futility.

Despite my efforts, there have been no determination on the merits of my concerns about 35 year-long misinterpretation and misapplication - i.e. violations - of vital civil service laws at U.S. Office of Special Counsel (OSC) and U.S. Merit Systems Protection Board (MSPB). I contend these long-standing violations of law at OSC and MSPB that have contributed to a battered federal civil service, in which corruption and dysfunction have taken root and flourish in many federal workplaces, and a diminished and more threatened America.^{3 4}

Specifics of my protected disclosure against President Obama

President Obama's October 10, 2012 Presidential Policy Directive/PPD-19 "Protecting Whistleblowers with Access to Classified Information," (attached) unlawfully failed to mention the Office of Special Counsel (OSC) is the primary authorized disclosure channel for classified disclosures for intelligence agency employees.⁵ By the Civil Service Reform Act of 1978, OSC is

² I am licensed as a PE in Tennessee, see <http://www.tn.gov/regboards/ae/> for information about its rules of professional conduct and how to file a professional misconduct complaint when they are violated. I am a long time member of the following engineering professional societies - ASME, www.asme.org; ANS, www.ans.org; and NSPE/TSPE, www.nspe.org www.tnspe.org - each of which have codes of ethics requiring their members to "blow whistles" in certain circumstances and which require them to make public statements in a truthful and objective fashion.

³ See www.broken-covenant.org for extensive, elaborating, detail

⁴ I have also attached a May 5, 2013 letter from a Yale Law School Graduate, Loring Justice, to President Obama that makes somewhat similar points about OSC, MSPB and his lawful duty to direct a resolution of these concerns. I have written several letters to President Obama, starting in 2009, making similar points, to no apparent avail.

⁵ See 5 U.S.C. section 2302(b)(8)(B) that makes OSC the primary disclosure channel for all concerned federal employees when their concerns involve classified information or other information that cannot be publicly disclosed. An unsigned copy of the Presidential Policy Directive, dated October 12, 2012, that does not include the list of agency heads to whom it was sent, is available at <http://www.whitehouse.gov/sites/default/files/image/ppd-19.pdf>. Its page 6 definition of "protected disclosure" fails to include OSC.

the only disclosure channel that has a mandate to provide them confidentiality, is the only disclosure channel that can require their concerns to be investigated and is the only disclosure channel that has a mandate to transmit their concerns to directly to Congress in certain circumstances.⁶

One has to wonder if the terrorist attack in the Benghazi might have been prevented if concerned State Department and CIA employees know about OSC's classified disclosure function and if it were actually available to them.⁷ One has to wonder if the unprecedented security breach at the Department of Energy Y-12 nuclear bomb plant last summer would have been prevented if Department of Energy contractor employees were aware of their right to bring classified concerns to OSC confidentially.⁸

Conclusion and Request

As a result of President Obama's failure or refusal to comply with his most fundamental duty to the federal civil service - to "take any action....necessary" to ensure the federal civil service embodies the merit system principles, I contend that I (as over 2 million other federal employees, particularly engineers), cannot properly discharge our oaths of office in protecting the health, safety, security and welfare of the American people. I contend I cannot properly comply with the rules of professional conduct of my licensing authority, nor the codes of ethics of the engineering professional societies to which I belong. I contend I cannot "hold paramount" the health, safety

This omission is unlawful by 5 U.S.C. section 2302(b)(12) and, therefore, a violation of the President's primary duty to federal agency employees by 5 U.S.C. section 2301(c) "to take any action...necessary" to ensure the federal civil service embodies the merit system principles. When an investigative reporter asked OSC why it was not included in the President's Directive, OSC responded, "You'll have to ask the President."

⁶ See 5 U.S.C. section 1213. By 1213(h), OSC is mandated to provide confidentiality, by 1213(j), OSC is mandated to transmit classified disclosures involving foreign intelligence or counter-intelligence directly to the House and Senate Intelligence Committees.

⁷ OSC has denied or ignored this function for most of its 35 year history and it is still questionable whether it is capable of receiving disclosures containing highly classified information - whether it has staff with the requisite clearances and the specialized communication equipment. The same question could be raised about other failures of intelligence agencies since 1978, such as 9/11 and going to war in Iraq about non-existent WMD.

⁸ By the Whistleblower Protection Act of 1989 (WPA), OSC was authorized to receive classified disclosures from federal contractor employees and require the involved agency head to investigate them, see 5 U.S.C. section 1213(g)(1). OSC has ignored/denied this duty for 24 years, it will not accept such disclosures from federal contractor employees and it has never required an agency head to investigate a concern by this section of law.

and welfare of the public in the performance of my duties.

Mr. Holder, you have the lawful authority to resolve this matter, by tasking your Office of Legal Counsel to reviewing how the relevant civil service laws are to be interpreted and applied at OSC and MSPB so the President has the information necessary for him to comply with his duty to “take any action....necessary” to ensure people like me can do our duties consistent with our oaths of allegiance and the merit system principles.⁹

Thank you for whatever attention you deem this request and my long-standing, well-evidenced, good-faith, and significant concerns to warrant.

Respectfully,

S
Joseph Carson, PE
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Attachments:

Signed copy of the October 2012 Presidential Policy Directive/PPD-19 on classified whistleblowing

Attorney Loring Justice’s related letter to President Obama of May 5, 2013

Copy:

Other stakeholders in Federal Civil Service, Congress, and Engineering Profession to the merit system principles and/or engineering ethics

⁹ I contend that so-called “good government groups” as GAP and POGO will likely be the strongest opponent of your doing so. I contend they have exploited - instead of exposed - how OSC and MSPB have violated their duties for 35 years, because it benefits their business models - no matter how much harm it causes the vulnerable people they claim to champion - concerned federal employees as I - or America. They may be good watchdogs at times, but when the government lawbreaking benefits their business models, they morph to “church mice.” In fact, I would not be surprised if they had a role in OSC not being included in the “protected disclosure” definition in the President’s Policy Directive on classified whistleblowing.