

September 30, 2019

U.S. Office of Special Counsel, Disclosure Unit
1730 M St., NW, Suite 218
Washington, DC 20036

Subject: Whistleblower Disclosure, per 5 U.S.C. §1213(g)(1), against Joseph Maguire, the Acting Director of the Director of National Intelligence (DNI), alleging non-compliance with his duties per 5 U.S.C. §2301(c).

Dear U.S. Office of Special Counsel (OSC) Disclosure Unit,

I am a federal agency employee, not employed in an Intelligence Community (IC) agency, so I make this whistleblower disclosure per 5 U.S.C. §1213(g)(1). This statute gives OSC complete discretion about referring it to the DNI Maguire for investigation. However, if it is referred, then DNI Maguire:

“shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action shall be completed.”

Additionally, his report (unless classified, which it should not be) becomes a permanent, publicly-available, record per 5 U.S.C. §1219(a)(4).

5 U.S.C. §2301(c) details DNI Maguire’s primary statutory duty to the federal employees of the IC agencies. By it (the following is a close quotation of the law, made specific to him, emphasis added):

*With respect to any IC agency, DNI Maguire **shall**, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives which is consistent with the provisions of this title and he determines is necessary to ensure that personnel management is based on and embodies the merit system principles.¹*

In this whistleblower disclosure, made in good-faith and based on a number of communications with former federal IC agency employees, I claim that DNI Maguire is: 1) unable to demonstrate, on any objective basis, that “personnel management in IC agencies is based on and embodies the merit system principles,” and/or 2) failing or refusing to “take any action necessary” to rectify the situation.

¹ See <https://www.mspb.gov/meritsystemsprinciples.htm> for a listing and elaboration of the nine merit system principles

Furthermore, I claim DNI Maguire, even if he were willing “take any action necessary” to rectify the situation, would be unable to do so, because of the 40 year-long failure or refusal of the Merit Systems Protection Board (MSPB), contrary to its statutory duties at 5 U.S.C. §1204(a)(3), to: 1) conduct relevant “special studies” of the IC agencies, and/or 2) “report to the President and the Congress as to whether the public interest in a civil service (in IC agencies) free of prohibited personnel practices is being adequately protected.”²

My point is that DNI Maguire’s inability to demonstrate compliance with his primary statutory duty to federal employees of IC agencies has a cause outside of his direct control - specifically MSPB’s 40 year-long failure or refusal to make the reports required by 5 U.S.C. §1204(a)(3). The result is that DNI Maguire is “flying blind,” to a large degree, with respect to ascertaining what actions may be necessary for him to achieve and demonstrate compliance with his 5 U.S.C. §2301(c) responsibilities.

What DNI Maguire could do - and, in my opinion, should do - to resolve my whistleblower disclosure is straightforward - request the Attorney General issue an opinion about the interpretation of 5 U.S.C. §1204(a)(3), given this law’s relevance to DNI Maguire’s ability to discharge his duty per 5 U.S.C. §2301(c).³

Thank you for whatever consideration my good-faith, at least reasonably evidenced, whistleblower disclosure may receive. OSC has permission to share my identify with anyone interested and can contact me whenever it wishes.

Respectfully,

Joseph P. Carson, PE
10953 Twin Harbour Drive
Knoxville, TN 37934 jpcarson@tds.net 865-300-5831

copy:

DNI Joseph Maguire
DNI Inspector General (IG) Michael Atkinson
House Permanent Select Intelligence Committee
Senate Permanent Select Intelligence Committee

² Prohibited Personnel Practices (PPPs) are agency violations of one or more Merit System Principles, see <https://www.mspb.gov/ppp/ppp.htm> for a description and elaboration on PPPs.

³ My website “MSPB Watch,” https://whsknox.blogs.com/mspb_watch/, details my 15 year-long, futile, efforts to obtain any objective resolution of my whistleblower disclosure about 5 U.S.C. §1204(a)(3).