

Understanding the whistleblower law at the center of the House impeachment decision

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As House Democrats begin their formal impeachment inquiry of President Donald Trump this week, it is important to explain the legal basis for the whistleblower complaint at the center of it all. According to news reports, the complaint, filed sometime around August 12 with the Intelligence Community's Inspector General, alleges that President Trump pressured Ukrainian President Volodymyr Zelensky to reopen an investigation into former Vice President Joe Biden in an attempt to help the President's 2020 reelection campaign.

The complaint was filed according to the formal process set forth under the Intelligence Community Whistleblower Protection Act (ICWPA) of 1998. That process is as follows:

- A designee of the Inspector General who receives a complaint of an *urgent concern* from an employee within the intelligence community has 7 days from receipt to report the complaint to the intelligence element's IG.
- Within 14 calendar days from receipt, the responsible IG must report all complaints that the IG determines are credible to the head of the intelligence element, in this case the Director of National Intelligence (DNI), along with all supporting material.
- Within 7 days of receipt, the DNI is required to report the complaint to the Congressional intelligence committees along with any comments the intelligence element considers appropriate.
- In the event the IG does not report the complaint, does not find it credible, or reports it inaccurately, the complainant has the right to submit the complaint to either or both of the Congressional intelligence committees directly.
- If the complainant chooses to report directly to Congress, he/she must first provide a statement to the head of the intelligence element via the element's IG providing notice of his/her intent to contact the Congressional intelligence committees directly. Moreover, the complainant must follow the head of the intelligence element's guidance on security and the protection of classified material.

In accordance with the ICWPA, ICIG Michael Atkinson conducted a preliminary review, determined that the complaint was credible and, on August 26, sent the complaint to Joseph Maguire, the acting DNI. Maguire did not forward the complaint to the Congressional committees of jurisdiction within 7 days of receipt, and it is now being reported that he is relying in part on DOJ analysis that the complaint was not an "urgent concern" and that therefore the ICWPA does not apply. The ensuing showdown between the House and Senate intelligence committees and the Trump administration is a novel one, as legal precedent regarding the ability of an acting DNI to refuse to submit a complaint to Congress is unsettled. If the administration remains steadfast, then the whistleblower may decide to go directly to Congress.

The Dentons Public Policy Group will continue to monitor the situation and will provide updates accordingly.

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