

Charles McCullough, III  
Inspector General of the Intelligence Community  
Office of the Inspector General of the Intelligence Community  
Investigations Division  
Reston 3  
Washington, D.C. 20511

January 6, 2016

Dear Inspector General McCullough:

As organizations concerned with openness and accountability in all parts of government, we are writing to remind you about the important role that whistleblowers play in the proper functioning of the federal government. They deserve our protection, not persecution. We are concerned about the Office of the Director of National Intelligence's (ODNI) characterization of whistleblowers as insider threats, despite clear policy from the White House that those individuals should not be considered or targeted as such.

Whistleblowers are the first and best line of defense against waste, fraud, and abuse in federal programs, but in an internal training, ODNI recently gravely mischaracterized whistleblower Thomas Drake as an "insider threat," placing him in the same category as Fort Hood shooter Nidal Hasan and Navy Yard killer Aaron Alexis.<sup>1</sup> The presenter, ODNI official Patricia Larsen, reiterated an overly broad definition of insider threats to include "any employees and contractors who damage an entity's reputation, be it government or business, by exposing inside information should be considered insider threats, as they 'would be in the business world.'"<sup>2</sup> This kind of wanton misuse of the term "threat" demonstrates that this program fails to distinguish between those who want to fix problems from those who wish to do harm to our national security.<sup>3</sup> ODNI's silence following the reporting of this egregious mischaracterization sends the signal that the office sees whistleblowers as internal threats.

When President Obama issued Executive Order 13587, creating the Insider Threat Program, he included a provision to prohibit its use for identifying or preventing whistleblowers from making lawful disclosures.<sup>4</sup> Although there is no enforcement mechanism for this provision,<sup>5</sup> its inclusion was used to justify this program and placate organizations like ours and agencies like the Office of Special Counsel, which raised concerns about its application.<sup>6</sup>

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<sup>1</sup> Kenneth Lipp, "Government Compares NSA Whistleblower to Ft. Hood Shooter, Soviet Spies" *The Daily Beast*, November 18, 2015. [http://www.thedailybeast.com/articles/2015/11/18/government-compares-nsa-whistleblower-to-ft-hood-shooter-soviet-spies.html?source=TDB&via=FB\\_Page](http://www.thedailybeast.com/articles/2015/11/18/government-compares-nsa-whistleblower-to-ft-hood-shooter-soviet-spies.html?source=TDB&via=FB_Page) (Downloaded December 1, 2015)

<sup>2</sup> Lauren Harper, "ODNI Says Whistleblowers Comparable 'Insider Threats' to Spies and Murderers, Suggests Anyone who Damages Agency Reputation Should Be Considered a Threat," *National Security Archive*, November 19, 2015. <https://nsarchive.wordpress.com/2015/11/19/odni-says-whistleblowers-comparable-insider-threats-to-spies-and-murderers-suggests-anyone-who-damages-agency-reputation-should-be-considered-a-threat-frinformsum-11192015/> (Downloaded December 6, 2015)

<sup>3</sup> Testimony by Angela Canterbury, Director of Public Policy, Project On Government Oversight, before the House Oversight and Government Reform Committee, "Limitless Surveillance at the FDA: Protecting the Rights of Federal Whistleblowers", February 26, 2014. <http://www.pogo.org/our-work/testimony/2014/pogos-angela-canterbury-testifies.html>

<sup>4</sup> Exec. Order No. 13,587, § 7(e).

<sup>5</sup> PEN America, *Secret Sources: Whistleblowers, National Security, and Free Expression*, November 10, 2015, p. 25. <http://www.pen.org/sites/default/files/Secret%20Sources%20report.pdf> (Downloaded December 6, 2015)

<sup>6</sup> Memorandum from Special Counsel, Carolyn Lerner, Office of Special Counsel regarding Agency Monitoring Policies and Confidential Whistleblower Disclosures to the Office of Special Counsel and to Inspectors General, June 20, 2012 (expressing that the Insider Threat Program would interfere with or chill federal employees from using appropriate channels to disclose wrongdoing and the agencies should foresee this and make efforts to mitigate.) [https://osc.gov/Resources/omb\\_and\\_osc\\_memos\\_on\\_agency\\_monitoring\\_policies.pdf](https://osc.gov/Resources/omb_and_osc_memos_on_agency_monitoring_policies.pdf) (Downloaded Dec 6, 2015)

This training is not the first time ODNI has erroneously conflated insider threats and whistleblowers. ODNI guidance improperly equates unauthorized disclosures of unclassified information with espionage and sabotage.<sup>7</sup> This broad lumping together of information sharing gave our community pause years ago, when *McClatchy* reported that agencies were using the Insider Threat Program as grounds to pursue unauthorized disclosures of unclassified information—information that whistleblowers can legally disclose to anyone under current law – in 2013.<sup>8</sup> When the office leading this program does not understand the distinction between a whistleblower and a genuine threat, there is a fundamental flaw in the Insider Threat Program.

Because of these instances of confusion on this fundamental point, we are asking you to perform an evaluation of the Insider Threat Program, including an investigation into whether it has been improperly used to target or identify whistleblowers. Additionally, we ask that you lead the initiative to properly distinguish between whistleblowing and insider threats. This should include, but not be limited to, reviewing and revising manuals, guidance, and training on the Insider Threat Program, and developing proper training on what is a protected disclosure and legally protected whistleblowing.

It is ODNI's responsibility to make sure that the Insider Threat Program is not illegally stymying whistleblowers while implementing Executive Order 13587. We look forward to you showing that this is a priority for your office.

Sincerely,

American-Arab Anti-Discrimination Committee  
American Civil Liberties Union  
American Library Association  
Bill of Rights Defense Committee  
Center for Financial Privacy and Human Rights  
Center for Science and Democracy at the Union of Concerned Scientists  
Constitutional Alliance  
Defending Dissent Foundation  
Demand Progress  
Drum Majors for Truth  
Freedom of the Press Foundation  
Golden Badge  
Government Accountability Project  
James Madison Project  
National Judicial Conduct and Disability Law Project, Inc.  
National Whistleblower Center  
The Niskanen Center  
OpenTheGovernment.org  
PEN American Center  
Project On Government Oversight (POGO)  
Public Citizen  
R Street Institute

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<sup>7</sup> National Insider Threat Task Force, "National Insider Threat Task Force Fact Sheet," [http://www.ncsc.gov/nittf/docs/National\\_Insider\\_Threat\\_Task\\_Force\\_Fact\\_Sheet.pdf](http://www.ncsc.gov/nittf/docs/National_Insider_Threat_Task_Force_Fact_Sheet.pdf) (Downloaded December 1, 2015)

<sup>8</sup> Marisa Taylor and Jonathan Landay, "Obama's crackdown views leaks as aiding enemies of U.S.," *McClatchyDC*, June 20, 2013. <http://www.mcclatchydc.com/news/special-reports/insider-threats/article24750244.html#.Uccy--vmVHI> (Downloaded December 6, 2015)

