



Office of the Director of National Intelligence

Andrew P. Bakaj, Esq.
Chief Legal Counsel
Whistleblower Aid

Dear Mr. Bakaj:

The Office of the Director of National Intelligence (ODNI) has received your letter dated 3 February 2026. In this letter you falsely allege misconduct, demand security guidance - which has already been provided - and threaten an "unclassified briefing" to congressional intelligence committees. You also demand access to classified matters and interaction with Congress¹. Your letter misinterprets the statute and ignores the fact that the Director of National Intelligence (DNI) has followed the law throughout this process. Any allegations to the contrary are baseless and do not accurately reflect the DNI's actions to keep the relevant Congressional committees fully informed.

Complaint Not Credible

At no time did either Intelligence Community Inspector General (IC OG), then-Acting IC IG Tamara Johnson or the current IC IG, determine that your client's allegations were credible. On 4 June 2025, then-Acting IC IG Tamara Johnson determined the complaint, "if true," met the statutory definition of "urgent concern", but was unable to determine its credibility, despite the fact that this determination is required by law.²

On 9 June 2025, Acting IC IG Johnson issued a supplemental determination memorandum, finding that the first allegation did not appear credible while remaining unable to assess the apparent credibility of the second allegation. As a result of the then-Acting IG's refusal to determine whether she deemed the complaint credible, any requested response from the DNI was not time-bound, as you incorrectly imply, as the law does not provide a timeline for provision of security guidance in that circumstance.³

Legal Process for Congressional Notification

You have indicated that you intend to contact the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence to provide them with an unclassified briefing on 9 February 2026. Your claim of a right to go to Congress

¹ 50 U.S.C. § 3033(k)

² 50 U.S.C. § 3033(k)(5)(G)(i)

³ 50 U.S.C. § 3033

pursuant to the law is incorrect.⁴ I remind you that there is a clear statutory mechanism by which Intelligence Community (IC) personnel may report complaints or information about urgent concerns to Congress. Your proposed briefing violates this process.⁵

The highly classified nature of the underlying complaint increases the risk that you or your client inadvertently or otherwise breaks the law by divulging or mishandling classified information. You may have other means of appearing in front of Congress, but this is not it.

Furthermore, despite your contentions to the contrary, the protections and rights attributed to whistleblowers, including your client, do not extend to you.⁶ The complainant remains authorized to notify Congress of the "fact of" their complaint, not details of the contents.⁷

ODNI Properly Transmitted Complaint to Congress

On 2 February 2026, ODNI provided IC IG with security guidance on how to pass your client's complaint to the intelligence committees. ODNI understands your client was notified of this action within 3 days of its completion. Given the highly classified nature of the underlying allegations that your client chose to include, the IC IG's normal methods of informing the committees of the allegations were insufficient to protect exquisite intelligence. Therefore, ODNI provided security guidance that your client's complaint be hand-delivered by the IC IG to the "Gang of Eight", on a "read and return" basis and that no notes be taken. As a result, ODNI has satisfied congressional notification requirements.⁸ The transmittal letter from the current IC IG to Congress has also provided Congress and the public with other reasons why this abnormal complaint took longer than usual to provide to Congress.

Your letter of 3 February 2026 states *"This means that our client's complete whistleblower disclosure must be transmitted to congress, and that we, as their counsel, speak with members and cleared staff."* There is no basis in law for this assertion. A whistleblower complaint is transmitted to Congress with redactions and handling instructions as appropriate.

⁴ 50 U.S.C. § 3033(k)(5)(D)(ii)

⁵ 50 U.S.C. § 3033(k)

⁶ 50 U.S.C. § 3033

⁷ 50 U.S.C. § 3033(k)(5)(I)

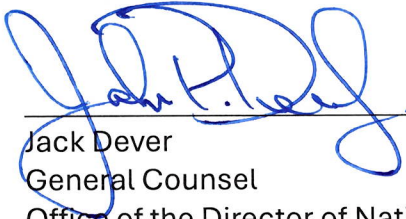
⁸ 50 U.S.C. § 3033(k)(5)(D)

You have implied that the ODNI “buried” this complaint through classification, but the classification of the complaint is the direct result of your client taking the unprecedented step of putting highly classified intelligence in the whistleblower intake form. As a result, ODNI has taken the proper steps, in accordance with established security requirements, to properly safeguard the material.

Commitment to Whistleblowers Protection and Transparency

The DNI has consistently reiterated her commitment to whistleblower protection and transparency. She has met all notification requirements associated with this matter by ensuring that the allegation was transmitted to the “Gang of Eight” and remains in steadfast support of transparency and accountability.

Sincerely,



Jack Dever
General Counsel
Office of the Director of National Intelligence

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Date

Enclosures:

(U) Office of the IC IG, Letter to the Hons. Tom Cotton, Mark Warner, Eric Crawford, and James Himes, 2 February 2026.

UNCLASSIFIED// [REDACTED]



OFFICE OF THE INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY
WASHINGTON, D.C. 20511

2 February 2026

VIA ELECTRONIC TRANSMISSION

The Honorable Tom Cotton
Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

The Honorable Eric A. "Rick" Crawford
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Mark R. Warner
Vice Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

The Honorable James A. Himes
Ranking Member
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

Chairman Cotton, Chairman Crawford, Vice Chairman Warner, and Ranking Member Himes:

(U// [REDACTED]) Today, I received security guidance from Director of National Intelligence (DNI) Tulsi Gabbard for transmittal of "urgent concern" complaint 25-0002-CD to the congressional intelligence committees. The guidance requires the complaint to be hand-delivered and made available for review exclusively to the "Gang of Eight," which includes the Chairman and Vice Chairman of the Senate Select Committee on Intelligence, the Chairman and Ranking Member of the House Permanent Select Committee on Intelligence, the Speaker of the House, the House Minority Leader, the Senate Majority Leader, and the Senate Minority Leader. It further provides for "read and return" and that no notes may be taken. Upon receipt of this guidance, I directed my Chief of Staff to arrange for your review of this highly classified information at your earliest convenience.

(U// [REDACTED]) The IC IG Hotline received this complaint on 21 May 2025 from an IC employee pursuant to 50 U.S.C. § 3033(k)(5). The complainant alleged: (1) distribution of a highly classified intelligence report was restricted for political purposes; and (2) the responsible IC element's Office of General Counsel failed to report a potential crime to the Department of Justice, also for political purposes. On 4 June 2025, then-Acting IC IG Tamara Johnson determined the complaint, "if true," met the statutory definition of "urgent concern" under 50 U.S.C. § 3033(k)(5)(G)(i) but was unable to determine its apparent credibility as required by 50 U.S.C. § 3033(k)(B)(i).

UNCLASSIFIED// [REDACTED]

Chairman Cotton, Chairman Crawford, Vice Chairman Warner, and Ranking Member Himes

(U// [REDACTED]) Acting IC IG Johnson notified the complainant of her determination on 6 June 2025, to which the complainant immediately responded with his/her election to transmit the complaint to the congressional intelligence committees pursuant to 50 U.S.C. § 3033(k)(5)(D)(i). That same day, as required by 50 U.S.C. § 3033(k)(5)(D)(ii)(II), IC OIG's former Acting Counsel requested security guidance from the DNI through ODNI's then-Acting General Counsel.

(U// [REDACTED]) On 9 June 2025, after receiving newly-obtained evidence, Acting IC IG Johnson issued a supplemental determination memorandum, finding that the first allegation did not appear credible while remaining unable to assess the apparent credibility of the second allegation. However, this supplemental determination had no legal effect on the complainant's right to submit the complaint to the congressional intelligence committees. IC OIG's Acting Counsel contacted ODNI's Acting General Counsel at least monthly to inquire about the status of the security guidance.

(U// [REDACTED]) On 17 September 2025, ODNI's Acting General Counsel cited complexity in the classification as the reason for the delay. The 43-day government shutdown beginning 1 October 2025 further delayed this effort, followed by the Senate's confirmation of the new ODNI General Counsel and myself as IC IG. I received a briefing on this matter from IC OIG's Acting Counsel on 17 October 2025, the day after I was sworn in, and immediately prioritized IC OIG's transmittal of this complaint to Congress. After obtaining the compartmented access required to view the complaint on 31 October 2025, I met with the newly-confirmed ODNI General Counsel to impress upon him the importance of receiving the security guidance. I agreed to standby until he also received access to the information in the complaint, which occurred on 1 December 2025.

(U// [REDACTED]) On 4 December 2025, I met separately with Mr. Dever and DNI Gabbard. In my meeting with Director Gabbard, I inquired about the security guidance and she revealed to me that the Acting General Counsel prior to Mr. Dever's confirmation had never informed her of the outstanding requirement for this security guidance, nor had she received any request from IC OIG. Upon learning it was one of my office's top priorities, Director Gabbard committed to providing the guidance as soon as practicable. That same day, the ODNI General Counsel informed me that security guidance was forthcoming, pending a review by the White House Counsel for a potential assertion of executive privilege. I received the security guidance from the DNI on 30 January 2026.

(U// [REDACTED]) Given Acting IC IG Johnson's unprecedented supplemental determination and the attention this case has received, I believe the committees should know my view on the determination by Acting IG Johnson in this case and the process by which this matter was evaluated. Were I to conduct a *de novo* review, or if the same or similar matter came before me today, I would likely determine that the allegations do not meet the statutory definition of "urgent concern" under 50 U.S.C. § 3033(k)(5)(G). This conclusion rests on

Chairman Cotton, Chairman Crawford, Vice Chairman Warner, and Ranking Member Himes

three critical flaws in Acting IC IG Johnson's initial determination in the present case: (1) failure to apply a "basis of knowledge" test; (2) expansive application of the "if true" standard to intent elements rather than to the complaint holistically; and (3) failure to apply the ICWPA provision barring "policy disagreement" as a basis for an "urgent concern" complaint.

(U// [REDACTED]) For any complaint, the IC IG should consider how the complainant knew or reasonably could have known the information at issue, and evaluate the complainant's ability to understand and interpret the events as alleged. Complaints resting exclusively on inference, speculation, or unverified rumors should not be handled as matters of "urgent concern." In the present case, the complainant's access to the intelligence report had no bearing on the central allegations.

(U// [REDACTED]) In her 4 June 2025 determination, Acting IC IG Johnson explained that a decision to limit the distribution of a report, on its own, would not meet the "urgent concern" definition. The first allegation in the complaint became potential misconduct only when "for political purposes" was ascribed as intent by the complainant. The "basis of knowledge" examination fails because the complainant could not have reasonably known the intent for the limited distribution and offered no evidence beyond his/her own speculation. Numerous permissible reasons exist for limiting distribution of highly sensitive reporting. Applying the "if true" analysis to speculative intent allows naked assertions to avoid plausibility scrutiny.

(U// [REDACTED]) The second allegation concerned the alleged failure to report a potential crime to the Department of Justice. Congress expressly excludes "difference of opinion concerning public policy matters" from the "urgent concern" definition under 50 U.S.C. § 3033(k)(5)(G)(i)(III). Acting IC IG Johnson cited a DOJ Memorandum of Understanding (MOU) outlining reportable crimes for non-employees, but continued to apply the "if true" standard to the complainant's assertion of a political motive, effectively disregarding the guidance of the MOU. Absent extending "if true" standard to the speculative intent, the second allegation would necessarily be reduced to a policy disagreement, which Congress explicitly excluded from consideration under the ICWPA framework.

(U// [REDACTED]) Applying facially neutral standards for determining credibility and statutory sufficiency, I would likely conclude these allegations do not meet "urgent concern" standards. The complainant would nonetheless remain authorized under 50 U.S.C. § 3033(k)(5)(D) to notify Congress of the "fact of" their complaint. Further evidencing the disconnect between the legal "urgent" determination and the real-world urgency of the allegations, IC OIG administratively closed the case on 6 June 2025 and ceased all further investigative efforts. If the allegations were truly "urgent" in the present case, then one would reasonably expect my predecessor to have continued an investigation, at least to determine the credibility of the second allegation.

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(U// [REDACTED]) Of all "urgent concern" complaints handled by IC OIG since the establishment of this Office, only one previous case from 2020 included information so sensitive that it needed to be hand-carried to Congress. In the present case, the intelligence report from which the complaint was derived is the most sensitive to-date received by IC OIG as an "urgent concern" complaint. In fact, the referenced intelligence reporting in the complaint would ordinarily be restricted by the originating IC element to oral briefings to the "Gang of Eight" according to longstanding security guidance from that element's security office.

(U// [REDACTED]) Despite my assessment as the current IC IG that this matter does not meet the statutory "urgent concern" threshold, I must respect the lawful determination made by my predecessor. Accordingly, I have prioritized its transmittal to Congress since the moment I first learned of it on 17 October 2025. My intent in this memorandum to the leadership of the congressional intelligence committees is to provide information that is responsive to many of the questions my staff have already received from the Congress and members of the press, in order "to ensure that the congressional intelligence committees are kept similarly informed..." as required by 50 U.S.C. § 3033(b)(4).

(U// [REDACTED]) We will also be providing the congressional intelligence committees with the 4 June 2025 determination memorandum, the 9 June 2025 supplemental determination memorandum, and the complaint in accordance with the DNI's security guidance.

(U// [REDACTED]) For further coordination or questions, please contact my Chief of Staff, [REDACTED], at [REDACTED] or [REDACTED].

Sincerely yours,

[REDACTED]

Christopher R. Fox
Inspector General of the
Intelligence Community

Cc: The Honorable Tulsi Gabbard, Director of National Intelligence