

foiapa

**From:** Request@ip-10-170-20-224.ec2.internal  
**Sent:** Sunday, July 01, 2018 8:42 AM  
**To:** foiapa  
**Subject:** Request for Document from Amarel, Taylor

Taylor S Amarel

United States

## Expedited Treatment Requested

**Request:**

COMP\_NAME: Chair White Response To Letter

DOC\_DATE: 2015 to Present

TYPE: Other (fully describe)

COMMENTS: I would like to obtain a copy of the SEC's response to this letter written and sent by Senator Grassley and Senator Warren - [https://www.warren.senate.gov/files/documents/SEC\\_Whistleblower\\_Letter\\_111615.pdf](https://www.warren.senate.gov/files/documents/SEC_Whistleblower_Letter_111615.pdf)

*L. printed*

See attached for more details.

FEE\_AUTHORIZED: Willing to Pay \$61

FEE\_WAIVER\_REQUESTED: No

EXPEDITED\_SERVICE\_REQUESTED: Yes

EXPEDITE\_COMMENT: I am requesting expedited processing because this data, if released, would be the only instance in which the SEC disclosed the fundamental operating metrics of the SEC's Whistleblower program and without that data it is impossible to make an informed and educated comment to the SEC's proposal to change the Whistleblower rules.

# United States Senate

WASHINGTON, DC 20510

November 16, 2015

## VIA ELECTRONIC TRANSMISSION

The Honorable Mary Jo White  
Chair  
Securities and Exchange Commission  
100 F St. NE  
Washington, DC 20549

Dear Chair White:

When Congress passed the Dodd-Frank Act in the wake of the 2008 financial crisis, House and Senate leaders expanded the protections afforded to whistleblowers and provided new incentives to encourage them to report potential violations to the SEC. Dodd-Frank contained two key provisions intended to expand whistleblower participation: Section 922(a) provided the SEC with the authority to award cash payments to whistleblowers who provided actionable tips,<sup>1</sup> and Section 924(d) instructed the SEC to establish a new division tasked with overseeing the whistleblower program, the Office of the Whistleblower (OWB).<sup>2</sup>

The SEC's Office of the Inspector General (SEC OIG) completed a congressionally-mandated analysis of the implementation of the whistleblower program in January 2013, finding that "the SEC is generally prompt in responding to information that is provided by whistleblowers."<sup>3</sup> Specifically, the IG found that 53% of whistleblower tips, complaints, and referrals (TCRs) were reviewed on the date they were received, that 63% of "No Further Action" (NFA) determinations were made within 30 days, and that 93% of "Point of Contact" (POC) assignments took place within 30 days. More recently, SEC has acted in high-profile ways to protect whistleblowers. For example, in April of this year, the SEC announced an enforcement action against KBR Inc. "for using improperly restrictive language in confidentiality agreements with the potential to stifle the whistleblowing process."<sup>4</sup>

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<sup>1</sup> Pub. L. No. 111-203, § 922(a), 124 Stat. 1841 (2010).

<sup>2</sup> Pub. L. No. 111-203, § 924(d), 124 Stat. 1841 (2010).

<sup>3</sup> SEC Office of the Inspector General. Report No. 511, Evaluation of the SEC's Whistleblower Program (2013).

<sup>4</sup> SEC, Press Release, Companies Cannot Stifle Whistleblowers in Confidentiality Agreements (Apr. 1, 2015), available at: <http://www.sec.gov/news/pressrelease/2015-54.html>.

While the IG concluded that this performance was acceptable, the report identified some outliers. For example, the report identified one case where the time between submission, review, and designation of a whistleblower's case was 249 days.<sup>5</sup> The IG report also found that "there is no standard to determine whether the response time is prompt or not," and that this lack of a performance metrics may result in the degradation of performance and . . . unnecessarily long response times to whistleblower information."<sup>6</sup>

In response to this finding, the SEC OIG recommended that SEC establish formalized performance standards for the whistleblower program. The OWB concurred with this recommendation and reported in its 2014 report to Congress that it had taken steps to implement those recommendations.<sup>7</sup>

The whistleblower program is an important tool in the SEC's efforts to combat securities fraud and almost three years have passed since the SEC OIG evaluation of this program. We are writing to seek an update on the program's performance and on OWB's progress in implementing the OIG recommendations. We ask that you provide answers to the following questions no later than December 8, 2015:

- 1) A description of OWB's progress in implementing the recommendations in the 2013 SEC OIG report.
- 2) The number of whistleblower tips, complaints, and referrals (TCR) received by the OWB from July 1, 2013 – June 30, 2015.
- 3) The average time it took for OWB staff to initially review tips, complaints, and referrals once they were received, and the percent of tips, complaints, and referrals reviewed within three days.
- 4) The percentage of tips, complaints and referrals that received a "no further action" designation, and, for these tips, complaints and referrals, the average time between the initial review and the designation and the percentage that were designated for "no further action" within 30 days.
- 5) The percentage of tips, complaints and referrals that were assigned a point of contact, and for these tips, complaints, and referrals, the average time between the initial review and the assignment to a point of contact and the percentage that were assigned to a point of contact within 30 days.

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<sup>5</sup> SEC IG, Report No. 511 at 16.

<sup>6</sup> SEC IG, Report No. 511 at 17.

<sup>7</sup> SEC, Office of the Whistleblower, 2014 Annual Report to Congress on the Dodd-Frank Whistle Blower Program, at 9 (2014).

- 6) The percentage of tips, complaints, and referrals that are designated as a "matter under investigation."
- 7) The percentage of "matters under investigation" that are being tracked by the OWB's Case Tracking System.
- 8) The average amount of time between the posting of a Notice of Covered Action and the relevant whistleblower being contacted by OWB's staff.

We look forward to receiving your response and reviewing your progress. Please feel free to contact Brian Cohen of Senator Warren's staff at (202) 224-4543 or Paul Junge of Chairman Grassley's staff at (202) 224-5225 if you have any questions.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary



Elizabeth Warren  
Ranking Member  
Subcommittee on Economic Policy



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
STATION PLACE  
100 F STREET, NE  
WASHINGTON, DC 20549-2465

Office of FOIA Services

August 15, 2018

Mr. Taylor Amarel



Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552  
Request No. **18-02339-FOIA**

Dear Mr. Amarel:

This is the final response to your July 2, 2018 request for a copy of the SEC's response to a November 16, 2015 letter written and sent by Senators Grassley and Warren.

Access is granted in full to the attached correspondence, which consists of eight (8) pages. If you have any questions, please contact me by email at [sifordm@sec.gov](mailto:sifordm@sec.gov) or by telephone at (202) 551-7201. If you cannot reach me please contact Mr. John J. Livornese, the SEC's FOIA Officer, by calling (202) 551-7900 or by sending an e-mail to [foiapa@sec.gov](mailto:foiapa@sec.gov). You may also seek assistance from an SEC FOIA Public Liaison, whose contact information can be located at <https://www.sec.gov/oso/contact/foia-contact.html>.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Siford".

Mark P. Siford  
Counsel to the Director/Chief FOIA Officer  
Office of Support Operations

Attachment



THE CHAIR

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

December 22, 2015

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Grassley:

Thank you for your letter of November 16, 2015 seeking an update on the SEC's Whistleblower Program and the progress of the Office of the Whistleblower (OWB) in implementing the recommendations set forth in the SEC Office of the Inspector General's 2013 evaluation report.

Since the whistleblower rules went into effect in August 2011, the Commission has paid more than \$54 million to 22 whistleblowers. In Fiscal Year 2015 alone, more than \$37 million was paid to eligible whistleblowers. The SEC also has seen a substantial growth in the number of whistleblower tips submitted to the agency. As reported in this year's Annual Report to Congress on the Dodd-Frank Whistleblower Program, the Commission has received a total of 14,116 whistleblower tips since August 2011, with approximately 4,000 of those tips received in Fiscal Year 2015, a 30% increase over the number of tips received in Fiscal Year 2012 (the first year for which we have full-year data). Many are high-quality tips that led staff to open an investigation or examination, or are being considered in connection with an existing investigation or examination.

During Fiscal Year 2015, the Commission took several important actions aimed at protecting whistleblowers from unlawful retaliation by their employers or attempts to interfere with their ability to report to, and cooperate with, the agency. As noted in your letter, on April 1, 2015, the Commission initiated an administrative proceeding against KBR, Inc., finding that the language that had been used in the company's confidentiality statement impedes communications with Commission staff about potential securities law violations and undermines the Commission's rules, the purpose of which is to encourage individuals to report to the Commission. OWB continues to work with SEC Division of Enforcement (Enforcement) staff to identify and investigate potentially unlawful practices relating to the use of confidentiality and other agreements that may impede communications with Commission staff.

In addition, this year the Commission authorized the maximum statutory award to a whistleblower who provided original information that led to the Commission's first successful anti-retaliation enforcement action under the Dodd-Frank Act. Specifically, after the

whistleblower reported potential wrongdoing to the SEC, the whistleblower's employer engaged in a series of retaliatory actions against the whistleblower.

Your letter asks a series of questions related to the operations of OWB. Below are responses to those questions.

**1. A description of OWB's progress in implementing the recommendations in the 2013 SEC OIG report.**

The OIG report contained two recommendations for Enforcement, both of which have been closed by the Inspector General. Specifically, Recommendation 1 concerned the triage process utilized by the SEC's Office of Market Intelligence (OMI).<sup>1</sup> In response, OMI implemented the following performance metrics: (1) the length of time a tip, complaint, or referral (TCR) remains in the queue of an OMI triager; (2) the number of TCRs in OMI's queue as compared to the number of complaints received by OMI in the preceding 30 days; and (3) the length of time a TCR remains in OMI from the time it is entered into the TCR system until disposition by OMI. The OIG accepted OMI's request to close Recommendation 1 on September 9, 2013.

Recommendation 2, which related to OWB, provided as follows:

The Division of Enforcement should ensure that the OWB assesses the key performance measures that are contained in their internal control plan and develop performance metrics where appropriate. These performance metrics should be added to OWB's internal control plan.

OWB's internal controls plan focuses on the risks associated with OWB and identifies several key quantitative and qualitative performance measures to address those risks. Namely, in response to Recommendation 2, OWB reviewed the key performance measures to ensure that the measures properly addressed applicable risk and were aligned with the goals of OWB. OWB also established a metric for each of these key performance measures, enabling OWB to objectively benchmark results. OIG accepted OWB's request to close Recommendation 2 on September 9, 2013.

**2. The number of whistleblower tips, complaints, and referrals (TCR) reviewed by OWB from July 1, 2013 - June 30, 2015.**

Please see below my response to Question 3.

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<sup>1</sup> Recommendation 1 read as follows: "The Division of Enforcement should ensure that the Office of Market Intelligence (OMI) assesses the manual triage process and establishes key performance metrics that can be used to measure process performance. These performance metrics should be documented in OMI's written policies and procedures."

- 3. The average time it took for OWB staff to initially review tips, complaints, and referrals once they were received, and the percent of tips, complaints, and referrals reviewed within three days.**

The Commission received 7,203 whistleblower TCRs from July 1, 2013 through June 30, 2015. The Division of Enforcement's OMI is responsible for the analysis and triage of all TCRs received by the SEC, including whistleblower TCRs. On average, during the period July 1, 2013 to June 30, 2015, whistleblower TCRs were initially reviewed by OMI staff on the date they were entered into the TCR System and 99.9% of whistleblower TCRs were reviewed by OMI staff within three business days.

- 4. The percentage of tips, complaints and referrals that received a "no further action" designation, and for these tips, complaints and referrals, the average time between the initial review and the designation and the percentage that were designated for "no further action" within 30 days.**

During the period July 1, 2013 and June 30, 2015, 79% percent of whistleblower TCRs received a "no further action" designation. For these whistleblower TCRs, the average length of time between the initial review and the designation was 22 days. Seventy-nine percent of those designated as "no further action" were designated as such within 30 days.

- 5. The percentage of tips, complaints and referrals that were assigned a point of contact, and for these tips, complaints and referrals, the average time between the initial review and the assignment to a point of contact and the percentage that were assigned a point of contact within 30 days.**

Forty-five percent of whistleblower TCRs received during the period July 1, 2013 and June 30, 2015 were assigned to a point of contact. For those whistleblower TCRs, the average time between initial review by OMI staff and the assignment to a point of contact was eight days. Ninety-five percent of whistleblower TCRs were assigned to a point of contact within 30 days.

- 6. The percentage of tips, complaints and referrals that are designated as a "matter under investigation."**

During the period July 1, 2013 and June 30, 2015, 20% of whistleblower TCRs either resulted in the opening of a matter under inquiry or investigation, were forwarded to staff in connection with an ongoing investigation, or were referred for action within the agency (*e.g.*, to the Office of Compliance Inspections and Examinations or the Division of Corporation Finance). Another 11% were referred to other regulatory or law enforcement agencies.

- 7. The percentage of "matters under investigation" that are being tracked by the OWB's Case Tracking System.**

The OWB's case-tracking initiative is intended to assist OWB in identifying cases that may involve a potential whistleblower claim. OWB actively tracks whistleblower tips that are referred to Enforcement staff for further investigation or review. OWB currently is tracking over



700 matters in which a whistleblower's tip has caused a matter under inquiry or investigation to be opened, or which have been forwarded to Enforcement staff for review in connection with an ongoing matter.

**8. The average amount of time between the posting of a Notice of Covered Action and the relevant whistleblower being contacted by OWB's staff.**

OWB posts a "Notice of Covered Action" on the SEC website for every Commission enforcement action that results in monetary sanctions totaling more than \$1 million. A claimant has 90 days from the date of the Notice of Covered Action to file a claim for an award based on that action.

Although under the Commission's rules it is a whistleblower's responsibility to file a timely claim for an award, OWB endeavors to notify whistleblowers who have been actively working with Enforcement staff of the Notice of Covered Action and the applicable deadline for submitting a claim in that action.<sup>2</sup> If OWB is or becomes aware of potentially eligible whistleblowers in connection with a given posted matter, for example, through its whistleblower case tracking initiative, it contacts these potential claimants promptly and in advance of the application deadline taking into consideration that they may need time to complete the application.

Thank you again for your letter and your interest in the SEC's Whistleblower Program. Please do not hesitate to contact me at (202) 551-2100, or have a member of your staff contact Tim Henseler, Director of Legislative and Intergovernmental Affairs, at (202) 551-2010, if you have any additional questions.

Sincerely,

A handwritten signature in blue ink that reads "Mary Jo White". The signature is fluid and cursive, with the first name "Mary" and last name "White" clearly distinguishable.

Mary Jo White  
Chair

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<sup>2</sup> In its adopting release, the Commission explained that:

. . . in enforcement actions that we institute and litigate (based in part on information and assistance from one or more whistleblowers), there may be one whistleblower with whom we have worked closely, but other claimants who have a potential basis for award eligibility as well. Our procedures must provide due process to all potential claimants and accordingly cannot be tailored only to those claimants with whom the staff has worked closely. For that reason, we believe the "Notice of Covered Action" procedure provides the best mechanism to provide notice to all whistleblower claimants who may have contributed to the action's success. Nevertheless, we anticipate that the Office of the Whistleblower's standard practice will be to provide actual notice to whistleblowers with whom the staff has worked closely. We also believe the application form, preliminary determination, opportunity for response, and final determination together should operate to ensure that all potential claimants have a fair opportunity to pursue an award claim.



THE CHAIR

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

December 22, 2015

The Honorable Elizabeth Warren  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
Subcommittee on Economic Policy  
534 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Warren:

Thank you for your letter of November 16, 2015 seeking an update on the SEC's Whistleblower Program and the progress of the Office of the Whistleblower (OWB) in implementing the recommendations set forth in the SEC Office of the Inspector General's 2013 evaluation report.

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Sincerely,



Mary Jo White  
Chair

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