



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

John F. Sopko
Special Inspector General

June 1, 2020

Dear Senator Schumer:

I write in response to your letter dated February 10, 2020, regarding the importance of whistleblower protection. I wholeheartedly concur with you on the essential role of whistleblowers in helping to expose wrongdoing and to protect taxpayer money from waste, fraud, and abuse.

SIGAR has in the past and continues to rely on confidential sources as a basis for initiating and conducting audits and investigations, and in obtaining important information for our lessons learned studies. This has enabled us to expose hundreds of millions of dollars in waste and major cases of fraud. Moreover, confidential sources have enabled us to make recommendations for improvements designed to prevent future waste and fraud. Our lessons learned program, for example, which is unique among inspector general's offices, has obtained very significant information with the help of confidential sources. This information has helped form the basis for analysis and recommendations to Congress and Executive Branch agencies to improve the economy, efficiency, and effectiveness of reconstruction efforts in Afghanistan and future overseas contingency operations.

Maintaining the confidentiality of these sources is absolutely essential. SIGAR depends on the courage of government employees, contractors, and others to come forward to provide candid information regarding waste, fraud, and abuse, and information important to the efficient operation of federal agencies involved in the reconstruction of Afghanistan. If the identities of these sources were to be revealed, it could result in real harm to these sources, including harassment, public and private vilification, ostracization, demotion, employment termination, or other forms of retaliation. Some of these sources are Afghans, who could even face death, given the corrupt and violent environment in which they live. If SIGAR were not able to assure these sources that their identities will be protected, the majority would be unwilling to provide their candid observations and experiences, and SIGAR's Lessons Learned Program, investigations, and audits would be severely limited and substantially less effective, to the detriment of Congress, the Executive Branch, and the public.

SIGAR has vigorously defended whistleblower confidentiality. Most of the time, confidentiality is important to protect whistleblowers from those who might retaliate against them. But it also protects whistleblowers from exploitation. In an ironic turn, the Washington Post – a news organization famous for refusing to reveal its confidential sources – is currently suing SIGAR in Federal Court because we refused to reveal to the Post the names of government officials who provided information for our lessons learned reports. Although we voluntarily gave the Post copies

of our interview notes for more than 400 people, we redacted the names of those individuals who requested confidentiality. The Post sued to obtain their names, arguing to the court that “the public interest” in knowing who our sources were outweighs any interest these confidential sources may have in their own privacy. Apparently the Post does not care whether these confidential sources suffer retaliation if their names are revealed, so long as the Post can wring a story out of it. The case is still pending decision by the court.

Your letter made three requests, which I am happy to address. First, you requested that my office take immediate action to investigate any and all instances of retaliation against whistleblowers, both past and future. At this time, SIGAR is unaware of any instances in which a confidential source who has provided information to SIGAR has been retaliated against. Perhaps that is because we have been successful thus far in protecting the identities of our confidential sources. However, we will be vigilant in protecting our sources in the future as well.

Second, you requested that we inform you and the public about the last time the employees of our agency were notified of their legal rights to make protected disclosures anonymously and free from reprisals. Employees of our agency are routinely briefed on whistleblower protection upon being hired, as part of their initial orientation. In addition, a notice of whistleblower rights is permanently posted in common rooms in SIGAR offices and a notice of whistleblower rights is also published prominently on the home page of the SIGAR website. We also routinely publish notices to the public about the SIGAR Hotline, which guarantees confidentiality.

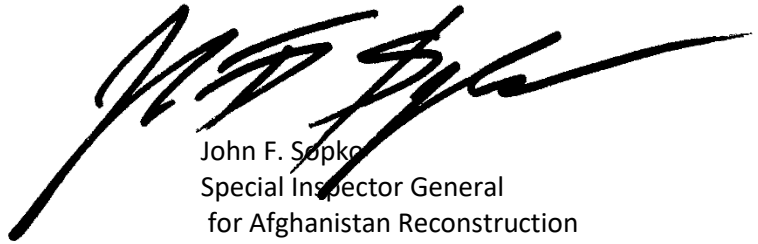
SIGAR’s efforts to protect whistleblowers have not gone unrecognized. On February 21, 2019, SIGAR received a Certificate of Compliance from the U.S. Office of Special Counsel (“OSC”) indicating our successful completion of OSC’s Whistleblower Certification Program. We believe SIGAR was one of the first agencies to obtain this certification, showing that SIGAR meets its obligations under the Whistleblower Protection Act and the Whistleblower Protection Enhancement Act.

Finally, you requested that SIGAR seek and provide to Congress written certification from “your agency or department’s general counsel” that he or she will not permit retaliation against whistleblowers. SIGAR is unique among inspectors general in that we are not part of a larger agency or department. Instead, SIGAR is an independent inspector general required to “provide for the independent and objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated or otherwise made available for the reconstruction of Afghanistan.”¹ As a result, our jurisdiction is narrowly focused on Afghanistan reconstruction, carried out by multiple agencies, which means we do not have the authority to request or even recommend that an agency general counsel make a broad certification regarding agency policy. I respectfully suggest that this is a matter appropriate for the inspector general established within each agency.

¹ Section 1229(a)(1), National Defense Authorization Act for FY 2008, Pub. L. No. 110-181.

SIGAR strongly supports whistleblower protection and we would like very much to work with you and your colleagues to strengthen the existing protections for confidential sources contained in the Inspector General Act of 1978, as amended. My office will be in contact with your staff to see how we might best help in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read 'John F. Sopko', written over the typed name and title.

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction