



U.S. OFFICE OF SPECIAL COUNSEL
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September 17, 2002

**FINAL REPORT TO THE OFFICE OF MANAGEMENT AND BUDGET
ON
GUIDELINES FOR ENSURING AND MAXIMIZING THE QUALITY, OBJECTIVITY,
UTILITY, AND INTEGRITY OF INFORMATION DISSEMINATED BY THE
OFFICE OF SPECIAL COUNSEL (OSC)**

Introduction

This report is submitted by OSC to the Office of Management and Budget (OMB) pursuant to § 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law No. 106-554, 114 Stat. 2763), and implementing OMB guidelines. Attached are final drafts of: (1) OSC's guidelines on ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by the agency; and (2) a *Federal Register* notice, responding to public comments and announcing the availability of OSC's final guidelines.

Agency Background

OSC is a small (approximately 106 full-time equivalent employees), independent federal investigative and prosecutorial agency. First established in 1979, it became an independent federal agency with enactment of the Whistleblower Protection Act of 1989.¹ Basic OSC authorities and responsibilities are defined at 5 U.S.C. § 1211, et seq.

OSC's primary mission is to safeguard the merit system in federal employment, by protecting current and former federal employees and applicants for federal employment from certain prohibited employment practices, especially reprisal for whistleblowing. The agency also facilitates disclosures (by current and former federal employees and applicants for federal employment) of wrongdoing in the federal government, and enforces restrictions on political activity by covered federal, state, and local government employees. OSC carries out this mission by:

¹ Public Law No. 101-12, 103 Stat. 16 (1989).

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- investigating complaints of prohibited employment practices, especially reprisal for whistleblowing, and pursuing remedies for violations;
- operating an independent and secure channel for disclosure and investigation of wrongdoing in federal agencies;
- providing advisory opinions on, and enforcing, Hatch Act restrictions on political activity by covered federal, state, and local government employees;
- protecting the rights of veterans under the Uniformed Services Employment and Reemployment Rights Act;² and
- promoting greater understanding of the rights and responsibilities of government employees under the laws enforced by OSC.

Information Disseminated by OSC

OSC maintains an active outreach program that disseminates a variety of information about the agency's jurisdiction, programs, and operations. Primary target audiences for these outreach efforts are current and former federal government employees, applicants for federal employment, employee representatives, and state and local government employees (*i.e.*, persons affected by or interested in the laws and regulations enforced by OSC). OSC uses a variety of tools in these efforts, including the agency web site (at www.osc.gov), brochures, posters, fact sheets, press releases, and provision of agency employees as speakers at training conferences and meetings.

OSC does not usually disseminate information to the public, as such. Press releases are issued by the Special Counsel, but they are generally excluded from coverage under the OMB guidelines.³ Other information is available to the public, primarily by means of the agency web site – usually, however, as a by-product of dissemination of that information to target audiences, transmittal of reports to Congress and other agencies, publication of regulations and required notices in the *Federal Register*, and OSC's performance of its statutory duties (*e.g.*,

² Public Law No. 103-353, 108 Stat. 3149 (1994) (OSC enforcement provisions codified at 38 U.S.C. § 4324).

³ Apart from the general exclusion of press releases from coverage under OMB's guidelines, OSC press releases usually announce agency policy initiatives, as well as settlements, resolutions of cases filed with the Merit Systems Protection Board, and other outcomes of matters investigated or litigated by OSC. The guidelines indicate that such types of issuances – *i.e.*, information about basic agency operations, and findings and determinations made in the course of adjudications involving specific parties – are not covered disseminations of information. 66 *Federal Register* 49718, 49723 (Sept. 28, 2001), and 67 *Federal Register* 8452, 8454 (Feb. 22, 2002).

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transmittal of reports to the President and Congress on whistleblower disclosures, filing of pleadings in litigation, and congressional testimony). Nevertheless, to the extent that OSC disseminates covered information to the public, agency guidelines will be in place pursuant to Public Law No. 106-554 and implementing OMB guidelines.

Agency Guidelines

OSC has always maintained high standards of quality in the production of any information to be disseminated outside the agency. The agency information quality guidelines included in this report formally incorporate in writing a basic standard of quality (including objectivity, utility, and integrity) into the development and dissemination by OSC of information to the public. To ensure and maximize the quality, objectivity, utility, and integrity of any such information, the OSC guidelines provide for administrative review by the head of the program unit developing the information, and periodic reviews thereafter to ensure that the information is current. After review by the head of the program unit, the information will also be reviewed before public dissemination by the Deputy Special Counsel, the Special Counsel, or a designated representative.

The guidelines also provide for administrative mechanisms allowing affected members of the public to seek and obtain appropriate correction of information maintained and disseminated by OSC if the information does not comply with OMB or agency guidelines. The mechanisms established by OSC provide for receipt and review of such requests by high-level management officials.

- Attachments: (1) Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Special Counsel (OSC) (Final Draft)
- (2) *Federal Register* Notice (Final Draft)



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**GUIDELINES FOR ENSURING AND MAXIMIZING THE QUALITY, OBJECTIVITY,
UTILITY, AND INTEGRITY OF INFORMATION DISSEMINATED BY THE
OFFICE OF SPECIAL COUNSEL (OSC)**

I. AUTHORITY

Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law No. 106-554, 114 Stat. 2763), § 515; Office of Management and Budget guidelines, at 66 Federal Register 49718 (September 28, 2001) (Final Guidelines, with Request for Comments); 67 Federal Register 8452 (February 22, 2002); and 67 Federal Register 9797 (March 4, 2002).

II. DEFINITIONS

Terms used in these guidelines are defined by reference to definitions in OMB guidelines as follows:

1. "Quality" includes the utility, objectivity, and integrity of information.
2. "Utility" refers to the usefulness of information not only to OSC, but also to its intended users, including the public.
3. "Objectivity," as applied to both presentation and substance, includes whether disseminated information is being presented in an accurate, clear, complete, unbiased manner, in a proper context, and with identification of sources (to the extent possible, consistent with confidentiality protections)
4. "Integrity" refers to the security of information (that is, protection of the information from unauthorized access or revision, to ensure that it is not compromised though corruption or falsification).
5. "Information" means any communication or representation of knowledge, such as facts or data, in any medium or form, including textual, numerical, graphic, narrative, or audiovisual forms. It includes information disseminated on the OSC web page, but does not include the provision of hyperlinks to information that others disseminate. The term also does not include opinions, where the agency's

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presentation makes it clear that what is being offered is someone's opinion rather than fact or the agency's views.

6. "Dissemination" means agency-initiated or -sponsored distribution of information to the public (see 5 C.F.R. § 1320.3(d) (definition of "Conduct or sponsor"). Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, or other similar law; distribution limited to correspondence with individuals or persons, press releases,⁴ archival records, public filings, subpoenas or adjudicative processes.
7. "OMB guidelines" means the "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies" issued by OMB pursuant to § 515 of Public Law No. 106-554.

II. SUMMARY

These OSC guidelines formally incorporate a basic standard of quality (including objectivity, utility, and integrity) into the development and dissemination of information by the agency to the public. They also include: (1) procedures for reviewing the quality of information before it is disseminated, and for periodically reviewing the information after dissemination to ensure its continuing quality; (2) administrative mechanisms by which affected persons may request, and obtain when appropriate, the correction of information maintained and disseminated by OSC if such information does not conform to OMB or agency guidelines; and (3) procedures for annually reporting to OMB the number and nature of complaints received by OSC about its compliance with OMB guidelines, and how such complaints were resolved.

Pre-dissemination review procedures referred to in item (1) above apply to information first disseminated by OSC on or after October 1, 2002. Administrative correction mechanisms referred to in item (2) above apply to information disseminated by OSC on or after October 1, 2002, regardless of when OSC first disseminated the information.

⁴ Apart from the general exclusion of press releases from coverage under OMB's guidelines, OSC press releases usually announce agency policy initiatives, as well as settlements, resolutions of cases filed with the Merit Systems Protection Board, and other outcomes of matters investigated or litigated by OSC. Information about basic agency operations, and findings and determinations made in the course of adjudications involving specific parties – are not covered disseminations of information under the OMB guidelines.

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Information disseminated to the public by OSC will protect information from or about complainants in prohibited personnel practice matters pursuant to 5 U.S.C. § 1212(g); it will also protect information about subjects, witnesses or others, as required or permitted under the Freedom of Information Act, the Privacy Act, and any other applicable law or regulation. OSC does not develop or disseminate specific categories of information cited by OMB that may require higher and more specific quality standards (e.g., scientific, financial or statistical information, and reports prepared by non-governmental entities).

III. QUALITY STANDARDS, ADMINISTRATIVE REVIEW PROCEDURES, AND ADMINISTRATIVE CORRECTION MECHANISMS

A. Quality Standards

1. *Information should adhere to a basic standard of quality.*

The quality (including the objectivity, utility, and integrity) of information to be disseminated by OSC to the public should be an integral component in every phase of the development of such information.

2. *Information should be objective in substance and presentation.*

Accurate, reliable, and unbiased information should be presented in an accurate, clear, complete, unbiased manner, in a proper context, and with identification of sources (to the extent possible, consistent with confidentiality protections). To ensure that the information is objective, it should relate to issues within OSC's jurisdiction, and be based on laws and regulations enforced by the agency or governing its operations, and on its experience in enforcing those laws and regulations.

3. *Information should be responsive to its intended users.*

Information should meet the needs of its intended users, including the public, with due regard for the costs and benefits involved. The needs of intended users will be determined by OSC, in part, through feedback or frequently asked questions at agency outreach activities, and comments received on the agency web site. At a minimum, information developed and disseminated by OSC should, whenever possible, be written in plain, understandable language.

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4. *The integrity of information should be protected.*

Protecting public information on OSC's web site from unauthorized access or revision is the responsibility of the agency's Information Systems Branch (ISB). In carrying out that responsibility, ISB will: (a) implement applicable new software patches and security guidelines as recommended by the web site developer and by federal agencies responsible for guidance on information security issues; (b) routinely monitor web server event logs to identify potential breaches of security; and (c) maintain backups of web site and web server content, to permit OSC to promptly restore the site if its security is threatened or the system fails due to hardware or software error.

B. Administrative Review Procedures

The head of the program unit developing information for dissemination to the public is responsible for reviewing its content, and for periodic review of the information to ensure that it is updated to reflect changes in laws and regulations, and recent court decisions. After review by the head of the program unit, such information will be reviewed before dissemination to the public by the Deputy Special Counsel, the Special Counsel, or a designated representative.

C. Administrative Correction Mechanisms

Affected persons outside OSC (current and former federal government employees, applicants for federal employment, employee representatives, and state and local government employees – that is, people who may benefit or be harmed by the information in question – who believe that information disseminated by OSC does not comply with OMB guidelines or these agency guidelines may contact OSC to request a correction of the information. Such persons ("requesters") should write to the Deputy Special Counsel, Office of Special Counsel, 1730 M Street, N.W. (Suite 201), Washington, DC 20036-4505. The Deputy Special Counsel will refer the request for response to the program unit responsible for development or maintenance of the information. Initial requests should include all relevant information available to the requester, and a clear statement of the alleged conflict with OMB or OSC guidelines. OSC will reject requests made in bad faith or without justification.

OSC will respond to the requestor in writing. If the request requires more than 60 calendar days to resolve, OSC will inform the requester that more time is required, indicate the reason why, and provide an estimated decision date. The program unit to which the request has been referred will respond by letter, informing the requester whether OSC believes a correction is appropriate given the nature and timeliness of the information involved, and if so, will provide any corrected information.

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If the OSC response is not acceptable to the requester, he or she may appeal the initial decision. The requester must send an appeal within 30 calendar days of the date of OSC's response. It should be addressed to the Deputy Special Counsel (at the address shown in the first paragraph of this section), and must state the reason(s) why the initial decision was not acceptable. If OSC believes that other agencies may have an interest in the resolution of an appeal, it will consult with those agencies about their possible interest before completing its review of the appeal.

OSC will respond to all appeals within 60 calendar days of receipt. If the appeal requires more than 60 calendar days to resolve, OSC will inform the requester that more time is required, indicate the reason why, and provide an estimated decision date. The Deputy Special Counsel will respond by letter informing the requester whether the appeal is granted (that is, the letter will state whether a correction is appropriate given the nature and timeliness of the information involved, and if so, will provide any corrected information).

D. Reporting Procedures

OSC will send an annual report to OMB describing the number and type of complaints received about OSC's compliance with OMB guidelines, and how such complaints were resolved. OSC will submit its initial report by January 1, 2004.

E. Conclusion

The Deputy Special Counsel shall be responsible for ensuring agency compliance with OMB guidelines. OSC's guidelines are not intended to create any right or benefit, substantive or procedural, enforceable in any court by a party against OSC, the federal government, or any individual, beyond any that may be established by § 515 of Public Law No. 106-554 or by implementing OMB guidelines. In particular, these agency guidelines do not impose any additional requirements on OSC during adjudicative proceedings and do not provide parties to such proceedings any additional rights of challenge or appeal.

NOTICE

OFFICE OF SPECIAL COUNSEL

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Special Counsel (OSC)

[insert Federal Register publication date]

AGENCY: Office of Special Counsel

ACTION: Final Agency Guidelines

SUMMARY: Pursuant to guidance issued by the Office of Management and Budget (OMB), the U.S. Office of Special Counsel (OSC) published a Federal Register (FR) notice on April 30, 2002, inviting public comment on its draft report to OMB with proposed OSC guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of certain information disseminated to the public (“information quality guidelines”). 67 FR 21316. This notice describes comments received, and announces the availability of OSC’s final information quality guidelines.

DATES: Final OSC information quality guidelines become effective on October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Sharyn Danch, by mail (Planning and Advice Division, Office of Special Counsel, 1730 M Street, N.W. (Suite 201), Washington, DC 20036-4505), or electronic mail (info_quality@osc.gov). OSC’s final information quality guidelines are available on the agency web site (<http://www.osc.gov>, at the “Reading Room” link).

SUPPLEMENTARY INFORMATION: OMB guidelines, issued to Federal agencies under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554, 114 Stat. 2763), provide that each agency should: (1) develop information resources management procedures and issue agency guidelines to ensure the quality, objectivity, utility and integrity of information disseminated by the agency to the public; (2) establish administrative mechanisms for affected persons to seek and obtain the correction of disseminated information that does not comply with the OMB or agency guidelines; and (3) report annually to OMB on requests for correction received by the agency and the resolution of those requests. OMB advises agencies to use common sense in adapting its guidelines to information disseminated to the public, taking into account the nature and importance of the information involved. Finally, OMB encourages agencies to incorporate standards and procedures required by its guidelines into existing agency information management and administrative practices, under applicable laws and OMB circulars.

On April 30, 2002, pursuant to the OMB guidelines, OSC published its draft report to OMB with proposed OSC information quality guidelines, and invited public comment on or before June 1, 2002. OSC received one response, from the Center for Regulatory Effectiveness (CRE), on May 30th, 2002. On June 6, 2002, OMB gave agencies an extension of time (to August 1, 2002) in which to submit their reports with proposed guidelines to OMB, and suggested that agencies consider extending the public comment period on their guidelines. 67 FR 40755. On July 8, 2002, OSC published a notice extending the public comment period to July 10, 2002. 67 FR 45168. A second response, received from Citizens for Sensible Safeguards (CSS) on June 14, 2002, was deemed to have been received during the comment period, as extended. OSC carefully considered both responses received.

CRE advised OSC that its response (entitled “Proposed CRE Generic Comments to all Federal Agencies Related to Data Quality Guidelines”) consisted of generic comments, provided to all Federal agencies on cross-cutting issues that might apply to draft guidelines of only some agencies. OSC reviewed the CRE comments, and identified two that might apply to its proposed guidelines.⁵

Under comment (1), CRE asserted that neither OMB nor Federal agencies have the authority to exempt types and categories of information from their guidelines. CRE maintained that the OMB guidelines improperly limited the relevant statutory language requiring that guidelines apply to “information...disseminated by Federal agencies,” by including certain exemptions in the definition of “dissemination.”⁶ CRE stated that “any information that an agency has in fact made public” must be covered. OSC’s proposed guidelines incorporated the OMB definition of “dissemination” with the included exemptions. OSC believes that no change should be made in its guidelines until such time as OMB may revise its guidelines to amend the definition and exemptions in question.⁷

Under comment (6), CRE stated that in determining who may file an administrative complaint requesting correction of disseminated information, agencies should use a broad

⁵ Six of CRE’s 16 numbered comments (nos. 5, 11, 12, 14, 15) addressed matters not applicable to information disseminated by OSC and, therefore, not addressed by its guidelines. Other comments (nos. 7, 8, and 9), critical of guidelines issued by some agencies, did not apply to OSC because its guidelines met or exceeded the standard(s) suggested by CRE. Several comments (nos. 2, 10, and 13, and discussion referring to no. 1) indicated dissatisfaction with definitions used in the OMB guidelines issued to agencies. OSC has decided to keep any definitions taken from the OMB guidelines, until such time as OMB may revise its guidelines to amend the definitions in question. As noted by CRE in its comments, “[a]ll agency guidelines are required to comply with the requirements set forth by OMB in their interagency February 22nd Final Guidelines. (statutory citations omitted).”

⁶ “Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy act, the Federal Advisory Committee Act or other similar law. This definition also does not include distribution limited to correspondence with individuals or persons, press, releases, archival records, public filings, subpoenas or adjudicative processes.” 67 FR 8452, 8460 (Feb. 22, 2002).

⁷ See last sentence of fn. 1, above. OSC’s proposed guidelines did not add exemptions to those defined by OMB. Those parts of CRE comments (1), (3), and (4) that addressed agency guidelines defining other exemptions did not apply to OSC.

definition of “affected persons,” noting with favor the definition OMB used in its guidelines to agencies.⁸ While the draft report to OMB described specific target audiences for information disseminated by OSC,⁹ a description of “affected persons” was not included in the agency’s proposed guidelines. OSC agrees that such a description should appear in the guidelines. Part IV.C. of OSC’s guidelines, therefore, now describes, by reference to the target audiences described in its initial report to OMB and in OMB’s guidelines for Federal agencies, affected persons who can file an administrative request for correction.

The comment received from CSS also consisted of generic, non-agency specific comments. OSC reviewed all the comments and determined that no changes to its proposed guidelines were needed. One or more of the following factors applied to each comment: (1) OSC guidelines met or exceeded the standards suggested by CSS; (2) the comment concerned a type of information not disseminated by OSC; or (3) the proposed OSC guidelines adopted or mirrored provisions in OMB’s guidance to Federal agencies.

After review of the public responses received, OSC sent its report and proposed information quality guidelines for OMB review and comment on August 1, 2002, and for final review on September 17, 2002. Pursuant to OMB’s review and further guidance to Federal agencies, OSC revised its proposed guidelines to: (1) clarify that OSC press releases typically contain information about matters not covered under OMB’s guidelines, and (2) conform times for responses to requestors seeking corrections of information, and appealing OSC decisions on those requests, from 30 to 60 days.

OSC’s final information quality guidelines are available, upon publication of this notice, on the agency’s web site, at <http://www.osc.gov> (go to “Reading Room” link).

Dated: September __, 2002.

Elaine Kaplan,
Special Counsel.

[FR Doc [add no.] filed [add date and time].]

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⁸ OMB defined affected persons as “people who may benefit or be harmed by the disseminated information ... includ[ing] persons who are seeking to address information about themselves as well as persons who use information. (citation omitted).”

⁹ “Primary target audiences ... are current and former federal government employees, applicants for federal employment, employee representatives, and state and local government employees (i.e., persons affected by or interested in the laws and regulations enforced by OSC).” 67 FR 21317.