

## **Fact Sheet on Complaint Processes within INS Office of Internal Audit**

The Immigration and Naturalization Service' (INS) Office of Internal Audit (OIA) has jurisdiction over INS staff and is available to receive complaints *only* about misconduct of INS employees (i.e. violations of INS codes of conduct, theft of property, physical or sexual abuse, and introduction of contraband). OIA does not have jurisdiction over corrections officers and other employees in non-INS detention facilities, even if utilized by INS. Complaints of potentially prosecutable offenses or complaints concerning non-INS employees of the Department of Justice (DOJ) are forwarded to the DOJ Office of Inspector General (OIG). Complaints about violations of civil rights (i.e. unlawful search and seizure or excessive use of force) are forwarded to DOJ's Civil Rights Division (CRD). Complaints about facility-specific conditions *may* be reviewed for recommendations, but are not a primary concern of the OIA. OIA will investigate complaints on theft of property, sexual misconduct and introduction of contraband. As far as medical issues, food complaints, and other discrimination-related matters are concerned, OIA will forward these types of complaints to the INS Office of Detention and Removal for review.

The Office of Internal Audit is an in-house office that reports directly to the Commissioner. It is a fact-finding body that investigates non-criminal and other misconduct committed by INS employees including physical abuse and civil rights violation that under color of the law deprives another of his/her rights. In view of the massive complaints on abuse allegedly being committed by INS officials, a Citizen's Advisory Program was launched to look into the complaints for further investigation. OIA opened a total of 4,371 complaints in FY 2001. Of these, OIA investigated a total of 552 complaints<sup>1</sup>.

The OIA regularly receives complaints from various entities on allegations of abuse, misconduct, and mismanagement. Since the OIA is merely a fact-finding body, it does not take nor recommend disciplinary actions against INS employees. INS has complete authority on what disciplinary action, if any, should be taken in any instance of documented abuse.

### **1. Sending Complaints**

The OIA has a complaint form (Form I-847, in English and Spanish, available on INS' website at <http://www.ins.usdoj.gov/graphics/formsfee/forms/files/i-847.pdf>) that is required to be available at all INS owned facilities and contract detention facilities, but is not yet available in other facilities that house immigration detainees. This is a one-page form that can be sent directly to the OIA at no cost to the detainee or facility. In addition, an informative poster outlining complaint processes must be visibly displayed in the facility in order to inform detainees of their right to lodge complaints.

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<sup>1</sup> From notes taken at an ABA Commission on Policy, Practice and Pro Bono meeting with Sue E. Armstrong, Deputy Assistant Director, Office of Internal Audit, Internal Investigations held on August 8, 2002.

The OIA also accepts complaints via written correspondence, but does not accept complaints via fax or phone. Complaints can be sent in English or Spanish, however other languages may not be accommodated.

Advocacy groups, family members, or other outside entities can send complaints on behalf of detainees, and complaints can be sent anonymously, however complaints received directly from a complainant are given more weight. If complaints are sent anonymously, a more detailed amount of information may be necessary to initiate an investigation.

Officers may be notified if they are named in a complaint, and there is no guarantee of confidentiality for detainees during an investigation. The OIA expects INS employees to maintain objectivity and if an employee is suspected of having committed some form of retaliation, someone from an outside office may be sent in to investigate.

## **2. Handling Complaints**

There are three regional supervisors that review complaints and make the decision as to what action will be taken. Records of all complaints are kept in their database.

Complaints may be forwarded to another agency for investigation (depending on their content) or they may be handled directly by the OIA. The OIA investigates a small number of high-level, sensitive, controversial, or difficult cases with its own team, but refers the majority of cases to local management (Regional and District Offices) for inquiry.

The OIA classifies complaints in three categories:

- **Category 1** involves the most serious allegations, including misconduct of any kind by a supervisor or an employee at or above the GS-14 level, or a violation of law that is likely to result in criminal prosecution. If the matter is serious, it must be sent to the OIG because it has primary jurisdiction. If the OIG returns an abuse case to the OIA for consideration of administrative discipline, OIA may investigate the matter itself or refer the matter to an INS field manager.
- **Category 2** cases may involve violations of laws, rules or regulations, and are given to field managers for immediate investigation. Managers initiate their own inquiries and are required to report the results of inquiry to the OIA. The OIA may recommend that corrective action be taken, but does not recommend what that action should be. The case remains open until OIA is informed of what corrective action was taken.
- **Category 3**, the least egregious, involves matters that OIA just wants field managers to deal with. These allegations concern performance matters or instances of minor misconduct. The OIA does not seek further information on these matters.

### **3. Investigating Complaints**

All field managers receive training from the OIA on how to properly conduct investigations. Trainings are held periodically and upon request. There is also a handbook on how to conduct investigations.

The procedure in which the investigation is conducted is as follows:

1. Employees report immediately to their supervisors or higher-level service officials or OIA or OIG on alleged misconduct. For Class Level I, the report must be submitted within 24 hours and 48 hours for Class Level II.
2. INS managers report to the OIA and OIG suspected misconduct as well as the most serious allegations.
3. OIA will review the complaint.
4. OIA sends large number of cases to the Management Inquiry Program (MIP) for investigation. Whatever the outcome of the investigation by MIP, OIA has final say.
5. Submit the result of its fact-finding investigation to the INS and make recommendations on disciplinary policies and procedures.

During investigations, witnesses, including the detainee, may be interviewed for information. Investigations by field managers should take no longer than sixty days, but criminal investigations may take an undetermined amount of time. If OIA does not receive correspondence about a case within 60 days, they will contact the field manager for an update.

### **4. Notification**

OIA does not notify detainees of the status of their complaint. OIA is not obliged to report the outcome of any investigation and what, if any, disciplinary action has taken place. Investigations by OIA are strictly confidential, however detainees and/or their legal representatives can gain access to limited information regarding their case through the Freedom of Information Act (FOIA) process.

### **5. Appeal**

OIA does not review duplicate complaints or take appeals, but complaints are considered regardless of a detainees complaint history, i.e. that complaints received from detainees with several complaints on file continue to be reviewed with objectivity.

### **6. Contact Information**

The Office of Internal Audit  
Immigration and Naturalization Service  
425 I Street, NW  
Washington, D.C. 20536-0001