

Park Police Chief Case Shows Complexities Whistleblowers Face in Talking to the Press

By Greg T. Rinckey

Almost seven years after a U.S. Park Police chief lost her job after talking to a Washington Post reporter about her agency's dire need for additional resources, the U.S. Merit Systems Protection Board last month ruled the federal government violated the Whistleblower Protection Act and ordered it to restore her employment.

For potential federal employee whistleblowers, Park Police Chief Teresa C. Chambers' case can prove insightful on the dos and don'ts of blowing the whistle, particularly when the media is involved. In fact, the case, which over the years has bounced around the legal system, plays a prominent role in the board's December 2010 report on Whistleblower Protections for Federal Employees.

Even though Chambers managed to secure protections under the Whistleblower Protection Act, it was not an easy process. In all, the case was subject to three decisions by the board (2006, 2009, 2011) and two by the U.S. Court of Appeals for the Federal Circuit (2008, 2010). At issue were her disclosures published in the Post on December 2, 2003 that staffing shortages at U.S. Park Police were leading to the deterioration of public safety in parks and on parkways in the Washington D.C. metropolitan area.

Initially, the board said Chambers' disclosures were not protected by the First Amendment. The court subsequently agreed with the board that Chambers improperly disclosed information about budget negotiations to the Post, in addition to not carry out her supervisor's orders and not following the chain of command. However, it also ruled that Chambers' statements about a specific danger to public safety merited protection under the Whistleblower Protection Act – not the First Amendment. The court, whose latest remand to the board resulted in January's decision, concluded this disclosure played a role in the Park Police's decision to put Chambers on administrative leave on December 5, 2003 and remove her the following July. Ultimately, the board said evidence showed the agency's actions against Chambers were meant as a "reprisal for her protected disclosures."

Here are a few points potential federal employee whistleblowers interested in talking to the media can glean from Chambers' case, along with the commentary on it in the Whistleblower Protections for Federal Employees:

Protected v. Unprotected Disclosures:

The law is very specific on what disclosures are protected. Remember, Chambers' statements about budget deliberations were not protected but the ones concerning a substantial threat and specific danger to public health or safety were. Other protected disclosures are those relating to the violation of any rule, law or regulation and the gross mismanagement, a gross waste of funds or an abuse of authority.

Specificity:

In its 2010 decision, the U.S. Court of Appeals for the Federal Circuit noted how the specific details in Chambers disclosure, such as identifying the problem's source, consequences and predicted outcomes, qualified it for whistleblower protections.

Proper Channels:

Disclosures of information that, under a law or executive order must be kept secret in the interest of national defense or the conduct of foreign affairs, are not protected if made to the media. Instead, such disclosures are only protected when they are made to the agency's inspector general, the employee designated by the agency's head to receive such disclosures or the Office of the Special Counsel. Disclosures not subject to these prohibitions are protected when made to the media.

Freedom of Speech:

Whistleblower laws, more than the First Amendment, will protect whistleblowers. Remember, the board rejected Chambers' claim that her disclosures were protected by the First Amendment. It said the agency had an "overriding interest" in not having its chief publicly question her superiors on the Park Police's functions and budget.

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