

TOPIC

Report of Investigation concerning allegations of restriction against a Responsible Management Official

TEXT OF THE DECISION

We reviewed the referenced Inspector General (IG) Report of Investigation (ROI) as approved by the Secretary of the Air Force Complaints Resolution Directorate (SAF/IGQ). The case includes one allegation of restriction against one Responsible Management Official (RMO). We concur with the Investigating Officer (IO) and SAF/IGQ and conclude the allegation was **SUBSTANTIATED**.

BACKGROUND

On 16 Jun 17, Complainant attended a staff meeting with Maj X, Capt Y, and SSgt Z to discuss equipment disposal procedures. Complainant believed Maj X's directives during this meeting constituted micromanagement and were excessive to the point of being impossible, and asked Maj X to lay out his "expectations because these aren't doable." The exchange became somewhat heated and Maj X told Complainant to "shut up" and told him he wasn't allowed to speak for the remainder of the meeting. Later that day, Complainant sought out the First Sergeant, to get a third-party perspective on the exchange and how to resolve issues with Maj X. The First Sergeant later told Maj X about his meeting with Complainant, and when Maj X expressed frustration, he suggested Maj X address the flight to lay out his expectations.

On 18 Aug 16, Maj X called a 1500 meeting with the flight. Maj X began the meeting by separating the NCOs and Airmen and ordering them to stand at attention on opposite walls of the room.¹ He then engaged in a "one-way" conversation addressing what he believed was a lack of good order and discipline, including the fact that members of the flight were discussing complaints outside their chain of command. On 22 Aug 17, Complainant filed an AF Form 102 (*Inspector General Personal and Fraud, Waste and Abuse Complaint Registration*) with the Inspector General's office, alleging Maj X restricted the entire flight and also threatened reprisal.

GUIDANCE

AFI 90-301 *Inspector General Complaints Resolution*, 27 August 2015, paragraph 7.3.1, states; "Pursuant to 10 USC 1034, DoDD 7050.06, and as further defined in this instruction, no person may restrict a member of the armed forces from: making or preparing to make a lawful communication to any of the following:

- 7.3.1.1. A Member of Congress or a member of their staff.
- 7.3.1.2. An Inspector General or a member of an Inspector General's staff."

¹ He allowed a Capt, the civilians, and the SNCOs in attendance, including the First Sergeant, to sit down.

DISCUSSION

We concur the preponderance of the evidence supports the IO's conclusions that Complainant's allegation is substantiated. The IO interviewed multiple witnesses who generally agreed on the content and tone of Maj X's address to the flight on 18 Aug 17. Although Maj X claims his intent was to direct his flight to use their chain of command and curtail a culture of open complaining in the workplace, and although some of the witnesses stated they did not feel restricted, the preponderance of the evidence supports the IO's finding that Maj X created a chilling effect that would cause a reasonable person to believe they were actually restricted from communicating with the IG or Congress.

The evidence does not support Maj X's explanation for why he called the 18 August meeting. Maj X testified that he called the meeting to address good order and discipline because he could not allow "NCOs to be able to continue to whine and complain about how things are being run in the open while I have three to five first-term Airmen listening right there and the only reason that I knew about it is because the First Sergeant gave me that feedback." Maj X then elaborated "there's just one or two NCOs that I know of that...openly voices [sic] their opinion about things...the decisions [he made] and the things that are being handled." However, the preponderance of the evidence supports the IO's finding that the meeting was the result of complainant questioning Maj X and then discussing Maj X's conduct at that meeting with the unit First Sergeant. At neither of these points did Complainant "whine" in the open nor did he do so in front of junior Airmen. Complainant expressed concerns to Maj X about his taskings in a closed meeting on 16 Aug 16; the only other attendees were a captain and another staff sergeant. There is no evidence Complainant's discussion with the First Sergeant was in the open or in front of junior Airmen and, given the context, such a setting seems highly unlikely. The First Sergeant's testimony did not corroborate Maj X's account of their conversation. He testified that Maj X was frustrated because of a "run-in with one of the Staff Sergeants," which he felt was disrespectful and that Maj X was dissatisfied with the overall quality of work coming out of the flight.² The First Sergeant recommended Maj X lay out his expectations in a meeting to address these issues. There is no evidence that the First Sergeant told Maj X there was an issue with "whining and complaining in the open." The evidence also showed Maj X rescheduled the meeting specifically to ensure Complainant was in attendance after he learned that Complainant was scheduled to leave early that day.

Regardless of his intent,³ by nearly all accounts Maj X directed the flight to stop taking complaints outside the chain of command. The IO neatly summarized the most relevant testimony in his ROI and the preponderance of the evidence supports his finding that Maj X conveyed the flight needed to stop complaining, specifically to stop taking grievances outside the chain of command. The unit superintendent stated the message was that "people are talking outside of SC [the Cyber Ops flight] and you know, we've all been through basic training and should know better...use your first line supervisors for any grievances or complaints." A SSgt testified that Maj X told them "nothing will leave the flight, everything will stay in house." SSgt Z echoed this testimony: "you

² The First Sergeant also gave this explanation to Capt Y, when he asked why Maj X was addressing the flight in such a manner.

³ We are not as convinced as the IO that Maj X did not intend to restrict the flight; given the overall finding, this does not affect the legal sufficiency of the investigation.

are not to go to outside agencies for problems and if we find out you went outside to another party you will be reprimanded.” According to Complainant, Maj X told them “nobody under him had any right to go to the IG, to the Command Chief, to the DS or anybody with any complaints and that...it just doesn’t look good on us if somebody goes and talks to them.” Complainant also testified that Maj X threatened that “if anyone complained or reported anything he would deal with them personally,” and then gave a direct order to the flight that they must report anyone who complained outside the chain of command.

A few witnesses did not remember Maj X mentioning “outside agencies,” but even those witnesses testified that Maj X’s list of authorized recipients of complaints included only the chain of command. Although not all witnesses remembered Maj X mentioning the IG during his talk, no one, including Maj X himself, remembered him telling the flight they could use outside agencies like the IG, in addition to using the chain of command. Particularly telling was the testimony of Capt Y, who after hearing Maj X say “somebody in the shop is going outside the shop...or outside their section complaining, and you know, that’s not tolerable,” was so confused he pulled the First Sergeant outside the room to ask what caused the outburst. When he learned Maj X was upset because Complainant went to the First Sergeant after their meeting two days prior, Capt Y immediately reported the incident to the wing’s Director of Staff, because he believed Maj X was “literally saying that people can’t go outside to other organizations and explain how they’re having a conflict.”

Finally, the context of the conversation supports the IO’s conclusion that Maj X created a chilling effect. The investigation revealed Maj X struggled as a leader. The term the witnesses most often used to describe his leadership style was “micromanaging,” but witnesses also described him as “cold,” “dictatorial,” and “authoritarian.” When asked if they felt personally restricted, most of the witnesses denied personally feeling so, but several witnesses speculated that Maj X would not respond favorably if someone did go to the IG.⁴ Part of this speculation was informed by the experience of a former flight member who had previously threatened to go to the IG over an issue with Maj X. According to the unit superintendent, Maj X became upset, and while he did not tell the former flight member she could not go to the IG, he did tell her she did not need to “run to the IG” because the question at issue was within his purview to decide. Capt Y testified that Maj X told the former flight commander she was “weak” when she threatened to go to the IG. Although Maj X told the IO he “highly encourages” members to take issues to the IG, when pressed by the IO to give examples, he admitted he had never done so—in a large group or one-on-one capacity—and the only example he had in mind involved encouraging someone to go up the chain, not outside it.

Against this background and against the backdrop of complainant’s visit to the First Sergeant, the evidence shows Maj X called a nearly no-notice meeting, held the flight at attention for between 10 and 30 minutes, and engaged in a “one-way” conversation where in an angry tone he berated his flight for complaining, and ordered them not to raise complaints outside the chain of command. Again, although most of the witnesses denied feeling personally restricted and claimed they knew

⁴ “[Maj X] -“wants us to be gainfully employed the whole time we’re at work...but if he would catch wind that one of the Airmen or NCOs is coming to IG to file a complaint, I’m sure he would show frustration that we’re not doing what he wants and they’re doing what they’re allowed to do;” and “my honest opinion is I don’t think he wants anybody speaking to other agencies that would take the control out of his hands.”

they could always go to the IG, nearly all of the witnesses also stated it would be reasonable for someone to interpret Maj X as saying they could not take grievances outside the chain of command. The evidence showed this belief was so reasonable and palpable that several of the flight's NCOs held follow-up conversations with their subordinates to reiterate and clarify they still had the right to go outside the chain, including to the IG with issues.⁵

The IO's findings and conclusion that Maj X restricted Complainant from going to the IG are legally sufficient. The evidence and testimony established that Maj X convened a flight-wide meeting after learning Complainant raised issues with his leadership to the First Sergeant. Regardless of intent, Maj X directed the flight to not take issues outside the chain of command, and threatened to punish both those who complained and even those who did not report the complainers. Although Maj X did not tell his flight they could not go to the IG during this meeting, the evidence showed that he had criticized other flight members who had threatened to do so previously. The evidence showed that in addition to telling his flight not to take complaints to outside agencies, Maj X had never told any member of his flight that they could take complaints to the IG or Congress. The totality of this evidence supports the IO's findings and conclusion that Maj X created a chilling effect causing a reasonable person to believe they were actually restricted from making a lawful communication with the IG or Congress.

CONCLUSION

The framed allegation has been addressed and alleges a violation of law, regulation, or policy. The IO correctly applied the preponderance of the evidence standard in arriving at his finding. The ROI is supported by and consistent with the evidence. The investigation complied with all applicable legal and administrative requirements. We concur with the IO that the allegation is **SUBSTANTIATED** for restriction.

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⁵ The unit superintendent testified: "I was unaware of how some of the other folks took that [Aug 18] meeting until I had talked to them...but come to find out, a lot of people felt that's what [definition of restriction] they were being told during that meeting...enough so that when the NCOs and the Airmen went back to their work centers they had talks with their Airmen to tell them that...despite what was said, you can go speak with First Sergeant, Commander, IG, Legal, any agency available to you."