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Fact check: Were whistleblower rules changed before Ukraine complaint?

“The law was not changed. What happened was a form was changed. A form cannot change the law,” one attorney told NBC News.



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By **Jane C. Timm**

President Donald Trump and his allies advanced a conspiracy theory about [the Ukraine whistleblower](#) over the last few days alleging that the intelligence community had recently changed the rules requiring whistleblowers to base their claims on first-hand information.

But the law hasn't changed, and there is no requirement that whistleblowers stick to first-hand information in their complaints precisely because those filings are designed to trigger official investigations that would uncover such first-hand information, three attorneys who represent whistleblowers told NBC News.

“The whistleblower does not need to prove right off the bat with direct evidence what they're claiming,” explained Eric Bachman, an attorney with Zuckerman Law who represents whistleblowers. “That type of direct evidence is frankly hard to come by. Instead, the whistleblower needs to have a reasonable belief that something illegal has occurred, and then it's up to the inspector general to investigate.”



Donald J. Trump

@realDonaldTrump

WHO CHANGED THE LONG STANDING WHISTLEBLOWER RULES JUST BEFORE SUBMITTAL OF THE FAKE WHISTLEBLOWER REPORT? DRAIN THE SWAMP!

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The Office of the Inspector General of the Intelligence Community released a statement confirming that there is no requirement for first-hand information in such a complaint and said they had not rejected complaints on that basis. The form was changed this summer, when new employees began reviewing forms.

"In the process of reviewing and clarifying those forms, and in response to recent press inquiries regarding the instant whistleblower complaint, the ICIG understood that certain language in those forms and, more specifically, the informational materials accompanying the forms, could be read – incorrectly – as suggesting that whistleblowers must possess first-hand information in order to file an urgent concern complaint with the congressional intelligence committees."

The Ukraine whistleblower, the statement noted, used both first-hand and second-hand information in the complaint.

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After a whistleblower complaint is transmitted to an inspector general, the independent government watchdog reviews the allegation to determine whether it is credible. That could mean reviewing documents and interviewing witnesses, Bachman said. If the complaint deemed credible, the inspector general will send it to Congress for further investigation.

"Most of the complaints I'm familiar with have had some second-hand information," Bachman said.

The president and his allies widely shared a story in conservative outlet [The Federalist](#), which reported that a previous version of an intelligence community whistleblower form had included a paragraph stressing the importance of first-hand information in complaints transmitted from the inspector general to Congress.

A new form, which asks respondents to check a box if they are reporting first- or second-hand information, was posted days before [the Ukraine whistleblower's complaint](#) was declassified and released to the public.

Bachman said the whistleblower form that the news site focused on was "poorly worded and hard to make much sense of, which could be the reason it was revised."

David Colapinto, an attorney with Kohn, Kohn, and Colapinto who represents whistleblowers, and who is a co-founder of the National Whistleblower Center, said whistleblowers need only have a "reasonable belief" that wrongdoing occurred. The claim that the Ukraine whistleblower hadn't followed procedure or somehow shouldn't be protected as a whistleblower was "ridiculous," he said.

Acting Director of National Intelligence Joseph Maguire [told Congress last week](#) that the Ukraine whistleblower had followed the law.

"I want to stress that I believe that the whistleblower and the inspector general have acted in good faith throughout," Maguire said at a House Intelligence hearing Thursday. "I have every reason to believe that they have done everything by the book and followed the law."

In addition, the intelligence community's inspector general, Michael Atkinson, [deemed the complaint an "urgent concern"](#) that he was required by law to provide to the congressional intelligence committees. But Maguire [refused to do so on the advice of the Justice Department](#), resulting in a standoff with Congress that ultimately resulted in House Speaker Nancy Pelosi [backing a formal impeachment inquiry](#) against Trump.

Still, [defenders of the president have attacked the Ukraine whistleblower](#) for writing second-hand information into his complaint, even after some of that information has been publicly corroborated by [a call memo released by the White House](#).

Trump has called the complaint "a fraud" and "fake," saying his phone call with the Ukrainian president – in which he [sought an investigation into former Vice President Joe Biden and his son](#) – was "perfect."

Trump has spread [numerous conspiracy theories](#) related to the whistleblower complaint in an apparent attempt to discredit the allegations that have [prompted impeachment proceedings](#). He tweeted [the Federalist story on Saturday](#) before re-upping the claim again on Monday.

Full coverage: [Trump impeachment inquiry](#)

Bradley Moss, an attorney who specializes in representing whistleblowers, said when asked about the Federalist story, "The law was not changed. What happened was a form was changed. A form cannot change the law."

Moss is a partner at Mark Zaid, P.C., the firm representing the Ukraine whistleblower, but he said he is completely "walled off" from the individual's representation.

The intelligence community inspector general's statement Monday clarifying the reasons for changing the whistleblower complaint forms came after Republican Sens. Ron Johnson of Wisconsin, Chuck Grassley of Iowa, and Mike Lee of Utah penned a letter to Atkinson on Monday asking about the form revision.



Jane C. Timm

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Frank Thorp V contributed.



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