

CUI



INSPECTOR GENERAL

U.S. Department of Defense

DECEMBER 4, 2024



WHISTLEBLOWER RESTRICTION INVESTIGATION GEORGIA ARMY NATIONAL GUARD B COMPANY, 221ST EXPEDITIONARY MILITARY INTELLIGENCE BATTALION FORT GILLEM, GEORGIA

Controlled by: DoD-OIG

Controlled by: Administrative Investigations, Whistleblower Reprisal Investigations

CUI Category: PRIIG//INV//WHSTL

Distribution/Dissemination Control: FEDCON

POC: [REDACTED]

INDEPENDENCE ★ INTEGRITY ★ EXCELLENCE ★ TRANSPARENCY

The document contains information that may be exempt from
mandatory disclosure under the Freedom of Information Act.

CUI



Contents

Executive Summary	1
Background	3
Scope	5
Whistleblower Protection for Members of the Armed Forces	6
Legal Framework	7
Restriction	7
Analytical Process	7
Findings of Fact	8
Contextual Events	8
Sensing Session	8
Analysis	13
Subject 1's and Subject 2's Words, Actions, and Demeanor	13
Restriction Analysis	14
Preliminary Conclusions	15
Subject 1's Response to Preliminary Conclusions	16
Overall Conclusions	17
Recommendations	18
Acronyms and Abbreviations	19

CUI



CUI

WHISTLEBLOWER RESTRICTION INVESTIGATION

GEORGIA ARMY NATIONAL GUARD

B COMPANY, 221ST EXPEDITIONARY MILITARY

INTELLIGENCE BATTALION

FORT GILLEM, GEORGIA

Executive Summary¹

We conducted this investigation in response to a complaint alleging that [REDACTED] (Subject 1) and [REDACTED] (Subject 2) restricted Soldiers of B Company (B Co), 221st Expeditionary Military Intelligence Battalion (221 EMI BN), 78 Troop Command (78 TC), Fort Gillem, Georgia, from lawfully communicating with a Member of Congress or an Inspector General (IG). The following background information is provided for these individuals.

- [REDACTED]
- [REDACTED]

A preponderance of the evidence established that during an August sensing session, Subject 1's words and actions of referencing congressional or IG complaints, admonishing a Soldier, and displaying a dismissive attitude and demeanor about vocalized issues constituted restricting B Co, 221 EMI BN Soldiers, from lawfully communicating with Members of Congress or an IG. Therefore, we substantiated the allegation that Subject 1 restricted B Co, 221 EMI BN Soldiers, from lawfully communicating with a Member of Congress or an IG.

A preponderance of the evidence established that Subject 2's words, actions, or presence did not constitute restricting B Co, 221 EMI BN Soldiers, from lawfully communicating with a Member of Congress or an IG. Therefore, we did not substantiate the allegation that Subject 2 restricted B Co, 221 EMI BN Soldiers, from lawfully communicating with a Member of Congress or an IG.

¹ This report contains information that has been redacted because it was identified by the DoD Office of Inspector General as Controlled Unclassified Information (CUI) that is not releasable outside the Executive Branch. CUI is Government-created or -owned unclassified information that allows for, or requires, safeguarding and dissemination controls in accordance with laws, regulations, and Government-wide policies.

We recommend that the Secretary of the Army take the following actions.

- Consider appropriate action against Subject 1 for restricting Service members from lawfully communicating with a Member of Congress or an IG.
- Direct the IG, Department of the Army, to clarify its policies and procedures on the appropriate processing of complaints of military restriction filed by third parties or anonymous individuals to be consistent with DoD Instruction (DoDI) 7050.09, "Uniform Standards for Evaluating and Investigating Military Reprisal or Restriction Complaints," October 12, 2021.

Background

On September 11, 2020, the Georgia National Guard (GANG)-IG received a third-party restriction complaint. Specifically, the complaint alleged that Subject 1's and Subject 2's demeanor and questions presented to the Soldiers during the conduct of a sensing session on or about August 19, 2020, was an attempt to deter or produce a chilling effect on Soldiers filing complaints related to the annual training with either an IG or Members of Congress.

In June 2022, the GANG-IG completed its investigation into the restriction allegation and concluded that Subject 1 and Subject 2 did not restrict or attempt to restrict Service members from making lawful communications to a Member of Congress or an IG. The GANG-IG interviewed three Soldiers who attended the sensing session.

- [REDACTED] (Witness 1), [REDACTED]
[REDACTED]
- [REDACTED] (Witness 2), [REDACTED]
[REDACTED]
- [REDACTED] (Witness 3), [REDACTED]
[REDACTED]²

Additionally, the GANG-IG interviewed six secondhand witnesses. The Georgia Army National Guard (GAARNG) Office of the Staff Judge Advocate found the investigation and the report of investigation legally sufficient in August 2022, and the National Guard Bureau IG office concurred with the GANG-IG's findings in September 2022.

On January 31, 2023, the Department of the Army Inspector General office (DAIG) indicated that it did not agree with the GANG-IG's recommendation to not substantiate the restriction allegation against Subject 1 and Subject 2 and directed the National Guard Bureau IG to conduct additional fact-finding and investigation. On February 6, 2023, the National Guard Bureau IG submitted a memorandum to the DAIG, writing that it concurred with the GANG-IG's conclusion not to substantiate the restriction allegation. On January 18, 2024, the DAIG Legal Division concurred with the GANG-IG's findings and disagreed with the DAIG that Subject 1's statements had a chilling effect.³ The Legal Division wrote that it had two legal objections: (1) An attempt required a specific intent to commit a restriction, and an inference did not equate to specific intent. No credible evidence of specific intent to restrict existed. (2) As the complaint was from a third party, no restriction investigation was required, in

² Witness 3 was promoted to [REDACTED] between August 2020 and March 25, 2021, the day he submitted his sworn statement to the GANG-IG. Documentary and testimonial evidence refer to him as either [REDACTED] or [REDACTED].

³ The Legal Division referenced a DAIG amendment in its January 18, 2024 memorandum. However, the DAIG amendment we reviewed was dated February 14, 2024. In this amendment, the DAIG concluded that Subject 1's attempt to ascertain why several congressional complaints that arose from the unit led to creating a chilling effect that prevented Service members from making or preparing to make a lawful communication to a Member of Congress or an IG beyond the sensing session.

accordance with the “Assistance and Investigations Guide.”⁴ On February 14, 2024, the DAIG submitted a memorandum to the DoD Office of Inspector General (DoD OIG) recommending case closure due to not substantiating the allegations. The DoD OIG disagreed with the DAIG’s recommendation to close the case as not substantiated and assumed the case on February 16, 2024, based on the fully developed record. Specifically, the DoD OIG does not treat the subject’s “intent” as conclusive in a restriction analysis; rather, we view the impact of the subject’s words or actions from the perspective of a reasonable Service member.⁵

Additionally, DoDI 7050.09 does not require a named complainant. Rather, DoDI 7050.09 requires only that a “complaint” be filed with an allegation that a subject said or did something that, if true, would have deterred a similarly situated Service member from lawfully communicating with a Member of Congress or an IG.

⁴ Section 9-1 of the “Assistance and Investigations Guide,” March 2020, states that IGs would not initiate a whistleblower reprisal restriction investigation based on third-party or anonymous allegations of whistleblower reprisal.

⁵ In accordance with DoDI 7050.09, the DoD OIG processes complaints of restriction by evaluating “whether the **complaint** [emphasis added] alleges that the subject said or did something that, if true, would have deterred a similarly situated Service member from lawfully communicating with a Member of Congress or an IG. The subject’s words or actions are evaluated from the perspective of a reasonable Service member; that is, an objective third person with knowledge of the essential facts known to and readily ascertainable by the Service member.”

Scope

This investigation covered the period from August 19, 2020, the date of the sensing session, through September 11, 2020, the date the GANG-IG received the third-party restriction complaint. We reviewed transcripts from 21 interviews that the GANG-IG conducted under sworn oath or affirmation, which included transcripts of Subject 1's, Subject 2's, and other firsthand and secondhand witnesses' testimony, 2 sworn statements, and 2 Memorandums for Record. We reviewed documentary evidence on departmental and organizational policies, written communications, emails, a report of investigation, and personnel records.

Whistleblower Protection for Members of the Armed Forces

The DoD OIG conducts whistleblower restriction investigations involving members of the Armed Forces under section 1034, title 10, United States Code, "Protected Communications; Prohibition of Retaliatory Personnel Actions," as implemented by DoD Directive 7050.06, "Military Whistleblower Protection," April 17, 2015.

Legal Framework

Restriction

Section 1034, title 10, United States Code, as implemented by DoD Directive 7050.06, prohibits any person from restricting a member of the Armed Forces from lawfully communicating with a Member of Congress or an IG. DoD Directive 7050.06 defines restriction as “[p]reventing or attempting to prevent a current Service member from making or preparing to make a lawful communication to a Member of Congress or an IG.”

Analytical Process

The DoD OIG employs the following process in conducting military whistleblower restriction investigations. First, we establish the facts and circumstances of the subject’s words or actions that constituted the alleged restrictive event. Next, we determine whether what the subject actually said or did would have deterred a similarly situated Service member from lawfully communicating with a Member of Congress or an IG. The subject’s words or actions are evaluated from the perspective of a reasonable Service member—an objective third person who knows of the essential facts known to and readily ascertainable by the Service member.

Sufficient evidence that the subject prevented, or attempted to prevent, a Service member from making or preparing to make a lawful communication to a Member of Congress or an IG, based on proof by a preponderance of the evidence, is necessary to prove restriction. On this basis, we will determine whether the evidence indicates that the subject restricted a Service member from lawfully communicating with a Member of Congress or an IG.

Restriction can be substantiated even if the subject’s attempt at preventing a lawful communication failed to actually deter the Service member from subsequently making contact with a Member of Congress or an IG.

Findings of Fact

Contextual Events

B Co, 221 EMI BN, 78 TC, conducted annual training and Soldier Readiness Processing at Fort Stewart, Georgia, in August 2020.⁶

On August 17, 2020, the GAARNG Commanding General emailed the GAARNG Assistant Adjutant General and 78 TC Commander and other GAARNG commanders, writing that they had received “a rash of IG complaints” from Soldiers assigned to three of the five major subordinate commands. In the email, the GAARNG Commanding General wrote that they had to ensure basic Center for Disease Control and Prevention COVID-19 guidelines had been implemented at all GAARNG facilities and activities to protect the force and to avoid further criticism. The GAARNG Commanding General asked the commanders to document the measures they were implementing and to communicate the facts of the virus (COVID-19) to the Soldiers.

According to Subject 2, the GAARNG Assistant Adjutant General and 78 TC Commander directed him and Subject 1 to conduct a sensing session with the Soldiers of B Co.⁷ Subject 2 added that the purpose of the sensing session was to identify the Soldiers’ issues and concerns related to COVID-19. Subject 1 stated that he thought the GAARNG Assistant Adjutant General and 78 TC Commander planned to conduct the meeting himself but that the GAARNG Assistant Adjutant General and 78 TC Commander sent him instead at the last second.

Sensing Session

During the annual training and Soldier Readiness Processing, Subject 1 and Subject 2 conducted a sensing session with B Co, 221 EMI BN, on or about August 19, 2020, at Fort Stewart. According to firsthand and secondhand witnesses, between 15 and 24 enlisted Soldiers from B Co attended the sensing session. [REDACTED] (Witness 4),

[REDACTED]; Witness 1; and Witness 2 described numerous attendees as junior enlisted.

[REDACTED] (Witness 5), [REDACTED], stated that the officers were not present and that he thought the attendees were all enlisted but was unsure if they were the junior enlisted or all the enlisted Soldiers.⁸

⁶ Soldier Readiness Processing is a program within the U.S. Army that provides for continual administrative and medical readiness for Soldiers in units for deployment processing, redeployment processing, post-deployment processing, and unit readiness validation.

⁷ Sensing sessions are group interviews that can serve as a source of information, as their objective is to provide the facilitators with the perceptions and opinions of the Soldiers.

⁸ We reviewed the B Co personnel status report that showed personnel statuses of 68 Soldiers, including 12 officers and 2 warrant officers. We determined that Soldiers denoted with a location of Fort Stewart, Georgia, and not in quarantine, as well as Soldiers denoted as arriving for Soldier Readiness Processing, most likely attended the sensing session. Based on that rationale, 21 enlisted Soldiers were probable attendees in the sensing session. This number is consistent with witnesses’ testimony that between 15 and 24 enlisted Soldiers from B Co attended the sensing session. Of the 21 probable attendees, 3 were E-6s or E-7s and 18 were E-3s to E-5s. Therefore, we concluded that the attendees were more likely than not approximately 85 percent junior enlisted (E-3s to E-5s).

Initial Comments Regarding Congressional Complaints

Subject 1 told the GANG-IG that he began the sensing session by referring to the congressional complaints from the unit. Specifically, Subject 1 testified:

So I probably did ask them, hey, you know, I understand there's some disgruntlement ... and, you know, we're hearing what you're saying and here's the actions we're taking. [...] We've taken corrective measures there but tell me about some of these congressionals ... can you tell me a little bit about what's going on?

Witness 2 recalled that the purpose of the sensing session was for Subject 1 to look into a congressional complaint about Soldiers being mistreated, and Witness 1 remembered the question being asked, "[W]hy are these complaints on [our] desk?" However, Subject 2 did not recall Subject 1 mentioning anything about a congressional or IG complaint. In his testimony with the GANG-IG, Subject 2 said that he went to the sensing session not knowing of an IG or congressional complaint or "anything like that." Witness 3 wrote in his sworn statement that Subject 2 came in later to the sensing session, addressed a concern about a pay issue, and "didn't say too much."

Witness 1 told the GANG-IG that he had no concerns about what Subject 1 or Subject 2 said during the sensing session and that he did not believe that Subject 1's comments about congressional or IG complaints on their desk would discourage the Soldiers from seeking guidance from an IG or Members of Congress. Witness 1 explained that 221 EMI BN Soldiers felt they were smarter than everyone else and said that they were going to do the complete opposite if they were told not to go to Congress or an IG. Witness 1 also said, "... making any statement would not discourage them. If anything, it might encourage them to go put more complaints or whatever on their desk."

On the other hand, although Witness 2 responded affirmatively to the GANG-IG when asked if she felt like requesting congressional or IG assistance was still an avenue that she had after the sensing session, she said that if she had been considering submitting an IG complaint or a congressional, "that would have scared me for my command team or fellow Soldiers or my company, because it was something directly referenced and brought up."

Witness 3 wrote in a sworn statement that he saw a reference by Subject 1 and Subject 2 to requests for assistance made to Members of Congress or an IG as an attempt to find out who filed the complaints. Additionally, Witness 3 wrote that their reference implied they knew the complaints were happening, and they were trying to find out who made them to reprise or retaliate against the complainants. Witness 3 also wrote that he feared reprisal if he were to make a complaint after Subject 1's comments.

Secondhand witnesses also discussed Subject 1 mentioning congressional or IG complaints. For example, [REDACTED] (Witness 6), [REDACTED], told the GANG-IG that the Soldiers told him Subject 1 asked them during the sensing session why he had a congressional on his desk.

██████████ (Witness 7), ██████████ said that he also heard from several Soldiers that Subject 1 asked why IG complaints were on his desk. Similarly, according to ██████████ (Witness 8), ██████████, the Soldiers told him that Subject 1 and Subject 2 had mentioned congressional or IG complaints.

Witness 6 testified, “Having a ██████████ [go] into a room full of enlisted and ask the question, ‘Why is this complaint on my desk,’ that’s the tone that you don’t complain.” Similarly, Witness 7, who told the GANG-IG that Soldiers reported to him that Subject 1 was asking why IG complaints were on his desk, said that he believed after Subject 1 and Subject 2 opened the sensing session by referencing IG or congressional complaints, “it caused a lot of people to hush up and not be comfortable openly communicating about their concerns.”

When the GANG-IG asked Witness 8 if he believed that the references to IG or congressional complaints created a chilling effect among the Soldiers present at the sensing session, he responded, “Yes.” Witness 8 added that he did not feel the Soldiers thought they would be well represented if they went to an IG or Member of Congress.

Additionally, when the GANG-IG asked how he believed Subject 1’s or Subject 2’s reference to requests for assistance to Members of Congress or an IG influenced the Soldiers’ behavior, Witness 4, who was told about the sensing session, wrote that the reference “foreshadowed consequences for voicing concerns—in other instances it galvanized Soldiers to continue to report concerns.”

Subject 1’s Admonishment of Witness 3

According to Witness 2, Subject 1 told the Soldiers to “[t]alk to me like your friend.” Similarly, Subject 2 testified that Subject 1 told the Soldiers, “[W]e’re here just to talk to you all, to find out what’s going on. We’re here to help We don’t need y’all to be uptight about anything. ... you just need to kind of relax and talk to us, basically.”

Witness 2 stated that shortly after Subject 1 made the “[t]alk to me like your friend” statement, Witness 3 raised his hand, was called on, and started speaking. Witness 2 added that Subject 1 immediately chastised Witness 3 for not standing at the position of attention when speaking to ██████████. Similarly, Witness 3 wrote in his sworn statement to the GANG-IG that after asking the Soldiers to talk to him like he was one of them, Subject 1 immediately “jumped down my throat” and responded to his concerns by saying, “That’s why ██████████ don’t make decisions.”

Secondhand witnesses also recalled hearing about Subject 1’s interaction with Witness 3. For example, Witness 7 told the GANG-IG that he heard the sensing session started out with Subject 1 saying, “I’m open. I’m able to talk with you,” but that Subject 1 immediately told Witness 3 to stand at attention when directing comments toward him after Witness 3 shared a concern. Witness 6 testified that the Soldiers told him that Witness 3 addressed the ██████████

and that the [REDACTED] told him to stand up and go to attention when addressing the [REDACTED]. Witness 6 added that after Witness 3 made a statement, the [REDACTED] told him, “Well, you’re not making—you’re not making the plans, are you Soldier? Sit down.”

Subject 1 agreed that the meeting probably started contentiously with [REDACTED] [REDACTED] and stated that he did it on purpose to “kind of” get the Soldiers’ attention, pull them back a little bit under the command, and let them know the command was not going to tolerate nonsense. Subject 1 added that he probably said, “This is still a military organization. Maybe talk to [REDACTED] and see with them, you’re not going to sit down. It’s not acceptable.” However, Subject 1 noted to the GANG-IG that the Soldier was borderline belligerent and that he interpreted the Soldier’s tone as somewhat disrespectful. Subject 1 also stated that the Soldier was one of the ringleaders and a “pot stirrer” and that there were a couple [REDACTED] “mafia” that needed to be corralled and reminded that they were Soldiers.

Witness 3 wrote that “the sensing session felt hostile” and “was less [of] a conversation and more [of] a way for [Subject 1] to find out who the ‘troublemakers’ [were], those that had the audacity to question command team decisions, and squash them.” Witness 3 also wrote that Subject 1’s response—“That’s why [REDACTED] [sic] don’t make decisions”—was “something [he] will never forget.”

Witness 2 stated that she thought the setup for the sensing session created an environment—not free and open—in which the Soldiers felt they could not be honest. Witness 2 added that she personally felt uncomfortable speaking to Subject 1 and Subject 2 after watching them chastise Witness 3 and that the Soldiers were more hesitant to speak, although she thought some Soldiers still voiced concerns.

Witness 1 told the GANG-IG that he arrived at the sensing session after it started and that “[n]obody wanted to talk” at first. Witness 1 did not indicate whether he witnessed Subject 1’s interaction with Witness 3.

Several secondhand witnesses echoed the belief that Subject 1’s admonishment established a negative tenor for the meeting. For example, Witness 7 said that he believed Subject 1’s behavior immediately set the tone for the rest of the sensing session. Witness 5 also stated that he thought Subject 1 shutting down the Soldier set the tone and that the Soldiers were less inclined to speak. According to Witness 6, after Subject 1’s interaction with Witness 3, most Soldiers felt like they really should not speak because they were kind of talked down to and disregarded anytime they did speak. Witness 6 also stated that Soldiers told him the sensing session felt hostile.

Subject 1's and Subject 2's Demeanor

Witness 3 wrote that Subject 1 got tired of hearing the Soldiers' concerns about COVID-19 and forced them to move on to other issues, while only offering nonanswers as responses. Witness 3 also wrote that the Soldiers' concerns were met with contempt or were brushed off as issues that did not deserve Subject 1's time. Additionally, Witness 1 stated that Soldiers told him Subject 1 and Subject 2 were not listening to them, shrugging them off, and implying that "you are in the military, suck it up" before Witness 1 arrived at the sensing session.

Secondhand witnesses told the GANG-IG that other Soldiers had similar reactions as Witness 1 and Witness 3. For example, Witness 8 stated that morale was low after the sensing session and noted that the Soldiers came back saying they voiced their concerns in an after-action review format and were yelled at about why they should not think for themselves the rest of the time. Witness 8 added that Soldiers commented on how Subject 1 and Subject 2 "caught the gist of the complaints, felt that they had enough information to speak to the group, and use[d] the rest of the time to explain why Soldiers should shut up and listen to instructions." Similarly, [REDACTED] (Witness 9), [REDACTED], told the GANG-IG that she thought some of the Soldiers felt like the response that they received when they aired a concern or asked a question was, "Okay, yes. That's your concern. This is what we did to cover it. Next." Additionally, when the GANG-IG asked Witness 4 about comments or concerns that he witnessed or were brought to his attention about the sensing session, he responded, "It was a violation of expectations regarding Soldier concerns being voiced via State Senior Enlisted Advisors and an open-door policy and rather, it became a 'bitch-out session.'"

According to Subject 1, he listened to the Soldiers' concerns about being at Fort Stewart during a pandemic but always reverted to the Commanding General's guidance that missions would go on in a safe manner within the guidelines. Subject 1 added that he told them that they were part of the GAARNG, and "you've got to do what—do what you do. You do what you're told."

Witness 3 wrote in his sworn statement that it seemed like the purpose of the sensing session was to ensure the Soldiers knew who was in charge and that there was a feeling Subject 1 and Subject 2 were trying to put people in their places. Witness 4 also wrote in his sworn statement that he heard that the specified or implied purpose of the sensing session was to chastise the junior enlisted for causing issues for the battalion and the brigade.

Analysis

We determined, by a preponderance of the evidence, that Subject 1 restricted Soldiers from lawfully communicating with a Member of Congress or an IG.

We determined, by a preponderance of the evidence, that Subject 2 did not restrict Soldiers from lawfully communicating with a Member of Congress or an IG.

Subject 1's and Subject 2's Words, Actions, and Demeanor

We evaluated testimony from Subject 1, Subject 2, and firsthand and secondhand witnesses to determine Subject 1's and Subject 2's actual words, actions, and demeanor during the sensing session.

First, Subject 1 began the sensing session by asking the Soldiers to tell him about “some of these congressionals.” Firsthand witnesses recalled that the purpose of the sensing session was for Subject 1 to look into a congressional complaint about Soldiers being mistreated and remembered the question being asked, “[W]hy are these complaints on [our] desk?” Most of the secondhand witnesses heard from the Soldiers that Subject 1 asked them why he had a congressional inquiry or IG complaint on his desk. Subject 2 stated that he went to the sensing session not knowing of an IG or congressional complaint. Therefore, the evidence demonstrated that Subject 1 referenced congressional or IG complaints during the sensing session.

Second, Subject 1 and firsthand and secondhand witnesses indicated a contentious start to the session in which Subject 1 chastised a soldier for not standing at a position of attention when speaking to [REDACTED]. Additionally, a firsthand witness recalled Subject 1 responding to his concerns by saying, “That’s why [REDACTED] [sic] don’t make decisions.” A secondhand witness also recalled hearing that Subject 1 responded to a Soldier, “Well, you’re not making—you’re not making the plans, are you Soldier? Sit down.”

Third, some witnesses had unfavorable reactions to Subject 1's demeanor. According to a firsthand witness, Subject 1 addressed the Soldiers' concerns with contempt or brushed them off. Secondhand witnesses reported that Soldiers talked to them and similarly characterized Subject 1's and Subject 2's demeanor as not listening to the Soldiers, dismissing their concerns, and implying to them, “[Y]ou’re in the military, suck it up.” Subject 1 testified that he listened to the Soldiers' concerns, but always reverted to the Commanding General's guidance and told them that they were part of the GAARNG and that “you’ve got to do what—do what you do. You do what you’re told.”

Finally, little evidence existed that Subject 2 meaningfully interacted with the Soldiers in the sensing session other than displaying a dismissive demeanor. A disinterested observer would not view a display of a dismissive demeanor as restrictive; therefore, we do not analyze his words, actions, or demeanor further. We agree with the DAIG's recommendation to not substantiate the allegation against Subject 2.

Restriction Analysis

We considered whether a reasonable person under the circumstances would interpret Subject 1's words, actions, and demeanor as restricting a similarly situated Service member from lawfully communicating with a Member of Congress or an IG.

A witness testified that when [REDACTED] asked why a complaint was on his desk in a room full of enlisted Soldiers, "[T]hat's the tone that you don't complain." We considered this to be an objectively reasonable statement, which a disinterested observer would have recognized as reflecting military culture, as most of the witnesses had an unfavorable view of Subject 1's reference to congressional or IG complaints. Another witness said that he viewed Subject 1's comment as an attempt to find out who filed the complaints; the same witness feared reprisal if he were to make a complaint after Subject 1's comment. Additionally, when the GANG-IG asked a third witness if he believed that Subject 1's comment had a chilling effect among the Soldiers present at the sensing session, the witness responded, "Yes."

In that environment, Subject 1 admonished a junior enlisted Soldier and displayed a dismissive attitude and demeanor, leaving some Soldiers with the impression that what they had to say did not matter and that public repercussions could be made for expressing their concerns or choosing to complain.

Subject 1's rank and position of authority, combined with his apparent reference to congressional or IG complaints, admonishment of a Soldier, and display of a dismissive attitude and demeanor toward vocalized concerns would have the effect of deterring a reasonable Soldier from lawfully communicating with a Member of Congress or an IG. Therefore, we conclude that a preponderance of the evidence demonstrated that Subject 1 restricted Soldiers from lawfully communicating with a Member of Congress or an IG and disagree with the DAIG's recommendation to not substantiate the allegation against Subject 1.

Preliminary Conclusions

A preponderance of the evidence establishes that Subject 1 restricted B Co, 221 EMI BN Soldiers, from lawfully communicating with a Member of Congress or an IG.

A preponderance of the evidence establishes that Subject 2 did not restrict B Co, 221 EMI BN Soldiers, from lawfully communicating with a Member of Congress or an IG.

Subject 1's Response to Preliminary Conclusions

We provided a preliminary report of investigation to Subject 1 on October 9, 2024, and provided him an opportunity to respond to our preliminary conclusions. Subject 1 did not respond to our letter or subsequent follow-up email. Absent a response or additional information for our consideration, our conclusions remain unchanged.

Overall Conclusions

A preponderance of the evidence indicates that Subject 1 restricted B Co, 221 EMI BN Soldiers, from lawfully communicating with a Member of Congress or an IG.

A preponderance of the evidence indicates that Subject 2 did not restrict B Co, 221 EMI BN Soldiers, from lawfully communicating with a Member of Congress or an IG.

Recommendations

We recommend that the Secretary of the Army take the following actions.

- Consider appropriate action against Subject 1 for restricting Service members from lawfully communicating with a Member of Congress or an IG.
- Direct the IG, Department of the Army, to clarify its policies and procedures on the appropriate processing of complaints of military restriction filed by third parties or anonymous individuals to be consistent with DoDI 7050.09.

Acronyms and Abbreviations

[REDACTED]
[REDACTED]
221 EMI BN 221st Expeditionary Military Intelligence Battalion

78 TC 78th Troop Command

B Co B Company
[REDACTED]
[REDACTED]
[REDACTED]

DAIG Department of the Army Inspector General Office

DoDI DoD Instruction
[REDACTED]

GAARNG Georgia Army National Guard

GANG Georgia National Guard
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CUI



CUI

Whistleblower Protection

U.S. DEPARTMENT OF DEFENSE

Whistleblower Protection safeguards DoD employees against retaliation for protected disclosures that expose possible fraud, waste, and abuse in Government programs. For more information, please visit the Whistleblower webpage at www.dodig.mil/Components/Administrative-Investigations/Whistleblower-Reprisal-Investigations/Whistleblower-Reprisal/ or contact the Whistleblower Protection Coordinator at Whistleblowerprotectioncoordinator@dodig.mil

For more information about DoD OIG reports or activities, please contact us:

Congressional Liaison
703.604.8324

Media Contact
public.affairs@dodig.mil; 703.604.8324



www.twitter.com/DoD_IG

LinkedIn
www.linkedin.com/company/dod-inspector-general/

DoD Hotline
www.dodig.mil/hotline



CUI

D-CATSe 20201001-067366-CASE-03



DEPARTMENT OF DEFENSE | OFFICE OF INSPECTOR GENERAL

4800 Mark Center Drive
Alexandria, Virginia 22350-1500
www.dodig.mil
DoD Hotline 1.800.424.9098

CUI