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OBSTRUCTING OVERSIGHT: CONCERNS FROM INSPECTORS GENERAL

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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OBSTRUCTING OVERSIGHT: CONCERNS FROM INSPECTORS GENERAL

Wednesday, September 10, 2014

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, D.C.

The committee met, pursuant to call, at 9:30 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, Turner, Duncan, Jordan, Chaffetz, Walberg, Lankford, Amash, Meehan, Gowdy, Woodall, Massie, Meadows, Bentivolio, DeSantis, Cummings, Norton, Connolly, Cartwright, Duckworth, Kelly, Davis, Horsford and Grisham.

Staff Present: Melissa Beaumont, Assistant Clerk; Molly Boyl, Deputy General Counsel and Parliamentarian; David Brewer, Senior Counsel; Ashley Callen, Deputy Chief Counsel for Investigations; Sharon Casey, Senior Assistant Clerk; Steve Castor, General Counsel; John Cuaderes, Deputy Staff Director; Jessica Donlon, Senior Counsel; Adam Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Ryan Hambleton, Senior Professional Staff Member; Mark Marin, Deputy Staff Director of Oversight; Ashok Pinto, Chief Counsel, Investigations; Andrew Rezendes, Counsel; Laura Rush, Deputy Chief Clerk; Jessica Seale, Digital Director; Andrew Shult, Deputy Digital Director; Jonathan Skladany, Deputy General Counsel; Peter Warren, Legislative Policy Director; Rebecca Watkins, Communications Director; Tamara Alexander, Minority Counsel; Meghan Berroya, Minority Deputy Chief Counsel; Krista Boyd, Minority Deputy Director of Legislation/Counsel; Aryele Bradford, Minority Press Secretary; Jennifer Hoffman, Minority Communications Director, Chris Knauer, Minority Senior Investigator; Juan McCullum, Minority Clerk; Dave Rapallo, Minority Staff Director; Ilga Semeiks, Minority GAO Detailee; and Mark Stephenson, Minority Director of Legislation.

Chairman ISSA. The committee will come to order.

Without objection, the chair is authorized to declare a recess of the committee at any time.

The Oversight Committee's mission statement is that we exist to secure two fundamental principles. First, Americans have a right to know that the money Washington takes from them is well spent; and, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsi-

bility is to hold government accountable to taxpayers because taxpayers have a right to know that the money Washington takes from them is well-spent. It's our job to work tirelessly in partnership, citizens watchdogs and, yes, the IG watchdogs, to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is our mission statement.

On August 5, 47 Inspectors General, two-thirds of the IG community, sent an unprecedented letter to Congress describing serious limitations on access to records that have recently impeded the work of the Inspectors General. Section 6(a)(1) of the Inspector General Act of 1978 requires agencies to provide, and I quote, "full and timely access to agency records to their respective Inspector General." Anything less than full cooperation, of course, is unacceptable.

These government watchdogs play a key role in improving the government's efficiency, honesty, and accountability. They conduct oversight and investigations and audits to prevent and detect waste, fraud, and mismanagement within government agencies. Their work often protects life of Federal workers and the American people. They help Congress shape legislation and target our oversight and investigative activities; but let there be no doubt, they are executive branch employees who, in fact, were created by an act of Congress and signed by a president so that the tools that they provide are available to the President of the United States to run our government better.

The IGs have proven to be one of Congress's and the American people's best investments. In the last fiscal year the IG community used their 2.7 billion dollar budget to identify potential cost savings to taxpayers totalling about 46 billion dollars. That means that for every dollar in the total IG budget, they identified approximately $17 in savings. Access is key to that kind of savings.

But the let me make it very clear, many of the investigations, including some you will hear today, are not about money. They're far more valuable. They're about liberty. They're about your government not trampling on your rights. So when agencies withhold information and their records from these watchdogs, it impedes their ability to conduct their work thoroughly, independently and most of all, timely. It runs up the cost to both sides of the ledger. The Inspectors General spend many, many, many millions of dollars simply trying to get access, while your government, the very same agency, spends millions and millions of dollars on lawyers trying to impede. This is one of the greatest wastes we could possibly have. When agencies refuse or deny IGs access to agency records, it undermines the intent of Congress and the IG's ability to effectively oversee these respective agencies.

Today, we are going to hear from three widely respected IGs who have faced serious challenges from their agencies to access the necessary records to what they do in their work. At the Justice Department, the Inspector General cannot gain access to grand jury documents or national security-related documents without approval and delay from the Deputy Attorney General of the Federal courts. Requiring such permission compromises and impedes IGs' investigations.

At the Chemical Safety Board, they have denied the EPA Inspector General, Mr. Elkins, who is with us today, access to certain documents on the basis of attorney-client privilege, but who is the attorney and what is the privilege? Mr. Elkins is, in fact, the same entity that is, in fact, the client. He is, in fact, part of the defined client, which of course is the EPA.

Further, several offices within the EPA itself, including the EPA office of Homeland Security, have interfered with the OIG's investigations themselves. And perhaps most disturbing to me personally, and I spoke to the Vice President last night, and I believe he was equally disturbed, at the Peace Corps they have refused to provide the Inspector General, Ms. Buller, access to information related to sexual assaults on Peace Corps volunteers absent a memorandum of understanding.

Let's understand, last night we honored and celebrated the 20th anniversary of the enactment of violence against women, designed to do just the exact opposite, to ask women to come forward and report their assaults. If, in fact, the IG cannot oversee a possible pattern of failure to protect women, then are we to ask women to come forward with the record of their assaults.

But in all instances, it is the committee's position that these agencies should and must cooperate with the Inspectors General's requests for information. During the 113th Congress, the committee has investigated several instances, including the ones facing these watchdogs in which agency leadership undermined the effectiveness of the Inspectors General. The committee has held several hearings on this issue and facing these Inspector Generals over the past year. The committee has also conducted a deposition of the Peace Corps general counsel to address the access issue at the Peace Corps. It has not been resolved, and quite frankly, I look forward to the departure of the general counsel as part of the problem.

Neither this committee nor the IG committee should be wasting time and resources attempting to gain access to records which the IGs have not just a legal entitlement to, but a sworn obligation to under the IG Act.

For nearly six years we have seen this administration make unprecedented efforts, it says to fight transparency and block investigations by journalists, Congress, but that's not what we're here for today. We're not here because the press wants to snoop. We're not here because Article 1, the Congress, is trying to look over the shoulder of the President and his administration. We're here because the more or less 12,000 men and women who work for these IGs and the others not here today, part of this President's team for efficiency, transparency, and, in fact, an Honorable service by all, has not been getting what they wanted.

It is my intention upon the end of this hearing to write with my ranking member if at all possible, a letter to the President, urging him to use his executive order capability to resolve this question once and for all. Notwithstanding that, I want to thank our three witnesses here today, and I want to assure you of one thing, after you testify here today and for all 47 IGs who wrote, I will be looking, I know my ranking member will be looking, to make sure that, in fact, no retribution, no punishment, is allowed for your coming

forward and expressing your concerns under your responsibility of the IG Act.

With that, I would ask just one thing. We do have a response from the executive office of the President, the Office of Management and Budget, in response to Mr. Cummings and my letter, and I will place it into the record at this time. Without objection, so ordered.

Chairman ISSA. And we recognize the ranking member for his opening statement.

Mr. CUMMINGS. Thank you, Mr. Chairman. I want to thank our witnesses for testifying here today. I also want to thank the chairman for calling this hearing.

Let me start off by saying that what the chairman said with regard to retribution, I agree with. You have come; you do a phenomenal job, a very important job, and every member of this committee, both sides of the aisle, if we hear about any repercussions from you being here, we will be on it and deal with it effectively and efficiently.

Rooting out waste, fraud and abuse is a central tenet, of this committee and we take this mission very seriously. I'm a staunch defender of the IGs and the authorities.

And, for example, in 2013, I sent a bipartisan letter to the President. I was joined by Chairman Issa as well as Representative Chaffetz and Representative Tierney, the chairman and ranking member of the National security Subcommittee. In that letter we pressed the President to finally nominate an Inspector General at the State Department, a position that had remained vacant for five years. I have also supported legislation to help IGs do their job more effectively and efficiently, such as the IG Reform Act of 2008.

Last month after receiving the letter from 47 IGs, I co-signed a letter with Chairman Carper and Ranking Member Coburn of the Homeland Security Committee and the Government Affairs Committee, as well as Chairman Issa. In that letter, we expressed our bipartisan concern to the Office of Management and Budget about access issues raised by three IGs testifying here today from the Peace Corps, the Department of Justice and the Environmental Protection Agency.

When Congress passed the Inspector General Act in 1978, Section 6 of that legislation authorized IGs to have very broad access to agency records. This provision was intended to give IGs wide latitude to conduct their audits and investigations. But Congress also included certain exemptions on the legislation, some of which are at issue today. In addition, some contend that other Federal laws may conflict with this broad grant of authority, and that is also a concern that we will be discussing today.

First we have the Peace Corps. In 2011 Congress passed and the President signed the Kate Puzey Volunteer Protection Act. This law requires the Peace Corps to establish a confidential system for volunteers to report sexual assault crimes. When the IG sought access to this data in order to prepare a report also mandated by Congress, the Peace Corps raised a question about providing the personally identifiable information of sexual assault victims, which was supposed to be confidential.

On May 22, the agency and the IG signed a memorandum of understanding providing the IG with access to all information except personally identifiable information and explicit details of the sexual assaults. I understand the disagreement does not address all of the IG's access concerns, but I believe it is a very good start when we have two potentially conflicting statutes like this.

Next the Department of Justice Inspector General has expressed concern that when he seeks access to sensitive law enforcement information, such as grand jury and wire tap information, he must go through a lengthy approval process at the highest levels of the department. The IG's testimony for today says the department has granted access to the records in every case, but he contends that the lengthy delays erodes his independence. According to the Department, several other statutes restrict the release of sensitive information, such as grand jury and wire tap material. So they must be carefully analyzed, and we have to look at that.

My understanding is that the Department has now asked the Office of Legal Counsel to review the issue. I applaud the IG for working through this process with the agency, and I look forward to OLC's review.

Finally, the Environmental Protection Agency IG has raised two concerns. The IG reports said that the EPA's office of Homeland Security has been denying the IG access to classified threat material and failing to recognize the IG's statutory authority over intrusions into EPA computer networks. Democratic staff has been working with both sides to mediate this issue, and on June 19, EPA Administrator McCarthy proposed a framework for better cooperation. At this point my understanding is that the IG still has issues with the proposal, so I hope we can spend some time today hearing about those concerns.

Lastly, the dispute between the EPA IG and the Chemical Safety Board seems, at least to me, to be the most problematic. The IG has been trying to obtain documents from the CSB chairman, but the CSB still has not produced all of the requested documents. This week the IG's office sent a letter explaining that although the CSB has complied substantially with the request, documents still remain outstanding. I hope we can work with you closely on a bipartisan basis to solve this issue.

Let me close by making one observation. As we have seen, many of these issues involve several laws that appear to conflict, and some have raised the possibility of legislative fixes. I believe this idea should be considered very carefully. Although I will not hesitate to pursue statutory clarification if necessary, the last thing the IGs need is for legislation to be introduced and fail, which could have the unintended effect of diluting their authority.

For these reasons, Mr. Chairman, I appreciate your commitment to work with me and my staff in developing bipartisan and widely supported legislative reform proposals. My staff and I have devoted tremendous efforts to helping IGs do their work, and my goal has always been to try to solve the challenges constructively.

And with that I yield back.

Chairman ISSA. I thank the ranking member. All members will have seven days to submit opening statements for the record.

Chairman ISSA. We now welcome our distinguished panel of witnesses. The Honorable Michael E. Horowitz is the Inspector General of the U.S. Department of Justice. The Honorable Arthur A. Elkins, Jr., is Inspector General of the U.S. Environmental Protection Agency and the Honorable Ms. Kathy A. Buller is the Inspector General of the Peace Corps.

Lady and gentleman, pursuant to the committee rules, would you please rise to take the oath, and raise your right-hand.

Do you solemnly swear or affirm, that the testimony you will give today, will be the truth, the whole truth, and nothing but the truth?

Please be seated. Let the record reflect that all witnesses answered in the affirmative.

Since you're all skilled professionals, and, Mr. Horowitz, since you're less than 24 hours from a similar event, you know that we'd like you to keep your opening statements to 5 minutes, summarize any way you can, and that your entire opening statements will be placed in the record without objection.

And with that, Mr. Horowitz, you're up.

WITNESS STATEMENTS

STATEMENT OF THE HON. MICHAEL E. HOROWITZ

Mr. HOROWITZ. Thank you, Mr. Chairman, Congressman Cummings, members of the committee. Thank you for inviting me to testify today at this very important hearing.

Access by Inspectors General to information and agency files goes to the heart of our mission to provide independent and nonpartisan oversight. That is why 47 Inspectors General signed a letter late last month to Congress expressing their concerns about this issue. I want to thank the members of this committee for their bipartisan support in response to this letter.

The IG Act adopted by Congress in 1978 is crystal clear. Section 6(a) of the act expressly provides that Inspectors General must be given complete, timely, and unfiltered access to all agency records. However, since 2010, the FBI and some other department components have not read Section 6(a) of the act in that manner and therefore have refused our requests during our reviews for relevant grand jury, wire tap, and credit information in its files. As a result, a number of our reviews have been significantly impeded. In response to these legal objections, the Attorney General of the Department—or the Department Attorney General, granted us permission to access the records by making the finding that our reviews were of assistance to them. They also have stated their intention to do so in future audits and reviews. However, there are several significant concerns with this process.

First and foremost, the process is inconsistent with the clear mandate of Section 6(a) of the IG Act. The Attorney General should not have to order Department components to provide us with access to records that Congress has made clear we have a right to review.

Second, requiring the Inspector General to obtain permission from department leadership seriously compromises our independ-

ence. The OIG should be deciding which documents it needs access to, not the leadership of the agency that is being overseen.

Third, while current Department leadership has supported our ability to access records, agency leadership changes over time, and our access to records should not turn on the views of the Department's leadership.

Further, we understand that other Department components that exercise oversight over Department programs and personnel, such as the Department's office of professional responsibility, continue to be given access to these same materials without objection. This disparate treatment is unjustifiable and results in the Department being less willing to provide materials to the OIG, presumably because the OIG is statutorily independent, while OPR is not. This disparate treatment again highlights OPR's lack of independence from the Department's leadership, which can only be addressed by granting the statutorily independent OIG with jurisdiction to investigate all alleged misconduct at the Department.

Indeed, the independent, nonpartisan project on government oversight made the same recommendation in a report issued in March of this year, and bipartisan legislation introduced in the Senate would do just that.

This past May, the department's leadership asked the Office of Legal Counsel to issue an opinion addressing the legal objections raised by the FBI and other Department components. It is imperative that the OLC issue its decision promptly because the existing practice at the Department seriously impairs our independence every day we do our work.

Moreover, in the absence of a resolution, our struggle to access information in a timely manner continues to seriously delay our work. It also has a substantial impact on the morale of the OIG's auditors, analysts, agents, and lawyers, who work extraordinarily hard every day. Far too often they face challenges getting timely access to information, including even with routine requests. For example, in two ongoing audits, we had trouble getting organizational charts in a timely manner. We remain hopeful that OLC will issue an opinion promptly that concludes the OIG is entitled to independent access to the records and information pursuant to the IG Act.

However, should an OLC opinion conclude otherwise and interpret the IG Act in a manner that results in limits on our ability to access information, we will request a prompt legislative remedy.

For the past 25 years my office has demonstrated that effective and independent oversight saves taxpayers money and improves the Department's operations. Actions that limit, condition, or delay access to information have substantial consequences for our work and lead to incomplete, inaccurate, or significantly delayed findings or recommendations. I cannot emphasize enough how critical it is to get these pending access issues resolved promptly.

Hopefully, OLC will issue shortly, an opinion finding that 6(a) of the IG Act means what it says, namely that the OIG is entitled to have complete, timely, and independent access to information in our agency's files.

This concludes my prepared statement. I'd be pleased to answer any questions you may have.

Chairman ISSA. Thank you, and you'll yield back the one second.
Mr. HOROWITZ. I will yield back the one second.
Chairman ISSA. Thank you.
[Prepared statement of Mr. Horowitz follows:]

Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
Inspector General, U.S. Department of Justice

before the

U.S. House of Representatives
Committee on Oversight and Government Reform

concerning

"Obstructing Oversight: Concerns from Inspectors General"

September 10, 2014

Mr. Chairman, Congressman Cummings, and Members of the Committee:

Thank you for inviting me to testify about the issues that the Department of Justice (Department or DOJ) Office of the Inspector General (OIG) has faced in obtaining access to documents and materials needed for its audits and reviews. This is an issue of utmost importance, as evidenced by the 47 Inspectors General who signed a letter last month to the Congress strongly endorsing the principle of unimpaired Inspector General access to agency records. I want to thank the Members of Congress for their bipartisan support in response to our letter. I also want to acknowledge the provision included by the Senate Committee on Appropriations in the Department's fiscal year 2015 appropriations bill, S. 2437, which prohibits the Department from using appropriated funds to deny the OIG timely access to information.

Access by Inspectors General to information in agency files goes to the heart of our mission to provide independent and non-partisan oversight. It is very clear to me – just as it is to the Inspectors General community – that the Inspector General Act of 1978 (IG Act) entitles Inspectors General to access all documents and records within the agency's possession. Each of us firmly believes that Congress meant what it said in Section 6(a) of the IG Act: that Inspectors General must be given complete, timely, and unfiltered access to agency records.

However, as reflected in the recent Inspectors General letter and in my prior testimony before Congress, since 2010 and 2011, the FBI and some other Department components have not read Section 6(a) of the IG Act as giving my Office access to all records in their possession and therefore have refused our requests for various types of Department records. As a result, a number of our reviews have been significantly impeded. For example, the report we issued last week examining the Department's use of the federal material witness statute in international terrorism investigations experienced significant delays resulting from the FBI's objections to providing us with access to both grand jury and Title III electronic surveillance material. Additionally, in connection with our report last month on the FBI's use of national security letters, the FBI had previously objected to providing us with access to information it had collected using Section 1681u of the Fair Credit Reporting Act. We experienced similar objections from Department components that resulted in significant delays in gaining access to important information in other reviews as well, including during the review that culminated in our 2012 report on ATF's Operation Fast and Furious.

In response to each of these objections to providing us with access to information, the Attorney General or the Deputy Attorney General granted us permission to access the records we sought by making the finding that our reviews were of assistance to them. They also have stated to us, as well as publicly, that it is their intent to continue to grant us permission to access records in future audits and reviews. We appreciate their support and commitment to continue to issue to Department components whatever orders are necessary to ensure that we can access agency records in order to perform our oversight responsibilities. However,

as I have publicly testified previously, I have several significant concerns with this process.

First and foremost, this process is inconsistent with the clear mandate of Section 6(a) of the IG Act. The Attorney General and Deputy Attorney General should not have to order Department components to provide us with access to records that the Congress has already made it clear in the IG Act that we are entitled to review. Second, requiring the OIG to have to obtain the permission of Department leadership in order to review agency records compromises our independence. The IG Act expressly provides that an independent Inspector General should decide whether documents are relevant to an OIG's work; however, the current process at the Department instead places that decision and authority in the leadership of the agency that is being subjected to our oversight. Third, the need for the OIG to elevate matters such as these to the Department's leadership results in delays to our audits and reviews, consumes an inordinate amount of OIG staff time and my time, as well as time from the Attorney General's and Deputy Attorney General's busy schedules. Finally, while current Department leadership has supported our ability to access the records we have requested, agency leadership changes over time and an independent Inspector General's access to records surely should not depend on whether future occupants of these leadership positions support such access.

Moreover, the process that the OIG is being required to follow is inconsistent with how the Department treats other DOJ components that exercise oversight over Department programs and personnel, but that are not statutorily independent like the OIG and have not been granted an express statutory right of access by Congress like the OIG. For example, to our knowledge, the Department's Office of Professional Responsibility (OPR) continues to be given access to grand jury and wiretap information without objection, and no questions have been raised about providing OPR with the information it needs to investigate alleged misconduct by Department attorneys, which the IG Act grants OPR the exclusive jurisdiction to handle. This disparate treatment – requiring the OIG to obtain permission from Department leadership to gain access to these records, but not requiring OPR to do the same – is unjustifiable, and results in the Department being less willing to provide materials to the OIG, presumably because the OIG is statutorily independent, while OPR is not. Such a distinction subverts the very purpose of that statutory independence, and fails to take into account the clear access language in Section 6(a) of the IG Act. The disparate treatment, however, does highlight once again OPR's lack of independence from the Department's leadership. This lack of independent oversight of alleged attorney misconduct at the Department can only be addressed by granting the statutorily-independent OIG with jurisdiction to investigate all alleged misconduct at the Department, including by Department attorneys, as we have advocated for many years. Indeed, the independent, non-partisan Project on Government Oversight (POGO) made the same recommendation in a report issued in March of this year. Bipartisan legislation introduced in the Senate at the same time, the Inspector General Empowerment Act of 2014 (S.2127), would do just that.

This past May, the Department's leadership asked the Office of Legal Counsel (OLC) to issue an opinion addressing the legal objections raised by the FBI to the OIG gaining access to certain records. We did not then believe, nor have we ever believed, that a legal opinion from OLC was necessary to decide such a straightforward legal matter regarding the meaning of Section 6(a) of the IG Act. However, we did not object to the Department's decision to seek an OLC opinion, in part because we hoped that OLC would quickly provide the assurance that our Office is indeed entitled to access all agency records that the OIG deems necessary for its audits and reviews. We have attached to my written statement the legal views of the OIG regarding these issues, which summarizes the views we previously shared with the Department.

We also have emphasized to the Department's leadership the importance of a prompt OLC opinion, given that the existing practice, even though it has enabled us to get materials through an order of the Attorney General or Deputy Attorney General, seriously impairs our independence for the reasons I just described. It remains critical that OLC issue its opinion promptly.

Meanwhile, in the absence of a resolution of this dispute, our struggles to access information relevant to our reviews in a timely manner continue to cause delays to our work and consume resources. They also have a substantial impact on the morale of the auditors, analysts, agents, and lawyers who work extraordinarily hard every day to do the difficult oversight work that is expected of them. Far too often, they face challenges getting timely access to information from some Department components. Indeed, even routine requests can sometimes become a challenge. For example, in two ongoing audits, we even had trouble getting organizational charts in a timely manner.

We remain hopeful that this matter will be resolved promptly with a legal opinion concluding that the IG Act entitles the OIG to independent access to the records and information that we seek. Indeed, a contrary opinion, which interpreted the IG Act in a manner that resulted in limitations on the OIG's access to documents, would be unprecedented and would be contrary to over 20 years of policy, practice, and experience within the Department. As we discuss in our attached legal summary, for the OIG's first 22 years of existence, until the FBI raised legal objections in 2010 and 2011, the OIG received without controversy or question grand jury, Title III, and FCRA information in connection with reviews in which the information was relevant, including from the FBI. Should an OLC legal opinion interpret the IG Act in a manner that results in limits on our ability to access information pursuant to the IG Act, we will request a prompt legislative remedy, which the Department has said it will work with us on.

For the past 25 years, my Office has demonstrated that effective and independent oversight saves taxpayers money and improves the Department's operations. Actions that limit, condition, or delay access to information have substantial consequences for our work and lead to incomplete, inaccurate, or significantly delayed findings or recommendations. In order to avoid these consequences, the pending access issues need to be resolved promptly, hopefully

through a legal opinion from OLC finding that Section 6(a) of the IG Act means what it says, namely that the OIG is entitled "to have access to all records . . . or other material available to the" Department, which must be construed as timely, complete, and independent access to information in the Department's possession.

This concludes my prepared statement. I would be pleased to answer any questions that you may have.

Attachments to the testimony are filed with the Committee records.

Chairman ISSA. Mr. Elkins.

STATEMENT OF THE HON. ARTHUR A. ELKINS, JR.

Mr. ELKINS. Good morning, Chairman Issa, Ranking Member Cummings, and members of the committee.

I am Arthur Elkins, Inspector General for the Environmental Protection Agency and the Chemical Safety and Hazard Investigation Board. Thank you for inviting me to appear before you today.

I would like to take this opportunity to publicly commend the Office of Inspector General staff across the Federal Government who work hard each day to carry out our important mission. As the committee is aware, for more than a year this OIG was confronted with a denial of access by the CSB. The CSB's leadership asserted that the denial was based on attorney-client privilege. We countered that such denial violated Section 6(a)(1) of the Inspector General Act.

With that impairment of my office's ability to provide oversight of the CSB continued, we resorted to the rarely invoked 7-day letter. This committee held a hearing on the 7-day letter and related issues on June 19 at which you stated the CSB to turn over the documents to the OIG within a week. The CSB since has produced several sets of documents to the OIG. We have determined that the CSB has substantially but not fully complied with our document request. However, the evidence we have gathered demonstrates that there are additional documents within the scope of our request the CSB officials have not provided.

In addition to the CSB matter, the EPA office of Homeland Security continues to impede the investigations of this OIG. We provided testimony on that subject before this committee on May 7. While there are multiple facets to this problem, the crux is this. The EPA asserts a belief that there is a category of activity defined as, "intelligence" to which the OIG may have access only if the EPA determines the OIG access is permitted. This impairment by the EPA was ongoing when I arrived four years ago, and it is still not resolved.

Now, I would like to discuss how well the IG Act is serving the taxpayers of this country in accomplishing goals that Congress set in passing it more than 35 years ago. On August 5, I joined with 46 other IGs in sending a letter to this committee, as well as other congressional members, discussing the troubling pushback many of us have been experiencing from our respective agencies when we seek mandated access to employees and records. We asked Congress for a strong reaffirmation of the original, and we believe, still existing intent of the IG Act, that OIGs have unfettered access to all agency information to assist us in obtaining prompt and complete agency cooperation.

Mr. Chairman, questions about whether the IG Act is accomplishing Congress's goals and whether the act needs strengthening or clarification are not hypothetical to me. They are questions with real-world impact on my ability to carry out my mandated functions. You might think, therefore, that I would say without reservation that the IG Act requires some enhancements on access and agency cooperation.

However, I want all of us, IGs and Congress included, to be very careful about what I am saying and what I am not saying on this issue. The act as written is quite strong and quite clear. It provides access to all agency information and all agency employees. There are no exceptions, not for material that an agency asserts cannot be further released outside of the OIG once the OIG does receive it, and not for some piece of agency activity that might happen to involve classified information.

No courts, no congressional committees, and no opinions from the Department of Justice's Office of Legal Counsel have given any cause for concern that the requirement for access to all information means anything other than all. Any attempt to clarify or strengthen that authority could only suggest that it is not already strong and fully encompassing.

The IG Act hinges on the cooperation of an agency with its IG. If there is not prompt and complete cooperation, the work of the OIG is stifled. In this regard, the IG Act can be compared to a house of cards. If you pull out the agency cooperation card, the entire act collapses. I therefore urge this committee to look at enforcement mechanisms for the access and cooperation already required. The IG Act is fine as written. The agency's ability to ignore the act without consequence is the problem.

This OIG will be happy to work with your staff in concert with the Council of Inspector Generals on integrity and efficiency on solutions to address our access concerns. I believe that Congress can send a strong and needed message through legislative enhancements and other means that such impairment will not be tolerated.

Mr. Chairman, this concludes my prepared statement, and I will be pleased to answer any questions you or the committee may have.

Chairman ISSA. Thank you. And you yield back four seconds.

Mr. ELKINS. Yes, I will. Thank you.

[Prepared statement of Mr. Elkins follows:]

Statement of
Arthur A. Elkins Jr.
Inspector General
Office of Inspector General
U.S. Environmental Protection Agency
Before the
Committee on Oversight and Government Reform
U.S. House of Representatives
September 10, 2014

Good morning, Chairman Issa, Ranking Member Cummings and members of the committee. I am Arthur Elkins, Inspector General (IG) at the U.S. Environmental Protection Agency (EPA). Thank you for inviting me to appear before you today. I appreciate the opportunity to address how well the Inspector General Act is serving the taxpayers of this country in accomplishing goals that Congress set in passing it more than 35 years ago. As an Inspector General entrusted with executing the authorities provided for in the Act, the corollary question for me is whether the Act needs to be strengthened or clarified in any way. And I welcome the opportunity to publicly commend the expertise, dedication, diligence and professionalism of the Office of Inspector General (OIG) staff—not only at the EPA, but across the federal government—who work hard each day to carry out this very important mission.

Overview of the EPA OIG

The EPA OIG is an independent and objective office that is uniquely charged with conducting investigations and audits related to programs and operations not only at the EPA but at the U.S. Chemical Safety and Hazard Investigation Board (CSB). The EPA OIG operates with a separate budget and decision-making authority, and neither agency's senior leaders may prohibit, prevent or obstruct us from conducting our work.

At the request of the committee, I will testify on the importance of an OIG's access to agency records, and how this OIG's access has been limited by both the EPA and the CSB. Then, I will summarize the letter to Congress signed by 47 IGs, including me, regarding the denial of access. Lastly, I will offer my opinion as to whether there is a need to strengthen or clarify the IG Act.

CSB Denies Access to the OIG

Several recent events inform my personal response to the questions posed today. First, as the committee is aware, for more than a year, this OIG was confronted with a denial of access by the CSB. The CSB's leadership asserted that the denial was based on attorney/client privilege. However, we countered that such denial violated the IG Act, specifically Section 6(a)(1).

Our current issue with the CSB began in February 2013 when we received a complaint alleging that CSB officials were using nongovernmental email accounts to conduct official business. In

response, we opened an investigation. In May 2013, the OIG requested records of communications of the CSB for a specified time period pertaining to official CSB matters sent by Chairman Rafael Moure-Eraso via nongovernmental email accounts. A private attorney hired by the CSB in connection with the whistleblower complaints sent us only some of the records, and some of those were heavily redacted.

In July and August 2013, the OIG made repeated requests for a full and complete production of the requested records. Although the CSB acknowledged having the records, it still refused to produce them.

When that impairment of my office's ability to provide oversight of the CSB continued—despite lengthy, time-consuming efforts by my staff—we resorted to the rarely invoked "Seven Day Letter." On September 5, 2013, we issued a Seven Day Letter to CSB Chairman Moure-Eraso, which required him to transmit the OIG's letter and the CSB's response to the appropriate congressional committees and subcommittees within seven days.

This committee held a hearing on the Seven Day Letter and related issues on June 19, 2014, during which I provided testimony about these matters. At that hearing, Chairman Issa instructed that the CSB turn over the documents to the OIG within a week. The CSB produced several sets of documents to the OIG since the hearing. We have reviewed the documents to determine whether they were responsive to the request, whether the response was complete, and whether the documents indicated the existence of and need to request additional documents from CSB. At this point, the OIG concludes that CSB has substantially, but not fully, complied with our document request; however, the evidence we have gathered demonstrates that there are additional documents within the scope of our request that CSB officials have not provided to the OIG.

The evidence that we have been able to gather and review demonstrates that senior CSB officials, including Chairman Moure-Eraso, have used non-government email accounts to conduct official business on significant CSB issues.

EPA Denies Access to the OIG

The second matter I will discuss is how the EPA's Office of Homeland Security (OHS), which is in the Immediate Office of the Administrator, continues to impede the investigations of this OIG. My Assistant IG for Investigations, Patrick Sullivan, provided detailed testimony on this subject before this committee on May 7, 2014. He noted that while the OHS serves as the agency's internal liaison for the intelligence community on homeland security matters, it has no statutory authority to conduct investigations and no law enforcement authority.

I would like to remind this committee that the OHS' investigation of John C. Beale, who infamously defrauded the EPA under the guise of being a Central Intelligence Agency operative, seriously compromised the EPA OIG's later investigative interviews with Mr. Beale. Mr. Sullivan testified, "Because OHS continues to block my office's access to information essential to the OIG's work, I cannot assure the committee that we are doing everything possible to root

out other 'John Beales' who may be at the EPA or other malfeasance of similar magnitude." That is still the case.

During the May hearing, Mr. Sullivan also highlighted how OHS' denial of access to information has impeded the EPA OIG's ability to:

- Investigate threats against EPA employees and facilities.
- Conduct employee misconduct investigations.
- Investigate computer intrusions.

While there are multiple facets to this problem, the crux is this: The EPA believes that there is a category of activity that the EPA defines as "intelligence" to which the OIG may have access only subject to the EPA's granting of permission. EPA Administrator Gina McCarthy has given me a "Procedures" memorandum that is to govern the "handling" of matters between OHS and the OIG. That memo provides that, upon receipt of "intelligence," OHS will provide that information to the OIG "to the maximum extent allowable by law," with any such limitations on what might or might not be allowed by law to be determined by the EPA in accordance with advice and counsel from the EPA's Office of General Counsel. That, as is obvious, does not give the OIG access to "all" information "available" to the agency, as required by Section 6(a)(1) of the IG Act. Rather, it purports to preclude the OIG from full access to EPA information.

There are no "special needs", as referenced in the Procedures memo for national security matters and intelligence information other than required handling protocols. But, if an OIG member has the requisite security clearance, and is viewing or discussing the matters in an appropriate facility, there is no legal basis that allows the EPA or a unit of the EPA to preclude OIG access based on a "special need" for that program area. At intelligence community agencies, essentially <u>all</u> program areas involve intelligence and their respective OIG has access to all such program areas. At the EPA, that includes the OHS and its programmatic functions.

The committee has taken an on-going interest in this situation with OHS, and you have asked me to keep you informed. This impairment was ongoing when I arrived four years ago, and is still not resolved to this day.

Forty-Seven IGs Notify Congress about Denial of Access

I recently joined with 46 other federal IGs in writing a letter on August 5, 2014, to this committee, as well as other congressional members, to discuss more broadly the troubling push-back many of us have been seeing from our respective agencies denying us mandated access to agency employees and records. The letter provided examples of the obstacles faced by other IGs besides myself, including those at the Peace Corps and the U.S. Department of Justice (DOJ). Specifically, it mentioned how the agencies construed other statutes and laws applicable to privilege to circumvent our express authorization contained in the IG Act.

While the challenges faced by the three IGs were highlighted in the letter, by no means were such restrictions only limited to them. In fact, other IGs have also faced similar obstacles to their

mission. Besides claiming some highly tenuous rationale to trump the clear mandate of the IG Act, an agency will sometimes impose burdensome administrative conditions on access. Further, we noted that even when the IGs were ultimately able to resolve these issues with agency management, the negotiation utilizes a considerable amount of the OIG's resources and diverts the OIG from substantive oversight activities. Indeed, the letter emphasizes that agency actions that limit, condition, or delay access thus have profoundly negative consequences for our work—they make us less effective, encourage other agencies to take similar actions, and erode the morale of the dedicated professionals that make up our staffs.

As I stated earlier in my testimony, Section 6(a)(1) of the IG Act provides for the IG's complete and timely access to all agency materials and data. The letter reiterates that fact and also reminds Congress that limiting access risks leaving the agencies insulated from scrutiny and vulnerable to mismanagement and misconduct. In that letter, we asked Congress for a strong reaffirmation of the original and still existing congressional intent that OIGs have unfettered access to all agency information—coupled with the use of all available powers to enforce such access when agencies refuse to comply—to assist IGs in obtaining prompt and complete agency cooperation.

Does the IG Act Need to Be Strengthened or Clarified?

In short, Mr. Chairman, the questions about whether the IG Act is accomplishing Congress' goals, and whether the IG Act needs strengthening or clarification, are not hypothetical for me. They are questions with real-world impact on my ability to carry out my mandated functions—in situations I have faced over an extended period of time and continue to face today.

You might think, therefore, that I would say without reservation that the IG Act requires some enhancements on IG access and agency cooperation. However, I want all of us—IGs and Congress included—to be very careful about what I am saying and am not saying on this issue that is the crux of today's hearing: The IG Act as written is quite strong and quite clear. It provides access to all agency information and all agency employees. There are no exceptions—not for material that an agency asserts cannot be further released outside of the OIG once the OIG does receive it, and not for some piece of agency activity that might happen to involve classified information. No courts, no congressional committees, and no opinions from the DOJ's Office of Legal Counsel have given any cause for concern that the requirement for access to "all" information means anything other than "all." Even the former EPA Administrator issued a "cooperation with the OIG" memo in 2009 explicitly recognizing that the OIG has "full and unrestricted access to personnel, facilities, records … or other information that is needed by the OIG to accomplish its mission." Any attempt to clarify or strengthen that authority could only suggest that it is not already strong and fully encompassing.

The problem that I and my IG colleagues face is in the implementation or enforcement of the authority we already have. What happens when an agency refuses? In the case of the EPA and its OHS, we have had over four years of non-cooperation, which resulted in us not finding out about John Beale as quickly as we should have. It also means that an alleged assault within OHS has not been investigated for almost a year. In the case of the CSB, it means that we had to resort to a

Seven Day Letter, followed by an investigation by this committee with substantial investment by your staff and mine to gain access that should have been given immediately.

I also would like to take this opportunity to remind the committee that another threat to IG independence is under-funding. The OIG is a very labor-intensive agency. In fact, most of my budget—about 90 percent—goes toward staffing costs, and the remainder goes toward administrative costs. Lack of funding leads to fewer personnel to accomplish the mission. A decrease in staff leads to fewer audits and investigations. It also hampers succession planning, as senior staff are not replaced following retirements due to a lack of funds.

Conclusion

The IG Act hinges on the cooperation of the agency with its IG. If there is no cooperation, the work of the OIG is stifled. In that circumstance, the American taxpayers, the Congress and the agency will not receive the full benefit of an unimpeded, objective review of the nation's investment in the programs and operations of an agency. The result is that the taxpayers cannot have confidence that their investment is being used as intended.

I therefore urge this committee to look at enforcement mechanisms for the access and cooperation already required. The standard is fine; the ability to ignore the standard without consequence is the problem.

We will be happy to work with your staff—in concert with the Legislation Committee of the Council of the Inspectors General on Integrity and Efficiency—on devising an array of tools and remedies.

Mr. Chairman, as you have demonstrated repeatedly, this committee and the federal IGs are partners in providing oversight of agency activities and protecting taxpayers' investment. For whatever reason, many of our IGs have been encountering strong and continued push-back on our authority to provide mandated oversight. I believe Congress can send a strong and needed message, through legislative enhancements and other means, that such impairment will not be tolerated. In conclusion, I would like to reaffirm the OIG's commitment to add value and assist the EPA in accomplishing its mission of safeguarding the health of the American people and protecting the environment. We take very seriously our mandate to promote economy, efficiency and effectiveness; and to prevent and detect fraud, waste and abuse through independent oversight of the EPA's programs and operations.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions you or committee members may have.

Chairman ISSA. Ms. Buller.

STATEMENT OF KATHY A. BULLER

Ms. BULLER. Chairman Issa, Ranking Member Cummings, distinguished members of the committee, thank you for inviting me to appear before you today and allowing me to summarize my prepared statement.

You have asked me to testify about my office's difficulty in obtaining access to agency documents. I testified about this issue before your committee on January 15th, and while progress has been made, thanks in part to your efforts, some challenges remain.

Our access issues stem from the Peace Corps' interpretation of the Kate Puzey Volunteer Protection Act of 2011 which Congress enacted after serious reports that the agency failed to adequately respond to volunteer victims of sexual assault. To enhance the Peace Corps' response to sexual assaults, the Kate Puzey Act mandates the creation of a restricted reporting mechanism so that volunteers may confidentially disclose the details of their assault and receive the services they need without dissemination of their personally identifying information.

Unfortunately, Peace Corps's general counsel has written a legal opinion concluding the Kate Puzey Act overrides the IG Act, causing the agency to establish policies and procedures that deny OIG access to information. In the case of restricted reports, the agency argues the Kate Puzey Act prohibits the agency from disclosing to OIG any details of a sexual assault or the victim's PII. However, the Kate Puzey Act authorizes disclosure when required by law, and the law mandates an extensive oversight role to my office.

In May my office entered into a formal agreement with the agency to obtain some information from restricted reports. The agreement can be terminated by either party at any time, but we signed it so that we could get some information while continuing to seek agency or congressional action. Although the agreement improves our access, I am concerned about my office having to enter into an agreement to get information we are entitled to by law and that we need to do our jobs.

I am also concerned that the agency's legal opinion authorizing it to withhold information from the OIG remains in place. This legal opinion sets a dangerous precedent whereby an agency may interpret a law as overriding the IG Act, forcing its IGs to spend its limited resources and time wrangling with the agency to obtain information.

Many have asked why we need full access to restricted reports. The answer is simple. Without full access, we cannot properly inform the agency or Congress whether the agency is complying with the Kate Puzey Act and whether the agency's response to sexual assaults is getting better or worse. Furthermore, the Kate Puzey Act mandates that my office conduct a case review of a statistically significant number of cases. Without full access to information, it's very difficult for us to complete this review and ensure that volunteers are receiving the services that they need.

On August 5th, 47 IGs signed a letter to Congress expressing concern over our access issues, recognizing the implication of agencies refusing, restricting, or delaying IG access to agency docu-

ments. In response to inquiries about the letter, Peace Corps told the Washington Post it is, "committed to working with the Inspector General to ensure rigorous oversight while protecting the confidentiality and privacy of volunteers who are sexually assaulted," suggesting that privacy and oversight are mutually exclusive. They are not.

My office is bound by the same confidentiality rules as the agency. It is trained and experienced in handling sensitive information, and there is no cited record of my office ever mishandling such information. The agency has also suggested that fewer volunteers would report sexual assaults if OIG had access to the information, but when pressed for a factual basis for this assertion, the agency had none.

As the Daily Beast reported, "it's hard to imagine a case where volunteers declined to report sexual assaults base the agency's internal watchdog will be provided information to determine there is no negligence or wrongdoing." The agency argues its policies and procedures are victim centric, but what could be more victim centric than providing independent oversight of victims' care.

We ask that Congress reaffirm what is said in the IG Act. The IG Act we also believe is very plain on its face, and the legislative history also strengthens that intent, but there are individuals like our general counsel, who have taken it upon themselves to interpret another piece of legislation to override that act. We request that Congress and this committee take a look at reaffirming what the IG Act says and make sure everybody is on the same page.

I thank you for asking me to testify before you, and I am prepared to answer any questions.

Chairman ISSA. Thank you. And you yielded back 12 seconds.

[Prepared statement of Ms. Buller follows:]

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
SEPTEMBER 10, 2014, 9:30 AM
DIFFICULTIES FACED BY THE PEACE CORPS INSPECTOR GENERAL IN OBTAINING ACCESS TO AGENCY DOCUMENTS
TESTIMONY OF KATHY A. BULLER
PEACE CORPS INSPECTOR GENERAL

Chairman Issa, Ranking Member Cummings, and distinguished Members of the Committee:

Thank you for inviting me to appear before you today to discuss the difficulties faced by my office in obtaining access to agency documents. My testimony will focus on our access issues stemming from the Peace Corps' interpretation of the Kate Puzey Volunteer Protection Act of 2011 (Kate Puzey Act),[1] a law that was designed to enhance the Peace Corps' response to volunteer victims of sexual assault, but which the Peace Corps has regrettably undermined by establishing policies and procedures that deny the Office of Inspector General (OIG) access to information. I will also address how the Peace Corps general counsel's legal opinion concluding the Kate Puzey Act overrides the Inspector General Act of 1978, as amended,[2] creates an unacceptable precedent for our office and other inspectors general.

Access to Agency Documents and Information

When Congress enacted the IG Act it recognized that access to information is essential for inspectors general to effectively oversee agency programs and operations. Accordingly, Section 6(a)(1) of the IG Act enables every inspector general to access:

> All records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act.

There is no ambiguity in this language. IGs have access to all agency documents and information, and the legislative history to the IG Act leaves no room for doubt: the language 'all records' is expansive and is intended to include even confidential agency memoranda.[3] It is thus remarkable that in July 2013, the Peace Corps' general counsel would write a legal opinion concluding that Kate Puzey Act overrides the access provisions of the IG Act.

The Kate Puzey Act

Congress enacted the Kate Puzey Act following reports that emerged after the ABC network's 20/20 show aired a story on how the agency mishandled sexual assault

[1] Pub. L. No. 112-57.
[2] Pub. L. No. 113-126.
[3] S. REP. NO. 95-1071, at 33-34 (1978).

complaints by former volunteers. The show also focused on the mishandling of an unrelated complaint filed by Kate Puzey, a volunteer who was murdered in Benin in 2009 after a staff member allegedly failed to keep her complaint confidential. [4] Among other things, the Kate Puzey Act mandates an extensive oversight role to OIG and the creation of a restricted reporting mechanism that allows volunteer victims of sexual assault to confidentially disclose the details of their assault to specified individuals, and receive services without the dissemination of their personally identifying information (PII) or automatically triggering an official investigation.[5]

The Peace Corps' general counsel argues the Kate Puzey Act requires that, unless an exception applies, any details of a sexual assault, as well as the PII of a victim, cannot be disclosed to anyone other than the "specified individuals" providing the services outlined in the statute. The general counsel further asserts that OIG staff members do not qualify as specified individuals and that none of the law's exceptions apply to OIG, even though one of the exceptions in the Kate Puzey Act expressly authorizes disclosure when required by federal law. From the beginning, OIG has argued the exception applies to the IG Act because the IG Act is a federal law requiring disclosure and the Kate Puzey Act does not manifest any intent to override the IG Act, but the general counsel insists the exception applies only to courts.

Despite our objections, over the past two years the Peace Corps has developed and implemented policies and procedures denying us access to restricted reports.[6] The agency claims it is necessary to withhold information from OIG to protect victims' information, even though OIG has always had access to PII and medical records of volunteers, and there are no cited incidents of this information being breached while in OIG's custody. The agency claims its policies and procedures are "victim-centric," but our view is that nothing could be more "victim-centric" than providing independent oversight of victims' care.

Throughout this time OIG has attempted to resolve these issues through discussions with the agency's senior management, most recently by entering into a memorandum of understanding (MOU) with the agency on May 22, 2014. Nevertheless, the agency's legal opinion authorizing it to withhold information from OIG remains in place and as recently as last month the agency publicly reasserted it had to protect victims' information from disclosure to OIG. As a consequence, the Peace Corps has set a dangerous precedent whereby an agency may interpret a law as overriding the broad access provisions in the IG Act, forcing its OIG to spend limited time and resources wrangling with the agency to obtain the information it needs to fulfill its statutory duties.

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[4] The 20/20 show was not the first in-depth investigation into the underreported incidence of rape, sexual assault, and murder in the Peace Corps. On October 26, 2003, the *Dayton Daily News* published an article titled, "Mission of Sacrifice: Peace Corps volunteers face injury, death in foreign lands." The newspaper combed through thousands of records on Volunteer assaults over a span of four decades and highlighted the alleged failings of the Peace Corps in responding to crimes against volunteers.

[5] Pub. L. No. 112-57 §§ 8A(e)(f), 8E(d).

[6] The first version of these policies and procedures was developed in the spring of 2013, before the general counsel issued his legal opinion concluding the agency could properly withhold information from OIG.

Thanks to congressional efforts, including the efforts of this Committee, the Peace Corps revised its sexual assault policy in December 2013 to provide OIG with certain data points from restricted reports that are not tied to any PII. Regrettably, even that minor concession was nearly undone by the agency's revised interpretation of the Kate Puzey Act following my congressional testimony on January 15, 2014. Prior to my testimony, the agency's sexual assault policy defined PII as including "any details of the sexual assault incident" – an overreaching definition that has no basis in law. After my testimony, the agency asserted this language was a drafting convenience, but to preserve the same result, the Peace Corps' general counsel advanced the novel argument that there is a separate requirement in the Kate Puzey Act that all details of a sexual assault in a restricted report must be kept secret. A plain reading of the law, however, reveals such requirement is nonexistent.

Why OIG needs full access to restricted reports
OIG needs access to information to ensure the agency is complying with the Kate Puzey Act and properly supporting volunteers who are victims of a sexual assault. The Kate Puzey Act mandates that OIG conduct a case review of a statistically significant number of cases. Examples of services OIG would seek to review include: (1) medical care and counseling; (2) safety and security of the victim and of other volunteers; and (3) advice given to the victim on his or her prosecutorial options. Relevant records are located in various offices and within a number of Peace Corps' systems of records. OIG's lack of access to PII coupled with the agency's lack of a single case management system makes it difficult for OIG to identify and track all records related to a specific case, which is essential to providing independent oversight and reviewing allegations of mismanagement.

In addition to the oversight mandates of the Kate Puzey Act, OIG needs access to the information contained in restricted reports to perform its day-to-day oversight of agency operations. OIG reviews core agency processes and the integrity of data in systems. Investigators address complaints from whistleblowers regarding the mishandling of sexual assault incidents, while evaluators review how well posts respond to crimes against volunteers, safety and security environments, and site histories. Without full access to information, OIG cannot properly review the agency's Crime Incident Reporting System, or the actions of the more than 180 staff members who handle restricted reporting cases, ensure that appropriate services are provided victims, or make effective recommendations on how to improve Volunteer safety and security at posts.

Impact of the Peace Corps' policy on its sexual assault response program
Because Peace Corps policy states that all sexual assault allegations are restricted reports until a Volunteer converts them to a standard report, staff is unable to ask OIG about prosecutorial options and safeguarding evidence immediately after an incident. This policy diminishes agency cooperation with OIG and could, in some cases, interfere with subsequent OIG investigations if the victim chooses to seek justice.

Our office has been engaged with the agency and Congress on this issue for almost two years, and there is no question the debate has taken a toll, consuming limited resources

and affecting staff morale and our relationship with agency components beyond the Office of General Counsel. I hope to move forward with the agency to address these problems and restore cooperation for both the sake of the victims as well as the taxpayers who fund the Peace Corps. Otherwise, I am afraid this policy will have long term implications for the effectiveness of the Peace Corps' sexual assault response program.

MOU between the Peace Corps and OIG signed on May 22, 2014

The MOU signed in May allows OIG to review non-PII from a restricted report and commits the agency to develop a case management system or provide some identifier that allows OIG to track and identify case information. It also aligns the agency's definition of PII with the Kate Puzey Act and protects whistleblowers that may come to OIG with allegations similar to those featured on 20/20.

Under the terms of the MOU, however, the agency will continue to withhold the PII of volunteers who made a report as well as the explicit details of the incident. We are hopeful we will be able to provide the oversight required by the Kate Puzey Act without this information, but once we commence our evaluation there is still a risk we will disagree with the agency as to what constitutes PII and explicit details, resulting in another impasse and substantial delays in reporting. We are also concerned about the agency's ability to identify all the pertinent records in various systems of records (i.e. medical, safety and security, post) related to an individual case in a reasonable timeframe. OIG's evaluation would be far more efficient and effective if it had full access to information as authorized by the IG Act, and, OIG's lack of access to PII coupled with the agency's lack of a case management system will make it difficult for OIG to identify and track all records related to a specific case.

I am also concerned about the appropriateness of my office having to enter into an agreement with the agency head to get information we are entitled to by law and that we need to fulfill our statutory duties. My office views the MOU as a temporary instrument to get some of the information we need while we continue to seek agency or congressional action. In fact, the MOU expressly provides it can be terminated in writing by either party at any time.

Meanwhile, even though the MOU was signed in May 2014, the policies, procedures and the legal opinion blocking OIG access to restricted information remain in place. The agency is making some progress in this regard. On August 1, 2014, the director approved revisions to the policy to align it with the MOU, but that policy has yet to be issued. On August 26, 2014, the agency provided us with a revised draft of the procedures, but due to its lengthiness, our review remains ongoing. We would like to acknowledge however, that we requested some restricted information from two posts in late August and received it, with the redactions, a day later. Notably, some of this activity took place only after the 47 IGs signed the letter to Congress, the press covered the issue, and the agency received notice of this hearing.

More crucially, a significant number of staff has yet to be trained on how to respond to our information requests in light of the MOU. This new training is critical because staff has been instructed so far to withhold all information from restricted reports from OIG.

Letter to Congress signed by 47 IGs

On August 5, 2014, 47 IGs signed a letter to the chairmen and ranking members of the House and Senate government oversight committees to express their concerns for "the serious limitations on access to records that have recently impeded the work of the Inspectors General of the Peace Corps, the Environmental Protection Agency, and the Department of Justice." The 47 IGs who signed the letter did so because of the implications of agencies refusing, restricting, or delaying IGs' access to agency documents.

The letter attracted the attention of local and national news media. In response to an inquiry from *The Washington Post*, the Peace Corps stated it is "[...]committed to working with the Inspector General to ensure rigorous oversight while protecting the confidentiality and privacy of volunteers who are sexually assaulted," suggesting that sharing information with OIG may result in a volunteer's loss of privacy or confidentiality. This false dichotomy between privacy and oversight is at the root of the problem. As *The Daily Beast* noted, "the Peace Corps' tension with its inspector general exists because the agency is trying to uphold a principle other than transparency: commitment to the privacy of volunteers. It is far from an ignoble ideal, but it also implies that the office of the inspector general would not treat reports responsibly."

The agency has also asserted that fewer volunteers would report sexual assaults if OIG had access to the information being requested. However, when pressed about the factual basis for this assertion the agency has admitted it has none. As *The Daily Beast* reported, "It is hard to imagine a case where volunteers decline to report sexual assault because the agency's internal watchdog will be provided information to determine that there is no negligence or wrongdoing. The denial of information, even for pure intentions, is difficult to defend—especially for an agency that has struggled to ensure the safety of its volunteers."

Enhancing OIG's Oversight

Full access to agency records and information is necessary not only to meet the reporting requirements of the Kate Puzey Act, but to provide the type of general oversight that Congress expects from us. For example, in a 2008 review we found that data included in the agency system to categorize and track crime incidents, including sexual assaults, was unreliable. Denial of access to restricted reports would prohibit a follow-up to such a review. In 2009, our review of sensitive medical records related to the death of a Volunteer resulted in recommendations that significantly improved the way in which the Peace Corps provides medical care to volunteers. We could not have completed that review without full access to information.

The Peace Corps provides unparalleled opportunities for individuals to serve their country while helping local communities around the world that are most in need. Like at any agency, robust and independent oversight is required to ensure accountability and the integrity of its programs. OIG believes that volunteers who are victims of sexual assault are better off when the Inspector General has full access to information and can hold the agency fully accountable than when the Peace Corps is allowed to withhold information from OIG and operate without proper oversight.

Without continual oversight, the agency could slip back into the patterns of indifference, victim blaming, and lack of effective support described by returned Peace Corps volunteers during the congressional hearings held on the Peace Corps in 2011. The agency's general counsel's existing legal opinion creates an unacceptable precedent that could be used in the future to deny OIG access to agency records and information applying a similar analysis to other laws restricting access or protecting the privacy of individuals.

Reaffirming OIG's broad access to agency records
IG independence is critical to effective oversight. IGs should not have to seek the intervention of, or enter into an MOU with, the head of the agency to access information they already are authorized to obtain under the IG Act. IGs must independently determine whether a request for access to documents is relevant or appropriate. If IGs must seek the approval of agency management or senior officials to obtain agency information, their independence could be compromised and agency staff will receive the wrong message about cooperation with OIG. Even if information is not denied, it might be delayed, affecting our operations. My office relies on Peace Corps staff's cooperation to fulfill its mission. Without its help, we cannot do our job.

As Congress considers laws protecting information held by federal agencies on individuals, it should consider the impact of those laws on OIGs ability to perform the type of oversight expected by Congress and the American people. My legal counsel, myself, and my fellow IGs believe the IG Act means what it says when it provides OIGs access to all agency records and information; but perhaps the committee can consider legislation to reaffirm OIGs access to all agency documents and information is required under the IG Act regardless of provisions contained in other laws unless specifically stated otherwise. Hearings like this one send an important message to federal agencies that OIG oversight and unfettered access to agency information is essential.

Conclusion

I want to thank the Committee for the opportunity to testify on our issues regarding access to agency information. The IG Act requires the Peace Corps provide all agency records fully, completely, and without delay. Peace Corps policies and procedures that refuse access to my office are particularly serious and flagrant problems. We need unfettered access to agency documents and information to continue providing effective oversight, and we can do so while respecting the privacy of victims. My staff is trained and experienced in dealing with sensitive information, interacting with victims when

necessary, and protecting confidentiality. As the committee considers legislation to support the work of IGs, I ask that you consider further strengthening or reaffirming the access provision in the IG Act.

Chairman ISSA. So, I have never had a more professional panel. I commend you all.

We do a lot of hearings here that are partisan. As you know, this isn't one of them. So one of the challenges here is asking the first and most difficult question, which is from each of your experiences, when did this begin, and what do you think the source is? And I just, to the extent that you can say time and date, and if you will, accountable individual, who you think is the decisionmaker, or the impediment, I'd like that answer as succinctly as possible. Ms. Buller?

Ms. BULLER. In my case I think it's very easy to pinpoint the time and the person. The passage of the Kate Puzey Act and mandating the restricted reporting I think was the impetus. The person is the general counsel. Basically he has taken the opportunity to interpret the Kate Puzey Act to impede our access.

Chairman ISSA. Mr. Elkins?

Mr. ELKINS. In my case, you know, I have two agencies that I oversee, the CSB and the Environmental Protection Agency. In both cases I have to say that issues relative to access starts at the top. With a clear message from the top that access will be granted, it will be granted. To the extent that there is a muddled message or the message is not clear, you end up in situations that we have here today.

On the CSB side of the House, the issues started back in 2010, 2011. On the EPA side of the House, some of the issues that we're dealing with today actually started before I even came on board. So this has been an ongoing sort of matter.

But to answer your question directly, it starts at the top. Clear message from the top, what the expectations are, that's the way the rest of the troops will march. Thank you.

Chairman ISSA. Mr. Horowitz?

Mr. HOROWITZ. Our issues started in 2010. It has continued. It started in 2010 with the FBI raising objections. Other components have now joined in, and there's a long list of them that have said me too in terms of Section 6(a) of the act doesn't mean what it says.

Chairman ISSA. So what you're saying is, is it began with the FBI thinking they could beat your oversight, but like any infection, particularly a popular one, you're being shut out systematically?

Mr. HOROWITZ. Correct. If there is a way to do that, that's what happens.

Chairman ISSA. Mr. Horowitz, yesterday you and I were together over in Judiciary, along with a number of the members, and I think you testified that on six occasions the Attorney General or the Deputy Attorney General has intervened when you've been denied and ultimately allowed you to get some of the information. Is that correct?

Mr. HOROWITZ. That's correct. Approximately six.

Chairman ISSA. Okay, so in your case it's delay and impeding and, in fact, some of the benefits of an expedient investigation more than outright denial; is that correct?

Mr. HOROWITZ. That's correct. It also compromises our independence.

Chairman ISSA. Mr. Elkins, in your case you continue, as I understand, in spite of the ranking member and his staff's efforts, to not get information, and that is a decision being made by the agency head; is that right?

Mr. ELKINS. Well, I can't say emphatically that it's coming from the agency head.

Chairman ISSA. I should say the agency head has not intervened, and in some of these letters, ask her to do so. That's what I was saying.

Mr. ELKINS. And I think that's a fair characterization.

Chairman ISSA. But ultimately that's the person who could intervene?

Mr. ELKINS. Absolutely. Absolutely.

Chairman ISSA. Ms. Buller, in your case you site the general counsel, but the general counsel is a referral point. There is an agency head that also has not intervened?

Ms. BULLER. Yes.

Chairman ISSA. And I think if I can take Mr. Elkins and Ms. Buller and bring your two statements together, which I think are important for Mr. Cummings and myself, both, Mr. Elkins you cautioned us not to attempt to clarify if you will and maybe come up short and diminish what already is the law, while, Ms. Buller, you clearly said this review, which is also going on at Justice, begs the whole question of is 6(a), does it notwithstanding other laws, mean what it says it means?

Now, Mr. Elkins, I'm coming back to you for that reason. If either through executive action of the office of the President or through congressional action, if we say, because we believe that notwithstanding other laws, 6(a) in the IG Act means what it says it means, does that both meet your test of not writing new law on top of already good law, but at the same time clarify the question so that there not be endless review by agency heads, general counsels, and referrals to legal review?

Mr. ELKINS. Yes. I think that would be quite helpful. That message clearly without any wiggle room in it, coming from the President, would help, absolutely.

Chairman ISSA. Thank you and with that, I have used 12 seconds. I yield to the ranking member.

Mr. CUMMINGS. I want to go back to what the chairman was just asking.

So, Ms. Buller, as I have listened to you and I have read your testimony, and I have thought about the issue here, the personally identifiable information, it just seems like we should be able to work that out some kind of way. I mean, have you gotten any further than the memorandum of understanding?

Ms. BULLER. We have the memorandum of understanding in place, and we are hopeful that we can continue to do our work with that memorandum of understanding, but there is, with the legal opinion that's still in place, if there's another dispute that comes up regarding what PII is or what explicit details of the sexual assault is, we're going to be right back where we started, going back and forth with the general counsel's office trying to figure that out.

Mr. CUMMINGS. Mr. Elkins, during your tenure as an Inspector General, you worked with the EPA to identify ways the agency can

improve its management. For example, your office released three reports in the past month that identify ways the EPA can save money by improving its contracting processes and oversight; is that right?

Mr. ELKINS. That is correct.

Mr. CUMMINGS. Your recommendations have led to many successful reforms. For example, on July 22, 2014, your office reported that the EPA implemented corrective action on all of your recommendations regarding the EPA's nationwide monitoring system that protects us from exposure to radiation; is that right?

Mr. ELKINS. That's correct, sir.

Mr. CUMMINGS. Congress has also charged you with overseeing the Chemical Safety Board which I want to ask you about. You discussed in your testimony a long-term dispute with the CSB. You also identified before the committee in June, testified before the committee in June, about that issue. Your office is investigating the use of personal email accounts by senior CSB officials to conduct official business; is that right?

Mr. ELKINS. That is correct, sir.

Mr. CUMMINGS. On September 5, 2013, you sent a 7-day letter to the CSB seeking email records but CSB refused to provide. This is the only 7-day letter you have issued in your tenure as Inspector General; is that right?

Mr. ELKINS. That's correct.

Mr. CUMMINGS. How long have you been Inspector General?

Mr. ELKINS. Over four years now.

Mr. CUMMINGS. After the committee's hearing, CSB provided some documents, but on July 8, however, you informed the committee that CSB still had not fully complied with your request. You said the documents they provided were not fully responsive. The attachments were not provided, and some documents were redacted; is that right?

Mr. ELKINS. That is correct.

Mr. CUMMINGS. More recently CSB has provided additional documents, including unredacted copies, and on September 8, 2014, you sent a letter to the committee saying, "OIG concludes that the CSB has substantially complied with our document request. However, the evidence we have gathered demonstrates that there are additional documents within the scope of our request which CSB officials have not provided to the OIG." So it sounds like CSB improved its cooperation following the committee's hearing in June, but even that was like pulling teeth. Is that a fair statement?

Mr. ELKINS. That's a very fair statement.

Mr. CUMMINGS. Well, I got to tell you, I think that this is totally unacceptable. Can you tell us now specifically how you know the CSB is withholding documents?

Mr. ELKINS. Well, I'd like to think I have got a crack team of investigators that ask good questions. And, you know, we track the documents. We track the questions, and it's really just matching it up. We ask certain questions. We take a look to see if we have got a response, and if the response is not there, there's a void. That's pretty much what we have got.

Mr. CUMMINGS. Can you identify the categories of documents that you believe are being withheld for the record so that we can follow-up directly?

Mr. ELKINS. Yeah, I can give you somewhat of a characterization. For instance, there was you know, of course the instance of using you know, email that's not government email to conduct agency business. At one point in the process, it was conveyed to us that there was a directive to CSB staff not to do that, and then subsequent, we found emails that suggested that after that date, it was still going on. So in our mind, that suggests that you know, there is a disconnect there, so that's one example.

Mr. CUMMINGS. Last question. In the letter you sent on Tuesday, you said you will be issuing a report of investigation in the near future. What will the scope of that report be, and when do you expect to issue it?

Mr. ELKINS. Well, it will be a compilation of what we have determined, you know, based on the facts of the case. At this point, it appears to us that the CSB leadership was using means other than Federal communication means to conduct agency business, so that's where the report is likely to head.

In terms of when that report is going to be issued, I can't give you an exact date, but I would say very shortly, maybe within the next 90 days or so.

Mr. CUMMINGS. Thank you very much, and we will follow-up.

Chairman ISSA. Will the ranking member yield?

Mr. CUMMINGS. Yes.

Chairman ISSA. To clarify, Ms. Buller, did you ever ask on this personally identifiable information and the details of these sexual assaults, did you ever ask for in camera review for your people to look at the documents without receiving them?

Ms. BULLER. No. That wouldn't have been permitted under the general counsel's legal opinion.

Chairman ISSA. The question is did you ask?

Ms. BULLER. No.

Chairman ISSA. Did you attempt to have something where you would respect the fact that you wouldn't take possession but you at least would review them.

Ms. BULLER. No, we did not.

Mr. CUMMINGS. Just one last question to follow-up.

Chairman ISSA. Sure.

Mr. CUMMINGS. You know, as I listen to your testimony, one of the key—when I think about the conflict, and you said that your agency has been used to handling very sensitive information and keeping it confidential. I'm sure you made those same arguments to the Peace Corps?

Ms. BULLER. Yes.

Mr. CUMMINGS. And what was the response? I mean, because we have got government, public servants who want to do the right thing, and the last thing your agency would be doing would be going against yourself by revealing information identifying somebody who may have been sexually assaulted. So, I'm just wondering what happened there? Do you follow me? Is it that they don't—do you think there's a distrust or——

Ms. BULLER. The way that the Kate Puzey Act is drafted, there are two exceptions on the disclosure. One is for one of the exceptions that is enumerated, and the other is that if a person files a restricted report, it won't automatically trigger an investigative process.

Our general counsel basically interpreted the receipt by my office of any information from a restricted report as doing that, automatically triggering an investigative process, even though we assured him that we are required to follow the law, that if we got any restricted reported information, we would not use it to trigger an investigation. It didn't seem to make an impact on him, and he is the only person who has concluded that the two laws conflict. When you read the two laws, there's a way to interpret them that they don't.

Mr. CUMMINGS. Very well. Thank you very much.

Chairman ISSA. Thank you.

Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

And thank you for holding this hearing, and I appreciate the Inspector Generals testifying.

I guess with being the senior member of the committee and having gone through almost all, half a dozen or so chairman and hundreds of members who have been on the panel, you get a little bit of institutional insight. I have never seen an instance in my 21-plus years of 47 Inspector Generals coming together and saying that their oversight was being obstructed.

Mr. Horowitz, do you know of any instance similar to this?

Mr. HOROWITZ. I don't.

Mr. MICA. Mr. Elkins?

Mr. ELKINS. This is the first to my recollection.

Mr. MICA. Ms. Buller?

Ms. BULLER. I don't recall any either.

Mr. MICA. Each of the instances which you've come here to cite before us have different parameters. Some of them, there could be questions, and I have seen some of your recommendations for possible changes in legislation, and that would be one way to resolve some of the issues.

I think, Mr. Horowitz, you have some recommendations about some exemptions that are currently allowed that should be excluded. I think you, Ms. Buller. Is that correct?

[Nonverbal response.]

Mr. MICA. Just answer yes, Ms. Buller.

Ms. BULLER. Yes.

Mr. MICA. Mr. Elkins, with the EPA, it appears that the actions taken by EPA in really ignoring you and allowing whistleblowers and others to be intimidated, this has undermined your position as Inspector General to conduct your legitimate investigative oversight responsibilities. Would that be a fair statement?

Mr. ELKINS. Yeah, that would be a fair statement.

Mr. MICA. Uh-huh. The other thing that would concern me is using some language or exceptions that are in the law and the case of Justice and the Peace Corps to obstruct an investigation or even worse, to cover up, particularly concerned about the sexual abuse instances.

Now, some of these cases the staff have told me it may be like Peace Corps worker on Peace Corps worker or some locals on Peace Corps volunteers; is that the case?

Ms. BULLER. Yes.

Mr. MICA. And again, it appears that it is sort of a blatant cover-up of sexual abuse cases that some might embarrass the agency. I guess you expose yourself when you send people to foreign lands or on any mission to locals or foreign nationals taking advantage of American personnel.

How prevalent is the case of problems with Peace Corps workers being involved in these instances?

Ms. BULLER. Usually it's a host country national involved in the assaults. From what we gathered, the information we gathered, it's usually volunteer on volunteer or staff on volunteer in about 4 percent of the cases.

Mr. MICA. In how many?

Ms. BULLER. About 4 percent of the cases.

Mr. MICA. Four percent. Not huge, but it's very embarrassing, I would imagine, to the agency.

And you know, again, I think we have a particular position of responsibility to deal with that kind of action, and also I think you should have that authority to uncover again what's going on and expose it.

A couple of questions because the Inspector Generals have been under attack for a number of years now. Several ways of attacking, one, get rid of them. We went through that in the beginning, and I remember Gerald Walpin, and he was removed. I think the committee let it be known that that was not going to be tolerated, although they did get away with that particular instance.

Then not appointing Attorney Generals, I'm told there are 13 vacancies, 7 Presidentially appointed, about 15, 20 percent of the Inspector General positions are vacant; is that about right, Mr. Horowitz?

Mr. HOROWITZ. I think that's right.

Mr. MICA. You think. Mr. Elkins?

Mr. ELKINS. I don't have the statistics.

Mr. MICA. You're not sure. Okay.

Ms. BULLER. It sounds right.

Mr. MICA. Well, again these are the numbers that I have. You don't appoint them. You try to get rid of them, and then you don't cooperate with them and obstruct them. Those are all very serious problems.

I appreciate, Mr. Chairman, your bringing this matter to the attention of the committee.

Chairman ISSA. And I thank you, Mr. Mica.

Mr. MICA. I will have further questions later on. Thank you.

Chairman ISSA. And the gentleman yields back.

We now go to Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman, and thank you for holding this hearing.

I find myself in firm agreement with yourself and with the ranking member, your opening statements.

Ms. Buller, in my other committee, in the House Foreign Affairs Committee, we actually, Judge Poe and I had some legislation deal-

ing with the Peace Corps and the whole issue of sexual assaults and how best to handle that. There were a series of investigations and investigative stories really that were highlighted how poorly historically the Peace Corps had heretofore frankly managed cases of sexual assault among volunteers.

We introduced legislation to try to address that and so I'm particularly concerned to find that today on the subject at the Peace Corps, there isn't full cooperation with your office. So that's the context in which I look at particularly the Peace Corps issue and the role of the IG.

In January you testified before this committee and raised concerns about access to Peace Corps information. Is that correct?

Ms. BULLER. Yes.

Mr. CONNOLLY. And what was the nature of that testimony?

Ms. BULLER. It was the same issue——

Mr. CONNOLLY. Could you speak into the microphone? Thanks so much.

Ms. BULLER. It was the same issue that I am testifying about today. It's the lack of access to restricted reported information.

Mr. CONNOLLY. Specifically in 2011, we passed the Kate Puzey Volunteer Protection Act, to which I just referred, requiring the Peace Corps to establish a restricted reporting system giving volunteers the option to report sexual assaults on a confidential basis.

Under the Puzey Act, the Peace Corps IG is required to conduct a case review of a statistically significant of sexual assault cases to evaluate the effectiveness of that policy and to provide a report to Congress; is that true?

Ms. BULLER. Yes.

Mr. CONNOLLY. Due to the Peace Corps' interpretation of that act, the agency, however, withheld from the IG certain personal information about victims as well as sexually explicit details about sexual crimes; is that correct?

Ms. BULLER. Yes.

Mr. CONNOLLY. On May 22, you and the agency signed a memorandum of understanding. Under that agreement, the agency agreed to provide you with access to all information related to restricted reports other than clearly defined personally identifiable information, and explicit details of sexual assaults; is that correct?

Ms. BULLER. Yes.

Mr. CONNOLLY. Since that MOU has been in effect, has your office requested any sexual assault case information under the MOU from the Peace Corps agency?

Ms. BULLER. We have requested crime incident reports for a program evaluation that we were going to do.

Mr. CONNOLLY. Did you say five?

Ms. BULLER. No. Two. Well, we had one program evaluation, and we requested all of the crime incident reports including restricted reports for that country before we went into evaluation. There were two reports. We did get both reports with the redactions.

Mr. CONNOLLY. With the appropriate redactions?

Ms. BULLER. Yes.

Mr. CONNOLLY. From your point of view?

Ms. BULLER. According to the MOU, yes.

Mr. CONNOLLY. Right. So since the MOU has been put into effect, you have had requests, and you have found full compliance on behalf of the agency?

Ms. BULLER. Yes.

Mr. CONNOLLY. Is it your expectation that the case information that you did receive is useful to the work you're undertaking?

Ms. BULLER. It's useful to the particular program evaluation we're doing at this particular point in time. The problem that we have is when we are going to do our case review for the Puzey-mandated work, it requires a statistic sampling to do that, and the Peace Corps has no case management system, so that everything is compiled in one place. We have records in medical. We have records in the victim advocate office. We have records all over the place, and we don't have any way to track how a volunteer is treated after they've been assaulted because there's no case management system.

Mr. CONNOLLY. Even now?

Ms. BULLER. Even now, yes.

Mr. CONNOLLY. And would that case management rubric also include legal actions? So for example, if somebody's been sexually assaulted, presumably there's a legal case pending in the host country?

Ms. BULLER. If there is, it should be included in the records, yes.

Mr. CONNOLLY. But it's part of the case management problem, I assume, that's also somewhere else?

Ms. BULLER. If the case was actually taken into court it would no longer be a restricted report, so we should have access to that information anyway.

Mr. CONNOLLY. And do you?

Ms. BULLER. Yes, we do have access to non-restricted reports. The problem is the default position for Peace Corps is every report of sexual assault that's filed is automatically restricted until a volunteer determines to make it otherwise, so the universe of restricted reports is quite large.

Mr. CONNOLLY. Thank you.

Mr. Chairman, I just want to end by saying this is a particularly troubling case. Since Congress on a bipartisan basis actually addressed this topic, the Peace Corps and the incidence and management of sexual assaults on volunteers abroad, and to find three years after passing that act that we're still finding problems internally with the Peace Corps that directly affect the victims because their cases aren't being managed efficiently and properly and sympathetically, and the IG has not had until the MOU.

Full cooperation from the agency is troubling indeed, and to me circumvents the letter as well as the spirit of the law Congress passed to try to address this very sensitive but real issue affecting our Peace Corps volunteers.

Thank you, Mr. Chairman.

Mr. WALBERG. [Presiding.] I appreciate your comments.

I now turn and recognize the gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. I thank the chairman.

And thank you, the three of you, for being here. You play a vital role in the checks and balances and just good government, and I thank you for your time and your dedication for you and your staff.

I'd ask unanimous consent to enter into the record the letter dated August 5, 2014. This is a letter to Chairman Issa, Ranking Member Cummings, and Senators Carper and Coburn from the 47 IGs.

Mr. WALBERG. Hearing no objection, it will be entered.

Mr. CHAFFETZ. I want to read just three sentences from this letter. The undersigned Federal inspectors general write regarding the serious limitations on access to records that have recently impeded the work of inspectors general at the Peace Corps, the Environmental Protection Agency, and the Department of Justice.

On page 2, last paragraph, "Moreover, the issues facing the DOJ OIG, the EPA OIG, and the Peace Corps OIG are not unique. Other inspectors general have from time to time faced similar obstacles in their work, whether on a claim that some other law or principle trumps the clear mandate of the IG Act or by the agency's imposition of unnecessarily burdensome administrative conditions on access."

It is extraordinary that 47 inspectors general have issued this letter expressing this concern. But I'd also like to ask unanimous consent to enter into the record a letter from the Director of the Office of Management and Budget dated September 9, 2014.

Mr. WALBERG. Without objection, it will be entered.

Mr. CHAFFETZ. Let me read a sentence here from that response from the Director of the OMB, and then I'd like each of you to please respond to it, because the administration doesn't seem to think there's a problem. In this letter, paragraph three, the last sentence says, "Overall, the numbers reported by the IGs demonstrate that Federal departments and agencies in this administration value the work of IG offices and are almost uniformly successful in getting them the information they need to perform their responsibilities."

This letter, if you were to read this letter, the Office of Management and Budget issuing a letter a full month after the 47 IGs, they don't think there's a problem. How do you respond to that sentence? We'll start with Mr. Horowitz.

Mr. HOROWITZ. I can only speak from experience and what I've heard from other IGs, which is we have faced roadblocks in several of our reviews. Untimely access, where we have gotten it, it has taken a fair amount of time. I think the other IGs have had their experiences. And I know from conversations with fellow IGs, while they haven't had lawyers come forward and say, we can't legally give it to you, they've had issues with getting materials in a timely manner. That is a very significant issue for us.

Mr. CHAFFETZ. So when it says "almost uniformly successful," how would you characterize what you're able to access and get right now, particularly from the FBI?

Mr. HOROWITZ. It has been an extraordinarily difficult issue for us for now several years to get prompt, timely access to materials.

Mr. CHAFFETZ. Mr. Elkins.

Mr. ELKINS. I think there is a disconnect, and I think that statement that you just read capsulizes the disconnect. On the one

hand, I think what we have seen here is that we hear from time to time that, well, there is substantial cooperation with the OIG, I mean 80 percent, 90 percent of the time there's no problems, you get what you ask for. But that assumes that the other 10 to 20 percent of the time that we're not getting what we ask for is okay, and that suggests it's a moving target, and that's a very slippery slope.

And that is exactly, I think, why we're here today and talking about these issues, because there is this assumption that most of the time we cooperate, and that's where the focus is at. But the real issue here is what about that 10 percent of the time that there is no cooperation, and that seems to just keep jumping around and jumping around. That's the problem, and I think that message says that it's a broad problem with OMB and a lot of agencies.

Mr. CHAFFETZ. Thank you, Mr. Elkins.

Ms. Buller.

Ms. BULLER. I agree with my esteemed colleague. From our perspective, we've had an agency issue opinions or issue policies and procedures specifically stating that we can't have access to something, so it's very difficult for me to understand how it's not a problem. And I think the fact that 47 other IGs have at one time or another, maybe not all the time, but one time or another had problems should be an indicator that there is a problem.

Mr. CHAFFETZ. Well, thank you. Again, I appreciate the great work that we do and look forward to hearing from you further.

Yield back.

Mr. WALBERG. I thank the gentleman.

And I recognize the gentleman from Pennsylvania, Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman. And thank you for the inspectors general appearing here today.

As this committee has previously highlighted, the offices of inspectors general are essential to the efficiency of our Federal Government. They help hold agencies accountable, identifying misconduct in programs and by personnel. They can highlight the holy trinity of waste, fraud, and abuse, guaranteeing that the American taxpayers get the most bang for their buck.

The position of IG is a difficult position to hold, and IGs are tasked with investigating alleged abuses among those with whom they work. Now, of course, however, a balance has to be struck between confidentiality and privacy rights of victims, as well as whistleblowers, and the needs of the inspectors general.

Ms. Buller, I listened to your testimony closely and also your questioning by Representative Connolly. As you noted in your written testimony, the OIG recently reached this memorandum of understanding with the Peace Corps on how best to comply with the Kate Puzey Peace Corps Volunteer Protection Act. Obviously, many victims of sexual abuse and assault choose to report that conduct anonymously out of fear of retribution and for their safety in general.

And there's an irony, isn't there, in that the Kate Puzey Act was intended to provide tighter oversight to make sure a complainant's anonymity is protected. In fact, Kate Puzey herself was murdered by her attacker when the Peace Corps mishandled her complaint and her identity got out, and I think Mr. Connolly has made that

point. But there's this irony that the Kate Puzey Act was intended to tighten oversight of the confidentiality and at the same time now we hear that the Peace Corps is saying that because of the need for confidentiality they don't want to cooperate as much with the OIG. And I see that.

And I think probably a good thing to do this morning, Ms. Buller, would be for you to elaborate. You touched on it briefly in your testimony about how professional your staff is and how careful you are with anonymity. Will you elaborate further and tell us more about systems and procedures in place to protect anonymity?

Ms. BULLER. Sure. All of my staff is required, as is Peace Corps staff, to comply with all of the laws that protect personal identifying information, such as the Privacy Act, HIPAA, things of that nature. We are all required by law to comply with those, the same way that Peace Corps staff is.

Furthermore, my investigators are trained investigators. We must comply with all of the guidelines from the Attorney General. We have full law enforcement authority. We participate like any other law enforcement organization. And my evaluators, when they go out to a post, they go to the volunteer site and sit and interview individual volunteers, and they tell them that they will not use their name because they're trying to find out how well Peace Corps is actually supporting those volunteers.

So they do not use their names. They aggregate information and bring it back so that we can issue a report to the agency to tell them that you have these problems in this area, that volunteers don't feel supported in another area, things of that nature. We are a very professional staff, and we do comply with all of the federally mandated laws.

Mr. CARTWRIGHT. I thank you for that. And you did say in your testimony there's never been an instance of the Office of Attorney General being implicated in an improper disclosure of an identity. Is that correct?

Ms. BULLER. Yes.

Mr. CARTWRIGHT. And there never will be, will there?

Ms. BULLER. No, there will not.

Mr. CARTWRIGHT. Well, I thank you for testifying here today, and we take your testimony seriously.

Ms. BULLER. Thank you.

Mr. CARTWRIGHT. Mr. Chairman, I yield back.

Mr. WALBERG. I thank the gentleman.

Before I recognize myself for 5 minutes of questioning, I would ask that an additional document that follows up the preceding documents, a letter addressed to the Director of Office of Management and Budget on these issues and signed by our chairman and ranking member, as well as the corresponding chairman and ranking member in the Senate, be introduced into the record. Without objection, it will be introduced.

Mr. WALBERG. I thank the witnesses for being here as well and carrying on with this continued investigation to make sure that your work is accomplished.

Mr. Horowitz, I still remember our first meeting in my office when you came in after your appointment and how direct you were about saying my job is to be the job that the OIG is supposed to

do and to get to the bottom of the issue regardless of where we find ourselves, and I appreciate that.

Let me ask you a question relative to a fairly high profile investigation that we've been involved with as well as you. Were there restrictions or limitations on your ability to access documents in your investigation into the Operation Fast and Furious?

Mr. HOROWITZ. That's one of them, the investigations, where the issue was first raised back in 2011 to our access.

Mr. WALBERG. Did you have to make document requests in writing?

Mr. HOROWITZ. We did, and the issues came up both in the context of our request for grand jury information, which, as you know, given the case was a criminal case, were many, as well as wiretap information. As you know from our report, there were many.

Mr. WALBERG. How long did it take for you to get access to those documents?

Mr. HOROWITZ. It took many months for this issue to be resolved, and it was resolved through an order being issued by the leadership, not through our independent access pursuant to the IG Act.

Mr. WALBERG. Elaborate on that last statement a little bit.

Mr. HOROWITZ. Yes. In our view, we have a right, as Congress has laid out in the IG Act in Section 6(a), to get the materials we ask for. When we ask for materials, we ask for relevant information, responsive information, and in our view we're entitled to that by law. Congress has been clear.

The FBI, other components in the Department have taken the view that the IG Act perhaps doesn't mean that. Indeed, we've been told that that was the Office of Legal Counsel's preliminary view, that it wasn't sure the IG Act meant what it said, and as a result it required an order of the Attorney General or the Deputy Attorney General to the component that said, I find these reviews are of assistance to me as the leadership of the Department, and therefore you can give the IG those materials.

Mr. WALBERG. How has the requirement that the OIG obtain written permission to access documents related to the Fast and Furious operation affected your office's ability to conduct a complete investigation in the matter?

Mr. HOROWITZ. It delays. It frequently has the impact of delaying our reviews, not only because we have to go through that process to the leadership of the Department, but also because, frankly, it encourages other objections by other components of other issues. For example, personally identifiable information that IG Buller has talked about, that issue was thrown up in front of one of our reviews on sexual misconduct within the Department by both the FBI and the DEA. That's a frivolous objection and after many months of back and forth was withdrawn by the agencies and we finally got the material.

Mr. WALBERG. How does all this affect your independence?

Mr. HOROWITZ. It compromises it, in my view, entirely. I should not have to go to the people I oversee for approval to get records. Congress I don't think intended that. That would undercut in every way our independence.

Mr. WALBERG. We certainly didn't. I appreciate that.

Let me ask questions of each of the panelists. Other than the reason described in the letter from 47 IGs, what tactics do agencies use to deny OIGs access to agency records and documents?

And, Ms. Buller, I'll start with you.

Ms. BULLER. In my case, we've had instances where our situation and the issue on the Kate Puzey Act has bled into other areas. For example, they redid the Crime Reporting Management System for standard reports, and when they did that we were denied access to that for no reason, because they were not a restricted report. So we had to go back to the general counsel, and actually I had to go to the director of the agency and make a personal plea to get the information that we had been getting all along reinstated to us. Once you start down the road where they're preventing you from getting information, it pops up in different places and unexpected places.

Mr. WALBERG. Mr. Elkins.

Mr. ELKINS. In my case what I see is stonewalling, to a large extent parsing out information. You ask for 10 pieces of information and you get 2 or 3 pieces of information, and there wants to be a discussion on the other 7 pieces of information, and then there is continually fighting and going back and meetings. And at the end of the day, a year later, you still don't have the information.

And in the back of my mind what I hear is cha-ching, cha-ching, cha-ching. That's the taxpayers' dollars that are going out and being used on the agency side and on my shop's side to be able to solve an issue that the IG Act says when we ask for information we're supposed to get it immediately and promptly, and if we had received it at that time, the cash register wouldn't continually be ringing. So that's what I see.

Mr. WALBERG. Mr. Horowitz.

Mr. HOROWITZ. As a result of the position that the IG Act may not mean what it says, the FBI has put in place in our instance their general counsel reviewing all of the materials and all of our requests for materials before they come to us. That requires reviews by lawyers at the FBI, it delays us getting access. And a concrete example of what that means in a review we are doing, we asked one of the subcomponents within the FBI for an organizational chart. They told us they couldn't give it directly to us because of the standing requirement within the FBI that materials have to go through the Office of General Counsel first. And so we were delayed for weeks in even getting an organizational chart so we could figure out who to talk to in the course of a review.

That should not be happening. That is a waste of money, as IG Elkins just said. We have entitlement to the access to the records. I'm not sure what use there is of the resources of the FBI to go page by page through records before giving it to us.

Mr. WALBERG. Thank you.

My time has expired. Now I recognize the gentlelady from Illinois, Ms. Duckworth.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

The inspector general community plays a key role in making the government more honest, efficient, and effective in ensuring wise stewardship of taxpayer money. I have seen firsthand their work, and obstruction of their work is simply not acceptable. So I take

the concerns being aired here today very seriously, and hopefully the message that my colleagues and I are sending on this point today is heard loud and clear.

I'd like to discuss the concerns I have with EPA's Office of Homeland Security in particular. And, Mr. Elkins, on May 7 of this year the assistant inspector general for investigations at EPA testified before the committee and raised a number of access concerns. Specifically, Mr. Sullivan expressed frustrations that the EPA's Office of Homeland Security, OHS, was denying access to important classified threat material that was impeding your ability to investigate threats against EPA facilities and its employees. He also testified that OHS refused to share misconduct cases with his office because OHS believed it was, "a de facto law enforcement organization in itself." And finally, Mr. Sullivan raised concerns that OHS did not recognize the IG's statutory authority over intrusions into EPA's computer networks, apparently denying access to classified information related to possible cyber intrusions.

Is that a fair summary of your concerns also with the OHS office under EPA?

Mr. ELKINS. Yes, ma'am, that is a fair characterization.

Ms. DUCKWORTH. Thank you. So I understand from your testimony today that you continue to have problems with access to information from OHS. Is that correct?

Mr. ELKINS. Yes, ma'am, that's correct.

Ms. DUCKWORTH. In June, June 19th of this year, EPA Administrator McCarthy sent you a memo entitled "Working Effectively and Cooperatively," that's correct? Is that correct?

Mr. ELKINS. I don't recall that exact memo. June 19th you say?

Ms. DUCKWORTH. It's called "Working Effectively and Cooperatively."

Mr. ELKINS. Oh, yes, I do recall that, yes.

Ms. DUCKWORTH. Okay. So my understanding is that it attempts to construct a framework for better cooperation between OHS and your office, and section 5 of the memo lays out a dispute resolution process. Has that process been used by your office since receiving the memo?

Mr. ELKINS. Well, I can speak from my own personal opinion, no. I mean, we still have the same issues that we had at the date of that letter. So if there was a dispute process that was used, it hasn't worked, and I haven't been a part of it.

Ms. DUCKWORTH. Okay. Do you think it should and it could or should be further enhanced, the dispute resolution process, or do you think that that is something that's just hindering your work in general?

Mr. ELKINS. Well, personally I think the IG Act says all means all. I mean, when we ask for information and access to documents and individuals, that's exactly what it means. Entering into a dispute resolution process sends the message that there's some wiggle room, that it can be negotiated, and I am totally against that process.

Ms. DUCKWORTH. So the committee staff attempted to assist you in resolving this impasse that you're having with EPA's Office of Homeland Security. My understanding from your testimony, what you just said, that we're still hitting roadblocks. Is that correct?

Mr. ELKINS. Absolutely.

Ms. DUCKWORTH. What steps do you think would be helpful to resolve some of the disputes that you're having, and how can this committee be helpful to you in that process?

Mr. ELKINS. Well, I think ultimately the Administrator needs to send a clear message that the IG Act requires absolute cooperation with the IG. If that message is sent, I think everything would change. And until we get some clear message from the Administrator to that effect, I think the status quo will continue.

Ms. DUCKWORTH. Do you think the inspector is supporting OHS' position that they are a de facto law enforcement agency within the EPA?

Mr. ELKINS. I'm sorry, can you repeat the question, please.

Ms. DUCKWORTH. Do you think that Administrator McCarthy's position, from what he has said with this, by supporting this memo, "Working Effectively and Cooperatively," and not sending out this the statement that you should have full access, do you think that he supports what OHS believes, that they are a de facto law enforcement organization within EPA?

Mr. ELKINS. Well, I don't want to put words in the Administrator's mouth, but the end result is that the status quo continues. So I can only infer that the administrator agrees with that.

Ms. DUCKWORTH. Thank you.

Thank you so much, Mr. Chairman, for having this hearing. To the extent that this committee and its staff can be of assistance to help address this impasse, we certainly should be willing to help.

And again, Mr. Elkins, thank you for the work that you do for us and for the American taxpayer.

Mr. ELKINS. Thank you, ma'am.

Ms. DUCKWORTH. I yield back, Mr. Chairman.

Mr. WALBERG. Thank the gentlelady.

I recognize the gentleman from Oklahoma, Mr. Lankford.

Mr. LANKFORD. Thank you, Mr. Chairman.

Thank you all for being here and for your work that you do every single day for the American taxpayer. We really do appreciate what the Office of Inspector General does in every one of these agencies. It is extremely important. Congress and the American people established all these agencies. These agencies just didn't appear out of dust and one day have responsibility. Congress created these agencies, and then Congress has the oversight responsibilities for these. What the Office of Inspector General does is to bring transparency to the American taxpayer, and so what you're doing is vital.

So with that, Mr. Horowitz, if I asked to see all of the papers on your desk, would you assume that's only three pages or would you assume that's all?

Mr. HOROWITZ. I would assume it's everything.

Mr. LANKFORD. Would you assume, if I asked for all the pages on your desk, that you could go back and seek counsel and then come back and say, no, we've really decided all doesn't mean all?

Mr. HOROWITZ. Pursuant to the IG Act, no, you would get everything.

Mr. LANKFORD. Okay. I have a real issue when any agency steps in and says, I know Congress has required all these pages to be

turned over, but we've discussed it as an agency and we're not going to turn it over. I have an issue with that. I have an issue with anytime an agency steps up and says, we don't like some of the information coming out and so we're going to choose not to give it.

I don't like it when I read reports from the Attorney General when he writes back to the inspector general and says, I have determined that providing the OIG with access to it is helpful to me, and so I'm going to turn this over because it's helpful to me. That implies to me that he's also reviewing other documents and saying, I have determined this is not helpful to me, so I'm not turning it over. That is not the responsibility of the Attorney General of the United States, to be able to conceal documents that are not helpful and to turn over documents that are.

So with that, I have several questions. The roadblocks that you all have experienced over the last several years, Mr. Horowitz, you've been at this how many years?

Mr. HOROWITZ. A little over 2 years.

Mr. LANKFORD. So of what you have seen and the folks that you have talked to—Mr. Elkins, how long have you been at this as an inspector general with the inspector general's office?

Mr. ELKINS. Just a little over 4 years, sir.

Mr. LANKFORD. Okay.

Ms. Buller.

Ms. BULLER. Six years.

Mr. LANKFORD. The question is, this is obviously an old law. This is not new. This is requiring the administration, every administration, any administration to say American tax dollars are at use here. What have you seen in the individuals that you have talked to and other folks that are around that have worked in the inspector general office, some for decades, what are they experiencing now that has changed, and has it changed? Is this just normal protocol from every administration to drag their feet on every investigation or is something changing? And I'm not asking this in a political way. I'm just trying to figure out is this just typical, normal protocol from every administration, every agency?

Mr. HOROWITZ. I can certainly speak to our situation. I've talked to my predecessors, and I think the answer is quite clearly no in our circumstances. We did FBI oversight after the attacks of 9/11, after the Robert Hanssen scandal. We were given complete access to the materials we needed. We didn't face these kinds of issues. Frankly, we didn't face these issues until 2010 or 2011.

Mr. LANKFORD. Are you finding that FOIA requests, any information coming out from a FOIA request is coming out as fast or at equal speed than what you are getting from the inspector general's office?

Mr. HOROWITZ. I actually haven't compared those, so I couldn't speak to that.

Mr. LANKFORD. I can tell you in Congress we are finding that, that at times that we'll make a request of a document and a FOIA request happens, and the FOIA request gets it the same day that we do, sometimes faster. So that has been an issue.

Mr. Elkins, I have a question for you. You're dealing with the EPA, and you said in your oral testimony that you're being blocked

from the EPA receiving information that they have deemed intelligence activity. Tell me about that.

Mr. ELKINS. Yes, sir. The EPA, the Office of Homeland Security has asserted that it is the primary office in EPA to handle any issues related that have intelligence connected to it. Unfortunately, they do not have investigation authority. There are only two entities within EPA that have investigative authorities. One is the OIG and the other is CID. In terms of employee misconduct cases, which typically result in where you have intelligence information where individuals inside the agency are doing something illegal, it's going to be related to employee misconduct.

Mr. LANKFORD. Right. So can you tell what intelligence activity is within EPA. They're saying they're withholding this information from you, you can't look at it because it's intelligence activities. Can you tell what that is?

Mr. ELKINS. Well, to the extent that they have the intelligence activities information I don't know, because they don't share that information with me.

Mr. LANKFORD. Well, I can tell you this committee finds that ironic because it wasn't that long ago we had someone sitting at that same table that pretended to be with the CIA and was also with the EPA, and for years—for years—eluded EPA oversight because he claimed he was secretly working for the CIA. So I find it ironic that the EPA is now telling the inspector general, well, this is intelligence related, we can't pass this on for oversight.

I'm going to be very interested to hear from the EPA what intelligence activities that they are doing on the American people and what intelligence activities that they're doing nationwide or worldwide related to the Environmental Protection Act and why they would say this is so secret that we're not going to allow the American people to see the activities of the EPA or to allow the inspector general to participate in oversight for that. I think that's a reasonable question to ask any agency that doesn't have investigative intelligence responsibilities, how they have somehow created their own intelligence department and what they are doing with that.

Mr. Chairman, thank you for allowing me the extra seconds here of questioning, and I thank you all for your work.

Mr. WALBERG. I thank the gentleman.

And now I recognize the gentleman from Nevada, Mr. Horsford.

Mr. HORSFORD. Thank you, Mr. Chairman. I appreciate very much this hearing.

And we started off saying that this was going to be nonpartisan, and unfortunately, as usual, it turns into a bit more partisan than it should because the role that the IG plays is very important, your mission is important, and we should be working in a nonpartisan fashion to support that.

Mr. Horowitz, I do want to follow up on your comment by my good friend, the gentleman from Oklahoma, and to ask you to clarify a little bit based on your testimony today and your previous testimony in January. I want to ask you about some of the concerns that you raised regarding your office's access to categories of information relevant to ongoing IG reviews, including wiretap and grand jury materials and documents related to the Department of Justice's use of material witness warrants.

Mr. Horowitz, as I understand it, in specific instances you have had to seek access to this information from the Department's leadership, correct?

Mr. HOROWITZ. That's correct.

Mr. HORSFORD. When testifying about this same issue before the committee on January 15th you stated, "In each instance the Attorney General or the Deputy Attorney General provided us with the permission to receive the materials." Is that correct?

Mr. HOROWITZ. That's correct.

Mr. HORSFORD. You also wrote in your testimony today that the Department has informed you that, "it is their intent to continue to grant permission to access records in future audits and reviews." Is that correct?

Mr. HOROWITZ. That's correct.

Mr. HORSFORD. So, Mr. Horowitz, as a preliminary matter, has all of the information you have sought from the Department been provided to you?

Mr. HOROWITZ. We are told that it has been.

Mr. HORSFORD. Has any information that you have requested from the Department ultimately been withheld from you?

Mr. HOROWITZ. Ultimately no, we've gotten it after many months.

Mr. HORSFORD. So during the January hearing you testified that your office's access issues were, "not necessarily specific to this Attorney General, this Deputy Attorney General, it is an issue that my predecessors have had to deal with." Is that correct?

Mr. HOROWITZ. It is correct that they have had to deal with timely production of materials.

Mr. HORSFORD. So when you were asked by my good friend, the gentleman from Oklahoma, is this an issue that is unique to this Department's leadership, that was not the answer you just gave.

Mr. HOROWITZ. The issue arose in 2010 when my predecessor was still there and continued beyond that. There were other issues that predated in terms of timeliness, but we have not had a legal objection raised by a component until then.

Mr. HORSFORD. I appreciate that clarification.

It is my understanding that the Department recently requested a formal opinion from the Office of Legal Counsel to resolve a conflict between the interpretation of section 6(a) of the IG Act, which grants the IG prompt and full access to all necessary requested information, and several statutes that restrict the release of certain types of protected information, such as grand jury and wiretap material.

It is also my understanding that the Department has told you that it is committed to working with you to provide access to all materials necessary for your office to complete its review until the OLC releases its opinion. Is this correct? Is this a correct understanding?

Mr. HOROWITZ. As I made clear in my testimony, the leadership has made that clear. The problem is every day this goes on without a decision we're not independent, we're not acting in an independent manner.

Mr. HORSFORD. But that is not an issue of the leadership of that department?

Mr. HOROWITZ. As I testified today, the leadership has made it clear they will continue to issue orders to the components to get us the records, but the issue is whether that's really required by Congress' Act.

Mr. HORSFORD. And so therefore, Chairman, I think to the degree there's some clarification, it's the clarification within the disputes with section 6(a) and the statutes, not as some would like to assert somehow the Department's leadership in a lack of providing information that's being requested of them. And I just think that that needs to be made clear for the record.

I am encouraged the Department's leadership has been working to provide your office with access to the information it needs to do your job, including grand jury and wiretap information that must be closely guarded. And I hope that both parties continue to work together as we move forward on this important issue.

Thank you very much, Mr. Chairman. I yield back my time.

Mr. WALBERG. I thank the gentleman.

And I guess I would express my pleasure at this hearing so far up until now that it has been bipartisan, nonpartisan, looking for answers of what is happening now, so that we can move forward and do it right. And so I would state that I think that is what this committee hearing has developed around and over and has been carried on. So I appreciate the bipartisan fashion and the nonpartisan fashion so far.

Having said that, let me recognize, looking at the list here, Mr. Duncan from Tennessee.

Mr. DUNCAN. Well, thank you, Mr. Chairman.

I'm sorry, I had to preside over the House, and so I couldn't hear all of your testimony, but I introduced the original bill to create an inspector general for the Tennessee Valley Authority, and I've always believed very strongly in the inspector general process. It has been very, very helpful to the work of this committee.

But I was really amazed by the number of inspectors general that signed this letter. I haven't tried to count them, but I'm told it was 47, I think, or something like that. That's pretty amazing. I think that certainly is not something that we've ever seen before. So apparently there's pretty serious concern by people who are in the know, so to speak.

Mr. Horowitz, I understand, though, that there are several high profile investigations, such as in the New Black Panther case and the prosecution of the late Senator Ted Stevens and the torture memo case, other matters, where your investigation has been hindered or delayed or something by the Office of Professional Responsibility. Could you tell me about that and explain a little bit about what that's done to your work.

Mr. HOROWITZ. Certainly, Congressman. The issue there is that when Congress set up our IG office in 1988—we weren't part of the original IG Act—it kept in place the Office of Professional Responsibility, and it provided that, unlike with regard to all the other employees in the Justice Department, that we don't have jurisdiction to review alleged misconduct by Department attorneys. So as a result, matters such as those cases go to the Office of Professional Responsibility, which lacks statutory independence, instead

of coming to us. So we actually have no authority to investigate those matters.

Mr. DUNCAN. Well, I understand that, but what I'm asking you, there have been these high profile situations, and I'm sure several much lower profile cases where there has been misconduct by Department of Justice lawyers. Do you think that your office would be capable of investigating this type of misconduct along with the Office of Professional Responsibility?

Mr. HOROWITZ. We absolutely think that, and I think we've demonstrated that, frankly, by issuing reports regarding agent misconduct, such as some of the work we've done in the FBI context. We've demonstrated quite ably our abilities to do that. And I think the same independence that Congress believes is important, independent oversight over the FBI, should also exist with regard to Department attorneys.

Mr. DUNCAN. I'll ask the panel as a whole, do you feel that there's been an overclassification of documents by the departments or agencies with which you have worked or in which you've worked or in other departments that you've read or heard about?

Mr. ELKINS. I have to concur with Mr. Horowitz here, yes, I have heard that. In my particular agency that has not been an issue particularly, but I have heard that issue raised, yes.

Ms. BULLER. Peace Corps doesn't have original classification authority, so that's really not an issue at the Peace Corps.

Mr. HOROWITZ. We have found some issues related to that in one of the reports we did last year and have reported out on that.

Mr. DUNCAN. All right. Well, thank you very much, Mr. Chairman.

Mr. MEADOWS. [Presiding] I thank the gentleman.

And the chair recognizes the gentleman from Illinois, Mr. Davis.

Mr. DAVIS. Thank you very much, Mr. Chairman.

And let me begin by emphasizing how much I value the work of the inspector generals community in helping our government function better and become more efficient. So I want to thank all of you for being here.

It is imperative that all inspectors general have a good working relationship with the agencies they are tasked with overseeing in order to fulfill their mission of identifying and eliminating waste, fraud, and abuse in the Federal Government.

Mr. Horowitz, I would like to ask about the Department's overall level of cooperation with your office. You testified before the committee on January 15 of this year that, "Most of our audits and reviews are conducted with full and timely cooperation from the Department's components." Is that a correct——

Mr. HOROWITZ. That's correct. In most of our work we have had full cooperation.

Mr. DAVIS. Would it be fair to say that the access concerns you raised in your testimony are limited to specific instances and not representative of a larger-scale, agency-wide problem?

Mr. HOROWITZ. I would say there are limited reviews where we've had this problem. The problem, though, is, as IG Elkins and IG Buller said, it takes on a life of its own. We get what I think are, frankly, frivolous objections in other instances that don't have to go to the Deputy Attorney General or the Attorney General be-

cause I'm able to work them out with agency leadership at the DEA or the FBI, wherever it is. But these problems, once some people see they can object, you get more and more objections, frankly.

Mr. DAVIS. Thank you. Your office's semiannual report to Congress for the October 2013 through March 2014 reporting period states that it has closed 184 investigations, issued 35 audit reports, and made 137 recommendations for management improvement. Is that correct?

Mr. HOROWITZ. That's correct.

Mr. DAVIS. The report mentions, for example, that your office issued an audit of the Department's efforts to address mortgage fraud, and the Department agreed with all seven of the IG's recommendations. Is that correct?

Mr. HOROWITZ. That's correct.

Mr. DAVIS. Your office also examined the FBI's terrorist watch list operations and practices and issued 12 recommendations, all of which the FBI agreed with. Is that correct?

Mr. HOROWITZ. That's correct.

Mr. DAVIS. Mr. Horowitz, can you then give us an overview of how these audits and recommendations help streamline costs and improve the Department's programs and operations?

Mr. HOROWITZ. Well, we make these recommendations to do precisely that, Congressman, so that we can not only advise the agency leadership what steps need to be taken, but the Congress itself as it does its oversight. And the recommendations we make go to the deficiencies we find, either management or waste, fraud, misuse that save the taxpayers every year tens of millions of dollars.

Mr. DAVIS. Then it sounds to me like your office is doing a great deal of very valuable work to ensure that the agency maintains high standards of integrity and accountability. I want to commend and thank you again for your efforts.

And I thank all of you for being here this morning and clarifying, testifying, and giving us the assurances that we need to have to know that you're doing good work and that the oversight of our government is in good hands.

Mr. Chairman, I thank you and yield back the balance of my time.

Mr. MEADOWS. I thank the gentleman, and the chair recognizes himself for 5 minutes.

Thank you, all of you, for your testimony. Mr. Elkins in particular, welcome. It's been a real pleasure to work with you in a nonpartisan way. I think all of us here would agree that we don't want Republicans, Democrats, or unaffiliated, or agencies to influence your work, that indeed it needs to be independent, that the American taxpayers depend on your work. And so I just say thank you to each one of you.

Ms. Buller, I want to start with you. This continued stonewalling of access to documents, what kind of harm, potential harm can you see that would come from this, specifically with your work?

Ms. BULLER. Well, in our case we do have the memorandum of understanding, so we are somewhat receiving information, but the problem with that is it's a temporary measure and we can't rely on it being there because it can be taken away at any time. And if we don't receive access to the information that we need, we can't en-

sure the volunteers who have been victims of sexual assault are receiving the types of care and services that they need and are entitled to in order for them to move on with their lives.

Mr. MEADOWS. So is it your testimony today that victims might potentially continue to suffer if you don't get the kind of access to documents that is outlined in the memo of understanding? If they quit providing that could victims continue to be harmed?

Ms. BULLER. We'll never be able to tell. That's the big problem. We won't be able to tell whether or not the agency is doing what it's supposed to do or whether or not they're actually performing in a poorer manner than they were before. We will be able to tell only from when the victims come in, like they did in 2010, and complain about their treatment by the agency.

Mr. MEADOWS. So what rationale would be out there to justify—and this question is to all of you—what rationale is out there to preclude you from getting information that would be deemed beneficial to the American people? Why should they withhold stuff from you? Mr. Elkins, we can start with you.

Mr. ELKINS. Yes, sir. I think that's a good question, and I scratch my head sometimes trying to figure out the answer to that. But it seems to me that sometimes some of these defenses are made out of whole cloth, they just kind of pop up based on the circumstances. So it's random, and that's part of the problem.

Mr. MEADOWS. So there are times when they will very willingly give you information and then other times where they say you can't have this?

Mr. ELKINS. Yes, I think that's a fair assessment.

Mr. MEADOWS. Is that because the employees that you have working for the OIG are somewhat inferior to the employees of the agencies?

Mr. ELKINS. Oh, no, no.

Mr. MEADOWS. Well, I would hope you would answer that in that manner. And so what you're saying is the level and professionalism of your employees would be equal with the agency?

Mr. ELKINS. Oh, absolutely.

Mr. MEADOWS. Do you think that the level of professionalism and privacy concerns within your agency is equal to that of the EPA as a whole?

Mr. ELKINS. Absolutely.

Mr. MEADOWS. Would you agree with that, Mr. Horowitz? Would you say you have the same desire to protect the integrity of the process?

Mr. HOROWITZ. Absolutely. And we have a track record of handling among the most sensitive national security information that the FBI has through our review of section 702 of FISA, through various Patriot Act reviews we have done that Congress has mandated. We have among the most sensitive information that exists in our possession.

Mr. MEADOWS. So there is not a clearance issue here, there is not a propriety issue. And so really there is no reason at all why you should not be getting 100 percent of what you request.

Mr. HOROWITZ. Absolutely.

Mr. MEADOWS. I think, Ms. Buller, you said earlier that there's never been a case where some of that information has been dis-

closed by the OIG in terms of causing harm to a potential victim. Is that correct?

Ms. BULLER. That's correct.

Mr. MEADOWS. And so if we have all of these, then what is the real genesis of this whole problem of why they do not want to share it with really the only independent source out there to protect the American people? What is the reason these agencies would do that, Mr. Elkins?

Mr. ELKINS. It seems to me that there may be a belief that the IG Act doesn't mean what it says that it means.

Mr. MEADOWS. So has this been a new revelation, that all of a sudden we have this new revelation in the last couple of years that it doesn't mean that? Why did they come to this conclusion recently?

Mr. ELKINS. That's a good question, and that's probably one that you would have to——

Mr. MEADOWS. So we have got new counsel that's interpreting it a little bit differently? So what you are saying is from a bipartisan standpoint what we need to do is make sure that the ranking member and the chairman come together and say, well, we mean what we say?

Mr. ELKINS. Well, and one other thing, sir. There is no enforcement mechanism in the IG Act.

Mr. MEADOWS. All right, I'm going to close with this: What would be the great enforcement mechanism, that if they don't give you 100 percent of the documents that they get their budget cut by 10 percent?

Mr. ELKINS. Sir, I will leave that up to you.

Mr. MEADOWS. I'll certainly yield to the ranking member.

Mr. CUMMINGS. Just this one question, Ms. Buller. I'm just trying to figure out what you are able to get under the memorandum of understanding. Let's say, for example, someone is raped. Right now you can get the—what can you get?

Ms. BULLER. Right now we can get access to the restricted report that's filed in the incident report. We may have more difficulty getting other information concerning that particular incident because we don't have a personal identifying number or anything to associate with it.

Mr. CUMMINGS. So you can get the details of the rape? Because I'm kind of confused when I look at what you agree to. Go ahead.

Ms. BULLER. With the exception of explicit details, and we've tried to define that MOU very narrowly, salacious, things that wouldn't necessarily add anything to our review.

Mr. CUMMINGS. I see. All right. Thank you.

Mr. MEADOWS. I thank the gentleman.

The chair is going to recognize the gentleman from Oklahoma for 4 minutes at this point.

Mr. LANKFORD. Thank you, Mr. Chairman. I'm not going to need all that time. I just need to follow up.

One of the documents that, Mr. Horowitz, you provided was some background information about grand jury investigations, specifically about an Oklahoma case that I want to bring up to you. In the 1990s the Office of Inspector General at that time requested information related to an FBI agent's testimony and the Bureau of

Prisons related around a gentleman who died in the Federal Bureau of Prisons in Oklahoma named Ken Trentadue. That was a very controversial case in many ways in Oklahoma. There was a lot that happened around that case. And still a lot of questions still spin around the death of Ken Trentadue in Oklahoma.

Your reference to that case, I just want to be able to ask why you're bringing that up at this point, what you have learned from it, what was established then, and what's happening now.

Mr. HOROWITZ. So this is now the 1997–1998 time period. Our office was involved in the misconduct review related to that matter. We needed grand jury information, and the Justice Department, the Civil Rights Division then, but the Justice Department supported our right of access to grand jury information and went to court, to two different Federal judges in Oklahoma, to confirm that the Department's reading of the grand jury statute allowed them to give us those materials.

The two judges both said, you, Justice Department, are right in your legal interpretation—not the OIG, the Justice Department—and under the law the IG is entitled to get these grand jury materials. To our mind that should have resolved this issue. That's now 15 years ago. Two Federal judges have both ruled. They're Article III judges. We are at a loss to understand why nonconstitutional officers would be deciding the issue any differently.

Mr. LANKFORD. Okay. So fast forward to now today and to what you're dealing with. You're not getting access to grand jury information currently. Is that correct?

Mr. HOROWITZ. The objection is we're not entitled as a matter of law, so we have to go through this mechanism of getting the Attorney General or the Deputy Attorney General's approval to get it.

Mr. LANKFORD. So at that point you now have to make a request and the Attorney General can say I either want you to have this or I don't want you to have this. It goes back to some of the earlier statements that I made, that he now has the ability to say this helps me or doesn't help me and so I'm going to give it to you or not give it to you, not based on I've made the request, a Federal judge has already ruled on this in Oklahoma, this has resolved issues. Is that correct or not correct? I want to make sure I get this correct.

Mr. HOROWITZ. It's ultimately the decision of the Attorney General or the Deputy Attorney General.

Mr. LANKFORD. Okay. Rather than I make the request, you're already entitled to that?

Mr. HOROWITZ. Correct.

Mr. LANKFORD. Okay. So how many cases are out there that are like that for you? Do you have a guess of how many documents or cases that you're either getting delayed response or getting partial response or getting a response at some date in a future time period? Because you had testified earlier that you are getting records, you're just not getting them in a timely manner.

Mr. HOROWITZ. There are probably 10 or more examples I could give of instances where we've either had the legal objection raised or the timeliness issue come up in the last 2 years. At least. I could probably make an even longer list if I went through it with my staff.

Mr. LANKFORD. Okay. Thank you.

Mr. Chairman, I appreciate your allowing me to ask that Oklahoma-related question. Thank you.

Mr. MEADOWS. I thank the gentleman from Oklahoma.

The chair recognizes the ranking member, the gentleman from Maryland, Mr. Cummings.

Mr. CUMMINGS. As we close, I want to thank all of you for being here today. These disputes are very serious because they without a doubt impede you from doing your work. On the other hand, of course you have the agencies, such as in, I guess, in all these cases, who cite laws that conflict with your duties and the rules and regulations that you operate under. It seems like we ought to be able to resolve this.

I have two concerns, and one is, if we were to pass legislation, and sharing your viewpoint, Mr. Elkins, and if it does not prevail, I think that makes your position weaker, your present position. The other thing that I'm concerned about is that, if we were to do a universal thing that says your access to information is superior to everything, I don't know what that universe of everything is, you know? And I'm sure you don't either. You may know in your area, but we're talking about 47 of you all.

So then considering what the chairman talked about in Executive order, I think the President probably would face the same kind of problem with regard to what that universe is. But there's got to be a way to deal with this.

Ms. Buller, the reason why I keep coming back to you is because, I mean, we've got an agency that, when you have an IG office whose duty it is to get information and protect these victims and not be trusted with the information it seems like there's something missing there, that we ought to be able to get to the bottom line is how do we protect victims, how do we get the information that we need so that we can accomplish that.

So we're going to put our heads together and see what we can do to try to resolve these issues, but they are serious issues. I would imagine that if the agencies came in they probably would say, we really do believe in what we're doing, we're trying to obey the law, too. So it's going to take a little bit of effort—a lot of effort—but I do believe that we should be able to resolve this.

My last question. Do you all believe an Executive order is the answer? Ms. Buller.

Ms. BULLER. I think anything that sends a very strong message to agencies that the IG is there to perform oversight and in order to provide that oversight they need access to agency records. Anything that is very clear and states that without exception I think would help.

Mr. CUMMINGS. Mr. Elkins.

Mr. ELKINS. Yeah, I agree that Executive order would be helpful. You know, also I'd just like to remind the panel here that in administrative law cases there's a very rock solid case which is called Chevron that agencies rely on to determine whether or not deference should be paid to an agency that has jurisdiction. Well, I think in our case Chevron would apply as well. The IG Act, we're the subject matter experts there, and there should be a certain amount of deference to our interpretation as to what our access

should be. That deference is not given to us. Agencies would use Chevron all the time. But in our circumstance, when we try toassert a Chevron argument, it's ignored.

Mr. CUMMINGS. Mr. Horowitz.

Mr. HOROWITZ. I would agree with you, Congressman, that a clarification is critical. An Executive order, a prompt OLC decision, we've been waiting for a few months now, that would say what does the law mean. Because that's the objection we're all getting at some level, which is Congress didn't mean in 6(a) what we all think it means, the FBI is reinterpreting statutes, DEA, others. In my agency, the other inspectors general have said the same thing. Ultimately they're trying to interpret what Congress meant.

Mr. CUMMINGS. Right.

Mr. HOROWITZ. So it's really all your issue here that you've got the executive branch, in my case OLC, which speaks for the executive branch, trying to divine does 6(a) mean what it says, as we think has always been the case, at least until 2010 when the FBI general counsel raised an objection, or what the FBI general counsel and some others have said. We need clarity on that issue. An Executive order would do it, an immediate OLC order would do it, and then Congress can decide whether to fix 6(a) at that point or not. But that's really what we need.

Mr. CUMMINGS. Thank you all very much.

Thank you, Chairman.

Mr. MEADOWS. I thank the gentleman.

I thank each of you for your testimony. I think today highlights really in a bipartisan way the need for full disclosure to the OIGs, not just with your agencies that you oversee, but across the board.

Ms. Buller, some of the testimony that you've given us gives us great pause because sometimes we look at these things as just administrative, and yet the victims that you have discussed are real. And I don't believe that we could tolerate the lack of cooperation. Ultimately the information that these agencies have belong to the American taxpayers, they're not proprietary to an agency, they're not proprietary to Congress, they're not even proprietary to you. They belong to the American taxpayers. And what we must do is have full and complete disclosure.

To give the best example, if the IRS comes in and does an audit, I don't know the universe of which they may be asking for. When they say they want all of the documents, generally they mean all of the documents. And I would suggest that that simple test be one that the agencies hear loud and clear today, that when you request it, they are to provide it. And then we are going to hold you accountable to make sure that those disclosures and the integrity and the professionalism that each one of you have assured me that you have, that that gets abided by, because a fracture there really does irreparable harm.

We've got a lot of great Federal workers. For many of the American taxpayers the OIG is the only thing that they can believe in to hold these agencies accountable.

Mr. Elkins, you know in my particular district I've got an issue that has been going on for 25 years with the EPA. They have no confidence, Democrats, Republicans, unaffiliated, none of them have confidence in that agency to deal with that problem. Their

last hope, truly their last hope is your office, and your involvement in the independence of that and the full disclosure is what they're counting on. And so I think that that can be echoed across all of the OIGs.

And so I thank you for your testimony, I thank the ranking member for his closing comments. And I look forward to you providing to this committee three recommendations on how we can help with the enforcement component, the stick or the carrot that we need to have, I need to know three suggestions that you might have that we can encourage these agencies to provide what the American people deserve.

Mr. MEADOWS. And with that, I adjourn this hearing.

[Whereupon, at 11:36 a.m., the committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

September 9, 2014

The Honorable Darrell Issa
Chairman
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am responding to your August 8, 2014, letter to the Office of Management and Budget (OMB) regarding Inspectors General (IG). We appreciate your interest in the important role of IGs.

The IG community plays an integral role in enhancing transparency, financial stewardship, and accountability across the Federal Government. Through audits, investigations, evaluations, and inspections, the IG community provides critical analysis and oversight that strengthens program integrity, helps to eliminate waste, and holds our Federal projects and programs accountable to the public. In this era of fiscal constraints, the role of the IG is more important than ever in helping agency leadership identify and address management challenges and maximize the impact of our limited Federal resources.

As you are aware, IGs are required to report to Congress semi-annually about: (1) the audits, investigations, and inspections they have conducted; (2) the progress of their respective establishments in implementing recommendations to reduce waste, fraud, and abuse; and (3) any instances in which – in the IG's sole judgment – a Department or agency has unreasonably refused to provide access to information requested by an IG.[1] Overall the numbers reported by the IGs demonstrate that Federal Departments and Agencies in this Administration value the work of IG offices and are almost uniformly successful at getting them the information they need to perform their responsibilities.

In this Administration, IGs have been more productive than ever before – issuing more reports on audits, inspections, and evaluations each year since 2009 than in any of the three years prior to 2008.[2] Yet for all this increased activity, of the 337 semiannual reports submitted by the 31 Presidentially-appointed IGs during this Administration, just seven of those reports, include any complaints at all.

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[1] 5 U.S.C. app. 3 §(5)(a)(5).
[2] Council of the Inspectors General on Integrity and Efficiency, PROGRESS REPORTS TO THE PRESIDENT (Reports from 2000-2014) available at https://www.ignet.gov/randp/arpt1.html.

Although these numbers are informative, OMB shares your commitment to the mission and effectiveness of IGs and I agree there is more Federal Departments and Agencies can do to improve how they work with their respective IGs. OMB is currently working with the Council of the Inspectors General on Integrity and Efficiency to ensure that all agencies and their staffs are properly informed and trained on the requirements of the *Inspector General Act*, 5 U.S.C. app. 3 and other Federal statutes and rules approved by Congress concerning access and dissemination of information. OMB also will look for opportunities to raise this issue with appropriate agency officials.

I look forward to working with you, as well as other members of Congress, as we continue to implement the Inspector General Act. If you have questions or would like additional information, please contact Tamara Fucile, Associate Director for Legislative Affairs, at 202-395-4790.

Sincerely,

Shaun L. Donovan
Director

Identical Letter Sent to:

The Honorable Thomas R. Carper
The Honorable Tom Coburn
The Honorable Darrell Issa
The Honorable Elijah Cummings

August 5, 2014

The Honorable Darrell Issa
Chairman
Committee on Oversight and
Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Thomas R. Carper
Chairman
Homeland Security and
Governmental Affairs Committee
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and
Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Tom Coburn
Ranking Member
Homeland Security and
Governmental Affairs Committee
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairmen and Ranking Members:

The undersigned federal Inspectors General write regarding the serious limitations on access to records that have recently impeded the work of Inspectors General at the Peace Corps, the Environmental Protection Agency, and the Department of Justice. Each of us strongly supports the principle that an Inspector General must have complete, unfiltered, and timely access to all information and materials available to the agency that relate to that Inspector General's oversight activities, without unreasonable administrative burdens. The importance of this principle, which was codified by Congress in Section 6(a)(1) of the *Inspector General Act of 1978*, as amended (the IG Act), cannot be overstated. Refusing, restricting, or delaying an Inspector General's access to documents leads to incomplete, inaccurate, or significantly delayed findings or recommendations, which in turn may prevent the agency from promptly correcting serious problems and deprive Congress of timely information regarding the agency's performance.

We have learned that the Inspectors General for the Peace Corps, the Environmental Protection Agency (in his role as Inspector General for the Chemical Safety and Hazard Investigation Board) and the Department of Justice have recently faced restrictions on their access to certain records available to their agencies that were needed to perform their oversight work in critical areas. In each of these instances, we understand that lawyers in these agencies construed other statutes and law applicable to privilege in a manner that would override the express authorization contained in the IG Act. These restrictive readings of the IG Act represent potentially serious challenges to the authority of every Inspector General and our ability to conduct our work thoroughly, independently, and in a timely manner.

In the Peace Corps example, the Peace Corps General Counsel interpreted the Kate Puzey Peace Corps Volunteer Protection Act of 2011, which, among other things, provided an extensive oversight role for the Peace Corps Office of Inspector General (Peace Corps OIG) in examining the Peace Corps' handling of reports of sexual assault against Peace Corps volunteers, as prohibiting the agency from giving access to records clearly authorized under the IG Act. While the Peace Corps has entered into a Memorandum of Understanding with its OIG granting access to a greater amount of information than initially provided, the agency still refuses to provide its OIG with full access to sexual assault records. The Department of Justice Office of the Inspector General (DOJ OIG) had essential records withheld by agency components in three different reviews due to a cramped reading of the IG Act by agency lawyers, despite the fact that such records had been produced to the DOJ OIG by the agency in many prior reviews without objection. While Department of Justice leadership ultimately granted permission for these particular records to be made available to the DOJ OIG, it did so based on a finding that the three reviews were of assistance to the Department of Justice's leadership, not because of the DOJ OIG's independent authority under the IG Act, thereby undermining the DOJ OIG's independence. Issues such as these are likely to recur unless agencies recognize the authority of Inspectors General under Section 6(a)(1) to access all agency records.

With respect to the Environmental Protection Agency Office of Inspector General (EPA OIG), the Chemical Safety and Hazard Investigation Board (CSB) refused to provide requested documents relating to an EPA OIG investigation, arguing that attorney-client privilege defeated the statutorily mandated Inspector General access. While valid privilege claims might in certain circumstances appropriately limit the EPA OIG's subsequent and further release of documents, a claim of privilege provides no basis to withhold documents from the EPA OIG in the first instance. Unable to obtain access to these CSB documents, the EPA OIG ultimately filed a "Seven Day Letter" under Section 5(d) of the IG Act in September 2013, noting and objecting to the interference and seeking Congressional assistance. On June 18, 2014, the House Oversight and Government Reform Committee held a hearing that addressed the EPA Seven Day Letter along with related issues.

Moreover, the issues facing the DOJ OIG, the EPA OIG, and the Peace Corps OIG are not unique. Other Inspectors General have, from time to time, faced similar obstacles to their work, whether on a claim that some other law or principle trumped the clear mandate of the IG Act or by the agency's imposition of unnecessarily burdensome administrative conditions on access. Even when we are ultimately able to resolve these issues with senior agency leadership, the process is often lengthy, delays our work, and diverts time and attention from substantive oversight activities. This plainly is not what Congress intended when it passed the IG Act.

The Honorable Thomas R. Carper
The Honorable Darrell Issa
The Honorable Tom Coburn
The Honorable Elijah Cummings
August 5, 2014

This nation's 35 years of experience since the IG Act was passed has demonstrated that effective and independent oversight by Inspectors General saves taxpayers money and improves the operations of the federal government. Because meaningful oversight depends on complete and timely access to all agency materials and data, Section 6(a)(1) of the IG Act expressly provides for such access. Agency actions that limit, condition, or delay access thus have profoundly negative consequences for our work: they make us less effective, encourage other agencies to take similar actions in the future, and erode the morale of the dedicated professionals that make up our staffs.

Therefore, we strongly and unequivocally support our fellow Inspectors General at the Peace Corps, the Environmental Protection Agency, and the Department of Justice in their efforts to gain access to documents that are available to their agencies and that relate to their ongoing investigations and reviews, without undue administrative burdens and delays. Limiting access in this manner is inconsistent with the IG Act, at odds with the independence of Inspectors General, and risks leaving the agencies insulated from scrutiny and unacceptably vulnerable to mismanagement and misconduct – the very problems that our offices were established to review and that the American people expect us to be able to address.

Section 6(a)(1) of the IG Act reflects the clear intent of Congress that an Inspector General is entitled to timely and unimpeded access to *all* records available to an agency that relate to that Inspector General's oversight activities. The constricted interpretations of Section 6(a)(1) by these and other agencies conflict with the actual language and Congressional intent. The IG Act is clear: no law restricting access to records applies to Inspectors General unless that law expressly so states, and that unrestricted access extends to all records available to the agency, regardless of location or form. The Senate Committee on Appropriations, Subcommittee on Commerce, Justice, and Science, so recognized in Section 217 of S. 2437 regarding access to records by the DOJ OIG. A strong, generally applicable reaffirmation of this Congressional intent, coupled with the use of all available powers to enforce such access when agencies refuse to comply, will assist Inspectors General in obtaining prompt and complete agency cooperation.

Respectfully,

Michael G. Carroll, Acting Inspector General,
Agency for International Development
Hubert Sparks, Inspector General,
Appalachian Regional Commission
Kevin Mulshine, Inspector General,
Architect of the Capitol

The Honorable Thomas R. Carper
The Honorable Darrell Issa
The Honorable Tom Coburn
The Honorable Elijah Cummings
August 5, 2014

The Honorable Todd J. Zinser, Inspector General,
Department of Commerce
The Honorable Deborah Jeffrey, Inspector General,
Corporation for National and Community Service
Mary Mitchelson, Inspector General,
Corporation for Public Broadcasting
Kristi M. Waschull, Inspector General
Defense Intelligence Agency
David Sheppard, Acting Inspector General,
The Denali Commission
The Honorable Arthur A. Elkins, Jr., Inspector General,
Environmental Protection Agency
Milton Mayo, Inspector General,
Equal Employment Opportunity Commission
Michael T. McCarthy, Acting Inspector General,
Export-Import Bank of the United States
Elizabeth Dean, Inspector General,
Farm Credit Administration
Michael P. Stephens, Acting Inspector General,
Federal Housing Finance Agency
Dana Rooney-Fisher, Inspector General,
Federal Labor Relations Authority
Jon Hatfield, Inspector General
Federal Maritime Commission
Kelly Tshibaka, Acting Inspector General,
Federal Trade Commission
The Honorable John Roth, Inspector General,
Department of Homeland Security
The Honorable David A. Montoya, Inspector General,
Department of Housing and Urban Development
The Honorable Michael E. Horowitz, Inspector General,
Department of Justice
The Honorable Scott Dahl, Inspector General,
Department of Labor
Jeffrey E. Schanz, Inspector General
Legal Services Corporation
The Honorable Paul K. Martin, Inspector General
National Aeronautics and Space Administration
James Springs, Acting Inspector General,
National Archives and Records Administration

The Honorable Thomas R. Carper
The Honorable Darrell Issa
The Honorable Tom Coburn
The Honorable Elijah Cummings
August 5, 2014

Jim Hagen, Inspector General
National Credit Union Administration
Tonie Jones, Inspector General,
National Endowment for the Arts
Laura Davis, Inspector General,
National Endowment for the Humanities
Dawn R. Eilenberger, Inspector General,
National Geospatial-Intelligence Agency
David Berry, Inspector General,
National Labor Relations Board
Adam G. Harris, Inspector General,
National Reconnaissance Office
Allison Lerner, Inspector General,
National Science Foundation
Dr. George Ellard, Inspector General,
National Security Agency
The Honorable Hubert T. Bell, Inspector General,
Nuclear Regulatory Commission
The Honorable I. Charles McCullough, III, Inspector
General, Office of the Inspector General of the
Intelligence Community
The Honorable Patrick E. McFarland, Inspector General
Office of Personnel Management
Kathy A. Buller, Inspector General,
Peace Corps
Deborah Stover-Springer, Acting Inspector General,
Pension Benefit Guaranty Corporation
Jack Callender, Inspector General,
Postal Regulatory Commission
David Williams, Inspector General
U.S. Postal Service
The Honorable Martin J. Dickman, Inspector General
Railroad Retirement Board
Carl W. Hoecker, Inspector General
Securities and Exchange Commission
John F. Sopko, Special Inspector General
Special Inspector General for Afghanistan
Reconstruction

The Honorable Thomas R. Carper
The Honorable Darrell Issa
The Honorable Tom Coburn
The Honorable Elijah Cummings
August 5, 2014

The Honorable Christy Romero, Special Inspector General,
Special Inspector General for the Troubled Asset Relief Program
The Honorable Steve A. Linick, Inspector General,
Department of State
The Honorable Richard Moore, Inspector General,
Tennessee Valley Authority
The Honorable Eric M. Thorson, Inspector General,
Department of the Treasury
The Honorable J. Russell George, Inspector General,
Treasury Inspector General for Tax Administration
Richard J. Griffin, Acting Inspector General,
Department of Veterans Affairs

cc: The Honorable Beth Cobert
Deputy Director for Management
Office of Management and Budget

The Honorable Carrie Hessler-Radelet
Director, Peace Corps

The Honorable Eric H. Holder, Jr.
Attorney General

The Honorable David Mader
Controller, Office of Management and Budget

The Honorable Rafael Moure-Eraso
Chair, Chemical Safety and Hazard Investigation Board

The Honorable Barbara Boxer
Chair, Senate Environment and Public Works Committee

The Honorable Ken Calvert
Chair, House Subcommittee on Interior, Environment, and
Related Agencies of the House Committee on Appropriations

The Honorable John Conyers, Jr.
Ranking Member, House Committee on the Judiciary

The Honorable Thomas R. Carper
The Honorable Darrell Issa
The Honorable Tom Coburn
The Honorable Elijah Cummings
August 5, 2014

The Honorable Bob Corker
Ranking Member, Senate Committee on Foreign Relations

The Honorable Eliot L. Engel
Ranking Member, House Committee on Foreign Affairs

The Honorable Chaka Fattah
Ranking Member, House Subcommittee on Commerce, Justice, Science, and Related Agencies of the House Committee on Appropriations

The Honorable Bob Goodlatte
Chair, House Committee on the Judiciary

The Honorable Lindsay Graham
Ranking Member, Senate Subcommittee on State, Foreign Operations, and Related Programs of the Senate Committee on Appropriations

The Honorable Kay Granger
Chair, House Subcommittee on State, Foreign Operations, and Related Programs of the House Committee on Appropriations

The Honorable Charles E. Grassley
Ranking Member, Senate Committee on the Judiciary

The Honorable Patrick Leahy
Chair, Senate Committee on the Judiciary
Chair, Senate Subcommittee on State, Foreign Operations, and Related Programs of the Senate Committee on Appropriations

The Honorable Nita Lowey
Ranking Member, House Subcommittee on State, Foreign Operations, and Related Programs of the House Committee on Appropriations

The Honorable Robert Menendez
Chair, Senate Committee on Foreign Relations

The Honorable Barbara Mikulski
Chair, Senate Subcommittee on Commerce, Justice, Science, and Related Agencies of the Senate Committee on Appropriations

The Honorable Thomas R. Carper
The Honorable Darrell Issa
The Honorable Tom Coburn
The Honorable Elijah Cummings
August 5, 2014

The Honorable Jim Moran
Ranking Member, House Subcommittee on Interior, Environment, and Related Agencies of the House Committee on Appropriations

The Honorable Lisa Murkowski
Ranking Member, Senate Subcommittee on Interior, Environment, and Related Agencies of the Senate Committee on Appropriations

The Honorable Jack Reed
Chair, Senate Subcommittee on Interior, Environment, and Related Agencies of the Senate Committee on Appropriations

The Honorable Edward R. Royce
Chair, House Committee on Foreign Affairs

The Honorable Richard C. Shelby
Vice Chair, Senate Subcommittee on Commerce, Justice, Science, and Related Agencies of the Senate Committee on Appropriations

The Honorable Fred Upton
Chair, House Energy and Commerce Committee

The Honorable David Vitter
Ranking Member, Senate Environment and Public Works Committee

The Honorable Henry Waxman
Ranking Member, House Energy and Commerce Committee

The Honorable Frank Wolf
Chair, House Subcommittee on Commerce, Justice, Science, and Related Agencies of the House Committee on Appropriations

Congress of the United States
Washington, DC 20510

August 8, 2014

Shaun L. Donovan
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Donovan:

We write to express our grave concern about difficulties that certain Inspectors General (IG) have encountered in trying to obtain documents from their respective agencies. Timely and complete access to information is essential if Inspectors General are to perform their missions, and their rights to information are clearly provided for in the Inspector General Act of 1978. We call on you to underscore this important fact and enlist your office to help ensure that agencies comply.

Earlier this week, we received a letter signed by 47 of the federal IGs raising serious concerns about difficulties some have faced receiving documents needed for their work. In particular, the letter (attached) details problems encountered by the respective Inspectors General for the Environmental Protection Agency, the Justice Department and the Peace Corps. This is not the first we have heard of these problems. Our offices have already spent time working with the affected IGs in an effort to try and help them gain the needed information. Indeed, Chairman Issa and Ranking Member Cummings examined some of these concerns during hearings before the House Committee on Oversight and Government Reform this year.

As the letter reflects, the affected IGs have gained access to some of the disputed material. Yet this progress occurred only after significant time and effort by numerous parties.

Under the Inspector General Act, IGs are broadly empowered to undertake whatever investigations or reports they consider "necessary or desirable."[1] In support of this function, Section 6(a)(1) of the Act clearly states that IGs shall "have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act."

We are pleased to note that in the majority of cases, IGs do receive requested information without undue argument or delay. But these recent conflicts raise concerns about agencies' interpretations of the Inspector General Act with respect to access. In most cases, IG access to requested materials should be beyond question. When conflict arises between an agency and an

[1] 5 U.S.C. app3, §6(a)(2).

Inspector General, agencies should engage quickly and proactively with the affected Inspector General to try to resolve any possible conflicts in a manner that allows the Inspector General to do his or her work.

We trust that you share our commitment to the mission and effectiveness of the Inspectors General, and ask that you take affirmative steps to ensure that all agencies and their staffs are properly informed and trained on the requirements of the Inspectors General Act so that IGs receive the information they need to do their jobs.

With best personal regards, we are

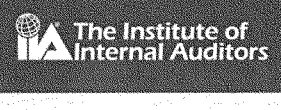
Sincerely yours,

Thomas R. Carper
Chairman

Tom A. Coburn, M.D.
Ranking Member

Darrell Issa
Chairman
Committee on Oversight
and Government Reform

Elijah E. Cummings
Ranking Member
Committee on Oversight
and Government Reform



Statement of

The Institute of Internal Auditors

House Oversight and Government Reform Committee

"Obstructing Oversight: Concerns from Inspectors General"

Chairman Issa, Ranking Member Cummings and members of the Committee:

The Institute of Internal Auditors (IIA) is pleased to submit this statement for the record in connection with this important hearing on obstruction of Inspectors General.

The IIA is the internal audit profession's global voice, acknowledged leader, chief advocate, and principal educator. As the profession's recognized authority, The IIA actively supports the statutory independence of the nation's Inspectors General as granted by the Inspector General Act of 1978. We appreciate the opportunity to provide Congress with our perspective on the alarming resistance by certain government agencies to granting access to records necessary for the IGs to carry out their mandates.

At a time when Americans are demanding greater accountability from leaders in the public and private sectors, we are profoundly concerned that the one office charged with holding our elected and appointed federal officials accountable is being handcuffed in its ability to do its job.

Clashes with the Department of Justice, Peace Corps, and Environmental Protection Agency outlined in the August 5 letter from 47 Inspectors General are rooted in claims that issues of privilege or other legal protections somehow trump the expressed authorization in the Inspector General Act. The IIA finds this particularly troubling.

Access to information is a cornerstone of effective internal auditing and one of the principle guarantors of independence. Withholding access to information is anathema to the public accountability envisioned by the framers of the IG Act. Since its passage 36 years ago, the nation's Inspectors General have proved their value time and again uncovering waste, abuse, and wrongdoing – while saving taxpayers untold millions of dollars.

Any effort to circumvent or block an IG's investigative process should be challenged by all who seek accountability from our government. I was fortunate during my tenure as Inspector General of the Tennessee Valley Authority and Deputy Inspector General of the U.S. Postal Service to have boards that understood the important role of IGs. They conveyed zero tolerance policy for any management interference with our work. However, in more than 25 years as an auditor in the U.S. government, I still encountered many instances in which officials tried to block access to records, provided misleading information, or delayed the release of audit reports containing bad news.

I am encouraged to see bipartisan support for the Inspectors General in their call for access, particularly from leaders of this committee and from the Senate Homeland Security and Government Affairs Committee. Allowing any agency to block access to information based on competing legal protections would not only severely limit IG investigations, it would create the proverbial slippery slope toward erosion of IGs' legislative and statutory authority.

The IIA stands ready to assist Congress in helping to educate officials and staff at all levels of government to understand the importance of maintaining IGs' unfettered access to information and the absolute need for independence.

Established in 1941, The IIA is the recognized world leader in certification, education, research, standards and guidance for the internal audit profession. It is dedicated to supporting quality, professional, and ethical practices across all industries, as well as public enterprises. The IIA includes thousands of IG and other public-sector employees among its more than 60,000 members in the United States and more than 180,000 members worldwide.

As the profession's global standard-setting body, The IIA stands firmly behind the IGs' efforts for complete and unrestricted access to information they deem necessary to fulfilling their tasks. Anything less than full support of the IGs by Congress and the President would set a perilous precedent, undermining decades of effective oversight and the public's ability to hold our government officials accountable.

Submitted by: Richard F. Chambers, CIA, QIAL, CGAP, CCSA, CRMA
President and Chief Executive Officer