

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.

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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.

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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