

**Congress of the United States**  
**Washington, DC 20515**

November 21, 2013

The Honorable Rafael Moure-Eraso  
Chairman  
U.S. Chemical Safety Board  
2175 K Street, NW, Suite 400  
Washington, D.C. 20037-1809

Dear Dr. Moure-Eraso:

The Committee on Oversight and Government Reform and the Committee on Science, Space, and Technology are investigating allegations that the U.S. Office of Special Counsel (OSC) improperly revealed the identity of a whistleblower to an official at the U.S. Chemical Safety Board (CSB). Because OSC is bound by law to maintain the confidentiality of information it receives, the disclosure of a whistleblower's identity to an agency is a critical matter that requires further inquiry.<sup>1</sup>

According to information obtained by the Committees, CSB's General Counsel, Richard Loeb, has a close personal relationship with a senior OSC attorney. As a result of this relationship, OSC has allegedly failed to investigate various complaints against CSB officials. If these allegations are true, there are serious questions about whether OSC has properly investigated the Board's personnel practices.

The EPA Office of Inspector General (OIG) is investigating the leak of the CSB whistleblower's identity. During a briefing to the Oversight Committee, the EPA OIG informed Committee staff that CSB is obstructing the investigation by withholding documents that it claims are subject to attorney-client privilege.<sup>2</sup> According to the OIG, the documents that are being withheld would reveal who at OSC disclosed the identity of the whistleblower to the CSB. The CSB claims these documents are protected by attorney-client privilege. Lawyers in the Board's Office of General Counsel claim that if the Board turns over these documents to the OIG, the Board would waive the attorney-client privilege with regard to the documents, thereby allowing third-party complainants to obtain the documents in litigation. This position is not supported by case law and is contrary to the intent of Congress. Congress included a provision in the Inspector General Act of 1978 to guarantee that all IGs have complete and unfettered access to documents and information.<sup>3</sup> That language is clear and unambiguous. Section 6 of the IG Act states that each IG is authorized:

[T]o 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; [and] to

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<sup>1</sup> 5 U.S.C. § 1213 (h).

<sup>2</sup> Briefing by Staff, Office of Inspector Gen., EPA, to Committee Staff (Sept. 18, 2013).

<sup>3</sup> Pub. L. No. 95-452, 92 Stat. 1101 (Oct. 12, 1978) (codified as amended at 5 U.S.C. App.), § 6(a)(1),(4).

require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of the functions assigned by this Act . . . .<sup>4</sup>

The CSB's failure to produce the relevant documents and information prompted the OIG to issue a seven-day letter, which, as you know, is extremely serious. Section 5(d) of the Inspector General Act requires the inspectors general to report particularly flagrant problems to Congress through the agency head within seven days via what has become known as a "seven-day letter."<sup>5</sup> The seven-day letter has been used sparingly.<sup>6</sup> It has become a tool of last resort.<sup>7</sup> In this case, it appears that EPA Inspector General Arthur A. Elkins Jr. was left with no alternative. If an agency claims attorney-client privilege in order to withhold documents from its inspector general, the intent of Congress in creating the IGs—to root out waste, fraud, and abuse in the federal government—can be easily undermined.

The OIG plays a vital role in preventing waste, fraud, and abuse, and also provides Congress with invaluable information. Withholding documents from the OIG cannot be tolerated.

Accordingly, we request that you produce to the Committees the following documents and communications in unredacted form, covering the time period from June 1, 2010, to the present, as soon as possible, but by no later than noon on December 6, 2013:

1. All documents and communications, including e-mails, between and among CSB and the OSC employees regarding CSB whistleblower complaints;
2. All documents and communications, including e-mails, between and among Richard Loeb, CSB General Counsel, and OSC employees; and
3. All documents and communications, including e-mails, between and among CSB employees relating to whistleblowers and complaints or allegations filed with OSC.

Please also address what steps, if any, the CSB is taking to ensure that whistleblowers will not suffer retaliation as a result of this or any other complaint.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

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<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. App. § 5(d).

<sup>6</sup> GAO-11-770, *Inspectors General: Reporting on Independence, Effectiveness, and Expertise* (Sept. 2011), at 8-9. In September 2011, GAO reported that only one of 62 IGs surveyed had used the 7-day letter at any time during fiscal years 2008, 2009, and 2010. In 1999, GAO reported that none of the IGs had used the 7-day letter during the period from January 1990 through April 1998.

<sup>7</sup> *Id.*

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House Rule X assigns the Committee on Science, Space, and Technology special oversight responsibility for “reviewing and studying, on a continuing basis, all laws, programs, and Government activities dealing with or involving non-military research and development” to search for waste, fraud, abuse and mismanagement.

When producing documents to the Committees, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. Also, deliver two sets of documents to the Committee on Science, Space, and Technology in Room 2321 of the Rayburn House Office Building. The Committees prefer, if possible, to receive all documents in electronic format.

If you have any questions about these requests, please contact Ashley Callen of the Oversight Committee at (202) 225-5074, or Raj Bharwani of the Science Committee staff at (202) 225-6371. Thank you for your prompt attention to this important matter.

Sincerely,



Darrell Issa  
Chairman  
Committee on Oversight  
and Government Reform



Lamar Smith  
Chairman  
Committee on Science, Space,  
and Technology

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member  
Committee on Oversight and Government Reform

The Honorable Eddie Bernice Johnson, Ranking Minority Member  
Committee on Science, Space, and Technology

ONE HUNDRED THIRTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Majority (202) 225-5074

Minority (202) 225-5051

### Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,  
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,  
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Schedule Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.