

INSPECTORS GENERAL: INDEPENDENCE, ACCESS AND AUTHORITY

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

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INSPECTORS GENERAL: INDEPENDENCE, ACCESS AND AUTHORITY

Tuesday, February 3, 2015

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

The committee met, pursuant to notice, at 10:17 a.m. in Room 2154, Rayburn House Office Building, Hon. Jason Chaffetz (chairman of the committee) presiding.

Present: Representatives Chaffetz, Mica, Jordan, Walberg, Amash, Gosar, DesJarlais, Gowdy, Farenthold, Lummis, Massie, Meadows, DeSantis, Mulvaney, Buck, Walker, Hice, Russell, Carter, Grothman, Hurd, Palmer, Cummings, Maloney, Norton, Clay, Lynch, Cooper, Connolly, Cartwright, Kelly, Lawrence, Lieu, Watson Coleman, Plaskett, DeSaulnier, and Boyle.

Chairman CHAFFETZ. Good morning. The Committee on Oversight and Government Reform will come to order. Without objection, the chair is authorized to declare a recess at any time.

Inspectors General serve the American taxpayers as the first line of defense against waste, fraud and abuse by government agencies, and to that end, Congress has given them unfettered access to agency records. The Inspector General Act in Section 6(a) says clearly, “is authorized to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material.” The Act directs all records be made and be given to the IGs.

We appreciate you being here. Thank you very much.

I'd like to yield part of my time here to the gentleman from North Carolina, Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman. And thank each of you for being here. Obviously every day, some 13,000 employees that work with each one of you go to work to protect the American taxpayer. Really they're the first line of defense when American taxpayers feel like they are not getting treated fairly, and that's what this is about, being treated fairly; the IGs and the 13,000 people that work with them are there. The chairman said it well. This is about all records and making sure that all records are available to you to do the work that is so important to the American taxpayer. Yet we find that, I guess, last August that 47 Inspectors General signed saying that they're not getting all the documents to do the work that you need to do.

We had a hearing, and again today we have another hearing, because we have not had the progress that we should have seen. And so I look forward to hearing from each one of you how we can make it any more clear that the Inspectors General need to be able to

do their job, it needs to be done without relationship to—whether it is Democrat, Republican or unaffiliated, it needs to be done on behalf of the American taxpayer. And I thank the chairman for making this our first official hearing. And I yield back.

Chairman CHAFFETZ. I thank the gentleman.

I want to thank the men and women who serve in these various offices and agencies. There's more than 13,000 people who go to work every day. They're supposed to be able to access all the documents without exception. There aren't exceptions. The law is crystal clear. They serve as watchdogs, they serve as impartial people who go and look at these documents to figure out what is truly happening and look under the hood. They're essentially the internal auditors. We count on them and rely on them. If the Inspectors General can't do their job, we can't do our job, and this is why it is imperative and this is why I'm proud to have this as my first hearing as chairman of this committee.

Nothing is supposed to be off limits. The committee needs to send a strong message we support these hardworking men and women to access the information they need to fulfill their mission of holding government accountable.

Now, before I end, I want to address a letter that Ranking Member Cummings sent to me this past Friday. I appreciate him sending it to me. It was done in the right spirit. I'm going to work with him and cooperate with him, and I appreciate that. The letter that Mr. Cummings sent to me says that we—and requests that we sit down with the EPA, the EPA inspector general and the FBI to broker a resolution in a dispute between the three entities.

Again, I appreciate that invitation, I'm happy to be part of that meeting. But the letter that was given to me really drives home the point. The EPA inspector general should not have to lean on a Member of Congress to broker a deal to try to negotiate what kind of documents we need to get. The Act is crystal clear. We are going to go over that today.

And as I conclude here, I'd like to enter into the record—I'd ask unanimous consent to enter into the record August 5th, August 5th of 2014, 47 of the 72 Inspectors General sent a letter, and this issue has not been resolved. I ask that this be inserted into the record, as well as a letter that was brought today by Mr. Horowitz. It is dated February 3rd, 2015. Mr. Horowitz, as you give your opening Statement, and we'll give you a little extra latitude, if you could perhaps describe in your own words this letter that you delivered to us here in Congress today. And I'd also ask unanimous consent that the letter of January 30th, 2015, from Mr. Cummings to myself also be entered into the record. Without objection, so ordered.

Chairman CHAFFETZ. With that, I yield back my time and recognize the ranking member, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman, and I want to thank you for holding this hearing today. I want to thank all of our Inspector Generals and I want to thank the people that work with you for what you do every day.

Our Inspector Generals do a phenomenal job on behalf of the American people, they make our government work more effectively and efficiently, and they save billions of taxpayer dollars. So I'm

glad we are kicking off our committee's first hearing of the 114th Congress on this very critical issue.

I welcome all the IGs who are here today, including those in the audience and those testifying. Inspector general Buller from the Peace Corps, inspector general Elkins from the Environmental Protection Agency, and inspector general Horowitz from the Department of Justice.

Mr. Horowitz, I also want to congratulate you on your new post as the chairman of the Council of the Inspectors General on Integrity and Efficiency. It is an honor to have all of you here today.

You have no greater supporter in the Congress than me. The work you do is very critical, not only to Federal agencies, but to this committee. We rely on you for your investigations, your audits, and recommendations and advice. Your work can be very, very challenging. You are agency employees, but your job is to root out waste, fraud and abuse in these agencies. You stand apart. And in order to fulfill your obligations under the Inspector General Act, you need to be independent and you need access to information.

So I understand your frustration when you are not getting the documents you request. I empathize with you when agencies cite various other Federal statutes with competing interests and the system seems to slow to a crawl. You are just trying simply to do your jobs, and without information, it is extremely difficult to do so.

I do not want to downplay the interests of the agencies either; very, very important. They are sometimes put in very difficult positions. Congress orders them to protect information from unauthorized disclosure, and we are not always clear about whether that includes IGs too. For example, after reports of Peace Corps volunteers being sexually assaulted, Congress passed the Kate Puzey Act to protect whistleblowers and help these victims. Based on the law, the Peace Corps withheld the names of victims as well as specific details about their sexual attacks, while the IG wanted access to this information under the IG Act. Working together, they developed a MOU that fulfills both goals. It allows the agency to protect the information, and it establishes a process for the IG to gain access to this information in certain cases. The MOU is not ideal and it is frustrating that the IG even had to sign one. But the fact is that the IG is now getting access to the information it needs to do its job. That's real. That's happening.

Personally, I have always believed that the best course is to try to help the parties resolve these competing statutory interpretations if possible. I believe that it is preferable to coming back to Congress and seeking a change in the law. This is not easy and it sometimes takes hard work, but that is exactly what I have directed my staff to do. We could sit on the sidelines and do nothing, or we could get into the effort and try to make things work.

For example, at our last hearing in September, we heard about a similar disagreement between the EPA and the IG about Federal statutes governing Homeland Security-related investigations. The IG wanted access to this information under the IG Act, while the EPA cited other statutes that they believed required them to work through the FBI. On that issue, my staff worked for many months,

meeting with each party to address their concerns, and I believe that we are now very, very, very close to a resolution.

The leaders of these offices all seem to have an agreement in principle, but the FBI senior leadership field officers and agents need to fully commit. Last Friday I wrote to the chairman, and he referenced that letter, requesting that we call these agencies as soon as this week to get us past the finish line, and I sincerely hope we can do it.

Of course, on some occasions, we have to draw lines. At the Department of Justice, for example, the IG has waited for months for the Office of Legal Counsel to render an opinion on statutes governing their document dispute with the IG over grand jury and other sensitive investigative information. To the agency's credit, they said they would support a legislative fix if necessary, but this ongoing delay is simply unacceptable. We need a resolution and we need a resolution soon.

Finally, in some cases, it may not be possible to salvage a workable outcome. For example, Representative Henry Waxman, who served previously as the ranking member of the Energy and Commerce Committee, worked very hard to try to address management deficiencies at the Chemical Safety Board. Although he made a number of very sensible recommendations, we heard at our hearing last September that the CSB chairman failed to adequately address these problems, and in fact, had created a dysfunctional work environment.

Mr. Chairman, I want to thank you once again for holding this hearing. I want to thank you also for agreeing to sit down with me and other—these IGs from the three agencies to see what we can work out, but again, I agree with you, we have to find solutions to this problem so that that does not have to happen over and over again. But, again, I thank you, and I yield back.

Chairman CHAFFETZ. I thank the gentleman. Thank you.

I will hold the record open for 5 legislative days for any members who'd like to submit a written Statement.

Prior to my recognizing our three panelists today, we have a number of people in the audience who either serve as an inspector general or work for one of the Inspectors General. I'd actually ask you to rise. I'd like to recognize you and, A, thank you for your service, and just understand your support and your being here today. If you wouldn't mind standing for a moment, I'd appreciate it. Thank you for being here.

[applause.]

Chairman CHAFFETZ. We thank you for your service, we thank you for your commitment to this Nation, and we are trying to hold this hearing so that you can better do your job and get back to work and do the things that you need to do and have access to the records that we believe under the law you should be able to have without question.

We are now going to recognize our panel of witnesses. The first is the Honorable Michael E. Horowitz, who's the inspector general of the United States Department of Justice. He also is the new chairman of the Council of Inspectors General on Integrity and Efficiency, often referred to as CIGIE. The Honorable Arthur A. Elkins, Jr. is inspector general of the United States Environmental

Protection Agency; and Ms. Kathy Buller—close enough? I want to get it right, sorry—is inspector general of the United States Peace Corps.

These three people have testified before this committee previously, and we welcome you all, but pursuant to committee rules, all witnesses will be sworn in before they testify, so if you would please rise and raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Thank you. Let the record reflect that all witnesses answered in the affirmative.

We are going to allocate 5 minutes for each of your opening Statements. We'll be pretty liberal in that policy. And I've asked Mr. Horowitz, who brought a letter today that he had sent to Members of Congress, if you could take a few extra moments or minutes and explain in your own words that letter as well—it should be on each member's desk—I would appreciate that. So we'll now recognize Mr. Horowitz.

WITNESS STATEMENTS

STATEMENT OF HON. MICHAEL E. HOROWITZ

Mr. HOROWITZ. Thank you, Mr. Chairman, Congressman Cummings, members of the committee. Thank you for having me testify here today and thank you for the strong bipartisan support of this committee as we've discussed these issues.

I wish I could report to you that since we last appeared before the committee, that the concerns identified in the letter signed by 47 Inspectors General have been resolved. Unfortunately, they have not.

My office continues to face challenges in getting timely access to information. For example, the FBI still maintains that the Inspector General Act does not entitle us to access certain records in the FBI's possession, such as grand jury, Title III electronic surveillance, and Fair Credit Reporting Act information, because of disclosure limitations in statutes other than the IG Act.

In May 2014, in an attempt to resolve this dispute, the Department's leadership referred the matter to the Office of Legal Counsel. However, 8 months later, we are still waiting for that opinion. I cannot emphasize strongly enough how important it is that OLC issue its opinion promptly, because the existing procedures at the Department undermines our independence and puts in place a process that essentially is consistent with the FBI's legal position. The status quo cannot continue indefinitely.

We appreciate, as I said, the strong bipartisan support from this committee and the Congress. Most significantly, in December 2014, a provision included in the Appropriations Act, Section 218, prohibits the Justice Department from using appropriated funds to deny my office timely access to records in its possession unless in accordance with an express limitation of Section 6(a) of the IG Act. While the only—while the law only recently went into effect, it is clear that the Department has taken notice of it and it has had positive impact. However, despite that action, the FBI continues to maintain its legal position. As a result, the FBI is continuing its

costly and time-consuming process of reviewing documents responsive to our requests prior to producing them to us in order for them to determine whether we are entitled to receive them.

Our reviews have been impacted by the FBI's process, and that production has delayed our work, including on whistleblower retaliation investigations, which we are charged to undertake and review.

As we are—as we are directed in Section 218, today the—our office provided the Appropriations Committee with a letter and cc'd our oversight committees, including this committee, regarding two whistleblower matters where we have not obtained timely production to those records, and I'll describe that letter in a moment.

It is long past time to resolve this legal dispute. The FBI's position contradicts the plain language of the IG Act, Congress's clear intent when it created our office, the FBI's and the Department's practice prior to 2010 of providing the very same categories of information to our office without any legal objection, court decisions by two different Federal district judges stating that our office could receive grand jury material, and the reasoning of a 1984 decision by the Office of Legal Counsel concluding that grand jury material could be provided to the Department's Office of Professional Responsibility. We remain hopeful that the OLC opinion will conclude that the IG Act entitles my office to access all records in the Department's possession. However, should the OLC should decide otherwise, I would be pleased to work with the committee to develop an appropriate legislative remedy.

Let me briefly mention other areas where I think the ability of Inspectors General to conduct strong and effective oversight could be enhanced. One such area is the capacity of Inspectors General to obtain testimony from former agency employees, contractors, and grant recipients. While the IG Act empowers us to subpoena records from those individuals, we cannot require them to testify even if they have critical evidence. While I believe any such authority should include protections to ensure that it is used appropriately and only when necessary and does not inadvertently impair Justice Department prosecutions, I'm confident such protections can be developed while also empowering Inspectors General to carry out their responsibilities.

Another area where strong and effective inspector general oversight could be enhanced is by enabling us to more efficiently obtain and match readily available information in furtherance of our efforts to combat fraud and misconduct. This information currently exists, it does not require any further collection of information, and Inspectors General in each agency already have access to it or are entitled to access it. The timely use of such data will better enable Inspectors General to identify those who improperly receive Federal assistance, Federal grants or contracts, or duplicative payments. In my view, exempting all Inspectors General from limitations in the Computer Matching Act would greatly assist our ability to ensure that Federal programs are effective and efficient, without undermining the purposes of that law.

Finally, I'm aware of concerns that have been raised relating to the CIGIE integrity committee, including with respect to the timeliness of its work and the transparency of its efforts. One of my

first meetings as chair of the CIGIE was with the assistant director of the FBI, who chairs the integrity committee in order to discuss ways to address these issues. OIGs must maintain the highest levels of accountability and integrity, and as the new chair of CIGIE, I will make it a top priority to improve the procedures of the integrity committee.

I look forward, as I said, to working with the committee on these issues. And that concludes my prepared Statement. Let me turn, then, briefly, if I could, to the letter that we sent this morning, and this relates to Section 218. And as I mentioned in the prepared Statement which I had provided to the committee yesterday morning, we have had looming deadlines with the FBI. One of them for production was yesterday. The FBI informed us—and this regards two whistleblower retaliation investigations that we are undertaking. The FBI had made partial productions, they had not made complete productions, they informed us that they needed more time beyond yesterday to produce the remaining materials, they needed until the end of this week in one matter, until the end of next week on the other matter, and that they needed that time for purposes of reviewing the records to determine whether we were entitled to access to them or, in their legal opinion, not, based on restrictions in other statutes, in which case they would then have had to go and would have to go to the Deputy Attorney General or the Attorney General for approval to provide them to us.

We discussed this matter. I had conversations until last night with the Department about trying to get the information pursuant to yesterday's deadline. The FBI believes it needs to continue that process because of its legal views, and as a result, the deadline passed last night.

And pursuant to the Act, it is on the Inspector General's office to report those matters to the Appropriations Committee, and that is why we sent the letter. And regardless of the fact that, in our view, they needed this week and the following week, the purpose of the—of the need for that extension was precisely what Congress in Section 218 said was not permissible.

Chairman CHAFFETZ. I thank the gentleman.

[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

"Inspectors General: Independence, Access and Authority"

February 3, 2015

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

Thank you for inviting me to testify regarding the continued challenges to the independence, access, and authority of Inspectors General. During my nearly three years as the Inspector General of the Department of Justice (DOJ OIG), I have faced several challenges in these areas. Among the most serious is the continued refusal by the Department to recognize that Section 6(a) of the Inspector General Act authorizes the DOJ OIG to obtain access to all records in the Department's possession that we need in order to perform our oversight responsibilities.

In January, I also became the Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), and I am honored to serve the Inspector General community in that position. As DOJ Inspector General and CIGIE Chair, I look forward to working with this Committee to ensure that Inspectors General have the independence and tools they need to do their jobs on behalf of the American people, including making sure they have complete and timely access to agency information that is critical to performing their mission. We appreciate the bipartisan legislation in this area that was proposed by this Committee last year, and we look forward to continuing our work with the Committee to assist you in developing the legislative reforms that will help improve our ability to conduct strong and effective oversight.

Achievements of Inspectors General

Year in and year out, the Inspector General community has demonstrated its ability to root out waste, fraud, abuse, mismanagement, and misconduct through our audits, investigations, inspections, and reviews. Our efforts result in agencies that are more effective and efficient. The foundation for this work is our independence and central to that is our ability to access information that is in the possession of the agencies that we each oversee.

Inspectors General have a track record of delivering measurable and significant benefits to the taxpayers. For example, in FY 2013, the approximately 14,000 employees at the 72 federal Offices of Inspector General (OIG) conducted audits, inspections, evaluations, and investigations resulting in the identification of approximately \$37 billion in potential cost savings and approximately \$14.8 billion from investigative recoveries and receivables. In comparison, the aggregate FY 2013 budget of the 72 federal OIGs was approximately \$2.5 billion, meaning that these potential savings represent about a \$21 return on every dollar invested in the OIGs, in addition to the other valuable guidance we provide in the management of our agencies' operations and programs. And all of this was accomplished during a time of sequestration, when many of us in the Inspector General community, including the DOJ OIG, were faced with significant budget cuts that directly impacted our work. For example, staffing in my office fell by nearly ten percent, which inevitably affected our workflow, and is still below pre-sequestration levels. As we once again face the prospect of sequestration next year, many of us in the Inspector General community are concerned about the potential impact that another period of sharply limited resources could have on our ability to continue to

perform the kind and range of audits, inspections, evaluations, and investigations that are expected of us.

Speaking specifically for my Office, the DOJ OIG also has delivered outstanding value to the taxpayer. In FY 2014, the DOJ OIG identified over \$23 million in questioned costs and nearly \$1.3 million in taxpayer funds that could be put to better use by the Department. And our criminal, civil, and administrative investigations resulted in the imposition or identification of almost \$7 million in fines, restitution, recoveries, and other monetary results last fiscal year. This is in addition to the \$136 million in audit-related findings and over \$51 million in investigative-related findings that the DOJ OIG identified from FY 2009 through FY 2013. These monetary savings and recoveries, however, do not take into account some of our most significant reviews, which cannot be translated into quantifiable dollar savings but which address fundamental issues affecting national security, civil liberties, safety and security at federal prisons, effectiveness of law enforcement programs, and the conduct of Department employees. Examples include our reviews of the FBI's use of its authorities under the Patriot Act and the FISA Amendments Act, the government's information sharing prior to the Boston Marathon bombing, ATF's Operation Fast & Furious, the BOP's management of the compassionate release program, the Department's handling of known or suspected terrorists in the Witness Security Program, the FBI's management of the terrorist watchlist, nepotism by Department personnel, and our investigation of the FBI's corrupt relationship with James "Whitey" Bulger.

In addition, we have taken a number of significant steps during my tenure as DOJ Inspector General to address whistleblower issues, which are critical to ensuring that Department employees are encouraged to report waste, fraud, abuse, and misconduct, and that they can do so without fear of retaliation. The DOJ OIG was instrumental in creating and continues to chair CIGIE's Whistleblower Ombudsmen Working Group. I am proud of the efforts of this CIGIE Working Group and look forward to working with my fellow Inspectors General as CIGIE Chair to continue to move forward on important whistleblower issues.

Challenges Facing Inspectors General

While the Inspector General community has been able to generate impressive results, we face significant issues and challenges. For example, timely access to information in our agency's files remains an important issue and challenge. As I have testified on multiple occasions, in order to conduct effective oversight, an IG must have timely and complete access to documents and materials needed for its audits, reviews, and investigations. This is an issue of utmost importance, as evidenced by the fact that 47 Inspectors General signed a letter in August 2014 to the Congress strongly endorsing the principle of unimpaired Inspector General access to agency records.

The Inspector General Act could not be clearer – Inspectors General are entitled to complete, timely, and unfiltered access to all documents and records within the agency's possession. Delaying or denying access to agency documents

imperils an IG's independence, and impedes our ability to provide the effective and independent oversight that saves taxpayers money and improves the operations of the federal government. Actions that limit, condition, or delay access 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.

My Office knows these problems all too well, and we continue to face challenges in getting timely access to information from Department components. In particular, the FBI continues to take the position it first raised in 2010 that Section 6(a) of the Inspector General Act (IG Act) does not entitle the DOJ OIG to all records in the FBI's possession and therefore has refused DOJ OIG requests for various types of records. As I have indicated in my prior testimony before this Committee, the DOJ OIG and CIGIE strenuously disagree with the FBI's position, which we have both made clear to the Department's leadership.

In May 2014, in an attempt to resolve this dispute, the Department's leadership asked the Office of Legal Counsel to issue an opinion addressing the legal objections raised by the FBI. However, over eight months later, we are still waiting for that opinion even though, in our view, this matter is straightforward and could have been resolved by the Department's leadership without requesting an opinion from OLC. I cannot emphasize enough how important it is that OLC issue its opinion promptly because the existing process at the Department, which as described below essentially assumes the correctness of the FBI's legal position, undermines our independence by requiring us to seek permission from the Department's leadership in order to access certain records. The status quo cannot be allowed to continue indefinitely.

We appreciate the strong bipartisan support we have received from Congress in trying to address these serious issues. Most significantly, in December 2014, a provision was included in the Fiscal Year 2015 appropriations law – Section 218 – which prohibits the Justice Department from using appropriated funds to deny, prevent, or impede the DOJ OIG's timely access to records, documents, and other materials in the Department's possession, unless it is in accordance with an express limitation of Section 6(a) of the Inspector General Act. While the law only recently went into effect, it is clear that the Department has taken notice of it and it has already had an impact on our ability to get access to records in certain reviews.

However, despite Congress's reaffirmation in Section 218 of its support for DOJ OIG's access to records in the Department's possession, the FBI continues to maintain that Section 6(a) of the IG Act does not authorize access to certain records in its possession, such as grand jury, Title III electronic surveillance, and Fair Credit Reporting Act information, because of disclosure limitations in statutes other than the IG Act. As a result, the FBI is continuing the costly and time-consuming process it put in place prior to Section 218's enactment of reviewing documents responsive to DOJ OIG requests prior to producing them to us. The FBI has been undertaking this process in order to withhold from the DOJ OIG records that the FBI believes we are not legally entitled to receive, despite the absence of

any such limitation in the IG Act. Prior to the enactment of Section 218, this FBI document review process, in addition to consuming the FBI's resources, significantly impacted the FBI's timely production of material to us in several of our matters, including whistleblower retaliation investigations. As we are directed to do by Section 218, the DOJ OIG will be reporting to Congress impediments imposed by the FBI, or any DOJ component, to our timely access to records in the Department's possession that we are entitled to receive under Section 6(a) of the IG Act.

It is time to resolve this legal dispute. The FBI's position that Section 6(a) of the IG Act does not authorize the DOJ OIG to have access to various categories of records in its possession contradicts the plain language of the IG Act, Congress's clear intent when it created the DOJ OIG (as confirmed by the recent enactment of Section 218), the FBI's and the Department's practice prior to 2010 of frequently providing the very same categories of information to the DOJ OIG without any legal objection, court decisions by two different federal District Judges in 1998 and 1999 stating that the DOJ OIG could receive grand jury material, and the reasoning of a 1984 decision by the Office of Legal Counsel concluding that grand jury material could be provided to the Department's Office of Professional Responsibility.

The Department, in response to the FBI's questioning of our legal authority to review these types of records, has imposed a process whereby the Attorney General or the Deputy Attorney General may grant permission to the DOJ OIG to access such records if they conclude that specific reviews will assist them in the performance of their duties, and they have done so in each such review so far where the issue has arisen. However, no such permission is necessary under Section 6(a) of the Inspector General Act. Moreover, requiring an OIG to obtain permission from agency leadership in order to review agency documents seriously impairs Inspector General independence, creates excessive delays, and may lead to incomplete, inaccurate, or significantly delayed findings or recommendations.

We remain hopeful that the OLC opinion that has been sought by the Department's leadership will conclude that the IG Act entitles the OIG to independent access to the records and information to which we are entitled under the express terms of the IG Act. This will be one of the first topics that I intend to discuss with the Department's new leadership. However, should OLC interpret the IG Act in a manner that undercuts Congress's clear intent and limits the DOJ OIG's access to documents, I would be pleased to work with the Committee to develop a legislative remedy to address this issue.

Let me briefly mention other areas where I personally think the ability of Inspectors General to conduct strong and effective oversight could be enhanced. I expect that CIGIE will shortly be providing the Congress with a letter identifying the legislative priorities for the entire Inspector General community.

One such area is the capacity of Inspectors General to obtain testimony from former agency employees, contractors, and grant recipients. While the IG Act provides us with the ability to subpoena documents and records from those individuals, we are unable to require them to provide testimony, even if they have

critical evidence of fraud or of agency misconduct. I have seen several instances during my tenure as Inspector General where former employees of the Department (including those who resigned or retired immediately prior to a DOJ OIG interview), contractors, and grant recipients have refused to speak with the DOJ OIG, thereby impeding our ability to gather potentially valuable and relevant evidence. While I believe any authority granting Inspectors General the ability to compel testimony should include protections to ensure the authority is used appropriately and only when necessary, and that it does not inadvertently impair Justice Department prosecutions, I am confident based on my years as a former federal prosecutor and as a senior official in the Department's Criminal Division that such protections can readily be developed while also empowering Inspectors General to carry out their responsibilities. I look forward to discussing this issue further with the Committee.

Another area where legislation could enhance the ability of Inspectors General to conduct strong and effective oversight is in addressing the limitations on our ability to obtain and match readily available information across Executive Branch agencies in furtherance of our efforts to combat fraud and misconduct. These limitations arise out of the Computer Matching and Privacy Protection Act (CMPPA). The information at issue currently exists within the possession of government agencies – it does not require any further collection of documents or information – and Inspectors General of the agency are already entitled to access it under the IG Act. Yet the CMPPA contains provisions that impact the ability of Inspectors General to efficiently obtain information from another agency and to share it with each other. The timely use of such data by Inspectors General to identify those who improperly receive federal assistance, federal grants or contracts, or duplicative payments will improve program efficiency, enhance recovery of improper payments, and empower Inspectors General to better address waste, fraud, and abuse in federal programs. In my view, exempting Inspectors General from the CMPPA would greatly assist our ability to ensure that federal programs are effective and efficient without undermining the purposes of that law.

Finally, I am aware of the recent questions that have been raised relating to the work of CIGIE's Integrity Committee, including with respect to the timeliness of its work and the transparency of its efforts. One of my first meetings as Chair of CIGIE was with the Assistant Director of the FBI, who chairs the Integrity Committee, in order to discuss ways to address these issues. OIGs must maintain the highest levels of accountability and integrity, and as Chair of CIGIE I will make it a top priority to improve the procedures for the Integrity Committee.

Conclusion

In conclusion, I look forward to working closely with this Committee to ensure that Inspectors General continue to be empowered to provide the kind of independent and objective oversight for which they have become known, and which the taxpayers deserve. This concludes my prepared statement, and I will be happy to answer any questions the Committee may have.

Chairman CHAFFETZ. I now recognize Mr. Elkins for 5 minutes.

STATEMENT OF ARTHUR A. ELKINS, JR.

Mr. ELKINS. Good morning, Chairman Chaffetz, Ranking Member Cummings and members of the committee. I am Arthur Elkins, inspector general for the EPA and the CSB. Thank you for inviting me to appear before you today.

From this seat last June, I addressed impediments to access at CSB. In September, I addressed broader issues of access and whether there is a need to strengthen or clarify the IG Act. Today I will report on progress and challenges that still remain.

This OIG had requested documents of the CSB in the course of an investigation, which officials refused to provide, asserting attorney-client privilege. We explained that such denial violated the IG Act by obstructing an IG's unfettered access to all materials and information available to the agency. Eventually, I sent a 7-day letter to CSB chairman Moure-Eraso. Although the CSB forwarded my letter to Congress as required, CSB officials continued to refuse to produce the documents.

In June, both the chairman and ranking member of this committee instructed the CSB to provide the documents to the OIG. Subsequently, the CSB substantially complied. However, officials have yet to provide an affirmation of full compliance with our request. Still, the OIG was able to proceed with and complete our investigation.

Last week I sent a report to President Obama, who oversees Mr. Moure-Eraso. That report finds there is evidence sufficient to support a conclusion that the chairman and two of his senior officials violated the Federal Records Act in implementing regulations by using non-governmental email systems to conduct official government business and not capturing those emails in the CSB record system.

I would like to thank the committee for taking action in response to our 7-day letter, which allowed us to proceed with and conclude our investigation.

In September, I reported that the EPA had asserted the OIG may have access to intelligence information only with the EPA's permission. In addition, the EPA's Office of Homeland Security was conducting investigative activities without any legal authority, thereby interfering with OIG investigations. Senior OIG and agency officials have now reached a theoretical agreement on a substantial portion of the issues, with two caveats: First, we are only beginning to implement the agreements; and second, we have not resolved the issue of OHS having an assigned criminal investigator. We have agreed that the OIG has access to all EPA activities.

On another brighter note, Administrator McCarthy began 2015 with a memorandum to the EPA work force addressing cooperation with and providing information to the OIG. She called upon the vigilance of EPA staff to report fraud, waste and abuse.

Finally, in August, my office received information alleging an incident of serious misconduct by a senior EPA official. Over an approximately 5-month period, during which the agency placed the official on paid administrative leave, the OIG uncovered additional

allegations of improper actions by the same person. OIG investigators sought to interview the official a second time, but the official claimed to be retiring immediately, and refused. In fact, the official still was employed by the EPA. The agency ordered the official to cooperate with the OIG, but as the official stalled, retirement paperwork was processed and the official was allowed to retire, cutting off the OIGs access and the agency's ability to impose disciplinary remedies, including termination. Other examples in which EPA employees refused to appear for OIG administrative interviews are captured in my written Statement.

The IG Act access mandate predominantly has been applied to documents. It also applies to people. If an OIG needs to interview an employee who may have relevant information, other than when there is a possible criminal exposure, that employee is obligated to provide the information, but the Act provides no enforcement mechanism. I believe that this committee should look into the gap between what the IG Act requires and OIGs ability to achieve those requirements.

In conclusion, this committee has thanked me and the OIG community for the work we do in protecting taxpayer funds. We appreciate that, but there is a disconnect between what the oversight committees observe and appropriations that emerge from Congress. Budget levels made available are impeding our ability to do our work. We've returned \$7.33 for every dollar given to us in the past year. I know this is not an appropriations committee, but I ask for any help you can provide.

Access to documents and staff rest with the agency. Adequate funding must come from Congress. All are necessary to fully accomplish our mission. Yet the OIGs have control over none of these. As I stated in September, the concept underlying the IG Act is fragile and can be likened to a house of cards. The removal of the cooperation card will cause the foundation upon which the House is built to collapse.

Mr. Chairman, I will be pleased to answer any questions that you or committee members may have.

Chairman CHAFFETZ. I thank you, Mr. Elkins. Appreciate it.

[Prepared Statement of Mr. Elkins follows:]



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

**Progress and Remaining Challenges
Regarding Impediments to Access Faced by
Office of Inspector General for EPA and CSB**

**Statement of Arthur A. Elkins Jr.
Inspector General**

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

February 3, 2015

**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
February 3, 2015**

Good morning, Chairman Chaffetz, 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 appeared before this committee on June 19, 2014, to address impediments to access at the U.S. Chemical Safety and Hazard Investigation Board (CSB), for which I also am the IG, and again on September 10, 2014, to address broader issues of access and whether there is a need to strengthen or clarify the Inspector General Act to address impediments and access issues. Today, I would like to report to you on the progress we have made since those hearings and the challenges that still remain. Before I begin, I would like to publicly commend the expertise, dedication, diligence and professionalism of Office of Inspector General (OIG) staff—not only at the EPA, but across the federal government—who work hard each day to carry out our very important mission of promoting economy, efficiency and effectiveness; and preventing and detecting fraud, waste and abuse through independent oversight of programs and operations.

Overview of the EPA OIG

The EPA OIG is charged with conducting investigations and audits related to programs and operations at the EPA and CSB. The EPA OIG operates with a separate budget and decision-making authority, and neither EPA nor CSB senior leaders may prohibit, prevent or obstruct us from conducting our work.

CSB Has Substantially (But Not Fully) Complied With the OIG Requests

First, with regard to the CSB officials' refusal to provide documents, you will recall that we had requested certain documents in the course of an investigation. CSB officials refused to provide them, asserting that the denial was based on attorney/client privilege. However, we explained that such denial violated the IG Act, specifically Section 6(a)(1), which provides for the IG's unfettered access to all materials and information available to the agency. After more than a year of refusals by the CSB, I sent a "Seven Day letter"—a tool provided for in the IG Act—to Chairman Rafael Moure-Eraso. A Seven Day Letter requires the agency head to transmit the IG's letter and the agency's response to appropriate committees or subcommittees of Congress within seven calendar days. Although the CSB did forward my letter to committees, including this one, CSB officials continued to refuse to produce the documents.

At the June 2014 hearing before this committee, the Chairman and Ranking Member both instructed the CSB to provide the documents that the OIG sought. The CSB substantially

complied with those instructions; however, they have yet to provide an affirmation of full compliance with our requests. To elaborate, in August 2014, the OIG asked Chairman Moure-Eraso and other senior CSB officials to affirm their methodology for searching and identifying documents within the scope of OIG's requests, and that they had fully complied with the requests. At this time, none of the CSB officials have done so.

While the OIG cannot attest to the receipt of all requested documents from the CSB, as explained above, we were able to proceed with and complete our investigation. Last week, I sent the OIG's report of investigative results to President Obama, as there is no one higher than Chairman Moure-Eraso at the CSB, and he is appointed by the President. That report finds that there is evidence sufficient to support a conclusion that the Chairman and two of his senior officials violated the Federal Records Act, and implementing regulations, by using non-governmental email systems to conduct official government business and not capturing those emails in the CSB records system.

I would like to thank the committee for taking action in response to our Seven Day Letter, which allowed us to proceed with and conclude our investigation.

Progress and Remaining Challenges Regarding EPA's Office of Homeland Security

Next, I will address progress with regard to impediments to the OIG's ability to carry out its functions as imposed by the EPA's Office of Homeland Security (OHS). You will recall that in my testimony at the September 2014 hearing, I advised the committee that the EPA had asserted there was a category of activity defined as "intelligence" to which the OIG may have access only subject to the EPA's granting of permission. This situation impeded the OIG's ability to investigate threats against EPA employees and facilities, conduct certain misconduct investigations and investigate computer intrusions. In addition, OHS was conducting investigative activities of its own, without any legal authority to do so, thereby interfering with—and in some cases fouling—OIG investigations.

Since that hearing, senior OIG officials have met multiple times with senior agency officials to address a range of issues falling under these general categories. We have reached at least a theoretical agreement on a substantial portion of the issues, although I must offer two caveats: first, we are only now beginning to implement agreements, and second, we have not resolved the issue of OHS having a criminal investigator assigned to it while OHS lacks any investigative authority.

What we have agreed upon is that there is no category of activity at the EPA to which OIG does not have unfettered access, as provided by the IG Act. The "intelligence" activities can and are to be shared with the OIG if the OIG seeks access or an issue is within OIG purview. One specific impediment to being able to reach agreement previously was a memorandum of understanding (MOU) that the EPA had entered into unilaterally with the Federal Bureau of Investigation (FBI). The OIG was not party to, nor was it consulted in, creating that MOU. The EPA asserted that the MOU precluded it from sharing information with the OIG.

However, FBI senior management has since confirmed to the EPA that the FBI does not require withholding information from the OIG, and the EPA has confirmed to the OIG that it will now share the information we had been seeking, both with regard to previous matters and going forward on an ongoing basis. We have yet to have a three-way meeting among the EPA, the OIG and the FBI to confirm all of this, and to rescind or substantially modify the MOU.

With regard to the OHS criminal investigator, we cannot know whether OHS continues to conduct investigative activity.

These are important impediment issues that we have not yet resolved with the agency.

I am pleased to note that on January 2, 2015, Administrator McCarthy sent to the EPA workforce a memorandum addressing cooperation with and providing information to the OIG. She told employees that one of the ways employees can ensure that they all perform at their best is to support the internal review and oversight carried out by the OIG. She noted that the vigilance of EPA staff is key to successful OIG oversight, and she specifically stated that she expects all employees to report fraud, waste and abuse to the OIG if they see it.

Federal Agencies Lack Enforceable Mechanisms to Compel Employees to Cooperate with the OIG

I trust that these updates on specific matters discussed at previous hearings will help inform the committee's deliberations about any further investigative or legislative actions it may need to take. I would like to close by addressing big-picture challenges that my office, and many other OIGs across government, continue to face.

On August 1, 2014, my office received information from the Security Management Division at the EPA alleging serious employee misconduct by a senior EPA official. The information initially provided alleged that on July 30, 2014, the senior official had engaged in improper behavior with a 21-year-old female intern from another agency.

The investigation into the initial allegation uncovered allegations of several other improper actions by that senior official. The allegations investigated in this case were: (1) the senior official's inappropriate behavior toward at least 16 women, from 2004 to present; (2) violation of security procedures by the senior official; (3) mishandling of classified information by the senior official; and (4) lack of due diligence by other senior EPA executives (by not acting on information about this senior official) that resulted in six additional women being subjected to the senior official's inappropriate behavior from January 2014 to July 2014. During this latter period, the senior official was promoted.

While the OIG had interviewed the senior official during the initial stages of the investigation with the uncovering of information about additional allegations, the OIG determined it needed to interview this official again. By that time, the senior official was on paid administrative leave. OIG investigators attempted to interview the senior official again on January 12, 2015. However, the senior official declined to cooperate with the OIG investigation and refused to be interviewed, despite EPA supervisors directing the official to cooperate with the OIG. That senior official retired from federal service, that day, after spending approximately five months on

paid administrative leave. At that point, the OIG had no further access to the official and the agency had no disciplinary remedies available to it.

In addition to this senior official's unwillingness to cooperate with our administrative investigation, over the last two years, my office has been presented with other situations in which individuals refused to cooperate in administrative interviews. In one case, an Office of General Counsel attorney refused to cooperate with the OIG, even when prompted (although not directed) by the agency to cooperate. To my knowledge, the agency did not take any action against this attorney. Instead the attorney left the agency to work for another federal agency. Another instance involved a GS-15 program advisor in the Office of Research and Development who refused to cooperate with my office as part of an administrative investigation regarding violations of security policies. This case is still pending, but the agency, to my knowledge, has not taken any action against the EPA employee for not cooperating with my office.

As you know, the IG Act at Section 6(a) gives the OIG unfettered access to all information "available" to its department or agency. This authority predominantly has been applied to obtaining documents. But it also applies to access to people. If an OIG determines that it needs to interview an agency employee who may have relevant information, other than in an investigation with possible criminal exposure where the subject would be so advised by the OIG, that employee is obligated to provide the information requested.

But the IG Act provides no remedy for an employee's violation of this obligation. We have had situations where we attempt to interview an employee and the employee refuses. We can and do then tell the agency that it needs to require the employee to comply with the OIG's request. If the employee continues to refuse to comply with both the OIG and the agency, we are left without recourse. Further, in some of the recent cases we have encountered, the employee refuses to be interviewed and then resigns or retires, putting himself or herself permanently beyond the reach of the OIG. Of course, if there is a criminal violation, the employee can still be charged by prosecutors.

I believe that this committee should look into the "gap" between what the IG Act requires and OIGs' ability to achieve those requirements in such circumstances. Subject to constitutional due process rights, there might be ways to strengthen an agency's ability to discipline an employee for failure to comply with an OIG request. For example, Congress could provide for placing the employee on leave without pay status, rather than administrative leave with pay. Alternatively, Congress might consider restricting the availability of appropriated funds to pay the employee.

Finally, I know that this committee has recognized and thanked me personally, and the OIG community generally, for the good work we do in protecting taxpayer funds. We appreciate that. But, I have to remark on the disconnect between what the oversight committees observe and the appropriations that emerge from Congress as a whole. The budget levels made available to me are impeding our ability to do our work. This is penny-wise and pound-foolish, as Ben Franklin used to say. We returned \$7.33 for every dollar given to us in the past year. When the OIG is not able to carry out its responsibilities because of inadequate funding, it is a net loss to the federal

government and American taxpayers. I know this is not an appropriations committee, but I ask for any help you can provide us in this regard.

Conclusion

I have discussed today three major risks to OIG independence: access to agency documents; access to agency staff; and adequate funding. All of these are necessary to fully accomplish our mission. Yet the OIGs have control over none of these, nor ultimately can we compel solutions. All require external cooperation—from the Executive Branch for document and staff access and from the Legislative Branch for funding access. As I stated when I appeared before this committee in September 2014, the concept underlying the IG Act is fragile, and can be likened to a house of cards. The removal of the cooperation card, as related to the key risks I have discussed, will cause the foundation upon which the house is built to collapse.

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

Chairman CHAFFETZ. Ms. Buller.

STATEMENT OF KATHY A. BULLER

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

As you know, our access issue stems from a sensitive and important subject: the Peace Corps's handling of volunteer sexual assault reports. So before I continue, let me emphasize that our push for access goes beyond our zeal for upholding the basic principle that transparency and accountability are the hallmarks of good governance. Our push for access is about doing everything we can to confirm that volunteers, who sacrifice so much when serving in remote corners of the world, receive the services they need when they are victims of sexual assault.

Standing in our way to fulfilling that duty is a legal opinion drafted on July 9, 2013, by the Peace Corps former general counsel. That legal opinion asserts that the Kate Puzey Act of 2011 overrides my broad right of access to agency records under the IG Act.

As a result of the legal opinion, Peace Corps established policies and procedures denying OIG access to information. These policies effectively undermined one of the key purposes of the Kate Puzey Act, which is to enhance OIG oversight of sexual assault incidents to ensure Peace Corps does not repeat past mistakes.

It is worth reminding the committee that the Kate Puzey Act was enacted after more than 100 volunteers reported that Peace Corps had ignored allegations of sexual assault, blamed victims, and mismanaged their cases.

Since my last testimony on September 10th, Peace Corps has issued revised policies and procedures that grant OIG access to more, though not all, information on sexual assault reports. Unfortunately, these revisions took place only after 2 years of discussions with the agency, Members of Congress, two congressional hearings, negative press coverage, and a hold being placed on a nomination of the Director, and ultimately the signing of a formal agreement between the agency and the OIG.

My office is hopeful this agreement will give us enough information to fulfill some of our oversight duties, and Peace Corps has been responsive to our requests for information regarding two cases. However, I have several concerns about the agreement. First, I am concerned about the appropriateness of my office having to enter into an agreement to obtain information that we are entitled to by law and that we need to fulfill our statutory duties.

I am also concerned that the agreement does not undo all the damage these policies have caused. Since the agreement was signed, staff remain confused on how to handle sexual assault cases, and staff and volunteers remain confused about when they can or must report information to OIG.

Finally, I'm concerned about Peace Corps's ability to meet its commitments under the agreement, such as implementing a system that would permit OIG to review sexual assault cases without full access to information. Lacking such access, Congress would be un-

able to properly assess whether Peace Corps is adequately responding to victims.

It is clear that despite some progress, this agreement remains a temporary fix and much work remains to be done to restore a culture where staff and volunteers communicate openly with the IG.

Congress and Peace Corps have the power to solve this issue. Congress could take legislative action to ensure we get full access to agency records. The Peace Corps, for its part, could retract the erroneous legal opinion underlying its misguided policies. As long as that opinion remains in place, Peace Corps is free to rescind our agreement and withhold or delay OIG access to sexual assault reports. Moreover, its very existence sets a dangerous precedent whereby any agency may withhold information by deciding to interpret a law as overriding the IG Act.

Allowing agencies to decide when they will or will not release information to their IG creates a clear conflict of interest. Not only that, it forces IGs to spend their limited time and resources wrangling with the agency to obtain information, as I have done for over 2 years. Taxpayers and volunteer victims of sexual assault, in particular, deserve better.

While Peace Corps withdrawing its legal opinion may resolve our access issue, it will do nothing to help other IGs who are denied full access to agency records; therefore, I appreciate the committee's efforts to help restore our access for the sake of Peace Corps, volunteer victims of sexual assault, and the entire IG community.

Thank you. That concludes my prepared Statement, and I'm prepared to take any questions you may have.

Chairman CHAFFETZ. Thank you.

[Prepared Statement of Ms. Buller follows:]

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
 U.S. HOUSE OF REPRESENTATIVES
 FEBRUARY 3, 2015, 10:15 AM
 CHALLENGES TO ACCESS AND INDEPENDENCE FACED BY THE PEACE
 CORPS INSPECTOR GENERAL
 TESTIMONY OF KATHY A. BULLER
 PEACE CORPS INSPECTOR GENERAL

Chairman Chaffetz, Ranking Member Cummings, and distinguished members of the Committee:

Thank you for inviting me to appear before you today to discuss the challenges to access and independence faced by my office. I testified on this issue twice last year: on January 15 and again on September 10. While progress was made after each hearing, some challenges remain.

Denial of Access to Sexual Assault Records

The Peace Corps Office of Inspector General (OIG) access issues stem from a rather sensitive and important subject: the Peace Corps' handling of volunteer reports of sexual assault. So I must emphasize from the outset that our push for access goes beyond our zeal for upholding the basic principle that transparency and accountability are the hallmarks of good governance. Our push for access is about fulfilling our collective responsibility to ensure that we – Congress, the Peace Corps, and OIG – do everything we can to ensure our volunteers, who sacrifice so much when serving in remote corners of the world, receive the services they need when they are victims of a sexual assault.

Standing in our way to fulfilling that duty is a legal opinion drafted on July 9, 2013, by the Peace Corps' former general counsel. That legal opinion asserts the Kate Puzey Volunteer Protection Act of 2011 (Kate Puzey Act),¹ overrides my broad right of access to agency records under the Inspector General Act of 1978, as amended, (IG Act).² As a result of that legal opinion, the agency has implemented policies and procedures denying us access to information.

Since my last testimony on September 5, the Peace Corps has corrected course by issuing policies and procedures that grant OIG greater access to information.³ It's worth reminding the Committee that these revisions took two years of discussions with the agency and members of Congress, two congressional hearings, negative press coverage, a hold being placed on the nomination of the Director, and, ultimately, the signing of a memorandum of understanding (MOU) between the agency and OIG. Despite this progress, the underlying legal opinion supporting those policies and procedures is still in place and much work remains to be done to undo the damage caused by these access-denying policies.

¹ Pub. L. No. 112-57.

² Pub. L. No. 113-126.

³ On October 17, 2014, the Peace Corps issued revised Interim Policy Statement (IPS) 3-13, granting OIG access to all information from restricted reports except for the personally identifying information of volunteer victims and the explicit details of sexual assaults.

Summary of Legal Issue

The IG Act

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.⁴

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 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.⁵

Section 8E(d)(1)(B) of the Kate Puzey Act provides OIG with key oversight roles in ensuring the agency adequately responds to sexual assault and other crimes; effectively implements and trains on the Sexual Assault Risk Reduction and Response policy and program; and delivers services to sexual assault victims. The Kate Puzey Act requires that OIG conduct an evaluation on this matter and report to Congress by November 21, 2013, and again in 2016.⁶ The report must be based on a case review of a statistically significant number of sexual assault cases.⁷

Section 8A(f)(2) of the Kate Puzey Act mandates that victims have access to a restricted reporting mechanism that allows them to receive services without automatically triggering an official investigation. If a victim makes a restricted report, the victim’s personally identifiable information (PII) can only be shared with specified individuals unless an exception applies. One of those exceptions authorizes disclosures “to State and Federal courts when ordered, or if disclosure is required by Federal or State statute.”

⁴ S. REP. NO. 95-1071, at 33-34 (1978).

⁵ 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.

⁶ Sec. 8E(d)(1)(A) also requires Peace Corps OIG submit a biennial report to Congress concerning reports received from volunteers that discuss incidents of misconduct, mismanagement or policy violations by Peace Corps staff, or that relate to breaches of confidentiality of volunteers.

⁷ OIG submitted the initial report to Congress in November 2013 but the scope of the review did not include restricted reports because the agency had not implemented a system of restricted reporting until September 1, 2013.

Peace Corps' Legal Position

Despite the exception authorizing disclosure when required by federal law, the legal opinion asserts the exception applies only to courts because courts are the only person or organization listed in the exception. The opinion also reinterprets the statutory definition of PII in a manner that effectively prohibits OIG from accessing the crucial information it needs to fulfill its key oversight role mandated by the Kate Puzey Act.

Most egregiously, however, the opinion concludes OIG should not have access to restricted reports because the Kate Puzey Act overrides the IG Act. This is incorrect, however, since it is well established that a statute cannot be construed as overruling a pre-existing statute unless that intent is clear or the two statutes are irreconcilable.⁸ Nothing in the Kate Puzey Act suggests an intent to override the IG Act and both laws can be easily reconciled by reading the exception as applying to OIG.

Furthermore, the Peace Corps' interpretation conflicts with the plain meaning of the statute as a whole.⁹ The Kate Puzey Act provides OIG a central role in improving the Peace Corps' response to sexual assault victims. In particular, the law requires OIG oversee sexual assault mismanagement allegations and conduct a case review of a statistically significant number of sexual assault cases. It is inconceivable that Congress intended to increase OIG's oversight duties over the Peace Corps' response to sexual assaults, while simultaneously curtailing its ability to access the information it needs to fulfill those new duties.

Memorandum of Understanding between the Peace Corps and OIG

In May 2014, to avoid the possibility of remaining in the dark about a substantial category of sexual assault reports, I entered into a formal agreement with the Peace Corps granting OIG more – though not all – information from these reports, while maintaining our legal position.

The revisions the Peace Corps made to the access-denying policies and procedures as a result of the MOU are a good step forward. Since the policies and procedures were revised we have requested specific case files for two post country evaluations and have been able to review two restricted reports with corresponding redactions of PII and explicit details. However, the true test of the agreement will come this fall, when we begin reviewing a statistically significant number of cases as required by the Kate Puzey Act.

Other Concerns

Despite the progress made – thanks in part to this Committee – I remain concerned about the appropriateness of my office having to enter into an MOU to obtain information we are

⁸ “The intention of the legislature to repeal must be clear and manifest.” *Posadas v. National City Bank of New York*, 296 U.S. 497, 503 (1936). *See also* *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 189–90 (1978); *Morton v. Mancari*, 417 U.S. 535, 549 (1974); 1 GAO, *Principles of Federal Appropriations Law* 2-43 (3d ed. 2004) (“A corollary to the ‘cardinal rule’ against repeal by implication... is the rule of construction that statutes should be construed harmoniously so as to give maximum effect to both wherever possible.”)

⁹ “It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme... A court must therefore interpret the statute as a symmetrical and coherent regulatory scheme... and fit, if possible, all parts into an harmonious whole...” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. at 132–133 (citations and quotation marks omitted). *See also* 1 GAO, *Principles of Federal Appropriations Law* 2-86 (3d ed. 2004).

entitled to by law and that we need to fulfill our statutory duties. Therefore, we see this agreement as a temporary fix to obtain information while we seek agency or congressional action.

I am also concerned the Peace Corps has yet to adequately train staff on what information can and must be shared with OIG pursuant to the MOU. There is already evidence that the Peace Corps' lack of guidance has led to staff confusion in handling sexual assaults. For example, in November we issued a management advisory report (MAR) to the Director documenting confusion on whether complaints from a third party should be treated as a restricted report.¹⁰ The MAR documents how staff was initially advised by the Office of General Counsel not to report the information to OIG only to reverse course after discovering that other victims may have been assaulted by the same perpetrator. While the law is clear that only victims of sexual assault can make restricted reports, at least in one senior-level training the former general counsel advised staff that sexual assault allegations made by persons other than the victim should be treated as restricted and should not be reported to OIG.

Beyond training on third party complaints, staff and volunteers must be reassured that they should report allegations to our office concerning mismanagement of a sexual assault response, even if it relates to a restricted report. During the time OIG was denied access to any details of sexual assaults multiple people expressed concern about sharing information with OIG because of agency policies. Additionally, staff responsible for providing services and information to volunteers (in cases where the perpetrator is alleged to be another volunteer of staff) need to know they can consult with OIG about how our investigations are conducted, even if they are unable to provide OIG with explicit details of the assault or the victim's PII.

Finally, I am concerned about the Peace Corps' ability to meet its commitments under the agreement, such as implementing a system that would permit OIG to review sexual assault cases without full access to information. Lacking such access, Congress will be unable to properly assess whether the Peace Corps is adequately responding to victims.

Solving the Issue

Congress and the Peace Corps have the power to solve this issue. Congress could take legislative action in one way or another to ensure we get full access to agency records.

The Peace Corps, for its part, could retract its erroneous legal opinion underlying its access-denying policies and procedures. As long as that opinion remains in place, the Peace Corps is free to rescind our agreement and withhold or delay OIG access to sexual assault reports. Moreover, its very existence sets a dangerous precedent whereby any agency may withhold information by deciding to interpret a law as overriding the IG Act.

Allowing agencies to unilaterally decide when they can or cannot release information to the IG presents a clear conflict of interest. Not only that, it forces the IG to spend its limited time and resources wrangling with the agency to obtain information – as I have done for over two years. Taxpayers – and volunteer victims of sexual assault in particular – deserve better.

¹⁰Management Advisory Report: Agency Policies Related to Volunteer Sexual Assault Allegations: http://files.peacecorps.gov/multimedia/pdf/policies/PCIG_Agency_Policies_Related_to_Volunteer_Sexual_Assault_Allegations.pdf

While the Peace Corps withdrawing its legal opinion would resolve our access issue, it will do nothing to help other IGs who are denied full access to agency records. I appreciate the Committee's efforts to help us on our quest for access – for the sake of the Peace Corps, volunteer victims of sexual assault, and the entire IG community.

Chairman CHAFFETZ. I'll now recognize myself for 5 minutes.

Mr. Horowitz, help me understand what the atmosphere was like at the Department of Justice, and when did this change? I mean, this is a new phenomenon, is it not?

Mr. HOROWITZ. This changed in 2010 before I became inspector general in response to a legal opinion issued by the FBI's general counsel.

Chairman CHAFFETZ. So you—prior to that, you were able to access grand jury information, Title III electronic surveillance information, Fair Credit Reporting Act information?

Mr. HOROWITZ. That's correct. My office had no objection to any legal access to those.

Chairman CHAFFETZ. So they had been in operation to be able to access that information. And then what—I'm trying to get at the heart of what changed.

Mr. HOROWITZ. I'm at a loss to look—to understand why, frankly. And it—when you look at it, the law did not change, the work we were doing didn't change. In fact, one of the reviews, we got credit information at the start, and then 2010 came along and we were told we weren't going to get it anymore.

Chairman CHAFFETZ. What—are you impeded doing your job on any other information or is it exclusive to those three issues?

Mr. HOROWITZ. So far it has been those three issues, but we have a list of several other items where the FBI has indicated it believes there are problems with producing them to us as well.

Chairman CHAFFETZ. How often do you have to negotiate what you are going to be able to see?

Mr. HOROWITZ. It has—much like inspector general Buller said, it has taken far too much of my time and, frankly, it is taking far too much time of the leadership of various parts of the Department to work these out.

Chairman CHAFFETZ. And this is one of the concerns, is that you have to go in and negotiate for this. And, Mr. Elkins, what's your experience with that?

Mr. ELKINS. Well, I have to agree with everybody on the panel here. The—the issues that—that I have been confronting have spanned, you know, over 5 years. And when you think of the expense not only in my shop, but here on the Hill, the agency, it is just—it is phenomenal, it just doesn't make any sense, but I've had the same sorts of issues.

Chairman CHAFFETZ. Well, what percentage of the information do you need to come to a complete conclusion?

Mr. ELKINS. I need all of the information. To the extent that I—to the extent that there's any information that's missing, then I can be assured that, you know, I'm making a good decision. I need all the information. And the IG Act envisions that all the information—

Chairman CHAFFETZ. So how often do you bump into this problem? I mean, I think before, you had mentioned that you get 90-plus percent of the information, but it is that last little bit, isn't it, that you're—

Mr. ELKINS. Absolutely.

Chairman CHAFFETZ. Explain that to me. Give me an example of—do you have something that comes to mind when I bring that up?

Mr. ELKINS. Well, I guess I can, you know—hypothetically, you know, I can—I can think of a number of different issues. You know, in the course of any investigation, you know, it is important that we don't rush to judgment, it is important that we have all of the information, that we make sure that we are targeting or we are approaching, you know, the folks who need to be approached.

Chairman CHAFFETZ. And sorry to interrupt you there. Explain to me the situation with the Homeland Security and the lack of jurisdiction that you see. What are they doing—are they impeding your ability to do your job? Are they doing the same job that you're doing? What's happening with that?

Mr. ELKINS. Well, in the past—and we've made some progress in that area, so I want to preface that by saying we've come a long way in that area, but in the past, what the issue was is that we were working at opposite ends. There was activities in terms of investigative activities that clearly fell within the jurisdiction of the IG that we were not being provided that information at all, and the Office of Homeland Security, assuming that they had investigative authority, were going out on their own and doing their own investigations. But clearly, you know, you can't have—especially in law enforcement, you can't have two folks doing opposite—opposite missions. So that's the type of issues—

Chairman CHAFFETZ. But they were from—from Homeland Security?

Mr. ELKINS. The Office of Homeland Security within EPA.

Chairman CHAFFETZ. The last thing I want to bring up in my last minute here is—and you're fairly extensive in this description here, but one of the concerns is that people get into hot water, you're pursuing what's happening, and then they just file these retirement papers and then the issue just goes away. They get full retirement, they get full benefits, they're not held accountable.

Go into a little further detail about these—this allegation of this one person that you were investigating at the EPA.

Mr. ELKINS. Well, yes. This is a—it is an interesting set of facts. You know, we had allegations that—of inappropriate conduct by this particular senior official, and over a period of time, you know, in doing the investigations, we found additional individuals who were coming forward and providing us, you know, more and more information. We felt that we needed—in order to address some of these issues, we needed to talk to that individual.

And after about a 4-or 5-month period, when the individual was placed on administrative leave, once we approached the individual, he decided that he was going to retire. He didn't really want to talk to us. It was almost immediate. He said, I'm retiring today, and within a matter of hours, the paperwork was cut and he retired.

Now, he was directed by the agency's management to talk to us, but nothing happened. He didn't talk to us. He says, I'm retired. The agency produced the paperwork, he was gone. So—

Chairman CHAFFETZ. My time has expired, but I would hope that those of us on both sides of the aisle, these allegations is fairly serious. As the inspector general wrote, the senior official's inappro-

appropriate behavior toward at least 16 women from 2004 to present, violation of security procedures, mishandling of classified information, lack of due diligence by senior EPA executives who did not act on this information and did not hold him accountable, and which it ultimately resulted, as he wrote, in six additional women being subject to the senior official's inappropriate behavior from January 2014 to July 2014. We have to be able to figure this out. These people have to be held accountable. To just simply retire and take full benefits, not be held accountable, don't—ignore the investigation here from the Inspectors General, you just don't get a "get out of jail" free card by just filing some retirement papers and then not being held accountable.

Appreciate the time here and the patience. Now recognize the gentleman from Maryland, the ranking member, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. And I—and one of the thing that I just want to ask all of you, you know, all of us are public servants and, I think, trying to do the jobs that we are sworn and agree to do. And one of the reasons why I've spent so much time, and my staff has spent so much time in this is because I do believe that at times there can be, I guess, legitimate disputes. Would you agree? I'm just curious, Mr. Horowitz. Legitimate disputes between the IG statute and the statutes that these agency heads are using to say, well, maybe they can't give up the information or they have to review it or whatever. I mean, are there legitimate disputes or are you saying that they're trying to hide something? That's the only other—I mean—one or the other.

Mr. HOROWITZ. Yes. I'm not here to suggest anybody's making a legal opinion in bad faith at this point, but the issues that we had historically discussed were about sensitivity and how to handle documents—

Mr. CUMMINGS. Right.

Mr. HOROWITZ [continuing]. And access; not should we get them, but how do we safeguard them in some of the most sensitive work we did.

Mr. CUMMINGS. And you, Mr. Elkins?

Mr. ELKINS. I would agree. You know, the IG Act is clear. You know, we need access in order to do our job. There could be legitimate disputes, and I think built into the system there's always the opportunity to talk through these disputes, but at the end of the day—

Mr. CUMMINGS. You got to get—you got to get some resolution.

Mr. ELKINS. We have to have resolution.

Mr. CUMMINGS. And that's what I've been trying to do. Mr. Elkins, the challenges you've faced in getting the information from the EPA's Office of Homeland Security have been certainly a priority of mine, and I know yours. As you know, and my staff has spent many hours working with your office and the Office of Homeland Security to help address this issue, and it looks like we've gotten pretty close.

Since our hearing in September, there have been a series of additional meetings between your office and the Office of Homeland Security. Is that right?

Mr. ELKINS. That's correct.

Mr. CUMMINGS. And on October 15th, EPA Administrator McCarthy sent you and the acting associate administrator of OHS an email, and it said this, "I want to confirm that OIG shall, consistent with its authority under the Inspector General's Act, have access to all information shared between FBI and OHS under the 2012 MOU subject to OIG personnel having the necessary clearance and the need to know. This is effective immediately."

So that was a positive step in the right direction, right?

Mr. ELKINS. That was positive. It was positive.

Mr. CUMMINGS. And our staffers on the committee, both Democrat and Republican, received a bipartisan briefing in from your office on January 28th, your counsel, Alan Larsen, stated that your office has "seen a lot of progress," but he also said that you "haven't yet crossed the finish line." Is that right?

Mr. ELKINS. That's correct.

Mr. CUMMINGS. Do you agree with Mr. Larsen?

Mr. ELKINS. Yes, I do.

Mr. CUMMINGS. So things have improved, but there's still a long—there's a ways to go, isn't there?

Mr. ELKINS. There is a ways to go. And, you know, you also have to realize trust—

Mr. CUMMINGS. Very important.

Mr. ELKINS. And over the years, the trust piece has been rocked. And so I don't know what I don't know.

Mr. CUMMINGS. Right. And I'm not—I'm just trying to make sure I get a clear picture here, a complete picture. The—so when you say that trust has eroded, and I agree, I'm known for citing the book, the "Speed of Trust" by Covey, which talks about when you cannot trust someone or you don't have a trusting relationship, it is all downhill and it is almost impossible to accomplish anything.

So you would say a lot of this is—over the years, has been caused by this distrust. Is that right?

Mr. ELKINS. That's correct. You know, we've—I've had a lot of assurances over the years that didn't pan out, and, you know, 4 or 5 years, and here we are today still talking about this situation.

Mr. CUMMINGS. Can you explain the challenge presented by the FBI?

Mr. ELKINS. Quite frankly, no, I can't explain it. It is—you know, you have to understand that the MOU that this whole argument is built on, we weren't a party to that MOU. This was a unilateral agreement that was put together by the agency and the FBI which pretty much wrote us out with us have been even a role in it, so it is difficult for me to understand since I wasn't a part of the process, but it is not based on any legal authority. From what I understand, the FBI has even said that there's no reason that they can't share information with us, and they're willing to do so.

Mr. CUMMINGS. So things stand right now with the FBI willing to do so, but—

Mr. ELKINS. But we still have an MOU in place that says that they're not. That MOU is still in place. The MOU hasn't gone anywhere. As I recall, there is a meeting scheduled in March between agency management, myself and the FBI, and we are supposed to sit down. Now, subsequent—or maybe, I understand, from your office and what I've heard here today that maybe we will all get to-

gether and have a conversation as well, but until that—that happens, the MOU is still in effect.

Mr. CUMMINGS. Well, the chairman—you heard the chairman in his opening Statement, and he agreed to sit down with us and see what we could work out. And I can understand you-all's position and I understand all of our position is that you shouldn't even have to do that, you shouldn't even have to, but—but as I always say, sometimes you have to deal with what you've got, the cards at that moment. Hopefully we'll get something more permanent resolved here, but the question becomes what would you like to see done in that meeting, accomplished in that meeting?

Mr. ELKINS. Well, first of all, I would like for all parties to agree that the IG should have unfettered access to information and to people, period. And to the extent we can get there, we can move forward. We can't get there, and the MOU stands in the way. So if we can get over that hurdle, that's what I'd like to see.

Mr. CUMMINGS. And how soon do you want that meeting to happen, the meeting that—

Mr. ELKINS. It should have happened years ago, but I would like to see it happen today, tomorrow, as soon as possible.

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

Chairman CHAFFETZ. Thank you. I now recognize the gentleman from Ohio, Mr. Jordan, for 5 minutes.

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. Horowitz, I share your frustration with the Justice Department as well. I'm going to shift to a slightly different topic, but still in this general area of frustration with lack of cooperation and lack of doing what I think they're required to do under the law.

Are you aware of the fact that Lois Lerner's attorney, Bill Taylor, reported that Ms. Lerner sat down for a lengthy, and that's his term, her attorney's term, lengthy interview with the Justice Department regarding the situation of targeting conservative groups and that criminal investigation?

Mr. HOROWITZ. I'm not personally aware of it, but I think I've read somewhere along the way in news reports.

Mr. JORDAN. And my question is do you find that strange that Ms. Lerner is willing to sit down with the Justice Department but not willing to answer Congress's questions?

Mr. HOROWITZ. It would be difficult for me, Congressman, to answer that without knowing—

Mr. JORDAN. But just sort of a—I mean, you're an accomplished lawyer. Just the general point that, you know, it is the Justice Department that can put her in jail. We can't put her in jail. We are just trying to get information so that the American people can know what happened when the IRS systematically targeted people for exercising their First Amendment rights. Don't you think that's a little strange?

Mr. HOROWITZ. It would be hard for me to opine on what the strategy was there on—

Mr. JORDAN. Mr. Horowitz, last year the U.S. House of Representatives voted, with 26 Democrats I might add, voted to call for a special prosecutor at the Justice Department to look into this investigation, and on May 7th, 2014, May 7th of last year, 9 months ago, the U.S. House held Lois Lerner in contempt of Congress.

Do you have any information about what U.S. Attorney Ron Machen is doing with that Contempt of Congress resolution he has as district attorney for the District of Columbia?

Mr. HOROWITZ. I don't.

Mr. JORDAN. Do you know how the statute reads, Mr. Horowitz? The statute says, Section 194 says that such certification having been made, the contempt resolution having been made, it shall be the duty to bring the matter before the grand jury.

Are you familiar with Section 194?

Mr. HOROWITZ. I'm generally familiar with it.

Mr. JORDAN. And wouldn't that seem to point out rather clearly that Mr. Machen should take this to the grand jury?

Mr. HOROWITZ. You know, I certainly think there are questions there and to ask about the—

Mr. JORDAN. Now, there's—my understanding—and, again, you've been at the Justice Department a long time, I've looked at your bio before, very accomplished attorney. There is an exception for the U.S. attorney to not take this to a grand jury. Do you know what that exception is, Mr. Horowitz?

Mr. HOROWITZ. I don't off the top my head.

Mr. JORDAN. I will tell you. It is executive privilege. So if there's executive privilege, it doesn't have to take it. So, again, thinking about recent things Congress has done, that executive privilege exception would apply to, say, the contempt resolution of Attorney General Holder, correct?

Mr. HOROWITZ. I'm not sure I've sort of looked at this, frankly—

Mr. JORDAN. Well, let me ask you this: Do you think there's any type of executive privilege that exists between—for Lois Lerner?

Mr. HOROWITZ. Congressman, I'd have to pass on opining on that. Frankly—

Mr. JORDAN. But as a lawyer, the only way executive privilege would exist for Ms. Lerner is if she had some kind of conversation with the President or his key advisors. Isn't that correct?

Mr. HOROWITZ. My general understanding of executive privilege law—

Mr. JORDAN. Okay.

Mr. HOROWITZ [continuing]. Would be that.

Mr. JORDAN. Okay. Have you looked into why Mr. Machen has not taken this to the grand jury?

Mr. HOROWITZ. We have not. And we would not be allowed to look into that under the jurisdictional authority of our statute, or we would have questions certainly to raise about that, about whether we could even look at that.

Mr. JORDAN. If this committee asked you to look into that, could you look into it?

Mr. HOROWITZ. I don't believe so, although we would certainly want to look more closely at it. The issue being that under the IG Act, our office is limited to—in what we can do to oversee allegations of misconduct by department lawyers.

Mr. JORDAN. Okay. Finally, the last thing I would say is this, Mr. Chairman. This is a pattern. The executive branch agencies, first they drag their feet, they don't comply with things Congress wants. I mean, we have a subpoena—as just a recent example, we have

a subpoena that came from this committee in August 2013 dealing with a situation that took place in Benghazi, and we've yet to have the State Department comply with that subpoena a year and a half ago.

So there's all kinds of examples where executive branch agencies won't work with Congress, won't comply with the law, just like these Inspector Generals are pointing out today, as they pointed out in Mr. Horowitz's letter from today, and now, and now we find out it is across the board. So this is—this is, I mean, a very appropriate hearing and I appreciate the chairman doing this. And with that, I would yield back my time.

Chairman CHAFFETZ. I thank the gentleman. Now recognize the gentleman from the District of Columbia, Ms. Norton, for 5 minutes.

Ms. NORTON. Thank you very much, Mr. Chairman. And I want to thank Mr. Horowitz and all of those associated with the independent councils in our government.

I am particularly interested in law enforcement material, perhaps as a lawyer and perhaps because I regard some of this material as extremely sensitive and because I think this committee should not simply be exposing problems, but getting to remedies for these problems. And as I understand it, the Department of Justice has been reluctant to give access to certain kinds of information which address, the average person would regard them as highly secretive, like grand jury matters, wiretapping matters, even credit reporting matters.

Now, your complaint, as I understand it, is that in order for you to get access, this has to go through bureaucratic steps all the way to the deputy attorney general. Is that not correct?

Mr. HOROWITZ. That's the process currently set up, that's correct.

Ms. NORTON. And apparently in some of your investigation, you regard this delay as compromising your office's independence?

Mr. HOROWITZ. That's correct.

Ms. NORTON. And this is what I want to—want to seek clarification. Your—the statute couldn't be more generically clear, without exception. It says, I'm talking about 6—Section 6(a)(1). It states that the IG shall have access to all records, reports, audits, reviews, documents, and papers. And I don't know when this statute was passed, but that's what it said then. I haven't seen the legislative history. All I know is normally access to something like grand jury, and wiretap materials is of the utmost secrecy.

Now, the Justice Department says that if they get an Office of Legal Counsel opinion, then they would apparently be ready to release this material to the inspector general. Is that not correct?

Mr. HOROWITZ. That's what they say they're waiting for, is the Office of Legal Counsel opinion.

Ms. NORTON. Well, I have to tell you, Mr. Horowitz, I can understand an Office of Legal Counsel not wanting that weight on his shoulders, whoever he is, when it comes to materials that have always been regarded as secret, and no matter what the statute says. And I—and, of course, you're still waiting and they're still investigating.

I'm wondering if we shouldn't simply call the question and ask for a change in law so that that would not be on the shoulders of

a single law enforcement officer. When we are talking about something that in our society has always been regarded as secret for very good reasons, perhaps even before there was an independent—an IG statute, should we continue to wait and should we be content with an Office of Legal Counsel, or would it not be preferable for this Congress to clarify this issue once and for all?

Mr. HOROWITZ. That's an excellent question, Congresswoman. And just to clarify, my office before 2010 got all of this information without any legal issue—

Ms. NORTON. Yes. And we don't—

Mr. HOROWITZ [continuing]. From the FBI.

Ms. NORTON. So, you know—

Mr. HOROWITZ. There was no issue.

Ms. NORTON. And so we don't know—when we are in the—we are in an era of growing secrecy, which many of us object to precisely because we don't know what the secret is, we don't know what has transpired between 2010 and 2014. We have the same administration. Has there been a change in administration?

Mr. HOROWITZ. There has not.

Ms. NORTON. So, you know, we are talking about the same folks, and yet they don't want to give this material over. What that says to me is that, you know, the next administration, you could go the same Sisyphus uphill climb.

Isn't it time for some of these matters, at least these matters involving historically secret matters, because secret matters for very good reason, no matter who we are talking about, to simply get a clarification of a statute that is very general and does not seem to admit of any exceptions, would that not help at least with such—such sensitive materials to clarify this matter? And is there any reason for this committee not to come forward with a change in law once and for all?

Mr. HOROWITZ. And I think the issue for the inspector general community has been that the law is clear, the practice had always been to give us that information.

Ms. NORTON. We understand that. I'm talking about the delays—

Mr. HOROWITZ. No. And I'm—right.

Ms. NORTON. Look, look, Mr. Horowitz, unlike some people on this committee, I'm remedy-oriented.

Mr. HOROWITZ. I know that.

Ms. NORTON. You know, we can have you back here, and you've been here before. Now, I'm not talking about the other matters.

Mr. HOROWITZ. No. I understand.

Ms. NORTON. I'm talking about these matters which have always been considered highly secret. Is there any reason why we should delay clarifying this in law?

Mr. HOROWITZ. The concern in the inspector general community is, yes, if Congress immediately passed something and it could go through, that would be great, it would resolve all our issues. The problem is what the Department—the FBI and the Department and OLC has been looking at is what was Congress's intent back in 1978 when it passed the statute? And the concern being that if Congress took—took this up to imply or suggest for any reason that perhaps the law is unclear, when everybody in the inspector gen-

eral community thinks it is crystal clear and the practice has been that it is crystal clear we get access to it, that it could, if it didn't pass immediately or get addressed immediately, it would be cited as a reason not to give us access going forward. And that's a—that's a significant concern that we have.

Ms. NORTON. I thank the gentleman.

Mr. Chairman, I want to thank you, but I want to say 1978—between 1978 and 2014, there's such a world of difference in secret matters, I think this needs to be looked into more closely. Thank you very much.

Chairman CHAFFETZ. Now recognize the gentleman from Michigan, Mr. Walberg for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman, and thanks to the panel, each of you, Mr. Horowitz, Mr. Elkins Ms. Buller. Thanks for the work you do. Sounds like it is pretty much an uphill battle, and with deference to my colleague as well. I really think we ought to set the primacy on our discussions here on the law. What is the law?

I would—I would suggest, Mr. Chairman, that—that rather than pushing ourselves to change the law, when we hear from a panel as distinguished as this and the many in the room that are simply attempting to use the law that is clear. I mean, I'll read again where section 6(a) of the IG Act States clearly have—that IG shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which relate to programs and operations with respect to which the inspector general has responsibilities under. That's pretty clear, even for a nonattorney like myself.

As a minister, I've got to settle disputes on the issue of Scriptures, but this is the law, and we are doing a good work here, pushing back against the idea that things change, and yes, they do. I've had birthdays, 63 of them, and I changed, but the law is the law, and I think that's our concern for today.

Mr. Horowitz, many times you've raised the issue of the FBI restricting your access to certain documents and information. You even went so far as to include a formal complaint in your most recent semi-annual report, which is extremely rare. How do the FBI and DOJ justify withholding grand jury and Title III material from you?

Mr. HOROWITZ. The position they have taken since 2010 is that they have now interpreted those other statutes as placing limits on what section 6 says in the IG Act.

Mr. WALBERG. They've interpreted it?

Mr. HOROWITZ. That's correct.

Mr. WALBERG. You have not had this problem before?

Mr. HOROWITZ. Prior to 2010 we did not have that issue raised by the FBI.

Mr. WALBERG. What is the process for obtaining these materials if you need them for an investigation?

Mr. HOROWITZ. We send the document request to the FBI. They've put in place, frankly, what's a costly and timely system of now reviewing records before they produce it to us, something they hadn't done previously, for the purpose of determining whether they needed to withhold those materials from us so they could then

look at them, confer with the Attorney General or the Deputy Attorney General, get an opinion memorandum from the Attorney General or Deputy Attorney General authorizing them then to release them to us.

Mr. WALBERG. So it is correct or incorrect that you have to convince the Attorney General to release the materials to you in any case?

Mr. HOROWITZ. They certainly have to explain to the Attorney General. The Attorney General has to conclude it in each case. We have not yet had us have to go into the room for those meetings.

Mr. WALBERG. How that has that process affected the pace of your investigations?

Mr. HOROWITZ. It has had a significant impact on us. Frankly, the biggest impact is on the staff, when you talk about the thousands of people who work in the IGs offices. If you had some of my staff up here explaining to you how it impacts their day-to-day ability to do their jobs, we get bogged down, we stop work, you lose valuable time and money and resources on our side, You have the FBI ramping up on their side. It is a process that just doesn't need to happen and didn't happen before 2010?

Mr. WALBERG. It affects your independence?

Mr. HOROWITZ. It absolutely affects our independence.

Mr. WALBERG. Which is the rationale that the Congress had in mind to make sure we had oversight.

Mr. HOROWITZ. That's correct. If we have to go through the agency leadership to decide whether we get records, that's a serious problem undermining our independence.

Mr. WALBERG. In your testimony you pointed out that section 218 of the appropriations bill that we are living under now prohibited DOJ from using any funds to deny your office access to agency materials.

Do you believe this provision has a positive impact on your access to records?

Mr. HOROWITZ. I think it generally has had a positive impact.

Mr. WALBERG. Why do you believe the President in the budget that he has just released yesterday tries to remove this provision?

Mr. HOROWITZ. I can't explain the motivation. I can tell you I think we've had a—it has had a productive effect on our discussions with the Department generally.

Mr. WALBERG. Well, the President attempts to explain the change when he says in the budget address that the Department is unaware of any specific materials that OIG believed necessary to its reviews but to which the OIG has not been granted access.

Have you made the Department aware of access issues?

Mr. HOROWITZ. Made aware of the access issues as I've talked about in my Statement and in prior hearings? We haven't ultimately had anything withheld from us, but that is dependent on who sits in the corner offices at the Department. Fortunately, the Attorney General and the Deputy Attorney General have committed to getting us the material, but it turns on whether—on a decision by them as opposed to an independent decision by inspector general.

Mr. WALBERG. Okay. Well, I would just add, I am very interested in why the President would say this when we have a hearing like

this, and we've had one before, I'm certain that the Inspectors General have concerns why the President would want to remove that section when it seems so important that Congress would address it and say we need to use the Inspectors General appropriately and fully and give them access.

So I thank you for this questioning, and we'll see the answer.

Chairman CHAFFETZ. I thank the gentleman. We now recognize the gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman, and I thank the ranking member for holding this hearing, and I want to thank the witnesses for offering your testimony and helping the committee with its work.

This really is a, you know, in a way, a constitutional crisis if this is going to be the position of the administration or any administration. We had this situation back during the Bush Administration when we were trying to do oversight on Iraq reconstruction, and now I see in the last couple of weeks that—that DOD has taken a position against the special inspector general for Afghan reconstruction where information that used to come to this committee, and now I'm the ranking Democrat on the national security subcommittee, that information that we got for the last 6 years is now not available to us.

I guess last night *The New York Times* reports that there has been a reversal in part on the part of the NATO resolute support mission to release some of the information that we used to get all the time. So we are really hamstrung here. As long as—I mean, oversight is really a constitutional responsibility of ours. It is inherent in the balancing of the checks and balances between the executive, the Congress, and the judiciary, and if we can't get that information, if we can't have you as our emissaries in a real way to get that information to us, we cannot do that part of our constitutional responsibility.

And, you know, it mystifies me how this is happening all across the government in all these agencies at the same time and just recently. Like I said, for 6 years we were getting this information, these reports, these action reports. You know, I'm not a conspiracy-minded person, but, you know, I do have to say that we know, from your reports—actually Stuart Bowen, who is the inspector general for Iraq reconstruction, he actually helped us determine that in Iraq we had trained 930—938,000 Iraqis, military, police, and border patrol.

We spent \$25 billion on training Iraqis. So now when the military comes up with this new plan to train some more Iraqis, we can push that back on them, and the reason we can is because Stuart Bowen and members of this committee did dozens and dozens and dozens—and I give credit to John Tierney, who is no longer a Member here, but he did some great work on that. The reason we know that that system does not work and that Americans—American taxpayers' money was wasted was because of the work that the inspector generals did, that you-all did. That's how we got that information.

And now they are saying we can't have that information because it is embarrassing, it is embarrassing, that that information that you gave us allows us to hold the executive accountable. That's the

way this is supposed to work, and I just—I'm troubled by the fact that all of a sudden the transparency is shutting down, that you are not allowed to do your jobs. And I just want to say that, you know, at the outset, both the ranking member and the chairman both said it is pretty sad that the Inspectors General have to come here to Members of Congress to help them to do their job, but that is—it might be sad, but this is where we are at. Like the ranking member said, sometimes you get—you are what you are, and so we have to have a partnership between the inspector general community and Congress to make sure that we all do our jobs, that we help you help the American people. That's what this is all about.

So maybe it is—maybe it is a legal quandary, maybe we have to get reaffirmation from the courts that this is indeed our constitutional obligation, but we have to work together. And just by closing, I've used up all—almost all my time. I just want to say that in prior budgets, we had defunded the ability of the inspector general community to do their job. And I know that Mr. Elkins eloquently stated that resources are a big part of this as well.

In order to for them to do their job and help us with the issues that we are all talking about, we need to fund this part of government. You can be against big government, you can be against intrusive government, but you can't be against functioning government, and functioning government are those people out there that do this work every single day. And I just want to say that we ought to remember that when the budget time comes around. Thank you. I yield back.

Chairman CHAFFETZ. Thank you. Well said. I appreciate that. Mr. Gosar from Arizona is now recognized for 5 minutes.

Mr. GOSAR. Thank you, Mr. Chairman. Thank you for all that you guys do at the inspector general's office.

Mr. HOROWITZ, thank you for everything. Specifically my next questions come on the Department of Justice. Quick question. Is the Department of Justice run from the bottom up or from the top down?

Mr. HOROWITZ. I think generally from the top down.

Mr. GOSAR. Hmm. And you're a dependent or an independent agency?

Mr. HOROWITZ. We are an independent agency housed within the Justice Department.

Mr. GOSAR. You're no lesser of an attorney than anybody in the DOJ?

Mr. HOROWITZ. I will let others make that judgment, Congressman.

Mr. GOSAR. I think I'd put your credentials against anybody from what I see.

Whistleblower protection. Are you concerned about that?

Mr. HOROWITZ. We are deeply concerned about it, and I'm deeply concerned it is arisen in this context that I've sent the letter today.

Mr. GOSAR. Have you seen the protection of whistleblowers get stronger today or are they less so than lets say 2009? And I am picking that particularly.

Mr. HOROWITZ. Well, we have certainly made efforts to make them stronger, but when you see this action where we are trying to move forward on a whistleblower retaliation allegation, and

the—involving an FBI employee and the FBI wants to first review the documents to see if we are legally entitled to get access to them, that causes me great concern.

Mr. GOSAR. Absolutely. And I go back to something your partner right next to you said. Trust is a series of promises kept, and to the gentlewoman across that I've seen, what happened since 2010, well, there is Fast and Furious, the AP reparations, Jane Rose and IRS, Benghazi, it goes on and on and on.

Are you familiar, Mr. Horowitz, with slow walking documents?

Mr. HOROWITZ. We have certainly had difficulty getting prompt access to documents.

Mr. GOSAR. Prompt access to documents also supports proper protection for whistleblowers, does it not?

Mr. HOROWITZ. That's correct.

Mr. GOSAR. So I'm going to go back to your testimony in September 2014 to this committee. You stated, "the FBI and some other department components have refused our request for various types of documents. As a result, a number of our reviews have been significantly impeded." You added that DOJ officials caused significant delays in gaining access to important documents in the IGs review of Operation Fast and Furious.

Do you believe that the delays caused by the refusal of the DOJ officials to release documents were intentionally done by some officials within the agency in order to slow down the IGs investigations?

Mr. HOROWITZ. I actually was not, the IG, back when that all played out before—

Mr. GOSAR. But you've seen significant delays?

Mr. HOROWITZ. But I have certainly seen significant delays.

Mr. GOSAR. I mean, just like us in those delays, you've seen those delays because it took a Freedom of Information Act to get that information when it was not available to you or us.

Mr. HOROWITZ. I've seen them, and my staff, frankly, has lived them.

Mr. GOSAR. Okay. So could these delays and impediments to the investigation in the Fast and Furious which continue today, amount to obstruction in your opinion?

Mr. HOROWITZ. They have certainly—

Mr. GOSAR. I mean, this is not normal course.

Mr. HOROWITZ [continuing]. Impacted. Let me just say—

Mr. GOSAR. This is not normal course of procedure, is it not?

Mr. HOROWITZ. It shouldn't be. Unfortunately, in many reviews, we are seeing it over and over again, and it has impacted those reviews.

Mr. GOSAR. So let me go back to this DOJ being top down. So if the Attorney General wants to set an atmosphere of change and compliance, he could, could he not?

Mr. HOROWITZ. I think across all of the components, that culture that was talked about earlier is critical to set.

Mr. GOSAR. And the same thing with this President. He promised an era of transparency, and I've hardly seen, you know, the most transparent administration period. So even the President could actually expediate this, could he not?

Mr. HOROWITZ. I think there are a lot of people in this process, I agree, that could have an impact by sending a clear message that what happened prior to 2010, which worked just fine, no law changing in 2010 is where we should be.

Mr. GOSAR. So you are very familiar with the Vaughn Index, right?

Mr. HOROWITZ. Correct.

Mr. GOSAR. So was there anything in the Vaughn Index that really merited executive privilege?

Mr. HOROWITZ. Congressman, I wouldn't opine on that. Frankly, I haven't—I'm familiar with the index. I frankly—

Mr. GOSAR. Once again, it goes to that mindset from the top down, I mean, so when you start seeing private emails being put on executive privilege, I mean, it behooves me that we are not following the law. And the way our system is based is that everybody in good faith upholds their oath to defend and protect this Constitution, to uphold the rule of law, would you agree?

Mr. HOROWITZ. I agree with that.

Mr. GOSAR. So it starts from the top down, not the bottom up.

Mr. HOROWITZ. I think, frankly, it is both the top and the bottom and everything in between that we've had both—

Mr. GOSAR. But as an executive, you set the tone. You told me that—

Mr. HOROWITZ. That's correct.

Mr. GOSAR [continuing]. From the top down. So you set the tone from the top. And where responsibilities of aggression are, responsibilities of accountability need to be placed.

Mr. HOROWITZ. You know, we've taken the position from, certainly since I've been there in 2012 with the leadership of the Department that given the past practice, given how things worked before 2010, there is more than—more than enough good faith basis to send a message that the IG, as the Section 6 states, is entitled to access all of these records. And we've always handled them appropriately. We have never violated any of the provisions in the grand jury secrecy, Title III, et cetera, that are rightly there to protect privacy interests. That has never been an issue.

We have done the Hanssen review, we have done national security reviews, we have done FISA Amendment Act reviews, we have done PATRIOT Act reviews. I can go on and on about the sensitive work my office, primarily, as I said, the staff has done for the 25 years of our existence. We have acted responsibly and appropriately. Nothing changed in 2010, and what we need to do is get back to where we were before 2010 when there was a culture of openness and a dialog that occurred between our office and the components on how we appropriately handle those materials, review those materials to ensure that among the most sensitive information, which is what we are seeing when we are looking at the FBI national security matters, we do maintain that carefully, and we should have that dialog. But it shouldn't be whether we see it but how we handle it and go forward.

Mr. GOSAR. Mr. Chairman, I just would like to say that—

Chairman CHAFFETZ. Thank you.

Mr. GOSAR [continuing]. This is a very important question for the future Attorney General to be asked pointedly about her views in openness.

Chairman CHAFFETZ. Thank you. Recognize the gentleman from Virginia, Mr. Connolly for 5 minutes.

Mr. CONNOLLY. Thank you. Mr. Horowitz, is it not true that the President is a Kenyan socialist colonialist who lied about his birth certificate?

Mr. HOROWITZ. I wouldn't even venture to try and answer that.

Mr. CONNOLLY. Oh, so in other words, there is some leading questions an IG should not and cannot answer; is that correct?

Mr. HOROWITZ. I try not to answer questions that—

Mr. CONNOLLY. Right.

Mr. HOROWITZ [continuing]. Frankly haven't—

Mr. CONNOLLY. I appreciate the point. I really appreciate the work IGs do, but in order for us and the public to have confidence, we also need to have confidence in you. We need to make sure you are purer than driven snow, and that where there are any ethical or professional misconduct questions or even questions about methodology that seem not to be right, that there has to be a remedy that's accessible and transparent to address that and correct it; otherwise, your whole investigation is tainted if you are tainted. Would you agree with that, Mr. Horowitz?

Mr. HOROWITZ. I agree completely.

Mr. CONNOLLY. And Mr. Horowitz, you are now the chairman of something called CIGIE, the Counsel of Inspectors General on Integrity and Efficiency. Would you briefly tell us what CIGIE does?

Mr. HOROWITZ. CIGIE is the umbrella organization of all 72 Federal IGs the Congress set up when it created the IG Act. We have a number of responsibilities that include coordinating reviews among IGs, working to get replacements for vacant—IG vacancies, and we have an integrity committee that oversees allegations against Inspectors General and their most senior officials.

Mr. CONNOLLY. You have an integrity committee as a subset of CIGIE?

Mr. HOROWITZ. That's correct.

Mr. CONNOLLY. And who chairs—who chairs the integrity committee?

Mr. HOROWITZ. The Federal Bureau of Investigation.

Mr. CONNOLLY. The FBI. I hope the chairman heard that. The FBI chairs the integrity committee.

So when a charge is made about one of your colleagues, founded or unfounded, and assuming that it doesn't go to one of the specialized agencies, EEOC goes one place and something might criminally be referred to another place, but that which is left goes to the integrity committee about professional conduct and so forth; is that correct?

Mr. HOROWITZ. Correct.

Mr. CONNOLLY. And it is chaired by the FBI. So when that committee—

Mr. HOROWITZ. Uh-huh.

Mr. CONNOLLY [continuing]. In the due course of time investigates somebody and comes up with a finding, they then present

the report to you as the chairman of CIGIE for your review; is that correct?

Mr. HOROWITZ. They actually by statute don't.

Mr. CONNOLLY. They don't?

Mr. HOROWITZ. That's correct. They send their report to the Deputy Director for management at OMB, and if it is a Presidential appointee, to the President. If it is a non-Presidential DSE IG, it goes to the agency. It does not go to the CIGIE chair.

Mr. CONNOLLY. Hmm. So if the broad public wants—let's say somebody wants to clear his name. Let's say an unfounded charge comes before CIGIE and the integrity committee and it is unfounded but it has to be investigated, that report then gets buried at OMB and maybe never sees the light of day?

Mr. HOROWITZ. Under the statute, the records would be maintained by the FBI, and obviously, any recipient of a report would have a record of it.

Mr. CONNOLLY. How often does the integrity committee meet?

Mr. HOROWITZ. Frankly, I'm not a member of it. I'm not a part of it, but one of the things that I certainly want to do is have it meet on a monthly basis so that we can move matters more quickly.

Mr. CONNOLLY. So, for example, if there were a complaint or a charge filed against an IG, is there an immediate process that gets kicked in, or do we just wait for your biannual meeting?

Mr. HOROWITZ. Under the procedures currently in place, there is a process that kicks in in terms of it going to a working group to review it, consider it, and then processes that go forward from there.

Mr. CONNOLLY. And two of us on this committee filed a complaint against one of your colleagues, and all we got after a fairly detailed six-page, single-spaced complaint on July 31 of last year, we simply got a one-paragraph thing saying we reviewed it and we think his response—his response sufficiently addressed the allegations, period. Thank you very much. Have a good day.

Is that how you would conduct your review of an agency such as the one you're assigned to?

Mr. HOROWITZ. I think that is an issue that's important for us to take up in CIGIE, to how—how to better deal with the transparency issues that you've raised and I know we are concerned, other members were talking about.

Mr. CONNOLLY. Well, we are going to give you a chance, because I assure you Mr. Cartwright and I will refile our complaint.

Let me ask a question. I have here the Council of the Inspectors General on Integrity and Efficiency. You're familiar with that?

Mr. HOROWITZ. Yes, I am.

Mr. CONNOLLY. In that document, it says "IG should avoid any appearance of partisanship in such engagements. Bipartisan meetings and outreach is the most appropriate format for such OIG meetings. If a bipartisan meeting is not feasible, it is the best practice to ensure the majority and minority understand the willingness of the OIG to meet separately."

Would you say that a consistent pattern of meeting with just one side of the aisle by an IG would be in violation of at least the spirit of that guidance?

Mr. HOROWITZ. Congressman, it certainly isn't a practice that my office would follow. We follow that practices of reaching out to both sides.

Mr. CONNOLLY. Are you aware of the fact that the ranking member, Mr. Cummings, and I wrote a year ago, almost to the day, February 4th, 2014, complaining about that very fact and that very behavior by J. Russell George, the inspector general at the tax administration of the Treasury. Are you aware of that complaint?

Mr. HOROWITZ. I'm not familiar with it.

Mr. CONNOLLY. I'll make sure you have a copy of it.

Chairman CHAFFETZ. I thank the gentleman.

Mr. CONNOLLY. I thank the chair.

Chairman CHAFFETZ. Time has expired. We now recognize the gentlewoman from Wyoming, Mrs. Lummis, for 5 minutes.

Mrs. LUMMIS. Thank you, Mr. Chairman, and I want to thank the gentleman and women of the Office of the inspector general for your work on behalf of the American people, those here present and your colleagues as well.

I'd like to focus my questioning on Mr. Elkins and—

Mr. ELKINS. Yes.

Mrs. LUMMIS [continuing]. EPA. Mr. Elkins, is it the case that on January 16th you sent a memo to the President in followup to your investigation on the use of private email addresses by the Chemical Safety Board chairman Moure-Eraso, and to the general counsel Richard Loeb of the CSB, and the managing director Daniel Horowitz, and that these—the office found, your office found information sufficient to support a conclusion that these three officials used private non-government emails to communicate on Chemical Safety Board matters?

Mr. ELKINS. That's correct.

Mrs. LUMMIS. And is it a violation of the Federal Records Act to do that, to use—

Mr. ELKINS. That was our conclusion, yes.

Mrs. LUMMIS. Okay. Mr. Chairman, I have a copy of Arthur Elkins' inspector general's report to the President in my hand. I would like to enter it into the record.

Chairman CHAFFETZ. We would like to ask unanimous consent to enter into this into the report pending a review by this inspector general to make sure that there is no sensitive information that should not be released, but pending that review and getting back to our committee, I would ask unanimous consent that it be entered into the record.

Mr. CUMMINGS. Mr. Chairman, I have no objection except what you just said. I just want to make sure there are privacy concerns, should they might adhere to.

Chairman CHAFFETZ. So we will review these documents, allow the IG to review these documents before they go into the printed record. Without objection, that's the way we'll proceed, and I thank the gentlewoman.

Mrs. LUMMIS. Thank you, Mr. Chairman.

Has the White House responded to your report, Mr. Elkins?

Mr. ELKINS. Yes, the White House has. Actually, yesterday afternoon, I received a letter from the counsel to the President, a copy of the letter that was sent to the chair stating the intent to be com-

pliant with the law in the expectation that the White House—the expectation of compliance. So I did receive a letter and there was a followup, yes. That occurred yesterday.

Mrs. LUMMIS. And what followup will you be making to your report based on the White House's response?

Mr. ELKINS. Well, at this stage of the process, once our report is done and we forward it on to the deciding official, in this case it will be the President, it is really in the President's ballpark to then make a decision. So there is not much we can do beyond that. We've made a recommendation, and you know, that recommendation needs to be acted on, so our role is pretty much over with.

Mrs. LUMMIS. Do you know, are officials still using private emails to conduct official business at the Chemical Safety Board?

Mr. ELKINS. I can't say conclusively that the issue has been fully resolved because, you know, we haven't received—we don't know that we received all the information that we requested, so that's still an open matter.

Mrs. LUMMIS. Okay. Going back to some testimony that you provided to this committee in June 2014. You testified that as of that date in June that the Chemical Safety Board refused, and to that day, continued to refuse to provide documents that you requested, and that you determined were necessary to investigate these activities. Did they ever provide those documents?

Mr. ELKINS. Well, they were supposed to send us an affirmation that they have complied with our request. To this date, we are still waiting for that affirmation, so one can infer that maybe there is still information out there that we don't have.

Mrs. LUMMIS. You don't know what you don't know.

Mr. ELKINS. Correct.

Mrs. LUMMIS. I want to switch over to the EPA's semi-annual report to Congress from the first half of 2014. You indicated in that report that multiple offices at EPA were obstructing the OIG, including Homeland Security, chief financial officer, Chemical Safety and Pollution Prevention, and the Office of General Counsel all within EPA. Which of those offices have been most problematic to you?

Mr. ELKINS. The office of Homeland Security.

Mrs. LUMMIS. Is—so no other offices as egregious as that one, but you've had problems with all of them.

Mr. ELKINS. That's a fair assessment, yes.

Mrs. LUMMIS. Have any of those offices improved?

Mr. ELKINS. Yes, I think they have all improved. We have made progress, and I have to thank this committee for their efforts because, but for your efforts, I may have a different report; but for your efforts, things have improved greatly, yes.

Mrs. LUMMIS. You testified about being blocked from access to the EPA's office of Homeland Security. I think that was back in, well, roughly half a year ago. How were you prevented from access to information by them?

Mr. ELKINS. Well, the prevention really has come about from just stonewalling, just not providing the information that we have requested. It is stonewalling. That's the best way I can describe it.

Mrs. LUMMIS. Well, and your testimony submitted at that time, you said that OHS' investigation of John Beale, this was the guy who defrauded the EPA under the guise of being a CIA operative.

Chairman CHAFFETZ. The gentlewoman may finish her question that may be asked, but the gentlewoman's time has expired so—

Mrs. LUMMIS. You know, Mr. Chairman, I'll allow one of my colleagues to complete this line of questioning. Thank you.

Chairman CHAFFETZ. I thank the gentlewoman.

Now recognize the gentlewoman from Michigan, Ms. Lawrence for 5 minutes.

Mrs. LAWRENCE. Thank you, Chairman Chaffetz and our ranking member Mr. Cummings. I believe we have an obligation to preserve the independence and the effectiveness of the Office of the inspector general at the Department of Justice as well as other agencies. I want to thank all of you here today for your service and for the hard work that you do every day.

Today I would like to direct my questions—my concerns to the Peace Corps, and if I could ask Ms. Kathy Buller. Your testimony States that a legal opinion of the previous Peace Corps' general counsel is "standing in our way of fulfilling the duties of the inspector general's office."

Can you tell us a little bit about the legal issue here and why there is a disagreement?

Ms. BULLER. Back in 2011, Congress passed the Kate Puzey Volunteer Protection Act, and in that Act they created a system for Peace Corps to implement its program for assisting victims of sexual assault, and there were a number of requirements contained in that legislation. One of them was to create a system of restricted reporting that would allow a victim of a sexual assault to come and report that they had been assaulted and receive whatever services they needed as a result of that assault without their information being disseminated widely.

That legislation also created a mandatory duty for my office to do evaluations periodically. Included in those evaluations is the requirement that we review a significant number of sexual assault cases to assure that volunteers had, in fact, received the services that they needed.

In addition, the legislation also contained exceptions to the prohibitions against disclosure of restricted reporting information, and one of those exceptions contained the language that if—if required by other State or Federal statutes, and the argument that we have been having, or had been having with the former general counsel, he didn't interpret that particular provision to include the IG Act even though it specifically said Federal statute.

Mrs. LAWRENCE. Thank you.

In your testimony today, you're saying that the Peace Corps has corrected course by issuing policies and procedures that grant OIG greater access to information; is that correct?

Ms. BULLER. That's correct.

Mrs. LAWRENCE. So I'm pleased to hear that progress has been made. I'm pleased to hear that. What policies and procedures have been issued that has changed and given you the position that greater access to the Peace Corps information?

Ms. BULLER. Until we entered into the MOU, we basically had a blackout of information concerning restricted reports with the exception of three pieces of information, and that those three pieces are the country of the occurrence, the type of assault that it was, and the type of location, for example, if it was on public transportation. That was the only information that we got from restricted reports, and we only got that after a letter was written by the former chairman of this committee. So basically we got no information.

After we entered into the MOU, we got more information. With the exception of certain pieces of PII and explicit details of the sexual assault, we can get access to that information. There is several problems that still remain with that, however. We are dependent on the agency to go through all of their records to determine what needs to be redacted from the information that we get. We are never going to be fully assured that the information that we got is the information that was contained in the files. We will never be able to go in and just do an audit of the system to make sure that they are adequately recording everything that needs to be recorded.

One of the first things that we did years ago was to do an audit of the crime incident reporting system to make sure that the crimes that were being reported were being properly categorized. We could not do that type of an audit on the restricted reporting information. There are just a lot of prohibitions to general oversight that we still will not be able to do.

Mrs. LAWRENCE. I want to thank you for that update. But one of the things that I'm hearing from you while we have made progress, we still have some issues that we need to deal with, so I want to get back, but I want you to know that we truly support the work that you do, and this committee is here to look at those issues as we move forward. Thank you.

Chairman CHAFFETZ. Thank the gentlewoman. We'll now recognize the gentleman from North Carolina, Mr. Meadows for 5 minutes.

Mr. MEADOWS. Thank you, Mr. Chairman. Thank each of you for your testimony today.

Mr. Elkins, I'm going to follow up on Mrs. Lummis' questioning and complete her question, and it deals with an EPA employee who we heard testimony here about him being a CIA agent for a lengthy period of time, actually, and you know, as a story that can only be made for television or a movie as it unfolded. You have been investigating that, but I'm troubled to hear, and that's what I want to followup on, is that you indicated that you tried to interview the Office of General Counsel at the EPA, and that interview was denied. Is that correct?

Mr. ELKINS. We tried to interview a—an attorney in the Office of General Counsel.

Mr. MEADOWS. Right.

Mr. ELKINS. Yes. And we did not get cooperation from that attorney.

Mr. MEADOWS. And so they—are they claiming the Fifth, or why would they not allow you to get to the bottom of what I think all Americans believe is just an unbelievable story?

Mr. ELKINS. Well, from what I understand, initially, she just did not want to talk to us. I'm not quite sure that there was any privilege given, but subsequent to that, I think one of the areas of privilege is attorney/client privilege being that, you know, she was a agency attorney and the agency was the client, and so in some sort of way they thought that—

Mr. MEADOWS. In a twisted way, attorney/client privilege.

Mr. ELKINS. It does not apply.

Mr. MEADOWS. I'm sure we have a few attorneys out here who would have a hard time with that argument; would not you agree?

Mr. ELKINS. So, absolutely.

Mr. MEADOWS. Okay. So let us go on a little bit further because the chairman, in his opening questioning, talked about another employee who had an issue with an intern and 16 other alleged offenses of a sexual nature, and yet there was a delay there in terms of getting you the information; is that correct, Mr. Elkins?

Mr. ELKINS. That's correct. We were not able to get all of the information.

Mr. MEADOWS. So because of this delay, we put potentially other women in harm's way; would you agree with that?

Mr. ELKINS. I would agree with that, yes.

Mr. MEADOWS. So if we are doing that, that this delay of information that we are hearing that is a consistent theme, not only with you but I would imagine with a number of others in the audience here, has real consequences; wouldn't you agree with that?

Mr. ELKINS. It has very serious consequences.

Mr. MEADOWS. So if it has serious consequences, what do we need to do to compel compliance, because I think it is very clear on both sides, both Democrat and Republican, that we think that this is an important issue, that the intent of Congress is that you should get all of the information and not some, and it shouldn't be subject to legal interpretation. What do we need to do to enforce compliance?

Mr. ELKINS. Well, that is the million dollar question. You're absolutely right. There is a gap in the IG Act that allows these sorts of things to happen. We can only go so far. I can only make recommendations if it is not a criminal matter. We only have so much authority, and we rely really on this body right here to come up with some solutions. We would be glad to sit down and talk to you about some ideas.

Mr. MEADOWS. Well, here, while you're under oath, and we will not take the time today, but I would ask each one of you, but also anyone else that happens to be listening, we want names. We want you to name names of those that are presenting the problem, and let the chairman and the ranking member know that, and we will followup.

So it is imperative that we get to the bottom of this so that no one else potentially gets harmed, whether it is a whistleblowers or anybody else.

Mr. Horowitz, let me go back to you because one of my colleagues mentioned about the integrity committee and the importance of making sure that the IGs do their job and that—my understanding is that the head of the integrity committee is the FBI.

Mr. HOROWITZ. That's correct. They chair the committee.

Mr. MEADOWS. So they chair the committee, and I know that on January 21st—and I would ask unanimous consent that the letter gets put into the record, Mr. Chairman. It was a letter from Chairman Chaffetz and Ranking Member Cummings and myself that really wanted us to get the report with regards to some serious allegations that were made, and I would ask unanimous consent.

Chairman CHAFFETZ. Without objection, so ordered.

Mr. MEADOWS. So do you not find it ironic or troubling that the FBI who fails to give you information, Mr. Horowitz, chairs this particular committee and yet they have not complied with this letter? Do you find that troubling?

Mr. HOROWITZ. Certainly is a similar concern to what we have and the issues we face.

Mr. MEADOWS. So if we are being stonewalled, to use Mr. Elkins' language, if we are being stonewalled in terms of transparency within CIGIE, would it not be a better place to have someone else chair that other than the FBI that may have a conflict of interest?

Mr. HOROWITZ. I think there was a serious discussion about that last year in trying to figure out how to reform and address some of the concerns in the integrity committee, and I know there are many members who continue to have that question.

Mr. MEADOWS. And do you have the—

Chairman CHAFFETZ. The gentleman's time is expired. We still have members hoping to ask questions, so—

Mr. MEADOWS. I will yield back. Thank you, Mr. Chairman.

Chairman CHAFFETZ. Thank you. We'll now recognize the gentleman from California, and I want to make sure I pronounce his name properly. Is it Lieu?

Mr. LIEU. Yes.

Chairman CHAFFETZ. Very good. Mr. Lieu from California is now recognized for 5 minutes.

Mr. LIEU. Thank you, Mr. Chairman. I have a question for Ms. Buller. I agree with your interpretation of the Kate Puzey Peace Corps Volunteer Protection Act. I find it impossible to believe that Congress would have intended with this Act, which was designed to prevent sexual assault cases in the Peace Corps, to somehow obstruct IGs from investigating sexual assault cases.

My question to you, because I believe that prior opinion by their prior general counsel is ridiculous. We now have a new general counsel. What is your office's relationship with the new general counsel at the Peace Corps, and do you know whether or not what the view is of the new general counsel about that legal opinion?

Ms. BULLER. My relationship with the new general counsel is very good so far. He has been there since October, and we have had several meetings and discussed a number of issues. I have not specifically discussed the legal opinion with him. I have spoken to the Director about it a number of times. I think it is fair to say that I don't think that she would be opposed to having it revisited. I don't know what the position of the new general counsel is on that, but that is something that we could find out.

Mr. LIEU. Thank you. And then I have a question for the panel. When I served on active duty in the Air Force, I was a JAG, and one of my duties was to work with inspector generals and to review their reports and make recommendations to the commanding offi-

cer, but for this IG system to work effectively, you needed all employees to feel like they can share whatever it is they want with IG, completely free and clear. And my concern is, if we have a lot of one off memorandums of agreement and different specific issue areas, people get confused, they don't know what they can or cannot share, so it seems to me that we need to change the law.

And I understand your concern, following up on what Congresswoman Norton said about if we were to try to make a change and it didn't happen, it can be used against you. What if instead we put in a pretty harsh penalty. We do not change the standard of the IG Act, we do not say we meant what we said. We basically add a pretty harsh penalty for violating it. Would that help you do your job?

Mr. HOROWITZ. I think that is certainly one vehicle. That is frankly why we were appreciative of section 218 in the Appropriations Act because it starts to put forward that notion of we mean what we say in Congress in section 6(a), and through an appropriations bill you are obviously limited in what you can do, but that was a way that Congress tried to take that action, and I think what you mentioned, Congressman, is another way, vehicle to get at that issue.

Mr. LIEU. Thank you. I yield back my time.

Chairman CHAFFETZ. I thank the gentleman. Now recognize the gentleman from South Carolina, Mr. Mulvaney for 5 minutes.

Mr. MULVANEY. Thank you, Mr. Chairman. I want to talk with all the witnesses a little bit about how and when this started.

Mr. Elkins, I will start with you because you mentioned something that I was not familiar with, which was this memorandum of understanding, I think if I heard it correctly, between Homeland Security and the EPA that you were not involved with. When did that happen?

Mr. ELKINS. I don't have the date right off the top of my head, but I believe 4 or 5 years ago.

Mr. MULVANEY. And I think that is what you said to Mr. Cummings. You have had this difficulty now from 4 or 5 years ago.

Mr. ELKINS. Yes.

Mr. MULVANEY. Ms. Buller, I ask you the same question. Is there a point in time where you saw the practices changing?

Ms. BULLER. Yes, with the passage of the Kate Puzey Act. It was November 2011.

Mr. MULVANEY. Okay. So November 2011.

Mr. Horowitz, I think you testified that there was a FBI general counsel opinion in 2010 that was sort of a touchstone for the change in practices within the agencies that you oversee. By the way, what was the—what was the subject matter of that—of that general counsel's opinion?

Mr. HOROWITZ. There were a couple of reviews going on. One was Fast and Furious, one was our review of the FBI's use of its material witness warrants and whether it was appropriate in exercising its national security authority there. The third was the FBI's use of national security letters under the PATRIOT Act, so again we are trying to conduct oversight over the FBI's use of authorities that Congress gave to it.

Mr. MULVANEY. Mr. Elkins, do you remember, was there anything pending at your agency or was there something that happened that gave rise to the MOU? I am just trying to figure out why it suddenly happened.

Mr. ELKINS. You know, I think it was a matter of turf battles. I think it was personalities deciding that they wanted to carve out a certain section of authority for themselves, and they saw a conflict with the IGs role.

Mr. MULVANEY. Okay.

Mr. ELKINS. That's my opinion.

Mr. MULVANEY. All right. But what I'm hearing is it is 2010, 2010 or 2011, and 2011. Thereabout is where it changed. I wish I could ask that question of everybody. We may end up doing that, if they saw a particular time when the weather changed, for lack of a better word.

I do want to come back and talk to Mr. Horowitz about the question one of my colleagues asked you regarding the President's budget, to go back and cover it real quickly. We did add the language in section 218 last year. It passed with bipartisan support, folks on both sides of the aisle supported that language, and the President has taken it out of his proposed budget. I originally thought that that might be an oversight. The budget, as you have seen it, is something like this, and you could easily miss something like that, and I was surprised to see the language they included, and I'll read it to you again, because I think it merits a little bit of discussion.

This is from the President's proposed budget in explaining that language coming out. It says, "The Department is unaware of any specific materials the OIG believed necessary to its reviews but to which the OIG has not been granted access."

It is just not possible that that is a true statement, is it?

Mr. HOROWITZ. What that statement does is gloss over how we get the documents ultimately.

Mr. MULVANEY. Okay. Tell me about that.

Mr. HOROWITZ. We do not get them pursuant to the IG Act, some of these documents. What happens is the FBI decides, based on its legal views, that other statutes limit their ability to hand it to us, so they go to the Deputy Attorney General or the Attorney General and say "can we give it to them, do you give us permission to give it to them?" The AG or the Deputy makes a determination that our review will help them manage the Department as opposed to the inspector general making that decision, an independent entity, it is being made—the Department, in essence, is deciding for itself whether our reviews will help them so they will allow us to look at the records.

Mr. MULVANEY. I have been in government to know—long enough to know how you can gloss language, and I see exactly what you are talking about. I think the bottom line is that you still think that the language in 218 is necessary and helpful to you.

Mr. HOROWITZ. It has been necessary. It has been helpful. I can—there have been several issues where—we had with the DEA recently where, before December—mid December when this became law, we were having difficulty getting those records. In two instances in January, we—I engaged with the Administrator of the

DEA and an associate in the Deputy Attorney General's office who were very helpful in working through those issues, but we made clear we had a deadline under 218, and in our view, we needed the documents by the deadline, and so in those instances I can give precise examples where it has been helpful.

Mr. MULVANEY. Let me ask you very quickly in the time I have remaining about an issue that you raised about the warrantless searches, because there was an article in *The New York Times* just last month about it. There was a new report that was released that had been declassified but still redacted and sent to *The New York Times*, and it actually quoted you or it cited you, it didn't quote you, that said that in the report on the warrantless searches that was delivered to the Times, the inspector general, Michael Horowitz, concluded the FBI was doing a good job, *The New York Times'* words, making sure that email accounts targeted for warrantless collections belonged to non-citizens abroad.

And I guess my question is this: In—and I'm not asking you to give any classified information. I want to make that clear. In conducting the review that is the subject of the report that was recently made public, did you get everything that you asked for and everything that you felt you needed in order to conduct your investigation?

Mr. HOROWITZ. To be clear, in each of the areas, we have ultimately gotten what we have needed to do our work. The problem has been in various reviews, and I don't recall that that is one where it came up, but certainly others related to the FISA, PATRIOT Act, others are ones where these questions have been raised. In fact, one of the categories that has not yet played out but that the FBI has indicated it has questions about whether it could share information with us is raw data from FISA matters, and so what Congress has asked us to do is oversee the FBI's authorities in those areas to make sure they are exercising appropriately. To do that, we have to know that we are getting everything and we are getting everything promptly. That is the challenge we keep facing over and over and over again.

Mr. MULVANEY. Thank you, sir.

Mr. MEADOWS [presiding]. I thank the gentleman from South Carolina. The gentlewoman from the Virgin Islands, Ms. Plaskett, is recognized for 5 minutes.

Ms. PLASKETT. Thank you very much. Good morning. Thank you so much for your patience and your professionalism in dealing with these issues. I wanted to direct my questions to Mr. Horowitz, and thank you for testifying. You testified before this committee last September and you raised several concerns about your office's ability with the granting of timely access to the information. And during that testimony, you stated that the FBI and other Department components initially refused the office's request; is that correct?

Mr. HOROWITZ. That is the issue, yes, that we have been having.

Ms. PLASKETT. And that after that refusal, it was then elevated to another level and ultimately either to the Deputy Attorney General or to the Attorney General's office at which time the quote was, you were granted us permission to access the records by making the finding that our reviews were of assistance to them.

Mr. HOROWITZ. Correct.

Ms. PLASKETT. And that the Department further stated that their intention to do so in future audits and reviews and that the current Department's leadership had supported our ability to access those records.

Mr. HOROWITZ. That is correct.

Ms. PLASKETT. So the issue for the Department of Justice and FBI have been the MOU and the legal opinion that was given?

Mr. HOROWITZ. The issue is that the FBI believes it needs to go through this process that they have set up. There is no actual MOU in place. This is a process they've set up in order to get that permission here.

Ms. PLASKETT. And that process was set up by what measure? What was the reason for them setting it up?

Mr. HOROWITZ. There was a—it was in response to the FBI's legal opinion.

Ms. PLASKETT. Legal opinion. So the legal opinion—

Mr. HOROWITZ. It was not vetted through us.

Ms. PLASKETT. Their legal and their belief constrains them from freely giving—

Mr. HOROWITZ. Correct.

Ms. PLASKETT [continuing]. Information related to grand jury, wiretap, Fair Credit Reporting Act information, those types of—

Mr. HOROWITZ. And maybe others.

Ms. PLASKETT. And other types of information.

Now, it is my understanding that the Department has ultimately granted access to the requested reports and that has there ever been an instance that you already stated that you did not receive that?

Mr. HOROWITZ. We are not aware of any.

Ms. PLASKETT. You are not aware of any?

Mr. HOROWITZ. Right.

Ms. PLASKETT. But it is a timing factor?

Mr. HOROWITZ. It is a timing factor, and I will add, it is a waste of resources factor.

Ms. PLASKETT. Correct.

Mr. HOROWITZ. The time it takes me, and frankly, my staff to do it, and the FBI has built this mechanism to review these records solely for the purpose of having to go to the Attorney General, the Deputy Attorney General to ultimately give them to us.

Ms. PLASKETT. Uh-huh.

Mr. HOROWITZ. It is—you—

Ms. PLASKETT. Well, having worked on the staff of a Deputy Attorney General who has oversight over 9,000 attorneys, many different agencies and divisions within the Department of Justice, I can imagine that it would take quite a number of months in some instances before you would receive—you would come up in the cue to receive the information and the permission, correct?

Mr. HOROWITZ. And to be fair, the Deputy Attorney General, the Attorney General have been very supportive of getting that material to us. The problem is, at every step of the process there is a delay. My staff has to go through the issues. The FBI has to review the records. It then gets elevated to me. I elevate it to the general counsel in the FBI or the Director or the Deputy Director. It then goes from there up. All of that takes time.

Ms. PLASKETT. So now, am I understanding also is that the Department of Justice has stated that they are in a legal review of this to determine if this should be—this process should be changed?

Mr. HOROWITZ. Correct.

Ms. PLASKETT. And what is the status of that review?

Mr. HOROWITZ. To my understanding, all of the briefing, if you will, was submitted to the Office of Legal Counsel. My office sent materials. CIGIE sent its submissions. I understand other components sent submissions back in May of last year. We have heard at various times we might get the opinion in the fall, later in the year, but we still have no opinion.

Ms. PLASKETT. No deadline has been given for the opinion?

Mr. HOROWITZ. Not that I am aware of.

Ms. PLASKETT. So it would be helpful to you for this committee to either push forward that opinion to be granted or a change in the law?

Mr. HOROWITZ. Agree completely, Congresswoman. From our standpoint now, any opinion is what we are looking for. Hopefully it is a good opinion.

Ms. PLASKETT. Uh-huh.

Mr. HOROWITZ. But frankly, if it is not a—we are operating under the bad-opinion outcome.

Ms. PLASKETT. Right.

Mr. HOROWITZ. That's what's been set up, and we are all struggling with it because of the lack of a decision. We get a decision, my guess is Congress would then—if it is bad, Congress, as we have talked about today, I think would probably act pretty promptly.

Ms. PLASKETT. Well, it appears that you are operating under a very old law which has broad scope for the Inspector General's Office, and contrary to maybe my colleague's opinion, the law is not stagnant, and so there is constant changes that occur within the law, particularly in areas where technology or issues or circumstances change which will allow for opinions or further clarification or some other mechanism to make sure that the law is applicable to the time in which you are operating.

Mr. HOROWITZ. There certainly are some issues where that comes up. I do not think, frankly, in the ones that the FBI has raised with us, FBI—grand jury, the law has been the same all through. Title III, it has been the law all the way through, but there are other areas where we have had discussions about how evolving information and technology impacts our access.

Ms. PLASKETT. Well, I am thankful that the Department is working with you, and I am hopeful that this committee will be able to move that along much faster. Thank you so much, and I yield the balance of my time.

Mr. MEADOWS. The gentlewoman's time is expired. The chair recognizes the gentleman from North Carolina for 5 minutes, Mr. Walker.

Mr. WALKER. Thank you, Mr. Chairman. Thank you, panel, and to all the IGs who have been sitting out here for right at 2 hours now. I will not use my full 5 minutes by trying to get strictly and directly to the point.

The pattern here of obstruction is obviously at this point not an isolated incident, and specifically I want to dial down—Ms. Buller, the “u,” a short “u” or a long “u,” is that Buller or Bueller?

Ms. BULLER. It is Buller.

Mr. WALKER. Okay. Buller. All right. Fair enough. I want to talk specifically or work toward a question here. I find some of the things that you have shared today very concerning. My wife helped launch the sexual assault nurse examiner program at Wake Forest University Baptist Medical Center, and as a minister for 15 years, I have counseled some people who walked with some of the darkest times of their life. These victims, there are many obstacles, I will put it this way, to come forward to share such tragic moments in their life, and I’m troubled, I believe your words were, though there have been improvements, specifically after the last two committee meetings, that there have been improvements, challenges remain.

And I struggle with the fact that there are challenges remaining in such a sensitive and potentially damaging area. I do not understand that because we are not dealing with just unethical behavior. We are dealing with criminal behavior in some of these incidents. So my question for you today is because of the obstructions that you continue to face from whoever, unnamed sources at this point, hopefully that will be resolved in the future, is it fair to say that we could be protecting these predators—and I will say predators because even, and the FBI has been thrown out a few times today, according to the FBI, the one behavior pattern that they have no proof can be amended are those who are continually sexually assaulting others.

So my question is, are we, at some point, if we cannot remove these barriers or challenges, are we protecting these predators who, in remote areas, have no law enforcement people to contact?

Ms. BULLER. I think the issue we have is with restricted reporting, and the way—the reason it was created was to allow people to come forward and get the services they need without law enforcement necessarily launching an investigation, and we respect the whole concept of reporting and why it was put into place.

The problem being that if law enforcement does not find out about it, then there is nothing that law enforcement can do, but that is a choice that is being given to the victim, and it is a legitimate choice, and Congress saw that as a legitimate choice when they created the Kate Puzey Act, and our problem is not with restricted reporting. Our problem is with the fact that restricted reporting has been used to keep information from my office that we need to perform our oversight capabilities. Even if we had access to the restricted reported information in total, my law enforcement officers, by statute, could not go out and investigate.

Mr. WALKER. What do you think may be the first immediate approach is as far as resolving the frustration?

Ms. BULLER. What I did would be to have the Peace Corps retract the legal opinion, because it is the legal opinion that was the impetus for all of the policies and procedures. To date it has not been retracted. The general counsel left the agency, I believe, in October, and we do have a new general counsel. We continue to work with him, and hopefully we can get that retracted, but as I

said in my testimony, if we get it retracted for us, it does nothing to help Art and Mike Horowitz.

Mr. WALKER. Right. A real problem. Thank you Mr. Chairman, I yield back.

Chairman CHAFFETZ. Thank the gentleman. Will now recognize the gentleman from California, Mr. DeSaulnier. Did I pronounce that properly?

Mr. DESAULNIER. That was great, Mr. Chairman. I apologize.

Chairman CHAFFETZ. I can not do any better than that. So I will now recognize you for 5 minutes.

Mr. DESAULNIER. I respond to almost anything close to that, Mr. Chairman.

Well, I want to thank you all for the job you do. I really do not think we could overstate the importance of the integrity of the work you do. As someone who believes in the possibility of government being a force of enormous good in this country, I think that those who lack that, it really comes down to trust.

So, Mr. Elkins, I want to talk to you specifically about some of your comments about the Chemical Safety Board. As you may or may not know, in the area of California that I represent, we have a very large intensity of chemical and hazardous material facilities. It was very important to my predecessor that this group work well. Just last week we had a major report from the board on a major incident at the Chevron refinery in Richmond that just narrowly missed killing or seriously injuring 18 constituents.

So knowing of the importance, first let me ask you a general question. You said about not reaching a judgment, this balance that you all have to face and then the erosion of trust. Usually it takes two parties, whether it is deliberate or not, to have that happen, and some of the other comments by some of my colleagues. Could you—you have done this for a while. Have there been incidents from your side, from the IG community, where you wish that the material you had gotten had not been used in a manner that it had been used that helped to get us to this point where there is an erosion of trust?

Mr. ELKINS. Off the top of my head, I can not really think of any examples where that has occurred, but let me just state that we are not above the law.

Mr. DESAULNIER. Understand.

Mr. ELKINS. We have an obligation as well, and we could be subject to sanctions, criminal prosecution if we violate the law. So it is—I am not talking double standards here.

Mr. DESAULNIER. Okay. And then specifically to the CSB, and I am familiar some of the personality issues that have happened at the board. So in your testimony in September, you issued a 7-day letter to try to get the information of the private emails, and that you said that it was the only time in your tenure that you had to issue a 7-day letter. Is that accurate?

Mr. ELKINS. That is accurate, yes.

Mr. DESAULNIER. So in spite of that, you were able to complete your investigation, and that led you to, “evidence sufficient to support a conclusion that the chairman and two of his senior officials violated the Federal Records Act in implementing regulations by using non-governmental email systems.”

Now, in your investigation, was that deliberate? Did these three individuals deliberately use their private emails to avoid the Federal Records Act?

Mr. ELKINS. It would sure seem that way, yes.

Mr. DESAULNIER. And are there consequences for them, either individually or the board?

Mr. ELKINS. There definitely are consequences.

Mr. DESAULNIER. Have there been consequences implemented?

Mr. ELKINS. Well, the consequences are that we sent that information on to the White House with—with the ROI, and then the White House would then have to take actions. And the White House, as I said earlier, has issued a letter directing that they comply with the law.

Mr. DESAULNIER. So this is an issue of compliance. And I find in my previous life in local and state government is always a big issue, whether it is a civil grand jury or it is a legislative body trying to get people to comply, and it goes to a little bit about some of the concerns by previous speakers about the Peace Corps as well.

So in terms of compliance specifically to CSB, are you satisfied that they are complying now with the letter of the law?

Mr. ELKINS. No, I can not say that I am totally satisfied, because they, again, have not affirmed that they have complied with our requests, so we are still waiting. So until I receive that affirmation, I do not know what I do not know.

Mr. DESAULNIER. Okay. And, Mr. Horowitz, and again, my personal experience, whistleblowers are really important, but how you handle them is really important. So as you work on your working group, and just briefly if you could mention some of the struggles, my experience may be accurate or not, but it is mine, the front end and the back end are two of the most important, so trying to find out if somebody actually is valid and has objective material, and I wonder if you could comment on that, and then the back end when it comes to retribution.

And then last, I have a question on a different subject matter. Maybe you could tell me, when you allocate resources for investigations, what percentage do you put to just getting the information, and has that changed over time?

Mr. HOROWITZ. On the whistleblower issue, I could not agree with you more, Congressman. I think it is very important for IGs and our staffs to respect allegations that come in, thoroughly look at them, evaluate them, respond. I have found that simply the response and the interaction with folks coming forward is very important even if you ultimately conclude there is not merit or there is not sufficient information to corroborate the allegation. So that is, I think, very important on the front end.

And then on the back end, I agree with you. If there is certainly confirmation of the allegations, making sure that there are processes in place and protections in place to ensure that whistleblowers who suffer retaliation have a vehicle to come forward and get remediation for what occurred and get it done promptly. And, frankly, one of the concerns, as I said that I have about the issue that is in the letter today, is that it comes up in two whistleblower cases where we have outstanding requests for several months, and the reason we are being asked to wait even longer through this

week or next week is so the FBI can determine what are things we do not get access to so the Attorney General Or the Deputy Attorney General can decide we should get access to it. That is a problem also in terms of the message to a whistleblower as they look at issues if they see that process.

Mr. DESAULNIER. Thank the gentleman. Appreciate it.

Chairman CHAFFETZ. We will now recognize the gentleman from Georgia, Mr. Hice, for 5 minutes.

Mr. HICE. Thank you, Mr. Chairman.

The law is very clear when it states that all records, reports, documents, people and so forth are to provide the information that you need, and, of course, that is the issue that brings us here. You have stated clearly, each of you, that in order to do your job, you need 100 percent of the information that you request. That being the case, what percentage would you say of that 100 percent do you not receive or is delayed to the extent that it is problematic? Just—and I realize this is just a guess, but what would you say?

Mr. HOROWITZ. Our issue has been the delay issue and the timely receipt of it, and the Congressman's—

Mr. HICE. Okay.

Mr. HOROWITZ [continuing]. Question as well, which is it is taking a substantial amount of my time as inspector general and a significant time of certain teams of mine who get delayed. Ultimately they may get the records, but it is taking us, in some instances—

Mr. HICE. Okay. How much is delayed?

Mr. HOROWITZ. Months—

Mr. HICE. Okay.

Mr. HOROWITZ [continuing]. Of time.

Mr. HICE. The rest of you experience a similar type of thing?

Mr. ELKINS. Yes.

Mr. HICE. Okay.

Ms. BULLER. In my case, we do not—up until recently, did not get the records, period, until we entered into the MOU.

Mr. HICE. Okay. So we have a whole gamut of issues here: Significant delays to the extent that you are unable to do your job or not receiving the material at all?

All right. Last year Attorney General Holder testified before the Judiciary Committee in April at that time regarding this type of issue. He said, "I'm not sure exactly what the process is, but I do not think that it is anything that has had a negative impact on any investigation that he's tried to conduct."

What is your assessment of that statement? It sounds like it is not true.

Mr. HOROWITZ. Well, the impact on our investigations has not been that we did not ultimately get the records. The impact on our investigations has been the time delay, and if there are findings associated with our efforts, that means we do not learn of them early enough, the Attorney General does not learn of them early enough, and the Congress does not learn of them early enough.

Mr. HICE. But the Attorney General said that he is not aware of anything that has had a negative impact at all on the investigation, and that would not seem to be true.

Mr. HOROWITZ. Well, as I mentioned, that is the impact we have had, that it's had on us, has been the delay and the delay in our

ability to do our work and get our reports done, and that does have an impact on—on our ability to do what you—what Congress has instructed us to do.

Mr. HICE. All right. I understand. Mr. Horowitz, you mentioned that during this time when you experienced personally in 2010 delays and the type of things that you are experiencing, that was right in the middle of some of the issues that were being dealt with, the PATRIOT Act, national security issues, Fast and Furious.

Mr. HOROWITZ. Correct.

Mr. HICE. There were a number of issues taking place at that time. And we have also determined today that our system around here in Washington operates with authority, people do as they are told. Is it reasonable to the average person hearing this information today to conclude that it would appear as though somewhere someone in whatever position of authority has been able to direct agencies to either withhold or delay information? Would that be a reasonable conclusion?

Mr. HOROWITZ. In my instance, it was an FBI general counsel opinion that—and it was from—through the FBI back in 2010.

Mr. ELKINS. In my opinion, generally it starts at the top in terms of messaging, in culture. If the top says it is okay to do it, then everybody else will fall into line.

Mr. HICE. Okay.

Ms. BULLER. In my case, it was a general counsel opinion that was issued that caused the problem.

Mr. HICE. Okay. So this—the problem that you are facing is coming from somewhere at some higher level that is giving directives and it is going through. So as one of my colleagues mentioned a while ago, we need some names. If you are aware of any, we—in order to get to the root and pull the root of this problem up, we need some names, we need something to go by.

Let me shift gears real quickly in the brief moment that I have left. Have—in the midst of your requesting information, have you, to your knowledge, ever received back information that was edited, altered, redacted in any way?

Mr. HOROWITZ. We have initially received redacted information. We have also learned through our reviews that reports—productions that we were told were complete, it turned out when we interviewed witnesses were not complete, and we had to go back and ask for supplemental records.

Mr. HICE. Okay. Mr. Elkins?

Mr. ELKINS. Yes. I can not think of any instance where we have received information that has been redacted.

Mr. HICE. Okay. Ms. Buller.

Ms. BULLER. Well, in our case, pursuant to the MOU, they do redact information before they give it to us.

Mr. HICE. Okay. So we have a multiple issues of problems here, where you are not receiving information, you're receiving delayed information, or you're receiving information that, in one way or the other, is inaccurate when you receive it?

Mr. HOROWITZ. That—we are being told it is complete, and it turns out we find other records along the way.

Mr. HICE. Okay. Thank you.

Chairman CHAFFETZ. I thank the gentleman. I now recognize the gentleman from Pennsylvania, Mr. Cartwright, for 5 minutes.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

The premise of the hearing today is getting full and efficient access to the information necessary to conduct effective oversight, but Congress needs to do oversight on the Inspectors General as well. In February 2014, as he said here today, Mr. Connolly and I wrote a letter to Deputy Director Colbert, inspector general Fong, and Deputy Assistant Director Campbell to raise serious concerns over the troubling activities of Treasury inspector general for Tax Administration, TIGTA for short, J. Russell George, with respect to TIGTA's May 14, 2013, final audit report named "Inappropriate Criteria Were Used to Identify Tax Exempt Applications for Review." This included IG George appearing to have officially sanctioned audit processes and procedures that, both in appearance and in reality, indicate TIGTA's Office of Audit was conducting an audit on behalf of and in consultation with Republican members to the exclusion of Democratic members and staff.

We concluded that TIGTA produced a fundamentally flawed audit that harmed the public interest to such a severe extent that trust and confidence in TIGTA's independence, ethics, competence and quality control have been called into question and its effectiveness had been threatened.

We urged the Integrity Committee to investigate the matter. Their response was ridiculous. I am going to read it to you.

"Dear Ranking Members Connolly and Cartwright, the Integrity Committee, IC, of the Council of Inspectors General on Integrity and Efficiency recently reviewed the allegations you provided about non-conformity to GAGAS and evasiveness in testimony before Congress by J. Russell George, inspector general for Tax Administration. Your office referred these matters for IC consideration on February 5, 2014.

The IC reviewed the allegations against Mr. George and requested his response. The IC reviewed the response from Mr. George and determined that his response sufficiently addressed the allegations, thus, the IC determined the matter did not meet the threshold for further consideration and has closed the matter. Thank you for your attention to this matter. Sincerely, Angela Byers, Acting Chair, Integrity Committee." That was their response.

In September 2014, my office and the Connolly office requested a copy of the complete unredacted response that was submitted to the integrity committee by Mr. J. Russell George, and we still have not got a response. If his response was so comprehensive and beyond reproach, then why can't we even see that response?

Look, this is about transparency and consistency. We would like—we would like to see all the documents related to this.

Mr. Horowitz, can I get a promise from you that you will share that unredacted response with us in a timely fashion?

Mr. HOROWITZ. Congressman, I learned about this last night from Congressman Connolly's staff. The statute that creates the integrity committee makes the FBI as the custodian of records for integrity committee matters. So I will follow up and ask the FBI

about the records, but I—I know nothing more than what you just referenced in the letter, and need to follow up on that.

Mr. CARTWRIGHT. Will you do—will you follow up?

Mr. HOROWITZ. Yes, I will follow up—

Mr. CARTWRIGHT. Thank you, sir.

Mr. HOROWITZ [continuing]. On the request.

Mr. CARTWRIGHT. Because I hope that you and Congressman Connolly and I and IG George can work together to get the information we need so that Congress can do its necessary oversight. Responses like that are just ridiculous and cannot be tolerated if we are going to believe in transparency and consistency in our oversight process. Do you agree with that?

Mr. HOROWITZ. I do. And I have heard concerns raised by members of both parties about the Integrity Committee and making sure it is operating more effectively in terms of timeliness as well as transparency concerns, and something that we need to talk about. And I think, frankly, some of them are statutory based on how the Integrity Committee was created. So I think part of it is us talking with the FBI about the processes, but part of it is also talking about whether there needs to be any fixes to the statute.

Mr. CARTWRIGHT. Then I thank you for your commitment, Mr. Horowitz. And, Mr. Chair, I yield back.

Chairman CHAFFETZ. Thank the gentleman. Now recognize the gentleman from Oklahoma, Mr. Russell, for 5 minutes.

Mr. RUSSELL. Thank you, Mr. Chairman.

The three of you and scores of your colleagues that stand with you believe that the IG Act is clear in granting you the authority to obtain all the documents, and that has been discussed many times respective to each department. A Department of Justice Office of Legal Counsel opinion is pending that has been referenced that will either agree or disagree with the law. An affirmative ruling solves the dispute, a negative ruling will provide legal and congressional options to uphold the law against the ruling.

Given the importance of the OLC ruling to unconstipate the timely review of information, what can Congress provide, in your view, to help expedite the ruling so you can do your job?

Mr. HOROWITZ. I think continued contact with the Justice Department by the committee and Members of Congress, as I have been doing, to try and find out when we can expect an opinion.

Mr. RUSSELL. Mr. Elkins?

Mr. ELKINS. I will concur with Mr. Horowitz.

Mr. RUSSELL. Ms. Buller?

Ms. BULLER. From personal experience, I have noticed that every time Congress has gotten involved in our issue, we have seen movement, at least as far as Peace Corps is concerned, so I concur with what has been said.

Mr. RUSSELL. Would there be any other options beyond asking when a date could be expected? I mean, obviously they have told you that it may be in the fall, it may be—we are not sure. Congress could also get that type of an answer. What other options might be available?

Mr. HOROWITZ. Well, certainly something I think we will discuss and think about and talk with the committee as to whether there are other options and other issues. As I said, I think Section 218

in the Appropriation Act has had a positive impact generally. Obviously there has been an issue that I have addressed today, but that is a vehicle by which there has been some change. And I concur fully with what inspector general Buller said, which is every time Congress has gotten involved, it has resulted in attempts to address some of our concerns.

Mr. RUSSELL. Other members of the panel?

Okay. Thank you, Mr. Chairman. I yield back my time.

Chairman CHAFFETZ. Thank you. This—this marks the halfway point of our hearing, and—hang in there. We are getting there. We are getting there.

All right. We will now recognize the gentleman from Georgia, Mr. Carter, for 5 minutes.

Mr. CARTER. Thank you, Mr. Chairman. And—thank you, Mr. Chairman.

And thank all of you for being here and thank you for what you do. Please don't ever think that what you do is not important, please don't ever think that what you do is not appreciated. It is very much so.

I can't help but get the impression, and please correct me if I am wrong, but at least in certain circumstances, it seems to be us against them. How did that evolve? I mean, what happened? What—how did we get to that point? I mean—

Mr. HOROWITZ. It would—hard for me to say that, the latter part, because I was not there in 2010, but it is interesting you say that, because when I talk to my staff and they talk about what it was like before 2010, it was, we go—we are part of the Department of Justice, we are independent, but we are within the Justice Department. We would go to our components like the FBI and say, we are investigating the Hanssen spy matter. We need access to records. The discussion would be about how do we make sure we are looking at them in the appropriate place with the right people who have the right clearance, not, we have got to look at them, we are not sure if you are entitled to them. A completely different dialog and, frankly, I will go back to what Art said, culture. Inspector general Elkins has it just right. There was a sea—a significant change in the attitude with the relationship.

Mr. CARTER. Mr. Elkins?

Mr. ELKINS. In addition to that, I think in some cases agencies do not really understand the role of an IG and they see the IG has an adversary rather than as a vehicle to help the agency be more efficient and more effective, and that relates to culture as well, but if you come in with the attitude that, you know, the IG is an adversary, then that is going to set a—you know, it is going to set a tone. So I think that is a part of it.

Mr. CARTER. Okay.

Ms. BULLER. Well, from my perspective in the Peace Corps, we really did not have that mentality before the issuance of the general counsel's opinion. We had country directors who would call us asking for information, asking if this would be the type of case that we would normally take, things like that.

Since the issuance of the general counsel's opinion, that kind of communication has pretty much stopped, which is really detrimental to volunteer victims of sexual assault in particular, because

there are so many opportunities that they could get information from us on how to do things, how to process, for example, a safe kit, a rape kit that a country director does not feel comfortable even calling and asking anymore.

Mr. CARTER. All right.

Mr. HOROWITZ. I was just going to say, and I want to make clear also, I have got a lot of components in the Justice Department. Most of them are still having that relationship. So we are doing a lot of work, for example, on the Federal Bureau of Prisons. We have a very strong working relationship with them. I could name many more components like that. So I do not want to leave that impression, but we do so much work with the FBI and the DEA, that that is where a lot of our work ends up focusing.

Mr. CARTER. Okay. Well, very quickly, and, you know, any time we are in a situation like this, we want to do some self-assessment. Mr. Horowitz, you said there were 72 IGs and that 40-some-odd had signed off to this. Let's talk about those who did not. What are they doing differently? Are they not having any problems, or were they intimidated to not sign, or can we get any best practices from them? You know, let us—

Mr. HOROWITZ. I think, frankly, you'd have to talk to the others who decided not to sign to understand why. I do not think it was necessarily because they—that the issues they were facing were the reason, or were not facing, were the reasons for their decision, but I think I would suggest you would really need to talk to them.

Mr. CARTER. Okay. Fair enough. Fair enough. Okay.

Very quickly, because I want to get this in. The recommendations that you make, particularly as it pertains to saving money, which is one of the primary reasons, if not the primary reasons that I am in Congress, it is because of an \$18 trillion debt that I do not want to leave for my children, I do not want to leave to my grandchildren, none of you do. Are those recommendations being looked at? Are they being adhered to? What—

Mr. HOROWITZ. We followup on all our recommendations and we find, generally speaking, they are implemented and they are followed. We have issues at times, but we have a very strong track record of—at the Department of following up on them.

I will add one way to save money and time, frankly, is resolve this issue, because it is causing a waste of resources and time on all sides.

Mr. CARTER. Great.

Well, Mr. Chairman, that was the quickest 5 minutes I have ever seen, but nevertheless—

Chairman CHAFFETZ. They get faster and faster, I guarantee you.

Mr. CARTER. Okay. Nevertheless, please understand, whatever the ruling is of the OLC, regardless, what you do is important, what you do is appreciated. If you continue to have problems, please, please come back to us.

Chairman CHAFFETZ. Thank the gentleman. Now recognize the gentleman from Alabama, Mr. Palmer, for 5 minutes.

Mr. PALMER. First of all, thank each one of you for your service and for coming today.

Mr. Elkins, I believe you were asked earlier about the EPA's Office of Homeland Security. Is this the office that utilizes armed agents?

Mr. ELKINS. No. They should not have any armed agents.

Mr. PALMER. Are you aware, or do you know what office or division of EPA has armed agents?

Mr. ELKINS. Sure. That would be the CID division.

Mr. PALMER. Okay. Has anyone contacted your office about the use of these armed agents against private citizens or municipal governments at any level?

Mr. ELKINS. Not that I am aware, but we may have hotline complaints that just have not reached their way to me as of yet.

Mr. PALMER. Okay. There is an issue of this that I would like to address later, Mr. Chairman, this may not be the appropriate forum for that, of the EPA using armed agents, particularly against a small town in Alabama where they showed up at a waste treatment facility, full body armor and weapons drawn, and I would think that would be an area that would be of interest to the Inspector General's office in terms of oversight. That is a little heavy-handed.

Ms. Buller, in regard to the situation at the Peace Corps, were any of the people who were involved in the sexual assault prosecuted?

Ms. BULLER. We have had instances where we have had prosecutions for sexual assault. Most of the instances of sexual assault involved host country nationals, so they are prosecuted in their country.

Mr. PALMER. Were there any cases where the prosecution may have been impeded?

Ms. BULLER. As far as the—this new policy that's been implemented?

Mr. PALMER. Right.

Ms. BULLER. It is only been in place for about a year. And if a volunteer chooses to go restricted reporting, there is no prosecution that's done.

Mr. PALMER. Okay. Then can you speculate, or maybe you can give an answer as to why your investigation would have been impeded?

Ms. BULLER. It would not necessarily have been my investigation, it would have been the investigation of the host country where the incident occurred, but when a person decides to file a restricted report, it does not go outside of a specific chain of people, so there would be no possibility for the local law enforcement to get the information.

Mr. PALMER. Okay. And, Mr. Horowitz, I have a question for you in regard to the overall discussion that we have had here today. Do you think any of these delays would constitute obstruction?

Mr. HOROWITZ. They certainly have had a significant impact on our reviews. The—the time ranges are very significant. Ultimately we have gotten—or we are told we have gotten the records, so I think that is where it stands at this point. They have certainly—for the time when we are not getting them, they have obstructed us and prevented us from completing our work in a timely fashion.

Mr. PALMER. In regard to a timely fashion, then, particularly where it involves political appointees, would that—could that be considered an act of running out the clock?

Mr. HOROWITZ. I do not know specifically what the motive is for why this is occurring. Frankly, it started with the FBI with the general counsel, who is not a political appointee, who came in. But there certainly could be more done to resolve this quickly in terms of the OLC opinion, it seems to me. We—again, we just need an opinion. Hopefully it will be good, but if it is not good, that will allow Congress to look at what is problematic from the Department's standpoint and then correct the problem.

Mr. PALMER. Well, to echo what Congressman Carter said, we do appreciate the work that you are doing. I think it is absolutely critical that we have transparency and oversight and accountability, and anything that can be done to expedite your work needs to be done. I think we owe it to the American people to restore confidence in our government. And I thank you for the job you are doing and for your willingness to come before us today.

I yield the rest of my time, Mr. Chairman.

Chairman CHAFFETZ. Thank you. Now recognize the gentleman from Texas, Mr. Hurd, for 5 minutes.

Mr. HURD. I'd like to add my thanks to you all on coming here today. My first question is actually for Mr. Elkins. As a former CIA officer for 9 years, I was undercover. The case of John Beale is very interesting to me. It is usually the other way around. We are saying we are someone else rather than someone saying they are one of us. What do you need in order to continue that investigation and bring that to closure?

Mr. ELKINS. Well, the—Mr. Beale's case has been closed. He is serving time in prison—

Mr. HURD. Okay.

Mr. ELKINS [continuing]. Right now.

Mr. HURD. Well, good work.

And my next question is for Ms. Buller. You know, in the documents you provided talking about, our push for access is about fulfilling our collective responsibility to ensure that we, Congress, the Peace Corps and the OIG do everything we can to ensure our volunteers, who sacrifice so much time when serving in remote corners of the world, receive the services they need when they are victims of assault. And my question to you is how can we better fulfill our collective responsibility? You had mentioned earlier about having the Peace Corps retract their general counsel opinion. What else—what else can be done?

Ms. BULLER. Well, short of Peace Corps retracting the general counsel opinion, the only other alternative I can see is Congress taking some sort of action to make it perfectly clear that the IG Act means what the IG Act says, and that we have access to all of the information.

Mr. HURD. Excellent. Thank you for that.

Mr. Horowitz, my next question, in your opening statements, you talked about the Computer Matching and Privacy Protection Act. And how is that specifically hindering the ability of the IG community to execute its responsibilities?

Mr. HOROWITZ. The issue there is that IGs in one department have access to certain information; IGs in another department have access to information. And one of the things that we try and do, for example, is try and detect improper payments. Where are individuals getting payments from two agencies that are duplicative, that they should not get both, they might be entitled to neither, but they are certainly not entitled to both. And so that would be an example where if we could exchange that information and speak about—and match the data in an easier way through our own initiative, that would be helpful to us.

Mr. HURD. So do IGs not have the ability to directly access information from servers?

Mr. HOROWITZ. We do not have the—that is a major issue for several IGs directly, which is we do not have the ability to directly access that in our own agencies, and we also do not have the ability to access data or information across agency without going through the process in the Computer Matching Act which requires us, for example, to go to the agency's leadership to decide if they should give us the authority to be able to match information that would look at potential misconduct or wrongdoing within the agencies.

Mr. HURD. So why do some IGs have direct access and others don't?

Mr. HOROWITZ. By statute as well as by approval through the various processes that are laid out in the statute.

Mr. HURD. So does this impact an IGs independence?

Mr. HOROWITZ. It would certainly strengthen and—our ability to be more independent, because to get those approvals for many of us, we need to go through our agency head. It is not something that I as IG have the authority to decide. I have to go through the agency leadership to get that authority, and so that does impair our independence.

Mr. HURD. So if the IG has to request access to information from someone within the agency itself, does this tip off the agency that the IG is conducting an investigation?

Mr. HOROWITZ. They would normally be aware generally of our review. It is, frankly, more a concern that they are managing the documents. And, as my colleagues said, you do not know what you do not know. We do not know how thorough it is, how promptly it is being done.

In my situation, we are being told we are getting everything. In Ms. Buller's situation, she was being told she was not getting everything. And that is the concern. It should be the Inspectors General who are deciding what documents we need to do our work. The system that is set up for several of us now is that the agency is deciding what documents it thinks we should get for our work.

Mr. HURD. Well, as the chairman of the Information Technology Subcommittee of this committee, I am looking forward to having further conversations on this topic, something that is very important in order for you all to continue to do your jobs of making sure that the money we collect from citizens is being used effectively and efficiently. So appreciate your time and what you guys do.

I yield back the rest of my time.

Chairman CHAFFETZ. Thank the gentleman from Texas. And now recognize the gentleman from Wisconsin, Mr. Grothman, for 5 minutes.

Mr. GROTHMAN. Thanks much.

Chairman CHAFFETZ. If you can hit your button there, talk but-
ton there.

Mr. GROTHMAN. There we are. Okay. There we are.

You talked about expanding—Mr. Horowitz, you talked about expanding IG authority and compelling more testimony. Can you give me examples of how that would benefit your work?

Mr. HOROWITZ. So, for example, we often—we have often faced the problem where on the eve of an interview, employees have retired or resigned. At that point, we do not have access—we can ask them for a voluntary interview, but we can not compel them to testify, which they would have to do had they still been an employee. And what we want to ask them about is conduct while they were employed. And that is the difficulty we are facing.

Mr. GROTHMAN. Okay. Can you give me any specific example where you really wish you had that authority?

Mr. HOROWITZ. Well, one that comes to mind, in the—one of the reviews we did after Fast and Furious, we wanted to interview the U.S. attorney from Arizona, who had already resigned from the Department, and he declined our voluntary request for an interview. We have no further ability to get that information. He had actually provided testimony to the Congress, I believe to this committee, and the committee then allowed us to see the testimony he had given to you, but that is how we got his information.

Mr. GROTHMAN. Okay. That applies when somebody is no longer in government service or no longer at their job, or what is the—

Mr. HOROWITZ. Correct. It is someone who once was in government service, we want to talk to them about what they did while they were in government service, but then left the service. And at that point—we can subpoena those people, by the way, for their records, we just can not get their testimony.

Mr. GROTHMAN. Okay. And you still have the authority over them if they are working anywhere in the government or do they have to be in the executive branch or—

Mr. HOROWITZ. If they are within the executive branch, we have had instances where we have gone to other IGs in other agencies and worked with them to compel the testimony, because they are still employed within the government, within the Federal Government.

Mr. GROTHMAN. Okay. Could you give me another example of appropriate boundaries you think where any more authority would be?

Mr. HOROWITZ. Well, I think there needs to be some assurances, protections built in that were—that there are careful consideration before we are running out and subpoenaing individuals who are no longer with the government, for example. We have got to make sure that we are not compelling testimony where there is a Justice Department prosecution that could be impaired. So there are a couple of things that we need to do, in my personal opinion, to take those steps.

Mr. GROTHMAN. I do not know. Do you ever abuse your discretion now, you know?

Mr. HOROWITZ. No. I agree. I mean, I think—but it is the same thing. For example, subpoena authority that my office has, there are certain categories of subpoenas that come to me personally for my personal review. There are others that we allow folks other than myself to authorize. And I think those are the kind of controls we—where we want to make sure exist so that it is elevated to a high level and there is careful consideration given to it.

Mr. GROTHMAN. Okay. We are almost done here. You are on the home stretch. I'll ask you—I'll ask you just a broad question for each one of the three of you.

Obviously, you know, your testimony today is just scary, because, you know, we rely on you guys so much to make sure our government is functioning and it is functioning with integrity. Do you have any broad comments on how you see individuals responding today? I mean, you have all had a given period of time in this position, over a given period of years. Say today compared to 4 years ago, 8 years ago, what have you, do you see any trends going on?

Mr. ELKINS. I do not know if I would call it trends. Ever since I have been in this role, I have seen these issues that we are talking about today, they have always been there.

So if there is any trend, the trend is is that having the support of this committee has made a positive difference, because to the extent that we are seeing arguments or obstructions, those instances are actually becoming fewer, and there is a sense from the agency head at least to want to talk about cooperation. That would not have happened but for your involvement. So that is the trend that I am seeing.

Mr. GROTHMAN. Thank you. Go ahead.

Ms. BULLER. From my perspective, the trend has been toward not—it—the staff of the Peace Corps has been very confused by the general counsel's opinion as to whether or not they can cooperate with us, whether they can give us any information, not just the information related to sexual assault. Before the opinion, we had a fairly good working relationship with the staff of the Peace Corps. We would have, as all IGs do, little times where they have questions about what we are doing, but they were readily answered and we got what we needed. It is changed now.

Mr. GROTHMAN. Thank you.

Chairman CHAFFETZ. Thank the gentleman. I thank the gentleman. I will now recognize the gentleman from South Carolina, Mr. Gowdy, for 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman. I want to take this opportunity to congratulate you and the ranking member on your—your new title, the ranking member's continuing title, and thank both of you for having this very important hearing, which was consistent with your work when you were on the committee before you were the chairman.

I apologize to our three witnesses. There is a simultaneous hearing going on in Judiciary, which required my time, but before I left, Mr. Chairman, I made a note that perhaps at a future hearing, if you decided it was worthwhile, it might be productive for us to have the Department and have the Bureau and have the appropri-

ators here so we can all kind of have this conversation at the same time. You know, for Mr. Horowitz to have a position that is not held by the Department of Justice, I don't know who would win that debate. Mr. Horowitz has a tendency to win most debates he is in, but I think it would be helpful for everybody to be at the table together.

With that in mind, Mr. Horowitz, it is been a long time since I took a class on statutory construction, so I am going to ask you to help me with that. Here is the phrase: all records, reports, documents, or materials. What do you think the word "all" means?

Mr. HOROWITZ. it is been a long time as well for me, but "all" means everything, all.

Mr. GOWDY. Now, you had a very distinguished career in the Southern District of New York. I think you were a white collar prosecutor. I suspect that when you were doing investigations, you wanted as many documents as you could have before you made a charging decision. Right?

Mr. HOROWITZ. That is correct.

Mr. GOWDY. And you worked for the Department of Justice, and I assume that when it came time for you to meet your discovery obligations to the defense, you did not kind of pick and choose which documents you wanted to turn over, you turned over all those that you were legally required to do so.

Mr. HOROWITZ. That is correct. In fact, my practice was to invite the lawyers in and they could look through the file cabinets.

Mr. GOWDY. An open file policy.

Mr. HOROWITZ. Open file policy.

Mr. GOWDY. All right. I want to ask you specifically with respect to material witness warrants, for those watching at home who do not know what that is and do not know why it is important, what is it and what do you want access to that you are not gaining access to?

Mr. HOROWITZ. So material witness warrants are a process by which an agent and a prosecutor can go to a court to arrest an individual, not for committing a crime, but because they have relevant evidence that relates to a criminal investigation. That provision has various restrictions on it.

One of the allegations that occurred after 9/11 was whether the Department and law enforcement components were abusing that authority to arrest witnesses. We undertook a review. We asked for information relating to grand jury proceedings, which is critical to understanding what is being done, because the very purpose of arresting the individual is to put them before the grand jury to get testimony. So in order to understand whether it is being abused or not, you need to know what's happening in the grand jury. We asked for that information back. This occurred right in the outset of some of these issues, 2010, 2011. It took, if I recall correctly, nearly a year to get resolution on that so we could gain access to those grand jury records so we could evaluate whether the work was being done properly or whether we had concerns about it.

Mr. GOWDY. There is an old adage that justice delayed is justice denied, and evidently we have bought in—we have bought into that as a country, because there is a Speedy Trial Act for—for prosecutors—

Mr. HOROWITZ. That is correct.

Mr. GOWDY [continuing]. So you can get the case to court.

Mr. HOROWITZ. Right.

Mr. GOWDY. Explain to us why it is not only important that you get the information, the “all” in that statute, but also get it in a timely fashion?

Mr. HOROWITZ. We get allegations about waste, fraud, abuse, about misconduct, about whistleblower retaliation, just to give you some examples. We are reviewing those to see if, in fact, they are accurate. I think everyone would agree that if there are allegations of whistleblower retaliation that prove to be true, waste, fraud, abuse going on in the Justice Department, everybody would want to see that uncovered as quickly as possible so it could be remediated, so it could be addressed, so it could be fixed. That is the kind of delay that—that is the kind of impact we are having when we are delayed.

Mr. GOWDY. I think it is important for the folks at home to understand that the three of you, Jason uses the word sometimes “auditor.” Because he is not a lawyer, he uses words that are easier for him to understand. I think of you as being more independent, neutral arbiters. You do not work for anybody except for your fellow citizens. And I really—you know, I do not know whether I will live long enough to see a Republican administration or not, but this really should transcend politics. You cannot do your job without timely access to the documents. And I do not know the other two inspector generals as well as I know Mr. Horowitz, but you have a reputation of being a total, complete strait arrow who calls balls and strikes exactly as you see it.

Mr. HOROWITZ. Sure.

Mr. GOWDY. I am completely comfortable with you in your job. I'd be more comfortable if you had access to all the documents in a timely fashion. And I wish all three of you luck.

Mr. CUMMINGS. Will the gentleman yield?

Mr. GOWDY. Certainly.

Mr. CUMMINGS. The—first of all, I think the gentleman's made some excellent points. And going back to your initial point with regard to having everybody in the room, I think that is a great idea. As a matter of fact, the chairman and I had talked about it a little earlier today, not on the record, that we were going to try to get these folks on the other side of this to get an understanding of what is happening there so that we could move forward, and the chairman has said that perhaps we would have a hearing, but we would bring those folks in, because I agree, we have got to get past this, we—and so I just wanted to make you aware of that.

Mr. GOWDY. Well, I know that when you and Chairman Chaffetz put your minds in the same direction, there is nothing that cannot be accomplished. So I—

Chairman CHAFFETZ. The gentleman's time—

Mr. GOWDY [continuing]. Look forward to—

Chairman CHAFFETZ [continuing]. Has expired. I now recognize the gentleman from Colorado, Mr. Buck, for 5 minutes.

Mr. BUCK. Thank you, Mr. Chairman.

Mr. Horowitz, I wanted to visit with you a little bit. I may be the only Member of Congress that worked in an IGs office a num-

ber of years ago before I became a prosecutor, and I have a concern. Without seeing the IGs subpoena and without hearing from the other side, do your subpoenas, in any way, inhibit an investigation? In other words, you are all—you were also a prosecutor, you understand the discovery requirements that can be created if there is a parallel investigation, you understand the concerns with grand jury secrecy and the disclosure that must be made to a court. Do your—are your requests narrowly enough drawn so that they do not inhibit FBI prosecutions and counterintelligence, counterterrorism, very serious areas?

Mr. HOROWITZ. Very fair question and something as a former prosecutor, I am acutely aware of. We do a couple of things to try and be careful in that regard. We tend not to undertake investigations or reviews while there are criminal cases ongoing or criminal prosecutions ongoing; we try to make sure where that is happening but we need to investigate, we do it in a manner that does not trample into an area that could harm the case. Best example I can give is, and I was not here at the time, but post-9/11, we were asked to look at the issues at the same time the Moussaoui prosecution was going forward. And everything I have heard from my staff is an example of, frankly, their longing for the good old days where we did work together in a manner that the FBI respected our ability to have to plow—move forward, get the work done, but we also understood and worked with the agency to make sure that we did it in a responsible, careful way, but never compromising our independence, never compromising our thoroughness and making sure we did everything to get to the bottom of issues.

Mr. BUCK. And a perfect example might be a subpoena for—a grand jury subpoena for financial records. We would typically ask for 3 or 4 years of financial records, and then get a monthly statement and then go through the monthly statement and ask for specific items that we are looking for.

Do you have that relationship with the Bureau at this point where you can actually ask for a broader area to go through specifically and say this is what we are really after, can you help us, or is that something that you do not want to do? Does that give away your investigation?

Mr. HOROWITZ. No. We have had that discussion. Indeed, I will give you a good example. Just recently with the DEA, and Section 218, we had a deadline approaching, I talked with the administrator, I talked with an associate in the Deputy Attorney General's Office with constructive ideas on how to make sure we saw and had access to the information we needed to assure ourselves that we were getting that, but then allow them to keep custody, take custody of the records that were unrelated and were not of interest to us going forward so that we could make sure that we had satisfied our needs in terms of thoroughness, review, et cetera, but also respecting their concerns about how the records were maintained and stored and kept.

And those are the kinds of dialogs that should be occurring; not can we get access, but how do we make sure our access is done in a manner that is consistent with our independence, consistent with your expectations of what we need to do to get to the bottom of

issues, but also understanding that there are countervailing issues and concerns out there.

Mr. BUCK. With the short time I have left, I want to ask a question of the whole panel. And you mentioned the word "independence." From the agency's perspective, often it is not independence, it is a thorn in their side. What you discover may embarrass them, what you discover may be something that they—that is turned around in the press and embarrasses them in a way that indicates that they are not doing their job properly, or it could be used for political purposes by others.

How do we overcome that issue? And I throw this open. How do we—how do we really address the—what we all want, which is achieving an efficient and accountable government?

Mr. ELKINS. I think it boils down to trust ultimately. If the two parties trust that we are all on the same page—because at the end of the day, we are all on the same page. You know, we all work for an agency, and the mission of the agency is our mission. For EPA, it is to protect public health and the environment. That is my job to do that as well. But my job is a little different, because I am focused on identifying where funds are not being used to the full extent and then making recommendations that they can. So it really kind of boils down to trust. If you have got the trust in the relationship, things can work out. If you do not have trust, it is going to be rocky.

Mr. BUCK. I yield.

Chairman CHAFFETZ. Thank you. Thank you. Well said. I now recognize the gentleman, Mr. Cummings from Maryland.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I want to thank all of you for being here today. You know, when I was sitting here listening to you all, I could not help but think about when I was teaching my—one of my sisters to drive. And so she is driving along and I am sitting in the driver's seat—I mean, in the passenger's seat, and a man steps out and she almost hits him. And I stepped on her foot, literally. You know, I put my foot on—on the brake, and I said, "Why did you do that?" And she said, "He should not have been there. I said, He was there."

My point is is that, you know, we do have a problem here, and that is why I have spent so much time, and the chairman and our committee trying to help resolve the problem, because we do have a problem. So on the one hand, hopefully we get to some type of permanent solution, but in the meantime, we want to do everything in our power to help you do your jobs.

And I understand the frustration. I really do. I understand you have your—you've got the IG law, which seems to be very clear, but on the other hand, I have to believe that there are people on the other side of these arguments who might make very strong arguments saying that they are trying to obey the law and trying to do what they believe is right. I have asked you, I asked you all earlier whether you felt that somebody was trying to hide something and all that, and you basically said no. So—so we have got to get past this.

I just want to commit to you that I'm—I am committed to both—both sides, in other words, to both avenues: one, to do whatever we have to do right now to get you where you have got to go and at

the same time trying to come up with a permanent solution. I think we have got to do both. I do not think that we can stand around and not try to do something to help you get past some of these immediate problems that you are experiencing.

And, again, I want to—I want you all to do your jobs. You have very, very important jobs. I mean, we sit here, and I know the chairman will agree with me, there are many times we get very frustrated trying to figure out how do we make sure that government does what government is supposed to do. And then—you know, and then—so the now is—now we are at a point where we—we’ve got to try to figure out how can we get these issues resolved as fast as possible.

It is going to be interesting to hear the other side. I want to hear what they have got to say. I am absolutely curious, Mr. Horowitz, as to why the same things that you are requesting that you used to be able to get now you can not get them. I am curious. I want to know that. I really do.

I also do not want us to move away from what Ms. Norton said. It may be a situation where there have been some things that have changed. I do not know. I thought maybe it was because of 9/11, but this stuff just happened. So—I mean, it started in 2010, right?

Mr. HOROWITZ. [no verbal response.]

Mr. CUMMINGS. So, again, and I’m saying to the departments that are listening to us today, get ready, because we want maximum cooperation with the IGs, but we also want everybody to be able to do their job in an effective and efficient manner.

So, again, I want to thank all of you. I want to make sure that, not just the witnesses, but all the IGs who have taken the time out to be here today, I want to thank you for making a difference in our country. I know that many of you all get—have frustrations, but the fact is that you all are making a big, big difference, and we want to help you make an even bigger difference. And may God bless you and God bless all of those who work with you and support you. Thank you very much.

Chairman CHAFFETZ. I thank the gentleman. And I want to echo and—the sentiment that you feel, I think, on both sides of the aisle. We truly do appreciate the good work, the hard work, the diligent work that is done within the IG community. We have more than 13,000 people who dedicate their time and their lives. They are patriotic Americans. They’re trying to root out the waste, the fraud, the abuse, the bad apples that might be there, and for that, we thank you and appreciate that. I know a lot of you work for a long period of time and wonder does anybody pay attention to that, does anybody read that, and I assure you that it is of the utmost importance.

As I said at the beginning, if you can not do your job, then we can not do our job in Congress. And we rely so heavily on your perspective, your non-partisan view of the world and the objective viewpoint that you take. And to that extent, I hope you all carry back how much we love, care and appreciate those that work day in and day out.

So this has been a bit of a long hearing, and this committee now stands adjourned. Thank you.

[Whereupon, at 1:13 p.m., the committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

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.

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

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



U.S. Department of Justice

Office of the Inspector General

 February 3, 2015

The Honorable Harold Rogers
 Chairman
 Committee on Appropriations
 U.S. House of Representatives
 H-305, The Capitol
 Washington D.C. 20515

The Honorable Nita Lowey
 Ranking Member
 Committee on Appropriations
 U.S. House of Representatives
 1016 Longworth House Office Building
 Washington D.C. 20515

The Honorable Thad Cochran
 Chairman
 Committee on Appropriations
 United States Senate
 S128, The Capitol
 Washington D.C. 20510

The Honorable Barbara Mikulski
 Vice Chairwoman
 Committee on Appropriations
 United States Senate
 142 Dirksen Senate Office Building
 Washington D.C. 20510

Dear Chairmen, Vice Chairwoman, and Ranking Member:

This letter is to report to the Committees on Appropriations, as required by Section 218 of the Department of Justice Appropriations Act, 2015, Pub. L. No. 113-235, § 218, 128 Stat. 2130, 2200 (2014), that the Federal Bureau of Investigation (FBI) has failed, for reasons unrelated to any express limitation in Section 6(a) of the Inspector General Act (IG Act) to provide the Department of Justice Office of the Inspector General (OIG) with timely access to certain records. The OIG requested these records in connection with two investigations being conducted by the OIG under the Department's Whistleblower Protection Regulations for FBI Employees, 28 C.F.R. pt. 27.

As you are aware, Section 218 provides:

No funds provided in this Act shall be used to deny the Inspector General of the Department of Justice timely access to all records, documents, and other materials in the custody of the Department or to prevent or impede the Inspector General's access to such records, documents and other materials, unless in accordance with an express limitation of section 6(a) of the Inspector General Act, as amended, consistent with the plain language of the Inspector General Act, as amended. The Inspector General of the Department of Justice shall report to the Committees on Appropriations within five calendar days of any failures to comply with this requirement.

Id.

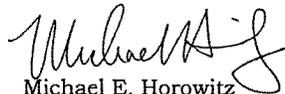
The unfulfilled document requests that cause the OIG to make this report were sent to the FBI on September 26, 2014, and October 29, 2014, respectively. Since that time, the FBI has made partial productions in both matters, and there have been multiple discussions between the OIG and the FBI about these requests, resulting in the OIG setting a final deadline for production of all material of February 2, 2015.

On February 2, 2015, the FBI informed the OIG that it would not be able to produce the remaining records by the deadline and that it would need until later this week in one of the whistleblower investigations to do so, and sometime later next week in the second whistleblower investigation to do so. The primary reason for the FBI's inability to meet the deadline set by the OIG for production is the FBI's desire to continue its review of e-mails requested by the OIG to determine whether they contain any information which the FBI maintains the OIG is not legally entitled to access, such as grand jury, Title III electronic surveillance, and Fair Credit Reporting Act information. The FBI further informed the OIG that, for any such information it identified, it would need the authorization of the Attorney General or Deputy Attorney General in order to produce the information to the OIG. However, Section 6(a) of the IG Act does not contain an express limitation of the OIG's access to these categories of information. Moreover, even if the Department's leadership were to give such authorization, which it has indicated it would do, a process allowing the OIG access to records of the Department only when granted permission by the Department's leadership is inconsistent with the OIG's independence, as reflected in Section 6(a) of the IG Act and Section 218 of the Appropriations Act.

Section 218 of the Appropriations Act does not permit the use of funds appropriated to the Department of Justice to deny the OIG access to records in the custody of the Department unless in accordance with an express limitation of Section 6(a) of the IG Act. The IG Act, Section 6(a), does not expressly or otherwise limit the OIG's access to the categories of information the FBI maintains it must review before providing records to the OIG. For this reason, we are reporting this matter to the Appropriations Committees in conformity with Section 218.

We will continue to work to resolve this matter, and will keep the Committees apprised of our progress. If you have any questions, please feel free to contact me or Chief of Staff Jay Lerner at (202) 514-3435.

Sincerely,



Michael E. Horowitz
Inspector General

cc: The Honorable Jason Chaffetz
Chairman, Committee on Oversight and
Government Reform
U.S. House of Representatives

The Honorable Elijah Cummings
Ranking Member, Committee on Oversight and
Government Reform
U.S. House of Representatives

The Honorable Ron Johnson
Chairman, Committee on Homeland Security and
Governmental Affairs
United States Senate

The Honorable Thomas Carper
Ranking Member, Committee on Homeland Security and
Governmental Affairs
United States Senate

The Honorable Bob Goodlatte
Chairman, Committee on the Judiciary
U.S. House of Representatives

The Honorable John Conyers, Jr.
Ranking Member, Committee on the Judiciary
U.S. House of Representatives

The Honorable Charles Grassley
Chairman, Committee on the Judiciary
United States Senate

The Honorable Patrick Leahy
Ranking Member, Committee on the Judiciary
United States Senate

The Honorable John Culberson
Chairman, Subcommittee on Commerce, Justice, Science and
Related Agencies
Committee on Appropriations
U.S. House of Representatives

The Honorable Chaka Fattah
Ranking Member, Subcommittee on Commerce, Justice, Science
and Related Agencies
Committee on Appropriations
U.S. House of Representatives

The Honorable Richard Shelby
Chairman, Subcommittee on Commerce, Justice, Science,
and Related Agencies
Committee on Appropriations
United States Senate

JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

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) 225-6074
MINORITY (202) 225-5051
<http://oversight.house.gov>

January 30, 2015

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for scheduling next week's hearing on the independence and authority of agency Inspectors General (IGs). As you know, I am a staunch defender of the rights and prerogatives of IGs, and I fully support Tuesday's hearing.

The IG from the Environmental Protection Agency and the agency's Office of Homeland Security have been engaged in a longstanding disagreement centering on each party's statutory obligations in working with the Federal Bureau of Investigation (FBI) during ongoing national security-related investigations.

For the past year, my staff and I have spent many hours working with each of the parties to resolve this matter. Significant progress has been made, and I am pleased to report that the leadership of each office appears to be in agreement about their respective roles and duties in national security-related investigations.

Since a final resolution appears to be within reach, I request that you join me in inviting the three relevant stakeholders—the IG, the Environmental Protection Agency, and FBI—to a joint meeting with us and our staffs to help the parties achieve it. Given that our hearing is on Tuesday, I understand that we may not be able to schedule this meeting beforehand, but I hope we can schedule this meeting at a convenient time next week.

Thank you for your consideration of this request.

Sincerely,


Elijah E. Cummings
Ranking Member

Table 2

FY 2014 GENERAL PROVISIONS NOT CONTINUED IN F

Section Included in the Consolidated Appropriations Act, 2015 (P.L. 113-235)	Explanation for Why General Provision Is No Longer Necessary
<p>Sec. 218. No funds provided in this Act shall be used to deny the Inspector General of the Department of Justice timely access to all records, documents, and other materials in the custody or possession of the Department or to prevent or impede the Inspector General's access to such records, documents and other materials, unless in accordance with an express limitation of section 6(a) of the Inspector General Act, as amended, consistent with the plain language of the Inspector General Act, as amended. The Inspector General of the Department of Justice shall report to the Committees on Appropriations within five calendar days any failures to comply with this requirement.</p>	<p>The Department is unaware of any specific materials that the OIG believed necessary to its reviews, but to which the OIG has not been granted access. In light of the continued interest of the Inspector General in addressing the legal issues implicated by the differences between the provisions section 6(a)(1) of the Inspector General Act and other statutes pertaining to the disclosure of particular categories of sensitive information, the Department intends to work with the OIG to develop statutory language that would more clearly address the Inspector General's concerns regarding access to such information.</p>

JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

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
<http://oversight.house.gov>

January 21, 2015

Via U.S. Mail and Email (J.McDonough@ic.fbi.gov)

Mr. Timothy Delaney
Chair, Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
935 Pennsylvania Avenue NW, Room 3973
Washington, D.C. 20535

Dear Mr. Delaney:

The Committee on Oversight and Government Reform is investigating allegations of misconduct by former Department of Homeland Security Acting Inspector General Charles Edwards. To assist the Committee, please provide, by January 28, 2015, a complete, unredacted copy of the final Report of Investigation titled, "Conduct of Charles K. Edwards Department of Homeland Security Office of Inspector General," completed by the Department of Transportation Office of Inspector General, and provided to the Council of the Inspectors General on Integrity and Efficiency's Integrity Committee on October 17, 2014.

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.

If you have any questions regarding this request, please contact Mike Howell of the Majority staff at (202) 225-5074 or Brandon Reavis of the Minority staff at (202) 225-5051. Thank you for your attention to this matter.

Sincerely,


Jason Chaffetz
Chairman
Elijah E. Cummings
Ranking Minority Member
Mark Meadows
Member

Enclosure

