

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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November 17, 2015

The Honorable Joseph P. Clancy
Director
U.S. Secret Service
950 H Street NW
Washington, DC 20223

Dear Director Clancy:

At a hearing before this Committee on April 29, 2015, you were asked whether former Secret Service (USSS) Deputy Director Alvin “A.T.” Smith was still on the agency’s payroll, and you confirmed that he was.¹ The next day, a *Washington Post* blog reported on the hearing exchange regarding Mr. Smith’s employment status and posted a screenshot of Mr. Smith’s profile from an internal USSS directory, which listed his title as Chief of Staff.²

It has come to our attention that USSS is conducting an investigation into how the *Washington Post* obtained this screenshot. We request that this investigation be transferred to the Office of Inspector General (OIG). An OIG report earlier this year noted “the Secret Service’s reputation for punishing or ignoring those who would further investigate or report . . . violations.”³ Similarly, a December 2013 OIG report stated: “During interviews, supervisors and employees described the USSS as a small and competitive agency, which can make fear of retaliation or alienation an issue.”⁴ In response to an electronic survey conducted as part of that report, forty-four percent of respondents felt they could not report misconduct without fear of retaliation.⁵

¹ *Flying Under the Radar: Securing Washington, D.C., Airspace: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 114th Cong. 74-76 (Apr. 29, 2015) (No. 114-25).

² Colby Itkowitz, *Top Secret Service official removed after security lapses remains on agency payroll*, In the Loop, <http://washingtonpost.com/blogs/in-the-loop/> (Apr. 30, 2015).

³ Memorandum from Hon. John Roth, Inspector Gen., U.S. Dep’t of Homeland Sec. to Hon. Jeh C. Johnson, Sec’y, U.S. Dep’t of Homeland Sec., and Hon. Joseph Clancy, Dir., U.S. Secret Service, “Investigation Into the Incident at the White House Complex on March 4, 2015” (May 6, 2015), at 18.

⁴ *Id.*

⁵ Office of Inspector Gen., Dep’t of Homeland Sec., *Adequacy of USSS Efforts to Identify, Mitigate, and Address Instances of Misconduct and Inappropriate Behavior*, OIG-14-20 (Dec. 17, 2013), at 42.

In addition, the Whistleblower Protection Enhancement Act of 2012⁶ and a similar longstanding appropriations rider⁷ both require that employee non-disclosure agreements include precise language stating that they do not supersede employee rights relating to communications to Congress, reporting to an Inspector General, or any other whistleblower protection statute.⁸ It is a prohibited personnel action to implement or enforce any non-disclosure policy, form, or agreement that does not contain this precise language.⁹ USSS should immediately replace any non-disclosure forms that do not comply with the Whistleblower Protection Enhancement Act of 2012.

Finally, we request that you remind all USSS employees of their rights and statutory protections with respect to disclosing information to Congress. USSS employees have the right to provide information to Congress that otherwise would be covered by the Privacy Act, which allows employees to provide information to congressional committees.¹⁰ Secret Service personnel—like all federal employees—have a constitutional right to communicate with Congress under the First Amendment, and it is against the law to deny or interfere with an employee's right to furnish information to Congress.¹¹

⁶ 5 U.S.C. § 2302(b)(13).

⁷ Division E, § 713 of the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235).

⁸ Both provisions state that no agency may “implement or enforce” “any nondisclosure policy, form or agreement, if such policy form, or agreement does not contain the following statement”:

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

⁹ 5 U.S.C. § 2302(b)(13).

¹⁰ 5 U.S.C. § 552a(b)(9) permits disclosure “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee . . .”

¹¹ See 5 U.S.C. § 7211 (“The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied”). See also 18 U.S.C. § 1505, which states:

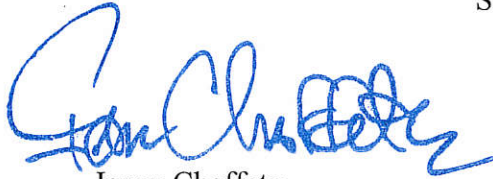
Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

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Please provide the Committee with evidence that you have taken these steps as soon as possible, but no later than by noon on November 20, 2015. Please contact Tristan Leavitt of Chairman Chaffetz' staff at (202) 225-5074 or Valerie Shen of Ranking Member Cummings' staff at (202) 225-5051 with any questions about this letter. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman



Elijah E. Cummings
Ranking Member

Enclosure

cc: The Honorable Harold Rogers, Chairman
Committee on Appropriations

The Honorable Nita M. Lowey, Ranking Member
Committee on Appropriations

The Honorable John Roth, Inspector General
U.S. Department of Homeland Security

**United States Secret Service
Office of Professional Responsibility
Inspection Division**

Disclosure Warning

"WARNING TO NOT DISCLOSE INVESTIGATIVE INFORMATION"

You are being interviewed as part of an official investigation by the United States Secret Service, Office of Professional Responsibility, Inspection Division. As this investigation is sensitive in nature, you are instructed not to discuss this interview and investigation with any other person(s), except private legal counsel or when otherwise required by law or agency policy.

Failure to comply with this directive could subject you to disciplinary and/or criminal action for interfering with or impeding an official investigation.

I, [REDACTED], have read and understand the above warning.
(Print Name)

