

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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<https://oversight.house.gov>

May 31, 2024

Mr. Paul C. Smedberg
Chairman of the Board
Washington Metropolitan Area Transit Authority
300 7th Street, S.W.
Washington, DC 20024

Dear Mr. Smedberg:

The Committee is investigating actions taken by the Washington Metropolitan Area Transit Authority (WMATA) with respect to its Office of Inspector General (OIG).¹ The forced resignation of Inspector General Rene Febles marked the second departure of a WMATA IG in just two years. Febles's resignation followed an OIG audit report describing WMATA's failure to make policy and procedural changes necessary to enable the OIG to "exercise procurement and HR independence in accordance with the [Infrastructure Investment and Jobs Act]."² In other words, Febles found WMATA management failed to provide the OIG with the statutory autonomy it was accorded by a law that will send over \$1 billion in federal funding to WMATA,³ atop \$2.4 billion in pandemic relief funds it had recently been awarded by Congress.⁴

On February 17, 2023, the OIG under Febles issued a report expressing grave concern about "access to WMATA data by foreign nationals who were supporting sensitive applications and systems from Russia."⁵ These were non-U.S. citizens hired to do work under contract for WMATA. That investigation was initiated when the OIG learned of "abnormal network activity originating in Russia."⁶ The report found that "the credentials of a contractor who was no longer working for WMATA had been used to access a sensitive WMATA directory from Russia."⁷ At the time of the incident, the contractor was not employed by WMATA, but his WMATA supervisor had allowed the contractor to retain his "high-level administrative access to WMATA

¹ Justin George, *Metro inspector general resigns one day after releasing critical audit*, THE WASHINGTON POST (Nov. 8, 2023).

² *Review of WMATA's Compliance with Infrastructure Investment and Jobs Act*, WMATA OIG REPORT, OIG 23-003 (Nov. 6, 2023).

³ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021).

⁴ Lilliana Byington, *D.C.'s 'Big Money Loser' Metro Faces Uphill Battle for More Aid*, BLOOMBERG GOVERNMENT (Feb. 9, 2022).

⁵ WMATA OIG, MAR-23-0003, MANAGEMENT ASSISTANCE REPORT – OIG CONCERNS OVER CRITICAL CYBERSECURITY VULNERABILITIES THAT REMAIN UNRESOLVED (February 17, 2023).

⁶ *Id.*

⁷ *Id.*

systems and networks” in the hopes that his contract would be renewed.⁸ It’s imperative that the WMATA OIG have the autonomy to pursue such critical national security matters without fear of retribution.

Lack of independence for the WMATA OIG is a long-standing concern. Febles’s predecessor as IG, Geoffrey Cherrington, repeatedly “raised the need for his office to have greater autonomy,” and noted that the OIG had “‘scant protection’ if a board member wanted to alter the office’s policies or practices.”⁹ WMATA’s first and longest serving IG, Helen Lew, experienced similar frustrations, arguing that the office “needs more autonomy” and “independence to carry out the office’s duties.”¹⁰ Cherrington also reportedly lamented the office’s dependence on WMATA human resources to hire investigative personnel; needing WMATA permission to publish investigative reports that are often “heavily redacted” by WMATA’s lawyers; and the lack of a separate information technology structure, ostensibly allowing WMATA to “snoop on Cherrington’s email correspondence.”¹¹ That a WMATA employee was “‘inappropriately monitoring’ OIG communications through keystroke-monitoring software installed on OIG computers”¹² during Lew’s tenure renders this a very real concern.

We are also concerned that WMATA is not sufficiently willing to accommodate robust oversight from its OIG. WMATA’s actions since Febles’s departure further underscore the need for our investigation. Following IG Febles’s departure in November, WMATA named as Acting IG a lawyer from a firm to which WMATA reportedly paid over \$2 million in consulting fees.¹³ This despite your public comments that the WMATA board “‘fully supports’ the role of the inspector general’s office and has ‘ensured that the office has the independence necessary to carry out their duties and responsibilities without interference or undue influence.’”¹⁴

WMATA has since appointed Michelle A. Zamarin as the next IG, slated to replace the Acting IG next month.¹⁵ We hope she will be afforded more autonomy and independence than her predecessors. Former IG Febles put a fine point on it when he told a journalist last month, “‘I could not hire anybody that I wanted, there had to be a Metro person who made the final decision. Metro decided who made the best-qualified list. I could go on and on and on, but that’s not independence, and I could not in good faith say [to Congress] that we were independent in those areas.’”¹⁶

⁸ *Id.*

⁹ Justin George, *Metro expected to replace internal watchdog at end of five-year contract*, THE WASHINGTON POST (Mar. 8, 2022).

¹⁰ Faiz Siddiqui, *Former Metro inspector general says she was kept under ‘very tight’ watch*, THE WASHINGTON POST (Nov. 18, 2017).

¹¹ Martin Di Caro, *Metro may be stifling its top internal watchdog*, WAMU.ORG (Nov. 15, 2017).

¹² *Supra*, n.10.

¹³ Tom Roussey, *Questions raised about Metro’s temporary inspector general*, WJLA.com (Nov. 17, 2023).

¹⁴ *Supra*, n.1.

¹⁵ WMATA, *Metro Board names Michelle A. Zamarin Inspector General*, PRESS RELEASE (April 25, 2024).

¹⁶ Tom Roussey, *Virginia congressman warns Metro over its treatment of inspectors general*, WJLA.com (Apr. 29, 2024).

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We are concerned that the OIG—which is charged with critical duties to investigate and expose waste, fraud, and abuse—is not receiving sufficient cooperation and support from WMATA, yielding a serious lack of accountability and transparency. We request documents and communications to assist us in our investigation into this matter.

To assist our investigation, we request the following documents and information, covering the time period January 1, 2022, to the present, as soon as possible, but no later than June 13, 2024:

1. All documents and communications between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees, regarding employment or termination of anyone within the WMATA OIG, including incoming IG Michelle A. Zamarin;
2. All documents and communications between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees, regarding revisions to and issuance of any OIG publication including—but not limited to—an audit or report;
3. All documents and communications related to public and closed WMATA Board meetings, including but not limited to meeting minutes, reports, notes, and emails;
4. All authorities relied upon by WMATA as the basis for its ability to revise or alter WMATA OIG publications such as audits or reports;
5. All documents and communications between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees regarding WMATA's Policy and Instruction for the OIG, including the final WMATA policy document and all draft versions preceding the final document;
6. All documents and communications between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees, regarding employment or termination of anyone within the WMATA OIG for the six months preceding the departure of former IG Geoffrey Cherrington and former IG Helen Lew. Responsive documents for this request will likely be outside the time frame identified above;
7. All documents and communications between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees, regarding the duration of former IG Febles's term as WMATA IG;
8. All documents and communications between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees, regarding the January 2023 unauthorized access of WMATA's information systems, including

WMATA's notification about the incident to the Cybersecurity and Infrastructure Security Agency at the Department of Homeland Security;

9. All documents and communications between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees, regarding concerns about WMATA information systems and cybersecurity, including, for example, any reports about WMATA's vulnerability patching program, assessment of WMATA's OneDrive, and penetration testing of WMATA's information technology systems and trains;
10. All documents and communications between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees, regarding the practice of permitting the employment of contractors without US citizenship—such as Russian natives for example—to work on sensitive WMATA networks and information systems;
11. All documents and communications between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees, regarding inquiries by federal agencies and officials concerning the security of WMATA information systems in general, including but not limited to any cybersecurity breaches, other unauthorized access of WMATA's network, or references to vulnerabilities relating to the employment of contractors without US citizenship —such as Russian natives for example;
12. All documents and communications, including interview notes, between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees, regarding any personnel-related investigations conducted at WMATA's request by law firms or other non-WMATA entities, including any reports or deliverables emanating from these investigations. This request also includes documents and communications between WMATA employees and the contracted law firm or other non-WMATA entity conducting the investigation;
13. All documents and communications between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees, regarding any Memorandum of Understanding (MOU), including the MOUs themselves;
14. All documents and communications between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees, regarding OIG attempts to obtain greater independence by securing additional human resources and procurement authorities;
15. All documents and communications between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees, regarding the entrance conference in November 2023 with the US Government Accountability Office concerning WMATA's compliance with IIJA requirements;

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16. All documents and communications between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees, regarding the hiring and termination of Acting IG Kevin Muhlendorf, including his hiring contract; and
17. From the time period January 1, 2017 to the present, all documents and communications between any WMATA Board member, WMATA employee, or WMATA contractor, including WMATA OIG employees, regarding any contracts between WMATA and the law firm—Wiley—that employed current Acting IG Kevin Muhlendorf, including those identifying any responsibility Acting IG Muhlendorf may have had to support WMATA during his time at the law firm.

In complying with the above requests, please ensure all official and personal email accounts for WMATA Board members, WMATA employees, and WMATA contractors, including WMATA OIG employees, are searched for responsive documents and communications. This should also include messages in any format from official and personal phones and electronic devices. Additionally, please provide a staff-level briefing on the relationship between WMATA and the WMATA OIG as soon as possible, but no later than June 6, 2024.

Attached are instructions for producing the documents and information to the Committee. To schedule the briefing, delivery of responsive documents, or to ask any related questions, please contact Committee on Oversight and Accountability Majority staff at (202) 225-5074.

The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

Thank you in advance for your cooperation with this inquiry.

Sincerely,



James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability