

United States Senate

WASHINGTON, DC 20510

October 6, 2010

Via Electronic Transmission

The Honorable James H. Billington
Librarian of Congress
Library of Congress
101 Independence Ave, SE, LM-608
Washington, DC 20540-4000

Dear Dr. Billington:

As Ranking Members of the Senate Committee on Finance, and the Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, we sent a letter on April 8, 2010, to 69 Inspectors General, asking among other things, about any agency interference or resistance to the OIG's oversight work.

The OIGs replied, indicating varying degrees of cooperation with their agencies. We were disappointed to learn that the Library of Congress is among those that have not fully cooperated with the OIG. A copy of the Inspector General's letter is attached for your reference. Specifically, the Inspector General reported the following interference from the Office of General Counsel (OGC):

- The OGC told Library of Congress employees that reporting certain issues to the OIG is optional, although it is mandatory to report the same wrongdoing to the General Counsel.
- The OGC was unwilling to change an agency regulation requiring employees to report thefts of library property to the U.S. Capitol Police (USCP) rather than to the OIG.
- The OGC erroneously stated that management does not have to report employee misconduct to the OIG unless it is potentially criminal in nature, despite the fact that management mishandled an internal employee investigation.

Additionally, it is our understanding that OGC excluded the OIG during merger discussions between the USCP and the Library's police force. As a result, the OIG has been forced to attempt to iron out jurisdictional and operational concerns between themselves and the USCP unnecessarily. These concerns include notifications and referrals of investigations, and access to information and buildings, all which could have been resolved during the merger discussions.

We also remain concerned about the questions regarding OIG independence that were raised by the removal of the firearms privileges from OIG agents last year. Although those privileges were eventually restored, OGC played a significant role in recommending the removal of their firearms. OGC took an unnecessarily narrow view of the OIG's authority to obtain special deputation from the U.S. Marshals Service, which is essential when conducting certain criminal investigations. OGC also wrote a legal opinion on this subject in November 2008 that reportedly contained inaccuracies, as well as an unbalanced perspective.

We are troubled by these reports, and by any actions by the OGC that hampers the ability of the OIG to conduct its mission. In light of these continuing problems, we have the following questions:

- 1) Prior to this letter, were you aware of these new examples of interference with the OIG's oversight function?
- 2) If so, when and how did you become aware of these issues and what steps have you taken to correct the problems?
- 3) If not, what steps do you intend to take to correct the problems?
- 4) What steps are being taken by the LOC to educate its employees about the requirement to provide information to the OIG?
- 5) When will the agency regulation be changed requiring employees to report thefts of Library property to the OIG?
- 6) Please provide a copy of the General Counsel's legal opinion, written in November 2008, regarding the removal of the OIG's firearms as well as the OIG's authority to obtain special deputation from the U.S. Marshals Service.
- 7) Please provide copies of any memoranda or other notices provided to staff regarding their duties with respect to working with the OIG.

Thank you for your cooperation and attention to this important matter. Please provide the request set forth in this letter no later than October 20, 2010. Should there be any questions, please contact Jason Foster on Senator Grassley's staff at (202) 224-4515, or Keith Ashdown on Senator Coburn's staff at (202) 224-3721. All formal correspondence should be sent electronically in PDF format to Brian_Downey@finance-rep.senate.gov or via facsimile to (202) 228-2131.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on Finance



Tom Coburn
Ranking Member
Permanent Subcommittee on Investigations
Homeland Security and Governmental Affairs Committee

Attachment



THE LIBRARY OF CONGRESS

WASHINGTON, D.C. 20540

Via Electronic Transmission

OFFICE OF THE
INSPECTOR GENERAL

June 15, 2010

The Honorable Charles E. Grassley
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Tom Coburn
Ranking Member
Permanent Subcommittee on Investigations
Homeland Security and Government Affairs Committee
United States Senate
Washington, DC 20510

Dear Senators Grassley and Coburn:

This is in response to your April 8, 2010 letter requesting (1) instances of resistance or objection to oversight and/or access to information, even if temporary, from October 1, 2008 to April 8, 2010 and the reasoning provided by the agency, (2) any biannual reports of investigations, evaluations, or audits closed from January 1, 2009 to April 30, 2010 that were not disclosed to the public, (3) information on current or future threats or impediments in communicating with the Congress about budgets or other matters by federal officials, and (4) our reply to the Ranking Member, House Committee on Oversight and Government Reform, on unimplemented recommendations.

Instances of Resistance

I sent a memorandum (enclosed) to the Library of Congress (Library) General Counsel (GC) on June 2, 2009 stating several actions or inactions by her office that created impediments to our investigative effectiveness. For example, the GC wrote into Library regulations exceedingly narrow interpretations of our authority to conduct investigations by not requiring employees to report all suspected illegal activities and incidents of waste, fraud, abuse, and mismanagement to my office. The GC took the position that management did not have to report misconduct to the IG unless it believed it was potentially criminal. As a result, management conducted its own investigation of an employee who falsified information to a potential employer. Not only did the agency impinge on the jurisdiction of my office, but it also mishandled its investigation of the matter.

The GC also interpreted the word "should" in existing regulations as "optional" for reporting misconduct to the IG, informing employees of their "ability" to contact the IG when they suspect wrongdoing, rather than their "responsibility" to do so. The GC also appears unwilling to change an agency regulation requiring employees to report thefts of government property to the U.S. Capitol Police (USCP) instead of the IG. The USCP does not share these reports with my office. Also, it has been an arduous process to amend an existing agency regulation based on the 2008 revisions to the IG Act; we are still trying to finalize our 2008 policy changes. I believe that the June 2 memo had some positive effect and that the GC is now more responsive to the needs of my office. The GC's response to my memorandum is also enclosed.

The GC also played a very significant role in impeding our criminal investigations by recommending the removal of our firearms. The firearms were subsequently removed by the Congress in 2009 for more than six months. The GC again took a narrow view of our authority to obtain special deputation from the U.S. Marshals Service which is needed for conducting many criminal investigations. The GC wrote a legal opinion on this subject in November 2008 that contained inaccuracies and an unbalanced perspective. I did not have an opportunity to rebut the opinion because it was not shared with me until the following March, a few days after we lost the use of our firearms. The GC stated that her November 2008 legal opinion is protected by attorney/client privilege and therefore is not enclosed.

My office was also excluded by the GC from discussions with the USCP during the merger between the USCP and the Library's police force. As a result, there are still jurisdictional and operational issues concerning the USCP and my office.

Nonpublic Reports

All of our audit, survey, and review/evaluation reports are included in our Semiannual Reports to Congress. The aforementioned reports that are not for public release are summarized in our semiannual reports, minus the detailed information that precludes their public release. All investigations resulting in Management Implication Reports and other investigations that are closed are summarized in our semiannual reports. The only allegations that we do not report are minor issues that are referred to management. Our Semiannual Reports to Congress and individual publicly releasable reports are available on our Web site at www.loc.gov/about/oig.

Impediment to Communication with Congress

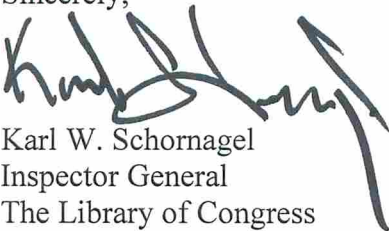
We do not have any current threats or impediments in communicating with the Congress on budgets or other matters. We will inform you if any arise.

Unimplemented Recommendations

Enclosed is our response to the Ranking Member, House Committee on Oversight and Government Reform, on unimplemented recommendations.

Thank you for your concern about Inspector General independence in the federal community. If you have any questions or if you need any further information, please let me know.

Sincerely,



Karl W. Schornagel
Inspector General
The Library of Congress