

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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DIFFICULTIES FACED BY THE PEACE CORPS INSPECTOR GENERAL
IN OBTAINING ACCESS TO AGENCY DOCUMENTS
TESTIMONY OF KATHY A. BULLER
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Chairman Issa, Ranking Member Cummings, and distinguished Members of the Committee:

Thank you for inviting me to appear before you today to discuss the difficulties faced by my office in obtaining access to agency documents. My testimony will focus on our access issues stemming from the Peace Corps' interpretation of the Kate Puzey Volunteer Protection Act of 2011 (Kate Puzey Act),¹ a law that was designed to enhance the Peace Corps' response to volunteer victims of sexual assault, but which the Peace Corps has regrettably undermined by establishing policies and procedures that deny the Office of Inspector General (OIG) access to information. I will also address how the Peace Corps general counsel's legal opinion concluding the Kate Puzey Act overrides the Inspector General Act of 1978, as amended,² creates an unacceptable precedent for our office and other inspectors general.

Access to Agency Documents and Information

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.³ It is thus remarkable that in July 2013, the Peace Corps' general counsel would write a legal opinion concluding that Kate Puzey Act overrides the access provisions of the IG Act.

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

¹ Pub. L. No. 112-57.

² Pub. L. No. 113-126.

³ S. REP. NO. 95-1071, at 33-34 (1978).

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.⁴ Among other things, the Kate Puzey Act mandates an extensive oversight role to OIG and the creation of a restricted reporting mechanism that allows volunteer victims of sexual assault to confidentially disclose the details of their assault to specified individuals, and receive services without the dissemination of their personally identifying information (PII) or automatically triggering an official investigation.⁵

The Peace Corps' general counsel argues the Kate Puzey Act requires that, unless an exception applies, any details of a sexual assault, as well as the PII of a victim, cannot be disclosed to anyone other than the "specified individuals" providing the services outlined in the statute. The general counsel further asserts that OIG staff members do not qualify as specified individuals and that none of the law's exceptions apply to OIG, even though one of the exceptions in the Kate Puzey Act expressly authorizes disclosure when required by federal law. From the beginning, OIG has argued the exception applies to the IG Act because the IG Act is a federal law requiring disclosure and the Kate Puzey Act does not manifest any intent to override the IG Act, but the general counsel insists the exception applies only to courts.

Despite our objections, over the past two years the Peace Corps has developed and implemented policies and procedures denying us access to restricted reports.⁶ The agency claims it is necessary to withhold information from OIG to protect victims' information, even though OIG has always had access to PII and medical records of volunteers, and there are no cited incidents of this information being breached while in OIG's custody. The agency claims its policies and procedures are "victim-centric," but our view is that nothing could be more "victim-centric" than providing independent oversight of victims' care.

Throughout this time OIG has attempted to resolve these issues through discussions with the agency's senior management, most recently by entering into a memorandum of understanding (MOU) with the agency on May 22, 2014. Nevertheless, the agency's legal opinion authorizing it to withhold information from OIG remains in place and as recently as last month the agency publicly reasserted it had to protect victims' information from disclosure to OIG. As a consequence, the Peace Corps has set a dangerous precedent whereby an agency may interpret a law as overriding the broad access provisions in the IG Act, forcing its OIG to spend limited time and resources wrangling with the agency to obtain the information it needs to fulfill its statutory duties.

⁴ 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.

⁵ Pub. L. No. 112-57 §§ 8A(e)(f), 8E(d).

⁶ The first version of these policies and procedures was developed in the spring of 2013, before the general counsel issued his legal opinion concluding the agency could properly withhold information from OIG.

Thanks to congressional efforts, including the efforts of this Committee, the Peace Corps revised its sexual assault policy in December 2013 to provide OIG with certain data points from restricted reports that are not tied to any PII. Regrettably, even that minor concession was nearly undone by the agency's revised interpretation of the Kate Puzey Act following my congressional testimony on January 15, 2014. Prior to my testimony, the agency's sexual assault policy defined PII as including "any details of the sexual assault incident" – an overreaching definition that has no basis in law. After my testimony, the agency asserted this language was a drafting convenience, but to preserve the same result, the Peace Corps' general counsel advanced the novel argument that there is a separate requirement in the Kate Puzey Act that all details of a sexual assault in a restricted report must be kept secret. A plain reading of the law, however, reveals such requirement is nonexistent.

Why OIG needs full access to restricted reports

OIG needs access to information to ensure the agency is complying with the Kate Puzey Act and properly supporting volunteers who are victims of a sexual assault. The Kate Puzey Act mandates that OIG conduct a case review of a statistically significant number of cases. Examples of services OIG would seek to review include: (1) medical care and counseling; (2) safety and security of the victim and of other volunteers; and (3) advice given to the victim on his or her prosecutorial options. Relevant records are located in various offices and within a number of Peace Corps' systems of records. OIG's lack of access to PII coupled with the agency's lack of a single case management system makes it difficult for OIG to identify and track all records related to a specific case, which is essential to providing independent oversight and reviewing allegations of mismanagement.

In addition to the oversight mandates of the Kate Puzey Act, OIG needs access to the information contained in restricted reports to perform its day-to-day oversight of agency operations. OIG reviews core agency processes and the integrity of data in systems. Investigators address complaints from whistleblowers regarding the mishandling of sexual assault incidents, while evaluators review how well posts respond to crimes against volunteers, safety and security environments, and site histories. Without full access to information, OIG cannot properly review the agency's Crime Incident Reporting System, or the actions of the more than 180 staff members who handle restricted reporting cases, ensure that appropriate services are provided victims, or make effective recommendations on how to improve Volunteer safety and security at posts.

Impact of the Peace Corps' policy on its sexual assault response program

Because Peace Corps policy states that all sexual assault allegations are restricted reports until a Volunteer converts them to a standard report, staff is unable to ask OIG about prosecutorial options and safeguarding evidence immediately after an incident. This policy diminishes agency cooperation with OIG and could, in some cases, interfere with subsequent OIG investigations if the victim chooses to seek justice.

Our office has been engaged with the agency and Congress on this issue for almost two years, and there is no question the debate has taken a toll, consuming limited resources

and affecting staff morale and our relationship with agency components beyond the Office of General Counsel. I hope to move forward with the agency to address these problems and restore cooperation for both the sake of the victims as well as the taxpayers who fund the Peace Corps. Otherwise, I am afraid this policy will have long term implications for the effectiveness of the Peace Corps' sexual assault response program.

MOU between the Peace Corps and OIG signed on May 22, 2014

The MOU signed in May allows OIG to review non-PII from a restricted report and commits the agency to develop a case management system or provide some identifier that allows OIG to track and identify case information. It also aligns the agency's definition of PII with the Kate Puzey Act and protects whistleblowers that may come to OIG with allegations similar to those featured on 20/20.

Under the terms of the MOU, however, the agency will continue to withhold the PII of volunteers who made a report as well as the explicit details of the incident. We are hopeful we will be able to provide the oversight required by the Kate Puzey Act without this information, but once we commence our evaluation there is still a risk we will disagree with the agency as to what constitutes PII and explicit details, resulting in another impasse and substantial delays in reporting. We are also concerned about the agency's ability to identify all the pertinent records in various systems of records (i.e. medical, safety and security, post) related to an individual case in a reasonable timeframe. OIG's evaluation would be far more efficient and effective if it had full access to information as authorized by the IG Act, and, OIG's lack of access to PII coupled with the agency's lack of a case management system will make it difficult for OIG to identify and track all records related to a specific case.

I am also concerned about the appropriateness of my office having to enter into an agreement with the agency head to get information we are entitled to by law and that we need to fulfill our statutory duties. My office views the MOU as a temporary instrument to get some of the information we need while we continue to seek agency or congressional action. In fact, the MOU expressly provides it can be terminated in writing by either party at any time.

Meanwhile, even though the MOU was signed in May 2014, the policies, procedures and the legal opinion blocking OIG access to restricted information remain in place. The agency is making some progress in this regard. On August 1, 2014, the director approved revisions to the policy to align it with the MOU, but that policy has yet to be issued. On August 26, 2014, the agency provided us with a revised draft of the procedures, but due to its lengthiness, our review remains ongoing. We would like to acknowledge however, that we requested some restricted information from two posts in late August and received it, with the redactions, a day later. Notably, some of this activity took place only after the 47 IGs signed the letter to Congress, the press covered the issue, and the agency received notice of this hearing.

More crucially, a significant number of staff has yet to be trained on how to respond to our information requests in light of the MOU. This new training is critical because staff has been instructed so far to withhold all information from restricted reports from OIG.

Letter to Congress signed by 47 IGs

On August 5, 2014, 47 IGs signed a letter to the chairmen and ranking members of the House and Senate government oversight committees to express their concerns for “the serious limitations on access to records that have recently impeded the work of the Inspectors General of the Peace Corps, the Environmental Protection Agency, and the Department of Justice.” The 47 IGs who signed the letter did so because of the implications of agencies refusing, restricting, or delaying IGs’ access to agency documents.

The letter attracted the attention of local and national news media. In response to an inquiry from *The Washington Post*, the Peace Corps stated it is “[...]committed to working with the Inspector General to ensure rigorous oversight while protecting the confidentiality and privacy of volunteers who are sexually assaulted,” suggesting that sharing information with OIG may result in a volunteer’s loss of privacy or confidentiality. This false dichotomy between privacy and oversight is at the root of the problem. As *The Daily Beast* noted, “the Peace Corps’ tension with its inspector general exists because the agency is trying to uphold a principle other than transparency: commitment to the privacy of volunteers. It is far from an ignoble ideal, but it also implies that the office of the inspector general would not treat reports responsibly.”

The agency has also asserted that fewer volunteers would report sexual assaults if OIG had access to the information being requested. However, when pressed about the factual basis for this assertion the agency has admitted it has none. As *The Daily Beast* reported, “It is hard to imagine a case where volunteers decline to report sexual assault because the agency’s internal watchdog will be provided information to determine that there is no negligence or wrongdoing. The denial of information, even for pure intentions, is difficult to defend—especially for an agency that has struggled to ensure the safety of its volunteers.”

Enhancing OIG’s Oversight

Full access to agency records and information is necessary not only to meet the reporting requirements of the Kate Puzey Act, but to provide the type of general oversight that Congress expects from us. For example, in a 2008 review we found that data included in the agency system to categorize and track crime incidents, including sexual assaults, was unreliable. Denial of access to restricted reports would prohibit a follow-up to such a review. In 2009, our review of sensitive medical records related to the death of a Volunteer resulted in recommendations that significantly improved the way in which the Peace Corps provides medical care to volunteers. We could not have completed that review without full access to information.

The Peace Corps provides unparalleled opportunities for individuals to serve their country while helping local communities around the world that are most in need. Like at any agency, robust and independent oversight is required to ensure accountability and the integrity of its programs. OIG believes that volunteers who are victims of sexual assault are better off when the Inspector General has full access to information and can hold the agency fully accountable than when the Peace Corps is allowed to withhold information from OIG and operate without proper oversight.

Without continual oversight, the agency could slip back into the patterns of indifference, victim blaming, and lack of effective support described by returned Peace Corps volunteers during the congressional hearings held on the Peace Corps in 2011. The agency's general counsel's existing legal opinion creates an unacceptable precedent that could be used in the future to deny OIG access to agency records and information applying a similar analysis to other laws restricting access or protecting the privacy of individuals.

Reaffirming OIG's broad access to agency records

IG independence is critical to effective oversight. IGs should not have to seek the intervention of, or enter into an MOU with, the head of the agency to access information they already are authorized to obtain under the IG Act. IGs must independently determine whether a request for access to documents is relevant or appropriate. If IGs must seek the approval of agency management or senior officials to obtain agency information, their independence could be compromised and agency staff will receive the wrong message about cooperation with OIG. Even if information is not denied, it might be delayed, affecting our operations. My office relies on Peace Corps staff's cooperation to fulfill its mission. Without its help, we cannot do our job.

As Congress considers laws protecting information held by federal agencies on individuals, it should consider the impact of those laws on OIGs ability to perform the type of oversight expected by Congress and the American people. My legal counsel, myself, and my fellow IGs believe the IG Act means what it says when it provides OIGs access to all agency records and information; but perhaps the committee can consider legislation to reaffirm OIGs access to all agency documents and information is required under the IG Act regardless of provisions contained in other laws unless specifically stated otherwise. Hearings like this one send an important message to federal agencies that OIG oversight and unfettered access to agency information is essential.

Conclusion

I want to thank the Committee for the opportunity to testify on our issues regarding access to agency information. The IG Act requires the Peace Corps provide all agency records fully, completely, and without delay. Peace Corps policies and procedures that refuse access to my office are particularly serious and flagrant problems. We need unfettered access to agency documents and information to continue providing effective oversight, and we can do so while respecting the privacy of victims. My staff is trained and experienced in dealing with sensitive information, interacting with victims when

necessary, and protecting confidentiality. As the committee considers legislation to support the work of IGs, I ask that you consider further strengthening or reaffirming the access provision in the IG Act.