



OFFICE OF INSPECTOR GENERAL

U.S. Department of Homeland Security

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February 1, 2024

BY ELECTRONIC TRANSMISSION

The Honorable James Comer
Chairman
Committee on Oversight and Accountability
U.S. House of Representatives
Washington, D.C.

The Honorable Mark E. Green, M.D.
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, D.C.

Re: January 25, 2024 letter from Ranking Member Raskin and Ranking Member Thompson

Dear Chairman Comer and Chairman Green:

I am writing in response to the January 25, 2024, letter I received from Ranking Member Raskin and Ranking Member Thompson, in which they reiterate a previous request from a July 27, 2023, letter for certain records from the Department of Homeland Security Office of Inspector General (DHS OIG) and demand that DHS OIG Chief of Staff Kristen Fredricks and DHS OIG Chief Counsel James Read provide a briefing. The July 27, 2023, letter incorrectly asserted that the committees you lead were conducting an “investigation” into my leadership of DHS OIG, and the January 25, 2024, letter, although less explicit, incorrectly implies that the committees are investigating various matters at DHS OIG.¹

¹ The January 25, 2024, letter accuses DHS OIG of “fail[ing] to produce substantive responses to the Committees’ requests” for records. In a similar vein, the attachment to the January 25, 2024, letter contains instructions entitled “Responding to Committees’ Document Requests.”

DHS OIG provided the 116th Congress with much of the information sought by Ranking Member Raskin and Ranking Member Thompson, and last year provided them with a detailed substantive response to their inquiry.

DHS OIG regularly provides information to Congress, on a bi-partisan basis, concerning our work, pursuant to the Inspector General Act, identifying deficiencies in the programs and operations of DHS and preventing and detecting waste, fraud, and abuse related to those programs and operations. In fact, since my unanimous Senate confirmation on July 25, 2019, DHS OIG has provided detailed, substantive briefings to Members and congressional staff on more than 400 occasions.

During the 116th Congress, I provided the House Committee on Oversight and Reform and the House Committee on Homeland Security with much of the information now being requested by Ranking Member Raskin and Ranking Member Thompson. Further, in an August 31, 2023, letter (attached hereto), I provided a detailed substantive response to what appears to be their main area of concern, namely, why DHS OIG paid a former employee a large lump sum in settlement of litigation.

Specifically, I explained that, after the former employee filed an appeal with the Merit Systems Protection Board (MSPB) against DHS OIG seeking reinstatement, back pay, and other remedies for her alleged wrongful termination:

- The Integrity Committee of the Council of the Inspectors General on Integrity & Efficiency (CIGIE) informed me that it had undertaken an investigation into the very matters that were at issue before MSPB.
- DHS OIG officials advised CIGIE that MSPB had exclusive jurisdiction to resolve this employment dispute,² but CIGIE refused to defer to MSPB.
- Under compulsion, CIGIE investigators obtained all of the records that DHS OIG intended to use to defend the litigation at MSPB, as well as materials covered by the attorney-client and attorney work-product privileges outlining, among other things, DHS OIG's litigation strategy.³
- CIGIE investigators also grilled DHS OIG's chief counsel for hours about the confidential advice he provided me and other DHS OIG officials. In addition, CIGIE

² See *Elgin v. Department of the Treasury*, 567 U.S. 1 (2012); *United States v. Fausto*, 484 U.S. 439 (1988).

³ CIGIE also obtained whistleblowing disclosures that DHS OIG personnel had made to Congress concerning wrongdoing by CIGIE leadership. CIGIE rejected a request from several Senators to establish a "taint team" that would have removed those protected communications from CIGIE's holdings.

investigators interviewed witnesses who would have appeared at the MSPB hearing and refused to allow DHS OIG counsel to be present at those interviews.

- Subsequently, counsel for the former employee referred to and questioned me about that same privileged material during my deposition.

In sum, **CIGIE's actions worked against the legal interests of the executive branch and undermined DHS OIG's litigation position at MSPB.** DHS OIG had no choice but to settle.⁴

It is inappropriate for Ranking Member Raskin and Ranking Member Thompson to publicly criticize DHS OIG officials for seeking relief in federal court for violations of their individual rights, and for their whistleblowing.

For several years, CIGIE has subjected Ms. Fredricks, Mr. Read, and me to a series of unwarranted and harassing inquiries questioning lawful, discretionary judgments we have made within the scope of our *official* duties. CIGIE has insisted, against all reason and with no legal basis, that it is proceeding against us instead in our *personal* capacities. We believe that CIGIE is violating our rights, and we filed a lawsuit in our *personal* capacities, seeking redress against CIGIE.

A congressional "investigation into individual affairs is invalid if unrelated to any legislative purpose." *Watkins v. United States*, 354 U.S. 178, 198 (1957). Ranking Member Raskin and Ranking Member Thompson do not identify any legislative purpose attached to their expression of pique over our lawsuit, in which we sought to vindicate our individual constitutional rights as United States citizens. In this connection, Ranking Member Raskin and Ranking Member Thompson are wrong insofar as they imply that the lawsuit was paid for with appropriated funds.⁵

Moreover, the claims in our lawsuit -- that CIGIE officials are abusing their authority and violating the law -- which were supported by detailed factual allegations and extensive citation to statute and judicial precedent, constitute whistleblowing under 5 U.S.C. § 2302(b)(8). It is shocking that sitting members of Congress have publicly attacked Ms. Fredricks, Mr. Read, and me

⁴ The January 25, 2024, letter from Ranking Member Raskin and Ranking Member Thompson refers to DHS OIG's settlement with the "former DHS OIG Deputy Inspector General," but this formulation is erroneous. On January 31, 2024, an MSPB Administrative Judge found that the former employee agreed to resign from her position of Chief Operating Officer of DHS OIG, effective June 11, 2020.

⁵ The January 25, 2024, letter from Ranking Member Raskin and Ranking Member Thompson states in pertinent part: "[Y]ou . . . have dedicated a significant amount of effort and taxpayer money to avoiding accountability. For example, on April 4, 2023, you and other members of your staff filed a lawsuit against [CIGIE] . . ."

for our whistleblowing.⁶ Notably, contrary to the implication in the ranking members' letter, the district court did not reach the merits of our claims, but instead ruled that our claims were not ripe for resolution at this time. In any event, I respectfully ask that you invoke the appropriate process to prevent further interference by the ranking members of your respective committees with our rights as citizens and as whistleblowers.

CIGIE's structure and claimed authority violates separation of powers principles.

CIGIE is "an independent entity within the executive branch." 5 U.S.C. § 424(a)(1). CIGIE includes, amongst others, all executive branch Inspectors General, as well as five legislative branch Inspectors General.⁷ CIGIE's rules provide that CIGIE's Integrity Committee, comprised of six officials in the executive branch who investigate and report on alleged misconduct by an Inspector General and certain senior officials in an OIG, *see* 5 U.S.C. § 424(d), has the authority to obtain all records and information held by an Inspector General that the Integrity Committee deems relevant to an Integrity Committee investigation.⁸ In other words, six *executive* branch officials claim the power to obtain what could be the most sensitive *legislative* records and information, and to then issue a public report containing findings and conclusions about a *legislative* branch official based on those records and information. This arrangement is unconstitutional, insofar as it violates separation of powers principles.

Please contact me with any questions, or a member of your staff may call Chief of Staff Kristen Fredricks at 202-981-6000.

Sincerely,

Joseph V. Cuffari, Ph.D.
Inspector General

⁶ Ranking Member Raskin and Ranking Member Thompson issued a press release summarizing their January 25, 2024 letter and posted a link to their letter on the internet. *See* <https://democrats-homeland.house.gov/news/correspondence/ranking-members-raskin-and-thompson-call-on-dhs-ig-cuffari-to-cooperate-with-congressional-investigation> (last visited January 31, 2024).

⁷ The five legislative branch Inspectors General oversee the Architect of the Capitol, the Capitol Police, the Government Accountability Office, the Government Publishing Office, and the Library of Congress. *See* <https://www.ignet.gov/content/inspectors-general-directory> (last visited January 31, 2024).

⁸ *See* Integrity Committee Policies & Procedures, Addendum A, available at <https://www.ignet.gov/sites/default/files/files/ICP%26PAccessAddendum-March2021.pdf> (last visited January 31, 2024).

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

The Honorable Benny G. Thompson
Ranking Member
Committee on Homeland Security

Attachments:

July 27, 2023, letter from Ranking Member Raskin and Ranking Member Thompson
Inspector General Cuffari's August 31, 2023, response to July 27, 2023 letter
January 25, 2024, letter from Ranking Member Raskin and Ranking Member Thompson