



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

FEB 26 2020

The Honorable Gerald E. Connolly
Chairman, Subcommittee on Government Operations
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515-6143

Dear Chairman Connolly:

This is in response to your February 12, 2020, letter forwarding eight questions for the record relating to the January 28, 2020, Subcommittee hearing entitled "Protecting Those Who Blow the Whistle on Government Wrongdoing."

Enclosed are my responses to the questions for the record.

If you have any questions regarding this matter, please contact me or Michael C. Zola, Department of Defense, Office of Inspector General, Assistant Inspector General for Legislative Affairs and Communications, at (703) 604-8324.

Sincerely,

A handwritten signature in blue ink, reading "Glenn A. Fine", is positioned above the typed name.

Glenn A. Fine
Principal Deputy Inspector General
Performing the Duties of the Inspector General

Enclosure:
As stated

cc:
The Honorable Mark Meadows
Ranking Member

**Questions for The Honorable Glenn A. Fine
Principal Deputy Inspector General Performing the Duties of the Inspector General
U.S. Department of Defense
Questions from Chairman Gerald E. Connolly
Subcommittee on Government Operations, Committee on Oversight and Reform
January 28, 2020, Hearing: “Protecting Those Who Blow the Whistle on
Government Wrongdoing.”**

QUESTION #1 - On January 16, 2020, the Government Accountability Office (GAO) released a decision that found “OMB withheld from obligation funds appropriated to the DoD for security assistance to Ukraine” ... and “violated the Impoundment Control Act.” That’s a finding of misconduct from the non-partisan GAO. What is the role of the Department of Defense Office of Inspector General (DOD OIG) in following up on GAO’s findings to determine the effects of the withheld obligating funding on DOD, its staff, and its mission?

DoD OIG Response #1 – The January 16, 2020, GAO appropriations law decision B-331564 concluded the Office of Management and Budget violated the Impoundment and Control Act when it withheld DoD’s Ukraine Security Assistance Initiative funds from obligation for policy reasons. The GAO typically follows up on its own findings, conclusions, and recommendations, rather than the DoD OIG doing so. With regard to this matter, the DoD OIG currently has no additional work planned on the GAO’s decision.

QUESTION #2 - An important role of inspectors general is to investigate government misconduct. On November 12, 2019, you wrote to Senate Democrats, declining to open an investigation into the DOD’s “delay in providing Ukraine Security Assistance Initiative funding.” In your response you stated that the questions related to the delay in funding were “significant,” but cited ongoing congressional investigations as a reason for not pursuing an investigation at the time. Given the new congressional context, what actions does the DOD IG plan to take to investigate these “significant” findings?

DoD OIG Response #2 – Presently, the DoD OIG has an evaluation underway examining the end-use monitoring of equipment transferred to Ukraine. This work, initiated in July, 2019, was announced in the attached project announcement entitled, “Evaluation of DoD Enhanced End-Use Monitoring for Equipment Transferred to the Government of Ukraine.”

With regard to the questions raised in the letter from the Senators, some of those questions were addressed in the House impeachment inquiry and Senate arguments on impeachment, as well as in public disclosures by witnesses.

The DoD OIG does not have additional work in this area planned at this time.

QUESTION #3 - To your knowledge, has President Trump ordered the Department of Defense not to cooperate with any IG investigations related to the withholding of Ukraine security assistance?

DoD OIG Response #3– No.

QUESTION #4 - To your knowledge, has President Trump ordered DOD OIG not to investigate any topics related to the withholding of Ukraine security assistance?

DoD OIG Response #4 – No.

QUESTION #5 - Have you ever had to battle the executive branch on questions of privilege? Have you ever successfully acquired information that was initially the subject of a privileged claim?

DoD OIG Response #5 - In several matters we are investigating and reviewing, claims of presidential communications privilege relating to communications between the President, his advisors, and DoD officials have been raised. As a result, we have not been able to obtain all the information we are seeking in those investigations and reviews.

QUESTION #6 - Are there additional authorities that an IG could use to ensure whistleblowers are afforded the protections they deserve?

DoD OIG Response #6 - With regard to Inspectors General, we believe it is appropriate to provide testimonial subpoena authority to other OIGs, similar to the testimonial subpoena authority provided to the DoD OIG.

In addition, I believe, as I have stated publicly and as the current Department of Justice (DOJ) Inspector General, Michael Horowitz, has stated, that the DOJ IG that should have unlimited jurisdiction within DOJ, like every other IG.

QUESTION #7 - Under the Inspector General Act of 1978, IGs can disclose the identity of a whistleblower either when the IG has consent from the employee or when disclosure becomes unavoidable during the investigation. Can you explain what it means for a disclosure to become “unavoidable”?

DoD OIG Response #7 – The disclosure of a whistleblower’s identity may become unavoidable when an inquiry into the substance of the allegations raised by the whistleblower would not be possible without disclosing the identity. For example, an OIG may not investigate a whistleblower’s allegation of reprisal without asking about alleged reprisal against the person, and questioning witnesses about the facts related to that alleged reprisal.

In addition, sometimes the OIG is required to disclose threats to individuals and others that are included in alleged whistleblower allegations. For example, the OIG must disclose a whistleblower's identity, even without the consent of the whistleblower, when the complaint includes a threat to harm to himself or others—such as the complaint that included a threat by the whistleblower to blow up the Pentagon.

Another example of unavoidable disclosure is when a court orders an OIG to make such a disclosure.

QUESTION #8 - Do you find anonymous whistleblower claims helpful?

DoD OIG Response #8 – Yes.

When individuals provide information to the DoD Hotline, they may do so anonymously and not disclose their identity or provide personally identifiable information.

For those individuals who choose to identify themselves, they may either not consent to the DoD Hotline sharing their name and contact information outside of the DoD Hotline, thereby remaining confidential, or they may give consent for their contact information to be shared on a need-to-know-basis. An example of a need to know would be if the investigators to whom the Hotline assigns the case needed to contact a complainant for additional information to pursue the allegation.

Anonymous and confidential complaints are helpful, particularly when they are fact-based and provide corroborating details, or ways to corroborate their disclosures.

For example, in fiscal year 2019, of the cases that the DoD Hotline referred for investigation, inquiry, or audit that resulted in substantiated findings, 49 percent were submitted by known, nonconfidential complainants, 5 percent were submitted by complainants who were known but wanted to remain confidential, and 46 percent were filed anonymously.

Enclosure:
As stated



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July 8, 2019

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Evaluation of DoD Enhanced End-Use Monitoring for Equipment Transferred to the Government of Ukraine (Project No. D2019-DEVOPB-0169.000)

We plan to begin this evaluation in July 2019. Our objective is to determine whether the DoD's transfer to the Government of Ukraine military equipment requiring enhanced end-use monitoring (EEUM), such as Javelin missiles, Javelin Command Launch Units, night vision devices, or any other EEUM item, is in accordance with law and DoD guidance. In addition, we will determine whether Ukraine's security and accountability of the EEUM military equipment meet the criteria prescribed by law and regulation. We will consider suggestions from management on additional or revised objectives.

We will perform the evaluation at selected stakeholder and Ukrainian facilities. We may identify additional locations during the evaluation.

Please provide us with a point of contact for the evaluation within **5 days** of the date of this memorandum. The point of contact must be a Government employee—a GS-15, pay band equivalent, or the military equivalent. Send the contact's name, title, grade/pay band, phone number, and e-mail address to [REDACTED]

You may obtain information about the Department of Defense Office of Inspector General from DoD Directive 5106.01, "Inspector General of the Department of Defense," August 19, 2014, and DoD Instruction 7050.03, "Access to Records and Information by the Inspector General, Department of Defense," March 22, 2013. Our website is www.dodig.mil.

If you have any questions, please contact [REDACTED]
[REDACTED]
[REDACTED]

A handwritten signature in cursive script that reads "Carolyn R. Hantz".

Carolyn R. Hantz
Assistant Inspector General for
Program Evaluations, Combatant Commands,
and Overseas Contingency Operations

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