



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 24 2014

THE INSPECTOR GENERAL

The Honorable David Vitter
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, DC 20515

Dear Senator Vitter:

I have received your letters to me of February 18, February 19 and February 20 addressing several recent projects by my office. The February 18 letter primarily addresses matters involving former U.S. Environmental Protection Agency (EPA) employee John Beale. Your February 19 letter primarily addresses our program evaluation report regarding Clean Air Federal Advisory Committees and the February 20 letter primarily addresses our audit report on use of private and alias email accounts by EPA officials.

All of the projects you have asked about originated from information or requests we received from others. That is, they were not initially generated by the Office of Inspector General (OIG) as part of a work plan. In the case of the advisory committees and the email usage, the inquiries came from you and other congressional colleagues. The Beale matter initially was brought to us by agency officials. When we receive such information, whether from a hotline complaint, an employee "tip" or a congressional inquiry, we have to evaluate whether there is some aspect of the issue(s) brought to our attention that we must or could usefully review. If the answer is yes, we have to establish a scope for the project, conduct the field work and report the results, all in accordance with applicable standards. Audit and program evaluation work completed by the EPA OIG is done in accordance with Generally Accepted Government Audit Standards, generally referred to as "Yellow Book" standards. For investigative matters, we must follow the Attorney General's Guidelines for OIGs with Statutory Law Enforcement Authority. The methodology cannot be dictated by the requestor, whether a concerned citizen or a member of Congress.

This letter will respond to your questions regarding the John Beale matter in your February 18 letter. In addressing your specific questions, it is important to distinguish between the two primary types of work the EPA OIG undertook in that regard. The initial work, begun on February 11, 2013, as soon as we first learned of Beale matters from the agency, was an investigation by the OIG's Office of Investigations (OI) into possible criminal matters. Early in that investigation, as we were uncovering Mr. Beale's actions, we concluded that later follow-on work would be needed in order to examine control weaknesses or gaps that could have allowed

those actions to have occurred. The follow-on would take the form of audit work by the OIG's Office of Audit (OA), which reviews such internal control issues as an administrative matter.

OI's investigation, as led by the U.S. Department of Justice (DOJ), resulted in one count of theft of government property in August 2013 and the sentencing of Mr. Beale in December 2013. In April 2013, the Assistant Inspector General for Investigations, Patrick Sullivan, referred to OA what appeared to be several internal control issues at the EPA that allowed Mr. Beale to perpetrate the fraud. Using as a starting point the many documents obtained and compiled during OI's criminal investigation, OA began several audits focusing on matters apart from and in addition to those that OI previously had addressed as part of its criminal investigation of Mr. Beale. To date, OA has issued two reports related to Mr. Beale's retention pay and travel. There are several other ongoing, related OA audits of the EPA's internal controls.

The following are the OIG's responses to your questions:

1. **Your office repeatedly stated on the record that Gina McCarthy was the first senior official to express concerns with Beale, and her leadership is what made the investigation and conviction possible.**
 - a. **Please provide all evidence that substantiates your claim that McCarthy reported concerns about Beale to the Office of General Counsel (OGC) on or around November 1, 2013. Your response should include any record memorializing this action and should include a description of the concerns that were expressed, as well as guidance provided on actions to be taken.**

Response: Through several interviews conducted by OI, it was determined that Ms. McCarthy reported her concerns about Mr. Beale to OGC on or around November 1, 2012. The OIG first was notified about the concerns surrounding Mr. Beale during a meeting among Ms. McCarthy, OGC and the OIG on February 11, 2013. The following documents are provided as evidence to support this claim.

Case Initiation and Hotline Complaint dated February 11, 2013

Beale Case
Initiation.doc

Memorandum of Interview- Gina McCarthy dated February 27, 2013

MOI McCarthy
2-27-13.doc

Memorandum of Interview- Nancy Dunham dated March 28, 2013

MOI Dunham
3-28-13.doc

Memorandum of Interview- Steven Williams dated March 11, 2013

MOI Williams
3-29-13.doc

- b. **Why did you view the issue of Beale's CIA status to be a human resources issue? What information did you rely on in your initial opinion that it was an HR issue? What research was conducted before you provided Craig Hooks with such guidance?**

Response: The OIG has never viewed the issue of Mr. Beale's CIA status to be a human resource issue. The OIG first learned of the Beale issue during the February 11, 2013, meeting. Following this meeting, OI immediately opened an investigation into the allegations expressed by Ms. McCarthy. As the investigation and subsequent audit have uncovered, there were several discussions among the Office of Administration and Resources Management (OARM), the Office of Air and Radiation (OAR) and OGC regarding Mr. Beale's alleged CIA status and its potential as a mere human resource issue. However, the OIG was not part of these discussions in any formal or informal capacity. While Mr. Hooks states otherwise, the Inspector General (IG) was not familiar with Mr. Beale's name until OGC finally provided the OIG with the information that led to OI's investigation. In addition to the IG's recollection, the OIG has found no evidence of any discussion between Mr. Hooks and the IG regarding the Beale case, either in its investigation or its audit, in document review or interviews. The IG gave no guidance to Mr. Hooks regarding the Beale matter.

- c. **On December 16, 2013, my staff specifically identified and requested a memorandum dated January 12, 2011, addressed to Gina McCarthy. In response, your staff responded to my staff, "that there is not a memorandum of that date to Gina McCarthy." However, as you know, I subsequently obtained this very document that allegedly did not exist. Why did your staff provide my office with incorrect information?**

Response: In responding to the oral request from your staff, the OIG OA staff person thought that the reference was to a different email of the same date between two other agency employees, an email that we had just provided to Ms. Bolen of your staff. With that incorrect understanding of which document was in question, the congressional affairs staffer responded that we did not possess the document. However, it was the OIG, not some other source, that had, in fact,

provided to you the document that your staff intended to ask us about, and the OIG had not concealed it in any way.

- d. A February 1, 2011, email stated “Gina is reluctant to finalize [cancellation of Beale’s bonuses] unless OARM Craig gives her the okay that the White House is aware and there will not be any political fallout.” Please identify the steps the OIG took to determine whether or not the White House influenced in any way the Agency’s response to Beale. Your response should include whether the OIG sought to interview any White House officials. If so, please identify and provide documentation of those interviewed. If not, please explain why the OIG did not investigate White House involvement.

Response: The OIG did not contact any staff at the White House regarding the Beale investigation. The investigation was attempting to determine whether the facts of the Beale case would substantiate all of the elements of any criminal violation. The case agent concluded that the reference cited above would neither prove nor disprove any criminal violation.

2. In the Early Warning Action Reports on Beale’s pay and travel issues, the OIG explained that one staff attorney in the OGC refused to be interviewed, as required under Section 6(a) of the Inspector General Act. Please explain in detail the information this individual may have and what gaps exist as a result of her noncompliance. Please describe if any corrective action has been recommended or taken against this individual.

Response: Nancy Dunham, an OGC staff attorney, was interviewed during OI’s criminal investigation (see attachment). Separately, and following the Beale criminal prosecution, OA conducted a related audit on pay issues. On November 21, 2013, Ms. Dunham refused to be interviewed by the auditors. A potential gap in information exists due to Ms. Dunham’s noncompliance. In her interview with OI, she indicated that she became aware of Mr. Beale’s pay issues and alleged CIA employment in late 2012. OA later developed information through other interviews which indicates that Ms. Dunham may have been aware of Mr. Beale’s pay issues several months or even a year prior to what she told OI during her interview. Interviewing Ms. Dunham as part of this audit would have enabled us to confirm the length of time that OGC knew about the pay issues and likely would have provided more information about reason(s) OGC did not act on the pay issues, and why it delayed in reporting the matter to the OIG.

Memorandum of Interview- Nancy Dunham dated March 28, 2013

MOI Dunham
3-28-13.doc

- a. **Have other EPA officials refused to cooperate with any aspects of the Beale investigation? If so, identify and provide documentation of individuals refusing to cooperate, and describe the specific corrective actions your office has taken to ensure a complete and thorough investigation.**

Response: With the exceptions of the individuals noted in the response to 2b below, no other EPA officials have refused to cooperate with the Beale investigation.

- b. **Are you aware of any EPA officials intimidating or otherwise taking actions to prevent the OIG from conducting investigations?**

Response: Yes. Over the past 12 months, there have been several EPA officials who have taken action to prevent OI from conducting investigations or have attempted to obstruct investigations through intimidation. These individuals are listed below:

- *Steve Williams (Office of Homeland Security, OHS) - During the course of an OI administrative investigation, Mr. Williams approached an OI special agent in a threatening manner, preventing the special agent from conducting her official duties in an ongoing investigation involving Mr. Williams and other members of OHS. Additionally, Mr. Williams issued non-disclosure agreements to EPA employees that prevented these employees from cooperating with OIG investigations. The Federal Protective Service conducted a criminal investigation and referred its finding of facts to support an assault charge to the U.S. Attorney's Office for the District of Columbia (USAO). The USAO declined prosecution and referred the matter back to the EPA OIG for administrative action as necessary.*
- *Nancy Dunham (OGC) - During the above altercation with Mr. Williams and the special agent, OIG employees heard Ms. Dunham telling Mr. Williams and others that they did not need to talk with the OI special agents.*
- *John Martin (OHS) - During numerous attempts by OI special agents to interview Mr. Martin, he did not cooperate and failed to provide information requested in the course of an investigation. Mr. Martin refused to provide information about his duties and responsibilities at the EPA. He also left an interview early and did not return to continue the OI interview at a later date. Furthermore, Mr. Martin issued non-disclosure agreements to EPA employees that prevented these employees from cooperating with OIG investigations.*

As required by the Inspector General Act Section 6(b)(2), the IG informed the head of the agency about the refusal by these agency employees to provide requested assistance or information and requested assistance in ensuring compliance. Although agency senior officials said that they would look into those administrative matters, to date the non-compliance by the individuals identified above continues.

- c. **Has Administrator McCarthy ever instructed the OIG to take a particular course of action during an investigation? Have you withdrawn, or directed staff to withdraw, from any portion of an investigation, at the direction of Administrator McCarthy? If so, please identify what OIG investigation has been halted at the direction of Administrator McCarthy and under what authority.**

Response: Administrator McCarthy issued the following memorandum regarding the ongoing OIG investigation referenced in the memorandum.

Administrator McCarthy's Memorandum dated October 28, 2013.

letter to OIG and
OHS.pdf

In an attempt to follow up on an interview into an OI administrative investigation, a confrontation occurred as described above involving Mr. Williams. Because this was an administrative matter, Administrator McCarthy asked that the agency be given an opportunity to address the issue. Because the resolution of all administrative matters rests with the agency, not the OIG, I agreed to allow the agency time to address and resolve the non-cooperation conduct at issue with this case. It was understood between myself and Administrator McCarthy that this was a temporary effort to address the administrative non-cooperation issues, and that the OIG would continue the administrative investigation on this specific issue should the EPA not succeed in its internal resolution effort.

In an email dated February 18, 2014, Bryan Zumwalt, Republican Chief Counsel, Senate Committee on Environment and Public Works (EPW), asked the OIG to address several questions in addition to those provided in your letter. The following are Mr. Zumwalt's questions and the OIG's responses:

1. **Will your office provide a briefing disclosing the full details on the circumstances surrounding Dr. Oscar Hernandez's departure from EPA, including all actions taken prior to and following his departure that involved the reorganization of any of his staff?**

Response: Yes, the OIG is prepared to brief the EPW and other congressional committees on this case.

2. **Did the OIG obtain a list of additional employees that have been suspected of time and attendance fraud? Did the OIG obtain a list of individuals who had approved timecards for staff that were not showing up for work or producing any work product?**

Response: The OIG received information from Mark Townsend (see attached) who was under investigation for allowing an EPA employee, Sandra Strassman-Sundy, to stay at home for more than five years without doing the work she claimed to have done for the EPA. As part of an ongoing dialogue with Mr. Townsend and his attorney, the OIG and the DOJ were provided with a document that contained the names of several EPA employees and managers who allegedly were involved in time-and-attendance fraud. The OIG vetted the provided information and determined that many of the employees listed already had retired from the EPA, which limits OIG jurisdiction and access to those employee records. Of those who were still employed with the EPA, the OIG did a preliminary review of time-and-attendance records to determine the veracity of Mr. Townsend's information. The OIG determined that, based on the information provided, there was no clear evidence through time-and-attendance records that a manager inputted, certified and approved time-and-attendance records for employees who allegedly were not coming to work or doing any work. Mr. Townsend was asked to provide more specific information to the DOJ and the OIG during a follow-on meeting, but Mr. Townsend never provided additional information, and the DOJ eventually declined prosecution of Mr. Townsend on December 17, 2013.

Memorandum of Interview- Mark Townsend dated July 3, 2012

FINAL Townsend
MOI 7-3-12.docx

Memorandum of Interview- Mark Townsend dated April 23, 2013

MOI Townsend
4-23-13.doc

Department of Justice Declination Memorandum- Mark Townsend dated
December 17, 2013

Townsend -
Declination.pdf

3. Is your office aware of any instances in which less than accurate performance reviews and promotion applications have been submitted or were otherwise allowed to slide? Has your office opened any investigations into such problematic reviews?

Response: Yes, the OIG is aware of cases that involve this type of employee misconduct. The OIG opened cases on these employees. The OIG is prepared to brief the EPW and other congressional committees on these cases, as appropriate, based on prosecutorial process and guidance from the DOJ.

4. Has your office been made aware of any concerns that the National Treasury Employees Union has been abusing the grievance process to prevent critical performance reviews, to ensure unearned promotions or otherwise to assist staff in avoiding work?

Response: The OIG searched its databases and identified no official allegations made to the OIG regarding the National Treasury Employees Union (NTEU) abusing the grievance process to prevent critical performance reviews, to ensure unearned promotions or otherwise to assist staff in avoiding work. However, Mark Townsend indicated that several grievances had been filed against him as a manager at the EPA. NTEU is one of the EPA employee unions that Mr. Townsend indicated was involved in at least one of the grievances against him.

5. Please provide your office's legal analysis as to what constitutes a False Writing.

Response: We assume that this question refers to the "Official certificates or writings" statute, 18 U.S.C. § 1018. The OIG's counsel's office did not analyze the application of this statute to the Beale prosecution because the prosecutor determines the criminal statute(s) under which to charge the defendant. 18 U.S.C. § 1018 makes it a misdemeanor to make or give a false certificate or writing. It provides: "Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined under this title or imprisoned not more than one year, or both."

I appreciate your interest in the work of the OIG. If you should have any questions about this or any other matter, please contact Alan S. Larsen, Counsel to the Inspector General, at (202) 566-2391.

Sincerely,



Arthur A. Elkins Jr.