



August 3, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and
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United States Senate
344 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and
Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Thomas R. Carper
Ranking Member
Committee on Homeland Security and
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United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government
Reform
United States House of Representatives
2471 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairmen and Ranking Members:

On July 20, 2015, the Department of Justice (DOJ) Office of Legal Counsel (OLC) issued an opinion that sharply curtails the authority of the Inspector General for the Department of Justice (DOJ-IG) to independently access all records necessary to carry out its oversight responsibilities. The legal underpinning of this OLC opinion – that Section 6(a) of the Inspector General Act (IG Act) does not give the DOJ-IG independent access to all records in the DOJ's possession that it needs to perform its oversight work – represents a serious threat to the independent authority of not only the DOJ-IG but to all Inspectors General. The Council of the Inspectors General on Integrity and Efficiency (CIGIE), representing 72 Federal Inspectors General, urges Congress to immediately pass legislation affirming the authority of an Inspector General under IG Act Section 6(a) to access, independently and without delay, all information and data in an agency's possession that the Inspector General deems necessary to conduct its oversight functions.¹ The legislation must further make clear that no law or provision restricting access to information applies to Inspectors General unless that law or provision expressly so states, and that such unrestricted Inspector General access extends to all records available to the agency, regardless of location or form. The CIGIE Chair is presently engaged in substantive discussions with the DOJ about a possible joint legislative proposal to address these concerns.

¹ As noted in the OLC opinion, CIGIE made two submissions to OLC in connection with this matter, one dated October 7, 2011, and another dated June 24, 2014. Those submissions are attached to this letter.

Despite the unequivocal language of Section 6(a) of the IG Act, the OLC opinion concludes that it does not entitle the DOJ-IG to obtain independent access to grand jury, wiretap, and credit information in the DOJ's possession that is necessary for the DOJ-IG to perform its work. Indeed, the OLC opinion concludes that such records cannot be obtained by the DOJ-IG pursuant to the IG Act, and can only be obtained in certain – but not all – circumstances through provisions in the specific laws related to those records. Further, the opinion provides that only the Department of Justice itself decides whether access by the DOJ-IG is warranted – placing the agency that the DOJ-IG oversees in the position of deciding whether to grant the Inspector General access to information necessary to conduct effective and independent oversight. Requiring an Inspector General to obtain permission from agency staff in order to access agency information turns the principle of independent oversight that is enshrined in the IG Act on its head.

The OLC opinion's restrictive reading of the IG Act represents a potentially serious challenge to the authority of every Inspector General and our collective ability to conduct our work thoroughly, independently, and in a timely manner. Our concern is that, as a result of the OLC opinion, agencies other than DOJ may likewise withhold crucial records from their Inspectors General, adversely impacting their work. Even absent this opinion, agencies such as the Peace Corps and the U.S. Chemical Safety and Hazard Investigation Board (CSB) have restricted or denied their OIGs access to agency records on claims of common law privileges or assertions that other laws prohibit access. Similarly, the Department of Commerce denied its Inspector General (Commerce-IG) access to agency records that were needed for the Commerce-IG to complete an audit of agency operations because agency counsel had concluded, based on guidance that agency counsel said came from OLC, that it might be a violation of another federal statute to make the records available to its Inspector General. As a result, the Commerce-IG could not complete its audit.

Without timely and unfettered access to all necessary information, Inspectors General cannot ensure that all government programs and operations are subject to exacting and independent scrutiny. Refusing, restricting, or delaying an Inspector General's independent access may lead to incomplete, inaccurate, or significantly delayed findings and recommendations, which in turn may prevent the agency from promptly correcting serious problems and pursuing recoveries that benefit taxpayers, and deprive Congress of timely information regarding the agency's activities. It also may impede or otherwise inhibit investigations and prosecutions related to agency programs and operations.

Uncertainty about the legal authority of Inspectors General to access all information in an agency's possession could also negatively affect interactions between the staffs of the Offices of Inspector General and the agencies they oversee. Prior to this opinion, agency personnel could be confident, given the clear language of Section 6(a) of the IG Act, that they were required to and should share information openly with Inspector General staff, and typically they did so without reservation or delay. This led to increased candor during interviews, greater efficiency of investigations and other reviews, and earlier and more effective detection and resolution of

waste, fraud, and abuse within Federal agencies. We are concerned that witnesses and other agency personnel, faced with uncertainty regarding the applicability of the OLC opinion to other records and situations, may now be less forthcoming and fearful of being accused of improperly divulging information. Such a shift in mindset also could deter whistleblowers from directly providing information about waste, fraud, abuse, or mismanagement to Inspectors General because of concern that the agency may later claim that the disclosure was improper and use that decision to retaliate against the whistleblower.

In the over three decades since the IG Act's passage, Inspectors General have saved taxpayers hundreds of billions of dollars and improved the programs and operations of the Federal government through their independent oversight. Actions that limit, condition, or delay access to all agency information have profoundly negative consequences for our work: they make us less effective and erode the morale of the dedicated professionals who make up our staffs and are committed to the difficult task of government oversight. Such limitations are inconsistent with the IG Act, at odds with the independence of Inspectors General, and risk insulating agencies from independent scrutiny – the very issues that our offices were established to review and that the American people expect us to be able to address.

The only means to address this serious threat to Inspector General independence is for Congress to promptly pass legislation that affirms the independent authority of Inspectors General to access without delay all information and data in an agency's possession that an Inspector General deems necessary to execute its oversight functions under the law. The legislation should unambiguously state and provide what we in the Inspector General community have long understood – that no law or provision restricting access to information applies to Inspectors General unless that law or provision expressly so states, and that such unrestricted Inspector General access extends to all records available to the agency, regardless of location or form. In our view, only this kind of definitive legislation can ensure and promote an Inspector General's independent and unimpeded access to information as envisioned by the IG Act. We look forward to working with the Committees on this most important matter.

Sincerely,



Michael E. Horowitz
Chairperson



Allison C. Lerner
Vice Chairperson



Kathy A. Buller
Chairperson, Legislation Committee



Steve A. Linick
Vice Chairperson, Legislation Committee

Enclosures

The Honorable Ron Johnson
The Honorable Jason Chaffetz
The Honorable Thomas R. Carper
The Honorable Elijah E. Cummings

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