



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

Office of the
Inspector General

July 22, 2020

The Honorable Mike Quigley
Chairman
Subcommittee on Financial Services
and General Government
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Kennedy
Chairman
Subcommittee on Financial Services
and General Government
United States Senate
Washington, D.C. 20510

The Honorable Tom Graves
Ranking Member
Subcommittee on Financial Services
and General Government
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Christopher Coons
Ranking Member
Subcommittee on Financial Services
and General Government
United States Senate
Washington, D.C. 20510

Dear Chairmen and Ranking Members:

As required by the Consolidated Appropriations Act of 2020 (Act), P.L. 116-93, the U.S. Office of Personnel Management (OPM) Office of the Inspector General (OIG) is reporting OPM's failure to provide the OPM OIG with timely access to agency records as required by the Act and the Inspector General Act of 1978, as amended (IG Act).

Division C of the statute, the Financial Services and General Government Appropriations Act (FSGG), 2020, Title VI § 626 prohibits the use of appropriated funds to "deny an Inspector General funded under this Act timely access to any records...available to the department or agency over which that Inspector General has responsibilities under the [IG Act], or to prevent or impede that Inspector General's access to such records." The FSGG appropriations funds both OPM and OPM OIG for fiscal year (FY) 2020. Accordingly, the Act prevents OPM from withholding agency records from the OIG during FY 2020, as doing so would invariably require the use of appropriated funds and resources.

The specific instance requiring this notification is when OPM failed to provide the OPM OIG with requested records on July 17, 2020. The OPM OIG first requested agency records on June 9, 2020, with a requested delivery date of June 17, 2020. When OPM requested an extension on June 17, 2020, the OPM OIG agreed. On June 30, 2020, the agency requested additional information and clarifications regarding the OPM OIG request, however still failed to set a production schedule. It was not until July 14, 2020, that the agency provided the first production date of July 17, 2020. On Friday, July 17, 2020, at 6:45 pm, the agency informed the

OIG by email that they would not meet the deadline and that the items would be emailed early the next week. As of today, the agency has failed to provide any documents responding to our request. As required by FSGG FY 2020 § 626, the OPM OIG submits this report to the Committees on Appropriations of the House of Representatives and the Senate within five calendar days of the agency's failure to comply with the section 626 requirements.

Background

The IG Act clearly states that the agency must provide the Inspector General with “timely access to all records” related to the agency’s programs and operations. 5 U.S.C. App. 3, § 6 (a)(1)(A). The timely access requirement and principles of cooperation have been expressly conveyed to all OPM employees as recently as September 2018.¹ However, over the past two months the agency has engaged in a pattern of delay and non-responsiveness that culminated with the failure to produce agency records requested by the agreed upon date of July 17, 2020.

In May 2020, the OPM OIG received an inquiry from the House Committee on Oversight and Reform Subcommittee on Government Operations regarding OPM’s use of direct hire authority. The Committee requested the OPM OIG review OPM’s use of direct hire authority and the delegation of this authority to individual agencies. In order to determine if such a review was supported, OPM OIG began to scope the project and sought records from the agency in order to conduct a survey. The agency was first informed of this special review on May 20, 2020. On July 14, 2020, the OPM OIG Deputy Inspector General Performing the Duties of the Inspector General (DIG) and the Assistant Inspector General for Audits (AIGA) also notified the OPM Acting Director Michael Rigas, as required by the IG Act, of the fact that the agency had not yet provided the requested agency records. Id. at § 6 (c)(2). At this time, the Acting Director was also informed of the OPM OIG’s obligation under the FSGG FY 2020 § 626 to notify Congress of the agency’s failure to provide timely access to agency records.

OPM OIG acknowledges that the framing of the initial requests as a “Congressional Request” may have caused unnecessary confusion in certain OPM program offices. However, as detailed below, OPM OIG clarified the scope and purpose of the review with all relevant OPM program offices. Further, OPM OIG has been accommodating to the agency regarding the establishment of an alternative production schedule. Below is a full timeline of the agency’s failure to provide the OPM OIG with timely access to records.

Timeline – OPM’s Failure to Provide OPM OIG Timely Access to Agency Records

May 20, 2020 – Deputy Assistant Inspector General for Audits (DAIGA), OPM OIG contacts OPM program office to explain the background of the review and request subject matter expert (SME) points of contact (POCs) to assist with gathering records and answering questions. (Attachment B).

¹ Former OPM Director Jeff H.T. Pon emailed all OPM staff with his expectation that “all OPM employees are expected to cooperate promptly with the OIG’s requests.” September 12, 2018. (Attachment A).

May 26, 2020 (1:09 pm) – DAIGA informs the AIGA that the OPM program office has not responded to the OIG’s email request. (Attachment B).

May 26, 2020 (1:23 pm) – AIGA emails OPM program office requesting contact information for SME POCs as soon as possible. (Attachment C).

May 26, 2020 (1:35 pm) – OPM program office apologizes for overlooking initial request and responds to OIG email with SME POCs. (Attachment D).

May 27, 2020 (9:57 am) – OPM OIG staff email SME POCs requesting a meeting, proposing June 5, 2020, to discuss procedures and processes regarding the special review on delegation of authority and political appointees. OPM OIG staff also notes that a request for documentation would be due 7-10 days after the meeting. (Attachment E).

May 27, 2020 (3:43 pm) – OPM Office of Congressional Affairs reaches out to the OIG to inquire about special review. (Attachment F).

May 29, 2020 – OPM OIG clarifies telephonically and through email the scope and purpose of the special review and informs OPM Office of Congressional Affairs of the independent ways in which the OIG interacts with Congress. (Attachment G).

June 1, 2020 – After receiving no response to the May 27th email, OPM OIG staff schedules a meeting with OPM program office staff to discuss the special review.

June 5, 2020 – OPM OIG holds initial meeting with OPM program office SME.

June 9, 2020 – OPM OIG staff sends formal request for agency records following initial June 5th meeting, requesting response by June 17, 2020. (Attachment H).

June 15, 2020 – OPM Office of the General Counsel (OGC) contacts OPM OIG to discuss special review. (Attachment I).

June 16, 2020 (9:00 am) – OPM OIG holds a call with OGC to clarify the scope and purpose of the special review.

June 16, 2020 (3:18 pm) – OPM OIG staff emails SME POCs to request an update on the request for agency records and determine if the agency is on track to meet the requested due date. (Attachment J).

June 16, 2020 (7:51 pm) – OPM Office of Internal Oversight and Compliance (IOC) informs the OIG that the request is extensive and that they would not meet the original due date of June 17th. Further, OPM IOC informs OPM OIG that they would assess the workload and determine a target date based on other agency priorities. (Attachment K).

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June 17, 2020 – OPM OIG has a call with IOC to clarify the scope and purpose of the special review and discuss an appropriate timeline for the production of the requested documentation, specifically noting that the OIG would accept a rolling production as agency records become available.

June 29, 2020 (9:36 am) – OPM OIG emails SME POCs to check on the status of the request for agency records and reiterate that the agency records should be provided as they become available on a rolling basis. (Attachment L).

June 29, 2020 (9:01 pm) – OPM IOC informs OPM OIG via email that IOC is working with program offices to coordinate the request for agency records, informs OPM OIG that IOC is working on target date for productions, and confirms understanding that OPM OIG is willing to accept a rolling production. (Attachment M).

June 30, 2020 – OPM IOC contacts OPM OIG with follow-up questions pertaining to the request for agency records as well as request for clarification. OPM IOC requests clarification in writing. (Attachment N).

July 6, 2020 – OPM OIG provides OPM IOC with responses to follow-up questions in writing. (Attachment N).

July 8, 2020 (2:50 pm) – OPM OIG requests an estimated timeline from OPM IOC regarding the production of the request for agency records. (Attachment N).

July 8, 2020 (4:17 pm) – OPM IOC responds that they will need to confirm with OPM leadership on the timeframes and asks additional follow-up questions (which OPM OIG had previously answered). (Attachment N).

July 9, 2020 – OPM OIG informs IOC that the OPM OIG is being put in a position of having to notify Congress of the delays. Additionally, OPM OIG informs IOC that the DIG and AIGA would be briefing the Acting Director on July 14 about this issue. IOC informs OPM OIG that staff will make this production a priority.

July 14, 2020 (9:43 am) – OPM IOC shares an expected timeframe for providing OPM OIG with the requested documents from the initial June 9th document request. The production dates provided were July 17th and July 24th. (Attachment O).

July 14, 2020 (11:12 am) – OPM OIG accepts the production dates provided by OPM IOC. (Attachment O).

July 14, 2020 (3:00 pm) – The OPM OIG AIGA and the DIG notify the OPM Acting Director Michael Rigas during a monthly meeting of the agency's failure to provide timely access to agency records initially requested for delivery on June 17, 2020. Additionally, the DIG informs the Acting Director of the notification requirement under the FSGG FY 2020 § 626 should the agency fail to meet the July 17, 2020 deadline.

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July 17, 2020 (6:45 pm) – OPM IOC informs OPM OIG that the agency would not be able to meet the July 17th deadline and that production would be emailed early next week. (Attachment O).

OPM OIG Concerns

The IG Act tasks the OPM OIG with the responsibility to promote economy, efficiency, and effectiveness within the agency. Timely access to agency records is essential in order for the OIG to perform this critical work. In summary, the agency has missed two deadlines, a month apart (June 17th and July 17th). The OPM OIG repeatedly informed the agency that we would accept a rolling production, yet 35 days later the agency has failed to provide the OPM OIG with any documents.

Conclusion

The OPM OIG transmits this notification to the Appropriations Committees of the House of Representatives and the Senate within five calendar days of the failure to comply with the requirements set forth in FSGG FY 2020 § 626 of the Act. If you have any questions, or would like to discuss this letter, please do not hesitate to contact me. You or your staff may also contact Faiza Mathon-Mathieu, Senior Counsel for Legislative and External Affairs, OPM OIG, at Faiza.Mathon-Mathieu@opm.gov.

Sincerely,

Norbert E. Vint
Deputy Inspector General Performing the
Duties of the Inspector General

cc: The Honorable Gerald E. Connolly, Chairman
Committee on Oversight and Reform Subcommittee on Government Operations

The Honorable Jody Hice, Ranking Member
Committee on Oversight and Reform Subcommittee on Government Operations

The Honorable Michael Rigas, Acting Director
U.S. Office of Personnel Management