

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



OCT 29 2019

OFFICE OF
INSPECTOR GENERAL

Via Hand Delivery and Email

The Honorable Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Seven Day Letter -- Refusals to Fully Cooperate and Provide Information for Audit and Investigation

Dear Administrator Wheeler:

I write pursuant to Section 5(d) of the Inspector General (IG) Act of 1978, as amended, which requires an Inspector General to report to the head of the agency "whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such [agency]." 5 U.S.C. App. 3, § 5(d). This report is commonly called the "Seven Day Letter."

The particularly serious or flagrant problem I am reporting concerns two instances of refusal to fully cooperate and provide information to the IG, one during an audit and one during an administrative investigation. They center on a single employee -- Chief of Staff Ryan Jackson.

BACKGROUND

The IG Act gives the Office of the Inspector General (OIG) unqualified "timely access to all records ... or other materials" relating to agency programs or operations. 5 U.S.C. App. 3, § 6 (a)(1)(A). No "information" requested by the IG may be "unreasonably refused or not provided." *Id.* at § 6 (c)(2). The IG Act is unambiguous, as is your August 8, 2018, message to all EPA employees, *Cooperating with the Office of Inspector General to Ensure the U.S. Environmental Protection Agency is Fulfilling the Public's Trust* (Attachment A). There you echo the Act's explicit mandate of full agency cooperation: "It is imperative and expected that agency personnel provide the OIG with access to personnel ... or other information ... needed by the OIG to accomplish its mission."

Your message particularly recognizes OIG's investigation practices: "For investigations ... the OIG follows generally accepted protocols for questioning employees and gathering evidence." Protocols observed by our investigative agents -- such as those taught to all federal OIG agents at the Federal Law Enforcement Training Center -- do not allow agency employees to set conditions for interviews. As the IG Act reinforces, in the sphere of gathering information during an investigation, the IG, not an agency employee, makes the "judgment" as to reasonableness. 5 U.S.C. App. 3, § 6 (c)(2). Terms and

conditions for an interview dictated by an employee do not, in our judgment, satisfy investigative protocols.

Two courts of appeals agree. “Congress intended that the Inspector General’s investigatory authority include the power to determine when and how to investigate.” *Department of Homeland Security, Customs and Border Patrol v. Federal Labor Relations Authority*, 751 F.3d 665, 672 (D.C. Cir. 2014), quoting *U.S. Nuclear Regulatory Comm’n v. Federal Labor Relations Authority*, 25 F.3d 229, 235 (4th Cir. 1994).

As outlined more thoroughly below, Mr. Jackson’s cooperation has been patiently sought multiple times over protracted periods by OIG auditors and investigators. Auditors asked of him merely a brief email reply. Investigators requested to interview him. Both matters, after Mr. Jackson’s repeated delays and refusals, were elevated, in writing, to you and/or other senior agency leaders in a final hope for cooperation with the OIG, and to warn of the possibility of a Seven Day Letter. On both matters I personally met with the Associate Deputy Administrator and General Counsel (October 18, 2019) to press the grave character of failure to fully cooperate with audits and investigations and offer some minor accommodations to Mr. Jackson.

On October 24, 2019, I emailed you and the Associate Deputy Administrator the full contents of this letter in draft (subject line: “Draft Seven Day letter for refusal to fully cooperate ... for immediate attention”) requesting that Mr. Jackson have “fully cooperated” with the audit and investigation by COB October 28, 2019, or I could send this final letter as early as today. As of COB October 28, 2019, Mr. Jackson has still refused to cooperate. Since October 21, 2019, neither you nor any agency official has contacted OIG on this urgent matter.

REFUSAL TO COOPERATE

Audit: Refusal to provide requested information

- September 11, 2019, Mr. Jackson to auditors: “When would you like to talk to me about this? I’m eager.” (Attachment B)
- October 7, 2019, Angela Bennett (Lead Auditor) to Mr. Jackson: Asking Mr. Jackson to “confirm” his answer to question from October 3rd interview of Mr. Jackson -- “From whom did you receive a copy of the testimony?’ ... your [October 3rd] answer was: ‘Will I say where I got it from? No.’” (Attachment C)
- October 16, 2019, John Trefry (Audit Director) to Douglas Benevento (Associate Deputy Administrator): Alerting Mr. Benevento of Mr. Jackson’s continuing lack of cooperation by refusing to answer auditor question, and giving Mr. Benevento “opportunity to direct Mr. Jackson to fully cooperate ... and provide the requested information.” (Attachment D)
- October 21, 2019, Mr. Jackson to Mr. Benevento and auditors: Regarding October 7th question from Lead Auditor to identify from whom Mr. Jackson received copy of testimony, “I am not going to involve others or point fingers ... whoever agrees or not ... Welcome to Washington.” (Attachment D)

Administrative Investigation: Refusal to submit to interview

- October 8, 2019 (11:35 AM), Deputy Assistant Inspector General for Investigations Craig Ulmer to Mr. Jackson: Seeks date for interview “pertaining to an ongoing administrative investigation

... my office spoke to your scheduler ... on September 25th, to arrange a meeting, but since that time the OIG has not heard back about your availability.” (Attachment E)

- October 8, 2019 (12:04 PM), Mr. Jackson to Mr. Ulmer: “If you would like to tell me specifically what it is about, I’ll be glad to schedule it ... [my scheduler] has asked the subject of the matter and until I receive it ... I’m not meeting with you or your staff.” (Attachment E)
- October 9, 2019 (4:23 PM), Mr. Ulmer to Mr. Jackson: “[O]n July 24, 2019, you were interviewed by OIG Special Agents ... and you terminated that interview before it could be completed ... This second interview is necessary ... you are not entitled to advance notice of the purpose of the interview or the topics ... That said, you may reasonably expect that the same or similar topic(s) discussed during the interview of July 24, 2019 will be covered ... We have communicated with your scheduler on multiple dates, including on September 25, October 1, and October 2 ... we have yet to receive a date and time ... I should note that you were given the opportunity to follow up with any clarification you believed necessary ... At any time, should you feel that you need to clarify or provide additional documents or information regarding any of the matters discussed at the July 24 interview or any other future interview, you are permitted to do so.” (Attachment E)
- October 9, 2019 (4:40 PM), Mr. Jackson to Mr. Ulmer: “Well, then I am not meeting with you or your staff if you will not tell me the subject of the conversation so that I may prepare for it. The fact that you cannot and will not provide the subject of what you want to meet with me about is unprofessional, and I’m not participating. Unless you have further substantive information, do not contact me further.” (Attachment E)
- October 15, 2019: Helina Wong (Assistant Inspector General for Investigations) to Administrator Wheeler and Mr. Benevento: Alerting them to Mr. Jackson’s continuing lack of cooperation by refusing to submit to an interview, and “request[ing] that you direct Mr. Jackson to make himself immediately available to be interviewed and to henceforth fully cooperate with OIG investigations.” (Attachment F)
- October 21, 2019, Mr. Jackson to Mr. Ulmer: “I have already met with your staff for an hour. If you would like a second interview send me your questions in writing, and I will respond in writing.” (Attachment G).

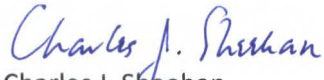
ACTION

Section 5(d) of the IG Act requires you to transmit this letter to appropriate committees or subcommittees of Congress within seven calendar days -- by November 5, 2019 -- together with your report containing any comments you wish to provide. The appropriate congressional committees (whether for issues arising under the IG Act or oversight responsibilities for the agency) are the House Committee on Oversight and Reform, House Committee on Science, Space and Technology, House Committee on Energy and Commerce, Senate Committee on Environment and Public Works and Senate Committee on Homeland Security and Government Affairs. Please inform me simultaneously with your notification to Congress that you have provided my report to those committees.

CONCLUSION

As it is for the agency itself, information is the oxygen for the Inspector General's office. If information is choked off, we cannot fulfill our congressional charter and produce work of the rigor and quality expected by the American public. You reaffirmed in your message to all agency employees that Inspector General access to all information is "imperative" in "Fulfilling the Public's Trust." To countenance open defiance even in one instance -- much less two, both by a senior official setting precedent for himself and all agency staff -- is ruinous.

Sincerely,


Charles J. Sheehan
Acting Inspector General

Attachments