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May 24, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable Charles Rosenberg
Acting Administrator
U.S. Drug Enforcement Administration
Lincoln Place-West
700 Army Navy Drive
Room 12060
Arlington, VA 22202

Dear Acting Administrator Rosenberg:

On October 19, 2015, I sent a letter to Deputy Attorney General Sally Quillian Yates requesting the status of the Department of Justice's efforts to address the issues identified in the Office of the Inspector General's (OIG) March 2015 report entitled, "The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components."¹ On November 13, 2015, I received a response from Assistant Attorney General Kadzik indicating that Attorney General Lynch and Deputy Attorney General Yates share my concerns about conduct that was detailed in the OIG report and about the inadequacy of the Drug Enforcement Administration's (DEA) response to misconduct.² As the response letter noted, following the OIG report, former Attorney General Eric Holder directed two reviews.

The first was a request of the Department of Justice Security Officer to conduct a review of DEA's policies and procedures for coordinating personnel security matters,

¹ U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, *The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components*, Report Number 15-04 (March 2015), available at <https://oig.justice.gov/reports/2015/e1504.pdf>.

² Letter from Peter J. Kadzik, Assistant Attorney General, U.S. Dep't of Justice, to Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (Nov. 13, 2015).

with a focus of the information-sharing between DEA's Office of Professional Responsibility (OPR) and DEA's Office of Security Programs (OSP). The Department Security Officer (DSO) completed this review and produced a report to the Deputy Attorney General, dated November 12, 2015. In that review, the DSO made 13 specific observations of deficiencies in information-sharing between OPR and OSP.³ The DSO review also stated that DEA has addressed 9 of the 13 observations with some corrective action, but noted that DEA has not yet addressed many recommendations.⁴

The findings in the DSO review raise serious concerns. The review identifies "a troubling amount of instances where misconduct issues may have warranted a security clearance suspension had the misconduct been reported in a timely manner according to Department of Justice policies and procedures."⁵ The lack of information-sharing within DEA between OPR and OSP and with the DSO is extremely concerning and the review found specific consequences that could affect national security. Specifically, due to OPR's failure to notify OSP when an employee misconduct investigation was opened, there were six individuals whose misconduct may have impacted their eligibility to hold a security clearance at the time of the misconduct, including five who were identified in the OIG report.

Despite this acknowledgement, the review says the misconduct for these six individuals "has since been mitigated by time and/or there is insufficient evidence to presently support a clearance revocation."⁶ This means that the employees who engaged in activities such as "sex parties" with prostitutes funded by local drug cartels at their government-leased headquarters or who engaged in repeated incidents of sexual harassment and other misconduct may have suffered no security clearance consequences related to their behavior.⁷

Unfortunately, this failure to communicate relevant information was coupled with an inadequate disciplinary process that left these agents unpunished. I have repeatedly raised questions about the adequacy of DEA's disciplinary process. I have written on several occasions to the Justice Department and to DEA concerning the horrific treatment of Daniel Chong, a University of California-San Diego college student, and the inadequate discipline for the DEA officials who violated DEA policy with respect

³ U.S. Department of Justice, Justice Mgmt. Div., Security and Emergency Planning Staff, *Report for the Deputy Attorney General, Review of the Drug Enforcement Administration, Policies and Procedures for Coordinating Personnel Security Matters, By Department Security Officer* (2015) [hereinafter, "Department Security Officer Review"].

⁴ *Id.*

⁵ *Id.* at 1.

⁶ *Id.* at 4.

⁷ See U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, *The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components*, Report Number 15-04 (March 2015), at [13 \(describing "Case #2" involving a DEA Assistant Regional Director\)](#), [27 \(describing "Case Example" involving DEA agents\)](#).

to the detention of Mr. Chong.⁸ None of these officials was dismissed; rather, discipline ranged from mere letters of reprimand to a 7-day suspension.⁹ I also wrote to the Justice Department following OIG's 2012 finding that three DEA officials had paid for sexual services while in Cartagena, Colombia, sponsored by Cartel members, but none of them was dismissed.¹⁰

Regarding both of these instances, the Justice Department itself has agreed that DEA's response to misconduct has been inadequate. The Department stated that it has "serious concerns about the adequacy of the discipline imposed on [the] employees" involved in the treatment of Mr. Chong,¹¹ and that it has "significant concerns about the lack of severity of...discipline" for DEA agents who attended parties with prostitutes at their government-leased quarters.¹² The DSO review now shows the security clearances of the agents involved in the above incidents were not adequately assessed due to the lack of coordination between OPR and OSP regarding the security clearances of these agents.¹³

The DSO review noted that during the pendency of the DSO review, DEA has taken steps to address the OIG report's findings. However, the DEA has not taken corrective action to address all of the recommendations. DEA has the critical mission of enforcing this Nation's controlled substances laws and regulations. The mission is handicapped without a functioning and effective disciplinary system, as well as communication among DEA's OPR, DEA's OSP, and the DOJ DSO.

In order to provide a better understanding of the lack of communication between DEA's OPR and DEA's OSP, and how DEA plans to address the findings in the DSO review, please provide the following information by June 7, 2016.

1. DEA OSP has not reported to the DSO when employees with Sensitive Compartmented Information (SCI), access have had their collateral clearances suspended or revoked. The DSO recommended a process be in place by December 1, 2015, to report to the DSO as soon as employees with SCI access have clearances suspended or revoked. Was such a process

⁸ See, e.g., Letter from Senator Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary, to Michele Leonhart, Administrator, Drug Enforcement Administration (Aug. 27, 2014).

⁹ Letter from Peter Kadzik, Assistant Attorney General, U.S. Department of Justice, to Sen. Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (Apr. 28, 2015).

¹⁰ Letter from Senator Charles E. Grassley to Sally Quillian Yates, Deputy Attorney General, U.S. Department of Justice (Mar. 26, 2015) (citing U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, *The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components*, Report Number 15-04 (Mar. 2015) at 27-28).

¹¹ Letter from Peter Kadzik, Assistant Attorney General, U.S. Department of Justice, to Sen. Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (Apr. 28, 2015).

¹² Letter from Peter Kadzik, Assistant Attorney General, U.S. Department of Justice, to Sen. Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (Apr. 10, 2015).

¹³ Department Security Officer Review, at 4.

instituted by December 1, 2015? If so, please provide a copy of this procedure/policy. If it was not, why not?

2. According to the DSO review, the DSO reviewed employee misconduct of 34 individuals to determine whether the misconduct DEA OPR failed to report to DEA OSP would have impacted those employees' security clearance eligibility had it been known (this review included the 14 individuals named in the OIG report). The DSO also reviewed the cases of 25 individuals who had their clearances suspended or revoked due to misconduct as reported by DEA OPR to ensure the effectiveness of the DEA OPR and DEA OSP coordination process. Please provide copies of the reviews conducted by the DSO for these 34 and 25 individuals.
3. The DSO review found that DEA OPR had failed to notify DEA OSP of ongoing misconduct investigations during reinvestigation OPR Integrity Checks. As a result, DEA OSP may have granted continued access to classified information to employees who were involved in misconduct. In an effort to correct this problem, DEA instituted a requirement that OPR provide the entire history of allegations of misconduct known to it, when requested by OSP as part of a reinvestigation OPR Integrity Check. Could this information be made readily available to DEA OSP via WEB-OCTS, the electronic notification system DEA OPR uses to document its investigations?
4. The DSO review, noted that OPR does not immediately notify OSP when additional subjects or offenses are developed during the course of an OPR investigation. DEA has taken the purported corrective action of having quarterly meetings with OPR and OSP. Of course, the DSO review identified this as insufficient to address the problem because it could still result in additional subjects and offenses not being reported for three months. Accordingly, the DSO review stated that the DEA OPR and OSP must further coordinate to ensure reliable and timely notification to OSP when additional subjects and offenses are identified, and recommended the DEA OPR consider providing DEA OSP with limited access to Web-OCTS.
 - a. Has DEA OPR provided OSP limited access to Web-OCTS, as recommended? If not, why not?
 - b. Has the April 21, 2015 Inspection Division Order been revised to address the DSO's recommendations in this area? If not, why not?

5. A September 10, 2004 DSO Memorandum requires Security Programs Managers to immediately review misconduct of employees with access to SCI in writing. According to the DSO review, the Security Programs Managers failed to do so.
 - a. Why was DEA not following the 2004 DSO Memorandum?
 - b. The DSO review recommended that the DEA Security Programs Manager report this information within two weeks of receipt of the information. However, the DSO review does not state that DEA has taken any corrective action in response to this recommendation. What policies and procedures has DEA put in place to address this recommendation?

Thank you for your attention to this matter. Please contact Patrick Davis of my Committee staff at (202) 224-5225 should you have any questions. Thank you for your cooperation in this important matter.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on the Judiciary

cc:

The Honorable Patrick Leahy
Ranking Member
Senate Committee on the Judiciary

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice