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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

February 16, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable Michael E. Horowitz
Inspector General
United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Dear Inspector General Horowitz:

On October 23, 2015, I wrote to the Department of Justice requesting specific information regarding a communication between a U.S. Marshals Service Office of Professional Responsibility chief inspector (USMS OPR) and another federal employee.¹ My letter notes that the chief inspector's e-mail to the employee may have run afoul of federal law protecting employee communications with Congress and denying appropriated funds to pay the salaries of individuals who interfere, or attempt to interfere, with that right.² The letter concludes by asking, among other things, what steps the agency would take to ascertain whether a violation occurred in this or in other instances.

¹ Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary to Loretta E. Lynch, Attorney General, U.S. Dep't of Justice (Oct. 23, 2015).

² Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 § 713 (2015) ("No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee.").

On January 14, 2016, the Department attempted to explain that in her communication with the employee, the USMS OPR chief inspector did not intend to discourage protected communications, but rather to “convey [the] concept” that “OIG matters” should be treated “with a high level of confidentiality and sensitivity.”³ It takes a significant amount of creativity to read that intent from the e-mail in question.

As I wrote in my October 23, 2015, letter, the e-mail chain clearly shows that the employee notified the OPR chief inspector that he communicated certain information to my staff, who were also copied on his e-mail. The chief inspector’s direct response was an instruction to the employee to “not release anything to anyone other than the OIG.” No other office or individual was included on this transmittal or mentioned as a recipient of that information. The information transmitted was not restricted by law, and directly concerned the employee’s own complaints. Thus, whatever “concept” the chief inspector was intending to convey, on its face, the e-mail appeared to be at least an attempt to prohibit a federal employee from exercising his right to speak to Congress.

The Department further explained that the USMS took the opportunity to counsel the chief inspector “to ensure that USMS’s policies on disclosures to Congress are conveyed clearly and consistently.”⁴ Counseling clarity on this point is certainly welcome, as I noted in my November 23, 2015, letter to the Department outlining an apparent common misunderstanding on USMS policy guiding communications with Congress.⁵ However, the Department did not respond to all of my questions posed in my October 23, 2015, letter, including the following:

What steps will you take to evaluate whether the USMS has *in this instance, or in other instances*, violated appropriations restrictions by paying sums unavailable for the salary of employees who attempt to prevent federal employees from directly communicating with Congress?⁶

The Department gave no indication that it took any steps to ensure 1) that there was no additional evidence that would shed light on this particular communication, or 2) that this type of communication was an isolated incident, either with respect to the chief inspector, or any other individuals within OPR.

The Department’s silence on these points is troubling, particularly with respect to an office that exists to receive, investigate, and adjudicate reports of misconduct within the agency, and to a chief inspector that I understand has held her post for some time—and who the USMS has recently promoted to the position of Acting Chief Inspector of

³ Letter from Peter J. Kadzik, Assistant Attorney General, U.S. Dep’t of Justice to Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary (Jan. 14, 2016).

⁴ *Id.*

⁵ Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary to Loretta E. Lynch, Attorney General, U.S. Dep’t of Justice (Nov. 23, 2015).

⁶ Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary to Loretta E. Lynch, Attorney General, U.S. Dep’t of Justice (Oct. 23, 2015).

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Internal Affairs.⁷ Ideally, OPR should be thoroughly familiar with all applicable policy and law related to protected disclosures of wrongdoing. Her e-mail suggests that it is not.

So, while I generally applaud the Department's training efforts on whistleblower protection, the USMS's intent to revise its communications policy to clarify that it aligns with federal law on protected activity, and the USMS OPR's actions to counsel the now Acting Chief Inspector of Internal Affairs to use greater care in her communications with employees,⁸ I am nevertheless concerned that the Justice Department's response may not be the whole story, and that this type of communication may have happened before. If it has, the chief inspector's instruction may be the symptom of a more systemic and fundamental problem.

Please review communications within the USMS OPR to determine whether any additional evidence exists that may implicate improper or unlawful efforts to prevent or attempt to prevent federal employees' communications with Congress in this instance or in others. Additionally, please assess the adequacy and accuracy of the USMS training on employees' rights to communicate with Congress.

Sincerely,



Charles E. Grassley
Chairman

cc: The Honorable Patrick J. Leahy
Ranking Member

The Honorable Loretta E. Lynch
Attorney General
U.S. Department of Justice

⁷ See Attachment.

⁸ Letter from Peter J. Kadzik, Assistant Attorney General, U.S. Dep't of Justice to Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary (Jan. 14, 2016).

