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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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October 19, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Sally Quillian Yates
Deputy Attorney General
U.S. Department of Justice

Dear Deputy Attorney General Yates:

The inadequacy of disciplinary policies and processes at the Drug Enforcement Administration (DEA) continues to raise serious concerns.¹ *USA Today* obtained records of DEA disciplinary proposals and decisions through the Freedom of Information Act (FOIA).² A review of these records indicates that discipline recommended for DEA employees who have committed misconduct is regularly mitigated by the deciding official. In fiscal years 2012 through 2014, proposed discipline was reduced more than twice as many times as it was increased. While consideration of mitigating evidence by the deciding official is an important component of DEA's disciplinary process, some of the discrepancies suggest overly lenient penalties.³ For example, in fiscal year 2013, 6 proposed terminations were mitigated to suspensions, and 1 proposed termination was mitigated to a letter of reprimand.

¹ Brad Heath and Meghan Hoyer, *DEA agents kept jobs despite serious misconduct*, *USA Today*, (Sept. 27, 2015), <http://www.usatoday.com/story/news/2015/09/27/few-dea-agents-fired-misconduct/72805622/>.

² Records obtained by USA Today are available at <https://www.documentcloud.org/documents/2434230-150824164300-0001.html>.

³ The Merit Systems Protection Board (MSPB) established 12 factors, known as "Douglas factors," for agency officials to consider when determining disciplinary actions. The Douglas factors are used to either mitigate (reduce) or aggravate (increase) a proposed penalty when an employee commits an offense.

The documentation obtained by *USA Today* also reveals significant concerns about the timeliness of DEA's disciplinary process. Based on the documentation obtained, 7 cases from fiscal years 2012 and 2013, respectively, appear to remain open, and 87 cases from fiscal year 2014 remain open. These 87 cases comprise over a third of all cases from that year.⁴

These circumstances are exceptionally troubling because they were the same ones described by the Department of Justice Office of Inspector General (OIG) in 2004.⁵ In particular, the OIG found weak guidance and mitigation by the proposing and deciding officials led to lenient penalties, a lack of management oversight over the deciding officials, and that DEA management failed to monitor and ensure the timeliness of the disciplinary process, among other things.⁶

I have repeatedly raised questions about adequacy of DEA's disciplinary process. I wrote several times to the Justice Department and to DEA concerning the horrific treatment of Daniel Chong, a University of California-San Diego college student, and the discipline for the DEA officials who violated DEA policy with respect to the detention of Mr. Chong.⁷ None of these officials was dismissed; rather, discipline ranged from letters of reprimand to a 7-day suspension.⁸ I also wrote to the Justice Department following OIG's 2012 finding that three DEA officials paid for sexual services while in Cartagena, Colombia, but none of them was dismissed.⁹

With respect to 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,¹⁰ and that it has

⁴ This number rises to over 40% when cases that were administratively closed (e.g., the employee resigned) are excluded.

⁵ U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, *Review of the Drug Enforcement Administration's Disciplinary System*, Report Number I-2004-002 (Jan. 2004).

⁶ *Id.*

⁷ See, e.g., Letter from Senator Charles E. Grassley to Michele Leonhart, Administrator, Drug Enforcement Administration (Apr. 9, 2014).

⁸ 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).

⁹ 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).

¹⁰ 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).

“significant concerns about the lack of severity of...discipline” for DEA agents who attended parties with prostitutes at their government-leased quarters.¹¹ Accordingly, the Attorney General directed the Department’s Office of Professional Responsibility (OPR) to examine DEA’s processes and procedures for investigating allegations of misconduct and its processes for determining and effectuating disciplinary action where appropriate.¹² In addition, the Justice Department reported that the Attorney General has directed the Department Security Officer to review the security clearances of DEA agents involved in the misconduct described in OIG’s report on sexual misconduct and harassment, and directed OPR to evaluate DEA’s failure to coordinate security matters between DEA’s OPR and the Office of Security Programs.¹³

The additional information brought to light through the new records obtained by *USA Today* indicates that issues of disciplinary leniency and timeliness continue to be pervasive—despite the OIG’s report over a decade ago—and that the examples of lenient punishment for those involved in the treatment of Mr. Chong and identified in OIG’s report on sexual misconduct are emblematic of DEA’s broken system. DEA has the critical mission of enforcing this Nation’s controlled substances laws and regulations. This is not possible without a functioning and effective disciplinary system to ensure DEA employees uphold the high standards of a federal law enforcement agency. Thus, Congress needs to thoroughly examine the systemic problems in DEA’s disciplinary process.

Please provide the following information regarding the departmental reviews of DEA’s disciplinary policy and procedures by November 2, 2015.

1. What is the status of OPR’s reviews of DEA’s disciplinary system? When will these reviews be completed? Please provide to the Committee a copy of all reports issued based on these reviews.
2. What is the status of the department’s Security Officer’s reviews of the security clearances of DEA agents? Please provide the results of these reviews.
3. Given that the OIG has previously conducted reviews of DEA’s disciplinary system, why did the Justice Department assign these reviews to the Department’s OPR, which is generally responsible for investigating allegations of misconduct involving department

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. 10, 2015).

¹² *Id.*

¹³ *Id.*

attorneys that relates to the exercise of their authority to investigate, litigate, or provide legal advice?

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