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COMMITTEE ON THE JUDICIARY

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September 29, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Sally Quillian Yates
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Deputy Attorney General Yates:

In March, this Committee convened a hearing entitled, “Whistleblower Retaliation at the FBI: Improving Protections and Oversight.”¹ At the hearing, the Committee obtained testimony regarding reports from the Justice Department² and the Government Accountability Office (GAO), which found problems in the Department’s handling of whistleblowers’ complaints of retaliation at the Federal Bureau of Investigation (FBI).³ According to GAO, it took the Department between 8 and 10.6 years to close some of these cases.⁴ The Deputy Attorney General contributed to these delays, taking nearly a year or over to make half of the appeals decisions that GAO reviewed.⁵ GAO also reported that the Department terminated at least 17 complaints in a five-year period in part because the underlying disclosures were made to the “wrong person” under regulations unique to the FBI.⁶

GAO recommended that the Office of the Deputy Attorney General provide parties with an estimated time frame for returning each decision and, if the time frame shifts, timely communicate a revised estimate to the parties. According to GAO, the Department concurred with this recommendation.⁷ However, as recently as September 21, 2015, your office stated in

¹ U.S. Senate Committee on the Judiciary, *Whistleblower Retaliation at the FBI: Improving Protections and Oversight* (Mar. 4, 2015), available at: <http://www.judiciary.senate.gov/meetings/whistleblower-retaliation-at-the-fbi-improving-protections-and-oversight>.

² Department of Justice, *Department of Justice Report on Regulations Protecting FBI Whistleblowers*, at 7-8 (2014) [hereinafter “DOJ Report”].

³ U.S. Government Accountability Office, *Whistleblower Protection: Additional Actions Needed to Improve DOJ’s Handling of FBI Retaliation Complaints*, GAO -15-112 (Feb. 23, 2015), available at: <http://www.gao.gov/products/GAO-15-112> [hereinafter “GAO Report”].

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 42.

an email that “given . . . the demands on [Deputy Attorney General Yates’] time are vast and quite unpredictable, it is not practical to require her to provide the parties with an estimated timeframe”⁸

This statement was provided to Darin Jones, a whistleblower at the FBI whose complaint of retaliation has been pending with your office since April 2015.⁹ In June, I wrote to you to express my concerns about the Department’s handling of Mr. Jones’ case.¹⁰ In July, the Department responded by stating that your office assigned Mr. Jones’ appeal to the Office of the General Counsel for the Department’s Justice Management Division (JMD OGC).¹¹ The Department noted that your office “will be in a position to provide Mr. Jones with a reasonable estimate for decision” once JMD OGC presents a recommendation to your office for decision.¹²

This is a curious response given that the Deputy Attorney General is responsible for providing estimated timeframes in accordance with GAO’s recommendation regardless of whether JMD OGC is providing case support. Indeed, it was none other than JMD that informed GAO that the Department agreed with GAO’s recommendation that your office should provide parties with an estimate time frame for returning each decision.¹³ JMD also agreed that if the time frame shifts, your office should timely communicate a revised estimate to the parties.¹⁴ So, your office’s admitted inability to provide an estimated time frame to Mr. Jones raises questions as to whether appeals of whistleblower retaliation cases should be handled by a different entity.

Whistleblowers provide a valuable service in helping to expose and deter waste, fraud, abuse, and mismanagement – often at the risk of retaliation. At the very least, whistleblowers deserve to have their complaints of retaliation heard and processed in a timely manner. In March, following the FBI whistleblower retaliation hearing, but prior to your confirmation hearing, you emphasized your commitment to ensuring that FBI whistleblower retaliation cases are handled properly by the Department. Unfortunately, the September 21, 2015 email referenced above suggests that your office is not fulfilling this commitment. Accordingly, please provide written responses to the following by October 13, 2015:

1. Please explain how the statement made to Mr. Jones on September 21, 2015 is consistent with your commitment to implementing GAO’s recommendation and your commitment to ensuring that FBI whistleblower retaliation cases are handled properly by the Department.

⁸ Email from the Office of the Deputy Attorney General, U.S. Department of Justice, to Darin Jones (Sept. 21, 2015).

⁹ “In the Matter of Darin Jones,” OARM-WB No. 13-4, United States Department of Justice (Dec. 8, 2014).

¹⁰ Letter from Sen. Charles E. Grassley, Chairman, Sen. Comm. on the Judiciary, to the Hon. Sally Quillian Yates, Deputy Attorney General (June 26, 2015).

¹¹ Letter from the Hon. Peter J. Kadzik, Assistant Attorney General, U.S. Department of Justice, to Sen. Charles E. Grassley, Chairman, Sen. Comm. on the Judiciary (July 14, 2015).

¹² *Id.*

¹³ GAO Report at 42 (“On January 16, 2015, an official with DOJ’s Justice Management Division sent us an email stating that the department concurred with our recommendations.”).

¹⁴ *Id.*

2. Given your office's belief that it would be impractical to require you to provide estimated timeframes in these cases, would you recommend another entity be given that job so that it can focus specifically on conducting reviews of the appeals of whistleblower retaliation cases? If not, why not, and what is the estimated timeframe for returning your decision on Mr. Jones' case?
3. As of today's date, how many cases of whistleblower retaliation are currently pending at JMD OGC?
4. How, if at all, has JMD support to your office improved the timeliness of processing FBI whistleblower retaliation appeals?

Please number your responses according to their corresponding questions. Should you have any questions, please contact Jay Lim or DeLisa Lay of my Committee staff at (202) 224-5225. Thank you for your immediate attention to this 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