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March 14, 2016

VIA ELECTRONIC TRANSMISSION

Chuck Rosenberg
Acting Administrator
U.S. Drug Enforcement Administration (DEA)
Lincoln Place-West
700 Army Navy Drive
Room 12060
Arlington, VA 22202

Dear Acting Administrator Rosenberg:

On August 7, 2014, I wrote to Administrator Leonhart about an Amtrak Office of Inspector General (OIG) report that revealed an Amtrak employee had received more than \$850,000 over a twenty-year period from the DEA for services as a confidential source.¹ These allegations were particularly troubling given that the report stated that the information would have been freely available as a result of the DEA's and Amtrak Police Department's (APD) participation in a joint drug task force. Moreover, the DEA's actions reflected an unwillingness to cooperate jointly with the APD on investigations and prevented the APD from coordinating and sharing information with the DEA.

My letter posed specific questions to DEA regarding the Amtrak OIG report:

- Has the DEA identified the weaknesses with its internal controls that allowed this improper and unnecessary use of taxpayer dollars to continue for nearly 20

¹ Letter from Charles E. Grassley, Ranking Member, Senate Committee on the Judiciary, to Michele Leonhart, Administrator, U.S. Drug Enforcement Administration (Aug. 7, 2014).

years? If so, have recommendations been offered and is DEA working to implement them?

- Has the DEA identified the agents or employees responsible for authorizing the improper and unnecessary use of taxpayer dollars in this case and if so, are there any disciplinary actions being taken against the employee/s?
- Has the DEA identified any other cases where improper or unnecessary payments were made for information? If so, please identify the cases and the amount of taxpayer dollars that were improperly or unnecessarily used.

The DEA refused to respond to any of these questions, citing the ongoing investigation of the payments to an Amtrak employee by the Department of Justice OIG.²

That investigation is now complete.³ The OIG concluded that DEA agents paid for information that was available at no cost to the government in violation of the Code of Federal Regulations,⁴ wasting substantial government funds. The investigation also disclosed that an additional Amtrak employee was paid for providing information that was available at no cost to the government. Moreover, investigators found that the DEA violated its own policy by proactively requesting information from a confidential source who was designated as a “Limited Use Confidential Informant.” The OIG further determined that the DEA documents used to justify the payments were submitted to DEA management for approval, but did not contain sufficient information to alert DEA management to the fact that the information could have been obtained at no cost.

These findings have several troubling implications for oversight of the Confidential Source Program. First, the OIG found not one, but two, Amtrak employee confidential sources who were signed up, indicating a more widespread problem. Next, the findings suggest a lack of oversight of confidential source designation. And finally, they point to the inadequacy of internal controls as there was management approval based on incomplete information for approximately twenty years.

² Letter from Eric J. Akers, Deputy Chief of Staff, Office of Congressional Affairs, U.S. Drug Enforcement Administration, to Charles E. Grassley, Ranking Member, Senate Committee on the Judiciary (Nov. 7, 2014). DEA also noted that the OIG had initiated a review of DEA’s management and oversight of its Confidential Source Program more generally. *Id.*

³ Dep’t of Justice, Office of the Inspector General, Investigative Findings in Cases Involving Administrative Misconduct, *Investigative Summary: Findings Concerning the DEA’s Use of Amtrak Employees as Paid Confidential Sources* (Jan. 7, 2016), available at <https://oig.justice.gov/reports/inv-findings.htm>.

⁴ 5 C.F.R. § 2635.704.

The circumstances of this case also suggest that the DEA and the APD are not sufficiently cooperating and achieving success as partners in joint task force operations. And finally, the OIG investigation raises the concern that DEA agents were not only subverting the task force, but also inappropriately using a confidential source to obtain information that did not have a nexus to a criminal investigation and a violation of law, the standard by which they would have been able to obtain it from the APD.

A second investigation completed by the OIG confirms that the issues identified with Amtrak are not part of an isolated incident, as remarkably similar problems were uncovered by the OIG in DEA's use of a Transportation Security Administration (TSA) screener as a limited use confidential source.⁵ Again, the enrollment violated DEA policy regarding confidential source registration. Again, information was sought that the confidential source was already obligated to provide to law enforcement. Again, the paperwork registering the confidential source was approved by management. Again, the activities and use of the confidential source violated DEA's policies. OIG is currently investigating the use of a second TSA security screener in another location, thus again suggesting a more widespread problem.

The OIG provided the results of these investigations to the DEA for appropriate action. In order to better understand the actions that the DEA has taken in response, please answer the questions that I posed to the Administrator on August 7, 2014, copied above, and the following questions:

- What has the DEA done to ensure that forms approved by management for confidential source registration, designation, and justification of payment contain sufficient information for managers to properly approve such requests? Has the DEA conducted a comprehensive review or audit of such forms to ensure they have been approved appropriately? What have been the results?
- What has the DEA done to require managers to be aware of applicable source registration, designation, and payment justification rules and policies so that their approvals are consistent with such rules and policies?
- What actions has the DEA taken to ensure that confidential sources approved under a specific designation, such a Limited Use designation, are being used as

⁵ Dep't of Justice, Office of the Inspector General, Investigative Findings in Cases Involving Administrative Misconduct, *Investigative Summary: Findings Concerning the DEA's Use of a TSA Airport Security Screener as a Paid Confidential Source* (Jan. 7, 2016), available at <https://oig.justice.gov/reports/inv-findings.htm>.

such? Has the DEA conducted any review or audit its designation practices to ensure compliance? What have been the results?

- What policy, guidance, or other internal control changes has the DEA made to ensure that the government does not pay for information to which it is already entitled?
- What actions has the DEA taken to improve its relationship with the APD, ensure that information is shared between the two entities, and enhance the efficacy of the joint task force?
- For all of the individuals identified by OIG as having violated DEA confidential source policy with respect to these two investigations, what disciplinary actions have been or will be taken with respect to those individuals?

Please provide your responses to these questions no later than March 28, 2016. Please contact Patrick Davis or David Bleich of my 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
United States Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530