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October 11, 2017

Mr. John Crane
c/o Tom Devine
Legal Director
Government Accountability Project
1612 K Street, N.W., Suite 1100
Washington, DC 20006

Re: OSC File No. DI-15-2333

Dear Mr. Crane:

We are writing to report to you on the resolution of your disclosures to OSC, made initially in February 2015, and supplemented since that time.

You were the Assistant Inspector General for Communication and Congressional Liaison at Department of Defense (DoD), Office of Inspector General (OIG). In that role, you oversaw the whistleblower outreach program and were the senior official in charge of FOIA and Privacy Act functions. You were also the OIG's FOIA Appellate Authority.

You disclosed that senior DoD OIG officials, particularly former Acting Inspector General Lynn Halbrooks and OIG General Counsel Henry Shelley, engaged in an abuse of authority when they departed from prior OIG practice and determined not to publicly release a report of investigation. You alleged they did this in order to protect a senior DoD official who was the subject of the investigation. You also alleged that, between 2011 and 2014, Ms. Halbrooks and Mr. Shelley: (1) directed an investigative team to depart from normal investigative practices; (2) abruptly canceled scheduled subject interviews; (3) improperly met with subject officials during the investigation; (4) removed key findings or information from the final report; and (5) delayed release of the report for improper reasons. Finally, you alleged that senior OIG employees: (1) applied improper standards to civilian reprisal investigations; (2) failed to correct identified deficiencies in military reprisal programs; (3) abused their authority in numerous investigations; and (4) abused their authority by removing investigative independence in civilian reprisal investigations.

In your disclosure, you alleged that the actions of senior OIG officials represented a continuation of a pattern of conduct that Senator Charles Grassley identified in a November 2014 report to then-DoD Inspector General Jon Rymer. Your disclosures to OSC overlapped substantially with the concerns raised by Senator Grassley. Although the report addressed many of the issues raised in your disclosures, it left open some questions about the propriety of certain of the actions and decisions of senior DoD OIG officials.

Under 5 U.S.C. § 1213(b), whenever the Special Counsel receives information alleging a disclosure of information from an employee who reasonably believes the information evidences a violation of any law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, she is required to review the information and determine whether there is a substantial likelihood that it discloses such wrongdoing. If so, she is required under 1213(c)(1) to transmit the information to the appropriate agency head and require that the agency head conduct an investigation and submit a written report. Under 5 U.S.C. § 1213(g)(2), if the Special Counsel receives information, but does not make a substantial likelihood determination under 1213(b), the Special Counsel may transmit the information to the head of the agency for a response, with the consent of the employee.

OSC generally does not refer allegations if a prior investigation already addressed the whistleblower's disclosures. However, as stated, Senator Grassley's report identified unresolved questions. In addition, your supplemental disclosures included the new information concerning the OIG's failure to release a report of investigation derivative of the issues identified in Senator Grassley's report.

Because your disclosures involved the DoD OIG, they posed a unique jurisdictional issue. Transmitting the allegations to the Secretary of Defense and requiring DoD to investigate its OIG would have compromised the independence of the OIG. Under the Inspector General Act of 1978 (IG Act), allegations of misconduct by inspectors general and their senior staff are within the jurisdiction of the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE).¹ Thus, to ensure that an impartial and thorough review or investigation was conducted, on April 19, 2017, then-Special Counsel Carolyn Lerner forwarded the allegations to the CIGIE IC pursuant to OSC's § 1213 authorities.

The IC notified OSC that it reviewed this matter, requested and received a response from Mr. Shelley, and that the matter is now closed.

Unfortunately, the IC's decision not to investigate countermanded the Special Counsel's statutory determination that the allegations warranted investigation. As we have discussed with you, this case highlights the challenges OSC faces in addressing allegations of misconduct by inspectors general and their high-level employees under the statutory framework of § 1213. We believe Congress has expressed a clear intent for the IC to review allegations concerning such officials, and since OSC received your allegations, Congress enacted the IG Empowerment Act of 2016 to establish a process aimed at ensuring the efficient resolution of jurisdictional issues between OSC and the IC. Nevertheless, the IC's processes and procedures and those in 5 U.S.C. § 1213 are not consistent, and without an investigation, OSC is obviously unable to reach a determination, as required by § 1213(e)(2), regarding the reasonableness of any findings.

¹ Under the Inspector General Empowerment Act of 2016, OSC and the IC must consult and coordinate to ensure that jurisdictional issues between OSC and the IC are resolved efficiently and effectively.

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Pursuant to OSC procedures, OSC will take no further action in connection with these allegations. However, your file remains open pending receipt of an investigative report from the Department of Justice OIG regarding other allegations you made, which OSC previously referred for investigation under § 1213. We will continue to provide you with updates on the status of that matter.

Please contact me at (202) 254-3677, if you have any questions regarding this matter.

Sincerely,



Karen Gorman
Chief, Retaliation and Disclosure Unit