

Responses to Committee's Questions for the Record
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QUESTIONS FOR THE RECORD FROM SENATOR KING

1. If confirmed, what policy or process changes would you recommend to ensure the Office of the Inspector General is sufficiently independent from NSA leadership?

If confirmed, I would make every effort to ensure that the NSA OIG operates with appropriate independence from NSA leadership, consistent with the Inspector General Act and, of course, the decision of Congress to make the IG at the NSA a Presidentially appointed Senate confirmed position. I would anticipate meeting early on with the staff of the OIG, and I would explore in detail the existing relationship with agency leadership and work with the leadership and counsel at the OIG to determine whether there are any policy or process changes that would help to ensure the independence of the office's work. In that regard, if confirmed, I would ensure that the OIG has policy or process in place to ensure that OIG personnel immediately notify me if there is any effort by anyone in agency leadership to interfere with the office's work. OIGs need to have good lines of communication with their agencies, including engaging in appropriate dialogue with agency leadership regarding our work. However, absent an invocation under Section 8G of the Inspector General Act, the independence of the OIG requires that the decisions regarding what work to do, and what findings and recommendations result from that work must rest solely with the OIG.

If confirmed, I also would ensure that the OIG has adequate policies and procedures in place to make sure that it has timely independent access to relevant information and that any issues regarding such access are brought promptly to my attention. An OIG cannot credibly conduct independent oversight if the entity over which it has oversight responsibility determines what information it will provide to the IG to do its work, whether that decision is made at the leadership or lower levels. This important principle was emphasized in the recent passage of the IG Empowerment Act. During my time on the leadership team at the DOJ OIG, we have been very engaged on this issue, and one thing I have seen played out on a number of occasions is the importance of elevating any access disputes promptly to the IG so that they can be addressed immediately and the office's work not unduly hampered or delayed.

2. If confirmed, would you support allowing appropriately cleared Government Accountability Office (GAO) personnel access to NSA for conducting audits and reviews at the request of this Committee?

If confirmed, I would work to ensure coordination with the Government Accountability Office (GAO) by the OIG and I would support cooperation with GAO by the agency to the greatest extent possible. As indicated in my responses to the Committee's Additional Pre-Hearing Questions, I recognize the importance of GAO's work, and strongly support a strong cooperative relationship between OIGs and GAO, as we have enjoyed at DOJ OIG. I also believe that such cooperation is consistent with Intelligence Community Directive (ICD) 114, which provides in Sections D.1 and D.2, respectively, that "[i]t is IC policy to cooperate with the Comptroller General, through the GAO, to the fullest extent possible," and that "[t]o the extent consistent with national security and the protection of intelligence sources and methods, IC elements shall provide GAO access to information that relates to matters that are the subject of announced GAO reviews." With regard to physical access by appropriately cleared GAO personnel to NSA facilities, OIGs do not, of course, have any authority over access to agency facilities, which is a management function of the agency itself. Having said that, I am not aware of any issues with obtaining access for appropriately cleared GAO personnel to meet with the NSA OIG. I am not in a position to know if there are any issues with regard to NSA facilities more broadly but, if confirmed, I would support the greatest possible cooperation with GAO by the agency.

QUESTIONS FOR THE RECORD FROM SENATOR WYDEN

Intelligence Community Contractors

3. According to the report accompanying S. 795, a bill To Enhance Whistleblower Protection for Contractor and Grantee Employees, “Section 1553 of The American Recovery and Reinvestment Act of 2009 (ARRA) established whistleblower protections for all recipients of stimulus funds, including all state and local government employees and all contractors, including within the intelligence community (IC).”

(a) Are you aware of any concerns associated with the ARRA’s extension of whistleblower protections to Intelligence Community contractors?

I am not aware of any concerns having been raised about the extension of whistleblower protections by Section 1553 of the American Recovery and Reinvestment Act of 2009 (ARRA) to Intelligence Community (IC) contractors. I should note that ARRA was passed several years before I joined the DOJ OIG, and I do not recall any discussions about ARRA’s extension of whistleblower protections to IC contractors during my time here or as Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Whistleblower Ombudsperson Working Group. Having said that, if confirmed, I will continue to make whistleblower protections a priority, and I would welcome the opportunity to explore this issue further with the Committee to ensure that we are doing everything possible to protect people who perform the difficult act of coming forward with such information, wherever they may work.

In that regard, at DOJ OIG, I have worked to support the protection of contractor whistleblowers pursuant to the National Defense Authorization Act of 2013 (NDAA), as expanded by S. 795. I believe that S. 795 was a significant piece of legislation in extending the prohibition against reprisal for making protected disclosures to subgrantees and personal service contractors, and making permanent the prior pilot program that provided procedures for independent review by OIGs of reprisal complaints made by employees of contractors and others. I have worked diligently to help effectuate these protections, including preparing and working to disseminate informational materials to make sure individuals covered by the statute are fully informed as to their rights and protections. Our brochure is publicly available, including to all DOJ employees and contractors, on the OIG’s website at: <https://oig.justice.gov/hotline/docs/NDAA-brochure.pdf>.

Whether someone works as an employee of an agency or a contractor, they still perform a valuable service when they come forward with information, and they should not suffer reprisal for doing so. If confirmed, I would welcome the opportunity to work with the Committee to further this fundamental principle at the NSA.

(b) Do you agree with the December 6, 2011, testimony of the Chair of the Legislation Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE) in which she supported the extension of specific whistleblower protections in the ARRA?

I was not at the DOJ OIG or in the OIG community in 2011, but in response to this question I have read the statement excerpted in the report accompanying S. 795 from the former chair of the CIGIE Legislation Committee, and I have no issue with her testimony. I note that her statement also referenced the concern that expanding ARRA whistleblower protections to all government contracts, grants, and payments might have a significant impact on OIG resources, and I can say that in my own experience at DOJ OIG and in serving as Chair of the CIGIE Whistleblower Ombudsman Working Group, this concern has been commonly expressed as well, as these are frequently resource-intensive matters. Therefore, I believe it is important that Congress consider providing additional resources to OIGs that would be necessary to ensure compliance with any new or expanded protections in this area. As I believe our efforts at DOJ OIG reflect, I am committed to the importance of whistleblower rights and protections and will, if confirmed, similarly make them a priority at the NSA and would welcome the opportunity to work with the Committee on these issues.

Confidentiality

4. What are your views on the obligation of Offices of Inspectors General not to reveal the identities of confidential whistleblowers? Are current laws and regulations sufficient to protect the identities of whistleblowers?

I believe that Section 7(b) of the Inspector General Act provides an extremely important protection for individuals who come forward to OIGs with complaints or information. It is critical that whistleblowers feel comfortable coming forward when they see something they reasonably believe to be wrong, which enables the OIG or other appropriate recipients to look into the situation and take any necessary corrective action. Given the difficulty of coming forward with information within an organization or office or involving colleagues, it is particularly important that OIGs scrupulously honor the confidentiality of whistleblowers, and I would welcome the opportunity, if confirmed, to engage with the Committee on the issue further.

Accountability

5. What is the appropriate form of accountability for individuals found to have reprised against whistleblowers?

Whistleblower reprisal is a prohibited personnel practice, and it is illegal. Individuals who violate the law by engaging in or threatening reprisal against whistleblowers should face swift and appropriate disciplinary action.

Ombudsman

6. You serve as the chair of the CIGIE Whistleblower Ombudsman Working Group. What are your views on whether the ombudsman role can be strengthened or protected?

I believe that the Whistleblower Protection Ombudsman positions established under the Whistleblower Protection Enhancement Act of 2012 (WPEA) and codified in Section 3(d) of the Inspector General Act have performed an important role in helping to ensure that agency personnel are informed regarding the prohibitions against retaliation for making protected disclosures, and that persons who have made or are contemplating making protected disclosures are aware of their rights and remedies against retaliation. As someone who has been working as the DOJ OIG Whistleblower Ombudsperson before the positions were even required by the WPEA, we have engaged in an extensive effort to get out a wide range of information in this area, much of which is available on our robust Whistleblower Protection site at: <https://oig.justice.gov/hotline/whistleblower-protection.htm>.

I do believe that there is room for further development of this important role, and have welcomed the opportunity to engage with staff of the bipartisan Senate Whistleblower Protection Caucus, the Senate Judiciary Committee, and the House Committee on Oversight and Government Reform on this issue. I testified before the HOCR Subcommittee on Government Operations about this earlier this year -- my testimony at the hearing entitled, "Five Years Later: A Review of the Whistleblower Protection Enhancement Act," is publicly available on the OIG's website at: <https://oig.justice.gov/testimony/t170201a.pdf>. Among the areas where I could see potential for expansion of this function, consistent with our own program at DOJ OIG, would be promoting the timely and appropriate handling by OIGs of protected disclosures and allegations of reprisal, and facilitating appropriate communications between the OIG and other entities, including the Office of Special Counsel, CIGIE, and the Congress. If confirmed, I would welcome the opportunity to work with the Committee on these issues.

QUESTIONS FOR THE RECORD FROM SENATOR FEINSTEIN

- 7. Will you commit to reviewing the security procedures in place at NSA and the ability of people to walk in and out with classified material?**

Specifically, I want to stop the theft of classified material from the NSA and am concerned about the three major thefts by contractors who have simply walked out of the building with classified documents.

Will you include in this review a determination of whether or not adding a physical search would be effective and appropriate in stopping these thefts?

If confirmed, I will work with the staff of the OIG to ensure that the security procedures in place at the NSA are reviewed appropriately, including the effectiveness and appropriateness of physical searches in stopping any thefts of classified documents.