

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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July 28, 2023

Peg Gustafson
Inspector General
Department of Commerce
Office of Inspector General
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Inspector General Gustafson:

The House Committee on Science, Space, and Technology (the Committee) sent several letters to the Department of Commerce, Office of Inspector General (OIG) regarding an ongoing investigation into serious allegations of misconduct by you and members of your office. On June 6, 2023, the Committee sent a letter requesting documents and communications related to this ongoing investigation with a deadline of June 20, 2023.¹ Your office failed to produce all of the relevant documents and communications, including certain documents that were withheld pending your decision to assert privilege[s]. Additionally, the Committee was disturbed to learn that you intentionally disclosed the identity of the whistleblower whose allegations against you and others this Committee is investigating.² Given the unnecessary delays, the Committee is requesting the immediate production of all pending documents related to the June 6 letter by no later than August 7, 2023.

On June 20, the Committee was informed by the OIG's General Counsel that the OIG is withholding at least four documents until you come to a decision regarding the exercise of privilege. This is extremely concerning, as you have not told Congress which privilege you are

¹ Letter from Frank Lucas, Chairman, and Zoe Lofgren, Ranking Member, H. Comm. on Sci., Space, and Tech., to Peggy Gustafson, Inspector General, Dep't of Com. (June 6, 2023), <https://republicans-science.house.gov/cache/files/b/9/b93b772c-d24b-42db-9d64-5d9b50c2d301/6FABDDBE5B70BB367A408DC404505DF0.2023-06-06-fl-zl-to-commerce-oig-doc-request-redacted.pdf>

² Letter from Peg Gustafson, Inspector General, Dep't of Com., to Frank Lucas, Chairman, and Zoe Lofgren, Ranking Member, H. Comm. on Sci., Space, and Tech. (July 7, 2023), <https://republicans-science.house.gov/cache/files/e/6/e65e9b19-fff2-4bd3-afbe-034a6a6eafa1/D1453692DAD2F98CE07CA4B8EB46E75C.doc-oig-response-to-wb-disclosure-redacted-redacted.pdf>

considering invoking and it is well known that Congress does not recognize common law privileges regarding document requests from federal agencies.³ Your efforts to prolong this production and consideration of unapplicable privileges are damaging the reputation of the OIG. These actions directly contradict statements made in your April 11 press release where you declare a desire for a “quick resolution of this matter.”⁴

These delays from your office are becoming a concerning trend. On June 15, 2023, the Committee sent a letter asking you to clarify if you had indeed disclosed the whistleblower’s identity and if so, to whom. Due to the severity of the allegations and simplicity of the request, the letter required a response within five days. However, the Committee’s letter went unanswered for several weeks, resulting in the Committee having to send a second letter on July 7, 2023, demanding a response. You provided a response to our request shortly thereafter in which you admitted to sharing the Committee’s unredacted letter, containing the whistleblower’s identity, with at least six individuals. Either because you provided no instructions or because your staff lacked proper whistleblower procedure training, several of the individuals with whom you shared the information shared the document themselves. In fact, one of these individuals, who reports directly to you, shared the letter with individuals outside of the OIG without discernable reason, further violating the whistleblower’s privacy. The protection of the confidentiality of a whistleblower’s identity is a pillar responsibility of the OIG.

The continued and constant delays in providing responses to the Committee’s requests, the absurd claim that you are considering invoking an unspecified privilege, and the intentional disclosure of the whistleblower’s identity have caused this Committee to question your willingness to cooperate with this investigation.⁵ We demand your immediate cooperation in this matter and expect your expedient response to the following:

1. Do you intend to assert privilege over any documents and communications that have been requested by the Committee? If so, immediately provide a privilege log that at a minimum, provides a description of the documents and communications, and the specific privilege[s] asserted. You must provide the privilege log on a rolling basis.
2. If you intend to assert privilege over any documents and communications requested by the Committee, please explain why Congress is required to accept each individual asserted privilege and provide a memo with analysis to support the position.

³ *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927) and *Barenblatt v. United States*, 360 U.S. 109 (1959) (stating that committee investigations pursued to aid the legislative process and protect important government functions cannot be ignored because of Congress’ critical need for information).

⁴ Press release, Dep’t of Com., Off. of Inspector Gen., Inspector General’s Statement Regarding a Investigation by the House Science, Space, and Technology Committee (Apr. 11, 2023), <https://www.oig.doc.gov/OIGPublications/2023-04-12%20IG%20Response%20to%20HSST.pdf>

⁵ Letter from Peg Gustafson, Inspector General, Dep’t of Com., to Frank Lucas, Chairman, and Zoe Lofgren, Ranking Member, H. Comm. on Sci., Space, and Tech. (July 7, 2023), <https://republicans-science.house.gov/cache/files/e/6/e65e9b19-fff2-4bd3-afbe-034a6a6eafa1/D1453692DAD2F98CE07CA4B8EB46E75C.doc-oig-response-to-wb-disclosure-redacted-redacted.pdf>.

3. After the Committee's June 6 and 15 letters, you requested relevant OIG employees produce documents and communications. What timeline did you give each of the relevant staff members to respond to the request, and when did they provide the documents for transmission to the Committee?
4. What measures are you taking to ensure that ongoing document production efforts will not further compromise the identity of whistleblowers?
5. What disciplinary measures, if any, have you taken in response to the release of the whistleblower's identity, and what measures have been taken to mitigate the chance of any future disclosure of a whistleblower's identity going forward?
6. Why did [REDACTED] screen-share the Committee's letter with [REDACTED]?
7. Why did [REDACTED] screen-share the Committee's letter with [REDACTED]?
8. Has Counsel confirmed with [REDACTED] that he communicated the advice to [REDACTED] and [REDACTED]? Why didn't Counsel communicate this advice directly to them?

We appreciate your cooperation in this matter and look forward to reviewing your response by August 7, 2023. Please coordinate with Dario Camacho of the Committee's Majority staff or Sara Palasits of the Minority staff should you have any questions or concerns.

Sincerely,



Frank Lucas
Chairman
Committee on Science, Space,
and Technology



Zoe Lofgren
Ranking Member
Committee on Science, Space,
and Technology

cc: Mark Greenblatt, Council of the Inspectors General on Integrity and Efficiency;
Gina Raimondo, Secretary of the Department of Commerce;
Henry J. Kerner, Special Counsel of the Office of the Special Counsel