



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 09 2014

THE INSPECTOR GENERAL

The Honorable David Vitter
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20515

Dear Senator Vitter:

Thank you for your letter of April 8, 2014, regarding the U.S. Environmental Protection Agency's (EPA's) Office of Inspector General's (OIG's) investigation of John Beale and related audits.

First, it is important to correct a key misstatement that underlies many of your questions. You assert, "The OIG has . . . characterized McCarthy's leadership as the driving force behind bringing an end to Beale's fraud." Your letter cites testimony before the Senate Committee on Environment and Public Works by Assistant Inspector General for Investigations Patrick Sullivan and me as the source. In fact, neither Mr. Sullivan nor I made such a statement, either in writing or orally.

Further, as explained in more detail in my February 24, 2014, response to another letter from you regarding the Beale matter, dated February 18, 2014, there are important distinctions between OIG investigations and audits. The EPA OIG first conducted an investigation and drew conclusions relying upon the facts known to us at that time. Later, the OIG initiated multiple audits, which are still ongoing, to examine EPA-wide internal controls relevant to the situation. As the auditors have conducted interviews and collected documents, we have obtained additional information, not available in the earlier investigation.

Additionally, your letter refers to "discrepancies" that hinge on statements attributed to EPA Assistant Administrator Craig Hooks. The OIG's job is to follow the facts that we have at a given time. OIG investigators were the first to interview Mr. Hooks about the Beale matter. A few months later, OIG auditors, with Deputy Assistant Inspector General Charles Sheehan and me present, interviewed Mr. Hooks. The auditors also performed a follow-up interview with Mr. Hooks, at which Mr. Sheehan was present. Additionally, both the investigators and auditors reviewed emails that provided contemporaneous information concerning Mr. Hooks' involvement in the matter. According to your letter, the House Committee on Oversight and Government Reform since has conducted an interview with Mr. Hooks, which provides a third set of alleged "facts." It is important to point out that the OIG had no involvement with that interview; nor do we have access to the transcript. As a result, we cannot determine or comment on any discrepancies.

Finally, you assert that Mr. Hooks' statement to the House Committee on Oversight and Government Reform "revealed" that I spoke about the Beale matter with him after one of the EPA Administrator's weekly staff meetings. At that time, Mr. Hooks did not speak to me of Mr. Beale, his alleged

involvement with the Central Intelligence Agency (CIA) or any other details. In the first of the two meetings with the OIG auditors, Mr. Hooks stated that he had asked me about an employee attendance matter, and I had informed him that employee attendance seemed like an administrative issue that should be handled by agency management. I agreed with Mr. Hooks' recollection.

Within this context, I will respond to your specific questions below to the extent possible:

1. McCarthy asserted that she was told by Hooks to "stand down" and that she complied. Hooks, though, has not only challenged any notion that he told McCarthy to "stand down," but has noted that he was then serving with equal rank to McCarthy and had no authority to give her orders.

a. Is Hooks correct in asserting that he has never had the authority to issue orders to Administrator McCarthy?

The OIG can only rely on the EPA's organizational chart for that time period. Prior to being sworn in as Administrator of the EPA, Ms. McCarthy held the position of Assistant Administrator for the Office of Air and Radiation. Mr. Hooks held the position of Assistant Administrator for the Office of Administration and Resource Management. The OIG has no way of knowing whether or how the Administrator at the time delegated authorities between Assistant Administrators and cannot assess relative rank among officials.

b. How did the OIG come to the conclusion that McCarthy's version of events was accurate and Hooks' was not?

The OIG relied on information uncovered during the criminal investigation and subsequent audits as it became available. As we have emphasized in previous communications with your office, the investigation was conducted prior to the audits, so our knowledge of past activities has expanded during the audit process.

The information obtained by the investigators and auditors through interviews and review of various documents, including emails, supported Ms. McCarthy's version of events. In particular, the emails represent a contemporaneous verification of her recollection.

Also, during the investigative interview, Mr. Hooks agreed with Ms. McCarthy's version of events and stipulated that, although he told Ms. McCarthy he would have his staff research her concerns, he never responded to her.

Further, Mr. Hooks stated that it was not until Ms. McCarthy approached him again in the fall of 2012 that he told her what his staff had uncovered. Emails indicate that Ms. McCarthy contacted Mr. Hooks again on November 30, 2012, regarding Mr. Beale, as Mr. Hooks stated. In his interview with the auditors, Mr. Hooks stated that he recalled advising Ms. McCarthy to not take action and wait to find out the facts about Beale's situation. Mr. Hooks said that he had believed this to be a matter of national security and wanted to take his time and err on the side of caution.

Again, the OIG has not seen the transcript of Mr. Hooks' testimony before the House Committee on Oversight and Government Reform. Consequently, I have no basis to respond to anything Mr. Hooks may have said as compared with statements he made during the OIG's criminal investigation or audit.

- 2. Hooks asserted that he only advised to proceed with "cautio[n]" because of the supposed involvement of the CIA. Hooks further testified that the only reason he believed Beale had a CIA connection was because McCarthy represented to him that Beale had a CIA connection. Why did the IG misrepresent Hooks' belief with regard to Beale's CIA status?**

The OIG has made no misrepresentation. In the interview with OIG investigators, Mr. Hooks never said that he believed Mr. Beale had a CIA connection based upon Ms. McCarthy's representation of the facts.

- 3. Hooks testified that you attend a weekly meeting with other "senior officials close to the Administrator" that constitute "the political leadership of the Agency."**

- a. Do you attend a weekly meeting with the Administrator and her senior officials?**

Yes.

- b. Do you consider yourself to be a "senior official[] close to the Administrator"?**

No. While I am a senior official, as the Inspector General, I am independent.

- c. Do you consider yourself to be part of the "political leadership of the Agency"?**

No. As the Inspector General – and, therefore, independent – I am not part of the political leadership of the agency.

- d. Even if you do not view yourself as a "senior official[] close to the Administrator" or part of the "political leadership of the Agency," have you considered the impression of others in assessing your independence as the IG?**

It is not entirely clear to me what you are asking. These agency meetings include the entire group of senior officials at the EPA based on positions. It is not a decision-making body and does not involve strategy or policy. Rather, the purpose is information-sharing across components. I attend because it serves the American taxpayer for me to hear what is going on and be able to identify high risk areas. To have oversight, I must have insight.

As an independent official at the agency, I do not take part in the EPA's management decisions, and I do not consider anyone else's assessment. I work with the facts.

- e. Has any aspect of the Beale matter been discussed in these meetings? If so, did you recuse yourself?**

I do not recall any time the matter was discussed.

- f. How often are matters involving ongoing OIG investigations discussed during these meetings?**

To date, never.

- g. How frequently do you recuse yourself during these meetings?**

I have never recused myself, as attendees have never talked about anything that warranted my recusal.

- h. Have you ever received any instruction from the Administrator, Deputy Administrator, or other senior EPA official during or around the time of these meetings? Please identify in detail every such instance (including which individual instructed you) as well as your response.**

No. I'm an independent official. Neither the Administrator nor the Deputy Administrator nor any other EPA official instructs me to do anything.

- i. Please identify and detail the steps that you take to ensure your independence as well as the perception of the OIG's independence given your attendance at these meetings.**

I listen to inform myself about agency activities. I do not reveal information about the OIG's pending decisions or ongoing investigations or reviews.

- 4. The OIG has emphatically proclaimed that McCarthy's "leadership" ended Beale's fraud, primarily by stating that on or around November 1, 2012, McCarthy referred the case to the Office of General Counsel (OGC), and on February 13, 2013, she reported the case to the OIG. As you are aware, the OIG is unable to provide any documentation supporting McCarthy's referral to the OGC and an OGC official notified the OIG of the matter before McCarthy's reporting. Even so, McCarthy referred the case to the OIG two years after she was first presented evidence of Beale's unauthorized bonuses. In March 2012, nearly six months after McCarthy attended Beale's retirement party, she learned that Beale had not retired and was still collecting all of his benefits and salary. Yet it took McCarthy an additional ten months to report Beale to the OIG.**

- a. Did the OIG examine whether or not the reporting delay was reasonable? Please provide the Committee with the evidence that you relied on to form this conclusion.**

The background to this question contains misstatements of fact, two of which are important to correct: First, the OIG has never proclaimed, emphatically or otherwise, that Ms. McCarthy's leadership ended Mr. Beale's fraud. Second, contrary to your relevant footnote, my letter to you of February 24, 2014, does not say that Ms. McCarthy referred the case to the OIG at all. It says that "the OIG was first notified about the concerns surrounding Mr. Beale during a meeting among Ms. McCarthy, OGC and the OIG on February 11, 2013." In fact, an OGC attorney requested the OIG's presence at that meeting.

In response to your question, the OIG consistently takes the position that when any person at the EPA, leadership or not, becomes aware of fraud, waste or abuse, he or she is obliged to report it promptly to the OIG.

- b. Although the OIG has praised McCarthy's leadership on the Beale issue, she has admitted that in reality she took no action to pursue the problems linked to Beale because she followed Hooks' direction to "stand down." How can anyone simultaneously "stand down" and provide leadership?**

The OIG has never praised Ms. McCarthy's leadership on the Beale matter but rather reported the facts as investigators and, subsequently, as auditors, uncovered them. As to your question, I cannot comment on an alleged statement to which I was not a party.

- c. During the period from January 12, 2011, to February 12, 2013, were matters concerning Beale ever discussed at the Administrator's weekly meetings? If so, please provide all details regarding what was discussed.**

No.

- 5. McCarthy recently testified before the EPW Committee that she, and the EPA as a whole, dealt with the Beale matter "effectively;" however, more than two years elapsed from the time McCarthy was alerted that Beale's bonuses failed to meet necessary criteria and advised to cancel the bonuses.**

- a. Do you agree with McCarthy that she handled the issue of Beale's bonus "effectively"? Please explain why or why not.**

The EPA OIG's record on the Beale matter best addresses this question. Specifically:

The OIG's criminal investigation determined that Mr. Beale was paid a bonus amounting to 25 percent of his salary, which had a maximum eligibility of six years, for a period of 22 years. Based on that finding and available evidence, the U.S. Department of Justice negotiated a settlement agreement that included restitution for 10 years of overpayment.

Additionally, on December 11, 2013, the OIG published an early warning audit report titled "Internal Controls and Management Actions Concerning John C. Beale Pay Issues" which found that:

- "Agency managers did not take timely effective action to address Beale's retention bonus and pay in excess of statutory limits even though they were presented with these issues in July 2010."
- "Management believed that Beale's pay issues were an administrative matter, and did not consider the matter a priority for them to address."

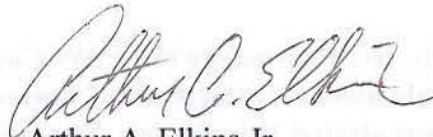
- “Agency management thought Beale had retired at the end of 2011, but Beale did not retire from the EPA until 2013.”
- “The EPA’s internal controls over timekeeping facilitated Beale’s time and attendance abuses.”

b. Do you agree with McCarthy that the EPA as a whole handled the issue of Beale's bonus "effectively"? Please explain why or why not.

Please refer to my response to question 5(a) above.

I appreciate your interest in the work of the OIG. If you should have additional questions about this or any other matter, please contact Alan S. Larsen, Counsel to the Inspector General, at (202) 566-2391.

Sincerely,



Arthur A. Elkins Jr.