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Description of document: Letter correspondence at the Office of Government Ethics (OGE) to or from the Government Accountability Office (GAO), 2016-2017

Requested date: 14-March-2017

Released date: 23-May-2017

Posted date: 24-July-2017

Source of document: Freedom of Information Act request
OGE FOIA Officer
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3917
Fax: 202-482-9237
Email: usoge@oge.gov

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UNITED STATES OFFICE OF
GOVERNMENT ETHICS



May 23, 2017

VIA ELECTRONIC MAILONLY

Tracking No: OGE FOIA FY 17/245

The U.S. Office of Government Ethics (OGE) is granting in part and denying in part your Freedom of Information Act (FOIA) request, which was received by the OGE FOIA Office on March 14, 2017. In your request, you asked for “[a] copy of all letter correspondence at the Office of Government Ethics TO or FROM the Government Accountability Office (GAO) during calendar years 2015, 2016 and 2017 to [March 14, 2017]”.

In response, we are enclosing 10 pages of responsive documents, subject to deletions made in accordance with FOIA Exemption 5, 5 U.S.C. § 552(b)(5), as inter- and intra-agency predecisional deliberative process material, and FOIA Exemption 6, 5 U.S.C. § 552(b)(6), as information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The deletions are each marked with a reference “(b)(5)” or “(b)(6)” in the enclosed copies. We searched, but did not locate any responsive records for 2015.

If you have any questions or wish to discuss any aspect of your request, you may contact me by telephone at 202-482-9267. As OGE’s FOIA Public Liaison, I am available for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.



The OGE official responsible for this FOIA determination is the undersigned. In accordance with the FOIA, as codified at 5 U.S.C. § 552(a)(6)(A), and OGE's updated FOIA regulations, at 5 C.F.R. § 2604.304, you may administratively appeal this determination to the Program Counsel, U.S. Office of Government Ethics, 1201 New York Avenue, N.W., Suite 500, Washington, DC 20005-3917. Any such appeal must be in writing and must be sent within 90 days of the date you receive this response letter. If you do appeal, you should include copies of your request and this response, together with a statement of why you believe this initial determination is in error. Also, if you appeal, you should clearly indicate on the envelope and in the letter that it is a "Freedom of Information Act Appeal."

Sincerely,

**RACHEL
DOWELL**

Digitally signed by RACHEL
DOWELL
DN: c=US, o=U.S.
Government, ou=Office of
Government Ethics,
cn=RACHEL DOWELL,
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Rachel K. Dowell
OGE FOIA Officer

Enclosures



441 G St. N.W.
Washington, DC 20548

February 1, 2016

The Honorable Walter M. Shaub, Jr.
Director
Office of Government Ethics

Dear Mr. Shaub:

The purpose of this letter is to remind you of the Federal Vacancies Reform Act of 1998 (Vacancies Act)¹ and, in particular, of the provisions of the Vacancies Act that require executive departments and agencies to report information about vacant positions to the Congress and to the Comptroller General.

The Vacancies Act provides rules for the temporary filling of certain vacant positions that require presidential appointment and Senate confirmation.² Under the Act, a person may serve as an acting officer in a vacant position covered by the Act for no longer than 210 days from the date of the vacancy. The Act provides for adjustments to the 210-day time limitation when the President submits a nomination to fill the position.³

The Act requires executive departments and agencies to immediately report to the Congress and to the Comptroller General when a vacancy occurs, the name of any person serving in an acting capacity, the name of any person nominated to fill the position, and the date of a rejection, withdrawal, or return of any nomination. The Act also requires the Comptroller General to report to Congress, the President, and the Office of Personnel Management if the Comptroller General determines that an acting official is serving longer than the 210-day period (including applicable extensions).⁴

GAO would also appreciate certain supplementary information to meet its statutory reporting requirements. Specifically, GAO requests that each agency report:

¹ 5 U.S.C. §§ 3345-3349d.

² The Vacancies Act applies to all presidentially-appointed, Senate-confirmed nominees, except for Article I judges, members of the Federal Energy Regulatory Commission and the Surface Transportation Board, and any appointment to a multimember board or commission that governs an independent establishment or a government corporation. 5 U.S.C. § 3349c.

³ The Department of Justice's Office of Legal Counsel provides advice to agencies on the application of the Vacancies Act to specific vacancies as well as some general guidance. See Memorandum for Agency Counsels, *Guidance on Application of Federal Vacancies Reform Act of 1998*, OLC Opinion, Mar. 22, 1999, available at: http://www.justice.gov/sites/default/files/olc/opinions/1999/03/31/op-olc-v023-p0060_0.pdf (last visited Jan. 19, 2016).

⁴ GAO's Vacancies Act webpage, at <http://www.gao.gov/legal/federal-vacancies-act/about>, provides information on the Act and a searchable database containing all information reported to the Comptroller General pursuant to the Act.

- the authority under which an acting officer was designated, if not the Vacancies Act;⁵
- any changes in the status of the vacant position and the effective date of the change (such as a change in title or elimination of the position);
- the discontinuation of service in an acting role; and
- the name, mailing address, telephone number, and email address for your agency's designated contact person.

GAO has created a form that agencies may use to report this information. It is available at: http://www.gao.gov/pdfs/legal/fed_vac.pdf.

If you have any questions about the reporting of vacancies to GAO, please contact Robert Cramer, Managing Associate General Counsel, on (b) (6) or Shirley A. Jones, Assistant General Counsel, on (b) (6).

Sincerely yours,



Susan A. Poling
General Counsel

cc: David J. Apol
General Counsel

⁵ For most vacancies, the Vacancies Act provides the exclusive means for making temporary appointments. However, there are some specific exceptions, such as where a statute expressly authorizes the President, a court, or an agency head to designate an officer or employee to temporarily perform the functions and duties of a specified office in an acting capacity. See 5 U.S.C. § 3347.



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

B-328944

March 24, 2017

The Honorable Walter M. Shaub, Jr.
Director, U.S. Office of Government Ethics

Dear Director Shaub:

The purpose of this letter is to remind you of the Federal Vacancies Reform Act of 1998 (Vacancies Act)¹ and, in particular, of the provisions of the Vacancies Act that require executive departments and agencies to report information about vacant positions to the Congress and to the Comptroller General.

The Vacancies Act provides rules for the temporary filling of certain vacant positions that require presidential appointment and Senate confirmation.² Under the Act, a person may serve as an acting officer in a vacant position covered by the Act for no longer than 210 days from the date of the vacancy. The Act provides for adjustments to the 210-day time limitation when the President submits a nomination to fill the position.³

The Act requires executive departments and agencies to immediately report to the Congress and to the Comptroller General when a vacancy occurs, the name of any person serving in an acting capacity, the name of any person nominated to fill the position, and the date of a rejection, withdrawal, or return of any nomination. The Act also requires the Comptroller General to report to Congress, the President, and the Office of Personnel Management if the Comptroller General determines that an acting official is serving longer than the 210-day period (including applicable extensions).⁴

GAO would also appreciate certain supplementary information to meet its statutory reporting requirements. Specifically, GAO requests that each agency report:

¹ 5 U.S.C. §§ 3345-3349d.

² The Vacancies Act applies to all presidentially-appointed, Senate-confirmed nominees, except for Article I judges, members of the Federal Energy Regulatory Commission and the Surface Transportation Board, and any appointment to a multimember board or commission that governs an independent establishment or a government corporation. 5 U.S.C. § 3349c.

³ The Department of Justice's Office of Legal Counsel provides advice to agencies on the application of the Vacancies Act to specific vacancies as well as some general guidance. See Memorandum for Agency Counsels, *Guidance on Application of Federal Vacancies Reform Act of 1998*, OLC Opinion, Mar. 22, 1999, available at: http://www.justice.gov/sites/default/files/olc/opinions/1999/03/31/op-olc-v023-p0060_0.pdf (last visited March 1, 2017).

⁴ GAO's Vacancies Act webpage, at <http://www.gao.gov/legal/federal-vacancies-act/overview>, provides information on the Act and a searchable database containing all information reported to the Comptroller General pursuant to the Act.

- the authority under which an acting officer was designated, if not the Vacancies Act;⁵
- any changes in the status of the vacant position and the effective date of the change (such as a change in title or elimination of the position);
- the discontinuation of service in an acting role; and
- the name, mailing address, telephone number, and email address for your agency's designated contact person.

GAO has created a form that agencies may use to report this information. It is available at: http://www.gao.gov/pdfs/legal/fed_vac.pdf.

If you have any questions about the reporting of vacancies to GAO, please contact Robert Cramer, Managing Associate General Counsel, on (b) (6) or Shirley A. Jones, Assistant General Counsel, on (b) (6).

Sincerely yours,



Susan A. Poling
General Counsel

cc: David J. Apol
General Counsel

⁵ For most vacancies, the Vacancies Act provides the exclusive means for making temporary appointments. However, there are some specific exceptions, such as where a statute expressly authorizes the President, a court, or an agency head to designate an officer or employee to temporarily perform the functions and duties of a specified office in an acting capacity. See 5 U.S.C. § 3347.

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



JUN 23 2016

Yvonne D. Jones
Director, Strategic Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report GAO-16-548, "FEDERAL WORKFORCE: Opportunities Exist to Improve Data on Selected Groups of Special Government Employees"

Dear Ms. Jones:

Thank you for the opportunity to comment on the U.S. Government Accountability Office's (GAO) draft report, "Federal Workforce: Opportunities Exist to Improve Data on Selected Groups of Special Government Employees." The Office of Government Ethics (OGE) appreciates GAO's work in planning and conducting its review and issuing this report.

The draft report contains one recommendation for OGE, with which we partially concur. Specifically, GAO recommended that the Director of OGE take the following actions:

To help ensure that agencies report consistent and reliable data, the Director of OGE should determine (e.g., through a survey of Designated Agency Ethics Officials and/or by analyzing agency data) whether other executive branch agencies are experiencing data challenges similar to HHS, State, and NRC. If they are, the Director should take steps to help the agencies strengthen their data.

OGE concurs with the emphasis on ensuring that agencies report consistent and reliable data on special Government employees (SGEs) not serving on federal boards. Consistent and reliable data collection fosters the proper designation of SGEs for ethics purposes, such as providing SGEs with special training and counseling. Likewise, consistent and reliable data better enables OGE to monitor and oversee agency ethics programs. To help determine whether other executive branch agencies are experiencing data challenges that could potentially affect the administration of their ethics programs, OGE will survey ethics officials or otherwise analyze agency data as recommended.

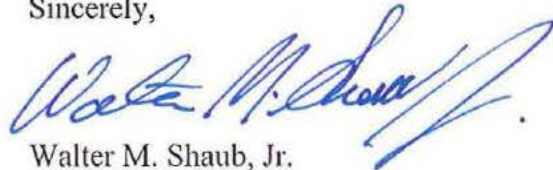
At the same time, information regarding the hiring of SGEs is within the control of human resources officials, over whom OGE has no authority. Although OGE can request that

agency ethics officials report difficulties in obtaining data from agency human resources officials on SGEs not serving on federal boards, the data challenges cannot be resolved without human resources officials collecting and sharing data in the first place.

OGE has taken steps to promote coordination between agency ethics officials and human resources officials to fulfill certain ethics program requirements. *See, e.g.,* Executive Branch Ethics Program Amendments, 81 Fed. Reg. 36193, 36195, 36198-99 (proposed June 6, 2016) (to be codified at 5 C.F.R. pt. 2638) (describing the Government ethics responsibilities of lead human resources officials). OGE will continue to encourage such coordination, which will help agencies strengthen their data. However, OGE has no authority to direct human resources offices to collect or share data or to otherwise coordinate with agency ethics offices. Ultimately, the development of mechanisms for tracking appointments, including the hiring of SGEs, is within the authority of agency human resources officials and the agency that oversees them, the Office of Personnel Management.

Again, thank you for the opportunity to comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter M. Shaub, Jr.", with a stylized flourish at the end.

Walter M. Shaub, Jr.
Director



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

October 24, 2016

The Honorable Walter M. Schaub, Jr.
Director
U. S. Office of Government Ethics

Dear Mr. Schaub:

This letter is to inform you of (b) (5)

[Redacted]

We would appreciate your notifying the appropriate officials of this work. (b) (5)

[Redacted]

Sincerely yours,

A handwritten signature in cursive script that reads "Yvonne D. Jones".

Yvonne D. Jones
Director, Strategic Issues

Enclosure

cc: Shelley K. Finlayson (skfinlay@oge.gov)
Doug Chapman (dlchapman@oge.gov)

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



OCT 11 2016

Yvonne D. Jones
Director, Strategic Issues
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Ms. Jones:

Pursuant to the requirements of OMB Circular A-50, the U.S. Office of Government Ethics (OGE) is providing you with a copy of OGE's statements to Congressional Committees in response to the recommendation for OGE in the Government Accountability Office (GAO) report, *FEDERAL WORKFORCE: Opportunities Exist to Improve Data on Selected Groups of Special Government Employees* (GAO-16-548).

OGE appreciates the effort that went into GAO's report. If you have any questions regarding this correspondence, please feel free to contact Ms. Shelley K. Finlayson, OGE's Chief of Staff and Program Counsel, at (202) 482-9314.

Sincerely,

Walter M. Shaub, Jr.
Director

Enclosures