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Description of document: Letter dated July 16, 2010 to Senator Charles E Grassley from the AMTRAK Office of Inspector General (OIG) regarding instances of interference with OIG operations, reports that were not publicly disclosed, and the status of outstanding recommendations

Requested: 29-June-2012

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Source of document: Amtrak FOIA Office  
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Washington, D.C. 20002  
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Note: This is one of several files on the same subject for various agencies available on governmentattic.org. See: <http://www.governmentattic.org/6docs/GrassleyCoburn.htm>

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## Office of Inspector General



August 16, 2012

Re: Freedom of Information Act Request

Enclosed is the document you requested in your Freedom of Information Act (FOIA) request dated June 29, 2012 for "the entirety of the letter dated July 16, 2010 to Senator Charles E Grassley from the Amtrak OIG." Unfortunately, we have been unable to locate the printed spreadsheet that had been attached to the original letter to Senator Grassley.

Your request has been classified as category IV, "Other". Requesters in this category receive 2 hours of search time, and the first 100 pages of duplication, free of charge. Thereafter, requesters are charged \$38 per hour for search time and 25 cents per page for duplication of records. The search as described above did not exceed the 2 hour allotted free time.

If you wish to appeal, you may file an appeal with Ted Alves, Inspector General, at the address below, within thirty days of the date of this letter.

If you have any questions concerning this response to your request, please contact me.

Sincerely,

A handwritten signature in blue ink that reads "Kathleen Ranowsky".

Kathleen L. Ranowsky, Esq.  
Deputy Counsel to the Inspector General  
OIG FOIA Liaison

cc: Sharron Hawkins, FOIA Officer



July 16, 2010

Senator Charles E. Grassley  
Ranking Member  
Committee on Finance  
135 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Grassley:

I am pleased to respond to your letter of April 8, 2010 requesting information about instances of interference with OIG operations, a list of reports that were not publicly disclosed, and the status of outstanding recommendations. The same letter was sent to Senator Tom Coburn.

Since my appointment as the Amtrak Inspector General in November 2009, I have been focused on working with Amtrak management to ensure that the Office of Inspector General (OIG) is positioned to operate independently, without interference from management, and equally as important, to operate effectively, with policies, procedures, and practices that support a high performing OIG operation. The following information responds to your request:

**(1) DESCRIBE INSTANCES WHEN AMTRAK MANAGEMENT RESISTED OIG OVERSIGHT EFFORTS OR RESTRICTED ACCESS TO INFORMATION**

A critical element for ensuring that any Office of Inspector General (OIG) can effectively perform the independent oversight role mandated by the Inspector General Act (IG Act) is a professional and effective working relationship between the OIG and management. Unfortunately, there was a breakdown in the relationship between Amtrak management and the OIG that came to a head in June 2009, when the then Inspector General retired and a law firm hired by the OIG issued a highly critical 64-page report describing numerous actions the company had taken to resist oversight and restrict the OIG's access to information. The report concluded that those actions seriously interfere with the independence of the Amtrak OIG. In July 2009, Amtrak management issued a 32-page rebuttal, disputing most of the facts as well as the conclusions cited in the OIG report and justifying its actions as consistent with both the IG Act and Amtrak's policies related to OIG operations. (The OIG-sponsored report and management's response are enclosed.)

**Management's Reasoning for its Actions**

You also asked that we include the company's reasoning for its actions. Management's response pointed out that the restrictions it had put in place on OIG operations (which it

asserted fully met IG Act requirements) were due to a lack of confidence that the OIG would protect privileged, proprietary, and confidential Amtrak documents. Management cited two instances when the OIG had provided such material to Congress and another Federal Agency and the material had been publicly released, albeit not without the OIG's efforts to protect the information from disclosure. Management also criticized the OIG's heavy involvement in management and operational matters, which, according to the response, significantly eroded the OIG's independence. Overall, management reasoned that the restrictions were reasonable steps to ensure company interests were protected without compromising the OIG's independence.

### **Appointment of Interim IG Raised Additional Questions About Interference with OIG Operations**

Subsequent to publication of the OIG-sponsored report, one other management action led to accusations that it continued to interfere with OIG operations. When the Amtrak IG retired in June 2009, the Chairman, with support of the Board, assigned an Amtrak executive to serve as the Interim IG until a permanent IG was selected, rather than assigning an OIG executive to be the Interim IG. To a large extent, the assignment of a management official reflected the breakdown in trust and management's lack of confidence in OIG operations and personnel. Regardless of the level of integrity and independence that the Interim IG exercised as a caretaker, the selection of a management official was unusual and exacerbated concerns that Amtrak management was attempting to control OIG operations.

### **Revised Relationship Policy and Other Actions Have Eliminated Restrictions on OIG Operations**

I am pleased to report that Amtrak management and the OIG have made significant progress in repairing their relationship by (1) developing a new relationship policy that fully meets the letter and spirit of the IG Act, (2) withdrawing the OIG from performing management functions, and (3) rebuilding relationships among Amtrak and OIG managers and staff. Moreover, no instances of resistance to OIG oversight or restrictions to information have occurred since my appointment in November 2009. Also, all significant stakeholders I have talked to—the Board of Directors, the President and other senior executives of Amtrak; as well as Congressional authorization, oversight, and Appropriations Committees, OMB, GAO, and the Department of Transportation OIG—agree that an effective Amtrak OIG, operating in the mainstream of the IG community, is an important oversight and accountability mechanism that contributes significantly to improved Amtrak operations.

The Fiscal Year 2010 Consolidated Appropriations Act of 2010 (Public Law 111-117) required that a member of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) certify that the Corporation and the IG “have agreed upon a set of policies and procedures for interacting with each other that are consistent with the letter and the spirit of the Inspector General Act.” The Appropriations Act further provides

that one year after this determination CIGIE appoint another member to evaluate and certify the operational independence of the Amtrak OIG.

Consistent with these principles, the OIG and company management discussed and negotiated the terms of a new policy to govern the relationship between the OIG and the company. This policy was finalized and submitted to the CIGIE representative for review in March 2010. (The relationship policy is enclosed)

Carl Clinefelter, the Inspector General of the Farm Credit Administration, conducted the evaluation and determined "that the Corporation and the IG have agreed to a set of policies and procedures for interacting with each other that are consistent with the letter and the spirit of the Inspector General Act of 1978, as amended. The report also concluded that the Amtrak IG's independence and ability to oversee Amtrak's operations and expenditure of funds, including funding provided by the Federal government, are properly addressed." (The report is enclosed)

The report highlighted several features of the relationship policy that address the independence and oversight capabilities of the IG:

1. The document constituting the policies and procedures is signed by the Chairman, the head of the entity. This provides the necessary import to the message and guidelines contained in the document.
2. The Responsibility section of the document specifies that "The head of Amtrak and the Amtrak Inspector General ("Inspector General") are responsible for the interpretation and administration of this policy." This properly places the responsibility at the highest levels for the successful implementation of the policies and procedures.
3. The document reiterates the IG Act's provision that a designated Federal entity's (DFE) IG, in this case Amtrak, is under the general supervision of the head of the DFE and that the IG is not subject to supervision by any other officer or employee of the DFE. (IG Act, section 8G (d)) This emphasizes the IG's independence.
4. The document reiterates the IG Act's provision that no one in a host establishment or DFE may "...prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation." (IG Act, section 8G (d)) This again emphasizes the IG's independence.
5. The document provides for, as does the IG Act, full and unimpeded access to all information at Amtrak. (IG Act, section 6(a) (1)) This, along with the reiteration of the IG Act in 3 & 4

above, serves to ensure that all Amtrak employees, particularly those not familiar with the IG Act, are informed of these essential provisions of the IG Act.

6. The OIG's handling of confidential, sensitive, or privileged Amtrak information obtained in connection with OIG review activities has been effectively dealt with in the document. The document provides for a process of internal discussion between the IG and management regarding the public release of such information, but with Amtrak's acknowledgement of the IG's final authority to decide whether such information should be released in a public report.

7. The document sets forth a number of general principles to guide the relationship between the Corporation and the IG. These address the Chairman's and Board's expectations of all staff regarding matters such as professionalism and mutual respect, open communication, objectivity and fairness, and the need for the OIG to respect and properly protect Amtrak information. All Amtrak personnel should benefit from the Chairman setting forth his and the Board's expectations in these areas.

8. The document establishes an Audit Liaison position to facilitate and coordinate the OIG's access and activities within the Corporation. This has the potential to provide an effective bridge between the OIG and the Corporation, and to significantly enhance the Corporation's effective and timely response to OIG products.

**(2) IDENTIFY CLOSED INVESTIGATIONS, EVALUATIONS, AND AUDITS THAT WERE NOT DISCLOSED TO THE PUBLIC FOR THE PERIOD OF JANUARY 1, 2009 THROUGH APRIL 30, 2010**

At this time, we believe that all Amtrak OIG audit or evaluation reports issued during that period have been disclosed to the public on the OIG website. However, as discussed below in section (3) of this letter we are currently working with Amtrak management to identify the universe of the OIG's prior audit and evaluation reports.

At the time of your request, none of the Amtrak OIG's investigative closing reports had been disclosed to the public. However, we are committed to transparency, and have recently posted those investigative closing reports where we substantiated an allegation on our website at <http://www.amtrakoig.gov>. Enclosed is a listing of unsubstantiated OIG investigations closed from January 1, 2009 through April 30, 2010 that have not been posted.

**(3) PROVIDE A COPY OF YOUR REPLY TO THE RANKING MEMBER OF THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**

We were not able to respond to the Ranking Member's request given the lack of reliable historical information on the scope and status of Amtrak OIG's outstanding recommendations. We discussed this with the Ranking Member's staff and described the efforts that we have underway to address the issue.

Specifically, we are working with Amtrak management to identify the universe of the OIG's prior audit and evaluation reports and recommendations. This will enable us to identify the universe of OIG recommendations and determine what recommendations should be closed because they have been implemented by management or are no longer relevant, as well as those recommendations where the status should be discussed with management because they appear to be relevant. Once these efforts are complete, we expect to have a baseline of outstanding OIG audit and evaluation recommendations. We are also working to implement a system for tracking the status of all our recommendations to management.

Should you have any questions regarding the information we are providing, please call me at 202-906-4600.

Sincerely,



Ted Alves  
Inspector General

Enclosures

Wilkie Farr and Gallagher Report  
Amtrak Management's Response  
Relationship Policy  
Clinefelter Report  
Listing of Closed Investigations