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Description of document: US Election Assistance Commission (EAC) records provided to Senator Charles E. Grassley and Senator Tom Coburn concerning the independence of Inspectors General necessary to promote efficiency and prevent fraud, waste and abuse in agency programs, in response to the Senators' inquiry, 2011-2012

Requested: 15-April-2012

Released date: 26-April-2012

Posted date: 04-July-2012

Source of document: Chief FOIA Officer
US Election Assistance Commission
1200 New York Ave., NW, Suite 300
Washington, DC 20005
Fax: 202-566-3127
Email: HAVAinfo@eac.gov

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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U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL
1201 New York Ave. NW - Suite 300
Washington, DC 20005

April 26, 2012

RE: Freedom of Information Act Request

The U.S. Election Assistance Commission Office of Inspector General has received your request pursuant to the Freedom of Information Act for each biannual response to Senators Coburn and Grassley regarding their April 8, 2010, request to the EAC Office of Inspector General to provide a summary of our non-public management advisories and closed investigations.

In response to your request enclosed are the following documents:

Response dated May 24, 2010
Response dated May 26, 2011
Response dated December 12, 2011

If you interpret any portion of this response as an adverse action, you have an opportunity to appeal it to the Election Assistance Commission (EAC). Your appeal must be in writing and sent to the following address.

U.S. Election Assistance Commission
1201 New York Ave. NW - Suite 300
Washington, DC 20005

Please include your reasons for reconsideration and attach a copy of this and subsequent EAC responses.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Crider".

Curtis Crider
Inspector General

Enclosures



U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF THE INSPECTOR GENERAL
1201 NEW YORK AVENUE, N.W., SUITE 300
WASHINGTON, D.C. 20005
(202) 566-3100

May 24, 2010

The Honorable Charles E. Grassley
Ranking Member, Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Coburn
Ranking Member, Senate Permanent Subcommittee
on Investigations, Homeland Security and
Government Affairs Committee
350 Dirksen Senate Office Building
Washington, DC 20510

RE: April 8, 2010 letter requesting information regarding
Offices of Inspector General

Dear Ranking Members Grassley and Coburn:

The U.S. Election Assistance Commission (EAC) Office of Inspector General (OIG) is writing in response to your April 8, 2010 request for information in four categories: (1) "instances when the agency resisted and/or objected to oversight activities and/or restricted your access to information;" (2) "biannual reports on all closed investigations, evaluations, and audits conducted by your office that were not disclosed to the public;" (3) any instances in which "any federal official threatens and/or otherwise attempts to impede your office's ability to communicate with Congress;" and (4) a copy of the response provided to Representative Issa's request concerning outstanding recommendations. We appreciate the opportunity to discuss these matters with you and your staff. Prior to responding to your questions, we provide, below, some background information regarding the EAC, its creation and its operations.

BACKGROUND

The EAC is a relatively new federal government agency. It was constituted in 2003 following the passage of the Help America Vote Act (HAVA), Public Law 107-252. The Commission is headed by four Presidentially-appointed and Senate-confirmed Commissioners. The EAC is primarily engaged in making and monitoring grants to states, local governments, and non-profit organizations for the improvement of processes related to conducting elections. In addition, the EAC is charged with operating the first federally-funded testing and certification programs for voting equipment used in federal elections and with conducting research regarding best practices related to election

administration. The Commission is staffed by approximately 42 full-time positions, not including the OIG.

Under HAVA and the Inspector General Act of 1978, as amended (IG Act), the EAC was established as a designated federal entity (DFE) and required to appoint an Inspector General. I was appointed as the EAC's first Inspector General in 2006. Since the creation of this office, we have conducted 25 audits of states that were awarded funding under HAVA, 12 audits and evaluations of EAC operations, and three investigations. My office is staffed by three full-time positions: Inspector General, Counsel to the Inspector General, and Assistant Inspector General for Audits. We contract with outside firms to conduct grant and internal audits. In addition, we enter into agreements with other OIGs, as needed, to investigate matters that are brought to our attention.

The small size of the EAC in combination with the fact that it is a relatively new federal agency create difficulties for the EAC OIG over issues that most of our department-level counterparts have battled and won many years ago. Below is some discussion of those issues. In addition, you will find material regarding those issues in the letter responding to Representative Issa, which is attached.

ACCESS TO RECORDS

In December 2009, the EAC OIG was asked by Representative Jo Ann Emerson to review a settlement agreement entered between the EAC and a former candidate for the position of EAC general counsel. The EAC OIG began this evaluation as a limited scope review of the settlement. The EAC OIG seeks to answer several questions as a part of this review: (1) whether EAC had the authority to enter into the agreement; (2) whether the EAC used proper fiscal year funds to pay the settlement; and (3) whether the EAC followed proper protocol in negotiating and entering into the agreement. On January 5, 2010, the OIG issued an engagement letter to the EAC and requested production of documents related to the evaluation. The EAC OIG requested production of the documents by January 20, 2010. The documents were not produced until March 1, 2010.

During the intervening period of approximately two months, there were some delays due to inclement weather in February 2010. However, at the entrance conference which was held on February 18, 2010, it was revealed that at least one of the EAC Commissioners questioned the OIG's ability or authority to access documents that are protected by attorney-client and other privileges including a negotiated, contractual confidentiality clause. The OIG had previously provided legal citations and precedents granting us access to such information as well as the impact of those privileges on the OIG should a request be made of the OIG to release those documents. However, it was not until the EAC obtained the opinion of outside counsel, following the entrance conference that the EAC agreed to produce the records to the OIG.

This is the only instance in which the EAC OIG has experienced an unwillingness to grant the OIG access to records which resulted in a delay or denial of access. However, it resulted in a delay of more than one month in conducting this evaluation. The evaluation

is ongoing. The OIG is nearing the end of field work on this evaluation and expects to issue a final report on this matter during the summer of 2010.

REPORTS NOT MADE AVAILABLE TO THE PUBLIC

The EAC OIG has not issued any reports during the period January 1, 2009 through April 30, 2010, which are unavailable to the public. All reports are posted to the EAC OIG's Web site, www.eac.gov/eac_ig.

AGENCY ATTEMPTS TO IMPEDE COMMUNICATION WITH CONGRESS


The EAC OIG has not experienced any incidents wherein the EAC attempted to impede our ability to communicate with Congress. For information related to issues involved with the EAC's communications to Congress regarding the EAC OIG, please see the response to Representative Issa's request.

RESPONSE TO REPRESENTATIVE ISSA'S REQUEST

A copy of the letter response sent to Representative Issa regarding his March 24, 2010 request is attached to this letter for your review and consideration.

Again, we appreciate this opportunity to update you and your staff on our work and the challenges that we face as an Office of Inspector General to a small designated federal entity. If you have any questions regarding our response or would like to discuss any of these matters further, please do not hesitate to contact me at 202-566-3125 or ccrider@eac.gov.

Sincerely,


Curtis W. Crider
Inspector General

Enclosure (1)

cc: The Honorable Max Baucus
Chairman, Senate Committee on Finance
The Honorable Carl Levin
Chairman, Permanent Subcommittee on Investigations, Senate Committee
on Homeland Security and Governmental Affairs



U.S. ELECTION ASSISTANCE COMMISSION

OFFICE OF THE INSPECTOR GENERAL
1201 NEW YORK AVENUE, N.W., SUITE 300
WASHINGTON, D.C. 20005
(202) 566-3100

April 23, 2010

The Honorable Darrell Issa
Ranking Member, House Committee on
Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Via U.S. Mail and Facsimile Transmission
202-225-3974

RE: March 24, 2010 request for update on
unimplemented recommendations

Dear Representative Issa:

Thank you for your March 24, 2010 letter and the opportunity to update you and your staff regarding recommendations made by my office which have not yet been implemented by the U.S. Election Assistance Commission (EAC). We apologize for the delay in providing this response to you. However, we wanted to ensure that it included the most up-to-date information from our office and from the agency with regard to the status of unimplemented recommendations. We received the agency's response to our February 12, 2010 request for updated status on April 16, 2010. My staff has worked diligently to turn this around quickly so that we did not unduly delay your analysis of the current situation.

We further appreciate the opportunity to discuss the issues related to operating an Office of Inspector General, particularly in a designated Federal entity, and ways that the Inspector General Act of 1978 and/or Inspector General Reform Act of 2008 can be improved to address those issues.

Unimplemented recommendations

The EAC Office of Inspector General has issued 114 recommendations for improvement of EAC operations, policies and procedures. These recommendations were issued as a part of 12 reports issued during fiscal years 2006 through 2010. Forty of the 114 recommendations remain open and unimplemented as of the date of this letter.

While we have not attributed cost savings to these recommendations, we believe they are fundamental to the efficient and effective operation of a government agency. The EAC is a relatively new Federal agency, having been constituted in December 2003. Many of our recommendations relate to the establishment of basic policies, procedures, rules and

regulations governing the operation of the agency and the administration of its financial affairs.

The agency has made substantial progress over the past year in implementing recommendations. According to information provided by the agency, 61 recommendations have been implemented since January 5, 2009. The vast majority of these recommendations were related to an assessment report issued in 2008 and to the EAC's 2008 Financial Statement audit. The recommendations were related to the improvement of the EAC's financial management system. The EAC's work to implement these recommendations was reflected in the fact that the EAC received an unqualified opinion in the audit of its fiscal year 2009 financial statements. This was a significant improvement over the disclaimer that they received on their fiscal year 2008 financial statements.

Of those 40 unimplemented recommendations, we believe that the following two categories of recommendations are the most critical to EAC's success as a Federal agency:

Establishing and Implementing Policies and Procedures

In its February 2008 Assessment of the U.S. Election Assistance Commission's Programs and Financial Operations, the Office of Inspector General issued numerous findings related to the need for documented policies and procedures. These recommendations touched nearly every division then existing at EAC, including communications, research, testing and certification, finance and administration, and programs and services (grants). Over the past several years, the absence of documented policies and procedures has manifested itself in several problems at EAC, including a disclaimer on the audit of their fiscal year 2008 financial statements as well as less than promising results in its employee satisfaction surveys. While EAC has taken steps to adopt and implement financial policies and procedures and to establish program manuals for its testing and certification program, more than two years later, the other divisions at EAC still lack uniform, documented policies and procedures.

This failure to implement policies and procedures has left an information gap and a lack of understanding of expectations on the part of EAC employees that is evident in the 2009 employee satisfaction survey. Less than half of respondents believed that:

- Managers communicate the goals and priorities of the organization (45%);
- Leaders generate high levels of motivation and commitment in the workforce (42%);
- Employees have a feeling of personal empowerment with respect to work processes (34%);
- Promotions are based on merit (34%);
- Employees understood what they had to do to achieve a certain performance rating (41%); and
- Pay raises are dependent on how well a job is performed (28%).

Employee Satisfaction Survey 2009, questions 15, 18, 20, 26, 29, and 31. A copy of the 2009 employee satisfaction survey is available on the EAC's Web site, www.eac.gov.

Failure to adopt and implement comprehensive policies and procedures leaves the EAC vulnerable in many areas, including the possibility of sustainable success, loss of valuable employees, as well as exposure to liability for inconsistent actions. The Office of Inspector General reported this in two of the top management challenges identified to the agency in 2009. Top Management Challenges are available on the Inspector General's Web page, www.eac.gov/eac_ig.

The EAC has agreed with these recommendations and the need to adopt and implement policies and procedures. However, the date initially proposed by the EAC for implementation was June 30, 2009, which was approximately a year and a half after the date of the recommendation. That date has been changed multiple times since its passage. The current date for implementation proposed by the agency is May 1, 2010.

Information Security Management

The second category of recommendations is related to the EAC's need to adopt and implement the information security protocols imposed upon the Federal government. In four successive, annual evaluations of Federal Information Security Management Act (FISMA) compliance as well as a report on the agency's compliance with section 522 of the 2005 Consolidated Appropriations Act, the Office of Inspector General has cited EAC's failure to comply with FISMA and the Privacy Act. Despite the fact that the EAC has agreed with all of the findings issued on this topic, the EAC has implemented corrective action in response to only a few of the recommendations. EAC ties its ability to implement corrective action to their hiring of a Chief Information Officer, a position which has not yet been filled. Thus, the current date for expected implementation is September 30, 2010.

Savings/Value of Recommendations

There is currently no monetary savings associated with these recommendations. It is very difficult to quantify the savings or corresponding value that is associated with comprehensive policies and procedures. They are the underpinnings of good management, efficient operations, and secure information technology systems. They impact every segment of administration and program operation. In short, the presence of such a policy and procedure structure is priceless.

Changes to the Inspector General's Authorizing Statutes

Operating an Office of Inspector General in a designated Federal entity (DFE) comes with some inherent issues that are not experienced by our larger, department-level counterparts. DFE Inspectors General must rely more heavily upon the agency to provide basic administrative and operational services and to account fairly in the allocation of our budgets. Likewise, there are inherent conflicts of interest that plague our relationship

with the agency head that both appoints the Inspector General to his/her post and impacts the ability of the Inspector General to conduct audits and investigations of agency programs and operations. These issues and suggested improvements to legislation to ameliorate these issues follow.

Budget Allocation by the Agency

The U.S. Election Assistance Commission receives a limited number of appropriations each year. These are primarily consisted of the agency's salaries and expenses appropriation as well as appropriations for various grant programs administered by the agency. The Office of Inspector General does not receive a separate appropriation and does not appear as a line item in the agency's annual budget request. Thus, after an appropriation is made by Congress, the EAC allocates a portion of its salaries and expenses appropriation to the Office of Inspector General. Unfortunately, this has not always been conducted in a manner that is consistent with the information provided to Congress in the agency's budget request, either by virtue of the agency's initial allocation of funds to the Office of Inspector General or by virtue of the agency mid- or late- year sweep of funds from various divisions to cover end-of-the-year expenses.

For fiscal year 2010, the EAC submitted a total budget request of \$16,530,000. Of that amount, EAC showed an allocation to the Office of Inspector General of \$1,888,960. The actual appropriation to the EAC for its salaries and expenses for fiscal year 2010 was \$17,959,000. The actual allocation to the Office of Inspector General for fiscal year 2010 was \$1,770,259. This allocation was approved by public vote of the EAC on February 25, 2010, more than five months after the beginning of the fiscal year and more than two months after the passage of Public Law 111-117, which established the agency's fiscal year 2010 appropriation. The difference of \$118,701 represents more than six percent of the Office of Inspector General's anticipated allocation and is significant to the operation of a small office such as this. The budget reduction to the Office of Inspector General is also notable in light of the fact that the agency received more in its appropriation than it requested and that it came on the heels of the Office of Inspector General initiating an investigation into the work environment at EAC and reports of potential retaliation. The Office of Inspector General has raised this issue with the agency and is working with them to restore the deficit in the budget allocation.

Similarly, late in fiscal year 2009, the EAC conducted a sweep of budget allocation accounts which impacted the Office of Inspector General without notifying us or requesting the release of funds from our allocation. My office became aware of this only because of the need to enter into an interagency agreement with another Office of Inspector General to conduct the above referenced investigation of the EAC work environment. Ultimately, the EAC funded the interagency agreement. However, we were initially told that we did not have sufficient funds to cover the agreement despite the fact that funds sufficient to cover the expense initially had been allocated to the Office of Inspector General.

Congress could provide greater safeguards to the continued effective operation of Offices of Inspector General by requiring agencies, particularly small DFEs such as the EAC, to submit their annual budget requests to include separate appropriations or separate line items for the Offices of Inspector General.

Challenges to Independence

An issue that takes many forms is the challenges to independence that small Offices of Inspector General face on nearly a daily basis. They range from the necessary reliance on our agencies for information technology, personnel, financial and contracting services to intentional or unintentional delays or interference with our work. These issues challenge our ability to ensure confidentiality in our work and to ensure that our work is not obstructed by undue or inappropriate influence from the agency.

As a small Office of Inspector General, we do not possess the resources to maintain our own, independent information technology resources. As such, our email resides on the agency's email server including the email box that receives confidential and anonymous hotline complaints. While we have an informal agreement with the agency not to collect identifying information such as IP addresses from senders to that email box, there is little way for my office to ensure complete confidentiality to a complainant. Similarly, our data files reside on the agency's data servers. Access to these folders by many EAC employees is restricted. However, agency IT administrators have access to all portions of the servers. My office takes precaution as to what is stored on these servers. Materials involving investigations are not stored there. However, in order to do this, we had to put in place additional protocols for information back up and storage in order to comply with the Federal Information Security Management Act.

Similar issues arise when payroll, personnel, travel, and procurement services are provided by the agency. It is difficult to maintain confidentiality and security over our work when we must rely on the agency to process procurement vehicles, pay invoices, and process personnel and travel requests for my office. While it would be ideal to have these services provided by another Federal agency, this office currently does not have the resources to pay for these services.

Challenges to independence also take the form of delays or denials to access agency records or personnel. In the past six months, we have struggled to get documents and information from the agency, even when the information was necessary to respond to requests like this one. Likewise, we have had to fight issues such as our access to interview agency employees without the presence of an agency representative. These are battles that our department-level counterparts have fought and won years ago. But for small DFE Inspectors General, like me, these are issues that arise and have to be addressed yesterday, today and tomorrow.

In another example of challenges to independence, the EAC has failed or refused to act on our request to have a FOIA officer designated for the Office of Inspection General. This office made an initial request that the EAC change its regulations regarding the

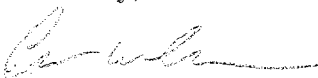
Freedom of Information Act to allow the Office of Inspector General to be considered a FOIA component in July 2009. This request was made due to the fact that the EAC's chief FOIA officer was and continues to process FOIA requests for records held by the Office of Inspector General. In an effort to protect the security of our records and the confidentiality of complainants as well as to help the EAC avoid the appearance of, if not actual, conflicts of interest, the Office of Inspector General made its request to become a component office. This request met with some resistance and in an effort to compromise the Office of Inspector General agreed to seek to have a FOIA officer designated by the EAC's Chief FOIA Officer to serve the Office of Inspector General. The EAC has also failed to act on this request. This inaction allows the EAC to screen Inspector General documents and potentially to withhold documents, even when the FOIA requests relate to investigations of EAC operations and programs.

These challenges to independence are complicated by the fact that DFE Inspectors General are appointed by, report to and can be removed by the agency head. Many times in small agencies such as this one, battles over independence are fought with the very person or people that control the Inspector General's continued employment. Many of us fight on, but the current structure creates a disincentive to rocking the boat.

Congress could assist the Inspectors General for small DFEs by exploring ways to separate them from the agency. Additional funding could permit the Inspectors General to contract for services provided by another agency and to add safeguards to their information technology systems, procurement processes, and other administrative concerns. An alternative would be to consolidate the small DFE offices into a single Office of Inspector General for all small DFEs, thereby creating economies of scale for operational concerns and removing the small Inspectors General from the complicated relationship of battling the very person or persons that sign their paychecks.

We appreciate this opportunity to keep Congress informed of our work and the struggles that Inspectors General face. I would be happy to discuss our recommendations, the agency's progress in implementing those recommendations or any suggestions that we have made to improve the Inspectors General authorizing statutes with you or your staff. If you have any questions or concerns, please do not hesitate to call me at 202-566-3125.

Sincerely,



Curtis W. Crider
Inspector General

May 26, 2011

The Honorable Charles E. Grassley
Ranking Member, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Coburn
Ranking Member, Senate Permanent Subcommittee
on Investigations, Homeland Security and
Government Affairs Committee
350 Dirksen Senate Office Building
Washington, DC 20510

RE: April 8, 2010 letter requesting information regarding
reports

Dear Ranking Members Grassley and Coburn:

The U.S. Election Assistance Commission (EAC) Office of Inspector General (OIG) is writing in response to your April 8, 2010 request for "biannual reports on all closed investigations, evaluations, and audits conducted by your office that were not disclosed to the public." We appreciate the opportunity to provide you and your staff information regarding our work.

During the past year, the EAC OIG issued one memorandum to the agency that was not made available to the public. The memorandum stemmed from a hotline complaint that we received concerning an allegedly inappropriate gift that was exchanged at the EAC's holiday party. The complainant alleged that some persons felt uncomfortable due to the nature of the gift. We reviewed the EAC's handling of the situation and issued a memorandum offering recommendations to improve the EAC's process in addressing potentially harassing situations.

Again, we appreciate this opportunity to update you and your staff on our work. If you have any questions regarding our response, please do not hesitate to contact me at 202-566-3125 or ccrider@eac.gov.

Sincerely,

Curtis W. Crider
Inspector General

cc: The Honorable Pat Leahy
Chairman, Senate Committee on the Judiciary
The Honorable Carl Levin
Chairman, Permanent Subcommittee on Investigations, Senate Committee
on Homeland Security and Governmental Affairs



ELECTION ASSISTANCE COMMISSION

OFFICE OF THE INSPECTOR GENERAL
1201 NEW YORK AVENUE, N.W., SUITE 300
WASHINGTON, D.C. 20005
(202) 566-3100

December 12, 2011

The Honorable Charles E. Grassley
Ranking Member, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Coburn
Ranking Member, Senate Permanent Subcommittee
on Investigations, Homeland Security and
Government Affairs Committee
350 Dirksen Senate Office Building
Washington, DC 20510

RE: April 8, 2010 letter requesting information regarding
reports

Dear Ranking Members Grassley and Coburn:

The U.S. Election Assistance Commission (EAC) Office of Inspector General (OIG) is writing in response to your April 8, 2010 request for "biannual reports on all closed investigations, evaluations, and audits conducted by your office that were not disclosed to the public." We appreciate the opportunity to provide you and your staff information regarding our work. For the six-month period ending September 30, 2011, the EAC OIG has not issued any memorandums or reports to the agency that were not made available to the public.

If you have any questions regarding our response, please do not hesitate to contact me at 202-566-3125 or ccrider@eac.gov.

Sincerely,

Curtis W. Crider
Inspector General

cc: The Honorable Pat Leahy
Chairman, Senate Committee on the Judiciary
The Honorable Carl Levin
Chairman, Permanent Subcommittee on Investigations, Senate Committee
on Homeland Security and Governmental Affairs