

**EMPOWER OVERSIGHT**  
*Whistleblowers & Research*



October 6, 2021

**Via Electronic Transmission:** [FOIAAPPEAL@cigie.gov](mailto:FOIAAPPEAL@cigie.gov)

Allison C. Lerner, Chair  
c/o Office of General Counsel  
Council of the Inspectors General on Integrity and Efficiency  
1717 H Street NW, Suite 825  
Washington, DC 20006

**RE: Freedom of Information Act Appeal**  
**CIGIE FOIA Case Nos. 6330-2021-45, 6330-2021-65, 6330-2021-66,**  
**6330-2021-67, 6330-2021-69, and 6330-2021-71**

Dear Chair Lerner:

Empower Oversight Whistleblowers & Research's ("Empower Oversight")<sup>1</sup> appeals the denial of Council of Inspectors General on Integrity and Efficiency ("CIGIE") FOIA case numbers 6330-2021-45, 6330-2021-65, 6330-2021-66, 6330-2021-67, 6330-2021-69, and 6330-2021-71, which seek two narrowly defined categories of records.

The records sought are intended to shed light on the causes of the unconscionably long delay of CIGIE's investigation of allegations of abuses among the leadership of the Federal Housing Finance Agency, Office of Inspector General ("FHFA-

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<sup>1</sup> Empower Oversight is a nonpartisan, nonprofit educational organization, which is dedicated to enhancing independent oversight of government and corporate wrongdoing. It works to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seeks to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

OIG”). The summary denials undermine CIGIE’s own criticisms of FHFA-OIG leadership’s disdain for independent oversight. CIGIE’s Integrity Committee (“CIGIE-IC”) should be responsive to Congressional and public scrutiny through FOIA just as the FHFA-OIG should have been responsive to scrutiny from the CIGIE-IC.

Moreover, in addition to reversing the initial CIGIE denials of our FOIA requests, Empower Oversight asks that CIGIE ensure that the FHFA-OIG employees who were the subjects of the underlying investigations at issue are not allowed to participate in adjudicating or screening documents pursuant to our FOIA requests.

## **Introduction**

As the Supreme Court explained more than 40 years ago, a primary purpose of the Freedom of Information Act (“FOIA”)<sup>2</sup> is to serve as a “check against corruption and to hold the governors accountable to the governed.”<sup>3</sup> Accordingly, at its core, the FOIA “operates on the assumption that ‘it is for the public to know and then to judge.’”<sup>4</sup> With respect to government investigations, the Court of Appeals for the District of Columbia Circuit (“Circuit Court”) has stated that the “public has an interest in knowing ‘that a government investigation itself is comprehensive, that the report of an investigation released publicly is accurate, that any disciplinary measures imposed are adequate, and that those who are accountable are dealt with in an appropriate manner.’”<sup>5</sup> “That is how the FOIA helps ‘to hold the governors accountable to the governed.’”<sup>6</sup> The public interest in government investigations “crescendos when the misfeasance of a federal” official with “‘the power to employ the full machinery of the state in scrutinizing any given individual’ is at stake.”<sup>7</sup> “The public ‘must have assurance that those who would wield this power will be guided solely by their sense of public responsibility for the attainment of justice.’”<sup>8</sup>

Offices of Inspectors General exist to detect, prevent, and report instances of waste, fraud, and abuse and to promote economy, efficiency, and effectiveness in government.<sup>9</sup> If any agencies within government should operate consistent with the principles of transparency and accountability underlying the FOIA, it should be inspectors general.

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<sup>2</sup> The FOIA is codified at 5 U.S.C. § 552.

<sup>3</sup> NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978).

<sup>4</sup> Bartko v. DOJ, 898 F.3d 51, 69 (D.C. Cir. 2018) (quoting, Stern v. FBI, 737 F.2d 84, 94 (D.C. Cir. 1984)).

<sup>5</sup> Bartko, 898 F.3d at 69 (quoting, Stern, 737 F.2d at 92).

<sup>6</sup> Bartko, 898 F.3d at 69 (quoting, Stern, 737 F.2d at 92).

<sup>7</sup> Bartko, 898 F.3d at 69 (quoting, Young v. US ex rel Vuitton et Fils S.A., 481 U.S. 787, 814 (1987)).

<sup>8</sup> Bartko, 898 F.3d at 69 – 70 (quoting, Young, 481 U.S. at 814).

<sup>9</sup> 5 U.S.C. App. § 2.

Yet, in contrast to these guiding principles, CIGIE staff have issued *Glomar* responses to CIGIE FOIA case numbers 6330-2021-45, 6330-2021-65, 6330-2021-66, 6330-2021-67, 6330-2021-69, and 6330-2021-71, and have denied them categorically pursuant to Subsections b(6) and b(7)(C) of the FOIA.

Empower Oversight appeals the initial determinations of CIGIE's staff. As discussed in detail below, CIGIE staff erred because CIGIE's investigation of the FHFA-OIG leadership abuses does not qualify as a "law enforcement" investigation subject to protection under Subsection b(7)(C) of the FOIA (which is a prerequisite of a *Glomar* response), and alternatively, were the investigation somehow qualified for protection under Subsection b(7)(C), then:

- A *Glomar* response, nonetheless, is not available because there is a public interest in the reasons for the delay of the CIGIE's investigation and a redacted copy of the report of the investigation is in the public domain; and
- A categorical denial pursuant to Subsection b(7)(C) is not available under these circumstances.

Categorical denials typically are not available under Subsection b(6), and CIGIE staff did not identify, evaluate, and balance the privacy and public interests on a document-by-document basis—a necessary step in invoking Subsections b(6) and b(7)(C) under the circumstances of this matter.

Empower Oversight respectfully requests that you reverse the initial determinations of your staff and ensure that they promptly compile, review, and produce the records requested as required by the FOIA.

## **Background**

### **IC Investigation of FHFA-OIG Leadership**

It has been widely reported by the news media that by a letter to President Biden dated April 14, 2021, the Chairman of the CIGIE-IC reported its findings, conclusions, and recommendations regarding allegations of misconduct against four current and former FHFA-OIG executives:

- Former Inspector General Laura Wertheimer,
- Former Associate Inspector General Jennifer Byrne,
- Former Acting Deputy Inspector General for Investigations Richard Parker, and

- Chief Counsel Leonard DePasquale.<sup>10, 11</sup>

At least one of the media accounts included a link to a copy of the CIGIE-IC Chairman's 29-page letter to the President.<sup>12</sup>

The CIGIE-IC Chairman's letter advised that in 2017, the CIGIE-IC began receiving multiple complaints alleging that former Inspector General Wertheimer, former Associate Inspector General Byrne, and other senior FHFA-OIG personnel had grossly mismanaged the Office of Audits, implemented coercive personnel actions, and created a culture of retaliation and abuse.<sup>13</sup> In response to these complaints, the CIGIE-IC sponsored an investigation to determine whether:

1. Inspector General Wertheimer and a senior FHFA-OIG employee imposed (at mid-year) unachievable performance standards upon audit staff, to coerce them to separate from the agency;
2. Inspector General Wertheimer failed to resist or report to Congress threats by the FHFA Director to undermine FHFA-OIG's budget, staffing, and resources, and cited those threats as grounds for certain decisions;
3. Inspector General Wertheimer violated the Privacy Act by describing the details of an Equal Employment Opportunity complaint to a subordinate that had no official need to know the information;
4. Inspector General Wertheimer – since becoming aware of allegations and complaints made against her – sought to identify complainants, and disparaged and demeaned FHFA-OIG staff whom she believed complained about her or cooperated with inquiries into the complaints and allegations; and
5. Associate Inspector General Byrne threatened to retaliate against (*i.e.*, file criminal complaints against) FHFA-OIG employees who complained to Senator [Charles] Grassley's office.<sup>14</sup>

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<sup>10</sup> See, *e.g.*, <https://www.washingtonpost.com/us-policy/2021/06/30/fhfa-inspector-general-resigns-laura-wertheimer/>; <https://thehill.com/homenews/senate/550777-report-finds-federal-housing-agency-official-abused-her-authority>; <https://thehill.com/homenews/administration/550761-read-watchdog-report-on-federal-housing-inspector-general>; and <https://www.govexec.com/oversight/2021/05/white-house-reviewing-recommendation-fire-housing-finance-inspector-general/174026/>.

<sup>11</sup> Ms. Byrne and Mr. Parker are still employed by FHFA-OIG, but they serve in different senior positions.

<sup>12</sup> See, The Hill, *Read: Watchdog Report on Federal Housing Inspector General*, (April 28, 2021), available at <https://thehill.com/homenews/administration/550761-read-watchdog-report-on-federal-housing-inspector-general>.

<sup>13</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 2, ([Apr 14, 2021](#)).

<sup>14</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, pp. 2 – 3, ([Apr 14, 2021](#)).

The CIGIE-IC found, by a preponderance of the evidence, that former Inspector General Wertheimer and Messrs. Parker and DePasquale “abused their authority in the exercise of their official duties,” and that former Inspector General Wertheimer “engaged in conduct that undermines the integrity reasonably expected of an” Inspector General.<sup>15, 16</sup>

Specifically, the CIGIE-IC “substantiated the fourth allegation” that its inquiry sought to address, “raised significant concerns regarding the first,” and claimed that former Inspector General Wertheimer and Messrs. Parker and DePasquale “prevented IC investigators from having access to a complete record of the facts” of the matters accepted for investigation.<sup>17</sup> Indeed, the CIGIE-IC adds that former Inspector General Wertheimer’s and Messrs. Parker’s and DePasquale’s “wrongful withholding of evidence prevented the IC from having the necessary information to make findings on the remaining allegations of misconduct.”<sup>18</sup>

More specifically, the CIGIE-IC concluded that former Inspector General Wertheimer:

... showed a disdain and resistance towards Congressional and IC oversight by fostering a culture of witness intimidation through a pattern of staff abuse and fear of retaliation. Furthermore, she wrongfully refused to cooperate with the IC’s investigation by denying IC investigators full access to FHFA OIG personnel and documents.<sup>19, 20</sup>

Moreover, the CIGIE-IC caught former Inspector General Wertheimer in an effort to evade the truth during her interview. The CIGIE-IC reports that when she was first asked whether she had disparagingly referred to two FHFA-OIG executives who had cooperated with requests from Congressional investigators as “Boris and Natasha”—the

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<sup>15</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, pp. 1 – 2, ([Apr 14, 2021](#)).

<sup>16</sup> Section 3(a) of the Inspector General Act of 1978 states that there shall be at the head of each Office of Inspector General an Inspector General “who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation;” and who shall be selected for appointment “solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.” 5 U.S.C. App. § 3(a) (emphasis added). Regarding the first of the two criteria governing the selection of Inspectors General, the first essential meaning of “integrity” is “the quality of being honest and fair.” See, <https://www.merriam-webster.com/dictionary/integrity>.

<sup>17</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 3, ([Apr 14, 2021](#)).

<sup>18</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 25, ([Apr 14, 2021](#)).

<sup>19</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, pp. 3 – 4, ([Apr 14, 2021](#)).

<sup>20</sup> Although the Chairman of the CIGIE-IC’s April 14<sup>th</sup> letter to the President notes that the CIGIE-IC began to receive complaints and allegations about former Inspector General Wertheimer and FHFA-OIG leadership in 2017, the letter discusses witness intimidation and a pattern of staff abuse dating back to October of 2015. See, Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 5, ([Apr 14, 2021](#)).

names of cartoon characters—she initially denied that she had.<sup>21</sup> Under further questioning she conceded that she “may” have done so.<sup>22</sup> And under further questioning she acknowledged that “she was sure she had done so.”<sup>23</sup>

With respect to Messrs. Parker and DePasquale, the CIGIE-IC specifically found that they:

. . . were fully complicit in IG Wertheimer’s refusal to cooperate, by repeatedly and improperly denying the IC access to documents and a key witness, who was CC DePasquale himself. In fact, CC DePasquale, a government employee simply refused to be interviewed by IC investigators.<sup>24</sup>

In addition to his refusal to appear formally for an interview and confront issues of potential privilege and relevance on a question-by-question basis as is expected of federal employees, Chief Counsel DePasquale and Office of Legal Counsel staff under his supervision improperly refused to provide the CIGIE-IC investigators information that they claimed to be “not directly relevant to the allegations under investigation’ or ‘unnecessary to the IC to complete a thorough investigation.’”<sup>25</sup>

Moreover, they limited the CIGIE-IC investigators’ access to some records to an *in camera* review, during which three attorneys under Chief Counsel DePasquale’s supervision monitored the investigators and prohibited them from making copies of and taking notes concerning relevant materials.<sup>26</sup>

For his part, former Acting Deputy Inspector General for Investigations Parker denied the CIGIE-IC investigators access to interview Chief Counsel DePasquale on the grounds of privilege (*i.e.*, alleging that former Inspector General Wertheimer’s specious attorney-client relationship with Chief Counsel DePasquale) and the absence of necessity.<sup>27</sup>

The CIGIE-IC recommended that former Inspector General Wertheimer’s misconduct warranted “substantial disciplinary action, up to and including removal.”<sup>28</sup>

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<sup>21</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, pp. 6 and 28, ([Apr 14, 2021](#)).

<sup>22</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, pp. 6 and 28, ([Apr 14, 2021](#)).

<sup>23</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, pp. 6 and 28, ([Apr 14, 2021](#)).

<sup>24</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 5, ([Apr 14, 2021](#)).

<sup>25</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 15, ([Apr 14, 2021](#)).

<sup>26</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 15, ([Apr 14, 2021](#)).

<sup>27</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 16, ([Apr 14, 2021](#)).

<sup>28</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 29, ([Apr 14, 2021](#)).

Similarly, it recommended that Messrs. Parker and DePasquale “each be subject to appropriate disciplinary action.”<sup>29</sup> However, more than two months passed after the CIGIE-IC Chairman’s correspondence to the President and no visible action had been initiated against former Inspector General Wertheimer or Messrs. Parker and DePasquale; consequently, several public interest groups and a bipartisan group of Senators became increasingly emphatic in their encouragement that the White House act on the findings and recommendations in the CIGIE-IC Chairman’s April 14, 2021, letter to President Biden.<sup>30</sup>

Prior to any public action by the White House, however, former Inspector General Wertheimer announced her resignation (effective July 30, 2021) on June 29, 2021.<sup>31</sup> As of the date of this FOIA appeal, FHFA-OIG’s website shows that Mr. Parker serves as the Deputy Inspector General for Compliance and Mr. DePasquale continues to serve as Chief Counsel.<sup>32</sup>

Messrs. Parker’s and DePasquale’s continued presence in FHFA-OIG leadership roles stokes among FHFA-OIG staff fear of further retaliation and abuse, resentment of their apparent invulnerability to accountability, and expectation that their pattern of obstructing transparency and oversight will persist. One FHFA-OIG staffer recently advised Empower Oversight:

I work at FHFA OIG. If you look at the org chart on our website you will see that Depasquale is still the Chief Counsel and Rich Parker is still the head of Compliance. We were shocked that Acting IG Fong (whom we have great respect for by reputation and experience) left them in their former roles rather than immediately side lining them pending disciplinary action. So a fugitive from Cigie for not testifying remains the chief legal officer of the OIG. As such, he oversees FOIA requests including yours - which is an amazing conflict of interest.<sup>33</sup>

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<sup>29</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 29, ([Apr 14, 2021](#)).

<sup>30</sup> See, e.g., <https://thehill.com/homenews/administration/560560-biden-under-increasing-pressure-to-fire-housing-inspector-general>; <https://www.grassley.senate.gov/news/news-releases/grassley-hassan-call-on-biden-to-appoint-qualified-and-untainted-acting-fhfa-inspector-general>; <https://thehill.com/homenews/administration/562094-advocacy-groups-press-biden-to-name-new-inspector-general-at-housing>; <https://www.govexec.com/oversight/2021/07/agriculture-ig-named-acting-watchdog-federal-housing-finance-agency/184195/>; and <https://thehill.com/opinion/white-house/560704-its-time-for-biden-to-remove-an-inspector-general-the-right-way>.

<sup>31</sup> See, e.g., <https://www.washingtonpost.com/us-policy/2021/06/30/fhfa-inspector-general-resigns-laura-wertheimer/>; <https://www.govexec.com/oversight/2021/06/embattled-housing-finance-agency-ig-steps-down/176819/>.

<sup>32</sup> FHFA-OIG, *Organization Chart*, available at <https://www.fhfaoig.gov/about/Organization>.

<sup>33</sup> The FHFA-OIG staffer may have been prescient. See, *ftn. 56* below and the accompanying text, which recounts a curious and sudden reversal of cooperation on a FOIA request by an FHFA-OIG attorney under Chief Counsel DePasquale’s command.



## Investigative Delays Enabled the Protracted Abuse of and Retaliation Against Witnesses

The CIGIE-IC Chairman's April 14, 2021, letter to President Biden plainly shows that the CIGIE-IC's investigation of former Inspector General Wertheimer's abuses of authority was not the first such investigation. The letter discusses prior investigations: one by two Senate committees and another by the Office of Special Counsel ("OSC").<sup>34</sup>

According to the April 14<sup>th</sup> letter, in October of 2015 the then Chairmen of the Senate Committees on the Judiciary and Homeland Security and Government Affairs received multiple complaints about FHFA-OIG and requested information concerning FHFA-OIG personnel reductions, output, and hiring practices.<sup>35</sup> The Senators also requested that FHFA-OIG make five specifically named executives available for interview.<sup>36</sup>

Chief Counsel DePasquale—with the assistance of outside counsel—gathered the five executives together and aggressively discouraged them from cooperating with the Senators' interview request.<sup>37</sup>

Regarding the executives who failed to yield to Chief Counsel DePasquale's intimidation, the CIGIE-IC found evidence that former Inspector General Wertheimer was "not happy" with them, openly disparaged them, and re-assigned them to Chief Counsel DePasquale to "punish" them and insulate herself from them.<sup>38</sup> The CIGIE-IC Chairman devotes more than three pages (about 10%) of his letter to the President to descriptions of former Inspector General Wertheimer's pervasive retaliation against two of the executives and her comical lack of candor regarding such retaliation when confronted with evidence of it by the CIGIE-IC's investigators.<sup>39</sup>

Moreover, the CIGIE-IC noted that former Inspector General Wertheimer's retaliation against the two executives had a chilling effect on the willingness of other FHFA-OIG employees to cooperate with oversight inquiries,<sup>40</sup> and concluded that humiliating, demeaning, and embarrassing staff:

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<sup>34</sup> See, Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, pp. 5 and 26, ([Apr 14, 2021](#)).

<sup>35</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 5, ([Apr 14, 2021](#)).

<sup>36</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 5, ([Apr 14, 2021](#)).

<sup>37</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 5 fn. 18, ([Apr 14, 2021](#)).

<sup>38</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 5, ([Apr 14, 2021](#)).

<sup>39</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, pp. 5 – 8, and 28, ([Apr 14, 2021](#)).

<sup>40</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 9, ([Apr 14, 2021](#)).



. . . is inappropriate on its face and is exacerbated by IG Wertheimer's employment of these techniques against actual or potential witnesses or whistleblowers – the very people IGs are supposed to protect. Such behavior suggests a hostility to oversight and is widely known to be unacceptable in the IG community and beneath the standard of integrity expected of an IG.<sup>41, 42</sup>

The CIGIE-IC Chairman's letter also references an intervening OSC investigation of a 2015 change of auditor performance standards that caused the majority of FHFA-OIG auditors to resign *en masse*.<sup>43</sup> Like the two Senators, the OSC sought the testimony of one of the two executives whom former Inspector General Wertheimer had previously retaliated against; and, in defiance of her continued retaliation, he complied with OSC's request.

OSC determined that although the announcement of a performance standards change amounted to a threat of a personnel action, threats do not violate 5 U.S.C. § 2302(b)(12).<sup>44</sup> OSC, nonetheless, referred its findings to the CIGIE-IC, and suggested that "the problematic conduct might be wrongdoing under the CIGIE-IC's broader standard."<sup>45</sup> OSC's referral comprises the first allegation in the CIGIE-IC's investigation of the aforementioned FHFA-OIG leaders, but the CIGIE-IC Chairman reported that lack of cooperation by former Inspector General Wertheimer and FHFA-OIG prevented the CIGIE-IC from developing the necessary facts to make a final determination on the issue.<sup>46</sup>

Throughout the more than five-year pendency of the three investigations former Inspector General Wertheimer and her leadership team were enabled to retaliate

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<sup>41</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 11, ([Apr 14, 2021](#)).

<sup>42</sup> Sections 3(d) and 7(b) of the Inspector General Act of 1978, as amended, expressly elevate the importance and protection of whistleblowers within Offices of Inspector General. Section 3(d) requires each Inspector General to designate a Whistleblower Protection Coordinator to, among other things, educate agency employees about prohibitions against retaliation for protected disclosures, and assist the Inspector General in promoting the timely and appropriate handling and consideration of protected disclosures and allegations of reprisal. 5 U.S.C. App. § 3(d)(1)(C). Whereas, Section 7(b) generally prohibits Inspectors General from disclosing the identity of agency employees who submit complaints or provide information to the Office of Inspector General. 5 U.S.C. App. § 7(b).

<sup>43</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, pp. 25 – 26, ([Apr 14, 2021](#)).

<sup>44</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, pp. 25 – 27, ([Apr 14, 2021](#)). FHFA-OIG orchestrated the performance standard change three-quarters of the way through the Fiscal Year 2015 performance period. The revised standard provided that auditors would receive minimally successful ratings unless they published a report during the performance period. However, former Inspector General Wertheimer had complete control over which reports got published and when. Accordingly, the revised standard served as a threat used to encourage auditors to leave the FHFA-OIG.

<sup>45</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 27, ([Apr 14, 2021](#)).

<sup>46</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 27, ([Apr 14, 2021](#)).

persistently against staff who cooperated with the Senate, OSC, and CIGIE-IC investigations. In other words, some FHFA-OIG staff, such as two of the five executives that the Senate specifically requested for interview in 2015 (one of whom was also requested for interview by OSC and the CIGIE-IC), were subjected to more than five years of disparagement, embarrassment, and humiliation at the hands of former Inspector General Wertheimer and her inner circle.

And, as the CIGIE-IC found, the pervasive retaliation against such executives served as a bold and effective deterrent against other FHFA-OIG staff cooperating with legitimate oversight efforts directed at former Inspector General Wertheimer,<sup>47</sup> and as an implicit directive to ostracize staff who had cooperated. It is not reasonable to expect whistleblowers to endure years of retaliation or to believe that anyone would become a whistleblower in an environment where such circumstances are tolerated. Hence, if the Inspector General Community is to have any credibility that it will protect would-be whistleblowers within its own ranks, then the CIGIE-IC must itself demonstrate transparency and accountability.

Further, if the public is not reassured that the CIGIE-IC will efficiently, thoroughly, and timely investigate and report on witness intimidation and retaliation by Inspectors General and senior officials within the Inspector General Community, then the chilling effect on whistleblowing will be devastating.

### **Empower Oversight's FOIA Requests**

On June 16, 2021, Empower Oversight sent two FOIA requests to CIGIE.

Empower Oversight's first FOIA request sought "an unredacted version of the [the CIGIE-IC Chairman's April 14, 2021, letter to President Biden], and the five enclosures to that letter." (See, Exhibit 1).

Its second request sought:

1. Emails sent by (a) Laura Wertheimer, (b) Leonard DePasquale, or (c) Richard Parker; to (d) the CIGIE Chair at the relevant time (Michael Horowitz or Allison Lerner); (e) the Integrity Committee Chair at the relevant time (Scott Dahl or Kevin Winters); or (f) FDIC Inspector General Jay Lerner. The time period of the requested records is January 1, 2017, through the present.
2. Emails sent to (a) Laura Wertheimer, (b) Leonard DePasquale, or (c) Richard Parker; from (d) the CIGIE Chair at the relevant time (Michael Horowitz or

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<sup>47</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 9, ([Apr 14, 2021](#)).

Allison Lerner); (e) the Integrity Committee Chair at the relevant time (Scott Dahl or Kevin Winters); or (f) FDIC Inspector General Jay Lerner. The time period of the requested records is January 1, 2017, through the present.

3. Emails sent to or from a house.gov or senate.gov domain to or from any official (d), (e), or (f) in item 1 of this request that refers to any of the FHFA employees (a), (b), or (c) named in item 1 of this request, above, from January 1, 2017, to the present. (See, Exhibit 2).

In support of its FOIA requests, Empower Oversight explained that:

The public has an interest in understanding why the CIGIE-IC took so long to elevate this matter to the White House with a recommendation to consider imposing appropriate discipline. It is unclear from the public record whether the CIGIE-IC had previously made similar recommendations during President Trump's tenure in office, and if not, why it failed to do so. (See, Exhibits 1 and 2).

Empower Oversight intends to analyze the requested information in furtherance of two purposes:

1. To understand whether the CIGIE-IC investigation of former Inspector General Wertheimer, former Associate Inspector General Byrne, and Messrs. Parker and DePasquale was delayed solely by the actions of the investigative targets themselves, or whether there were other intentional or unintentional causes of the delay; and
2. To encourage Congress to consider legislative remedies to:
  - a. Protect whistleblowers from continued retaliation during the pendency of investigations stemming from their complaints or with which they cooperate; and
  - b. Overcome lack of cooperation or obstruction of investigations of wrongdoing by government officials.<sup>48</sup>

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<sup>48</sup> Gerald Connolly, Chairman of the House Government Operations Subcommittee, Committee on Oversight and Reform, described former Inspector General Wertheimer as "the poster child for why the House will pass" the Integrity Committee Reform Act of 2021, H.R. 2681. See, Press Release: *Connolly Statement on IG Wertheimer's Planned Resignation*, (June 29, 2021), available at <https://connolly.house.gov/news/documentsingle.aspx?DocumentID=4330>. The Integrity Committee Reform Act of 2021 would amend the Section 11 of the Inspector General Act of 1978 to require the CIGIE-IC to include additional information in its reports to Congress and submit semiannual reports to Congress that include, among other things, descriptions of any attempt to prevent or hinder an CIGIE-IC

CIGIE's FOIA Public Liaison acknowledged Empower Oversight's two FOIA requests on June 22, 2021. She assigned FOIA case number 6330-2021-45 to Empower Oversight's first FOIA request (*i.e.*, its request for an unredacted copy of the CIGIE-IC Chairman's April 14, 2021 letter to President Biden) (*see*, Exhibit 3) and assigned FOIA case number 6330-2021-46 to its second FOIA request (*i.e.*, its request for email communications among CIGIE leadership, the targets of the CIGIE-IC investigation, and Congress) (*see*, Exhibit 4).

Additionally, with respect to Empower Oversight's first FOIA request, CIGIE FOIA case number 6330-2021-45, CIGIE's FOIA Public Liaison advised that it is CIGIE's policy that "in all cases CIGIE will neither confirm nor deny the existence of a non-public law enforcement matter involving any particular individual."<sup>49</sup> (*See*, Exhibit 3). This type of response to a FOIA request is typically referred to as a "*Glomar* response," after the Circuit Court's decision in *Phillippi v. CIA*.<sup>50</sup> She then denied the request under FOIA Exemptions b(6)<sup>51</sup> and b(7)(C).<sup>52</sup> (*See*, Exhibit 3).

Regarding Empower Oversight's second FOIA request, CIGIE FOIA case number 6330-2021-46, CIGIE's FOIA Public Liaison claimed that, because the time frame of the **email** communications sought by Empower Oversight spanned several years, without some added search terms to narrow the scope of CIGIE's search over the requested date range, the request is overly broad, and she requested that Empower Oversight recommend to CIGIE supplemental search terms. (*See*, Exhibit 4). She added that CIGIE only has the capacity to search the emails of CIGIE employees, and that none of the personnel named in the request are CIGIE employees. Hence, CIGIE anticipated that it would need to contact Department of Justice-OIG ("DOJ-OIG"), National Science Foundation-OIG ("NSF-OIG"), Department of Labor-OIG ("DOL-OIG"), and Amtrak-OIG for the email communications of Inspectors General Horowitz, Lerner, Dahl, and Winters, respectively, as well as FHFA-OIG for the email communications of the

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investigation or any concerns about the integrity or operations of an Office of Inspector General. Empower Oversight is encouraged by the supplemental reporting requirements envisioned by the Integrity Committee Reform Act of 2021, but it also believes that close analysis of the unredacted CIGIE-IC Chairman's April 14, 2021, letter to President Biden with its five enclosures would likely result in legislative proposals to enable the CIGIE-IC or another authority to overcome impediments and unreasonable delays like those encountered by the CIGIE-IC during its investigation of FHFA-OIG leadership.

<sup>49</sup> *See*, DOJ, *FOIA Update: OIP Guidance: Privacy "Glomarization"*, (January 1, 1986), available at <https://www.justice.gov/oip/blog/foia-update-oip-guidance-privacy-glomarization>.

<sup>50</sup> 546 F.2d 1009 (D.C. Cir. 1976).

<sup>51</sup> Section b(6) of the FOIA exempts from production "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6) (emphasis added).

<sup>52</sup> Section b(7)(C) of the FOIA exempts from production: "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy . . ." 5 U.S.C. § 552(b)(7)(C) (emphasis added).

investigative targets. (See, Exhibit 4). Further, regarding email communications “sent to or from a house.gov or senate.gov domain,” she claimed that they “are not subject to FOIA because neither legislative body is a federal agency; FOIA, of course, only applies to federal agency records.” (See, Exhibit 4).

By letter dated July 14, 2021, Empower Oversight objected to CIGIE’s FOIA Public Liaison’s conclusion with respect to CCIGIE FOIA case number 6330-2021-46, to the extent that it concerns email communications sent to or from a house.gov or senate.gov domain, pointing out that it contrasted with explicit DOJ guidance. (See, Exhibit 5). In reply, CIGIE’s FOIA Public Liaison receded from her “bright line” categorical denial” and accordingly agreed that CIGIE will conduct a search for responsive emails and will apply applicable law to determine whether each such email is releasable. (See, Exhibit 6).

By letter dated August 16, 2021, CIGIE’s FOIA Public Liaison, referencing the first and second items CIGIE FOIA case number 6330-2021-46, proposed that “[i]n order to narrow the search so as to prevent it from being overly broad,” CIGIE would ask DOJ-OIG and NSF-OIG to conduct a search for emails to/from Inspectors General Horowitz and Lerner, respectively from/to six FHFA-OIG email addresses, *i.e.*, [laura.wertheimer@fhfaoig.gov](mailto:laura.wertheimer@fhfaoig.gov); [jennifer.byrne@fhfaoig.gov](mailto:jennifer.byrne@fhfaoig.gov); [leonard.depasquale@fhfaoig.gov](mailto:leonard.depasquale@fhfaoig.gov); [richard.parker@fhfaoig.gov](mailto:richard.parker@fhfaoig.gov); [alison.healey@fhfaoig.gov](mailto:alison.healey@fhfaoig.gov); [stacey.nahrwold@fhfaoig.gov](mailto:stacey.nahrwold@fhfaoig.gov); and [brian.baker@fhfaoig.gov](mailto:brian.baker@fhfaoig.gov). (See, Exhibit 6). Her proposal made no provision for searches of email communications maintained by CIGIE, FHFA-OIG, Amtrak-OIG, or DOL-OIG. CIGIE FOIA case number 6330-2021-46 remains pending.

In the meantime, on August 12, 2021 Empower Oversight submitted FOIA requests to FHFA-OIG, DOJ-OIG, NSF-OIG, DOL-OIG, Amtrak-OIG, and FDIC-OIG, in response to CIGIE’s FOIA Public Liaison’s June 22<sup>nd</sup> communication, which indicated that documents requested by Empower Oversight largely were not in CIGIE’s possession.<sup>53</sup> These requests sought:

1. Communications relating to the CIGIE-IC investigation sent by (a) Laura Wertheimer, (b) Leonard DePasquale, (c) Richard Parker, (d) Jennifer Byrne, (e) Brian Baker, (f) Stacey Nahrwold, or (g) Alison Healey to (h) the Council of the Inspectors General on Integrity and Efficiency (“CIGIE”) Chair at the relevant time (*i.e.*, Michael Horowitz or Allison Lerner), (i) the CIGIE-IC Chair at the

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<sup>53</sup> See, Empower Oversight, *Empower Oversight Seeks Answers on Multi-year Delay of FHFA Inspector General Report*, (August 13, 2021) available at <https://empowr.us/empower-oversight-seeks-answers-on-multi-year-delay-of-fhfa-inspector-general-report/> <https://empowr.us/empower-oversight-seeks-answers-on-multi-year-delay-of-fhfa-inspector-general-report/> (the referenced FOIA requests are listed and linked at the foot of the press release).

relevant time (i.e., Scott Dahl or Kevin Winters), (j) Federal Deposit Insurance Corporation (“FDIC”) Inspector General Jay Lerner, or (k) any FDIC Office of Inspector General personnel assigned to assist the CIGIE-IC investigation.

2. Communications relating to the CIGIE-IC investigation sent to (a) Laura Wertheimer, (b) Leonard DePasquale, (c) Richard Parker, (d) Jennifer Byrne, (e) Brian Baker, (f) Stacey Nahrwold, or (g) Alison Healey from (h) the CIGIE Chair at the relevant time (i.e., Michael Horowitz or Allison Lerner), (i) the CIGIE-IC Chair at the relevant time (i.e., Scott Dahl or Kevin Winters), (j) FDIC Inspector General Jay Lerner, or (k) any FDIC Office of Inspector General personnel assigned to assist the CIGIE-IC investigation.
3. Communications sent to or from a house.gov or senate.gov domain to or from any official described in subsections (h), (i), or (j) of item 1 of this request, to the extent that such communication refers to any of the FHFA-OIG employees named in subsections (a), (b), or (c) of item 1 of this request, above.<sup>54, 55</sup>

FHFA-OIG acknowledged receipt of Empower Oversight’s two FOIA requests on August 13, 2021. In her acknowledgement letters, FHFA-OIG’s FOIA Officer designated the FOIA requests as 2021-FOIA-00016 (Horowitz/Wertheimer communications request) and 2021-FOIA-00017 (wider communications request); placed the requests on FHFA-OIG’s “Standard Track,” which pertains to “requests that are routine or require little or no search time, review, or analysis of records;” and granted Empower Oversight’s request for a fee waiver. (See, Exhibits 7 and 8). In contrast to FHFA-OIG’s FOIA Officer’s prompt cooperation, however, two weeks later, Gregg M. Schwind, an attorney under Chief Counsel DePasquale’s supervision, purportedly on behalf of FHFA-OIG’s FOIA Officer, advised “Empower Oversight requests records related to matters under the purview of the Council of the Inspectors General on Integrity and Efficiency

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<sup>54</sup> See, Empower Oversight, *Empower Oversight Seeks Answers on Multi-year Delay of FHFA Inspector General Report*, (August 13, 2021) available at <https://empowr.us/empower-oversight-seeks-answers-on-multi-year-delay-of-fhfa-inspector-general-report/> <https://empowr.us/empower-oversight-seeks-answers-on-multi-year-delay-of-fhfa-inspector-general-report/> (the referenced FOIA requests are listed and linked at the foot of the press release).

<sup>55</sup> Empower Oversight sent two FOIA requests to DOJ-OIG and FHFA-OIG: one as set forth above, and another seeking:

1. Communications relating to the CIGIE-IC investigation sent by Laura Wertheimer to the Council of the Inspectors General on Integrity and Efficiency (“CIGIE”) Chair, Michael Horowitz.
2. Communications relating to the CIGIE-IC investigation sent to Laura Wertheimer from CIGIE Chair Michael Horowitz.

See, Empower Oversight, *Empower Oversight Seeks Answers on Multi-year Delay of FHFA Inspector General Report*, (August 13, 2021) available at <https://empowr.us/empower-oversight-seeks-answers-on-multi-year-delay-of-fhfa-inspector-general-report/> <https://empowr.us/empower-oversight-seeks-answers-on-multi-year-delay-of-fhfa-inspector-general-report/> (the referenced FOIA requests are listed and linked at the foot of the press release; compare, DOJ Letter Delay FOIA 1 and FHFA Letter Delay 1 with DOJ Letter Delay FOIA 2 and FHFA Letter Delay 2).



(CIGIE). For this reason, FHFA-OIG has referred the requests to CIGIE, whose FOIA office will respond to you directly.” (See, Exhibit 9).<sup>56</sup>

The next business day, *i.e.*, August 30, 2021, CIGIE’s Senior Assistant General Counsel, Faith R. Coutier,<sup>57</sup> advised Empower Oversight that FHFA-OIG had referred to CIGIE FOIA requests 2021-FOIA-00016 and 2021-FOIA-00017; and CIGIE had consolidated the requests into a single FOIA request: CIGIE FOIA case number 6330-2021-71. (See, Exhibit 11). Ms. Coutier added that, as she had previously advised Empower Oversight in “response to FOIA requests 6330-2021-65, 6330-2021-66, 6330-2021-67, and 6330-2021-69,”<sup>58</sup> it is CIGIE’s policy that “in all cases CIGIE will neither confirm nor deny the existence of a non-public law enforcement matter involving any particular individual.” (See, Exhibit 11). She then denied the request under FOIA Exemptions b(6) and b(7)(C). (See, Exhibit 11).<sup>59</sup>

In contrast to Ms. Coutier’s hasty and summary denials of CIGIE FOIA case numbers 6330-2021-65, 6330-2021-66, 6330-2021-67, 6330-2021-69, and 6330-2021-71, to date CIGIE’s FOIA Public Liaison continues to process CIGIE’s FOIA case number 6330-2021-46, which is the progenitor of, and functionally equivalent to, the requests that were summarily denied by Ms. Coutier.

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<sup>56</sup> Mr. Schwind’s action “(for)” FHFA-OIG’s FOIA Officer is curious because the FOIA Officer was available on the date of Mr. Schwind’s letter notifying Empower Oversight of the referral to CIGIE; FHFA-OIG’s FOIA Officer actually forwarded a .pdf of Mr. Schwind’s letter on the date of the letter. (See, Exhibit 10).

<sup>57</sup> Ms. Coutier is not CIGIE’s FOIA Public Liaison. Empower Oversight is advised that she serves as legal counsel to the CIGIE-IC.

<sup>58</sup> CIGIE FOIA case numbers 6330-2021-65, 6330-2021-66, 6330-2021-67, and 6330-2021-69, which collectively are attached as Exhibit 12, represent referrals from DOJ-OIG, NSF-OIG, DOL-OIG, and Amtrak-OIG, respectively, of Empower Oversight’s August 12<sup>th</sup> FOIA requests. With respect to CIGIE FOIA case number 6330-2021-67, Ms. Coutier advised Empower Oversight that CIGIE had received a referral of its FOIA request, which CIGIE was denying pursuant to FOIA exemptions b(6) and b(7)(C), on the same date that DOL-OIG acknowledged receipt of, and referred to CIGIE, Empower Oversight’s FOIA request. In the case of 6330-2021-69, Ms. Coutier advised Empower Oversight that CIGIE had received a referral of its FOIA request, which CIGIE was denying pursuant to FOIA exemptions b(6) and b(7)(C), on the day after Amtrak-OIG acknowledged receipt of and referred Empower Oversight’s FOIA request. In the case of 6330-2021-65 and 6330-2021-66, Ms. Coutier advised Empower Oversight that CIGIE had received a referral of its FOIA requests, which CIGIE was denying pursuant to FOIA exemptions b(6) and b(7)(C) within 48 hours of DOJ-OIG and NSF-OIG acknowledging receipt of and referring Empower Oversight’s FOIA requests to CIGIE.

<sup>59</sup> Ms. Coutier also noted that Empower Oversight’s FOIA request “constitutes a third-party request for law enforcement records covered by a system of records notice (SORN), involving the Privacy Act.” (See, Exhibit 11). That very well may be, but it is well established that the Privacy Act does not prohibit disclosure that the FOIA requires. See News-Press v. DHS, 489 F.3d 1173, 1189 (11th Cir. 2007) (“The net effect of the interaction between the two statutes is that where the FOIA requires disclosure, the Privacy Act will not stand in its way, but where the FOIA would permit withholding under an exemption, the Privacy Act makes such withholding mandatory upon the agency”); accord, Greentree v. U.S. Customs Serv., 674 F.2d 74, 79 (D.C. Cir. 1982).



## **CIGIE Denied Empower Oversight's FOIA Requests in Error**

CIGIE's *Glomar* responses and categorical denials pursuant to FOIA Exemptions b(6) and b(7)(C) constitute serious errors that, if uncorrected, will seriously undermine transparency and oversight of the Inspector General Community. In brief:

- The CIGIE-IC's investigation of allegations of misconduct by former Inspector General Wertheimer, former Associate Inspector General Byrne, and Messrs. Parker and DePasquale does not qualify as a "law enforcement" investigation protected by Exemption b(7)(C);
- Had the CIGIE-IC's investigation qualified as a "law enforcement" investigation protected by Exemption b(7)(C), then:
  - a. *Glomar* responses would still be impermissible because there is a public interest in the reasons for the delay of the CIGIE-IC's investigation and the CIGIE-IC Chairman's April 14, 2021, letter to President Biden is in the public domain; and
  - b. Categorical denials pursuant to Exemption b(7)(C) are not available under these circumstances;
- Categorical denials typically are not available under Exemption b(6); and
- CIGIE failed to identify, evaluate, and balance the privacy and public interests on a document-by-document basis—a necessary step in invoking Exemptions b(6) and b(7)(C) under these circumstances.

### Exemption b(7)(C) "Law Enforcement" Investigations

When records sought under the FOIA relate to an inquiry concerning the activities of one or more federal employees, the key to the applicability of a *Glomar* response or Exemption b(7)(C) denial is determining whether the records truly qualify as protected "law enforcement records."<sup>60</sup> This determination requires:

distinguishing between two types of files that relate to federal employees: (1) government surveillance or oversight of the performance of duties of its employees; and (2) investigations which focus directly on specifically

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<sup>60</sup> See, e.g., Bartko, 898 F.3d at 64 – 66, 68; Jefferson v. DOJ, 284 F.2d 172, 176 – 181 (D.C. Cir. 2002); Rural Housing Alliance v. U.S.D.A., 498 F.2d 73, 79 – 82 (D.C. Cir. 1974).

alleged illegal acts, illegal acts of particular identified officials, acts which could, if proved result in civil or criminal sanctions.<sup>61</sup>

To qualify as law enforcement records, the documents sought must arise out of “investigations which focus directly on specifically alleged illegal acts . . . which could, if proved result in civil or criminal sanctions.”<sup>62</sup> Conversely, documents that reflect only “government surveillance or oversight of the performance of duties of its employees’ do *not* qualify,” as law enforcement records.<sup>63</sup> Further, an agency must anticipate more than an ephemeral possibility of an enforcement action when it undertakes oversight to transform such oversight into a law enforcement investigation.<sup>64</sup>

The Circuit Court explained the distinction as follows:

To put the question [*i.e.*, was an investigation for law enforcement purposes] another way . . . is an agency’s internal monitoring to ensure that its employees are acting in accordance with statutory mandate and the agency’s own regulations an investigation for “law enforcement purposes” within the meaning of exemption 7?

On its face, exemption 7’s language appears broad enough to include all such internal audits. If this broad interpretation is accepted, however, we immediately encounter the problem that most information sought by the Government about its own operations is for the purpose ultimately of determining whether such operations comport with applicable law, and thus is “for law enforcement purposes.” Any internal auditing or monitoring conceivably could result in disciplinary action, in dismissal, or indeed criminal charges against the employees. But if this broad interpretation is correct, then the exemption swallows up the Act; exemption 7 defeats one central purpose of the Act to provide access to information concerning the Government’s own activities.

We think “investigatory files compiled for law enforcement purposes” must be given the same result, or a meaning to achieve the same result, whether the subject of the files is a government employee or an ordinary citizen. . . .

The purpose of the “investigatory files” is thus the critical factor. Was the purpose of the disputed report to determine if grounds existed for bringing [an enforcement action against a specific government employee]? If the

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<sup>61</sup> Rural Housing Alliance, 498 F.2d at 81.

<sup>62</sup> Bartko, 898 F.3d at 64 (*quoting*, Rural Housing Alliance, 498 F.2d at 81).

<sup>63</sup> Bartko, 898 F.3d at 64 (*quoting*, Rural Housing Alliance, 498 F.2d at 81) (emphasis original).

<sup>64</sup> Bartko, 898 F.3d at 68 (*quoting*, Rural Housing Alliance, 498 F.2d at 82 n. 48).

purpose of the investigation was to consider an action equivalent to those which the Government brings against private parties, thus demonstrating that the “law enforcement purpose” was not customary surveillance of the performance of duties by government employees, but an inquiry as to an identifiable possible violation of law, then such inquiry would have been “for law enforcement purposes” whether the individual were a private citizen or a government employee.<sup>65</sup>

Finally, the agency making the *Glomar* response, or asserting Exemption b(7)(C), bears the burden of establishing that the records in controversy qualify as law enforcement records.<sup>66</sup> CIGIE has not, and cannot, carry its burden herein. It is inconceivable that the CIGIE-IC anticipated that there was a reasonable possibility that criminal or civil enforcement proceedings would result when it initiated its investigation, and the allegations that it investigated (or is authorized to investigate, for that matter) have little or no practical application against private citizens.

In defense of their *Glomar* responses and denials pursuant to Exemption b(7)(C), CIGIE’s FOIA Public Liaison and Ms. Coutier make nothing more than the bare-bones, self-serving declarations that Empower Oversight had requested law enforcement records, that “in all cases CIGIE will neither confirm nor deny the existence of a non-public law enforcement matter involving any particular individual;” that CIGIE has not released the requested records publicly; and that, therefor, Empower Oversight’s “FOIA request is denied under FOIA exemptions (b)(6) and (b)(7)(C).” Exhibits 3, 11, and 12.

Section 11 of the Inspector General Act of 1978, as amended, established CIGIE and—at Subsection (d)(1)—the CIGIE-IC with the authority to “receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General” and designated high-level staff that report directly to such Inspectors General.<sup>67</sup>

Section 11(d)(5)(A) of the Inspector Act of 1978, as amended, requires representatives of the Department of Justice, the Office of Special Counsel, and the CIGIE-IC—collectively referred to as the “Allegation Review Group”<sup>68</sup>—to review applicable allegations of wrongdoing within seven days of the CIGIE-IC’s receipt thereof, and to refer them to either the Department of Justice, the Office of Special Counsel, or the Chairman of the CIGIE-IC for consideration of internal review.<sup>69</sup> Regarding such referrals to the Department of Justice and the Office of Special Counsel,

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<sup>65</sup> *Rural Housing Alliance*, 498 F.2d at 81 – 82.

<sup>66</sup> *Jefferson*, 284 F.2d at 178.

<sup>67</sup> See, 5 U.S.C. App. § 11; see also, CIGIE, *Integrity Committee Policies and Procedures*, § 4, (2018).

<sup>68</sup> See, CIGIE, *Integrity Committee Policies and Procedures*, §§ 3(F) and 6(B), (2018).

<sup>69</sup> See, 5 U.S.C. App. § 11(d)(5)(A); see also, CIGIE, *Integrity Committee Policies and Procedures*, § 6(B), (2018).

the CIGIE-IC's procedures state that the Department of Justice representative will identify potential criminal offenses, which will be referred to the Public Integrity Section of the Department of Justice, and the Office of Special Counsel representative will identify any remaining allegations within the jurisdiction of the Office of Special Counsel, which will be referred to it.<sup>70</sup> Pertinent to this matter, the Office of Special Counsel has investigative and prosecutorial jurisdiction to protect federal employees and applicants for federal employment from prohibited personnel practices set forth at 5 U.S.C. § 2302(b), especially reprisal for whistleblowing.<sup>71</sup>

Any allegations not referred to the Department of Justice or the Office of Special Counsel may be referred to the Chairman of the CIGIE-IC for consideration of an internal investigation.<sup>72</sup> According to the CIGIE-IC's policies, it may investigate allegations of wrongdoing against Inspectors General and their high-level direct reports that involve:

- Abuse of authority in the exercise of official duties or while acting under color of office;
- Substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or
- Conduct that undermines the independence or integrity reasonably expected of such officials.<sup>73</sup>

However, as discussed above, the Department of Justice side-tracks allegations of potential criminal offenses to the Public Integrity Section of the Department of Justice, and the Office of Special Counsel assumes jurisdiction over allegations of civil infractions within its authority.

Hence, any matters that remain for the CIGIE-IC to investigate are neither criminal nor civil offenses, but rather administrative reviews. According to the CIGIE-IC Chairman's April 14, 2021, letter to President Biden the allegations that the CIGIE-IC

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<sup>70</sup> See, CIGIE, *Integrity Committee Policies and Procedures*, § 6(B), (2018).

<sup>71</sup> Office of Special Counsel, *The U.S. Office of Special Counsel's Role in Protecting Whistleblowers and Serving as a Safe Channel for Government Employees to Disclose Wrongdoing*, p. 2, (Undated), available at <https://osc.gov/Documents/PPP/OSC's%20Role/OSC%E2%80%99s%20Role%20in%20Protecting%20Whistleblowers%20and%20Serving%20as%20a%20Safe%20Channel%20for%20Government%20Employees%20to%20Disclose%20Wrongdoing.pdf>.

<sup>72</sup> See, CIGIE, *Integrity Committee Policies and Procedures*, § 6(B), (2018).

<sup>73</sup> CIGIE, *Integrity Committee Policies and Procedures*, § 7(A), (2008); see also, Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 1, ([Apr 14, 2021](#)).

accepted for investigation do not relate to criminal violations or civil infractions.<sup>74</sup> Instead, they amount to “gross[] mismanagement,” “coercive personnel practices,” and “a culture of retaliation and abuse,”<sup>75</sup> which are clearly administrative in nature, amounting to employee performance issues.

When the Allegation Review Group refers allegations to the Chairman of the CIGIE-IC for consideration, the CIGIE-IC affords itself discretion to:

- Request additional information;
- Request that the subject of the allegations respond to them in writing; or
- Take one of the following actions:
  - a. Close the matter because the allegations do not satisfy CIGIE-IC’s threshold for investigation (*i.e.*, allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines independence or integrity);
  - b. Close the matter on the grounds that the subject sufficiently refuted the allegations in writing;
  - c. Make findings on the existing record;
  - d. Refer the matter for investigation;
  - e. Refer the matter to another agency for whatever action it deems appropriate; or

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<sup>74</sup> With respect to the first, fourth, and fifth allegations investigated by the CIGIE-IC, its Chairman’s April 14, 2021, letter to President Biden notes that OSC had referred the first allegation to the CIGIE-IC because OSC determined that former Inspector General Wertheimer’s announcement that auditors would receive minimally successful ratings unless they published a report during the Fiscal Year 2015 performance period (when she had complete control over which reports got published and when), threatened a personnel action but threats do not violate 5 U.S.C. § 2302(b)(12). *See*, Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, pp. 25 – 27, ([Apr 14, 2021](#)). OSC, nonetheless, referred its findings to the CIGIE-IC, and suggested that “the problematic conduct might be wrongdoing under the CIGIE-IC’s broader standard.” *See*, Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 27, ([Apr 14, 2021](#)). Further, the Office of Special Counsel’s failure to take control of the fourth and fifth allegations suggests that its representative on the Allegation Review Group was dubious about whether such allegations amounted to civil violations of 5 U.S.C. § 2302(b)(8); otherwise, he/she would have assumed jurisdiction over the allegations for the Office of Special Counsel. *See*, ftns. 70 and 71 and its accompanying text, above.

<sup>75</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 2, ([Apr 14, 2021](#)).

- f. Refer the matter to the CIGIE Chairman for appropriate action (if the allegations do not meet the CIGIE-IC's threshold for review).<sup>76, 77</sup>

During fiscal years 2017 through 2020, CIGIE-IC received 2,631 complaints alleging wrongdoing.<sup>78</sup> Of these 2,631 complaints, less than 1% of them (*i.e.*, 17) were referred to the Chairman of the CIGIE-IC for investigation.<sup>79</sup> Prior to submission to the Allegation Review Group, CIGIE removed from its docket roughly 90% of the complaints on the grounds that they represented duplicate complaints or complaints that it deemed to be characterized by “objectively unreliable information” or to be outside of its jurisdiction.<sup>80</sup>

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<sup>76</sup> CIGIE, *Integrity Committee Policies and Procedures*, § 7(C), (2018).

<sup>77</sup> If the CIGIE-IC decides to investigate a matter, then it may assign the investigation to any Inspector General who is a member of CIGIE. See 5 U.S.C. App. § 11(d)(6)(B).

<sup>78</sup> CIGIE, *Annual Report to the President and Congress, Fiscal Year 2020*, p. 6, (Undated), available at [https://www.ignet.gov/sites/default/files/417329-FY20 Annual Report-President%26Congress-WEB.pdf](https://www.ignet.gov/sites/default/files/417329-FY20%20Annual%20Report-President%26Congress-WEB.pdf) (in Fiscal Year 2020, CIGIE-IC received 1,152 complaints); CIGIE, *Annual Report to the President and Congress, Fiscal Year 2019*, p. 6, (Undated), available at [https://www.ignet.gov/sites/default/files/files/FY19 Annual Report to the President and Congress.pdf](https://www.ignet.gov/sites/default/files/files/FY19%20Annual%20Report%20to%20the%20President%20and%20Congress.pdf) (in Fiscal Year 2019, CIGIE-IC received 1,035 complaints); CIGIE, *Annual Report to the President and Congress, Fiscal Year 2018*, p. 6, (Undated), available at [https://www.ignet.gov/sites/default/files/files/FY18 Annual Report to the President and Congress.pdf](https://www.ignet.gov/sites/default/files/files/FY18%20Annual%20Report%20to%20the%20President%20and%20Congress.pdf) (in Fiscal Year 2018, CIGIE-IC received 385 complaints); CIGIE, *Annual Report to the President and Congress, Fiscal Year 2017*, p. 6, (Undated), available at [https://www.ignet.gov/sites/default/files/files/FY17 Annual Report to the President and Congress.pdf](https://www.ignet.gov/sites/default/files/files/FY17%20Annual%20Report%20to%20the%20President%20and%20Congress.pdf) (in Fiscal Year 2017, CIGIE-IC received 59 complaints).

<sup>79</sup> CIGIE, *Annual Report to the President and Congress, Fiscal Year 2020*, p. 6, (Undated), available at [https://www.ignet.gov/sites/default/files/417329-FY20 Annual Report-President%26Congress-WEB.pdf](https://www.ignet.gov/sites/default/files/417329-FY20%20Annual%20Report-President%26Congress-WEB.pdf) (in Fiscal Year 2020, CIGIE-IC referred 3 complaints to the Chairman of the CIGIE-IC for investigation); CIGIE, *Annual Report to the President and Congress, Fiscal Year 2019*, p. 6, (Undated), available at [https://www.ignet.gov/sites/default/files/files/FY19 Annual Report to the President and Congress.pdf](https://www.ignet.gov/sites/default/files/files/FY19%20Annual%20Report%20to%20the%20President%20and%20Congress.pdf) (in Fiscal Year 2020, CIGIE-IC referred 7 complaints to the Chairman of the CIGIE-IC for investigation); CIGIE, *Annual Report to the President and Congress, Fiscal Year 2018*, p. 6, (Undated), available at [https://www.ignet.gov/sites/default/files/files/FY18 Annual Report to the President and Congress.pdf](https://www.ignet.gov/sites/default/files/files/FY18%20Annual%20Report%20to%20the%20President%20and%20Congress.pdf) (in Fiscal Year 2020, CIGIE-IC referred 5 complaints to the Chairman of the CIGIE-IC for investigation); CIGIE, *Annual Report to the President and Congress, Fiscal Year 2017*, p. 6, (Undated), available at [https://www.ignet.gov/sites/default/files/files/FY17 Annual Report to the President and Congress.pdf](https://www.ignet.gov/sites/default/files/files/FY17%20Annual%20Report%20to%20the%20President%20and%20Congress.pdf) (in Fiscal Year 2020, CIGIE-IC referred 2 complaints to the Chairman of the CIGIE-IC for investigation).

<sup>80</sup> CIGIE-IC, *Annual Report on the Activities of the CIGIE Integrity Committee, Fiscal Year 2020*, pp. 4 – 6, (December 8, 2020), available at <https://www.ignet.gov/sites/default/files/files/FY20ICAnnualReport.pdf> (CIGIE culled out 1,071 complaints prior to submission to the Allegation Review Committee); CIGIE-IC, *Annual Report on the Activities of the CIGIE Integrity Committee, Fiscal Year 2019*, (February 14, 2020), available at <https://www.ignet.gov/sites/default/files/files/FY19-IC-Annual-Report.pdf> (CIGIE culled out 973 complaints prior to submission to the Allegation Review Committee); CIGIE-IC, *Annual Report on the Activities of the CIGIE Integrity Committee, Fiscal Year 2018*, pp. 2 – 3, (January 7, 2019), available at [https://www.ignet.gov/sites/default/files/files/2018\\_IC\\_Annual\\_Report.pdf](https://www.ignet.gov/sites/default/files/files/2018_IC_Annual_Report.pdf) (CIGIE culled out 299 complaints prior to submission to the Allegation Review Committee); CIGIE-IC, *Annual Report on the*

Moreover, regarding the few complaints that the CIGIE-IC accepts for investigation, CIGIE has no authority to take action with respect to any of the CIGIE-IC's investigative findings; rather, it is limited to forwarding reports of its findings and recommendations to the President (or to the employing agency for Inspectors General whose appointments are not subject to the advice and consent of the Senate) for any action deemed appropriate.<sup>81</sup>

The Circuit Court's decision in the Bartko case is instructive here. In Bartko, the Circuit Court reversed a lower court's decision affirming actions by DOJ's Office of Professional Responsibility ("OPR") to make a *Glomar* response to, and denials pursuant to Exemptions b(6) and b(7)(C) of, a FOIA request for records relating to allegations or investigations of misconduct by an Assistant United States Attorney ("AUSA").<sup>82</sup> The FOIA request arose from a criminal prosecution of an Atlanta-based securities broker, in which the Court of Appeals for the Fourth Circuit questioned the discovery practices of the United States Attorney's Office for the Eastern District of North Carolina and made a referral to the OPR as a result.<sup>83</sup>

Regarding OPR's denial of the subject FOIA request under Exemption b(7)(C), the Circuit Court determined that the OPR failed to justify its actions, and characterized the OPR's investigation as "several steps removed from the type of 'adjudicative or enforcement' proceeding or civil sanctions that could warrant Exemption 7(C) protection."<sup>84</sup> The key factors that the Circuit Court pointed to in support of its characterization of the OPR's investigation were that the OPR closed most of the misconduct complaints referred to it without investigating them, and that where it did investigate such complaints – and substantiated allegations of misconduct – it ordinarily referred its findings to another entity for action.<sup>85</sup> The Circuit Court stated:

OPR explained that most misconduct referrals are closed immediately "with no misconduct findings," or on the written record without a "full investigation, which includes requesting and reviewing relevant documents and conducting interviews of witnesses and the subject attorney." Even when a full investigation leads to the conclusion that an attorney has

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*Activities of the CIGIE Integrity Committee, Fiscal Year 2017*, (December 28, 2017), available at <https://www.ignet.gov/sites/default/files/files/2017%20IC%20Annual%20Report.pdf> (CIGIE culled out 20 complaints prior to submission to the Allegation Review Committee).

<sup>81</sup> See, 5 U.S.C. App. § 11(d)(8)(A)(ii).

<sup>82</sup> Bartko, 898 F.3d at 63 – 67.

<sup>83</sup> Bartko, 898 F.3d at 60 – 61.

<sup>84</sup> Bartko, 898 F.3d at 67 – 68.

<sup>85</sup> Bartko, 898 F.3d at 68.



engaged in professional misconduct, “those findings could result in a referral to the attorney’s state bar or disciplinary action by the Department.”

That description of OPR’s review process reveals just how attenuated its “law enforcement” function is. For starters, most matters do not even result in an investigation, making a finding of law-enforcement-triggering misconduct implausible in the vast majority of cases. . . .

In addition, according to OPR’s own explanation, even when misconduct is found, all that usually occurs is a finding of poor judgment or intentional misconduct. Discipline is left to the department head, and perhaps referral to a state bar that would presumably go through its own investigative process (and compile its own records) to determine whether punishment should ensue.<sup>86</sup>

Like OPR, the CIGIE-IC closes the vast majority of the allegations of misconduct that it receives—over 99% of them—without opening an internal investigation.<sup>87</sup> Indeed, it closes roughly 90% of them without even submitting them to the Allegation Review Group for vetting.<sup>88</sup> Further, when the CIGIE-IC investigates, and substantiates, such

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<sup>86</sup> *Bartko*, 898 F.3d at 68 (citations omitted).

<sup>87</sup> CIGIE, *Annual Report to the President and Congress, Fiscal Year 2020*, p. 6, (Undated), available at [https://www.ignet.gov/sites/default/files/417329-FY20 Annual Report-President%26Congress-WEB.pdf](https://www.ignet.gov/sites/default/files/417329-FY20%20Annual%20Report-President%26Congress-WEB.pdf) (in Fiscal Year 2020, CIGIE-IC referred 3 complaints to the Chairman of the CIGIE-IC for investigation); CIGIE, *Annual Report to the President and Congress, Fiscal Year 2019*, p. 6, (Undated), available at [https://www.ignet.gov/sites/default/files/files/FY19 Annual Report to the President and Congress.pdf](https://www.ignet.gov/sites/default/files/files/FY19%20Annual%20Report-to-the-President-and-Congress.pdf) (in Fiscal Year 2020, CIGIE-IC referred 7 complaints to the Chairman of the CIGIE-IC for investigation); CIGIE, *Annual Report to the President and Congress, Fiscal Year 2018*, p. 6, (Undated), available at [https://www.ignet.gov/sites/default/files/files/FY18 Annual Report to the President and Congress.pdf](https://www.ignet.gov/sites/default/files/files/FY18%20Annual%20Report-to-the-President-and-Congress.pdf) (in Fiscal Year 2020, CIGIE-IC referred 5 complaints to the Chairman of the CIGIE-IC for investigation); CIGIE, *Annual Report to the President and Congress, Fiscal Year 2017*, p. 6, (Undated), available at [https://www.ignet.gov/sites/default/files/files/FY17 Annual Report to the President and Congress.pdf](https://www.ignet.gov/sites/default/files/files/FY17%20Annual%20Report-to-the-President-and-Congress.pdf) (in Fiscal Year 2020, CIGIE-IC referred 2 complaints to the Chairman of the CIGIE-IC for investigation).

<sup>88</sup> CIGIE-IC, *Annual Report on the Activities of the CIGIE Integrity Committee, Fiscal Year 2020*, pp. 4 – 6, (December 8, 2020), available at <https://www.ignet.gov/sites/default/files/files/FY20ICAnnualReport.pdf> (CIGIE culled out 1,071 complaints prior to submission to the Allegation Review Committee); CIGIE-IC, *Annual Report on the Activities of the CIGIE Integrity Committee, Fiscal Year 2019*, (February 14, 2020), available at <https://www.ignet.gov/sites/default/files/files/FY19-IC-Annual-Report.pdf> (CIGIE culled out 973 complaints prior to submission to the Allegation Review Committee); CIGIE-IC, *Annual Report on the Activities of the CIGIE Integrity Committee, Fiscal Year 2018*, pp. 2 – 3, (January 7, 2019), available at [https://www.ignet.gov/sites/default/files/files/2018 IC Annual Report.pdf](https://www.ignet.gov/sites/default/files/files/2018%20IC%20Annual%20Report.pdf) (CIGIE culled out 299 complaints prior to submission to the Allegation Review Committee); CIGIE-IC, *Annual Report on the Activities of the CIGIE Integrity Committee, Fiscal Year 2017*, (December 28, 2017), available at <https://www.ignet.gov/sites/default/files/files/2017%20IC%20Annual%20Report.pdf> (CIGIE culled out 20 complaints prior to submission to the Allegation Review Committee).

allegations of misconduct, its authority is limited to forwarding reports of its findings and recommendations to the President or the employing agency for any action that they deem appropriate.<sup>89</sup> Thus, according to the Circuit Court in Bartko, the CIGIE-IC's investigations are several steps removed from the types law enforcement investigations protected by Exemption b(7)(C). To state it another way, in the District of Columbia Circuit, the CIGIE-IC's investigations of misconduct do not qualify as "law enforcement investigations" for purposes of Subsection b(7)(C) of the FOIA, which also is a precondition of a *Glomar* response.<sup>90</sup>

### Glomar

Courts have endorsed *Glomar* responses to FOIA requests seeking records that might reveal whether low-level government employees were investigated for misconduct because even to acknowledge the existence of such records could cause unwarranted invasions of personal privacy.<sup>91</sup> On the other hand, courts have found *Glomar* responses to be inappropriate when there is a substantial FOIA public interest in the requested information that outweighs the privacy interest, or when the existence of the requested information has been officially acknowledged.<sup>92</sup>

CIGIE's policy "in all cases . . . [to] neither confirm nor deny the existence of a non-public law enforcement matter involving any particular individual," (see, Exhibits 3, 11, and 12) (emphasis added)), is faulty because it fails to account for the possibility that the FOIA public interest may outweigh the privacy interests associated with requested records, or that the requested information has been officially acknowledged. Further, in failing to account for the possibility of the exceptions to the allowable application of a *Glomar* response, CIGIE failed to consider whether the FOIA public interest in the unreasonable delay of the investigation of former Inspector General Wertheimer, former Associate Inspector General Byrne, and Messrs. Parker and DePasquale, and the official acknowledgement thereof, precludes CIGIE's *Glomar* responses herein.

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<sup>89</sup> See, 5 U.S.C. App. § 11(d)(8)(A)(ii).

<sup>90</sup> Bartko, 898 F.3d at 64 ("to invoke *Glomar*, OPR had to make a threshold showing that the FOIA request seeks records 'compiled for law enforcement purposes'") (citing, Jefferson, 284 F.2d at 176).

<sup>91</sup> See, e.g., Beck v. DOJ, 997 F.2d 1489 (D.C. Cir. 1993); Lewis v. DOJ, 733 F. Supp. 2d 97, 112 (D.D.C. 2010).

<sup>92</sup> See, e.g., ACLU v. CIA, 710 F.3d 422, 427 (D.C. Cir. 2013); Roth v. DOJ, 642 F.3d 1161, 1176 (D.C. Cir. 2011); Parker v. EOUSA, 852 F. Supp. 2d 1, 10-13 (D.D.C. 2012).

The “public interest” championed by the FOIA is to inform the public about “an agency's performance of its statutory duties.”<sup>93</sup> Such information is “a structural necessity in a real democracy” and “should not be dismissed.”<sup>94</sup>

There is a strong public interest in discerning why it took the CIGIE-IC so long to complete its investigation of former Inspector General Wertheimer, former Associate Inspector General Byrne, and Messrs. Parker and DePasquale. Was the unreasonable delay caused solely by the actions of the targets themselves, or could the CIGIE-IC have conducted and reported its investigation in a more expeditious fashion, which would have protected whistleblowers and other FHFA-OIG staff who braved the efforts of former Inspector General Wertheimer and Messrs. Parker and DePasquale to silence them and thus conceal their own misconduct?

Any diminished privacy interest that the investigative targets may possess in the public revelation of the details of their misconduct<sup>95</sup> does **not** withstand the public interest in gaining an understanding of the reasons that their misconduct was enabled to endure for over five years through a succession of three separate investigations. Analogously, the decision in Parker v. EOUSA recognized that, although an AUSA had a valid privacy interest at stake in DOJ's disclosure of disciplinary documents about her, there was a countervailing public interest in knowing how DOJ handles its investigations of unlicensed attorneys.<sup>96</sup> Similarly, the public has a right to know how the CIGIE-IC handled its investigation.

Regarding the official acknowledgement of the investigation of former Inspector General Wertheimer, former Associate Inspector General Byrne, and Messrs. Parker and DePasquale, and the resulting diminishment of their privacy interest in the details of their misconduct, on April 28, 2021, Senator Chuck Grassley, Ranking Member of the Senate Judiciary Committee, issued a press release advising that he and Senator Ron Johnson had recommended that President Biden remove former Inspector General Wertheimer for her “consistent failures, contempt for congressional oversight and whistleblower retaliation.”<sup>97</sup> In support of the Senators' recommendation, the press

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<sup>93</sup> DOJ v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989).

<sup>94</sup> NARA v. Favish, 541 U.S. 157, 172 (2004).

<sup>95</sup> See, e.g., Bartko, 898 F.3d at 69, citing Reporters Comm., 489 U.S. at 763 n.15, (1989) (“[T]he interests in privacy fade when the information involved already appears on the public record”) and Kimberlin v. DOJ, 139 F.3d 944, 949 (D.C. Cir. 1998) (“[The AUSA's] statement to the press undoubtedly does diminish his interest in privacy: the public already knows who he is, what he was accused of, and that he received a relatively mild sanction”).

<sup>96</sup> Parker, 852 F. Supp. 2d at 10 – 13.

<sup>97</sup> Press Release, Grassley, *Johnson Call for Removal of FHFA Inspector General Following Findings of Misconduct, Reprisal*, (April 28, 2021), available at <https://www.grassley.senate.gov/news/news-releases/grassley-johnson-call-for-removal-of-fhfa-inspector-general-following-findings-of-misconduct-reprisal>.

release mentioned the CIGIE-IC investigation and included a link (i.e., “separate review of CIGIE’s integrity committee”) to the CIGIE-IC Chairman’s April 14, 2021, letter to President Biden.<sup>98</sup> The letter, thus, is officially acknowledged and publically available at [https://www.grassley.senate.gov/imo/media/doc/cigie\\_ic\\_report\\_on\\_fhfa\\_oig.pdf](https://www.grassley.senate.gov/imo/media/doc/cigie_ic_report_on_fhfa_oig.pdf).<sup>99</sup>

Also on April 28, 2021, a copy of CIGIE-IC Chairman Winters’ April 14, 2021, letter to President Biden was made available for public inspection on a commercial framework. On that date, *The Hill* published “Read: Watchdog Report on Federal Housing Inspector General,” which included a window that allowed the reader to view and download the April 14<sup>th</sup> letter, which had been uploaded to Scribd.com.<sup>100</sup>

Moreover, former Inspector General Wertheimer, by her personal representative, Emmet T. Flood, a lawyer who worked in the White House under former President Trump and who now works at Williams and Connolly LLP, publicly acknowledged the CIGIE-IC investigation of her.<sup>101</sup> Disputing an allegation that former Inspector General Wertheimer had called an overweight employee “Baby Huey,” the large diaper-wearing, dimwitted cartoon duck from the 1950s, Mr. Flood told *The Hill*:

This accusation fits the prior pattern of false leaks from Congressional staff, and it too is untrue. Not only did Inspector General Wertheimer not call anyone by this name, the notion that she did is directly contradicted by the testimony of a witness given on the record in the underlying investigation.<sup>102</sup>

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<sup>98</sup> Press Release, Grassley, *Johnson Call for Removal of FHFA Inspector General Following Findings of Misconduct, Reprisal*, (April 28, 2021), available at <https://www.grassley.senate.gov/news/news-releases/grassley-johnson-call-for-removal-of-fhfa-inspector-general-following-findings-of-misconduct-reprisal>.

<sup>99</sup> Section 11(d)(8)(A)(ii) of the Inspector General Act of 1978, as amended, requires the CIGIE-IC to submit to congressional committees of jurisdiction – here, given the Inspectors General involved in the allegations under investigation, the execution of the CIGIE-IC investigation, and CIGIE’s management of the CIGIE-IC, committees of jurisdiction includes Judiciary, among others – an executive summary of reports of CIGIE-IC investigations and resulting recommendations, and Section 11(d)(10)(C) requires the CIGIE-IC to provide access to more detailed information about specific allegations upon request by, among others, the ranking member of a committee of jurisdiction. See, 5 U.S.C. App., § 11(d). Hence, the Inspector General Act of 1978 authorized Senator Grassley, as the ranking member of the Senate Judiciary Committee, access to Chairman Winters’ April 14, 2021, letter report to the President. And, his release thereof was an official act.

<sup>100</sup> See, *The Hill*, *Read: Watchdog Report on Federal Housing Inspector General*, (April 28, 2021), available at <https://thehill.com/homenews/administration/550761-read-watchdog-report-on-federal-housing-inspector-general>.

<sup>101</sup> Humphreys, Crawford, *Biden Under Increasing Pressure to Fire Housing Inspector General*, (June 28, 2021), available at <https://thehill.com/homenews/administration/560560-biden-under-increasing-pressure-to-fire-housing-inspector-general>.

<sup>102</sup> Humphreys, Crawford, *Biden Under Increasing Pressure to Fire Housing Inspector General*, (June 28, 2021) (emphasis added), available at <https://thehill.com/homenews/administration/560560-biden-under-increasing-pressure-to-fire-housing-inspector-general>.

Similarly, directly responding to the findings in the CIGIE-IC Chairman’s April 14, 2021, letter to President Biden, Mr. Flood told *The Washington Post* that former Inspector General Wertheimer played no role in deciding what materials to provide to investigators, did not obstruct or resist the investigation, and that it was difficult for her to respond to specific complaints about intimidation since the April 14<sup>th</sup> letter did not include witness names.<sup>103</sup> Thus, former Inspector General Wertheimer’s denial, through counsel, of the content of the CIGIE-IC Chairman’s April 14, 2021, letter to President Biden is itself an acknowledgment of the investigation. And CIGIE’s refusal to confirm an investigation, through a *Glomar* response, that the subject of the investigation’s lawyer has already confirmed on the public record is nonsensical.

### Categorical b(7)(C) Exemption

Subsection b(7)(C) of the FOIA exempts from production: “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy . . .” 5 U.S.C. § 552(b)(7)(C) (emphasis added). By comparison to the “would constitute a clearly unwarranted invasion of personal privacy” language of Subsection b(6), courts have determined that Subsection b(7)(C), with its broader language and traditionally recognized privacy interests inherent in law enforcement records, allows for categorical withholding of information.<sup>104</sup> The Supreme Court in DOJ v. Reporters Committee for Freedom of the Press explained that the privacy interests inherent in law enforcement records pertaining to a private citizen that are requested by a third party—who/which seeks no official information about the activities or operations of the law enforcement agency that originated or possesses the law enforcement records—constitutes and unwarranted privacy invasion.<sup>105</sup>

On the other hand, in Kimberlin v. DOJ, the Circuit Court clarified that the categorical rule that Reporters Committee permits for law enforcement records

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<sup>103</sup> See, Siegel, Rachel, *Inspector General Overseeing Federal Housing Agency Resigns, Months After Watchdog Report Finds Abuse of Authority*, (June 30, 2021), available at <https://www.washingtonpost.com/us-policy/2021/06/30/fhfa-inspector-general-resigns-laura-wertheimer/>.

<sup>104</sup> See, SafeCard v. SEC, 926 F.2d 1197, 1206 (D.C. Cir. 1991); see also, Schoenman v. FBI, 575 F. Supp. 2d 136, 159 (D.D.C. 2008).

<sup>105</sup> Reporters Committee for Freedom of the Press, 489 U.S. at 780; accord, DOJ, Guide to the Freedom of Information Act: Exemption 7(C), p. 1, (Last Updated August 20, 2021), available at <https://www.justice.gov/oip/page/file/1206756/download> (last visited on September 17, 2021) (“In *DOJ v. Reporters Committee for Freedom of the Press*, the Supreme Court discussed the strong privacy interests protected under Exemption 7(C) and found that a third party’s request for law enforcement records pertaining to a private citizen categorically invades that citizen’s privacy, and that where a request seeks no official information about a government agency, the privacy invasion is unwarranted”) (emphasis added)).

pertaining to private citizens—when no information about government activities and operations is sought—is not available for records relating to higher-level public officials involved in misconduct. Instead, the Kimberlin court suggested that the law requires the use of case-by-case balancing test involving consideration of “rank of public official involved and the seriousness of misconduct alleged.”<sup>106, 107</sup>

By all outward appearances, CIGIE’s FOIA Public Liaison and Ms. Coutier categorically denied Empower Oversight’s FOIA requests, CIGIE FOIA case numbers 6330-2021-45, 6330-2021-65, 6330-2021-66, 6330-2021-67, 6330-2021-69, and 6330-2021-71, without considering the rank of former Inspector General Wertheimer and her key deputies and the seriousness of their misconduct that the CIGIE-IC uncovered as is required by the Circuit Court in Kimberlin. Their responses to Empower Oversight include no analysis of the rank of former Inspector General Wertheimer’s (*i.e.*, she was a Presidentially-appointed, Senate-confirmed civil servant, who supervised an office with an annual budget of \$49.9 million<sup>108</sup>), the high rank of her key deputies, the seriousness of their misconduct (*e.g.*, multiple patterns of abuses of authority that continued for years in succession), or the public interest in understanding the reasons for the unconscionable delay of the CIGIE-IC’s investigation for a reviewing court to evaluate.<sup>109</sup>

Moreover, it defies credulity to suggest that Ms. Coutier had sufficient time to analyze (or even retrieve for analysis) potentially responsive records according to the applicable standard. She denied CIGIE FOIA case numbers 6330-2021-65, 6330-2021-66, 6330-2021-67, 6330-2021-69, and 6330-2021-71 the day of, the day after, or within 48 hours of CIGIE’s receipt of referrals of the requests.<sup>110</sup>

### Categorical b(6) Exemption

Subsection b(6) of the FOIA exempts from production “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted

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<sup>106</sup> Kimberlin, 139 F.3d at 948 (D.C. Cir. 1998); *see also*, Davin v. DOJ, 60 F.3d 1043, 1060 (3d Cir. 1995) (ruling that “government must conduct a document by document fact-specific balancing”).

<sup>107</sup> Given that Section 11(d)(1) of the Inspector General Act of 1978, as amended, restricts the investigative jurisdiction of the CIGIE-IC to high-level personnel, CIGIE’s categorical denials pursuant to Exemption b(7)(C) of requests for CIGIE-IC investigations are difficult to reconcile. *See*, 5 U.S.C. App. § 11(d)(1); *see also*, CIGIE, *Integrity Committee Policies and Procedures*, § 4, (2018).

<sup>108</sup> FHFA, *Annual Report to Congress 2020*, p. 81, (June 15, 2021), available at <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Annual-Report-to-Congress-2020.pdf>.

<sup>109</sup> *See*, Bartko, 898 F.3d at 67 – 68 (*citing*, Jefferson, 284 F.3d at 176).

<sup>110</sup> By contrast, with respect to CIGIE FOIA case number 6330-2021-46, which is functionally equivalent to CIGIE FOIA case numbers 6330-2021-65, 6330-2021-66, 6330-2021-67, 6330-2021-69, and 6330-2021-71, CIGIE’s FOIA Public Liaison expressly recognized that she needed to retrieve records from Offices of Inspector General and then review them pursuant to the applicable standards. *See*, Exhibit 6.



invasion of personal privacy.”<sup>111</sup> Courts have found that “categorical” denials of FOIA requests on personal privacy grounds tend to be antithetical to Exemption b(6) when they are made without a document-by-document review of personal privacy-implicated information in individual records and a balancing of identified personal privacy interests against the public interest in disclosure of the records, tend.<sup>112</sup>

The plain language of Subsection b(6) invariably precludes agencies from categorically denying FOIA requests because it requires them to engage in a four-step analysis of records that are potentially responsive to the request; they must:

1. Determine whether a record at issue constitutes a personnel, medical, or “similar” file;
2. Determine whether there is a significant privacy interest invoked by information in such records;
3. Evaluate the requester’s asserted FOIA public interest in disclosure of the records that include information that invoke a privacy interest; and
4. Balance competing interests to determine whether disclosure of the records “would constitute a clearly unwarranted invasion of personal privacy,” if there is a FOIA public interest in disclosure of records that include information that invokes a significant privacy interest.<sup>113</sup>

Again, by all outward appearances, CIGIE’s FOIA Public Liaison and Ms. Coutier failed to perform the four-step analysis that Exemption b(6) requires with respect to Empower Oversight’s FOIA requests, CIGIE FOIA case numbers 6330-2021-45, 6330-2021-65, 6330-2021-66, 6330-2021-67, 6330-2021-69, and 6330-2021-71. Their responses to Empower Oversight include no analysis of the above-referenced steps for Empower Oversight to contest, or a reviewing court to evaluate the applicability of the exemption.<sup>114</sup>

Moreover, it again defies credulity to suggest that Ms. Coutier even had time on the day of, the day after, or within 48 hours of, CIGIE’s receipt of referrals of Empower Oversight’s FOIA requests to analyze (or retrieve for analysis) potentially responsive records according to the applicable standard.

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<sup>111</sup> 5 U.S.C. § 552(b)(6) (emphasis added).

<sup>112</sup> See, e.g., Bartko, 898 F.3d at 69 – 70; Schoenman, 575 F. Supp. 2d at 159 (quoting SafeCard, 926 F.2d at 1206).

<sup>113</sup> See, Multi Ag Media LLC v. USDA, 515 F.3d 1224, 1229 (D.C. Cir. 2008); NARA, 541 U.S. at 172; Wash. Post Co. v. HHS, 690 F.2d 252, 261 (D.C. Cir. 1982).

<sup>114</sup> See, Bartko, 898 F.3d at 67 – 68 (citing, Jefferson, 284 F.3d at 176).



## Balancing Private and Public Interests

As a consequence of their flawed reliance on *Glomar* responses and categorical denials, the CIGIE FOIA Public Liaison and Ms. Coutier articulated no consideration of the public interest in the causes of the unreasonable delay of the CIGIE-IC's investigation of former Inspector General Wertheimer, former Associate Inspector General Byrne, or Messrs. Parker and DePasquale. Yet, the public interest in all aspects of the CIGIE-IC's investigation is instantly recognizable.

The Circuit Court's opinion in Bartko is instructive. In Bartko, the Circuit Court stated:

The public has an interest in knowing that a government investigation itself is comprehensive, that the report of an investigation released publicly is accurate, that any disciplinary measures imposed are adequate, and that those who are accountable are dealt with in an appropriate manner. That is how the FOIA helps to hold the governors accountable to the governed. That interest crescendos when the misfeasance of a federal prosecutor with the power to employ the full machinery of the state in scrutinizing any given individual is at stake. The public must have assurance that those who would wield this power will be guided solely by their sense of public responsibility for the attainment of justice.<sup>115</sup>

Here, the public has a keen interest in learning whether the delay of the CIGIE-IC's investigation—which continued long past the 150-day baseline set forth at Section 11(d)(7)(C)(i) of the Inspector General Act of 1978, as amended<sup>116</sup>—was caused solely by the actions of the investigative targets themselves and whether the CIGIE-IC did everything that it could do to counter those actions. Or, whether there were other intentional or unintentional causes of the delay, *e.g.*:

- Did the CIGIE-IC fail, and if so, why did it fail to exhaust its potential avenues to appeal to political leadership in the Executive and Legislative Branches to exercise oversight over former Inspector General Wertheimer's refusal to comply with CIGIE-IC processes; or
- Could the CIGIE-IC's finding that former Inspector General Wertheimer abused her authority by retaliating against staff who cooperated with legitimate oversight efforts by the Senate, OSC, and/or the CIGIE-IC, have been severed from the

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<sup>115</sup> Bartko, 898 F.3d at 69 - 70 (internal citations and quotation marks omitted).

<sup>116</sup> *See*, 5 U.S.C. App. § 11(d)(7)(C)(i); *see also*, CIGIE, *Integrity Committee Policies and Procedures*, § 8(a), (2008).

larger investigation and submitted for consideration of discipline as the remainder of the investigation carried on?<sup>117</sup> And, if so, why did the CIGIE-IC fail to sever the abuse/retaliation finding and issue an interim report about it sooner?

The Bartko Circuit Court added:

The significant public interest in this case is corroborated by the decision of the U.S. Attorney's Office to overhaul its discovery and disclosure practices in response to the Fourth Circuit's decision. Indeed, the U.S. Attorney's Office admitted its failures and imposed more stringent discovery review and disclosure policies on its attorneys. Such matters of substantive law enforcement policy, and the events that set them in motion, are properly the subject of public concern. There is also a corresponding public interest in knowing if the government's remedial measures adequately redressed the harm that prompted the policy changes.<sup>118</sup>

Like the belated remedial actions by the United States Attorney's Office for the Eastern District of North Carolina, the House of Representatives actions demonstrate the public interest in these issues through its legislative activities related to the hindrance of IC investigations and the need for increased transparency of such investigations.<sup>119</sup>

## Conclusion

Empower Oversight respectfully requests CIGIE leadership to review and correct the errors of its staff in improperly presenting *Glomar* responses and categorical denials pursuant to FOIA Exemptions b(6) and b(7)(C) to Empower Oversight requests in CIGIE FOIA case numbers 6330-2021-45, 6330-2021-65, 6330-2021-66, 6330-2021-67, 6330-2021-69, and 6330-2021-71.

Correcting these errors is essential for CIGIE to repair its reputation regarding lack of transparency with the public and their representatives in Congress in matters of inspector general oversight. CIGIE leaderships need to intervene to ensure that its staff

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<sup>117</sup> Apparently, the CIGIE-IC Chairman was confident that severance is possible because he advised President Biden that, "Notwithstanding [former Inspector General Wertheimer's and her staff's 'unprecedented' refusal to cooperate with the CIGIE-IC's investigation, which prevented it from fully completing its investigation of all allegations], the IC determined there was sufficient evidence to make preliminary findings of wrongdoing . . . ." See, Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President, p. 2, ([Apr 14, 2021](#)). What is not clear is when severance became feasible? And, if severance was delayed, what was the cause of the delay?

<sup>118</sup> Bartko, 898 F.3d at 70 (internal citations and quotation marks omitted).

<sup>119</sup> See, H.R. 2681, The Integrity Committee Reform Act of 2021 would amend the Section 11 of the Inspector General Act of 1978, § 4.

promptly compiles, reviews, and produces the records requested by Empower Oversight as required by the FOIA.

Sincerely,

[/Jason Foster/](#)

Founder & President  
Empower Oversight Whistleblowers & Research

cc: Chairman Gary Peters & Ranking Member Rob Portman  
Senate Homeland Security and Governmental Affairs Committee

Chairwoman Carolyn Maloney & Ranking Member James Comer  
House Oversight and Reform Committee

Chairman Richard Durbin & Ranking Member Charles Grassley  
Senate Committee on the Judiciary

Chairman Jon Ossoff & Ranking Member Ron Johnson  
Senate Permanent Subcommittee on Investigations

CIGIE Vice Chair Mark Greenblatt

Former CIGIE Chair Michael Horowitz  
Justice Department Inspector General

Acting Inspector General Phyllis K. Fong  
Federal Housing Finance Agency

# Exhibit 1

# EMPOWER OVERSIGHT

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*Whistleblowers & Research*



June 16, 2021

VIA ELECTRONIC TRANSMISSION: FOIASTAFF@CIGIE.GOV

FOIA Officer  
Council of the Inspectors General on Integrity and Efficiency  
1717 H Street, NW, Suite 825  
Washington, DC 20006

**RE: FREEDOM OF INFORMATION ACT REQUEST**

Dear FOIA Officer:

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities while also seeking to hold those authorities accountable to act on those reports.

In a letter to President Biden dated April 14, 2021, the Council of the Inspectors General on Integrity and Efficiency’s Integrity Committee (CIGIE-IC) reported its findings, conclusions, recommendations regarding allegations of misconduct against four Federal Housing Finance Agency employees: Inspector General Laura Wertheimer; Chief Counsel Leonard DePasquale; Acting Deputy Inspector General for Investigations Richard Parker; and Associate Inspector General Jennifer Byrne.<sup>1</sup>

The CIGIE-IC report to the President is the result an oversight process that began more than *five years ago*, with whistleblowers contacting Congress and Senators writing letters to inquire about their claims.<sup>2</sup> The public has an interest in understanding why the CIGIE-IC took so long to elevate this matter to the White House with a recommendation to consider imposing appropriate discipline. It is unclear from the public record whether the CIGIE-IC had previously made similar recommendations during President Trump’s tenure in office, and if not, why it failed to do so.

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<sup>1</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President ([Apr 14, 2021](#)).

<sup>2</sup> See, e.g. “Senators Probing Effectiveness of FHFA’s Watchdog,” *Daily Dose* ([Jul 11, 2016](#)).

Accordingly, pursuant to the Freedom of Information Act, 5 U.S.C. § 552, please provide an unredacted version of the above-referenced letter, and the five enclosures to that letter.

Empower Oversight agrees to pay up to \$25.00 in applicable fees. Please note that Empower Oversight is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code and that it has no commercial interest in making this request.

If you have any questions about this request, you may reach me by telephone at (703) 972-5445 or by e-mail at [info@empowr.us](mailto:info@empowr.us). Thank you for your prompt attention to this matter.

Cordially,

A handwritten signature in blue ink that reads "Jason Foster". The signature is fluid and cursive, with the first name "Jason" and last name "Foster" clearly distinguishable.

Jason Foster  
Founder & President

# Exhibit 2



June 16, 2021

VIA ELECTRONIC TRANSMISSION: FOIASTAFF@CIGIE.GOV

FOIA Officer  
Council of the Inspectors General on Integrity and Efficiency  
1717 H Street, NW, Suite 825  
Washington, DC 20006

**RE: FREEDOM OF INFORMATION ACT REQUEST**

Dear FOIA Officer:

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities while also seeking to hold those authorities accountable to act on those reports.

In a letter to President Biden dated April 14, 2021, the Council of the Inspectors General on Integrity and Efficiency’s Integrity Committee (CIGIE-IC) recommended that three Federal Housing Finance Agency (FHFA) employees be disciplined for abusing their authority: Inspector General Laura Wertheimer; Chief Counsel Leonard DePasquale; and Acting Deputy Inspector General for Investigations Richard Parker.<sup>1</sup>

The CIGIE-IC report to the President is the result an oversight process that began more than *five years ago*, with whistleblowers contacting Congress and Senators writing letters to inquire about their claims.<sup>2</sup> The public has an interest in understanding why the CIGIE-IC took so long to elevate this matter to the White House with a recommendation to consider imposing appropriate discipline. It is unclear from the public record whether the CIGIE-IC had previously made similar recommendations during President Trump’s tenure in office, and if not, why it failed to do so.

Accordingly, to shed further light on this matter, please provide the following records pursuant to the Freedom of Information Act, 5 U.S.C. § 552:

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<sup>1</sup> Letter from CIGIE Integrity Committee Chair Kevin H. Winters to the President ([Apr 14, 2021](#)).

<sup>2</sup> See, e.g. “Senators Probing Effectiveness of FHFA’s Watchdog,” *Daily Dose* ([Jul 11, 2016](#)).

1. Emails sent by (a) Laura Wertheimer, (b) Leonard DePasquale, or (c) Richard Parker; to (d) the CIGIE Chair at the relevant time (Michael Horowitz or Allison Lerner); (e) the Integrity Committee Chair at the relevant time (Scott Dahl or Kevin Winters); or (f) FDIC Inspector General Jay Lerner. The time period of the requested records is January 1, 2017, through the present.
2. Emails sent to (a) Laura Wertheimer, (b) Leonard DePasquale, or (c) Richard Parker; from (d) the CIGIE Chair at the relevant time (Michael Horowitz or Allison Lerner); (e) the Integrity Committee Chair at the relevant time (Scott Dahl or Kevin Winters); or (f) FDIC Inspector General Jay Lerner. The time period of the requested records is January 1, 2017, through the present.
3. Emails sent to or from a house.gov or senate.gov domain to or from any official (d), (e), or (f) in item 1 of this request that refers to any of the FHFA employees (a), (b), or (c) named in item 1 of this request, above, from January 1, 2017, to the present.

Empower Oversight agrees to pay up to \$25.00 in applicable fees. Please note that Empower Oversight is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code and that it has no commercial interest in making this request.

If you have any questions about this request, you may reach me by telephone at (703) 972-5445 or by e-mail at [info@empowr.us](mailto:info@empowr.us). Thank you for your prompt attention to this matter.

Cordially,



Jason Foster  
Founder & President

# Exhibit 3



Council of the  
**INSPECTORS GENERAL**  
on INTEGRITY and EFFICIENCY

June 22, 2021

Gary J. Aguirre  
gary@aguirrelawapc.com

Subject: CIGIE Freedom of Information/Privacy Act Request 6330-2021-4539

Dear Mr. Aguirre,

This letter responds to your client's Freedom of Information Act (FOIA) request dated June 17, 2021, to the Council of the Inspectors General on Integrity and Efficiency (CIGIE). This request was assigned FOIA case number 6330-2021-45. As worded in the request, you seek an unredacted version of the following:

*[A] letter to President Biden dated April 14, 2021, the Council of the Inspectors General on Integrity and Efficiency's Integrity Committee (CIGIE-IC) reported its findings, conclusions, recommendations regarding allegations of misconduct against four Federal Housing Finance Agency employees: Inspector General Laura Wertheimer; Chief Counsel Leonard DePasquale; Acting Deputy Inspector General for Investigations Richard Parker; and Associate Inspector General Jennifer Byrne ... and the five enclosures to that letter.*

As an attorney, you will undoubtedly recognize that this is a third-party request for law enforcement records covered by a system of records notice, involving the Privacy Act, and FOIA provisions which protect personal privacy.

Please note that FOIA requires that the Federal government treat all requesters alike, regardless of whether they have some knowledge about a particular law enforcement activity for which they are seeking additional information. In addition, FOIA requests and the responses thereto are themselves available to the public under FOIA. As a result, if a request specifies the information desired by identifying a person involved in a law enforcement activity, or by providing sufficient information to enable the easy identification of one or more parties through public sources, and if CIGIE were to respond by providing that information, the result would be a pair of publicly available documents that linked the identified person to a law enforcement activity.

Under FOIA exemption (b)(6), records are exempt from disclosure if the records are "personnel and medical files and similar files the disclosure of which would constitute an unwarranted invasion of personal privacy." Under FOIA exemption (b)(7)(C), law enforcement information that, if disclosed, could reasonably be expected to constitute an unwarranted invasion of personal privacy is similarly exempt from disclosure. Disclosure is unwarranted if the private interest in nondisclosure outweighs the public interest in disclosure.

CIGIE takes the position that the disclosure of even the existence of a law enforcement matter involving any particular individual would constitute an unwarranted invasion of privacy unless it has become a matter of public record as a result of successful criminal prosecution, recent civil legal action, or active government-wide debarment or voluntary exclusion, that is adjudged or imposed based on the law enforcement matter. Furthermore, if our office routinely confirmed the absence of a law enforcement matter for individuals not investigated by our office, our failure to do so in other cases where an individual had been investigated would amount to an implied disclosure of that fact. Accordingly, in all cases CIGIE will neither confirm nor deny the existence of a non-public law enforcement matter involving any particular individual.

No public record of CIGIE activity, of the type mentioned above, exists with regard to the parties described in your request. For the reasons noted above, CIGIE can neither confirm nor deny the existence of any of the attachments or the underlying records involving any of the parties in question. Therefore, your FOIA request is denied under FOIA exemptions (b)(6) and (b)(7)(C).

You may also contact me at my direct phone number (202) 478-8265 or by sending an email to [FOIASTAFF@cigie.gov](mailto:FOIASTAFF@cigie.gov). 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  
[ogis@nara.gov](mailto:ogis@nara.gov)  
(202) 741-5770  
(877) 684-6448 (toll free)  
(202) 741-5769 (facsimile)

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

A requester may appeal a determination denying a FOIA request in any respect to the CIGIE Chairperson c/o Office of General Counsel, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW, Suite 825, Washington, DC 20006. The appeal must be in writing, and must be submitted either by:

- (1) Regular mail sent to the address listed in this subsection, above; or
- (2) By fax sent to the FOIA Officer at (202) 254-0162; or
- (3) By email to [FOIAAPPEAL@cigie.gov](mailto:FOIAAPPEAL@cigie.gov).

# Exhibit 4



Council of the  
**INSPECTORS GENERAL**  
on INTEGRITY and EFFICIENCY

June 22, 2021

Gary J. Aguirre  
gary@aguirrelawapc.com

Subject: CIGIE Freedom of Information/Privacy Act Request [6330-2021-46]

Dear Mr. Aguirre,

Your request for information relating to the above-cited subject was received in this office on June 17, 2021. As worded in the request, you seek the following:

- 1. Emails sent by (a) Laura Wertheimer, (b) Leonard DePasquale, or (c) Richard Parker; to (d) the CIGIE Chair at the relevant time (Michael Horowitz or Allison Lerner); (e) the Integrity Committee Chair at the relevant time (Scott Dahl or Kevin Winters); or (f) FDIC Inspector General Jay Lerner. The time period of the requested records is January 1, 2017, through the present.*
- 2. Emails sent to (a) Laura Wertheimer, (b) Leonard DePasquale, or (c) Richard Parker; from (d) the CIGIE Chair at the relevant time (Michael Horowitz or Allison Lerner); (e) the Integrity Committee Chair at the relevant time (Scott Dahl or Kevin Winters); or (f) FDIC Inspector General Jay Lerner. The time period of the requested records is January 1, 2017, through the present.*
- 3. Emails sent to or from a house.gov or senate.gov domain to or from any official (d), (e), or (f) in item 1 of this request that refers to any of the FHFA employees (a), (b), or (c) named in item 1 of this request, above, from January 1, 2017, to the present.*

CIGIE will process your request under the provisions of the Freedom of Information Act (5 U.S.C. §552). Moreover, CIGIE has assigned the following control number: 6330-2021-46. Please cite this number in any further communications about the subject request.

Please note that before CIGIE can consider this a perfected request which would trigger the statutory processing times, further clarification will be needed. Since you are an attorney filing a FOIA request on behalf of a client, you have undoubtedly already familiarized yourself with the Inspector General Act (IG Act). Accordingly, you understand that during the requested date range of over 4 years of emails, the requested parties would have communicated with each other in a variety of contexts, many of which would not be responsive. More specifically, as you probably already realize, IGs send emails sometimes in the capacity as IGs of their respective agencies, and sometimes in their CIGIE capacity. Without some added search terms to narrow the search over such an extended date range, your request is overly broad. Moreover, CIGIE only has the capability to search the emails of CIGIE employees. None of the personnel named in your request

are CIGIE employees. As the IG Act makes clear, CIGIE members and covered personnel for purposes of the CIGIE Integrity Committee are not CIGIE employees. Rather, IGs and other covered personnel are employees of the agencies for which they provide oversight under the IG Act. Before CIGIE can ask other OIGs to conduct searches for CIGIE equities in their respective email systems, much more specificity will be needed.

Regarding the third prong of your request, please note that emails from a house.gov or a senate.gov email address are not subject to FOIA because neither legislative body is a federal agency; FOIA, of course, only applies to federal agency records. For all three of the prongs in the subject request, please list search terms applicable to the subject and/or body of the emails so as to narrow the search to responsive emails, rather than the entire universe of emails many or most of which will be unresponsive.

While you consider ways to clarify your request, please feel free to engage with me at my direct phone number (202) 478-8265. You may also send an email to [FOIASTAFF@cigie.gov](mailto:FOIASTAFF@cigie.gov). I look forward to reaching a meeting of the minds so that we may move forward on your request. 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  
[ogis@nara.gov](mailto:ogis@nara.gov)  
(202) 741-5770  
(877) 684-6448 (toll free)  
(202) 741-5769 (facsimile)

Sincerely,

Elizabeth Sweetland  
Senior Assistant General Counsel  
FOIA Public Liaison



June 22, 2021  
FOIA Case No. 6330-2021-45

Your appeal must be received within 90 days of the date of this letter. The outside of the envelope should be clearly marked "FOIA APPEAL."

Sincerely,

Elizabeth Sweetland  
Senior Assistant General Counsel  
FOIA Public Liaison

# Exhibit 5



By Electronic Mail to [FOIASTAFF@cigie.gov](mailto:FOIASTAFF@cigie.gov)

July 14, 2021

Elizabeth Sweetland  
Senior Assistant General Counsel  
FOIA Public Liaison  
Council of the Inspectors General on Integrity and Efficiency  
1717 H Street, NW, Suite 825  
Washington, DC 20006

Re: FOIA Request 6330-2021-4539

Dear Ms. Sweetland:

This is a response to your letters of June 22 and supplements response of July 1, 2021, regarding FOIA Nos. 6330-2021-45 and 6330-2021-46 under FOIA Request FOIA Request 6330-2021-4539. I am also providing you with email addresses to expedite the search for the communications sought by FOIA Request No. 6330-2021-46. Since the search would be electronic, a search for these email addresses would provide us with the specific volume of emails in each category of the request. This would inform us of the exact universe of emails we have to deal with.

**1. CIGIE's *Glomar* Response is Unsupportable Because Ms. Wertheimer Has, through Her Attorney, Publicly Acknowledged the Investigation to the Press.**

In your June 22, 2021, letter regarding FOIA No. 6330-2021-45, you wrote that “in all cases, CIGIE will neither confirm nor deny the existence of a non-public law enforcement matter involving any particular individual.” However, the D.C. Circuit has established that such a *Glomar* response, as well as the categorical withholding of responsive documents on privacy grounds, are not legally justifiable when the subject of the investigation has publicly acknowledged the investigation's existence—regardless of whether the agency itself has officially publicly acknowledged it. *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, 746 F.3d 1082 (D.C. Cir. 2014) (subject of non-public FBI investigation pierced *Glomar* and diminished his privacy interests by publicly acknowledging it).

Through her attorney, Mr. Emmet Flood, Ms. Wertheimer has acknowledged the investigation in remarks to the *Washington Post* and even disputed particular findings in the investigation report. As reported by the *Washington Post* [in a June 30, 2021 article](#):

Wertheimer's attorney, Emmet T. Flood, disputed the findings in the report.

Flood told The Post on Tuesday that Wertheimer played no role in deciding what materials to provide to investigators and that she did not obstruct or resist the fact-finding mission. Flood said it was difficult to respond to specific complaints about intimidation since the report did not include witness names. “There was no evidence of retaliation against witnesses,” Flood said. “There was no evidence offered of

intimidation.” ... Flood acknowledged that Wertheimer used the term “weasel” in private to a small group of staff years ago.

However, Flood added that the allegations about a toxic office culture were years old and that there had been no complaints about office culture since.

In light of these statements to the press, under D.C. Circuit precedent, CIGIE cannot justifiably assert a *Glomar* response or categorically withhold the responsive documents based on privacy concerns.

## **2. Exemption 7(C) Does Not Apply to IG Investigation Materials Related to Administrative Misconduct, but Only to those Relating to Violations of Criminal or Civil Laws.**

Your letter also invoked Exemption 7(C) as a basis for withholding the requested records. However, Exemption 7 only applies to records “compiled for law enforcement purposes.” In applying the exemption, the D.C. Circuit has repeatedly distinguished between two types of agency investigations: ones relating to allegations of administrative misconduct for disciplinary purposes, and ones relating to allegations of illegal acts subject to criminal or civil sanctions. Only the latter involve records compiled for law enforcement purposes such that Exemption 7(C) can be invoked. The former does not, and Exemption 7 is not legally available. *E.g.*, *Jefferson v. U.S. Department of Justice*, 284 F.3d 172 (D.C. Cir. 2002) (distinguishing the two types of investigations and holding that investigative records relating to “allegations of non-law violations...for internal disciplinary purposes” are not law enforcement records so Exemption 7 cannot apply); *Kimberlin v. U.S. Department of Justice*, 139 F.3d 944 (D.C. Cir. 1998) (noting the distinction between two types of investigations and that Exemption 7 applies to investigations of “alleged illegal acts ...which could, if proved, result in civil or criminal sanctions,” not to investigations of non-illegal misconduct that could result in disciplinary measures).

Courts have specifically applied this distinction to FOIA requests to Inspectors General. *E.g.*, *Cotton v. Adams*, 798 F. Supp. 22 (D.D.C. 1992) (noting that the Smithsonian “Inspector General has the ability to conduct investigations as part of the prosecution of a civil or criminal violation [and] ... also investigates internal matters concerning agency inefficiency and mismanagement” and that Exemption 7(C) does not apply to the latter). In *Goldstein v. Treasury Inspector General for Tax Administration*, 172 F. Supp. 3d 221 (D.D.C. 2016), the court noted that TIGTA investigates both allegations of violations of law and allegations of administrative misconduct. The court stated that it understood “administrative misconduct” to mean violations of workplace rules that might not give rise to criminal or civil liability, but might lead to workplace discipline” and held that since the IG “has not offered any concrete evidence that would allow the court to conclude the investigation and the responsive material it generated pertained to its law enforcement function, as opposed to its function of investigating ‘administrative misconduct,’” Exemption 7(C) was not applicable.

CIGIE’s Integrity Committee (“IC”) clearly engages in these two different types of investigations. On the IC’s website, it states:

The IC takes action on allegations of wrongdoing that involve:

Abuse of authority in the exercise of official duties or while acting under color of office;

Substantial misconduct, such as: gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or

Conduct that undermines the independence or integrity reasonably expected of a Covered Person.

Only CIGIE's investigative efforts relating to "substantial violation of law" can qualify for Exemption 7(C) under D.C. precedent; the other types do not qualify.

The overwhelming majority of the content in the IC's April 14, 2021, letter summarizing its investigation of Ms. Wertheimer involves the type of investigation not covered by Exemption 7(C). Indeed, the letter's "Findings and Conclusions" section states that "IG Wertheimer abused her authority in the exercise of her official duties and engaged in conduct that undermines the integrity reasonably expected of an IG." The IC's closing recommendation is that "misconduct of this nature warrants consideration of substantial disciplinary action, up to and including removal." In short, this investigation was the type that does not qualify for Exemption 7(C): one examining misconduct for disciplinary purposes. CIGIE should not invoke that Exemption to categorically withhold responsive documents.

### **3. Congressional Emails Obtained by CIGIE and Presently under Its Control are "Agency Records" Subject to FOIA.**

In your June 22, 2021, letter regarding FOIA request No. 6330-2021-46, you incorrectly state that "emails from a house.gov or a senate.gov email address are not subject to FOIA because neither legislative body is a federal agency; FOIA, of course, only applies to federal agency records." However, as explained in the Justice Department's [\*Guide to the Freedom of Information Act\*](#):

In *DOJ v. Tax Analysts*, the Supreme Court articulated a two-part test for determining when a "record" constitutes an "agency record" under the FOIA: "Agency records" are records that are (1) either created **or obtained** by an agency, and (2) under agency control at the time of the FOIA request. (emphasis added).

Emails between Congress and agencies are agency records, absent evidence of Congressional intent to retain control of the emails. As [further explained](#) by the Justice Department's FOIA Guide:

Unlike "agency records," which are subject to the FOIA, "congressional records" are not. "Congressional records" may include records received by an agency from Congress, or records generated by an agency in response to a confidential congressional inquiry. The Court of Appeals for the District of Columbia Circuit has held that ascertaining whether records in an agency's possession are "agency records" or "congressional records" depends upon whether Congress manifested an intent to exert control over those records and on the particular contours of that reservation of control. Congress's intent to exert control over particular records must be evident from the circumstances surrounding their creation or transmittal. The D.C. Circuit has rejected the argument that "when Congress transmits documents to an agency, it must give contemporaneous instructions preserving any previous expressions of intent to control the documents in order to retain control over the documents." **The D.C. Circuit has found, however, that absent evidence of this intent to retain control over records, the records will not be found to be**

**“congressional records” and, accordingly, will be within the reach of the FOIA.**  
(emphasis added) (case citations omitted)

In response to FOIA requests, agencies regularly produce emails between agency personnel and Congressional personnel under this framework. In responding to FOIA No. 6330-2021-46, CIGIE cannot reject prong 3 under the offhand claim that any such emails are automatically not agency records; it must conduct a reasonable search, examine the results through the framework above, and produce records as appropriate.

#### **4. Email Addresses**

I have obtained the email addresses for seven individuals for whom we seek responsive emails. Hopefully this will allow you to conduct searches so we know the volume of emails we are working with:

- [laura.wertheimer@fhfaoig.gov](mailto:laura.wertheimer@fhfaoig.gov);
- [jennifer.byrne@fhfaoig.gov](mailto:jennifer.byrne@fhfaoig.gov);
- [leonard.depasquale@fhfaoig.gov](mailto:leonard.depasquale@fhfaoig.gov);
- [richard.parker@fhfaoig.gov](mailto:richard.parker@fhfaoig.gov);
- [alison.healey@fhfaoig.gov](mailto:alison.healey@fhfaoig.gov);
- [stacey.nahrwold@fhfaoig.gov](mailto:stacey.nahrwold@fhfaoig.gov);
- [brian.baker@fhfaoig.gov](mailto:brian.baker@fhfaoig.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. Aguirre', with a stylized flourish at the end.

Gary J. Aguirre

# Exhibit 6



Council of the  
**INSPECTORS GENERAL**  
on INTEGRITY and EFFICIENCY

August 16, 2021

Gary J. Aguirre  
gary@aguirrelawapc.com

Subject: CIGIE Freedom of Information/Privacy Act Request [6330-2021-46]

Dear Mr. Aguirre,

Your request for information relating to the above-cited subject was received in this office on June 17, 2021. As worded in the request, you seek the following:

- 1. Emails sent by (a) Laura Wertheimer, (b) Leonard DePasquale, or (c) Richard Parker; to (d) the CIGIE Chair at the relevant time (Michael Horowitz or Allison Lerner); (e) the Integrity Committee Chair at the relevant time (Scott Dahl or Kevin Winters); or (f) FDIC Inspector General Jay Lerner. The time period of the requested records is January 1, 2017, through the present.*
- 2. Emails sent to (a) Laura Wertheimer, (b) Leonard DePasquale, or (c) Richard Parker; from (d) the CIGIE Chair at the relevant time (Michael Horowitz or Allison Lerner); (e) the Integrity Committee Chair at the relevant time (Scott Dahl or Kevin Winters); or (f) FDIC Inspector General Jay Lerner. The time period of the requested records is January 1, 2017, through the present.*
- 3. Emails sent to or from a house.gov or senate.gov domain to or from any official (d), (e), or (f) in item 1 of this request that refers to any of the FHFA employees (a), (b), or (c) named in item 1 of this request, above, from January 1, 2017, to the present.*

CIGIE asked you to consider ways to clarify your request, one of which was to consider adding search terms. You have declined to provide any search terms. In order to narrow the search so as to prevent it from being overly broad, CIGIE proposes the following parameters for prongs (1) and (2) of the subject request:

- CIGIE will ask NSF OIG to conduct a search of Alison Lerner's emails for any emails to or from the following six named FHFA email accounts: [laura.wertheimer@fhfaoig.gov](mailto:laura.wertheimer@fhfaoig.gov); [jennifer.byrne@fhfaoig.gov](mailto:jennifer.byrne@fhfaoig.gov); [leonard.depasquale@fhfaoig.gov](mailto:leonard.depasquale@fhfaoig.gov); [richard.parker@fhfaoig.gov](mailto:richard.parker@fhfaoig.gov); [alison.healey@fhfaoig.gov](mailto:alison.healey@fhfaoig.gov); [stacey.nahrwold@fhfaoig.gov](mailto:stacey.nahrwold@fhfaoig.gov); [brian.baker@fhfaoig.gov](mailto:brian.baker@fhfaoig.gov).
  - Excluded from this search will be emails with Allison Lerner on the "cc" line or any of the above FHFA employees on the "cc" line;
  - Also excluded will be emails sent on the CIGIE Liaisons list serve because those emails are read by everyone on the list serve and are thus not communications limited to or from the individuals in question.



- CIGIE will ask DOJ OIG to conduct a search of Michael Horowitz' emails for any emails to or from the following six named FHFA email accounts: [laura.wertheimer@fhfaoig.gov](mailto:laura.wertheimer@fhfaoig.gov); [jennifer.byrne@fhfaoig.gov](mailto:jennifer.byrne@fhfaoig.gov); [leonard.depasquale@fhfaoig.gov](mailto:leonard.depasquale@fhfaoig.gov); [richard.parker@fhfaoig.gov](mailto:richard.parker@fhfaoig.gov); [alison.healey@fhfaoig.gov](mailto:alison.healey@fhfaoig.gov); [stacey.nahrwold@fhfaoig.gov](mailto:stacey.nahrwold@fhfaoig.gov); [brian.baker@fhfaoig.gov](mailto:brian.baker@fhfaoig.gov).
  - Excluded from this search will be emails with Michael Horowitz on the "cc" line or any of the above FHFA employees on the "cc" line;
  - Also excluded will be emails sent on the CIGIE Liaisons list serve because those emails are read by everyone on the list serve and are thus not communications limited to or from the individuals in question.

Regarding the third prong of your request, CIGIE has considered the legal research you provided concerning your views on Congressional emails. CIGIE agrees that a "bright line" categorical denial is not appropriate. Accordingly, CIGIE will conduct a search of emails to and from house.gov and senate.gov domains for the time frame in question and will apply the case law to the responsive emails to determine what is releasable. It would appear, however, that you would like a search of every email account of every CIGIE official, which would include every CIGIE employee, CIGIE detailee, and CIGIE member, to and from a house.gov or a senate.gov domain from January 1, 2017 to the present (over four and a half years). Simply put, this is overly broad and does not meet the requirement to reasonably describe records. If you could be more specific by listing the CIGIE officials either by name or by duty position, perhaps we could reach an understanding that suits your needs without being overly broad. As an alternative, perhaps you could describe what it is you hope to find and CIGIE staff could conduct a search of the email accounts most likely to yield what you seek.

While you consider ways to clarify your request, please feel free to engage with me at my direct phone number (202) 478-8265. You may also send an email to [FOIASTAFF@cigie.gov](mailto:FOIASTAFF@cigie.gov). I look forward to reaching a meeting of the minds so that we may move forward on your request. 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  
[ogis@nara.gov](mailto:ogis@nara.gov)  
(202) 741-5770  
(877) 684-6448 (toll free)  
(202) 741-5769 (facsimile)

Sincerely,

Elizabeth Sweetland  
Senior Assistant General Counsel  
FOIA Public Liaison

# Exhibit 7



## OFFICE OF INSPECTOR GENERAL

Federal Housing Finance Agency

400 7th Street SW, Washington, DC 20219

August 13, 2021

Jason Foster  
Founder & President  
Empower Oversight  
2615 Columbia Pike, #445  
Arlington, VA 22204  
By Electronic Mail: bsaddler@empowr.us

Dear Mr. Foster:

This letter is to acknowledge receipt of your August 12, 2021 request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, in which you requested:

- 1. Communications relating to the CIGIE-IC investigation sent by Laura Wertheimer to the Council of the Inspectors General on Integrity and Efficiency (“CIGIE”) Chair, Michael Horowitz.**
- 2. Communications relating to the CIGIE-IC investigation sent to Laura Wertheimer from CIGIE Chair Michael Horowitz.**

**Date Range for Record Search: From 1/1/2017 To 8/12/2021**

Your request was received by the Federal Housing Finance Agency’s Office of Inspector General (FHFA-OIG) on August 12, 2021.

For tracking purposes, the tracking number assigned to your request is 2021-FOIA-00016. FHFA-OIG has determined that you are a(n) All Other requester.

FHFA-OIG has placed your FOIA request on the Standard Track. Standard Track requests are requests that are routine or require little or no search time, review, or analysis of records. FHFA-OIG responds to these requests within 20 working days after receipt, in the order in which they are received. If we determine while processing your request that it is more appropriately a Complex Track request, it will be reassigned to the Complex Track and you will be notified of this change. *See* 12 C.F.R. § 1202.7(b).

In your letter, you also requested a fee waiver of all FOIA processing fees. The Federal Housing Finance Agency’s (FHFA) FOIA regulations state that FHFA-OIG “may grant your fee waiver request if disclosure of the information is in the public interest because it is likely to contribute

significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.” 12 C.F.R. § 1202.11(h)

Please be advised that your request for a fee waiver has been granted. Therefore, you will not be charged for any portion of FOIA processing fees that would otherwise be applicable in the processing of this request.

If you have any questions concerning your request, please contact me at (202) 730-0399 or at [FOIA@fhfaoig.gov](mailto:FOIA@fhfaoig.gov).

Sincerely,

A handwritten signature in black ink that reads "Sheila J. Peden". The signature is written in a cursive, flowing style.

Sheila J. Peden  
FOIA Officer

# Exhibit 8



## OFFICE OF INSPECTOR GENERAL

Federal Housing Finance Agency

400 7th Street SW, Washington, DC 20219

August 13, 2021

Jason Foster  
Founder & President  
Empower Oversight  
2615 Columbia Pike, #445  
Arlington, VA 22204  
By Electronic Mail: bsaddler@empowr.us

Dear Mr. Foster:

This letter is to acknowledge receipt of your August 12, 2021 request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, in which you requested:

1. **Communications relating to the CIGIE-IC investigation sent by (a) Laura Wertheimer, (b) Leonard DePasquale, (c) Richard Parker, (d) Jennifer Byrne, (e) Brian Baker, (f) Stacey Nahrwold, or (g) Alison Healey to (h) the Council of the Inspectors General on Integrity and Efficiency (“CIGIE”) Chair at the relevant time (i.e., Michael Horowitz or Allison Lerner), (i) the CIGIE-IC Chair at the relevant time (i.e., Scott Dahl or Kevin Winters), (j) Federal Deposit Insurance Corporation (“FDIC”) Inspector General Jay Lerner, or (k) any FDIC Office of Inspector General personnel assigned to assist the CIGIE-IC investigation.**
2. **Communications relating to the CIGIE-IC investigation sent to (a) Laura Wertheimer, (b) Leonard DePasquale, (c) Richard Parker, (d) Jennifer Byrne, (e) Brian Baker, (f) Stacey Nahrwold, or (g) Alison Healey from (h) the CIGIE Chair at the relevant time (i.e., Michael Horowitz or Allison Lerner), (i) the CIGIE-IC Chair at the relevant time (i.e., Scott Dahl or Kevin Winters), (j) FDIC Inspector General Jay Lerner, or (k) any FDIC Office of Inspector General personnel assigned to assist the CIGIE-IC investigation.**
3. **Communications sent to or from a house.gov or senate.gov domain to or from any official described in subsections (h), (i), or (j) of item 1 of this request, to the extent that such communication refers to any of the FHFA-OIG employees named in subsections (a), (b), or (c) of item 1 of this request, above.**

**Date Range for Record Search: From 1/1/2017 To 8/12/2021**

Your request was received by the Federal Housing Finance Agency's Office of Inspector General (FHFA-OIG) on August 12, 2021.

For tracking purposes, the tracking number assigned to your request is 2021-FOIA-00017. FHFA-OIG has determined that you are a(n) All Other requester.

FHFA-OIG has placed your FOIA request on the Standard Track. Standard Track requests are requests that are routine or require little or no search time, review, or analysis of records. FHFA-OIG responds to these requests within 20 working days after receipt, in the order in which they are received. If we determine while processing your request that it is more appropriately a Complex Track request, it will be reassigned to the Complex Track and you will be notified of this change. *See* 12 C.F.R. § 1202.7(b).

In your letter, you also requested a fee waiver of all FOIA processing fees. The Federal Housing Finance Agency's (FHFA) FOIA regulations state that FHFA-OIG "may grant your fee waiver request if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester." 12 C.F.R. § 1202.11(h)

Please be advised that your request for a fee waiver has been granted. Therefore, you will not be charged for any portion of FOIA processing fees that would otherwise be applicable in the processing of this request.

If you have any questions concerning your request, please contact me at (202) 730-0399 or at [FOIA@fhfaoig.gov](mailto:FOIA@fhfaoig.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Sheila J. Peden".

Sheila J. Peden  
FOIA Officer

# Exhibit 9





## OFFICE OF INSPECTOR GENERAL

Federal Housing Finance Agency

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400 7th Street SW, Washington, DC 20219

August 27, 2021

Bryan Saddler  
Empower Oversight  
2615 Columbia Pike, #445  
Arlington, VA 22204  
By Electronic Mail: bsaddler@empowr.us

RE: 2021-FOIA-00016 and 2021-FOIA-00017

Dear Mr. Saddler:

This letter responds to Empower Oversight's two requests pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, dated August 12, 2021. The Federal Housing Finance Agency's Office of Inspector General (FHFA-OIG) assigned the requests tracking numbers 2021-FOIA-00016 and 2021-FOIA-00017.

In both requests, Empower Oversight requests records related to matters under the purview of the Council of the Inspectors General on Integrity and Efficiency (CIGIE). For this reason, FHFA-OIG has referred the requests to CIGIE, whose FOIA office will respond to you directly. The CIGIE FOIA office can be reached at FOIASTAFF@cigie.gov.

Sincerely,

Gregg M. Schwind  
(for) Sheila Peden  
FOIA Officer

# Exhibit 10

Bryan Saddler <[bsaddler@empowr.us](mailto:bsaddler@empowr.us)>

---

**FOIA Request: CIGIE-IC Investigation of FHFA-OIG Leadership**

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**FOIA** <[FOIA@fhfaoig.gov](mailto:FOIA@fhfaoig.gov)>

Fri, Aug 27, 2021 at 10:51 AM

To: Bryan Saddler <[bsaddler@empowr.us](mailto:bsaddler@empowr.us)>Cc: FOIA <[FOIA@fhfaoig.gov](mailto:FOIA@fhfaoig.gov)>

Dear Mr. Saddler:

Attached please find correspondence pertaining to the two pending Empower Oversight FOIA requests (2021-FOIA-00016 and 2021-FOIA-00017). Thank you.

Sincerely,

Sheila Peden

FOIA Officer

---

**From:** Bryan Saddler <[bsaddler@empowr.us](mailto:bsaddler@empowr.us)>**Sent:** Thursday, August 12, 2021 11:10 AM**To:** FOIA <[FOIA@fhfaoig.gov](mailto:FOIA@fhfaoig.gov)>**Subject:** FOIA Request: CIGIE-IC Investigation of FHFA-OIG Leadership

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear FOIA Officer: Attached is a FOIA request seeking communications with CIGIE representatives and Congress relating to the CIGIE-IC investigation FHFA-OIG. If you have any questions concerning this request, then please contact me at [bsaddler@empowr.us](mailto:bsaddler@empowr.us) or by telephone at (571)-447-7453.

[Quoted text hidden]

**2021.08.27\_Notice of Referral.pdf**

104K

# Exhibit 11



Council of the  
**INSPECTORS GENERAL**  
on INTEGRITY and EFFICIENCY

August 30, 2021

Bryan Saddler  
bsaddler@empowr.us

Subject: CIGIE Freedom of Information/Privacy Act Request 6330-2021-71

Dear Mr. Saddler,

This letter responds to your client's Freedom of Information Act (FOIA) request dated August 12, 2021, to the Federal Housing Finance Agency Office of Inspector General ("FHFA-OIG"). In fact, it appears that your client filed two related requests with the FHFA OIG on that date. Please note that this OIG referred both requests to the Council of the Inspectors General on Integrity and Efficiency (CIGIE) on August 26, 2021. CIGIE has combined both requests and has assigned to them FOIA case number 6330-2021-71. As worded in the requests, you seek the following records in relation to an alleged CIGIE letter to the President on April 14, 2021:

- 1. Communications relating to the CIGIE-IC investigation sent by (a) Laura Wertheimer, (b) Leonard DePasquale, (c) Richard Parker, (d) Jennifer Byrne, (e) Brian Baker, (f) Stacey Nahrwold, or (g) Alison Healey to (h) the Council of the Inspectors General on Integrity and Efficiency ("CIGIE") Chair at the relevant time (i.e., Michael Horowitz or Allison Lerner), (i) the CIGIE-IC Chair at the relevant time (i.e., Scott Dahl or Kevin Winters), (j) Federal Deposit Insurance Corporation ("FDIC") Inspector General Jay Lerner, or (k) any FDIC Office of Inspector General personnel assigned to assist the CIGIE-IC investigation.*
- 2. Communications relating to the CIGIE-IC investigation sent to (a) Laura Wertheimer, (b) Leonard DePasquale, (c) Richard Parker, (d) Jennifer Byrne, (e) Brian Baker, (f) Stacey Nahrwold, or (g) Alison Healey from (h) the CIGIE Chair at the relevant time (i.e., Michael Horowitz or Allison Lerner), (i) the CIGIE-IC Chair at the relevant time (i.e., Scott Dahl or Kevin Winters), (j) FDIC Inspector General Jay Lerner, or (k) any FDIC Office of Inspector General personnel assigned to assist the CIGIE-IC investigation.*
- 3. Communications sent to or from a house.gov or senate.gov domain to or from any official described in subsections (h), (i), or (j) of item 1 of this request, to the extent that such communication refers to any of the FHFA-OIG employees named in subsections (a), (b), or (c) of item 1 of this request, above.*
- 4. Communications relating to the CIGIE-IC investigation sent by Laura Wertheimer to the Council of the Inspectors General on Integrity and Efficiency ("CIGIE") Chair, Michael Horowitz.*

*5. Communications relating to the CIGIE-IC investigation sent to Laura Wertheimer from CIGIE Chair Michael Horowitz.*

As was explained in the response to FOIA requests 6330-2021-65, 6330-2021-66, 6330-2021-67, and 6330-2021-69, also filed by you on behalf of your client, your request constitutes a third-party request for law enforcement records covered by a system of records notice (SORN), involving the Privacy Act, and FOIA provisions which protect personal privacy.

Please note that FOIA requires that the Federal government treat all requesters alike, regardless of whether they have some knowledge about a particular law enforcement activity for which they are seeking additional information. In addition, FOIA requests and the responses thereto are themselves available to the public under FOIA. As a result, if a request specifies the information desired by identifying a person involved in a law enforcement activity, or by providing sufficient information to enable the easy identification of one or more parties through public sources, and if CIGIE were to respond by providing that information, the result would be a pair of publicly available documents that linked the identified person to a law enforcement activity.

Under FOIA exemption (b)(6), records are exempt from disclosure if the records are “personnel and medical files and similar files the disclosure of which would constitute an unwarranted invasion of personal privacy.” Under FOIA exemption (b)(7)(C), law enforcement information that, if disclosed, could reasonably be expected to constitute an unwarranted invasion of personal privacy is similarly exempt from disclosure. Disclosure is unwarranted if the private interest in nondisclosure outweighs the public interest in disclosure.

To elaborate on the reliance on FOIA exemptions (b)(6) and (b)(7)(C), please note that the latter involves the characterization of CIGIE’s Integrity Committee (IC) records as law enforcement records. The IC maintains records in accordance with a SORN, which is posted in the Federal Register. For your convenience, a link to the SORN is provided herein: <https://www.federalregister.gov/documents/2017/11/06/2017-24038/privacy-act-of-1974-system-of-records>. This SORN clearly establishes the applicability of law enforcement FOIA exemption (b)(7) threshold to Integrity Committee records, which in turn addresses a key aspect of your FOIA request.

CIGIE takes the position that the disclosure of even the existence of a law enforcement matter involving any particular individual would constitute an unwarranted invasion of privacy unless it has become a matter of public record as a result of successful criminal prosecution, recent civil legal action, or active government-wide debarment or voluntary exclusion, that is adjudged or imposed based on the law enforcement matter. Furthermore, if our office routinely confirmed the absence of a law enforcement matter for individuals not investigated by our office, our failure to do so in other cases where an individual had been investigated would amount to an implied disclosure of that fact. Accordingly, in all cases CIGIE will neither confirm nor deny the existence of a non-public law enforcement matter involving any particular individual.

CIGIE has released no public records of the type mentioned above. For the reasons noted in this response, CIGIE can neither confirm nor deny the existence of any of the attachments or the underlying records involving any of the parties in question. Therefore, your FOIA request is denied under FOIA exemptions (b)(6) and (b)(7)(C).

You may also contact the CIGIE FOIA Public Liaison at telephone number (202) 478-8265 or by sending an email to [FOIASTAFF@cigie.gov](mailto:FOIASTAFF@cigie.gov). 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  
[ogis@nara.gov](mailto:ogis@nara.gov)  
(202) 741-5770  
(877) 684-6448 (toll free)  
(202) 741-5769 (facsimile)

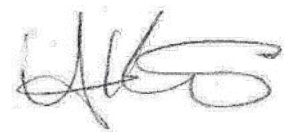
For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

A requester may appeal a determination denying a FOIA request in any respect to the CIGIE Chairperson c/o Office of General Counsel, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW, Suite 825, Washington, DC 20006. The appeal must be in writing, and must be submitted either by:

- (1) Regular mail sent to the address listed in this subsection, above; or
- (2) By fax sent to the FOIA Officer at (202) 254-0162; or
- (3) By email to [FOIAAPPEAL@cigie.gov](mailto:FOIAAPPEAL@cigie.gov).

Your appeal must be received within 90 days of the date of this letter. The outside of the envelope should be clearly marked "FOIA APPEAL."

Sincerely,



Faith R. Coutier  
Senior Assistant General Counsel

# Exhibit 12





*Council of the*  
**INSPECTORS GENERAL**  
*on INTEGRITY and EFFICIENCY*

August 19, 2021

Bryan Saddler  
bsaddler@empowr.us

Subject: CIGIE Freedom of Information/Privacy Act Request 6330-2021-65

Dear Mr. Saddler,

This letter responds to your client's Freedom of Information Act (FOIA) request, dated August 12, 2021, to the Department of Justice (DOJ) Office of Inspector General (OIG). Please note that the DOJ OIG referred your request to the Council of the Inspectors General on Integrity and Efficiency (CIGIE) on August 17, 2021. This request was assigned FOIA case number 6330-2021-65. As worded in the request, you seek the following records in relation to an alleged CIGIE letter to the President on April 14, 2021:

1. *Communications relating to the CIGIE-IC investigation sent by Laura Wertheimer to the Council of the Inspectors General on Integrity and Efficiency ("CIGIE") Chair, Michael Horowitz.*
2. *Communications relating to the CIGIE-IC investigation sent to Laura Wertheimer from CIGIE Chair Michael Horowitz.*

As has been explained to one of your colleagues at Empower, in relation to CIGIE FOIA request 6330-2021-45, your request constitutes a third-party request for law enforcement records covered by a system of records notice (SORN), involving the Privacy Act, and FOIA provisions which protect personal privacy.

Please note that FOIA requires that the Federal government treat all requesters alike, regardless of whether they have some knowledge about a particular law enforcement activity for which they are seeking additional information. In addition, FOIA requests and the responses thereto are themselves available to the public under FOIA. As a result, if a request specifies the information desired by identifying a person involved in a law enforcement activity, or by providing sufficient information to enable the easy identification of one or more parties through public sources, and if CIGIE were to respond by providing that information, the result would be a pair of publicly available documents that linked the identified person to a law enforcement activity.

Under FOIA exemption (b)(6), records are exempt from disclosure if the records are "personnel and medical files and similar files the disclosure of which would constitute an unwarranted invasion of personal privacy." Under FOIA exemption (b)(7)(C), law enforcement information that, if disclosed, could reasonably be expected to constitute an unwarranted

invasion of personal privacy is similarly exempt from disclosure. Disclosure is unwarranted if the private interest in nondisclosure outweighs the public interest in disclosure.

To elaborate on the reliance on FOIA exemptions (b)(6) and (b)(7)(C), please note that the latter involves the characterization of CIGIE's Integrity Committee (IC) records as law enforcement records. The IC maintains records in accordance with a SORN, which is posted in the Federal Register. For your convenience, a link to the SORN is provided herein: <https://www.federalregister.gov/documents/2017/11/06/2017-24038/privacy-act-of-1974-system-of-records>. This SORN clearly establishes the applicability of law enforcement FOIA exemption (b)(7) threshold to Integrity Committee records, which in turn addresses a key aspect of your FOIA request.

CIGIE takes the position that the disclosure of even the existence of a law enforcement matter involving any particular individual would constitute an unwarranted invasion of privacy unless it has become a matter of public record as a result of successful criminal prosecution, recent civil legal action, or active government-wide debarment or voluntary exclusion, that is adjudged or imposed based on the law enforcement matter. Furthermore, if our office routinely confirmed the absence of a law enforcement matter for individuals not investigated by our office, our failure to do so in other cases where an individual had been investigated would amount to an implied disclosure of that fact. Accordingly, in all cases CIGIE will neither confirm nor deny the existence of a non-public law enforcement matter involving any particular individual.

CIGIE has released no public records of the type mentioned above. For the reasons noted in this response, CIGIE can neither confirm nor deny the existence of any of the attachments or the underlying records involving any of the parties in question. Therefore, your FOIA request is denied under FOIA exemptions (b)(6) and (b)(7)(C).

You may also contact the CIGIE FOIA Public Liaison at telephone number (202) 478-8265 or by sending an email to [FOIASTAFF@cigie.gov](mailto:FOIASTAFF@cigie.gov). 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  
[ogis@nara.gov](mailto:ogis@nara.gov)  
(202) 741-5770  
(877) 684-6448 (toll free)  
(202) 741-5769 (facsimile)

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

A requester may appeal a determination denying a FOIA request in any respect to the CIGIE Chairperson c/o Office of General Counsel, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW, Suite 825, Washington, DC 20006. The appeal must be in writing, and must be submitted either by:

- (1) Regular mail sent to the address listed in this subsection, above; or
- (2) By fax sent to the FOIA Officer at (202) 254-0162; or
- (3) By email to [FOIAAPPEAL@cigie.gov](mailto:FOIAAPPEAL@cigie.gov).

Your appeal must be received within 90 days of the date of this letter. The outside of the envelope should be clearly marked "FOIA APPEAL."

Sincerely,

A handwritten signature in dark ink, appearing to read 'FC' or similar initials, followed by a stylized surname.

Faith Coutier  
Senior Assistant General Counsel



Council of the  
**INSPECTORS GENERAL**  
on INTEGRITY and EFFICIENCY

August 19, 2021

Bryan Saddler  
bsaddler@empowr.us

Subject: CIGIE Freedom of Information/Privacy Act Request 6330-2021-66

Dear Mr. Saddler,

This letter responds to your client's Freedom of Information Act (FOIA) request dated August 12, 2021, to the National Science Foundation (NSF) Office of Inspector General (OIG). Please note that the NSF OIG referred your request to the Council of the Inspectors General on Integrity and Efficiency (CIGIE) on August 17, 2021. This request was assigned FOIA case number 6330-2021-66. As worded in the request, you seek the following records in relation to an alleged CIGIE letter to the President on April 14, 2021:

- 1. Communications relating to the CIGIE-IC investigation sent by (a) Laura Wertheimer, (b) Leonard DePasquale, (c) Richard Parker, (d) Jennifer Byrne, (e) Brian Baker, (f) Stacey Nahrwold, or (g) Alison Healey to (h) the Council of the Inspectors General on Integrity and Efficiency ("CIGIE") Chair at the relevant time (i.e., Michael Horowitz or Allison Lerner), (i) the CIGIE-IC Chair at the relevant time (i.e., Scott Dahl or Kevin Winters), (j) Federal Deposit Insurance Corporation ("FDIC") Inspector General Jay Lerner, or (k) any FDIC Office of Inspector General personnel assigned to assist the CIGIE-IC investigation.*
- 2. Communications relating to the CIGIE-IC investigation sent to (a) Laura Wertheimer, (b) Leonard DePasquale, (c) Richard Parker, (d) Jennifer Byrne, (e) Brian Baker, (f) Stacey Nahrwold, or (g) Alison Healey from (h) the CIGIE Chair at the relevant time (i.e., Michael Horowitz or Allison Lerner), (i) the CIGIE-IC Chair at the relevant time (i.e., Scott Dahl or Kevin Winters), (j) FDIC Inspector General Jay Lerner, or (k) any FDIC Office of Inspector General personnel assigned to assist the CIGIE-IC investigation.*
- 3. Communications sent to or from a house.gov or senate.gov domain to or from any official described in subsections (h), (i), or (j) of item 1 of this request, to the extent that such communication refers to any of the FHFA-OIG employees named in subsections (a), (b), or (c) of item 1 of this request, above.*

As was explained in the response to FOIA request 6330-2021-65, also filed by you, your request constitutes a third-party request for law enforcement records covered by a system of records notice (SORN), involving the Privacy Act, and FOIA provisions which protect personal privacy.

Please note that FOIA requires that the Federal government treat all requesters alike, regardless of whether they have some knowledge about a particular law enforcement activity for which they are seeking additional information. In addition, FOIA requests and the responses thereto are themselves available to the public under FOIA. As a result, if a request specifies the information desired by identifying a person involved in a law enforcement activity, or by providing sufficient information to enable the easy identification of one or more parties through public sources, and if CIGIE were to respond by providing that information, the result would be a pair of publicly available documents that linked the identified person to a law enforcement activity.

Under FOIA exemption (b)(6), records are exempt from disclosure if the records are “personnel and medical files and similar files the disclosure of which would constitute an unwarranted invasion of personal privacy.” Under FOIA exemption (b)(7)(C), law enforcement information that, if disclosed, could reasonably be expected to constitute an unwarranted invasion of personal privacy is similarly exempt from disclosure. Disclosure is unwarranted if the private interest in nondisclosure outweighs the public interest in disclosure.

To elaborate on the reliance on FOIA exemptions (b)(6) and (b)(7)(C), please note that the latter involves the characterization of CIGIE’s Integrity Committee (IC) records as law enforcement records. The IC maintains records in accordance with a SORN, which is posted in the Federal Register. For your convenience, a link to the SORN is provided herein: <https://www.federalregister.gov/documents/2017/11/06/2017-24038/privacy-act-of-1974-system-of-records>. This SORN clearly establishes the applicability of law enforcement FOIA exemption (b)(7) threshold to Integrity Committee records, which in turn addresses a key aspect of your FOIA request.

CIGIE takes the position that the disclosure of even the existence of a law enforcement matter involving any particular individual would constitute an unwarranted invasion of privacy unless it has become a matter of public record as a result of successful criminal prosecution, recent civil legal action, or active government-wide debarment or voluntary exclusion, that is adjudged or imposed based on the law enforcement matter. Furthermore, if our office routinely confirmed the absence of a law enforcement matter for individuals not investigated by our office, our failure to do so in other cases where an individual had been investigated would amount to an implied disclosure of that fact. Accordingly, in all cases CIGIE will neither confirm nor deny the existence of a non-public law enforcement matter involving any particular individual.

CIGIE has released no public records of the type mentioned above. For the reasons noted in this response, CIGIE can neither confirm nor deny the existence of any of the attachments or the underlying records involving any of the parties in question. Therefore, your FOIA request is denied under FOIA exemptions (b)(6) and (b)(7)(C).

You may also contact the CIGIE FOIA Public Liaison at telephone number (202) 478-8265 or by sending an email to [FOIASTAFF@cigie.gov](mailto:FOIASTAFF@cigie.gov). 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  
[ogis@nara.gov](mailto:ogis@nara.gov)  
(202) 741-5770  
(877) 684-6448 (toll free)  
(202) 741-5769 (facsimile)

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

A requester may appeal a determination denying a FOIA request in any respect to the CIGIE Chairperson c/o Office of General Counsel, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW, Suite 825, Washington, DC 20006. The appeal must be in writing, and must be submitted either by:

- (1) Regular mail sent to the address listed in this subsection, above; or
- (2) By fax sent to the FOIA Officer at (202) 254-0162; or
- (3) By email to [FOIAAPPEAL@cigie.gov](mailto:FOIAAPPEAL@cigie.gov).

Your appeal must be received within 90 days of the date of this letter. The outside of the envelope should be clearly marked "FOIA APPEAL."

Sincerely,



Faith Coutier  
Senior Assistant General Counsel



Council of the  
**INSPECTORS GENERAL**  
on INTEGRITY and EFFICIENCY

August 23, 2021

Bryan Saddler  
bsaddler@empowr.us

Subject: CIGIE Freedom of Information/Privacy Act Request 6330-2021-67

Dear Mr. Saddler,

This letter responds to your client's Freedom of Information Act (FOIA) request dated August 12, 2021, to the Department of Labor (DOL) Office of Inspector General (OIG). Please note that the DOL OIG referred your request to the Council of the Inspectors General on Integrity and Efficiency (CIGIE) on August 20, 2021. This request was assigned FOIA case number 6330-2021-67. As worded in the request, you seek the following records in relation to an alleged CIGIE letter to the President on April 14, 2021:

- 1. Communications relating to the CIGIE-IC investigation sent by (a) Laura Wertheimer, (b) Leonard DePasquale, (c) Richard Parker, (d) Jennifer Byrne, (e) Brian Baker, (f) Stacey Nahrwold, or (g) Alison Healey to (h) the Council of the Inspectors General on Integrity and Efficiency ("CIGIE") Chair at the relevant time (i.e., Michael Horowitz or Allison Lerner), (i) the CIGIE-IC Chair at the relevant time (i.e., Scott Dahl or Kevin Winters), (j) Federal Deposit Insurance Corporation ("FDIC") Inspector General Jay Lerner, or (k) any FDIC Office of Inspector General personnel assigned to assist the CIGIE-IC investigation.*
- 2. Communications relating to the CIGIE-IC investigation sent to (a) Laura Wertheimer, (b) Leonard DePasquale, (c) Richard Parker, (d) Jennifer Byrne, (e) Brian Baker, (f) Stacey Nahrwold, or (g) Alison Healey from (h) the CIGIE Chair at the relevant time (i.e., Michael Horowitz or Allison Lerner), (i) the CIGIE-IC Chair at the relevant time (i.e., Scott Dahl or Kevin Winters), (j) FDIC Inspector General Jay Lerner, or (k) any FDIC Office of Inspector General personnel assigned to assist the CIGIE-IC investigation.*
- 3. Communications sent to or from a house.gov or senate.gov domain to or from any official described in subsections (h), (i), or (j) of item 1 of this request, to the extent that such communication refers to any of the FHFA-OIG employees named in subsections (a), (b), or (c) of item 1 of this request, above.*

As was explained in the response to FOIA requests 6330-2021-65 and 6330-2021-66, also filed by you, your request constitutes a third-party request for law enforcement records covered by a system of records notice (SORN), involving the Privacy Act, and FOIA provisions which protect personal privacy.



Please note that FOIA requires that the Federal government treat all requesters alike, regardless of whether they have some knowledge about a particular law enforcement activity for which they are seeking additional information. In addition, FOIA requests and the responses thereto are themselves available to the public under FOIA. As a result, if a request specifies the information desired by identifying a person involved in a law enforcement activity, or by providing sufficient information to enable the easy identification of one or more parties through public sources, and if CIGIE were to respond by providing that information, the result would be a pair of publicly available documents that linked the identified person to a law enforcement activity.

Under FOIA exemption (b)(6), records are exempt from disclosure if the records are “personnel and medical files and similar files the disclosure of which would constitute an unwarranted invasion of personal privacy.” Under FOIA exemption (b)(7)(C), law enforcement information that, if disclosed, could reasonably be expected to constitute an unwarranted invasion of personal privacy is similarly exempt from disclosure. Disclosure is unwarranted if the private interest in nondisclosure outweighs the public interest in disclosure.

To elaborate on the reliance on FOIA exemptions (b)(6) and (b)(7)(C), please note that the latter involves the characterization of CIGIE’s Integrity Committee (IC) records as law enforcement records. The IC maintains records in accordance with a SORN, which is posted in the Federal Register. For your convenience, a link to the SORN is provided herein: <https://www.federalregister.gov/documents/2017/11/06/2017-24038/privacy-act-of-1974-system-of-records>. This SORN clearly establishes the applicability of law enforcement FOIA exemption (b)(7) threshold to Integrity Committee records, which in turn addresses a key aspect of your FOIA request.

CIGIE takes the position that the disclosure of even the existence of a law enforcement matter involving any particular individual would constitute an unwarranted invasion of privacy unless it has become a matter of public record as a result of successful criminal prosecution, recent civil legal action, or active government-wide debarment or voluntary exclusion, that is adjudged or imposed based on the law enforcement matter. Furthermore, if our office routinely confirmed the absence of a law enforcement matter for individuals not investigated by our office, our failure to do so in other cases where an individual had been investigated would amount to an implied disclosure of that fact. Accordingly, in all cases CIGIE will neither confirm nor deny the existence of a non-public law enforcement matter involving any particular individual.

CIGIE has released no public records of the type mentioned above. For the reasons noted in this response, CIGIE can neither confirm nor deny the existence of any of the attachments or the underlying records involving any of the parties in question. Therefore, your FOIA request is denied under FOIA exemptions (b)(6) and (b)(7)(C).

You may also contact the CIGIE FOIA Public Liaison at telephone number (202) 478-8265 or by sending an email to [FOIASTAFF@cigie.gov](mailto:FOIASTAFF@cigie.gov). 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:



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(202) 741-5770  
(877) 684-6448 (toll free)  
(202) 741-5769 (facsimile)

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

A requester may appeal a determination denying a FOIA request in any respect to the CIGIE Chairperson c/o Office of General Counsel, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW, Suite 825, Washington, DC 20006. The appeal must be in writing, and must be submitted either by:

- (1) Regular mail sent to the address listed in this subsection, above; or
- (2) By fax sent to the FOIA Officer at (202) 254-0162; or
- (3) By email to [FOIAAPPEAL@cigie.gov](mailto:FOIAAPPEAL@cigie.gov).

Your appeal must be received within 90 days of the date of this letter. The outside of the envelope should be clearly marked "FOIA APPEAL."

Sincerely,



Faith Coutier  
Senior Assistant General Counsel



Council of the  
**INSPECTORS GENERAL**  
on INTEGRITY and EFFICIENCY

August 24, 2021

Bryan Saddler  
bsaddler@empowr.us

Subject: CIGIE Freedom of Information/Privacy Act Request 6330-2021-69

Dear Mr. Saddler,

This letter responds to your client's Freedom of Information Act (FOIA) request dated August 12, 2021, to the National Railroad Passenger Corporation (Amtrak) Office of Inspector General (OIG). Please note that this OIG referred your request to the Council of the Inspectors General on Integrity and Efficiency (CIGIE) on August 23, 2021. This request was assigned FOIA case number 6330-2021-69. As worded in the request, you seek the following records in relation to an alleged CIGIE letter to the President on April 14, 2021:

- 1. Communications relating to the CIGIE-IC investigation sent by (a) Laura Wertheimer, (b) Leonard DePasquale, (c) Richard Parker, (d) Jennifer Byrne, (e) Brian Baker, (f) Stacey Nahrwold, or (g) Alison Healey to (h) the Council of the Inspectors General on Integrity and Efficiency ("CIGIE") Chair at the relevant time (i.e., Michael Horowitz or Allison Lerner), (i) the CIGIE-IC Chair at the relevant time (i.e., Scott Dahl or Kevin Winters), (j) Federal Deposit Insurance Corporation ("FDIC") Inspector General Jay Lerner, or (k) any FDIC Office of Inspector General personnel assigned to assist the CIGIE-IC investigation.*
- 2. Communications relating to the CIGIE-IC investigation sent to (a) Laura Wertheimer, (b) Leonard DePasquale, (c) Richard Parker, (d) Jennifer Byrne, (e) Brian Baker, (f) Stacey Nahrwold, or (g) Alison Healey from (h) the CIGIE Chair at the relevant time (i.e., Michael Horowitz or Allison Lerner), (i) the CIGIE-IC Chair at the relevant time (i.e., Scott Dahl or Kevin Winters), (j) FDIC Inspector General Jay Lerner, or (k) any FDIC Office of Inspector General personnel assigned to assist the CIGIE-IC investigation.*
- 3. Communications sent to or from a house.gov or senate.gov domain to or from any official described in subsections (h), (i), or (j) of item 1 of this request, to the extent that such communication refers to any of the FHFA-OIG employees named in subsections (a), (b), or (c) of item 1 of this request, above.*

As was explained in the response to FOIA requests 6330-2021-65, 6330-2021-66, and 6330-2021-67, also filed by you, your request constitutes a third-party request for law enforcement records covered by a system of records notice (SORN), involving the Privacy Act, and FOIA provisions which protect personal privacy.

Please note that FOIA requires that the Federal government treat all requesters alike, regardless of whether they have some knowledge about a particular law enforcement activity for which they are seeking additional information. In addition, FOIA requests and the responses thereto are themselves available to the public under FOIA. As a result, if a request specifies the information desired by identifying a person involved in a law enforcement activity, or by providing sufficient information to enable the easy identification of one or more parties through public sources, and if CIGIE were to respond by providing that information, the result would be a pair of publicly available documents that linked the identified person to a law enforcement activity.

Under FOIA exemption (b)(6), records are exempt from disclosure if the records are “personnel and medical files and similar files the disclosure of which would constitute an unwarranted invasion of personal privacy.” Under FOIA exemption (b)(7)(C), law enforcement information that, if disclosed, could reasonably be expected to constitute an unwarranted invasion of personal privacy is similarly exempt from disclosure. Disclosure is unwarranted if the private interest in nondisclosure outweighs the public interest in disclosure.

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CIGIE takes the position that the disclosure of even the existence of a law enforcement matter involving any particular individual would constitute an unwarranted invasion of privacy unless it has become a matter of public record as a result of successful criminal prosecution, recent civil legal action, or active government-wide debarment or voluntary exclusion, that is adjudged or imposed based on the law enforcement matter. Furthermore, if our office routinely confirmed the absence of a law enforcement matter for individuals not investigated by our office, our failure to do so in other cases where an individual had been investigated would amount to an implied disclosure of that fact. Accordingly, in all cases CIGIE will neither confirm nor deny the existence of a non-public law enforcement matter involving any particular individual.

CIGIE has released no public records of the type mentioned above. For the reasons noted in this response, CIGIE can neither confirm nor deny the existence of any of the attachments or the underlying records involving any of the parties in question. Therefore, your FOIA request is denied under FOIA exemptions (b)(6) and (b)(7)(C).

You may also contact the CIGIE FOIA Public Liaison at telephone number (202) 478-8265 or by sending an email to [FOIASTAFF@cigie.gov](mailto:FOIASTAFF@cigie.gov). 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:

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(202) 741-5770  
(877) 684-6448 (toll free)  
(202) 741-5769 (facsimile)

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

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- (3) By email to [FOIAAPPEAL@cigie.gov](mailto:FOIAAPPEAL@cigie.gov).

Your appeal must be received within 90 days of the date of this letter. The outside of the envelope should be clearly marked "FOIA APPEAL."

Sincerely,

A handwritten signature in dark ink, appearing to read 'FC' or similar initials, followed by a stylized surname.

Faith Coutier  
Senior Assistant General Counsel