

EMPOWER OVERSIGHT

Whistleblowers & Research



December 9, 2021

VIA ELECTRONIC TRANSMISSION: FOIA@StateOIG.Gov

FOIA Officer
Office of General Counsel
Office of Inspector General
U.S. Department of State
1700 North Moore Street
Suite 1400
Arlington, VA 22209

**RE: FREEDOM OF INFORMATION ACT REQUEST FOR RECORDS RELATED TO
DOS-OIG REVIEW OF ALLEGATIONS OF WHISTLEBLOWER RETALIATION
WITHIN USAGM**

Dear FOIA Officer:

Introduction

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, and seek to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

Background

According to the Office of Personnel Management (“OPM”), the vast majority of Federal agencies use the Defense Counterintelligence and Security Agency—and previously used OPM’s National Background Investigations Bureau—to conduct background investigations of employees.¹ However, about 20 agencies or agency subcomponents—most of which are in the

¹ Ogrysko, Nicole, *In Rare Move, OPM Strips Broadcasting Agency of Background Investigation and Vetting Authorities*, (August 12, 2020), available at <https://federalnewsnetwork.com/workforce/2020/08/in-rare-move-opm-strips-broadcasting-agency-of-background-investigation->

intelligence community—have their own designated authority to conduct background investigations and other security services.² At one time, the United States Agency for Global Media (“USAGM”) was one such agency subcomponent with delegated authority from OPM.³

However, for more than a decade OPM audits reported deficiencies in USAGM’s compliance with the conditions of its delegation from OPM.⁴ These unresolved findings culminated in an August 2019 OPM report that identified 37 “recommendations requiring corrective action and provided USAGM 90 days to bring all program areas into compliance.”⁵ OPM advised USAGM that its failure timely to achieve compliance could result in the revocation of its delegated authority.⁶

In February 2020, OPM conducted a follow-up review.⁷ It determined that USAGM had taken corrective action on only 18 of OPM’s 37 recommendations, but had failed to remedy 19 recommendations.⁸ OPM also made six new recommendations for accomplishing USAGM’s compliance with the conditions of its delegated authority, and advised USAGM that it would revoke its delegated authority “until such time as USAGM can demonstrate to OPM’s satisfaction that USAGM has taken all [required] corrective actions.”⁹

Among its findings, OPM determined that USAGM’s delegation to conduct and adjudicate background investigations had expired in 2012.¹⁰ OPM began reporting this failing to USAGM in September of 2015, to no avail.¹¹ Additionally, in connection with such background investigations, OPM found that USAGM had failed to follow the applicable OPM regulations, *i.e.*, 5 C.F.R. § 731.106(a) and 5 C.F.R. Part 1400, which required it to designate its various job categories as high, moderate, or low risk.¹² Such designations reflect what sort of background investigation is necessary and how closely to screen an individual for the job.¹³

[and-vetting-authorities/](#); see also, OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 13, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

² *Id.*

³ *Id.*

⁴ OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, pp. 2 – 3, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Ogrysko, Nicole, *In Rare Move, OPM Strips Broadcasting Agency of Background Investigation and Vetting Authorities*, (August 12, 2020), available at <https://federalnewsnetwork.com/workforce/2020/08/in-rare-move-opm-strips-broadcasting-agency-of-background-investigation-and-vetting-authorities/>; see also, OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 14, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

¹¹ OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 14 – 15, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

¹² *Id.*

¹³ *Id.*

Again, USAGM had been aware of its failure to designate its many job categories since at least September of 2015, but failed to properly remedy the deficiency.¹⁴

Further, over at least the last four years, the Department of State's Office of Inspector General ("DOS-OIG") has reported deficiencies with USAGM's contracting and grants management. With respect to contracting, the DOS-OIG has reported successful prosecutions of USAGM's Chief Strategy Officer for theft of more than \$40,000 in government funds in connection with a travel fraud scheme, and of a contracting officer who provided preferential treatment to a contractor in exchange for the contractor hiring a relative of the contracting officer to fill a "no-show" position.¹⁵ It also reported that two USAGM employees had converted government-purchased computers for their personal use and accepted gifts from a contractor, which improperly billed the government for \$31,142 in equipment expenses that were not within the scope of its contract.¹⁶

Regarding grants management, the DOS-OIG has consistently reported that the independent auditor reports concerning USAGM's fiscal year 2017 through 2020 annual financial statements have disclosed significant deficiencies in internal control over it monitoring grantees.¹⁷ Such independent auditor reports have also repeatedly disclosed instances of noncompliance with Federal grant regulations.¹⁸

Similarly, with respect to human resources issues, in 2019 the DOS-OIG reported a massive deficiency: USAGM senior managers were not enforcing Federal requirements to assess employee performance.¹⁹ Specifically, a DOS-OIG targeted inspection report disclosed:

...OIG found that USAGM senior managers did not enforce timely completion of performance reviews, as required by law. At the time of the inspection, only 67 percent of the agency's 1,454 Civil Service employees had received performance reviews for the most recent rating period (from May 1, 2017 to April 30, 2018). . .

OIG found that despite having performance management policies, procedures, and training to guide supervisors on their responsibilities, senior managers did not hold supervisors accountable for completing annual performance reviews within 60 days of the end of the rating period. Failure to provide timely performance reviews can harm employee development, morale, and overall organizational efficiency as well as prevent employees from receiving merited within-grade and quality salary step increases and promotions.²⁰

¹⁴ *Id.*

¹⁵ DOS-OIG, *Semiannual Report to the Congress, October 1, 2020, to March 31, 2021*, p. 39, available at https://www.stateoig.gov/system/files/spring_2021_semiannual_report_to_the_congress_0.pdf.

¹⁶ *Id.* at 37.

¹⁷ *Id.* at 36, 38.

¹⁸ *Id.*

¹⁹ DOS-OIG, *Targeted Inspection of the Governance of the United States Agency for Global Media*, p. 15, (April 2019), available at https://www.stateoig.gov/system/files/isp-ib-19-22_0.pdf.

²⁰ *Id.* (footnote omitted).

Additionally, stakeholders have criticized the USAGM’s (and its predecessor’s) efforts to ensure that the broadcasters that it regulate present an accurate, balanced, effective, and objective picture of America and its institutions, policies, and thoughts. For example, the charter of the Voice of America (“VOA”), one of the broadcasters under USAGM’s jurisdiction establishes three principles that govern the VOA’s broadcasting:

1. VOA will serve as a consistently reliable and authoritative source of news. VOA news will be accurate, objective, and comprehensive.
2. VOA will represent America, not any single segment of American society, and will therefore present a balanced and comprehensive projection of significant American thought and institutions.
3. VOA will present the policies of the United States clearly and effectively, and will also present responsible discussions and opinion on these policies.²¹

The VOA and its affiliated broadcasters have a checkered history of complying with these principles. Almost a decade ago, during testimony before the House Foreign Affairs Committee, former Secretary of State Hillary Clinton described the Broadcasting Board of Governors—the predecessor of USAGM—as “practically defunct in terms of its capacity to tell a message around the world.”²² She went on to explain that USAGM’s predecessor was abdicating “the ideological arena...”; adding:

We have the best values. We have the best narrative. Most people in the world just want to have a good decent life that is supported by a good decent job and raise their families and we’re letting [competing narratives] fill a void. We have to get in there and compete and we can do it successfully.²³

Further, as the broadcasters under the USAGM’s jurisdiction were abdicating the external ideological arena to the United States’ competitors, internally they meddled in domestic politics. In the midst of the 2020 Presidential election, USAGM leadership was alerted to a video that was posted on the VOA’s Urdu Service, which encouraged Muslims *in Michigan* to vote for the Biden-Harris Presidential ticket.²⁴ The VOA offered no context for the video, which USAGM’s then leader determined violated the VOA’s charter.²⁵

In June of 2020, a new Chief Executive Officer (“CEO”), Michael Pack (“CEO Pack”), was installed at USAGM. And, according to a USAGM press release, on his first day CEO Pack “effected a series of significant and long-overdue actions to keep assurances to restructure the

²¹ 22 U.S.C. § 6202(c) (emphasis added).

²² House Foreign Affairs Committee, Recording of Oversight Hearing Concerning the Broadcasting Board of Governors, Opening Statement of Chairman Ed Royce, minute mark 5:06, (June 26, 2013), available at <https://www.c-span.org/video/?313590-1/house-holds-oversight-hearing-voice-america>; see also, BBG-USAGM Watch, *Clinton – Broadcasting Board of Governors Is Practically Defunct* (January 23, 2013).

²³ BBG-USAGM Watch, *Clinton – Broadcasting Board of Governors Is Practically Defunct* (January 23, 2013) (quoting former Secretary of State Clinton as saying, “Our Broadcasting Board of Governors is practically defunct in terms of its capacity to tell a message around the world. So we’re abdicating the ideological arena and we need to get back into it. We have the best values. We have the best narrative. Most people in the world just want to have a good decent life that is supported by a good decent job and raise their families and we’re letting the Jihadist narrative fill a void. We have to get in there and compete and we can do it successfully”).

²⁴ Pack, Michael, *The Death of Democracy* (November 15, 2021)(emphasis added), available at <https://www.washingtonexaminer.com/restoring-america/fairness-justice/the-death-of-democracy>.

²⁵ *Id.*

agency, fully in accordance with the law.”²⁶ Soon thereafter, USAGM announced that CEO Pack had “ordered a comprehensive investigation of USAGM operations” because he was concerned that “systemic, severe, and fundamental security failures, many of which have persisted for years,” “compromise the agency’s ability to fulfill its mission, undermine the efficiency and effectiveness of the federal workforce, and pose a threat to U.S. national security.”²⁷ Additionally, he publicly released OPM’s scathing report,²⁸ suspended the security clearances of six senior USAGM officials who had led the agency during the period in question, and placed the senior officials on administrative leave.²⁹

In further regard to USAGM’s suspension of the senior officials’ security clearances and placement of them on administrative leave, the Government Accountability Project (“GAP”)—an organization, which like Empower Oversight, advocates on behalf of whistleblowers—filed multiple whistleblower complaints with the U.S. Office of Special Counsel (“OSC”) alleging that CEO Pack and others at USAGM engaged in gross mismanagement; abused their authority; violated laws, rules, or regulations; and threatened public health and safety.³⁰ According to GAP, “OSC reviewed the allegations and, following its independent assessment, determined there was a substantial likelihood of wrongdoing” and “ordered [USAGM to investigate and] to provide a written response to OSC within 60 days for further evaluation.”³¹

On January 21, 2021, USAGM announced that the incoming Biden Administration had requested and accepted CEO Pack’s resignation.³² Additionally, President Biden designated Kelu Chao as Acting CEO of USAGM, pending the nomination, Senate confirmation, and appointment of a permanent CEO.³³ Soon thereafter, Acting CEO Chao is reported to have brought back five of the six senior USAGM officials whom CEO Pack reportedly had placed on administrative leave; the sixth official is reported to have opted to retire.³⁴

In further regard to the six senior USAGM officials whom CEO Pack reportedly placed on administrative leave after suspending their security clearances, on July 9, 2021, GAP reported that the DOS-OIG had concluded that:

²⁶ USAGM, *USAGM CEO Implements Critical Changes on Day One to Fulfill Legislative Mandate* (June 18, 2020), available at <https://www.usagm.gov/2020/06/18/usagm-ceo-implements-critical-changes-on-day-one-to-fulfill-legislative-mandate/>.

²⁷ USAGM, *USAGM CEO Pack Announces Investigation into Long-term Security Failures* (July 23, 2020), available at <https://www.usagm.gov/2020/07/23/usagm-ceo-pack-announces-investigation-into-long-term-security-failure/>.

²⁸ USAGM, *CEO Pack Releases OPM Report Detailing Long-Standing USAGM Security Failures* (August 4, 2020), available at <https://www.usagm.gov/2020/08/04/ceo-pack-releases-opm-report-detailing-long-standing-usagm-security-failures/>.

²⁹ Government Accountability Project (“GAP”), *Government Accountability Project Applauds U.S. Office of Counsel for Finding “Substantial Likelihood of Wrongdoing by Voice of America/U.S. Agency for Global Media Political Leadership* (December 2, 2020), available at <https://whistleblower.org/press-release/government-accountability-project-applauds-us-office-of-special-counsel-for-finding-substantial-likelihood-of-wrongdoing-by-voice-of-america-us-agency-for-global-media-political-leadership/>.

³⁰ *Id.*

³¹ *Id.*

³² USAGM, *Biden Administration Requests USAGM CEO Pack’s Resignation* (January 21, 2021), available at <https://www.usagm.gov/2021/01/21/biden-administration-requests-usagm-ceo-packs-resignation/>.

³³ *Id.*

³⁴ GAP, *US Government Media Whistleblowers Cleared of Wrongdoing* (July 9, 2021), available at <https://whistleblower.org/in-the-news/voice-of-america-us-government-media-whistleblowers-cleared-of-wrongdoing/>.

- The officials qualified as whistleblowers because they had raised concerns about CEO Pack’s actions;
- CEO Pack retaliated against the officials when he suspended their security clearances, a prerequisite for their positions; and
- CEO “Pack’s actions were ‘without a legitimate basis.’”³⁵

Empower Oversight has been unable to locate a copy of the DOS-OIG report that GAP referenced. The report does not appear to be published on the DOS-OIG’s website. However, the DOS-OIG’s semiannual reports for the period ending September 30, 2021 provides:

During the reporting period, OIG conducted six investigations under Presidential Policy Directive 19 regarding complaints that the security clearances of six USAGM employees were suspended in retaliation for whistleblowing activity. OIG substantiated that retaliation had occurred in all six cases and referred the cases to USAGM for remedial action.³⁶

Records Request

To shed light allegations of whistleblower retaliation within the USAGM from June 2020 through January 20, 2021, and the DOS-OIG’s response to such allegations, Empower Oversight respectfully requests, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552:

1. Copies of all reports of investigation prepared by DOS-OIG related to allegations—made between June 1, 2020, and January 21, 2021—of whistleblower retaliation within USAGM.
2. All records relating to communications between DOS-OIG personnel and Capitol Hill about Michael Pack, including emails to and from “@house.gov” or “@senate.gov” email addresses.
3. All records relating to communications between DOS-OIG personnel and USAGM personnel about Michael Pack, including emails to and from “@usagm.gov” email addresses.

Definitions

“COMMUNICATION(S)” means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more persons, including but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, voice-mail messages, text messages, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

“DOCUMENT(S)” or “RECORD(S)” mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or

³⁵ *Id.*

³⁶ DOS-OIG, *Semiannual Report to the Congress, April 1, 2021, to September 30, 2021*, p. 4, available at https://www.stateoig.gov/system/files/semiannual_report_to_congress_-_fall_2021_508.pdf.

neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically or otherwise. As used herein, the terms “DOCUMENT(S)” or “RECORD(S)” include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office communications, communications to, between and among employees, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, or other documentation of telephone or other conversations, interviews, affidavits, slides, statement summaries, opinions, indices, analyses, publications, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, sound recordings, data sheets, computer printouts, tapes, discs, microfilm, and all other records kept, regardless of the title, author, or origin.

“PERSON” means individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

“REFERS,” “REFERRING TO,” “REGARDS,” “REGARDING,” “RELATES,” “RELATING TO,” “CONCERNS,” “BEARS UPON,” or “PERTAINS TO” mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

Instructions

The time period of the requested records is June 1, 2020, through the present.

The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive.

The singular form shall include the plural form and vice versa.

The present tense shall include the past tense and vice versa.

In producing the records described above, you shall segregate them by reference to each of the numbered items of this FOIA request.

If you have any questions about this request, please contact Bryan Saddler by e-mail at bsaddler@empowr.us.

Fee Waiver Request

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but notes that it qualifies as a “representative of the news media”³⁷ and requests a waiver of any fees that may be associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii).

³⁷ As the Securities Exchange Commission recently conceded, with its issuances of ‘press releases’ describing its activities and findings, and its emails of research papers, FOIA updates, and news accounts of its activities to an address list more than 9,400 members of the press, Capitol Hill staff, and key thought leaders, Empower Oversight qualifies as a news media requester for purposes of fees assessed pursuant to the FOIA.

Empower Oversight is a non-profit educational organization as defined under Section 501(c)(3) of the Internal Revenue Code, which helps 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. Empower Oversight has no commercial interest in making this request.

Further, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public understanding of the operations and activities of USAGM and DOS-OIG. Specifically, the public has a significant interest in understanding CEO Pack's efforts to reform long-reported deficiencies within USAGM's operations, the reactions of USAGM senior managers to such efforts, and the DOS-OIG's response to any allegations of whistleblower retaliation that may have arisen.

Empower Oversight is committed to government accountability, public integrity, and transparency. In the latter regard, the information that that Empower Oversight receives that tends to explain the DOJ's practices will be disclosed publicly via its website, and shared copies with other news media for public dissemination.³⁸

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format.

Thank you for your time and consideration. Please don't hesitate to contact me with any questions.

Cordially,

/Jason Foster/

Jason Foster
Founder & President

³⁸ "Mission," Empower Oversight (<http://empowr.us/mission>).