

EMPOWER OVERSIGHT

Whistleblowers & Research



EMPOWR.us

January 4, 2023

VIA ELECTRONIC TRANSMISSION: FOIAREQUESTS@DODIG.MIL

Department of Defense Office of Inspector General
ATTN: FOIA Requester Service Center, Suite 10B24
4800 Mark Center Drive
Alexandria, VA 22350-1500

RE: Request for Records Relating to CIGIE's and DOD-OIG's Processing of an Empower Oversight FOIA Request

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

A confidential whistleblower provided Empower Oversight with a copy of a Department of Defense ("DOD") memorandum ("DOD memo") purporting to document excess salary payments (*i.e.*, payments over and above the authorized statutory limits) to two inspectors general. Additionally, the whistleblower alleged that the Council of Inspectors General on Integrity and Efficiency ("CIGIE") Integrity Committee ("CIGIE-IC") received a copy of the DOD memo and shared it with CIGIE members, but it did not open an inquiry into the overpayments.

Section 4(e) of the Inspector General Act provides generally that the rate of annual basic pay of Establishment Inspector Generals ("EIG"), including the inspectors general of the National Security Agency ("NSA") and National Reconnaissance Office ("NRO"), shall be equal to the rate payable to Level III of the Executive Schedule, plus 3%.^{1, 2}

¹ 5 U.S.C. App. §§ 3(e), 12(2), 12(3).

² Regarding the qualification "generally," inspectors general who served as Senior Executive Service ("SES") employees immediately prior to their appointments as inspectors general may opt to retain the basic pay levels that they attained as SES employees. See 5 U.S.C. § 3392(c).

Level III was capped at \$165,300 per annum for the 2014 through 2018 pay years.³ Beginning in 2019 and continuing through pay year 2022, Level III was capped at \$168,400 per annum.⁴ Hence, EIGs' annual pay levels for pay years 2014 through 2018 generally was \$170,259 ($\$165,300 \times 1.03 = \$170,259$) and was \$173,452 ($\$168,400 \times 1.03 = \$173,452$) for pay years 2019 through 2022.

The DOD memo obtained by Empower Oversight is dated January 25, 2022. It is from Nancy Anderson Speight, Deputy Assistant Secretary for Civilian Personnel Policy, Office of the Assistant Secretary of Defense, Department of Defense ("DOD"). It responds to a request by the Deputy Inspector General for Administrative Investigations, Office of Inspector General, Department of Defense ("DOD-OIG"), for a review of "executive pay setting methods within" the NSA-OIG and the NRO-OIG. Deputy Assistant Secretary Speight concluded that:

- The NSA-OIG correctly set the former NSA inspector general's ("NSA-IG's") pay rate upon his appointment in 2018 but, subsequently, it incorrectly adjusted his pay; and
- The NRO-OIG incorrectly set and subsequently adjusted the former NRO inspector general's ("NRO-IG's") pay rate.

Moreover, Deputy Assistant Secretary Speight recommended that DOD-OIG request that the NSA-OIG and NRO-OIG "take corrective action, as appropriate, with respect to pay actions for" their former inspectors general, and "review their personnel policies for compliance with applicable law and adjust as necessary."

According to whistleblower allegations made to Empower Oversight, the cap on EIGs' pay has frequently been discussed at CIGIE meetings. One or both the former NSA-IG and/or the former NRO-IG were allegedly in attendance on such occasions. Further, the whistleblower alleges that CIGIE leadership warned EIGs that the DOD memo had been sent to the CIGIE-IC, but that it had refused to investigate the salary overpayments to the former inspectors general.

On March 25, 2022, to shed light on NSA-OIG's, NRO-OIG's, DOD-OIG's, DOD's, and CIGIE's responses to information of pay irregularities of two Presidentially-appointed, Senate-confirmed inspectors general, Empower Oversight, pursuant to the Freedom of Information Act ("FOIA"),⁵ submitted requests for all communications:

1. Between and among DOD, DOD-OIG, NSA-OIG, and/or the NSA-IG:
 - a. Pertaining to overpayments of the NSA-IG's basic pay from January 2018 through April 1, 2022;

³ <https://www.chcoc.gov/content/2014-pay-freeze-certain-senior-political-officials>; <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/executive-senior-level/rates-of-basic-pay-for-the-executive-schedule/>; <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2014/executive-senior-level> (click on "Rates of Pay for the Executive Schedule" Pay Table); <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2015/executive-senior-level> (click on "Rates of Pay for the Executive Schedule" Pay Table); <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2016/executive-senior-level> (click on "Rates of Pay for the Executive Schedule" Pay Table); <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2017/executive-senior-level> (click on "Rates of Pay for the Executive Schedule" Pay Table); and <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/executive-senior-level> (click on "Rates of Pay for the Executive Schedule" Pay Table).

⁴ <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/executive-senior-level> (click on "Rates of Pay for the Executive Schedule" Pay Table); <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2020/executive-senior-level> (click on "Rates of Pay for the Executive Schedule" Pay Table); <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2021/executive-senior-level> (click on "Rates of Pay for the Executive Schedule" Pay Table); and <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2022/executive-senior-level> (click on "Rates of Pay for the Executive Schedule" Pay Table).

⁵ 5 U.S.C. § 552.

- b. Demanding repayment of such overpayments;
 - c. Requesting the full or partial waiver of such repayment demand; and/or
 - d. Responding to such full or partial waiver requests.
2. Between and among DOD, DOD-OIG, NRO-OIG, and/or the NRO-IG:
- a. Pertaining to overpayments of the NRO-IG's basic pay from September 2016 through April 1, 2022;
 - b. Demanding repayment of such overpayments;
 - c. Requesting the full or partial waiver of such repayment demand; and/or
 - d. Responding to such full or partial waiver requests.
3. Received by, or sent to/from CIGIE and/or the CIGIE-IC:
- a. Pertaining:
 - i. to overpayments of the NSA-IG's basic pay from January 2018 through April 1, 2022;
 - ii. to overpayments of the NRO-IG's basic pay from September 2016 through April 1, 2022; and/or
 - b. Concerning the cap on EIGs' pay during the pay years 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, and/or 2022; and/or
 - c. Regarding the disposition of any complaint, referral, or other communication to the CIGIE-IC related to alleged salary overpayments made to one or more EIG(s).

On July 29, 2022, DOD-OIG referred to CIGIE four pages of responsive records that allegedly had been originated by CIGIE.

RECORDS REQUEST

To shed light on DOD-OIG's and CIGIE's processing of its March 25th FOIA requests, pursuant to the FOIA), Empower Oversight requests:

- 1. All communications between or among the NSA-IG, DOD, DOD-OIG, NSA-OIG, and/or CIGIE (and/or any employees, officers, or detailees of such organizations) regarding Empower Oversight's March 25, 2022, FOIA requests (collectively or individually) to DOD, DOD-OIG, NSA-OIG, NRO-IG, and/or CIGIE.
- 2. The four pages of responsive records that DOD-OIG allegedly referred to CIGIE on July 29, 2022.
- 3. All processing notes relating to Empower Oversight's March 25th FOIA requests.

DEFINITIONS

“PROCESSING NOTES” means all records created by agency personnel that reflects the record systems and information platforms that were searched, and the search terms used, to respond to Empower Oversight’s March 25th FOIA requests.

“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, Slack 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 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.

“INCLUDING” means comprising part of, but not being limited to, the whole.

INSTRUCTIONS

The time period of the requested records is March 25, 2022, 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”⁶ 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).

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’s understanding of the collection of salary overpayments to Presidentially-appointed, Senate-confirmed inspectors general; DOD-OIG’s and CIGIE’s efforts to determine the causes for and factors surrounding such overpayments; and DOD-OIG’s and CIGIE’s overall efforts to bring transparency to the overpayments and correction thereof.

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 subject matter of this FOIA request will be disclosed publicly via its website, and copies will be shared with other news media for public dissemination.

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

⁶ On September 23, 2021, in connection with a FOIA appeal arising from Empower Oversight’s August 12th FOIA request, the Securities Exchange Commission conceded that Empower Oversight qualifies as a news media requester for purposes of fees assessed pursuant to the FOIA. “Empower Oversight Wins Appeal of Erroneous SEC Fee Decision: Must be treated as a “media requestor” in seeking ethics records of senior officials,” Empower Oversight Press Release (Sep 24, 2021), <https://empowr.us/empower-oversight-wins-appeal-of-erroneous-sec-fee-decision-must-be-treated-as-a-media-requestor-in-seeking-ethics-records-of-senior-officials/>. Thereafter, numerous other agencies recognized Empower Oversight as a media requester.