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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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May 17, 2021

The Honorable Peggy E. Gustafson
Inspector General
U.S. Department of Commerce
1401 Constitution Ave N.W.
Washington, DC 20230

Dear Inspector General Gustafson:

Thank you for the documents you provided pursuant to my letter dated March 15, 2021. Your document production in response to my request, however, remains incomplete. In particular, the productions did not include the primary report detailing your office's recently completed inquiry into the Investigations and Threat Management Service (ITMS) at the Department of Commerce, which is directly related to my ongoing oversight effort.

My frustration emanates not only from the incomplete document production but also the process by which your office processed my request. When I submitted my original request, your staff cited a Department of Justice advisory opinion that effectively allows Ranking Member oversight requests to be ignored.¹ While my legal staff disagrees with the opinion's conclusions, they agreed to receive any documents in the most expeditious manner with assurance of fair treatment and maximum transparency. Unfortunately, this did not happen.

I serve as the Ranking Member of the committee with primary jurisdiction over the Department of Commerce, and until a few months ago I served as the committee's Chairman. Titles change nothing, however, regarding my constitutional ability to request and receive documents from the Executive Branch under my responsibilities of providing effective oversight of the Federal Government as an elected member of the United States Senate.

Even if some standard is deemed useful for prioritizing requests to the Executive Branch from members of Congress, Offices of Inspectors General are unique. Congress established them to help the people's elected representatives provide additional oversight, regardless of the chamber in which the requesting member serves or the political party he or she represents. For this reason, congressional oversight requests should not be processed under the Freedom of Information Act (FOIA), particularly when the request is made in good faith by a ranking member of a congressional committee, who often employs a specialized staff specifically to conduct oversight.

¹ See Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch, 41 Op. O.L.C. (2017).

Setting these arguments aside, you promised in your opening statement at your confirmation hearing to be Inspector General of the Department of Commerce on May 10, 2016, to “make it a priority to maintain a good working relationship with this Committee, Congress as a whole, the Secretary, and others.”² Even more, you answered “yes” when the committee’s questionnaire asked, “[w]ill you ensure that your department complies with deadlines for information set by congressional committees?”

My ongoing investigation into misconduct at the ITMS has revealed that your Office reviewed similar claims as early as 2017. It seems the reviews by your office lacked the veracity to identify the unlawful conduct that has plagued the Department for more than a decade. This information suggests a continuation of past poor performance, which is a grave disservice not only to Department employees but also the taxpaying American public.

I implore you to provide me with your Office’s report into misconduct at the ITMS immediately. Collaboration between Congress and OIGs is imperative to perform effective oversight, and limiting access to important documents like this report only obstructs that shared goal.

Sincerely,



Roger F. Wicker
Ranking Member
Commerce, Science, and Transportation Committee

² *Nomination of Hon. Peggy E. Gustafson, to be Inspector General for the Department of Commerce*, Before the S. Comm. on Commerce, Sci., and Transp., 114 Cong. 1 (2016) Statement of Peggy E. Gustafson, available at <https://www.commerce.senate.gov/services/files/06F5BB24-1A17-4C8E-BB27-EF464AF880A1>.