

OFFICE OF INSPECTOR GENERAL

Management Alert Regarding Inspector General Access to Information



Homeland
Security

**July 6, 2017
OIG-17-45-MA**



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

July 6, 2017

MEMORANDUM FOR: Dr. Huban Gowadia
Acting Administrator
Transportation Security Administration

FROM: John Roth 
Inspector General

SUBJECT: Management Alert - *Access to Information*

We recently learned that employees in the Transportation Security Administration's (TSA) Office of Security Capabilities (OSC) were given internal guidance that, if followed, would improperly restrict and delay the DHS Office of Inspector General's (OIG) access to documents.

Specifically, on October 3, 2016, "TSA HQ - Executive Advisor" sent a communication to TSA's OSC setting out instructions for interacting with the OIG. The email notifies TSA personnel that documents responsive to an OIG request must first be "cleared" within TSA before being provided to the OIG. The email also states that, prior to production to the OIG, documents are to be subjected to multiple levels of review within TSA, including review by a Designated Program Office, the OSC Audit Liaison Team, the Office of Chief Counsel (OCC), and TSA leadership:

3. At no time should pre-decisional or draft documents be forwarded or shared until being cleared (the OIG does have the authority to request pre-decisional and draft documents);
4. Documents are not to be provided directly to GAO or OIG without review by the Designated Program Official and the OSC Audit Liaison Team. The DPO and OSC Audit Liaison team will ensure necessary reviews by OCC and leadership;

Excerpt for the October 3, 2016 communication



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Further, in a March 14, 2016 communication included with the October 2016 communication, TSA personnel were instructed to inform TSA senior leadership of all interviews with, and document productions to, the OIG:

Colleagues,

Both the GAO and OIG are kicking off important and highly visible audits.

I wanted to take this opportunity to remind everyone that all audit activities, interviews and providing of documents, must be done in coordination with MSD, and your DD and Deputy.

V/r

Executive Advisor

Office of Security Capabilities, TSA HQ

Excerpt for the March 14, 2016 communication

These internal TSA emails, of which we were unaware until recently, is contrary to previous DHS practice, violates the letter and intent of the *Inspector General Act* and DHS directives, and chills confidential communication with the OIG.

Section 6 of *The Inspector General Act* (IG Act) requires IGs “to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the applicable establishment which relate to the programs and operations with respect to which that Inspector General has responsibilities under this Act.” There are no limitations on the IG’s access to information, thus prior review by TSA OCC and leadership serves no purpose but to delay production of documents, chill TSA employees from cooperating with the IG, and create a mechanism by which documents could be withheld by senior leadership or counsel.

Additionally, the expressed purported requirement that TSA personnel notify senior leadership of interviews being conducted by the OIG violates Section 7 of the IG Act, which permits employees to provide information confidentially to the IG without fear of reprisal. Directing TSA employees



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to inform their leadership of contact with the OIG subverts the confidentiality provisions of the IG Act.

These communications also contradict DHS Management Directive 0810.1, which requires components to “provide prompt access for auditors, inspectors, investigators, and other personnel authorized by the OIG to any files, records, reports, or other information that may be requested either orally or in writing.”

They also contradict established DHS policy. As early as April of 2008, the Secretary of DHS reaffirmed the right of the IG to have direct access to all materials. In a memorandum to all employees, he reminded DHS personnel of their obligation to provide materials “to the OIG directly and immediately upon request.” Other DHS components routinely provide materials directly to OIG auditors and investigators without review and approval by senior management.

While these particular communications appear to be addressed to just TSA OSC employees, we are concerned that other TSA offices might use this communication as guidance for responding to OIG requests for information and documents. We are also concerned that other TSA offices may have generated their own, similar internal guidance restricting and delaying the OIG’s access to information.

Recommendation: We recommend that the Acting Administrator of TSA immediately openly reject the above guidance and issue a communication directing all TSA employees to fully cooperate with OIG activities, reaffirming TSA employees’ right to contact the OIG without restriction, and reminding all employees that they must comply with OIG directives to provide, without delay, all requested documents directly to the OIG without review and approval by any person.

TSA Response: TSA concurred with the recommendation and immediately took steps to resolve it. The TSA Acting Administrator told us that the emails we highlighted above were sent by an advisor within one of their program offices to about 200 TSA employees, a small percentage of the total TSA workforce. She stated that the emails were sent without leadership review, approval or authorization, and do not reflect TSA policy. In addition to other training and awareness actions, TSA sent an all-hands email reminding employees of their obligations under the Inspector General Act. A copy of the TSA response, as well as the all hands communication, is attached.



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OIG Analysis of TSA Response: We appreciate the TSA leadership's immediate action to mitigate any potential misunderstandings generated by the two earlier, unauthorized communications. We consider the recommendation resolved and closed.

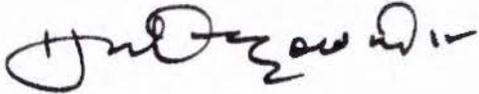


Transportation
Security
Administration

MAY - 9 2017

INFORMATION

MEMORANDUM FOR: John Roth
Inspector General

FROM: Huban A. Gowadia, Ph.D. 
Acting Administrator

SUBJECT: Response to OIG Management Alert: "Access to Information"
(OIG-17-45-MA)

The Transportation Security Administration (TSA) appreciates the Office of Inspector General (OIG) bringing this situation to our attention for immediate action, which we have taken. TSA fully supports "The Inspector General Act" (The IG Act) and DHS Management Directive (MD) 0810.1, which establishes DHS policy regarding the OIG.

It is important to note that the selected passages from the emails cited in your Management Alert do not reflect TSA policy on OIG access to information. TSA policy, as published in the TSA Handbook to MD 1100.73-5, Employees Responsibilities and Code of Conduct, requires that all employees cooperate fully with all investigations and inquiries, including those initiated by the OIG. The referenced emails were sent by an advisor within one of our program offices and were sent to a limited number of staff, not to the entire TSA workforce (i.e., about 200, compared to the approximately 60,000 people employed by TSA). These emails were not sent with leadership review, approval, nor authorization.

Please know that I am committed to ensuring that the OIG has access to TSA records and other information for the effective and efficient performance of its work. TSA understands that delays in the receipt of requested information can impede the ability of OIG to conduct work efficiently and to provide timely information to the Department, Congress, and the public. I am not aware of any systemic delays in providing information and access to OIG. I believe TSA has been "completely cooperative" with the OIG as you stated in your March 2, 2017, testimony to the U.S. House of Representatives Oversight and Government Reform Committee.

Lastly, we believe that statements in the draft Management Alert that consultation and review serve no purpose but to delay responses to the OIG or otherwise subvert the confidentiality provisions of the IG Act are overly broad. The IG Act does not preclude consultation with supervisors and likewise does not preclude the review of materials during the production process.

Depending on the situation, there may be valid, even compelling, reasons for having such consultations and reviews. Precluding them could result in inaccurate and incomplete information being provided to the OIG. It could also result in information being provided out of context. Such a result could lead to inaccurate, incomplete, and non-contextual OIG reports, which would not serve the purposes of the OIG, DHS, Congress, nor the public as a whole.

The draft Management Alert contained one recommendation with which TSA concurs. Please see the attached for our detailed response.

Again, thank you for bringing this matter to my attention. We appreciate having an opportunity to review and comment on this draft report. Please know that we have taken actions to address this situation through additional training and internal communications to staff from senior leadership. Technical comments were previously provided under separate cover.

Attachment

Attachment: TSA Management Response to Recommendation Contained in OIG-17-45

The OIG recommended that the Acting Administrator of TSA:

Recommendation: Immediately openly reject the above guidance and issue a communication directing all TSA employees to fully cooperate with OIG activities, reaffirming TSA employees' right to contact the OIG without restriction, and reminding all employees that they must comply with OIG directives to provide, without delay, all requested documents directly to the OIG without review and approval by any person.

Response: Concur. Upon first learning about this situation and receiving your recommendation in early March 2017, I directed the TSA Acting Chief of Staff to immediately recirculate to all TSA employees standing Secretary of Homeland Security guidance that instructs all DHS employees "to cooperate fully with the Inspector General and his staff in its work and should provide prompt access to requested materials and information." This action was completed on March 13, 2017.

Further, I will send a follow-up email to all TSA employees within the next 2 weeks reminding them of their responsibilities as outlined in the Secretary's guidance, DHS MD 0810.1, and TSA's Handbook to MD 1100.73-5, Employees Responsibilities and Code of Conduct. I will provide a copy of this email to the OIG.

It is important for readers of this Management Alert to be aware of additional context represented by several other emails sent to clarify the awkwardly expressed March 14, 0216, emails referenced in this draft Management Alert, all of which were sent that same day (copies of which were previously provided to OIG). Specifically, in response to a question about whether TSA's Office of Security Capabilities needed to review the documents prior to transmittal to OIG, the advisor replied "Since it's an OIG request, not required. We just need to properly document what they asked for and what we provided." In addition, readers should know that the underlining shown on the extracts of the email communications included in this Alert are not part of the original emails, but were apparently added by someone after the emails were sent/received.

At the enterprise level, TSA's Audit Liaison Division staff works with program offices and key audit participants to provide training and awareness that underscores each person's responsibility to readily accommodate OIG's access to TSA staff and information. The guidance provided by our TSA Audit Liaison highlights the requirement of MD 0810.1 for, "prompt access for auditors, inspectors, investigators, and other personnel authorized by the OIG to any files, records, reports, or other information that may be requested either orally or in writing." TSA's Audit Liaison Division staff also conducts refresher training for employees on their responsibilities and requirements as found in MD 0810.1. The training emphasizes employees' responsibilities to cooperate fully with the OIG by disclosing complete and accurate information pertaining to matters under review; and not concealing information or obstructing audits,

inspections, or other official inquiries. Refresher training for the program office staff that received the email referenced in this Management Alert was completed on May 1, 2017.

Estimated Completion Date: May 31, 2017.

From: TSABroadcast
Sent: Tuesday, May 23, 2017 10:54 AM
Subject: 100 – Employee Cooperation with the Office of Inspector General

Date: May 23, 2017
To: All TSA Employees
From: Huban A. Gowadia
Acting Administrator
Subject: 100 – Employee Cooperation with the Office of Inspector General

Earlier this year, TSA sent out a broadcast message reiterating the Secretary’s guidance on the DHS Office of Inspector General’s (OIG) important role in helping DHS’s many components, including TSA, prevent and detect fraud, waste, mismanagement and abuse.

Of note, TSA employees:

- Are required to cooperate fully with the OIG;
- Must promptly and directly provide materials and information to the OIG when requested; and
- May contact the OIG confidentially, and are protected against reprisal for reporting suspected wrongdoing to the OIG.

The recently-enacted Inspector General Empowerment Act of 2016 amends the Inspector General Act of 1978 with several new provisions to support and strengthen Inspector General (IG) independence. The law confirms that IGs “*have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available*” related to the federal programs and operations the IGs oversee. The new legislation eliminates any doubt about whether agencies can and should disclose potentially sensitive information to IGs.

TSA employees must provide requested documents directly to OIG, and are reminded that there *are no restrictions on your right to initiate contact and communicate directly with the OIG*. DHS [Management Directive \(MD\) 0810.1](#) outlines the roles, policies and procedures underlying the cooperative relationship between the OIG and DHS personnel, and TSA [MD 1100.73-5](#) requires TSA employees’ full cooperation with OIG activities.

For questions about your responsibility to cooperate with the OIG, please contact the Audit Liaison Division at TSA_ALDauditsmail@tsa.dhs.gov.



ADDITIONAL INFORMATION AND COPIES

To view this and any of our other reports, please visit our website at: www.oig.dhs.gov.

For further information or questions, please contact Office of Inspector General Public Affairs at: DHS-OIG.OfficePublicAffairs@oig.dhs.gov. Follow us on Twitter at: @dhsoig.



OIG HOTLINE

To report fraud, waste, or abuse, visit our website at www.oig.dhs.gov and click on the red "Hotline" tab. If you cannot access our website, call our hotline at (800) 323-8603, fax our hotline at (202) 254-4297, or write to us at:

Department of Homeland Security
Office of Inspector General, Mail Stop 0305
Attention: Hotline
245 Murray Drive, SW
Washington, DC 20528-0305