

**Testimony of Assistant Inspector  
General for Investigations  
Andrew Oosterbaan**

**Before the Subcommittee on  
Oversight and Management  
Efficiency and Subcommittee on  
Transportation Security**

**Committee on Homeland Security**

**United States House of  
Representatives**

**“How Pervasive is Misconduct at  
TSA: Examining Findings from a  
Joint Subcommittee Investigation”**





# DHS OIG HIGHLIGHTS

## *How Pervasive is Misconduct at TSA: Examining Findings from a Joint Subcommittee Investigation*

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July 7, 2016

### **Why We Did This**

The Office of Inspector General plays a critical role in ensuring transparent, honest, effective, and accountable government. The personal and organizational independence of OIG investigators, free to carry out their work without interference by agency officials, is essential to maintaining the public trust not only in OIG's work, but in the DHS workforce as a whole.

### **What We Recommend**

We provide our investigative findings to TSA and components for them to determine whether discipline is warranted. We are not involved in decisions involving discipline and do not make related recommendations.

**For Further Information:**

Contact our Office of Legislative Affairs at (202) 254-4100, or email us at [DHS-OIG.OfficeLegislativeAffairs@oig.dhs.gov](mailto:DHS-OIG.OfficeLegislativeAffairs@oig.dhs.gov)

### **What We Found**

In fiscal year 2015, we received almost 18,000 complaints. We initiated 664 investigations; the remainder were referred to component internal affairs officers, other agencies, or were administratively closed. Of the 18,000 complaints, about 1,000 were from or about TSA employees. We investigated about 40 of those allegations.

One investigation examined the award of six \$10,000 bonuses in one year to a TSA Assistant Administrator. We determined that no law or TSA policy was broken and there was no criminal or administrative wrongdoing. We concluded that TSA had loose internal oversight over the awards process.

Whistleblowers play an important part in identifying waste, fraud, and abuse and we have taken steps to improve our Whistleblower Protection Program.

### **DHS Response**

TSA has updated its policies relating to bonuses in order to address deficiencies that we identified.



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Chairman Katko, Chairman Perry, Ranking Member Rice, Ranking Member Watson Coleman, and members of the Subcommittees: thank you for inviting me to testify on TSA misconduct.

My testimony will focus on the Office of Inspector General's (OIG) role in investigating misconduct at TSA and the important role that whistleblowers play in bringing waste, fraud, and abuse to the attention of our office. In addition, I will address a particular OIG investigation regarding the award of TSA bonuses that has been of interest to this panel and mention a few other investigations as examples of our work related to TSA.

### **OIG's Role in Investigating Misconduct at TSA**

Through the *Inspector General Act of 1978 (IG Act)*, Congress established Inspectors General, in part, in response to concerns about integrity and accountability and failures of other forms of government oversight. The *IG Act* charged Inspectors General, among other tasks, with preventing and detecting fraud and abuse in agency programs and activities; conducting investigations and audits; and recommending policies to promote efficiency, economy, and effectiveness. The position of Inspector General was strengthened by provisions in the *IG Act* establishing independence from department officials, providing powers of investigation and subpoena, and reporting to the Secretary as well as Congress.

Inspectors General play a critical role in ensuring transparent, honest, effective, and accountable government. The personal and organizational independence of OIG investigators, free to carry out their work without interference by agency officials, is essential to maintaining the public trust not only in OIG's work, but in the DHS workforce as a whole. The American public must fundamentally trust that government employees will be held accountable for crimes or serious misconduct by an independent fact finder.

#### *OIG and DHS Internal Affairs Offices*

DHS Management Directive (MD) 0810.1 implements the authorities of the Inspector General Act in DHS. MD 0810.1 establishes OIG's right of first refusal to conduct investigations of criminal misconduct by DHS employees and the right to supervise any such investigations conducted by DHS internal affairs offices. The MD requires that all allegations of criminal misconduct by DHS employees and certain other allegations received by the components—generally those against higher ranking DHS employees—be referred to OIG immediately upon receipt of the allegations.



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Many DHS components, including TSA, have an internal affairs office that conducts investigations. Under the authority of the *IG Act*, OIG has oversight responsibility for those internal affairs offices. This oversight responsibility generally takes three forms.

- First, we determine upon receipt of the complaint whether the allegations are the type that should be investigated by OIG rather than the component's internal affairs office. We have the absolute right under the Inspector General Act to conduct any investigation without interference. Except for a few narrow categories of matters (which must be reported to Congress), not even the Secretary can prevent the OIG from conducting an investigation.
- Second, for those investigations the internal affairs offices conduct, we have the authority to receive reports on and monitor the status of investigations.
- Lastly, we conduct oversight reviews of DHS component internal affairs offices to ensure compliance with applicable policies, reporting requirements, and accepted law enforcement practices. Our reviews are conducted on a three-year cycle and our findings are published on our website. In this fiscal year, we have reviewed two component internal affairs offices and made more than 45 recommendations for improvement. In 2015 and the first half of 2016, we reviewed three component internal affairs offices and made 70 recommendations for improvement. Our recommendations ranged from suggestions for improving the processing of allegations to counseling a component to seek the proper investigative authority for its internal affairs office. These reviews are critical to ensuring that misconduct allegations, whistleblowers, and those reporting allegations of wrongdoing by DHS employees are treated with the seriousness they deserve.

Our process for addressing allegations of misconduct generally follows these steps:

1. An allegation of misconduct is reported to OIG or other appropriate office; if reported to an office other than OIG and several criteria for seriousness are met, the component must report the allegation to OIG.
2. Whether the allegation was reported directly to OIG or through a component, OIG will decide to investigate the allegation or refer it to the component's internal affairs office; if referred, the component can decide to investigate the allegation or take no action.



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3. If OIG decides to investigate, we develop sufficient evidence to substantiate or not substantiate an allegation and write a report of investigation.
4. For administrative or non-criminal misconduct, OIG provides its investigative findings to the affected component, which uses this information to decide whether discipline is warranted. We are not involved in decisions regarding discipline after we provide our investigative findings.
5. For criminal matters, OIG presents its investigative findings to the Department of Justice (DOJ) for a determination of whether DOJ will pursue judicial action.

The Department employs more than 240,000 employees (and nearly an equal number of contract personnel), including a large number of law enforcement officers and agents in U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, the Secret Service, and the TSA. These officers and agents protect the President, our borders, travel, trade, and financial and immigration systems.

In fiscal year (FY) 2015, we received almost 18,000 complaints. A substantial number of the complaints alleged that DHS personnel engaged in misconduct. We initiated 664 investigations; the remainder were referred to component internal affairs officers, other agencies, or were administratively closed. In FY 2015, our investigations resulted in 104 criminal convictions and 37 personnel actions.

Investigations against TSA personnel comprise a portion of our overall work. In the last fiscal year, we received about 1,000 complaints either from or about TSA employees. We typically accept for investigation about 40 of those cases per year. Our criteria for case selection generally involves an assessment of the seriousness of the allegation, the rank or grade of the individual involved, and whether OIG's uniquely independent role is necessary to ensure that the case is handled appropriately.

### **TSA Bonuses**

In March 2015, we initiated an investigation after receiving a complaint advising that former TSA Assistant Administrator Kelly Hoggan received six \$10,000 cash awards during the period of approximately one year. It was further alleged that the approving official and Mr. Hoggan were related and that nepotism was therefore motivating the awards.



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To address these allegations, our office reviewed pertinent records and interviewed TSA personnel involved in the award process. We confirmed that Mr. Hoggan was awarded six \$10,000 Special Act Awards and a seventh \$8,000 Special Act Award between November 2013 and November 2014. These Special Act Awards were in addition to annual Performance Awards for 2013 and 2014.

We concluded that these cash awards did not violate law or TSA policy, and that there was no criminal conspiracy between Mr. Hoggan and others to personally enrich themselves by abusing the TSA awards system. We also found no evidence indicating that Mr. Hoggan was related to anyone within his chain of command.

However, while this investigation did not uncover any criminal or administrative wrongdoing, it did reveal that TSA had inadequate internal oversight of the awards process and that TSA's internal written policy regarding cash awards contained unclear language. As the result of our investigation, TSA has tightened and clarified its written policies and practices to address these problems.

### **Examples of OIG Investigations of TSA Misconduct**

The integrity of TSA's workforce is an important factor in the safety of our airports. And, while the percentage of TSA employees involved in crimes or serious misconduct may be small, any acts of wrongdoing can diminish the public's confidence in air safety.

Some of the OIG's investigations of TSA personnel involve serious crimes. For instance, in 2012 we investigated a Transportation Security Officer (TSO) who conspired with others outside of TSA to smuggle Brazilian nationals through an international airport. For his role in the crime, the TSO was sentenced to 10 months' incarceration, followed by 36 months of supervised release.

In a 2014 case, a supervisory TSO was convicted for assisting a drug trafficking organization responsible for smuggling large quantities of narcotics through an airport in the Caribbean. With the supervisory TSO's assistance, the organization was able to bypass airport security and smuggle the narcotics to couriers on the secure side of the airport for transport to the United States. The TSO was sentenced to 87 months of imprisonment and 2 years supervised release.

Also in 2012, we investigated a supervisory TSO and a Lead TSO for using cocaine while on duty. Both employees were arrested, charged, and pled guilty in state court.



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Finally, in 2015 we investigated a TSO for transporting a 14-year old with the intent to commit sexual acts. He was sentenced to 188 months' imprisonment followed by 120 months of supervised release.

### **Whistleblower Protection**

It is important to note the critically important role that whistleblowers play in ensuring transparent, honest, effective, and accountable government. The DHS employees who step forward to disclose fraud, waste, abuse and other wrongdoing are invaluable to our mission, as are the federal laws providing them protection. Under these laws, managers are prohibited from retaliating against whistleblowers by taking or threatening to take any adverse personnel actions because they report misconduct. The *IG Act* also gives us the absolute right to protect the identity of our witnesses, who we depend on to expose fraud, waste, and abuse.

DHS employees' contributions to the integrity and effectiveness of DHS by exposing poor management practices and wrongdoing have been well documented. In the TSA context, for example, we investigated a whistleblower's allegation that a notorious felon was granted expedited screening through PreCheck in 2014. The traveler was a former member of a domestic terrorist group and, while a member, was involved in numerous felonious criminal activities that led to arrest and conviction. After serving a multiple-year sentence, the traveler was released from prison.

The traveler was sufficiently notorious through media coverage that a TSO recognized the traveler. Concerned, the TSO reviewed the traveler's boarding pass and realized that the traveler was PreCheck eligible. The TSO, aware of the traveler's disqualifying criminal convictions, notified his supervisor who directed him to take no further action and allow the traveler to proceed through the PreCheck lane.

As a result of the TSO's subsequent disclosure and our report, TSA ultimately agreed to modify its standard operating procedures to clarify TSOs' and supervisory TSOs' authority in referring passengers with PreCheck boarding passes to standard screening lanes when they believe it is warranted. This change came after TSA initially disagreed with our recommendation regarding the Secure Flight program, however. [\(Allegation of Granting Expedited Screening through TSA PreCheck Improperly \(Redacted\) OIG-15-45\)](#)

Over the last two years, our office has made changes to our Whistleblower Protection Program. These changes were intended to raise our profile within DHS as the entity to which allegations of fraud, waste, and abuse are reported, and with effective results. Our goal is to make sure that we have a proactive



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whistleblower program that is as good or better than any OIG in the federal government. To accomplish this, we have:

- Appointed a senior executive at the OIG to be the statutorily-mandated DHS Whistleblower Ombudsman. He is spearheading the efforts to ensure that all DHS personnel and contractors, in every component, understand their rights to report fraud, waste, and abuse, and to be protected from retaliation for doing so.
- Vastly improved the intake process for allegations of whistleblower retaliation. Now, each claim will be examined by a specially-trained group of investigators within our Whistleblower Protection Office, being assisted and supported by our lawyers in the Office of Counsel.
- Obtained, for the first time in our history, official certification from the Office of Special Counsel that our whistleblower protection program met the whistleblower protection requirements of 5 U.S.C. § 2302(c).
- Begun the process of hiring specially trained investigators who will be exclusively dedicated to whistleblower retaliation investigations.

While we are confident that these changes will make us more effective, we also understand that it will take constant vigilance and dedicated effort to ensure that whistleblowers who have claims of retaliation are listened to and that their claims are fairly and independently investigated.

Mr. Chairmen, this concludes my testimony. I welcome any questions you or other members of the Committee may have.