

Congress of the United States

Washington, DC 20515

January 25, 2024

The Honorable Joseph V. Cuffari
Inspector General
Office of Inspector General
Department of Homeland Security
245 Murray Lane S.W., Building 410
Washington, D.C. 20528

Dear Inspector General Cuffari:

On July 27, 2023, we notified you that we were expanding our investigation “into your failed leadership and egregious mismanagement of the Department of Homeland Security Office of Inspector General (DHS OIG).”¹ In that letter, we requested documents and information regarding your use of taxpayer funds to settle claims of retaliation against you. In the six months that have elapsed since we wrote to you, you have failed to substantively respond to all seven of our requests. You have also not made Deputy Inspector General and Chief of Staff Kristen Fredricks and Chief Counsel James Read available to brief the Committees as requested. We are reiterating our request for documents and information relating to this payment and any other settlements paid on behalf of DHS OIG in regard to your conduct or the conduct of other senior DHS OIG employees, as well as our request for a briefing with Deputy Inspector General and Chief of Staff Kristen Fredricks and Chief Counsel James Read.

Reports revealing that DHS OIG approved a stunning \$1.17 million settlement with former DHS OIG Deputy Inspector General Jennifer Costello prompted our July 27, 2023, requests for documents. The Committees recently obtained documents indicating that only the Inspector General has delegated authority to sign settlement agreements to resolve “any matter to which DHS OIG is a party.”² Yet your Chief of Staff, Kristen Fredricks, signed this settlement, which was “the largest known settlement involving an employee from a federal office of inspector general.”³ The documents reviewed by the Committees found no “redelegation of IG

¹ Letter from Ranking Member Jamie Raskin, Committee on Oversight and Accountability, and Ranking Member Bennie G. Thompson, Committee on Homeland Security, to Inspector General Joseph V. Cuffari, Department of Homeland Security, Office on Inspector General (July 27, 2023) (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2023-07-27.JBR%20BGT%20to%20Cuffari-DHS%20OIG%20re%20Payments.pdf>).

² Department of Homeland Security, *Comprehensive Delegations of Authority Office of Inspector General* (Apr. 14, 2023) (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/DHS%20OIG%20Delegations%20of%20Authority.pdf>).

³ *DHS Watchdog Settles Whistleblower Reprisal Case for \$1.17 Million*, Project On Government Oversight (July 27, 2023) (online at www.pogo.org/investigation/2023/07/dhs-watchdog-settles-whistleblower-reprisal-case-for-1-17-million).

authorities to the IG’s deputies or highest official in the office” noted under negotiating or signing of settlement agreements authority, raising questions as to whether you followed the procedures established by your office.⁴ Federal regulations also require that the IG consult an agency ethics official when the conduct at issue involves the head of the agency. It is unclear whether you raised concerns regarding your subordinate’s approval of the settlement.⁵

Further, in our July 27, 2023, letter, we enumerated the many concerns regarding deeply troubling revelations in your Merit Systems Protection Board deposition, which indicate that you may be overseeing a toxic culture within DHS OIG where employees may be subject to retaliation if they express concerns with your leadership.⁶ Your deposition testimony also raises concerns about the integrity of your communications with Congress regarding your decision to hire WilmerHale to conduct an independent investigation into Ms. Costello and two other senior DHS OIG employees that cost taxpayers more than \$1 million. For example, in your previous correspondence with the Committees, you failed to disclose that before deciding to hire WilmerHale, you approached two Inspectors General who both declined to conduct this investigation.⁷ Your failure to disclose this pertinent information to Congress raises significant concerns about your candor and willingness to comply with our investigations.

In response to multiple years-long investigations into your leadership and conduct, you have repeatedly resisted compliance and have dedicated a significant amount of effort and taxpayer money to avoiding accountability. For example, on April 4, 2023, you and other senior members of your staff filed a lawsuit against the Council of the Inspectors General on Integrity and Efficiency (CIGIE) alleging that you have been “endlessly harassed” by its longstanding investigation into your conduct. The lawsuit also claimed that the “IC’s [CIGIE’s Integrity Committee] never-ending investigations of these obviously meritless grievances caused substantial interference” with your duties as DHS Inspector General.⁸ However, on November 2, 2023, the U.S. District Court for the Eastern District of Virginia dismissed the lawsuit with a Memorandum Opinion stating that your “allegations fall short of establishing an injury in fact.”⁹

⁴ Department of Homeland Security, *Comprehensive Delegations of Authority Office of Inspector General* (Apr. 14, 2023), at Page 5 (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/DHS%20OIG%20Delegations%20f%20Authority.pdf>).

⁵ 5 C.F.R. § 2635.102(b).

⁶ *Id.*; Merit Systems Protection Board, Washington Regional Office, Deposition of Inspector General Joseph Cuffari (June 29, 2023) (online at www.documentcloud.org/documents/23880005-june-29-2023-deposition-of-dhs-inspector-general-joseph-cuffari).

⁷ Merit Systems Protection Board, Washington Regional Office, Deposition of Inspector General Joseph Cuffari (June 29, 2023) (online at www.documentcloud.org/documents/23880005-june-29-2023-deposition-of-dhs-inspector-general-joseph-cuffari).

⁸ Plaintiffs Complaint for Declaratory Injunctive, and Other Relief, *Kristen Fredricks et al. vs. Council of the Inspectors General on Integrity and Efficiency et al.* (Apr. 4, 2023) (No. 1:23-CV-00442) (online at <https://nclalegal.org/wp-content/uploads/2023/04/ECF-1-CIGIE-Complaint-and-Exhibits-ALL.pdf>).

⁹ Memorandum Opinion and Order That Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction (Dkt. 8) is Granted, *Kristen Fredricks et al. vs. Council of the Inspectors General on Integrity and Efficiency et al.* (Nov. 2, 2023) (No. 1:23-CV-00442); *Judge Tosses IG’s Lawsuit Alleging Harassment by Oversight Body Investigating Him*, Government Executive (Nov. 3, 2023) (online at

The opinion noted that you failed to plausibly allege any harm from the complaints filed against you over and above the “inconvenience of having to obtain counsel and respond to government inquiries.”¹⁰ Once again, this recent decision by the courts underscores your record of frivolous attempts to shield yourself from the consequences of the work environment you have created as DHS Inspector General.

You have also sought counsel from the Chairs of the Committees on Oversight and Accountability and Homeland Security to preclude you from complying with our investigations. In your August 31, 2023, correspondence to our Committees, you stated, “I thank members of Chairman Comer’s and Chairman Green’s staffs for confirming that I am not under investigation by your respective Committees.”¹¹ Since you did not conduct bipartisan outreach to the Committees, seeking only to confer with Majority staff, nor have you made any effort to meet with or discuss the outstanding requests with Minority staff, we again reiterate that both Ranking Members of the Committees on Oversight and Accountability and Homeland Security continue to investigate you and your management of DHS OIG. It is our duty to conduct investigations into allegations and evidence involving concerns about your flawed work products, troubling professional conduct, potential waste of taxpayer dollars, and repeated failure to respond to congressional inquiries. We are hopeful that this clarification will prevent any additional confusion regarding the status of the active and ongoing congressional investigation into your office.

Given your continued failure to produce substantive responses to the Committees’ requests, we are reiterating our July 27, 2023, request for documents and information that we expect DHS OIG to respond to by February 1, 2024. We have provided the list again below for your convenience. Lastly, the Committees expect to receive a briefing with Chief of Staff Kristen Fredricks and Chief Counsel James Read by no later than February 8, 2024.

1. All documents referring or relating to the proposed removal of former Deputy Inspector General Jennifer Costello;
2. All documents referring or relating to the settlement between DHS OIG and former Deputy Inspector General Jennifer Costello, including but not limited to all documents referring or relating to the formulation, review, and approval of the settlement;
3. All policies governing the approval of settlements within DHS OIG and, to the extent that they are applicable to DHS OIG, all policies governing the approval of settlements within DHS;
4. All documents referring or relating to the source of funding for the settlement;

www.govexec.com/oversight/2023/11/judge-tosses-igs-lawsuit-alleging-harassment-oversight-body-investigating-him/391775/).

¹⁰ *Id.*

¹¹ Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, to Chairman James Comer, et al., Committee on Oversight and Accountability (Aug. 31, 2023).

5. All documents referring or relating to any allegations raised by any DHS OIG employee at any time during your tenure as Inspector General that you executed yourself or sanctioned or instructed others to retaliate against them in any manner, as well as all documents referring or relating to any investigative action contemplated or taken by DHS OIG to investigate or respond to any allegation of retaliation raised by any DHS OIG employee against you;
6. All documents referring or relating to any other settlement paid by DHS OIG during your tenure to settle any claims from any source regarding your conduct or the conduct of senior DHS OIG employees; and
7. All documents referring or relating to the independent investigation conducted by WilmerHale.

The Committee on Oversight and Accountability is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. The Committee on Homeland Security is the principal committee of jurisdiction for the “organization, administration, and general management of the Department of Homeland Security” under House Rule X. An attachment to this letter provides additional instructions for responding to this request. If you have any questions, please contact Committee staff at (202) 225-5051.

Sincerely,



Jamie Raskin
Ranking Member
Committee on Oversight
and Accountability



Bennie G. Thompson
Ranking Member
Committee on Homeland Security

Enclosure

cc: The Honorable James Comer, Chairman
Committee on Oversight and Accountability

The Honorable Mark Green, Chairman
Committee on Homeland Security

Responding to Committees' Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, including alternate spellings or transliterations of any names, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committees.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The terms “relating to” and “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “involving”, with respect to any given subject, means sending, receiving, or being copied (CC or BCC), or being the subject matter on any documents or communications described in the request.
9. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
10. The term “individual” means all natural persons and all persons or entities acting on their behalf.