



Homeland
Security

March 16, 2011

The Honorable Darrell Issa
Committee on Oversight and Government Reform
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman,

I was disappointed to receive your letter to Secretary Napolitano today, particularly because of its factual inaccuracies.

The employment status of Catherine Papoi at DHS has not changed. Moreover, counsel for DHS has at all times operated in this matter with integrity and deference to the wishes of all witnesses, including Ms. Papoi. The following provides an overview of the factual inaccuracies in your letter and the relevant facts:

1. *You state* that “a career professional in the Privacy Office was recently demoted.” *The fact is* that Ms. Papoi competed for a new position for which she was not selected. In February 2010, the Department was awarded new Senior Executive Service (SES) positions. A panel of senior career and non-career employees conducted an assessment of Departmental needs in order to determine the allocation of these positions among DHS offices. This panel determined that one of these positions should be allocated to the Privacy Office for a career SES position. Based on longstanding federal regulations, the selection of an SES official requires an extensive, competitive, merit based process. This process includes a public posting of the vacancy, a written application, a review of applicant qualifications by career officials in both the Department and the Office of Personnel Management (OPM), interviews conducted by a panel of SES employees, and a final selection by a selecting official. Even after these steps have been completed, OPM must certify the selection. Each of these steps was completed in the selection of the candidate who ultimately filled this new SES position.
2. *You state* that “[t]he demotion was effectuated one day after she appeared for a transcribed interview.” *The fact is* that Ms. Papoi was informed on January 10, 2011 that she was not selected for the SES position for which she applied. Her transcribed interview took place almost two months later, on March 3, 2011.
3. *You state* that “the Department’s lawyers asked Ms. Papoi’s counsel to stand down and allow the OGC to represent his client before the Committee.” *The fact is* that DHS counsel have repeatedly noted to both Ms. Papoi and her counsel that they do not represent her and would not appear at her transcribed interview in light of her request to that effect. The only request

that was ever made of her counsel was his forbearance to allow DHS counsel to negotiate the parameters of all witness testimony and to coordinate the dates thereof.

4. *You state* that “Ominously, the OGC lawyer advised - do the right thing.” *The fact is* that no DHS lawyer ever uttered those words or anything resembling those words to Ms. Papoi or her counsel.
5. *You state* that “The next day, March 4, Deputy Chief Privacy Officer John Kropf called Ms. Papoi to notify her that she was being demoted effective March 14, 2011.” *The fact is* that Ms. Papoi was informed in on January 10 that someone else had been selected for the new position for which she had applied. On March 5, Mr. Kropf called Ms. Papoi to inform her of the new employee’s start date – March 14.
6. *You state* that “[t]he decision to demote Ms. Papoi itself also appeared to be an act of retaliation because of her history of providing information to the OIG, and the Department's belief - whether founded or not - that Ms. Papoi was providing information to this Committee.” *The fact is* that it is not the practice of OIG to reveal the sources of information that may lead to an inspection. Indeed, it was your correspondence of earlier today that revealed this claim. Moreover, the selection of the preferred candidate was made in December 2010. The Department learned that you had received documents relating to this inspection from another source in your letter of January 14, well after this hiring decision was made.
7. *You state* that “A lawyer from OGC intimated to my staff yesterday, and the Ranking Member's staff, that he believed Ms. Papoi provided documents to the Committee.” The lawyer said no such thing; he merely pointed out the chronology described above regarding the hiring process and the investigation.
8. *You state* that “The process to fill the SES allocation played out with the Department's knowledge that Ms. Papoi initiated two OIG investigations [sic] of abuse and mismanagement by the Department's political appointees.” As noted above, the suggestion that Ms. Papoi initiated the OIG inspection was brought to our attention through your letter today.
9. *You state* that “management's decision to bypass and ultimately demote a six-year veteran of the DHS Privacy Office with extensive FOIA training and experience raises questions.” *The fact is* Ms. Papoi was determined by the career SES panel to be less qualified than the individual selected, a candidate with more than 20 years of federal program management and IT experience with specialized expertise in FOIA administration, including leading a FOIA office for a Federal agency and serving in several senior management positions.
10. *You describe* Ms. Papoi as “the FOIA Office's most senior career official.” *The fact is* she is not. The most senior career employee in the Privacy office in which she is employed is John Kropf, Deputy Chief Privacy Officer.

11. *You state* that “The decision weakens the Department's claim that reduction of the FOIA backlog is ‘an important achievement, and one that matters to the leadership of our Department.’” *The fact is* that the Department is indeed proud of its accomplishments on FOIA and of its career employees who have helped achieve those accomplishments. The office in which Ms. Papoi works has 18 career employees. Department-wide, the Department employs approximately 400 career employees who focus on FOIA.

I should note further that privacy considerations prevent the Department from providing a complete written response to address additional inaccuracies in your letter at this time.

Your letter also makes unfounded allegations of bad faith and a breach of legal ethics — all based on assumptions about what the Office of the General Counsel did or did not do while the Department sought means to accommodate the Committee staff's request for information. But contrary to those assumptions, the Department and the Office of the General Counsel have taken appropriate steps to respond to your requests expeditiously. Characterizing our engagement as somehow designed to “slow” or “interfere[]” with your oversight activities is false. To fulfill the various requests from the committee, we have diverted 15 lawyers and more than six other support staff away from their existing responsibilities at the Department of Homeland Security. To date, Department employees have logged more than 700 hours responding to requests from the Committee, and provided transcribed interviews with senior Department officials. We have delivered more than 3,000 pages of responsive documents to the Committee. We have also offered to have Department officials meet with you or your staff for weeks before the dates on which your staff conducted formal interviews. In addition, we have agreed to participate in a hearing at the end of this month on the Department's FOIA process pursuant to discussions with your staff today.

The Department has not taken *any* retaliatory action against employees that have provided information to your Committee, and we have taken appropriate steps to provide you with access to Department employees. Moreover—and in contrast with your assertions—steps that the Office of the General Counsel has taken in advising the employees you have identified of their obligations toward Congress have been completely appropriate. Those steps reflect the longstanding practice between the Executive and Legislative branches to ensure the appropriate consideration for important Executive Branch institutional interests.

We remain committed to the view that the Congress has an important and legitimate role in reviewing the activities of our Department. We will continue to attempt to work with you and your staff in good faith, and continue to hope that that good faith will be reciprocated.

Respectfully,

A handwritten signature in black ink, appearing to read 'Nelson Peacock', with a stylized, flowing script.

Nelson Peacock
Assistant Secretary
Office of Legislative Affairs