

TESTIMONY OF CHARLES J. WILLOUGHBY, INSPECTOR GENERAL

**BEFORE THE
COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON GOVERNMENT OPERATIONS**

**B20-0412, THE “UNIVERSAL CODE OF CONDUCT AND
BEGA AMENDMENT ACT OF 2013”**

OCTOBER 7, 2013

GOOD MORNING CHAIRPERSON MCDUFFIE AND MEMBERS OF THE COMMITTEE. I AM CHARLES J. WILLOUGHBY, INSPECTOR GENERAL, AND I AM PLEASED TO TESTIFY TODAY CONCERNING BILL 20-0412, THE “UNIVERSAL CODE OF CONDUCT AND BEGA AMENDMENT ACT OF 2013.” ON SEPTEMBER 18TH, I SENT A LETTER TO MAYOR GRAY, CHAIRMAN MENDELSON, TO YOU, ALONG WITH OTHER MEMBERS OF THE COMMITTEE ON GOVERNMENT OPERATIONS DETAILING MY CONCERNS ABOUT THE IMPACT OF THE PROPOSED LEGISLATION ON THE OFFICE OF THE INSPECTOR GENERAL’S (OIG) OPERATIONS. THAT LETTER CAN BE FOUND ON THE OIG’S WEBSITE. MY PREPARED REMARKS HIGHLIGHT MANY OF THE MAIN POINTS IN MY LETTER.

MY PRIMARY CONCERN WITH THE LEGISLATION IS THAT IT POSES A SERIOUS THREAT TO THE INDEPENDENCE AND INTEGRITY OF OIG INVESTIGATIONS. BY INDEPENDENCE AND INTEGRITY OF THE OFFICE I MEAN THE CHILLING EFFECT THAT UNFETTERED ACCESS TO OIG RECORDS WOULD HAVE ON OIG AGENTS IN CONDUCTING THEIR INVESTIGATIONS ALONG WITH OTHER LAW ENFORCEMENT ENTITIES SUCH AS THE UNITED STATES ATTORNEY’S OFFICE (USAO) AND THE

FEDERAL BUREAU OF INVESTIGATION (FBI) WITH WHOM THE OFFICE WORKS CLOSELY. AS CURRENTLY WORDED, THE LEGISLATION ALLOWS THE BOARD ON ETHICS AND GOVERNMENT ACCOUNTABILITY (BEGA) TO “EXAMINE OR COPY ANY DOCUMENT OR RECORD PREPARED, MAINTAINED, OR HELD BY ANY AGENCY, IN ANY FORM, EXCEPT THOSE DOCUMENTS OR RECORDS THAT MAY NOT BE DISCLOSED ACCORDING TO LAW.” THE PROPOSED LEGISLATION ALLOWS BEGA, RESPONSIBLE FOR ONLY INVESTIGATING AND ENFORCING ADMINISTRATIVE MATTERS, UNRESTRICTED ACCESS TO DOCUMENTS AND RECORDS CONTAINED IN THE OIG’S INVESTIGATORY CASEFILES, NOTWITHSTANDING WHETHER THE UNDERLYING CASE IS CRIMINAL OR ADMINISTRATIVE, OPEN OR CLOSED. IT IS MY BELIEF THAT OIG INVESTIGATIONS WOULD BE NEGATIVELY IMPACTED IN THREE CENTRAL WAYS.

FIRST, UNDER THE PROPOSED LEGISLATION, BEGA STAFF, WHO ARE NON-LAW ENFORCEMENT PERSONNEL, WOULD HAVE ACCESS TO SENSITIVE AND RESTRICTED INFORMATION GATHERED THROUGHOUT THE COURSE OF OIG INVESTIGATIONS, SUCH AS NATIONAL CRIME INFORMATION CENTER (NCIC) RECORDS COLLECTED BY THE FBI AND WASHINGTON AREA LAW ENFORCEMENT SYSTEM (WALES) INFORMATION COLLECTED BY THE METROPOLITAN POLICE DEPARTMENT; NOT TO MENTION THE SENSITIVE INFORMATION, DOCUMENTS OR EVIDENCE THAT WE RECEIVED FROM OUR LAW ENFORCMENT PARTNERS WHICH ARE INCORPORATED IN THE OIG FILES.

TO APPRECIATE THE SERIOUSNESS IN WHICH THE OIG TAKES ITS DUTY TO MAINTAIN THE INTEGRITY OF ITS CASE FILES: OIG PERSONNEL FROM THE OTHER OIG DIVISIONS DO NOT HAVE ACCESS TO THE INVESTIGATIONS DIVISION CASE FILES WITHOUT PRIOR APPROVAL AND EVEN THEN, ONLY TO THE DEGREE THAT IS WARRANTED.

SECONDLY, I AM CONCERNED WITH THE INTEGRITY OF OUR ONGOING INVESTIGATIONS. AS I PREVIOUSLY MENTIONED, OIG INVESTIGATORS ROUTINELY CONDUCT JOINT INVESTIGATIONS WITH OUTSIDE LAW ENFORCEMENT ENTITIES AND OBTAIN HIGHLY SENSITIVE INFORMATION FROM CONFIDENTIAL INFORMANTS, AS WELL CONDUCT UNDERCOVER OPERATIONS INVOLVING MULTIPLE LAW ENFORCEMENT ENTITIES. THE PROPOSED LEGISLATION WOULD ALLOW BEGA UNFETTERED ACCESS TO OUR FILES WHICH WOULD SEVERELY HAMPER THE OIG'S AND OUR LAW ENFORCEMENT PARTNERS' CONTROL OVER INFORMATION RELATING TO THESE MATTERS. FURTHERMORE, PREMATURE RELEASE OF INVESTIGATORY INFORMATION COULD REVEAL CASE PLANNING, STRATEGY, AND INVESTIGATORY TECHNIQUES AS WELL AS THE NATURE, SCOPE, AND DIRECTION OF THE INVESTIGATIONS. ARMED WITH SUCH INFORMATION, SUBJECTS COULD FABRICATE DEFENSES, TAMPER WITH EVIDENCE, INTIMIDATE OR EVEN THREATEN KEY WITNESSES.

FINALLY, UNDER THE PROPOSED LEGISLATION, THE OIG CANNOT PROVIDE ASSURANCE TO OUR LAW ENFORCEMENT PARTNERS THAT BEGA WILL NOT COPY AND RETAIN INFORMATION CONTAINED IN OUR CASE FILES AND, MORE IMPORTANTLY, ASSURE OUR PARTNERS THAT THE INFORMATION (OBTAINED BY BEGA) WILL BE PROTECTED FROM PUBLIC DISCLOSURE. WITHOUT SUCH ASSURANCES, WE EXPECT OUR LAW ENFORCEMENT PARTNERS TO BE RETICENT ABOUT SHARING INFORMATION WITH OIG INVESTIGATORS AND TO WITHHOLD CERTAIN INFORMATION WHERE THE RISK OF PUBLIC DISCLOSURE OUTWEIGHS THE BENEFIT OF SHARING THE INFORMATION WITH THE OIG. INDEED, WE HAVE ALREADY RECEIVED SUCH FEEDBACK.

IN CONCLUSION, WHEN THE OIG HAS SUBSTANTIATED A CODE OF CONDUCT VIOLATION, OUR PRACTICE IS TO PROVIDE BEGA WITH ALL THE RELEVANT AND APPROPRIATE DOCUMENTATION NEEDED TO FULFILL ITS STATUORY AUTHORITY, INCLUDING SUPPLYING SUCH INFORMATION FROM THE CASE FILE INCLUDING WITNESS AND SUBJECT STATEMENTS, PHOTOGRAPHS, CHARTS, AND LIKE MATERIAL – THE OIG INTENDS TO CONTINUE WITH THAT PRACTICE.

I WOULD LIKE TO END THE WAY I STARTED, MY CONCERN WITH THE LEGISLATION IS THE THREAT IT POSES TO THE INDEPENDENCE AND INTEGRITY OF OIG INVESTIGATIONS; THAT IS, THE CHILLING EFFECT THAT UNFETTERED ACCESS TO OIG RECORDS WOULD CREATE ON OIG AGENTS IN CONDUCTING

THEIR INVESTIGATIONS AND LAW ENFORCEMENT ENTITIES SUCH AS USAO AND FBI WITH WHOM THE OFFICE WORKS CLOSELY.

AS I STATED IN MY LETTER, THE BETTER COURSE OF ACTION, WITH RESPECT TO BEGA AND OIG OPERATIONS, IN MY ESTIMATION, IS TO REQUIRE COORDINATION AND SHARING OF INFORMATION WHERE IT DOES NOT IMPINGE UPON THE INTEGRITY AND ABILITY OF BOTH AGENCIES TO CONDUCT TRULY INDEPENDENT INVESTIGATIONS.

I HOPE YOU FIND THIS HELPFUL. THIS CONCLUDES MY TESTIMONY. I AM HAPPY TO ANSWER ANY QUESTIONS THAT YOU MAY HAVE.