

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JEFF FLAKE, ARIZONA
MIKE CRAPO, IDAHO
THOM TILLIS, NORTH CAROLINA
JOHN KENNEDY, LOUISIANA

DIANNE FEINSTEIN, CALIFORNIA
PATRICK J. LEAHY, VERMONT
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE K. HIRONO, HAWAII

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Staff Director*

June 28, 2017

VIA ELECTRONIC TRANSMISSION

Chad A. Readler
Acting Assistant Attorney General, Civil Division
U.S. Department of Justice
Washington, D.C. 20530

The Honorable Michael Horowitz
Inspector General
U.S. Department of Justice
Washington, D.C. 20530

Dear Acting Assistant Attorney General Readler and Inspector General Horowitz:

Recently, the Department of Justice (DOJ), Office of Inspector General (OIG) published a review of the DOJ Civil Division's handling of sexual harassment and misconduct reports.¹ This review, which assessed cases from FY 2011 to FY 2016, identified significant weaknesses in the Civil Division's reporting and investigation of sexual harassment and misconduct allegations, and inconsistencies among discipline and penalties for substantiated allegations. These findings are similar to whistleblower reports provided to the Committee over the past two years,² and demonstrate the Department's continued failure to consistently enforce its "zero tolerance" policy for harassment across all components.

The OIG's 2017 review, similar to a 2015 investigation, found that the Civil Division lacked meaningful guidance, policy, or practice for reporting allegations of sexual harassment and misconduct. Instead, the Civil Division has been treating allegations as local management issues, blurring the lines between allegations that are required to be reported to headquarters, the component's front office and the OIG. Prior to 2015, the Civil Division had not referred *any* sexual harassment or misconduct allegations to the OIG, including two cases that raised criminal concerns. This seems to violate the *Inspector General Act of 1978* and federal regulations governing the handling of misconduct incidents. Additionally, the Civil Division's own internal

¹ OIG Review of the Handling of Sexual Harassment and Misconduct Allegations by the Department's Civil Division, May 2017.

² *Sen. Charles E. Grassley letter to DOJ and DOJ OIG regarding Sexual Harassment, Discrimination, Intimidation by Managers*, (Sept. 16, 2015), available <https://www.grassley.senate.gov/news/news-releases/atf-whistleblowers-allege-sexual-harassment-discrimination-intimidation-managers>

policies lack consistent standards for reporting to the OIG and Civil Division Leadership—which is consistent with whistleblower reports to the Committee.

Even after the OIG reminded the Civil Division of its obligation to report allegations of misconduct to them in 2015, whistleblowers provided information to this Committee demonstrating the Department continued to ignore employee complaints involving sexual harassment and misconduct allegations, and repeatedly failed to refer allegations to the OIG. The Committee sent a letter on September 14, 2015, to the Department requesting information on DOJ’s failure to investigate several allegations of sexual harassment, bullying, gender discrimination, and witness intimidation with the Bureau of Alcohol, Tobacco, and Firearms (ATF). Most harassers involved in these incidents were not reprimanded, and were allegedly promoted. In a case involving a female ATF agent, after the agency concluded an investigation into her harassment allegations, it delivered a Final Agency Decision substantiating her claims, yet ATF failed to follow penalty tables and appropriately discipline those found to have engaged in prohibited behavior.

It’s troubling to learn the previous administration’s Civil Division was not consistently using the penalty tables or guidelines for handling substantiated allegations of harassment and misconduct.³ Without the use of penalty tables, discipline proved to be inconsistent across the board and was less severe dependent on the perpetrator’s identity. The penalties for substantiated allegations of serious sexual misconduct “were nothing more than written reprimands, title changes or reassignments” when the subjects of the allegations were supervisors.⁴ Failing to adequately punish an employee, especially a supervisor, who sexually assaults or harasses another is unacceptable, and contrary to the Department’s own zero tolerance policy. It also creates an opportunity for the misconduct to continue putting additional employees at risk. Once again, this finding is consistent with whistleblower allegations.

Civil Division employees also received performance awards pending disciplinary actions, or while they were the subject of an ongoing sexual harassment or misconduct investigation. For example, despite having letters of reprimand in their personnel files, the Department rewarded a senior official found guilty of groping two colleagues and a senior attorney who admitted to stalking another attorney and hacking her computer. A male attorney who had received counseling for peeping into windows above the closed doors of female colleagues’ offices also received a performance award. Awarding employees who engage in this kind of misconduct is unacceptable and detrimental to the health of the workplace. In addition, rewarding bad behavior may “reinforce the general perception that coming forward to report an allegation of [sexual harassment or misconduct] will not result in any meaningful consequence.”⁵

The Civil Division’s systemic failures to appropriately document, timely investigate and punish perpetrators of sexual harassment and other misconduct undermines the integrity of the “zero tolerance” policy and jeopardizes employee confidence in the fairness of the disciplinary

³ OIG Review of the Handling of Sexual Harassment and Misconduct Allegations by the Department’s Civil Division, May 2017 at p. 17.

⁴ *Id* at 23

⁵ *Id* at 21

system. This Committee seeks a full understanding of the current administration's response to these serious concerns raised by the OIG report. Accordingly, please answer the following questions:

Acting Assistant Attorney General Readler:

1. How does the Department intend to implement each of OIG's four recommendations directed at improving the Civil Division's handling of sexual harassment and misconduct allegations and enforcing the Department's zero tolerance policy?
2. What procedures are in place for the Civil Division to review and refer reports of harassment and misconduct in the workplace pursuant to the Department's Policy Memorandum #2015-04? Please provide copies of the procedures.
3. What procedures are in place for ensuring harassment and misconduct allegations are appropriately reported to the front office, headquarters, and the OIG?
4. How many additional staff were hired to manage the employee relations program? Please provide their job titles and list of responsibilities.
 - a. The Department's response to the OIG's recommendations indicates that the Civil Division hired a Senior Advisor to assess the employee relations program. Please provide a copy of this assessment and any other internal reports and training documents developed in response to the OIG report.
 - b. How many case files has the Employee and Labor Relations Specialist reviewed since he/she was hired in December 2016? What were the results of this review?
5. How many employees Department-wide have received awards or any kind of public recognition while they were the subject of an ongoing sexual harassment or misconduct investigation or while disciplinary actions were in effect?
6. What is the status of the Civil Division's efforts to develop policy guidance regarding performance awards given to and public recognition of an employee who is under investigation or has recently been disciplined for misconduct, including sexual harassment? Please provide a copy of the guidance.

Inspector General Horowitz:

1. To what extent has the OIG reviewed the Civil Division's new data system for tracking and organizing case files? Does the OIG have access to the system?

2. What is the status of the OIG's investigation into allegations of harassment and misconduct involving employees at the Federal Bureau of Investigation, Drug Enforcement Administration, U.S. Marshals Service, and ATF, including all whistleblowers associated with previous Committee requests for information at each agency? Please provide a copy of the final report, if available.
3. What are the OIG's plans to monitor, follow-up, or conduct additional reviews of DOJ's handling of harassment and misconduct allegations?

Thank you in advance for your cooperation with this request. Please respond to this request by July 12, 2017 and number your responses according to their corresponding questions. If you have questions, please contact Katherine Nikas of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Senate Judiciary Committee

cc:

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary