

January 26, 2009

MEMORANDUM FOR GERALD WALPIN, INSPECTOR GENERAL

FROM: Nicola Goren *ng*
Acting Chief Executive Officer

SUBJECTS: Response to your concerns regarding the investigation of an Equal Employment Opportunity complaint involving the Office of Inspector General.

You have raised several concerns about the conduct of an Equal Employment Opportunity (EEO) investigation being overseen by the agency's Office of Civil Rights and Inclusiveness (OCR). The investigation involves the Office of Inspector General and you are a fact witness in the matter.

In our meeting on January 5, 2009, you expressed the following concerns:

1. The Complainant's affidavit seems to have been written by her attorney. It is written in the third-person and includes legal citations.
2. When reviewing a draft affidavit, the OIG noted that some portions did not appear to be accurate. When a request was made to listen to the tape of the investigative session that preceded the affidavit's drafting, the OIG was informed that the tape had been destroyed.
3. You suggested that the OIG and the Complainant be given an opportunity to review the investigation and add to its completeness.¹

As agreed in our meeting on January 5, I have followed up with OCRI on your concerns. With regard to your first concern, OCRI advises that there is nothing improper about a Complainant receiving assistance in drafting an affidavit which is signed by the Complainant. With regard to your second concern, OCRI agrees that interview materials should be kept until all affidavits have been signed and returned to the investigator. I am advised that, because that was not done in this matter, the OIG affiant was given an opportunity (and additional time) to make any corrections desired before signing the affidavit. With regard to your third concern, OCRI has provided assurances that it will review the entire record for fairness and legal sufficiency at the conclusion of the official inquiry. If OCRI determines that the official record is deficient, a supplemental investigation will be ordered, in keeping with standard operating procedures for processing Federal sector EEO complaints of discrimination under EEOC regulations and directives.

In our meeting on January 21, 2009, you expressed an additional concern that the process for obtaining affidavits from OIG agency witnesses may have differed from the process for

¹ You also sent a memorandum to me dated January 6, 2009, referring to legal authorities for Federal agency heads to supervise the Director of Equal Employment Opportunity.



obtaining an affidavit from the Complainant, and specifically that OIG agency witnesses may not have had an opportunity to provide information in their affidavit beyond the scope of questions posed by the OCRI contract investigator. In addition, you suggested that OCRI contract investigators would benefit from Standard Operating Procedures to ensure fairness and consistency.

As agreed in our meeting on January 21, I have followed up with OCRI on your additional concern. OCRI has provided assurances that it will review the entire record for fairness and legal sufficiency at the conclusion of the official inquiry and will take appropriate action if warranted to correct inconsistencies or omissions. OCRI notes that it holds contractors to the industry standards for processing and investigating EO complaints based on the regulations and guidance set out in 29 CFR 1614, MD-110, and applicable case law.

I have fully considered your concerns, followed up directly with OCRI, and I am satisfied that OCRI is properly carrying out the prompt, fair, and impartial processing of this matter. Mindful that the investigative process is not adversarial in nature, I now consider the matter of your above-referenced concerns to be closed.