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26 May 2008

Rena Y. Kim, Chief
FOIA/PA Unit
Criminal Division
U.S. Department of Justice
Suite 1127, Keeney Building
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: FOIA Request – Investigation of CIA Office of the Inspector General

Dear Ms. Kim:

This is a request on behalf of the James Madison Project (“JMP”) under the Freedom of Information Act, 5 U.S.C. § 552, et seq., for copies of all Department of Justice (“DOJ”) documents, including cross-references, pertaining to:

- 1) investigations referred to the Criminal Division’s Public Integrity Section by the Integrity Committee of the President’s Council on Integrity and Efficiency (“PCIE”) into the operations of the Central Intelligence Agency (“CIA”) Inspector General (“IG”), John Helgerson, and of the IG’s Office as a whole; and
- 2) discussions, records, correspondence, memoranda, or opinions of the Public Integrity Section regarding CIA Director General Michael Hayden’s decision to initiate an internal investigation of the IG’s Office.

Enclosed please find copies of news articles from the *New York Times* and *Los Angeles Times* referring to confirmation by the CIA that General Hayden ordered the internal review and referencing the PCIE.

“Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.”

James Madison, 1822

We are hereby requesting a waiver of all fees. The James Madison Project is a non-profit organization under the laws of the District of Columbia and has the ability to disseminate information on a wide scale. Stories concerning our activities have received prominent mention in many publications including, but not limited to, *Washington Post*, *Washington Times*, *St. Petersburg Tribune*, *San Diego Union Tribune*, *European Stars & Stripes*, *Christian Science Monitor*, *U.S. News and World Report*, *Mother Jones* and *Salon Magazine*. Our website, where much of the information received through our FOIA requests is or will be posted for all to review, can be accessed at <http://www.jamesmadisonproject.org>. Prior requests submitted by our organization have all received fee waivers.

We are also asking for expedited processing. The 1996 amendments to the Freedom of Information Act permit expedited processing when a “compelling need” exists. *See* 5 U.S.C. § 552 (a)(6)(E)(v). Specifically, “compelling need” means “with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.” *Id.* at § 552 (a)(6)(E)(v)(II). The Department of Justice has adopted internal regulations governing expedited processing and has determined that a “compelling need” is deemed to exist where the requester can demonstrate “the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.” *See* 28 CFR § 16.5(d).

There can be no question that the information sought would contribute to the public’s understanding of government operations or activities and is in the public interest. Over the course of the Global War on Terror (“GWOT”), numerous documents from a host of executive branch agencies have been released, detailing the legal and policy considerations that have formed the basis for discussions on a wide-range of national security policies. One example was the DOJ disclosure of memoranda that originated in its Office of Legal Counsel and which formed a critical component of U.S. policies concerning detention of terrorist suspects. Given the highly-publicized nature of this particular controversy and its relation to the activities of the CIA’s internal “watchdog,” an office which has recently produced reports highlighting critical failures by the CIA in its prosecution of the GWOT, as well as the controversy over the statutory independence of Inspectors General, details regarding the interest (or lack thereof) in such an investigation by the PCIE, the one governmental entity authorized to conduct such an investigation, and the DOJ Public Integrity Section will clearly contribute to the public’s understanding of government operations or activities.

With respect to expedited processing, as explained above, JMP has been and continues to be primarily engaged in disseminating information on a wide scale and clearly falls within the scope of the statute. A “compelling need” exists due to the critically important political and legal

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James Madison, 1822

questions that are clearly implicated by the CIA's decision to authorize the internal review of the IG's Office. Not only does the review have the potential to serve, either in mere appearance or in actual reality, as evidence of the politicization of a statutorily-designated non-political division within the CIA, but it also raises the possibility of constituting unlawful interference in the activities of the IG and obstruction of the IG's statutory obligations.

The DOJ is required by law to respond to this request within 20 working days. However, the DOJ is required to issue a determination on the request for expedited processing "within 10 days after the date of the request." 5 U.S.C. § 552 (a)(6)(E)(ii)(I). Therefore, the DOJ's response is due on or before June 6, 2008. Failure to timely comply may result in the filing of a civil action in the United States District Court for the District of Columbia. Please note that the denial of expedited processing should not interfere with the normal processing of these requests.

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. In excising material, please "black out" rather than "white out" or "cut out." Similarly, if you determine that this request must be made to a parent agency, please inform us of the correct office to which we must submit this request within the 10-day period required by law.

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact my Director of FOIA Operations Kel McClanahan at KellyBMcC@gmail.com or 301-728-5908.

Finally, please have all return correspondence addressed specifically to my attention to ensure proper delivery.

Sincerely,

A handwritten signature in black ink, appearing to read "M. S. Zaid for". The signature is fluid and cursive, with the word "for" written in a smaller, simpler script at the end.

Mark S. Zaid
Executive Director

MSZ/km

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James Madison, 1822

October 11, 2007

Watchdog of C.I.A. Is Subject of C.I.A. Inquiry

By [MARK MAZZETTI](#) and [SCOTT SHANE](#)

WASHINGTON, Oct. 11 — The director of the [Central Intelligence Agency](#), Gen. [Michael V. Hayden](#), has ordered an unusual internal inquiry into the work of the agency's inspector general, whose aggressive investigations of the C.I.A.'s detention and interrogation programs and other matters have created resentment among agency operatives.

A small team working for General Hayden is looking into the conduct of the agency's watchdog office, which is led by Inspector General John L. Helgerson. Current and former government officials said the review had caused anxiety and anger in Mr. Helgerson's office and aroused concern on Capitol Hill that it posed a conflict of interest.

The review is particularly focused on complaints that Mr. Helgerson's office has not acted as a fair and impartial judge of agency operations but instead has begun a crusade against those who have participated in controversial detention programs.

Any move by the agency's director to examine the work of the inspector general would be unusual, if not unprecedented, and would threaten to undermine the independence of the office, some current and former officials say.

Frederick P. Hitz, who served as C.I.A. inspector general from 1990 to 1998, said he had no first-hand information about current conflicts inside the agency. But Mr. Hitz said any move by the agency's director to examine the work of the inspector general would "not be proper."

"I think it's a terrible idea," said Mr. Hitz, who now teaches at the [University of Virginia](#). "Under the statute, the inspector general has the right to investigate the director. How can you do that and have the director turn around and investigate the I.G.?"

A C.I.A. spokesman strongly defended the inquiry on Thursday, saying General Hayden supported the work of the inspector general's office and had "accepted the vast majority of its findings."

"His only goal is to help this office, like any office at the agency, do its vital work even better," said Paul Gimigliano, the spokesman.

Current and former intelligence officials said the inquiry had involved formal interviews with at least some of the inspector general's staff and was perceived by some agency employees as an "investigation," a label Mr. Gimigliano rejected.

Several current and former officials interviewed for this article spoke on condition of anonymity because of the sensitivity of the inquiry.

The officials said the inquiry was being overseen by Robert L. Deitz, a trusted aide to the C.I.A. director and a lawyer who served as general counsel at the [National Security Agency](#) when General Hayden ran it. Michael Morrell, the agency's associate deputy director, is another member of the group, officials said.

Reached by phone Thursday, both Mr. Helgerson and Mr. Dietz declined to comment.

In his role as the agency's inspector general since 2002, Mr. Helgerson has investigated some of the most controversial programs the C.I.A. has begun since the Sept. 11 attacks, including its secret program to detain and interrogate high value terrorist suspects.

Under federal procedures, agency heads who are unhappy with the conduct of their inspectors general have at least two places to file complaints. One is the Integrity Committee of the President's Council on Integrity and Efficiency, which oversees all the inspectors general. The aggrieved agency head can also go directly to the White House.

If serious accusations against an inspector general are sustained by evidence, the president can dismiss him.

Both those routes avoid the awkward situation officials describe at the C.I.A. and preserve the independence of the inspector general.

But one intelligence official who supports General Hayden's decision to begin an internal inquiry said that going outside the agency would "blow things way out of proportion."

A report by Mr. Helgerson's office completed in the spring of 2004 warned that some C.I.A.-approved interrogation procedures appeared to constitute cruel, inhuman and degrading treatment, as defined by the international Convention Against Torture.

Some of the inspector general's work on detention issues was conducted by Mary O. McCarthy, who was fired from the agency last year after being accused of leaking classified information. Officials said Mr. Helgerson's office was nearing completion on a number of inquiries into C.I.A. detention, interrogation, and "renditions" — the practice of seizing suspects and delivering them to the authorities in other nations.

The inspector general's office also rankled agency officials when it completed a withering report about the C.I.A.'s missteps before the Sept. 11 attack — a report that recommended "accountability boards" to consider disciplinary action against a handful of senior officials.

When the report was made public in August, General Hayden took the rare step of pointing up criticisms of the report by the former intelligence director, [George J. Tenet](#) and his senior aides, saying many officials "took strong exception to its focus, methodology and conclusions."

Some agency officers believe the aggressive investigations by Mr. Helgerson amount to unfair second guessing of intelligence officers who are often risking their lives in the field.

"These are good people who thought they were doing the right thing," said one former agency official. "And now they are getting beat up pretty bad and they have to go out and hire a lawyer."

Agency officials have also criticized the length of the inspector general's investigations, some lasting more

than five years, which have derailed careers and generated steep legal bills for officers under scrutiny.

The former agency official called General Hayden's review of the inspector general "a smart move."

Since taking over at the C.I.A. in 2006, General Hayden has taken several steps to soothe anger within the agency's clandestine service, which has been buffeted in recent years by a string of prolonged investigations.

He has brought back two veteran agency operatives, Steven R. Kappes and Michael J. Sulick, both of whom angrily left during the tenure of [Porter J. Goss](#), the C.I.A. director, to assume top posts at the spy agency. He also supported the president's nomination of [John A. Rizzo](#), a career agency lawyer and someone well-respected by covert operatives, to become the C.I.A.'s general counsel.

Mr. Rizzo withdrew his nomination to the post last month in the midst of intense opposition from Senate Democrats.

"Director Hayden has done a lot of things to convince the operators that he's looking out for them, and putting the I.G. back in its place is part of this," said John Radsan, who worked as a C.I.A. lawyer from 2002 to 2004 and is now a professor at William Mitchell College of Law.

Mr. Hitz and other former C.I.A. officials said tensions between the inspector general and the rest of the agency were natural. Conflicts most often arise when the inspector general reviews the actions of the agency's directorate of operations, now known as the National Clandestine Service, which recruits agents and hunts terrorists overseas.

"The perception is like in a police department between street cops and internal affairs," said A. B. Krongard, the agency's executive director from 2001 to 2004.

Resentment of the inspector general's work has also at times extended to the agency's general counsel's office, whose legal judgment is sometimes second-guessed by after-the-fact investigations. "In some of our reports, we were quite critical of the advice given by the general counsel," Mr. Hitz said.

The C.I.A., created in 1947, had an in-house inspector general selected by the director starting in 1952 who investigated failed operations like the Bay of Pigs invasion against Cuba in 1961.

But that position was viewed as lacking clout and independence, and in 1989, partly in response to the Iran-contra affair, Congress created an independent inspector general at the agency, appointed by the president and reporting to both the director and to Congress.

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From the Los Angeles Times

CIA investigates conduct of its inspector general

The internal inquiry is prompted by senior agency officials who say they were criticized unfairly in the watchdog's reports on secret overseas prisons.

By Greg Miller

Los Angeles Times Staff Writer

October 12, 2007

WASHINGTON — CIA Director Michael V. Hayden has mounted a highly unusual challenge to the agency's chief watchdog, ordering an internal investigation of an inspector general who has issued a series of scathing reports sharply critical of top CIA officials, according to government officials familiar with the matter.

The move has prompted concerns that Hayden is seeking to rein in an inspector general who has used the office to bring harsh scrutiny of CIA figures including former Director George J. Tenet and undercover operatives running secret overseas prison sites.

The inquiry is focused on the conduct of CIA Inspector General John L. Helgerson and his office. Officials said it was aimed in particular at evaluating whether his office was fair and impartial in its scrutiny of the agency's terrorist detention and interrogation programs. But officials said the probe also spanned other subjects and had expanded since it was launched several months ago.

U.S. intelligence officials who are concerned about the inquiry said it was unprecedented and could threaten the independence of the inspector general position. The probe "could at least lead to appearances he's trying to interfere with the IG, or intimidate the IG or get the IG to back off," said a U.S. official familiar with the probe.

Frederick P. Hitz, who served as the CIA's inspector general from 1990 to 1998, said the move would be perceived as an effort by Hayden "to call off the dogs."

"What it would lead to is an undercutting of the inspector general's authority and his ability to investigate allegations of wrongdoing," Hitz said. "The rank and file will become aware of it, and it will undercut the inspector general's ability to get the truth from them."

But other officials described the probe as a chance to turn the tables on an inspector general who has been accused by some of his targets of treating career officers unfairly and letting personal biases undermine his objectivity.

"There is across-the-board distrust with the IG function and disrespect for Helgerson, who many believe has a personal agenda on issues," said a former high-ranking CIA official who, like others interviewed, spoke on condition of anonymity because of the classified nature of the inspector general's work.

Helgerson, the former official said, "always went in with a presumption of guilt."

Helgerson oversees a large staff of investigators whose activities include detailed examinations of highly classified programs and routine audits of mundane agency functions. He has served as inspector general at the CIA since 2002.

The CIA probe comes at a time when the powers of inspectors general in agencies throughout the federal government are under renewed debate. This month, the Bush administration threatened to veto a House bill that would strengthen the independence of inspectors general by giving them seven-year terms and permit the White House to fire them only for cause.

Hayden, an Air Force general who became CIA director last year, has not been involved in any public clashes with Helgerson. But Hayden has been a staunch defender of the Bush administration's counter-terrorism programs and has publicly lamented what he describes as a tendency by outside observers and critics to second-guess the activities of the nation's intelligence agencies.

In response to questions about the unusual arrangement, CIA spokesman George Little said Hayden "firmly believes that the work of the office of inspector general is critical to the entire agency, and, since taking the helm at CIA, he has accepted the vast majority of its findings." However, Hayden's goal is to "help the office do even better," Little said.

The CIA's review is being led by Robert Deitz, an attorney with long-standing ties to Hayden who was brought in to serve as a senior counselor to the director. Deitz, who served as general counsel at the National Security Agency when Hayden was director there in the 1990s, has assembled a small team of investigators to conduct the probe.

Little, the CIA spokesman, said Deitz came to the post with "an absolute belief in the value of an independent, rigorous Office of Inspector General."

The inquiry has been driven in large part by senior operations officers who have complained to Hayden that they were unfairly criticized by Helgerson in classified reviews of the CIA's secret prisons programs.

The probe is set up to examine "how those people were treated, how the investigations were conducted," said an official familiar with it.

The official declined to discuss the conclusions of the internal investigations, which are classified, but said that "the people who are upset didn't think they were glowing reviews."

Among the issues being explored are whether agency officers were given adequate opportunity to defend their actions, and whether the inspector general's conclusions accurately represented their roles.

Officials declined to name the CIA officers behind the complaint. One former official said, "We're talking about undercover people at mid- to senior-grade ranks."

The CIA created a network of secret overseas prisons shortly after the Sept. 11 attacks, and it has faced severe international criticism for employing harsh interrogation tactics as well as a program known as "extraordinary rendition," in which prisoners have been transferred to countries known to use torture.

To date, officials said, the inquiry has largely involved gathering information and statements from CIA officers who came under scrutiny in Helgerson's review.

But officials expressed concern that the probe would also involve reviewing the inspector general's files. Such a step could have a dramatic chilling effect, officials said, making agency employees reluctant to cooperate with future investigations for fear that their involvement and the information they provide would be exposed.

The focus on the prison program represents an expansion of a probe that officials said began several months ago into the relationship between Helgerson's office and that of the CIA general counsel.

Officials said Hayden was concerned about friction between the two offices and tapped Deitz to explore the matter. The nature of the friction was unclear but involved complaints that Helgerson had overstepped his role by offering legal opinions on agency programs.

One former high-ranking CIA official said Helgerson has not shied away from taking positions in heated internal policy debates. The former official recalled attending staff meetings in which Helgerson expressed opposition to agency involvement in handling detainees as part of the war on terrorism.

A career CIA officer who holds degrees in political science, Helgerson had previously served as chief of the agency's analytic branch as well as head of the National Intelligence Council, which produces authoritative reports on key national security issues.

Helgerson has become an unusually high-profile occupant of the position largely because his tenure has coincided with a series of historic intelligence blunders.

An examination of failures leading up to the Sept. 11 attacks was sharply critical of Tenet and other senior CIA officials, saying they "did not discharge their duties in a satisfactory manner," and calling for the creation of special in-house panels to determine whether they should be reprimanded.

The CIA had fought to keep that report secret. But Hayden reluctantly released its key findings in August after Congress passed legislation requiring the CIA to declassify the document's executive summary.

The conclusions were denounced by many targets of the probe, including Tenet, who issued a statement saying, "The IG is flat wrong."

The tone of the report also angered officials who were not singled out for criticism. Robert Richer, who was the assistant deputy director for operations at the CIA before retiring in 2005, said that shortly before he left the agency, he sent a memo to then-Director Porter J. Goss requesting that the inspector general be reviewed for his impartiality.

"The basis of it was the 9-11 report," Richer said in an interview, referring to Helgerson's examination of Sept. 11-related failures. Goss did not act on that request, and it is unclear whether it played any role in Hayden's decision to initiate a review of Helgerson's conduct.

Because of its role, the inspector general's office is viewed with distrust and suspicion by other parts of the agency, particularly case officers who operate overseas and "feel they're being investigated by people who don't fully understand their business," said one former CIA official.

Helgerson's office has also been accused of leaks to the press. Goss in 2006 fired CIA officer Mary O. McCarthy, who worked in the inspector general's office, after she was accused of inappropriate contacts with journalists, including a Washington Post reporter who wrote articles about the CIA's secret overseas prisons.

The relationship between the CIA director and the inspector general is complicated. The law creating the position specifies that the watchdog "shall report directly to and be under the general supervision of the director."

The law also makes clear that the CIA director can ignore recommendations from an inspector general and even prohibit the office from initiating investigations.

But Hitz, the former CIA inspector general, and others said that the position has traditionally operated with a great deal of autonomy, and that there are other mechanisms for holding an inspector general accountable. In particular, a 1992 executive order established what is known as the

President's Council on Integrity and Efficiency and gave it authority to evaluate the work of inspectors general in agencies across the government.

"I don't think it's appropriate for the IG to be in an offline way investigated by his superior," Hitz said. "If the director has a problem with the way the IG is performing his job, he can go to the Congress, to the president's intelligence oversight board, or he can go to the president himself."

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