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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

February 26, 2018

The Honorable David P. Pekoske
Administrator
Transportation Security Administration
601 South 12th Street
Arlington, VA 20598

Dear Mr. Pekoske:

The Department of Homeland Security Office of Inspector General (OIG) recently released a special review detailing how the Transportation Security Agency (TSA), under the previous Administration, failed to hold a Senior Executive Service (SES) employee accountable for misconduct.¹ This review found that TSA deviated from its personnel policy, allowing the SES employee to receive “unusually favorable treatment” in the disciplinary process.² We respectfully request information about how TSA will ensure that the agency uniformly carries out disciplinary actions against senior management.

In 2015, TSA’s Office of Inspection (OOI) completed an investigation against the SES employee, resulting in four charges against him. The OIG found that following the investigation, senior leaders within TSA involved themselves in the adjudication of the SES employee’s personnel matter, outside of normal protocols. Although TSA’s table of penalties required that TSA remove the SES employee, these senior leaders halted the removal process and instead offered the SES employee a minor settlement. The settlement included a 14-day suspension, reassignment within TSA, and removal from the SES for one year. The settlement allowed the employee to continue to receive the same salary he received as an SES employee. The SES employee is still employed by TSA.³

While the OIG found that some TSA senior leaders protect themselves from discipline, other employees allege that senior leaders seek to silence dissent from line-level employees. The Program Manager of TSA’s Office of the Chief Risk Officer testified in 2016 that “senior organizational leaders use retaliation as a means to silence those who would report violations, security concerns or operations issues by forcing employees into early retirement or

¹ Department of Homeland Security, Office of Inspector General, *Special Review: TSA’s Handling of the 2015 Disciplinary Matter Involving TSES Employee* (OIG-18-35) (Jan. 8, 2018).

² *Id.*

³ *Id.*

resignations.”⁴ In the 2017 Federal Employee Viewpoint Survey, fewer than half of non-TSA headquarters employees agreed that they could disclose a suspected violation of any law, rule, or regulation without fear of reprisal.⁵ Only 35% of these employees responded that arbitrary action, personal favoritism, and coercion for partisan political purposes are not tolerated, and just over half, 56%, agreed that prohibited personnel practices are not tolerated.⁶

To better understand TSA’s oversight and handling of claims of misconduct and retaliation, we request that you provide the following information:

1. Please describe TSA’s actions since the release of OIG’s review to ensure no undue influence by TSA senior leadership in the investigation, findings, or penalty processes of future disciplinary matters for SES employees;
2. Please describe the disciplinary actions taken by TSA to address OIG’s findings regarding the senior leaders who involved themselves in the adjudication of the SES’s personnel matter;
3. Please provide the number of complaints that TSA has received from employees alleging misconduct or retaliation by an SES official or TSA senior management for each year since 2013, including a description of the complaint and the resolution of each complaint;
4. Please provide the number of employees subject to adverse personnel actions for misconduct or retaliation for each year since 2013, and the action taken by TSA;
5. Please describe the responsibilities of the Office of Professional Responsibility (OPR), the Office of Inspection (OOI), and the Office of the General Counsel (OGC) as they relate to complaints of employee misconduct and retaliation;
6. Please provide the number of non-disclosure agreements (NDA) that TSA has required employees to sign relating to settlements or resolving complaints since 2013. Please include a copy of a representative NDA; and
7. Please provide the number of corrective actions for misconduct or retaliation issued by the Office of Special Counsel to TSA and those actions taken by TSA since 2013.

⁴ *Transportation Security Administration Management Practices: Hearing Before the H. Comm. on Oversight and Government Reform, 114th Cong. 114-96 (2016)* (statement of Dr. Mark Livingston).

⁵ Transportation Security Administration, *2017 Federal Employee Viewpoint Survey: TSA Overall Results*.

⁶ *Id.*

The Honorable David P. Pekoske
February 26, 2018
Page 3

We request that you provide this information as soon as possible, but no later than March 19, 2018. Additionally, we request that you provide a briefing regarding the allegations stated in this letter and the information provided above as soon as possible, no later than March 19, 2018.

If you have any questions regarding this request, please contact Chris Boness with the Majority staff at Chris_Boness@hsgac.senate.gov or Hannah Berner with the Minority staff at Hannah_Berner@hsgac.senate.gov.

Sincerely,



Ron Johnson
Chairman



Claire McCaskill
Ranking Member