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## United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR  
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

June 14, 2016

The Honorable Carolyn Colvin  
Acting Commissioner  
U.S. Social Security Administration  
1100 West High Rise  
6401 Security Boulevard  
Baltimore, MD 21235

Dear Acting Commissioner Colvin:

I write concerning reports of whistleblower retaliation within the Milwaukee and Madison hearing offices of the Social Security Administration's (SSA) Office of Disability Adjudication and Review (ODAR). I am troubled by SSA's refusals to provide information to the Committee about these allegations. I request your unfettered cooperation with this matter.

I wrote to you on April 26, 2016, regarding case processing delays in the Milwaukee hearing office.<sup>1</sup> These issues were brought to the attention of my staff by an SSA whistleblower, Ron Klym. SSA officials provided a staff level briefing on May 9, 2016, concerning SSA's policies and practices for processing cases and transferring cases to national hearing centers and national case assistance centers.<sup>2</sup> However, during the briefing, SSA officials refused to answer questions about media reports that the Milwaukee hearing office had placed Mr. Klym on administrative leave because he contacted my office and the media with his concerns about processing times.<sup>3</sup>

Since then, my staff have received additional complaints of whistleblower retaliation within the Milwaukee and Madison hearing offices.<sup>4</sup> Mr. Klym discussed his concerns about the Milwaukee hearing office in a news story that was published on May 4, 2016.<sup>5</sup> SSA placed Mr. Klym on administrative leave,<sup>6</sup> and most recently, issued him a proposal to terminate his

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<sup>1</sup> Letter from Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs (HSGAC), to Hon. Carolyn Colvin, Acting Comm'r, Soc. Sec. Admin. (SSA) (Apr. 26, 2016).

<sup>2</sup> Briefing between Staff, SSA, and Staff, HSGAC (May 9, 2016).

<sup>3</sup> See M.D. Kittle, *Deadly Delay: Whistleblower Alleges Misconduct, Incompetence in Social Security Office*, Watchdog.org (May 4, 2016), <http://watchdog.org/264179/whistleblower-social-security-misconduct/> [hereinafter Kittle, *Deadly Delay*].

<sup>4</sup> E.g., M.D. Kittle, *Social Security Whistleblower Now Faces Firing*, Watchdog.org (May 27, 2016), <http://watchdog.org/266437/social-security-ron-klym-termination/> [hereinafter Kittle, *Social Security Whistleblower Now Faces Firing*]; Kittle, *Deadly Delay*.

<sup>5</sup> Kittle, *Deadly Delay*.

<sup>6</sup> M.D. Kittle, *Social Security Whistleblower Questioned by Investigators After Going Public*, Watchdog.org (May 26, 2016), <http://watchdog.org/266333/social-security-investigators-whistleblower/> [hereinafter Kittle, *Social Security Whistleblower Questioned by Investigators*].

employment.<sup>7</sup> Additional whistleblowers, including Celia Machelles Keller and Mary Brister, have similarly described experiencing retaliation as a result of reporting complaints to the same journalist.<sup>8</sup> One week after a news story featured Ms. Keller's concerns, investigators from the SSA Office of Inspector General interrogated Ms. Keller at her home.<sup>9</sup> Several days after a news story anonymously quoted Ms. Brister,<sup>10</sup> she was suspended for five days and lost her telework privileges for one year.<sup>11</sup>

Despite the serious issues that these media reports highlight, SSA has refused to provide information to the Committee about these personnel actions. During the May 9 briefing, my staff requested information about the Milwaukee hearing office's decision to place Mr. Klym on administrative leave. However, SSA refused to provide the information, writing in a subsequent e-mail that "it is SSA policy that we must obtain such a request in a formal letter signed by Senator Johnson on official letterhead,"<sup>12</sup> and that "an email from a committee staff member is insufficient, and provides an opportunity for the inappropriate release of such information."<sup>13</sup>

Although SSA officials have asserted that SSA policy prevents them from cooperating with my staff's request, they notably have failed to cite or produce any such policy. In fact, SSA has not cited to *any* legal authority or written policy supporting its position. Rather, SSA cited to the Privacy Act as the basis for its policy, even though the Act expressly and "unambiguously"<sup>14</sup> exempts congressional committees from its limitations on disclosure of records. Specifically, section 552a(b)(9) expressly provides the following:

No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, **unless disclosure of the record would be . . . to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee . . .**<sup>15</sup>

As SSA has acknowledged,<sup>16</sup> the Committee has jurisdiction pursuant to Senate Rule XXV and Senate Resolution 73, which authorizes the Committee to examine "the efficiency and

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<sup>7</sup> Kittle, *Social Security Whistleblower Now Faces Firing*.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> M.D. Kittle, *Another Social Security Disability Office Employee Alleges Bullying, Harassment*, Watchdog.org (May 15, 2016), <http://watchdog.org/265389/social-security-odar-complaint/>.

<sup>11</sup> M.D. Kittle, *Social Security Whistleblower Suspended After Going Public with Complaints*, Watchdog.org (May 20, 2016), <http://watchdog.org/265897/social-security-suspended-mary-brister/>; Kittle, *Social Security Whistleblower Now Faces Firing*.

<sup>12</sup> E-mail from Suzanne Payne, SSA, to Staff, HSGAC (May 11, 2016, 7:44 PM) (on file with Comm.).

<sup>13</sup> E-mail from Suzanne Payne, SSA, to Staff, HSGAC (May 17, 2016, 12:28 PM) (on file with Comm.).

<sup>14</sup> *Devine v. United States*, 202 F.3d 547, 551-52 (2d Cir. 2000).

<sup>15</sup> The Privacy Act, 5 U.S.C. § 552a(b), (b)(9) (emphasis added).

<sup>16</sup> E-mail from Staff, HSGAC, to Suzanne Payne, SSA (May 16, 2016, 12:36 PM) (on file with Comm.); E-mail from Suzanne Payne, SSA, to Staff, HSGAC (May 17, 2016, 12:28 PM) (on file with Comm.).

economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption or unethical practices, waste, extravagance, conflicts of interest . . . .”<sup>17</sup>

Contrary to SSA’s assertion, neither the Privacy Act nor internal SSA policies impose a requirement that a chairman of a congressional committee make a formal, written request on official letterhead for purposes of obtaining information.<sup>18</sup> When asked, SSA has been unable to provide any legal support for that requirement. Indeed, in *Chang v. Department of the Navy*, the U.S. District Court for the District of Columbia found that the Navy’s release of information was appropriate under the Privacy Act when done in response to a request from a staff member from the chairman of the Senate Armed Services Committee.<sup>19</sup>

I am disappointed that SSA has refused to cooperate with the Committee’s requests to better understand the serious allegations of whistleblower retaliation that have been raised. Given the clear statutory authority and legal precedent for SSA to fully cooperate with this inquiry, SSA’s refusal to answer basic questions and SSA’s demand for formal letters unfortunately suggest an effort to delay the production of information necessary for the Committee to fulfill its oversight function. Although I would have preferred to obtain information informally, the SSA’s refusal to do so has left me with no choice but to formalize this process. Accordingly, I request that you provide the following information and materials:

1. Please provide all documents and communications concerning allegations of whistleblower retaliation within the Chicago region, including but not limited to all personnel documents relating to Ron Klym, Celia Machelles Keller, and Mary Brister.
2. Please provide all documents and communications between or among the Office of the Acting Commissioner, the Counselor to the Commissioner, the Office of Disability Adjudication and Review, and the Office of General Counsel concerning the termination of Ron Klym.
3. Please explain what SSA is doing to investigate the reported whistleblower retaliation within SSA ODAR.
4. Please explain whether SSA has disciplined any employees for retaliating against whistleblowers.
5. Please explain how SSA will ensure that whistleblowers do not experience retaliation as a result of speaking to Congress or the media.

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<sup>17</sup> S. Res. 73 (114th Cong.).

<sup>18</sup> See E-mail from Staff, HSGAC, to Suzanne Payne, SSA (May 19, 2016, 11:13 AM) (on file with Comm.).

<sup>19</sup> *Chang v. Dep’t of Navy*, 314 F. Supp. 2d 35, 45, 48 (D.D.C. 2004) (recognizing no distinction between a request from staff members and a formal, signed letter from a member of Congress where a federal regulation permitted the disclosure of information to members of Congress).

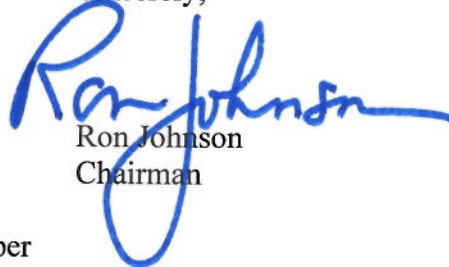
The Honorable Carolyn Colvin  
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Please produce this material as soon as possible, but by no later than 5:00 p.m. on June 28, 2016. Additionally, after receipt of all material requested above, I ask that SSA be prepared to provide a staff level briefing to address specific instances of reported whistleblower retaliation within the Madison and Milwaukee Hearing Offices.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.”<sup>20</sup> Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine “the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs.”<sup>21</sup>

For purposes of this request, please refer to the instructions and definitions contained in the enclosure. When delivering production sets, please produce to Majority staff in room 340 of the Dirksen Senate Office Building and to Minority staff in room 613 of the Hart Senate Office Building. If you have any questions about this request, please contact Samantha Brennan or David Brewer of the Committee Staff at (202) 224-4751. Thank you for your prompt attention to this matter.

Sincerely,



Ron Johnson  
Chairman

cc: The Honorable Thomas R. Carper  
Ranking Member

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<sup>20</sup> S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

<sup>21</sup> S. Res. 73 § 12, 114th Cong. (2015).

**Instructions for Responding to a Committee Request**  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
114th Congress

**A. Responding to a Request for Documents**

1. In complying with the Committee's request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e. CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic form should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - a. The production should consist of single page Tagged Image Files (".tif"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - b. Document numbers in the load file should match document Bates numbers and .tif file names.
  - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - d. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

## Instructions for Responding to a Committee Request

- e. Alternatively, if the production cannot be made in .tif format, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (".pdf") format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached.
  - f. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), consult with the Committee staff to determine the appropriate format in which to produce the information.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
  7. Documents produced in response to the request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
  8. When producing documents, identify the paragraph in the Committee's schedule to which the documents respond.
  9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
  10. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data or information not produced because it has not been located or discovered by the return date, should be produced immediately upon subsequent location or discovery.
  11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
  12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
  13. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.

## **Instructions for Responding to a Committee Request**

14. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
16. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents which would be responsive as if the date or other descriptive detail were correct.
17. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
18. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **B. Responding to Interrogatories or a Request for Information**

1. In complying with the Committee's request, answer truthfully and completely. Persons that knowingly provide false testimony could be subject to criminal prosecution for perjury (when under oath) or for making false statements. Persons that knowingly withhold subpoenaed information could be subject to proceedings for contempt of Congress. If you are unable to answer an interrogatory or information request fully, provide as much information as possible and explain why your answer is incomplete.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. Your response to the Committee's interrogatories or information requests should be made in writing and should be signed by you, your counsel, or a duly authorized designee.

## **Instructions for Responding to a Committee Request**

4. When responding to interrogatories or information requests, respond to each paragraph in the Committee's schedule separately. Clearly identify the paragraph in the Committee's schedule to which the information responds.
5. Where knowledge, information, or facts are requested, the request encompasses knowledge, information or facts in your possession, custody, or control, or in the possession, custody, or control of your staff, agents, employees, representatives, and any other person who has possession, custody, or control of your proprietary knowledge, information, or facts.
6. Do not refuse to provide knowledge, information, or facts on the basis that any other person or entity also possesses the same knowledge, information, or facts.
7. The request is continuing in nature and applies to any newly discovered knowledge, information, or facts. Any knowledge, information, or facts not provided because it was not known by the return date, should be provided immediately upon subsequent discovery.
8. Two sets of responses should be delivered, one set to the Majority Staff and one set to the Minority Staff. When responses are provided to the Committee, copies should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
9. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.
10. In the event that knowledge, information, or facts are withheld on the basis of privilege, provide a privilege log containing the following information: (a) the privilege asserted; (b) the general subject matter of the knowledge, information, or facts withheld; (c) the source of the knowledge, information, or facts withheld; (d) the paragraph in the Committee's request to which the knowledge, information, or facts are responsive; and (e) each individual to whom the knowledge, information, or facts have been disclosed.
11. If a date or other descriptive detail set forth in this request is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, provide the information that would be responsive as if the date or other descriptive detail was correct.
12. In the event a complete response requires the transmission of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
13. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.



## Instructions for Responding to a Committee Request

### C. Definitions

1. The term “document” in the request or the instructions means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” in the request or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
3. The terms “and” and “or” in the request or the instructions should be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” in the request or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” in the request or the instructions, when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; and (b) the individual’s business address and phone number.

## **Instructions for Responding to a Committee Request**

6. The terms “referring” or “relating” in the request or the instructions, when used separately or collectively, with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” in the request or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de fact employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee or subcontractor.
8. The terms “you” and “your” in the request or the instructions refer to yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.

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