



April 11, 2014

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510-6142

Dear Senator Grassley,

This letter responds to your inquiry regarding the Peace Corps' implementation of its restricted reporting policy as mandated by the Kate Puzey Peace Corps Volunteer Protection Act of 2011 (the Kate Puzey Act) and its refusal to allow the Office of Inspector General (OIG) to access information from restricted reports. Per your request, enclosed are the documents listed in Attachment A and we are in discussions with the Peace Corps general counsel and your office about establishing a process and a timeline for producing more documents. However, since the agency provided us a copy of its response to your letter, I feel compelled to correct some of its inaccuracies and clarify potentially misleading information.

OIG agrees with the agency that the health, safety and security of Peace Corps Volunteers should be the agency's highest priorities. However, the agency's position on OIG's access to restricted reporting information prevents the very oversight necessary to ensure that Volunteers are protected. The impact that lack of oversight can have on Volunteer safety was fully documented in the May 2011 hearings before the House Committee on Foreign Affairs.¹ OIG's work has also documented the effect of insufficient oversight on the health and safety of Volunteers in its February 2010 report "Peace Corps/Morocco: Assessment of Medical Care."²

In order to properly understand the issue, it must be put in context. In 2010 Returned Peace Corps Volunteers (RPCVs) came forward as whistleblowers to describe how the agency treated them after having been sexually assaulted during their service. On the *Washington Post* website there are approximately 100 affidavits from RPCVs who were sexually assaulted during their Peace Corps service.³ These RPCVs detailed actions by the agency that included victim blaming, disbelief, and retaliation. They also expressed their mistrust in the Peace Corps to take appropriate action and their frustration in not being provided with necessary services. Congress enacted the Kate Puzey Act to address these concerns and included provisions requiring OIG to provide oversight to ensure that the agency complies with the law. If the agency's interpretation of the Kate Puzey Act is allowed to stand – and proper oversight is not permitted to occur – there is no guarantee that the agency is properly protecting the health, safety and security of Volunteer victims of sexual assault.

¹ <http://archives.republicans.foreignaffairs.house.gov/112/66292.pdf>

² http://files.peacecorps.gov/multimedia/pdf/policies/PC_Morocco_Assessment_of_Medical_Care.pdf

³ <http://www.washingtonpost.com/wp-srv/special/nation/peace-corps-affidavits.html>

OIG's legal position concerning the agency's interpretation of the Kate Puzey Act is summarized in Attachment B. To give you the full picture, however, I must supply you with some background information on OIG's interactions with the agency on this matter.

The agency interprets the Kate Puzey Act as preventing OIG from having access to agency documents and records. Furthermore, the agency interprets the Kate Puzey Act's definition of "personally identifying information" (PII), so broadly that it is impossible for OIG to conduct the type of oversight mandated by Congress. At one point the agency defined PII to include the name of the country in which an assault occurred, the type of assault, and the type of location of the assault, regardless of whether a personal identifier was associated with that information.⁴ As such, there was never any legitimate legal question as to whether the Kate Puzey Act prohibited the dissemination of such data. However, the agency argued that OIG could not receive the information because it could use its investigative resources to discover the identity of the victim. On the other hand, country directors at overseas posts, who could identify the victim by simply monitoring the movements of staff, could receive that information even though they were not authorized under the policy to have access to restricted reporting information. In May of 2013, OIG advised the acting Director of OIG's concern and in September 2013, she authorized OIG to have conditional access to this information

OIG has tried resolving its access issue with the agency many times and, at one point, it appeared that OIG had reached a solution that would accommodate its need to have access to information while protecting the victim's PII. OIG has stated that in almost all cases it does not need to know the identity of the victim to perform its evaluative work. However, this solution was not viable since the agency determined that details of a sexual assault, not tied to any other identifier, were PII for purposes of the restricted reporting provisions of the Kate Puzey Act, and thus could not be disclosed. Without sufficient information concerning the incident it is impossible for OIG to evaluate whether the agency's response to the sexual allegations and the services provided to the victim fulfilled the Kate Puzey Act's requirements. After my testimony before the House Oversight and Government Reform Committee highlighted this overbroad definition of PII, the agency changed its policy to take the details of the sexual assault out of the definition of PII but then created a new category of restricted reporting information that includes both PII and the details of the sexual assault and denied OIG access to it.

In response to your inquiry, the agency has stated:

With respect to restricted reports, we have committed to provide the Inspector General with any information other than the victim's personally identifying information and details of the sexual assault. We believe this will enable the Inspector General to confirm, in the context of doing its evaluation of the effectiveness and implementation of Peace Corps' sexual assault policy that restricted report services have been provided to the victim.

⁴ For example, the words Ethiopia, rape, and public transportation, if taken from a restricted report, would be PII under the agency's interpretation and the information would be prohibited from being disclosed to OIG.

It is clear from this statement that the Peace Corps misunderstands the scope and purpose of OIG evaluations. It is not enough for OIG to “confirm” that restricted report services were provided to the victim. OIG must review the implementation and effectiveness of the services. In order to perform that work, we need to understand how the victim was assaulted and affected. An evaluation that merely confirms that the victim received services, regardless of what the victim’s circumstances were, is pointless.

The Kate Puzey Act’s definition of restricted reporting contains two prohibitions: that the PII of the victim not be disseminated beyond designated individuals (unless an exception applies) and that the report not automatically trigger an official investigative process. The agency’s response to your letter states that restricted reporting allows, “Volunteers who are victims of sexual assault to confidentially report the details of the crime and to receive medical, legal, advocacy, safety and other support services without notifying law enforcement officials.” OIG agrees with this statement, but the agency’s basis for denying access to restricted reporting information is factually incorrect and misleading. OIG has never requested that it be notified when a restricted report is made, but rather it has asserted that it be allowed to access all agency records, as authorized by the IG Act, to perform its mandated oversight work.

Furthermore, OIG has repeatedly assured the agency that it will comply with the Kate Puzey Act’s prohibition not to “automatically trigger an official investigative process” on the basis of information it receives from a restricted report. The agency’s concern, as stated in the attachment to its response to your letter, is that, “[I]f the information provided by the agency to OIG is sufficiently detailed that it *could* be used as the basis for conducting an investigation, an official investigative *process* would be triggered *regardless* of whether any PII is included in the report to OIG and regardless of whether OIG ultimately decides to investigate.” (Emphasis supplied).

This position demonstrates a complete lack of understanding of OIG’s request and how OIG functions. First, OIG is not requesting that the agency submit restricted reports; rather it is requesting its evaluators be allowed to access agency records documenting the support and services the agency is providing to victims of sexual assault. Second, an official investigative process is not triggered merely by providing information to OIG. An official investigative process begins when an OIG special agent initiates an investigation.

In August 2013 OIG entered into negotiations on a memorandum of understanding with the agency in which OIG would state in writing that information from a restricted report would not “automatically trigger an official investigative process.” However, the negotiations broke down when the agency would not recognize OIG’s right to access all agency records as authorized by the IG Act.

In its response to your inquiry, the agency appears to assert that it is being reasonable and accommodating to OIG by providing access to the agency’s Consolidated Incident Report System (CIRS), a database of all crime incidents involving Volunteers (except for those filed as restricted reports) that has existed long before the enactment of the Kate Puzey Act. The agency omits, however, that OIG had always had access to CIRS, but prior to launching its restricted reporting system on September 1, 2013, the agency curtailed OIG’s access to the unrestricted reports in CIRS. The agency did so even though unrestricted crime data has no

relationship to the Kate Puzey Act and curtailing OIG's access to such information is contrary to the Kate Puzey Act and the IG Act. On September 30, 2013, OIG sent a letter to the acting Director alerting her of this impediment and asking her assistance to obtain immediate access. On November 5, 2013, the acting Director intervened and restored our access.

The agency has also stated in its response to your inquiry that, "[I]n order to facilitate access to [details of the sexual assault and personally identifying information] while complying with the requirements of the Kate Puzey Act, we have put in place a mechanism for obtaining the consent of the victim to provide this information to the Inspector General for the purpose of evaluating the services received by the victim." What the agency does not say is that the mechanism is completely unworkable and that it was imposed on OIG despite my explicit objections. First, the Kate Puzey Act does not require pre-authorization for OIG to access agency records. Second, by acting as an intermediary, the Peace Corps is impeding the independence of my office and its evaluations, and undermines the professionalism and quality of its reviews. Third, the system is prone to abuse because there is no way for OIG to verify whether the victim actually declined consent; and if the victim provided limited consent, there is no way for OIG to verify the scope of the consent. When OIG approached the Peace Corps general counsel regarding these concerns, he asserted in an email that "There is nothing in the IG Act that prohibits the head of the agency from directing the work of the IG as long as that does not involve prohibiting or preventing an investigation or audit."

The Peace Corps general counsel could not be more wrong. The case law and the legislative history of the IG Act are clear that the agency head's supervisory authority over the Inspector General is "nominal" at best. Nevertheless, on April 3, 2014, the agency issued its revised policy including the consent form.

I greatly appreciate your attention to this important matter. If you have any questions, please do not hesitate to contact me at 202.692.2916 or kbuller@peacecorps.gov.

Sincerely,



Kathy A. Buller
Inspector General

Attachment A

List of Responsive Documents Enclosed

Following guidance from the U.S. Department of Justice Office of Legal Counsel,¹ the Peace Corps OIG does not consider the disclosure of privileged agency information by the agency to our office to be a waiver of applicable privileges. Therefore, we are coordinating with the general counsel to discern whether the agency is claiming a privilege for emails and other communications concerning draft policies and procedures as well as pre-decisional discussions. At the same time we have determined that the documents below are responsive to your request and they are enclosed with this letter:

- Interim Policy Statement (IPS) 3-13, approved but not issued, March 13, 2013.
- IPS 3-13 Procedures, August 29, 2013.
- IPS 3-13, August 30, 2013.
- IPS 3-13 Issuance Memorandum, August 30, 2013.
- Acting Director Memorandum to Inspector General, September 16, 2013.
- OIG Memorandum on Access to CIRS Standard Reports, September 30, 2013.
- Acting Director Memorandum to Inspector General, October 3, 2013.
- Acting Director Memorandum to Inspector General, November 5, 2013.
- IPS 3-13 Issuance Memorandum, December 2, 2013.
- IPS 3-13, December 2, 2013.
- IPS 3-13 Procedures, December 2, 2013.
- IPS 3-13 Issuance Memorandum, April 3, 2014.
- IPS 3-13, April 3, 2014.
- IPS 3-13 Procedures, April 3, 2014.

¹ Memorandum from Principal Deputy Assistant Attorney General Steven G. Bradbury, to National Science Foundation Deputy Director Kathie L. Olsen, dated November 8, 2008.

Attachment B

Peace Corps Policies and Procedures Denying OIG Access to Information

Congress enacted the Kate Puzey Volunteer Protection Act of 2011 (Kate Puzey Act)¹ in response to serious reports that the Peace Corps was ignoring volunteer victims of sexual assault, engaging in victim blaming, and mismanaging their cases. The Kate Puzey Act requires that the agency establish a comprehensive sexual assault policy that includes, among other things, a system of restricted and unrestricted reporting of sexual assaults.²

The Peace Corps' general counsel has interpreted the Kate Puzey Act as overriding the Office of Inspector General's (OIG) broad right of access to agency records, documents and information provided by Section 6 of the Inspector General Act of 1978, as amended (IG Act). As a result, the agency has implemented policies and procedures denying OIG information that is critical to conducting its oversight work, particularly the work required by the Kate Puzey Act.

For the reasons stated below, Peace Corps legal positions, and related policies and procedures, denying OIG access to agency records and information are inconsistent with federal law.

I. OIG Right of Access under the IG Act

When Congress enacted the IG Act it recognized that access to information was essential for inspectors general to effectively oversee agency programs and operations. Accordingly, Section 6(a)(1) of the IG Act enables every Inspector General to access:

all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act.

The legislative history to the IG Act provides that access to "all records" is expansive and is intended to include even "confidential agency memoranda."³ The Peace Corps' general counsel, however, interprets the restricted reporting requirement in the Kate Puzey Act as overriding Section 6(a)(1) of the IG Act.

II. Restricted Reporting Provision in the Kate Puzey Act

The Kate Puzey Act mandates that the Peace Corps develop and implement a comprehensive sexual assault risk-reduction policy that includes, among other things, a system of restricted reporting:

(A) IN GENERAL – The term 'restricted reporting' means a system of reporting that allows a volunteer who is sexually assaulted to confidentially disclose the details of his or her assault to specified individuals and receive [specified services] without the dissemination of his or her personally identifying information except as necessary for the provision of such services, and without automatically triggering an official investigative process.⁴

¹ Pub. L. No. 112-57

² 22 U.S.C. 2507b(a)(1).

³ S. REP. NO. 95-1071, at 33-34 (1978).

⁴ 22 U.S.C. 2507a(f)(2)(A).

Prior to the Inspector General's testimony before the House Oversight and Government Reform Committee on January 2014, the Peace Corps' general counsel interpreted the restricted reporting provision in the Kate Puzey Act as imposing only two requirements: (1) the victim's PII must not be disseminated unless an exception applies; and (2) a restricted report must not automatically trigger an official investigative process. We agree this is an accurate interpretation of the statute.

However, prior to the Inspector General's testimony, the agency's sexual assault policy also defined PII as including "any details of the sexual assault incident." When the Inspector General pointed out in her testimony that the agency's definition of PII was overly broad, the Peace Corps' general counsel asserted this was a "drafting convenience" and denied ever taking the position that all details of a sexual assault are PII for purposes of the Kate Puzey Act.

Subsequently, the Peace Corps' general counsel sought to preserve the same effect of its broad interpretation of PII by creating a new category of information ("restricted information"), which he defines as including PII and any details of the sexual assault incident. The Peace Corps general counsel justifies the creation of this new term by interpreting the phrase "to confidentially disclose the details of his or her assault" – found in the Kate Puzey Act's definition of restricted reporting – as imposing a third requirement that the details of a sexual assault must be kept secret.

The correct interpretation of the phrase, however, is borne out by the basic rules of grammar: The adverb "confidentially" modifies the verb "disclose;" so it is the *act* of disclosure that must remain secret, not the information itself. Therefore, there is no legal basis for the agency to withhold the details of a sexual assault from OIG.

Despite OIG's objections, on April 3, 2014, the Peace Corps issued a revised version of its policy reflecting this new interpretation of the Kate Puzey Act and preserving its ability to deny OIG access to any details of a sexual assault incident that is the subject of a restricted report.

This debate would be merely academic were it not for the real-life consequences of the agency's position. If OIG is denied access to the details of the sexual assault, then it cannot evaluate whether the victim received the proper services and it cannot properly fulfill its oversight duties as required by the Kate Puzey Act.

III. Exception to the General Rule Prohibiting the Dissemination of a Victim's PII

The Kate Puzey Act provides four exceptions to the general rule against the dissemination of PII from a restricted report, including an exception in cases where state or federal courts order disclosure, or if disclosure is required by federal or state statute.⁵ Despite this exception for statutorily mandated disclosures, the Peace Corps asserts that it only applies to courts because only courts are listed in the exception. Accordingly, since no other exception applies to the IG Act, the Peace Corps general counsel argues the Kate Puzey Act overrides the IG Act.

⁵ § 2507a(f)(2)(B)(iv).

The Peace Corps' conclusion is incorrect. First, it is well established that a statute cannot be construed as overruling a pre-existing statute unless that intent is clear or the two statutes are irreconcilable.⁶ Nothing in the Kate Puzey Act suggests that Congress intended to override the IG Act and both laws can be easily reconciled by reading the exception as applying to OIG.

Second, the Peace Corps' interpretation conflicts with the plain meaning of the statute as a whole.⁷ The Kate Puzey Act provides OIG a central role in improving the Peace Corps' response to sexual assault victims. In particular, the law requires OIG oversee sexual assault mismanagement allegations and conduct a case review of a statistically significant number of sexual assault cases. It is inconceivable that Congress intended to increase OIG's oversight duties over the Peace Corps' response to sexual assaults, while simultaneously curtailing its ability to access the information it needs to fulfill those new duties.

Lastly, the Peace Corps' interpretation of the exception is also inconsistent with Congress's intent that the Peace Corps' confidentiality policy mirror that of the Department of Defense to the extent possible.⁸ At time the Kate Puzey Act was drafted, the Department of Defense's sexual assault policy clearly stated that PII in a restricted report may be disclosed to "Military or civilian courts of competent jurisdiction when disclosure is ordered by a military, Federal, or State judge, or other officials or entities as required by a Federal or State statute or applicable U.S. international agreement."⁹ Even though the Kate Puzey Act language was borrowed from a poorly worded form¹⁰ related to that policy, the legislative history is clear that Congress intended the Peace Corps to mirror the policy, not the form.

The Peace Corps' general counsel asserts that granting OIG access to restricted reports would defeat the Kate Puzey Act's purpose by creating a system of mandatory reporting to law enforcement. There is a difference, however, between requiring a victim to report to law enforcement and allowing OIG to review agency records to evaluate Peace Corps services.

⁶ "The intention of the legislature to repeal must be clear and manifest." *Posadas v. National City Bank of New York*, 296 U.S. 497, 503 (1936). *See also* *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 189–90 (1978); *Morton v. Mancari*, 417 U.S. 535, 549 (1974); 1 GAO, *Principles of Federal Appropriations Law* 2-43 (3d ed. 2004) ("A corollary to the 'cardinal rule' against repeal by implication... is the rule of construction that statutes should be construed harmoniously so as to give maximum effect to both wherever possible.")

⁷ "It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme... . A court must therefore interpret the statute as a symmetrical and coherent regulatory scheme, ... and fit, if possible, all parts into an harmonious whole..." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. at 132–133 (citations and quotation marks omitted). *See also* GAO, *Principles of Federal Appropriations Law* 2-86 (3d ed. 2004). ⁸ S. REP. NO. 112-82, at 2 (2011).

⁸ S. REP. NO. 112-82, at 2 (2011).

⁹ Directive 6495.01. E3.1.8.5., October 6, 2005 (Incorporating Change 1, November 7, 2008)(emphasis added).

¹⁰ "In the course of developing the restricted reporting policy for the Peace Corps, I spoke with DoD lawyer Robert Reed, the original author of DoD's restricted reporting policy, including the language that was used as a model for [the Kate Puzey Act]. Not only was the wording for the exceptions taken almost verbatim from DoD Form 2910, but the legislative history of the Kate Puzey Act indicates that the Peace Corps should follow DoD's restricted reporting policy to the extent possible... While it was not [Mr. Reed's] intention to limit disclosures under the exception to courts, he did concede that his wording was 'inartful'[sic]." Legal Opinion from Bill Ruben to Carrie Hessler-Radelet, 6 (July 9, 2013).

VI. Conclusion

OIG access to restricted reports is consistent with the provisions of the Kate Puzey Act and the IG Act. The Kate Puzey Act authorizes the disclosure of the victim's PII from restricted reports when required by federal law. The IG Act is a federal law authorizing OIG access to all agency records and related materials. Therefore, OIG has a right to access all agency records and materials related to restricted reports it deems necessary to fulfill its statutory obligations.

OIG could evaluate sexual assault cases without involving the victim and in almost all cases without knowing the victim's identity. Nevertheless, the Peace Corps' interpretation of the term PII is so broad that the OIG's broad right of access under the IG Act must be preserved. Otherwise, the Peace Corps may continue withholding critical information from OIG on the basis that the information is PII.