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OFFICE OF INSPECTOR GENERAL

Office of Inspector General (OIG) Management Advisory Report – 2020-0002-INVM-P (OIG Interactions with an AOC Agency Avenue of Assistance)

Executive Summary

Federal agencies have done a great deal to address harassment and diversity in the workplace, from developing awareness programs and policies, to setting up specific offices to handle claims, but further work is needed to continue this progress and eliminate systemic problems. Agencies need to identify persistent and ongoing cultural issues as well as remedies to address them in order to facilitate sustainable relief. For example, an area agencies must focus on is standardizing the complaint process to include training and empowering employees who conduct intake, and on providing a safe and informative space for all employees who utilize their services. The goal for such diversity and inclusion programs must be one of transparency and safety while protecting employees and their information. These issues are not unique to other agencies and persist within the Architect of the Capitol (AOC). Thus, it is imperative that the AOC formulate a whole-of-agency approach to address workplace harassment and diversity and build and maintain processes that promote confidence and provide assurances for AOC employees.

The AOC remains committed to ensuring a work environment that values diversity, promotes respect for individual differences, and is free from unlawful discrimination, harassment and retaliation for all employees and applicants for employment.¹ This memorandum presents multiple interactions and process issues the AOC OIG has identified via OIG investigative activities involving an AOC Avenue of Assistance². These issues include concerns about the AOC Avenue of Assistance investigative standards and processes, a lack of defined authorities, and lack of compliance with the Inspector General Act of 1978, the AOC OIG Act, and other AOC Orders.

Our primary concern relates to the contamination of evidence in cases where the AOC Avenue of Assistance identified potential fraud, waste or abuse, but did not cease their activity after notifying the OIG. Their processes are not peer reviewed and they lack investigative standards that are auditable and manageable. The OIG has primary jurisdiction over investigative matters as identified in the AOC OIG Act of 2007³ and AOC Order 40-1, Authority and Responsibilities of the Office of Inspector General. Additionally, the AOC Avenue of Assistance lacks investigative standards and clarity of roles and responsibilities, which leads to workforce confusion and encroachment on OIG authorities. While the AOC Avenue of Assistance may be set up to enforce compliance with federal workplace discrimination laws by receiving,

¹ AOC Order 24-3, Workforce Diversity, Inclusion and Equal Employment Opportunity, October 1, 2019.

² AOC Avenue(s) of Assistance are resources designed to assist employees with work and life concerns. Through these resources, employees will be able to seek assistance in resolving employment-related disputes, achieving professional goals, increasing job satisfaction, and successfully handling adversity.

³ Title 2 U.S. Code § 1808. *Inspector General of the Architect of the Capitol*. Retrieved from <https://uscode.house.gov/> on March 20, 2020.

investigating and resolving incidents of workplace discrimination and sexual harassment, they often do so by contracting outside investigators, which frequently leads to a lack of control and insufficiencies in investigative activity such as access to information, swearing employees to their testimony and the power to subpoena. This practice could be considered wasteful of taxpayer funds since the OIG can conduct investigations to high standards, maintains law enforcement authority to swear testimony, and has subpoena authority. These contract investigators lack arrest authority, the authority to conduct criminal investigations, administrative investigations and the ability to advise employees of their rights under Garrity⁴ and Kalkines⁵ warnings. We identify these issues in order to protect the Agency and its employees by providing manageable and sustainable processes that provide legal protection for victims and witnesses, statements and evidence.

This management advisory includes six recommendations for improvement to the AOC's oversight of the Avenue of Assistance processes to promote the AOC's whole-of-agency approach to employee diversity and inclusion programs. In accordance with the Inspector General Act, OIG reports with recommendations will be provided to the agency for comment and the report with management comments will be made public.⁶

Background

The AOC Avenue of Assistance supports the AOC's commitment to providing a work environment free of discrimination and harassment, where diversity is valued and employees treat each other with respect. The AOC Avenue of Assistance reinforces this commitment by assisting employees in resolving workplace disputes through the AOC Conciliation Program, an informal dispute resolution program.⁷

The OIG is responsible for conducting and supervising audits and investigations relating to the AOC as well as for providing leadership, coordination and recommending policies to promote economy, efficiency and effectiveness related to AOC programs, policies and personnel.⁸

Key Investigative Activities from 2017 - 2020

The following events highlight the interactions and distinctions in procedural aspects related to the OIG and the AOC Avenue of Assistance.

On September 7, 2017 (AOC OIG 17-0040-C) and July 13, 2018 (AOC OIG 2018-0051-INVC-P), two separate confidential sources (CS) provided statements alleging that they were instructed by the AOC Avenue of Assistance personnel not to report information to the OIG under the pretext that it could be perceived as retaliation by an AOC jurisdiction. This practice is a violation of

⁴ Garrity warning is an advisement of rights usually administered by federal, state, or local investigators to their employees who may be the subject of an internal investigation.

⁵ Kalkines warning compels subjects to make statements or face disciplinary action up to, and including, dismissal, but also provides suspects with criminal immunity for their statements.

⁶ *Inspector General Act of 1978*, 5 USC. App. §4(b)(2)(e)(C), *Inspector General of the Architect of the Capitol*, 2 USC §1808(d)(1).

⁷ Policy Memorandum 24-3, Workforce Diversity, Inclusion and Equal Employment Opportunity, Dated October 1, 2019.

⁸ *Inspector General of the Architect of the Capitol*, 2 USC §1808 and Order 40-1, Authority and Responsibilities of the Office of Inspector General (OIG) and Cooperation of Architect of the Capitol (AOC) Employees, March 12, 2019.

AOC Order 40-1, and a potential violation of the Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority⁹ as referenced in the Inspector General Act of 1978. While conducting a Congressional inquiry in 2018 into the AOC's response to sexual harassment issues at the AOC¹⁰, the OIG found through interviews and surveys that concerns specific to the AOC Avenue of Assistance processes cited distrust, bias and inappropriately close relationships with AOC management and an AOC jurisdiction, which undermined employee trust in the AOC Avenue of Assistance impartiality and independence.

On July 5, 2019, the AOC Avenue of Assistance requested the OIG provide investigative assistance on a complaint (AOC OIG 2019-0049-INVQ-P) of sexual harassment that surfaced during a climate survey. It was alleged that for the prior 18 months, a custodial worker (subject) sexually harassed and indecently assaulted a co-worker. The AOC Avenue of Assistance interviewed the subject who admitted culpability to all allegations, but did not believe their actions were inappropriate or violated policy. The subject was placed on administrative leave while the AOC Avenue of Assistance completed their inquiry. The AOC Avenue of Assistance interviewed three witnesses (all supervisors) regarding their knowledge of the abuse and harassment prior to the OIG's involvement and all denied having knowledge or awareness. Based on these interviews, the AOC Avenue of Assistance believed the witnesses provided false statements. The AOC Avenue of Assistance then requested OIG assistance, citing our investigative expertise, to re-interview the witnesses about their knowledge of the behavior and failure to intervene or take action. The OIG interviewed five managers who denied knowledge of the sexual harassment, but indicated they observed playful interactions between the subject and victim on various occasions. The AOC Avenue of Assistance determined that they were unable to substantiate sexual harassment allegations against the subject; thus, they closed the investigation. Though the OIG may assist other AOC entities, and encourages such dialog, this particular case revealed that early involvement of the OIG is essential to getting the best evidence and information without the possibility of tainting witnesses' recollections or narratives. The OIG provided facts that may have indicated harassment; however, since the AOC Avenue of Assistance had some conflicting information, they were unable to determine the extent to which harassment occurred. Through proper training and intake, the AOC Avenue of Assistance could have quickly identified the need for the OIG's involvement while providing sufficient intake data for the OIG to manage the case, especially the interviews, from the outset, which would have resulted in a single set of facts. Because of confusion and a lack of clear guidelines and hand-off points, duplicative efforts precluded achieving a satisfactory resolution to this case, thereby impeding the AOC Avenue of Assistance office's primary duty of employee protection.

On October 24, 2019, the AOC Avenue of Assistance referred a complaint to the OIG regarding an AOC employee (subject) who allegedly displayed nude photos to three witnesses while on duty. The subject also allegedly bragged about engaging in intercourse with an underage female while on vacation out of country several years prior. Before referring the criminal accusation of the sexual harassment investigation (AOC OIG 2020-0002-INVI-P) to the OIG, the AOC Avenue of Assistance interviewed the subject about the allegations of sex with the minor,

⁹ Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority, Retrieved from <https://www.ignet.gov/sites/default/files/files/agleguidelines.pdf>

¹⁰ *Congressional Request: Office of Inspector General, Sexual Harassment Inquiry*, March 15, 2019; 2019-0001-INVQ-P.

although they lacked the law enforcement authority to do so and allowed for the photographic evidence to go unsecured. The AOC Avenue of Assistance then referred the complaint to the OIG without declaring that they had questioned the subject. This practice is a violation of Attorney General Guidelines for OIG's with Statutory Law Enforcement Authority as referenced in the Inspector General Act of 1978. OIG's have primary responsibility for the prevention and detection of waste and abuse, and concurrent responsibility with the Federal Bureau of Investigation for the prevention and detection of fraud and other criminal activity within their agencies and agency programs. Additionally, the AOC Avenue of Assistance actions were not in compliance with AOC Order 40-1, Section B - Architect of the Capitol Employee Responsibilities, Part 1¹¹, dated March 2019, and AOC Order 24-1, Conciliation Program Guide, Paragraph 4 on Confidentiality, dated May 2013.

On November 15, 2019, the OIG received a complaint (AOC OIG 2020-0006-INVC-P) regarding disparate treatment and inappropriate conduct on the part of co-workers and inadequate or inappropriate AOC Avenue of Assistance investigative processes. Overall, the complainant felt the AOC Avenue of Assistance processes and investigations were opaque, and were not investigated properly, which resulted in a final report of substantiated allegations that were false. Further, the complainant noted that the AOC Avenue of Assistance lacked information regarding how they conduct investigations and whether the AOC Avenue of Assistance investigations were in compliance with common standards. The complainant expressed distress and concern over the AOC Avenue of Assistance investigative processes because they were not interviewed during the process to provide their recorded evidence and testimony in their own defense, and received negative counseling as a result. The complainant appealed the informal counseling to their organization and it was removed from their file. The complainant also stated that the AOC Avenue of Assistance had made several attempts to meet with them after the negative counseling to rectify the shortcoming, but the complainant refused these requests due to mistrust and instead reported the occurrence to the OIG for resolution.

Finally, on February 27, 2020, the OIG received a complaint (2020-0006-INVI-P) that an AOC employee was terminated one day prior to the completion of their probationary period for reporting harassment by a co-worker in 2019. The employee reported they had been receiving favorable performance evaluations, raises and bonuses all year until the complaint was filed. After bringing these concerns to their management, management contacted the AOC Avenue of Assistance. The AOC Avenue of Assistance employee allegedly "pressured" the complainant to report issues to support their case while "guaranteeing" the employee could not be fired.

The AOC Avenue of Assistance initiated an investigation and contracted with a vendor to conduct an investigation into the harassment. The vendor completed their investigation but found no evidence of harassment. The OIG did not render an opinion on the vendor's non substantiation of harassment and only investigated the claim of retaliation experienced by the complainant.

The subject, their direct supervisor and senior supervisor were individually interviewed by the vendor and denied the complainant's claims and reported the complainant lied. On November 20,

¹¹ Report information or allegations that indicate that an AOC employee, contractor, subcontractor or potential contractor may have committed fraud, waste, abuse or violation of law, rules or regulations. Order 40-1, March 12, 2019.

2019, following the conclusion of the harassment investigation, the senior supervisor submitted a removal packet, recommending the employee be terminated for failure to meet management's expectations and sleeping on duty. Our investigation determined AOC managers claimed the employee had a history of poor work performance but did not document the alleged performance issues or coaching in writing throughout the rating period. The senior supervisor recommended the employee's termination and submitted a removal packet including a narrative summary of performance observations and feedback from memory for the period (December 2018 through November 2019). On December 3, 2019, the employee was issued a letter informing them that their employment with the AOC would be terminated on December 9, 2019. The complainant stated they communicated with the AOC Avenue of Assistance via text message about the decision; however, no findings or documents were produced and no follow-up was conducted by the AOC Avenue of Assistance. AOC terminated the employee on December 9, 2019. The OIG is concerned that the lack of documentation by management and seemingly convenient termination after the vendor's investigation gives the appearance of retaliation. In addition, seemingly poor advice from counselors with respect to employee's employment status can severely impact future OIG investigations as well as the results from the AOC Avenue of Assistance.

One additional item of concern is the AOC Avenue of Assistance's processes for managing confidential information and employee identities. This case highlights the impact of disclosing the employee's identity while investigating harassment. Once the vendor and the AOC Avenue of Assistance conducted their investigation and revealed the employee's name, supervisors became aware of the employee's acts and may have retaliated. OIG investigators are trained to maintain confidentiality and have the tools to ensure an employee's identity is protected to the extent allowable by law¹². Protections afforded through the IG Act enhance the ability of the OIG to conduct independent investigations while providing protection to the employee as well as the agency.

Conclusion

Employee experiences such as these lead to distrust and discourage employees from reporting harassment and discrimination, in addition to increasing AOC's risk of litigation.

The OIG's Sexual Harassment Inquiry (2019) suggested that the AOC Avenue of Assistance realign away from the Chief Human Capitol Officer, which reports to the Chief Administrative Officer, to the direct supervision of the Architect. The OIG now reassesses that the AOC Avenue of Assistance could be more successful in carrying out its mission through alignment to an autonomous AOC senior manager to gain jurisdiction buy-in, transparency, and trust, while building efficient and effective processes.

Complaints or allegations of sexual harassment which cause the AOC Avenue of Assistance to consider an administrative inquiry or investigation should immediately be turned over to the OIG per AOC Order 40-1, in cases where there are concerns of criminality or violation of policy outside of the AOC Avenue of Assistance standing authorities. If this practice is not adopted, the

¹² In accordance with section 7 (b) of the Inspector General Act of 1978, as amended, the OIG shall not, after receipt of a complaint or information from an AOC employee, disclose the identity of the employee without the consent of the employee unless the Inspector General determines such disclosure is unavoidable during the course of an investigation.

AOC should consider revising the AOC Avenue of Assistance roles and responsibilities. Further, alignment of the AOC Avenue of Assistance with the OIG would create synergies with developed investigative standards, subpoena powers, independence, established records management, and case management systems, and would ensure that standards and policies regarding transparency, reporting, and confidentiality are followed. Other Legislative Branch agencies maintain similar parallels between their independent OIG's and established Avenue of Assistance, and refer systemic issues or senior manager misconduct to the OIG for investigation.¹³

OIG Recommendations

In order to better facilitate the relationship between the AOC Avenue of Assistance, the OIG and the AOC community, the OIG recommends the following:

1. The AOC consider aligning the AOC Avenue of Assistance under an AOC senior manager such as the Assistant to the Architect or the OIG to better fulfill its mission;

AOC's Comment: The AOC concurred with the OIG recommendation to align the AOC Avenue of Assistance under an AOC senior manager but did not concur with the recommendation to align them under the OIG. As a part of the ongoing AOC organizational restructuring, the AOC Avenue of Assistance will be a direct report to the Chief Administrative Officer. This alignment provides the flexibility to coordinate directly with the AOC's Human Capital Management Division and the Chief Administrative Officer to efficiently resolve employee concerns.

OIG Response: We reviewed the AOC's management comments and determined they address the recommendation; we consider this recommendation closed.

2. The AOC Avenue of Assistance review and update all internal policies for complaint intake, employee interaction and engagement, inquiry procedures, documentation standards, and reporting for compliance with diversity and inclusion/equal opportunity community best practices to include clear definitions of authorities not already provided to the OIG;

AOC's Comment: The AOC concurred with the OIG recommendation that the AOC Avenue of Assistance review and update all internal policies to ensure compliance with their community's best practices. The AOC Avenue of Assistance has already implemented a new case management tracking system and had begun a business process review in 2019. In addition, they are currently undergoing a systematic review of its internal processes.

OIG Response: We reviewed the AOC's management comments and determined they address the recommendation; we consider this recommendation closed.

¹³ For example, at Library of Congress (LOC) individual complaints are handled by Office of Congressional Workplace Rights or Equal Employment Opportunity/Developmental Pathways. LOC OIG may get involved if there are issues or complaints about the procedures or if systemic issues are identified related to a particular employee or Service Unit. At the Government Publishing Office, individual business units handle harassment complaints and may escalate these to the OIG depending on circumstances.

3. The AOC Avenue of Assistance incorporate into practice and follow all laws and AOC Orders pursuant to its mission to include the Inspector General Act of 1978, the AOC OIG Act and other AOC Orders, specifically regarding the turnover of cases to the OIG;

AOC's Comment: The AOC concurred with the OIG recommendation that the AOC Avenue of Assistance follow all laws and AOC orders.

OIG Response: We reviewed the AOC's management comments and determined they address the recommendation; we consider this recommendation closed.

4. The AOC Avenue of Assistance should establish a tracking and reporting structure to publish the results of their inquiries to the AOC community to include the OIG for auditability and transparency;

AOC's Comment: The AOC did not concur with the OIG recommendation that the AOC Avenue of Assistance publish the results of their inquiries to the AOC community. They opined that this sort of publication would breach employee confidentiality requirements in addition to creating a chilling effect over the AOC Avenue of Assistance's ability to provide assistance.

OIG Response: We reviewed the AOC's management comments and determined they address the recommendation; we consider this recommendation closed.

5. The AOC seek annual training and academic certifications programs pertaining to the AOC Avenue of Assistance; and

AOC's Comment: The AOC concurred with the OIG recommendation that the AOC seek annual training and academic certification programs pertaining to the AOC Avenue of Assistance. Their personnel have already attended numerous related training in 2020 and future training sessions are scheduled.

OIG Response: We reviewed the AOC's management comments and determined they address the recommendation; we consider this recommendation closed.

6. The AOC Avenue of Assistance and the AOC OIG should establish standing quarterly meetings to open communications, discuss challenges and share information. Participants should be at a manager level with the ability to make decisions and commit resources. In addition, these meetings could be used as a training session to cover topics of interest, changes in policy or law, as well as policy impacts.

AOC's Comment: The AOC concurred with the OIG recommendation for more "open communications," but did not concur with the establishment of quarterly meetings between the AOC Avenue of Assistance and the OIG. The AOC Avenue of Assistance would promptly communicate with and refer any potential criminal issues to the OIG.

OIG Response: We reviewed the AOC's management comments and determined they address the recommendation. We understand that other engagement opportunities (monthly HCMD Meetings) may exist and will utilize those meetings as a conduit to communication with CAO and employee Diversity inclusion matters that should concern the OIG; we consider this recommendation closed.

This management advisory report is closed.

Appendix A - Management Comments



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United States Government

MEMORANDUM

DATE: October 29, 2020

TO: Christopher Failla
Inspector General

FROM: J. Brett Blanton 
Architect of the Capitol

SUBJECT: Official Response to Office of Inspector General (OIG) Management Advisory Report 2020-0002-INVM-P

Thank you for the opportunity to review and respond to the subject report regarding OIG interactions with the Diversity, Inclusion and Dispute Resolution Office (DI/DR) in accordance with Section 8 of AOC Order 40-1.

The following is our response to the recommendations in the report:

Recommendation 1. The AOC concurs with the OIG recommendation to align DI/DR under an AOC senior manager but does not concur with the recommendation to align DI/DR under the OIG. As a part of the ongoing AOC organizational restructuring, DI/DR will be a direct report to the Chief Administrative Officer. This alignment provides DI/DR the flexibility to coordinate directly with the AOC's Human Capital Management Division and the Chief Administrative Officer to efficiently resolve employee concerns.

Recommendation 2. The AOC concurs with the OIG recommendation that DI/DR review and update all internal policies to ensure compliance with diversity and inclusion/equal opportunity community best practices. DI/DR has already implemented a new case management tracking system and had begun a business process review in 2019. In addition, DI/DR is currently undergoing a systematic review of its internal processes.

Recommendation 3. The AOC concurs with the OIG recommendation that DI/DR follow all laws and AOC orders.

Recommendation 4. The AOC does not concur with the OIG recommendation that DI/DR publish the results of their inquiries to the AOC community. This sort of publication would breach employee confidentiality requirements in addition to creating a chilling effect over DI/DR's ability to provide assistance.

Recommendation 5. The AOC concurs with the OIG recommendation that the AOC seek annual training and academic certification programs pertaining to DI/DR. DI/DR personnel have

already attended numerous equal employment opportunity-related trainings in 2020 and future training sessions are scheduled.

Recommendation 6. The AOC concurs with the OIG recommendation for more “open communications,” but does not concur with the establishment of quarterly meetings between DI/DR and the OIG. DI/DR will promptly communicate with and refer any potential criminal issues to the OIG.

Thank you for the opportunity to provide comments to the draft report. Please contact Chief Administrative Officer Mr. William O'Donnell at 202.226.0007 or william.odonnell@aoc.gov if you have any questions.

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