



OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

September 25, 2015

The Honorable Ron Johnson
Chairman
U.S. Senate Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Johnson:

This letter is being sent in response to your June 23, 2015, letter requesting that the U.S. Securities and Exchange Commission (SEC or agency) Office of Inspector General (OIG) analyze the involvement of non-career officials in the SEC's Freedom of Information Act (FOIA) response process. Specifically, you requested that we analyze whether the involvement of non-career officials in the SEC's FOIA response process resulted in any undue delay of a response to any FOIA request, or the withholding of any document or portion of any document that would have otherwise been released but for the non-career officials' involvement in the process. In addition, you requested that we seek a written certification from the SEC's Chief FOIA Officer about non-career officials' involvement in the agency's FOIA response process.

We previously reviewed and reported on political appointees' involvement in the SEC's FOIA process. Specifically, in response to an August 23, 2010, request from Senator Charles Grassley and Congressman Darrell Issa, we reported on December 3, 2010, that we reviewed documents from the SEC's Office of FOIA Services (OFS), including documents describing the process for responding to FOIA requests and a listing of FOIA liaisons throughout the agency. Additionally, we took sworn testimony from SEC employees involved in the FOIA process and searched relevant e-mails and did not find any evidence that political appointees at the SEC played an improper role in the agency's review of or response to FOIA requests.

In response to your June 23, 2015, letter, we sought to determine the extent, if any, of non-career officials' involvement in the SEC's FOIA response process between January 1, 2007, and June 30, 2015. We defined "non-career officials" as political appointees, to include the agency head, presidential appointees, or lower level political appointees.¹ We excluded from our review FOIA requests related to the OIG.

The SEC's OFS receives FOIA requests, performs preliminary research, and requests documents from SEC divisions and offices when necessary. Each SEC division and office has at least one FOIA liaison who receives OFS requests and, if available, provides OFS with the requested documents. OFS applies FOIA exemptions and releases the final response to the requestor. The SEC's Office of General Counsel processes appeals.

¹ According to the SEC's Office of Human Resources, the agency does not have any Senior Officers equivalent to the Senior Executive Service's "Noncareer Appointments" or "Limited Term Appointments," as defined in the United States Office of Personnel Management's *Guide to the Senior Executive Service* (April 2014).

We found that some non-career officials are involved in the SEC's FOIA process. For example, one non-career official serves as a FOIA liaison, and other non-career officials were consulted during the FOIA response process in their respective divisions or offices. To determine whether the involvement of non-career officials impacted the timeliness of responses to the SEC's OFS or the disposition of FOIA requests, we analyzed FOIA request data from January 1, 2007, to June 30, 2015. We also interviewed SEC officials and staff involved in the agency's FOIA process, surveyed SEC FOIA liaisons identified by OFS, and reviewed information provided by the Chief FOIA Officer, including the facts surrounding certain FOIA cases. We found no trends or other indications that any non-career official's involvement in the SEC's FOIA response process resulted in any undue delay of a response or the withholding of any document or portion of any document that would have otherwise been released but for non-career official's involvement.

In response to your letter, we also requested that the SEC's Chief FOIA Officer sign one of two certifications about non-career officials' involvement in the agency's FOIA process. The certifications stated:

To the best of my knowledge, for the period _____, no non-career officials (i.e., political appointees, to include agency head, presidential appointees, or lower level political appointees) were involved in the SEC response to any FOIA request.

If non-career officials (i.e., political appointees, to include agency head, presidential appointees, or lower level political appointees) were involved in the FOIA process during the period _____, such involvement did not, to the best of my knowledge, result in undue delay of a response to a FOIA request or the provision of less information than would have been provided but for the involvement of the non-career officials.

The Chief FOIA Officer declined to sign either certification and indicated that neither certification adequately described situations that may arise during the processing of FOIA requests at the SEC. The Chief FOIA Officer stated in a memorandum to the OIG, ". . . to effectively assist OIG with its review, I provided as much information as possible during an interview, including documents, and also recommended that OIG staff meet with other SEC staff involved in processing FOIA requests."

If you have questions or require additional information, please contact Rebecca Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects at sharekr@sec.gov or (202) 551-6061.

Sincerely,



Carl W. Hoecker
Inspector General

cc: The Honorable Thomas R. Carper
Ranking Member