

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
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CHALLENGES TO ACCESS AND INDEPENDENCE FACED BY THE PEACE
CORPS INSPECTOR GENERAL
TESTIMONY OF KATHY A. BULLER
PEACE CORPS INSPECTOR GENERAL

Chairman Chaffetz, Ranking Member Cummings, and distinguished members of the Committee:

Thank you for inviting me to appear before you today to discuss the challenges to access and independence faced by my office. I testified on this issue twice last year: on January 15 and again on September 10. While progress was made after each hearing, some challenges remain.

Denial of Access to Sexual Assault Records

The Peace Corps Office of Inspector General (OIG) access issues stem from a rather sensitive and important subject: the Peace Corps' handling of volunteer reports of sexual assault. So I must emphasize from the outset that our push for access goes beyond our zeal for upholding the basic principle that transparency and accountability are the hallmarks of good governance. Our push for access is about fulfilling our collective responsibility to ensure that we – Congress, the Peace Corps, and OIG – do everything we can to ensure our volunteers, who sacrifice so much when serving in remote corners of the world, receive the services they need when they are victims of a sexual assault.

Standing in our way to fulfilling that duty is a legal opinion drafted on July 9, 2013, by the Peace Corps' former general counsel. That legal opinion asserts the Kate Puzey Volunteer Protection Act of 2011 (Kate Puzey Act),¹ overrides my broad right of access to agency records under the Inspector General Act of 1978, as amended, (IG Act).² As a result of that legal opinion, the agency has implemented policies and procedures denying us access to information.

Since my last testimony on September 5, the Peace Corps has corrected course by issuing policies and procedures that grant OIG greater access to information.³ It's worth reminding the Committee that these revisions took two years of discussions with the agency and members of Congress, two congressional hearings, negative press coverage, a hold being placed on the nomination of the Director, and, ultimately, the signing of a memorandum of understanding (MOU) between the agency and OIG. Despite this progress, the underlying legal opinion supporting those policies and procedures is still in place and much work remains to be done to undo the damage caused by these access-denying policies.

¹ Pub. L. No. 112-57.

² Pub. L. No. 113-126.

³ On October 17, 2014, the Peace Corps issued revised Interim Policy Statement (IPS) 3-13, granting OIG access to all information from restricted reports except for the personally identifying information of volunteer victims and the explicit details of sexual assaults.

Summary of Legal Issue

The IG Act

When Congress enacted the IG Act it recognized that access to information is 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.

There is no ambiguity in this language. IGs have access to all agency documents and information, and the legislative history to the IG Act leaves no room for doubt: the language ‘all records’ is expansive and is intended to include even confidential agency memoranda.⁴

The Kate Puzey Act

Congress enacted the Kate Puzey Act following reports that emerged after the ABC network’s 20/20 show aired a story on how the agency mishandled sexual assault complaints by former volunteers. The show also focused on the mishandling of an unrelated complaint filed by Kate Puzey, a volunteer who was murdered in Benin in 2009 after a staff member allegedly failed to keep her complaint confidential.⁵

Section 8E(d)(1)(B) of the Kate Puzey Act provides OIG with key oversight roles in ensuring the agency adequately responds to sexual assault and other crimes; effectively implements and trains on the Sexual Assault Risk Reduction and Response policy and program; and delivers services to sexual assault victims. The Kate Puzey Act requires that OIG conduct an evaluation on this matter and report to Congress by November 21, 2013, and again in 2016.⁶ The report must be based on a case review of a statistically significant number of sexual assault cases.⁷

Section 8A(f)(2) of the Kate Puzey Act mandates that victims have access to a restricted reporting mechanism that allows them to receive services without automatically triggering an official investigation. If a victim makes a restricted report, the victim’s personally identifiable information (PII) can only be shared with specified individuals unless an exception applies. One of those exceptions authorizes disclosures “to State and Federal courts when ordered, or if disclosure is required by Federal or State statute.”

⁴ S. REP. NO. 95-1071, at 33-34 (1978).

⁵ The 20/20 show was not the first in-depth investigation into the underreported incidence of rape, sexual assault, and murder in the Peace Corps. On October 26, 2003, the *Dayton Daily News* published an article titled, “Mission of Sacrifice: Peace Corps volunteers face injury, death in foreign lands.” The newspaper combed through thousands of records on volunteer assaults over a span of four decades and highlighted the alleged failings of the Peace Corps in responding to crimes against volunteers.

⁶ Sec. 8E(d)(1)(A) also requires Peace Corps OIG submit a biennial report to Congress concerning reports received from volunteers that discuss incidents of misconduct, mismanagement or policy violations by Peace Corps staff, or that relate to breaches of confidentiality of volunteers.

⁷ OIG submitted the initial report to Congress in November 2013 but the scope of the review did not include restricted reports because the agency had not implemented a system of restricted reporting until September 1, 2013.

Peace Corps' Legal Position

Despite the exception authorizing disclosure when required by federal law, the legal opinion asserts the exception applies only to courts because courts are the only person or organization listed in the exception. The opinion also reinterprets the statutory definition of PII in a manner that effectively prohibits OIG from accessing the crucial information it needs to fulfill its key oversight role mandated by the Kate Puzey Act.

Most egregiously, however, the opinion concludes OIG should not have access to restricted reports because the Kate Puzey Act overrides the IG Act. This is incorrect, however, since 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.⁸ Nothing in the Kate Puzey Act suggests an intent to override the IG Act and both laws can be easily reconciled by reading the exception as applying to OIG.

Furthermore, the Peace Corps' interpretation conflicts with the plain meaning of the statute as a whole.⁹ 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.

Memorandum of Understanding between the Peace Corps and OIG

In May 2014, to avoid the possibility of remaining in the dark about a substantial category of sexual assault reports, I entered into a formal agreement with the Peace Corps granting OIG more – though not all – information from these reports, while maintaining our legal position.

The revisions the Peace Corps made to the access-denying policies and procedures as a result of the MOU are a good step forward. Since the policies and procedures were revised we have requested specific case files for two post country evaluations and have been able to review two restricted reports with corresponding redactions of PII and explicit details. However, the true test of the agreement will come this fall, when we begin reviewing a statistically significant number of cases as required by the Kate Puzey Act.

Other Concerns

Despite the progress made – thanks in part to this Committee – I remain concerned about the appropriateness of my office having to enter into an MOU to obtain information we are

⁸ “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.”)

⁹ “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* 1 GAO, *Principles of Federal Appropriations Law* 2-86 (3d ed. 2004).

entitled to by law and that we need to fulfill our statutory duties. Therefore, we see this agreement as a temporary fix to obtain information while we seek agency or congressional action.

I am also concerned the Peace Corps has yet to adequately train staff on what information can and must be shared with OIG pursuant to the MOU. There is already evidence that the Peace Corps' lack of guidance has led to staff confusion in handling sexual assaults. For example, in November we issued a management advisory report (MAR) to the Director documenting confusion on whether complaints from a third party should be treated as a restricted report.¹⁰ The MAR documents how staff was initially advised by the Office of General Counsel not to report the information to OIG only to reverse course after discovering that other victims may have been assaulted by the same perpetrator. While the law is clear that only victims of sexual assault can make restricted reports, at least in one senior-level training the former general counsel advised staff that sexual assault allegations made by persons other than the victim should be treated as restricted and should not be reported to OIG.

Beyond training on third party complaints, staff and volunteers must be reassured that they should report allegations to our office concerning mismanagement of a sexual assault response, even if it relates to a restricted report. During the time OIG was denied access to any details of sexual assaults multiple people expressed concern about sharing information with OIG because of agency policies. Additionally, staff responsible for providing services and information to volunteers (in cases where the perpetrator is alleged to be another volunteer or staff) need to know they can consult with OIG about how our investigations are conducted, even if they are unable to provide OIG with explicit details of the assault or the victim's PII.

Finally, I am concerned about the Peace Corps' ability to meet its commitments under the agreement, such as implementing a system that would permit OIG to review sexual assault cases without full access to information. Lacking such access, Congress will be unable to properly assess whether the Peace Corps is adequately responding to victims.

Solving the Issue

Congress and the Peace Corps have the power to solve this issue. Congress could take legislative action in one way or another to ensure we get full access to agency records.

The Peace Corps, for its part, could retract its erroneous legal opinion underlying its access-denying policies and procedures. As long as that opinion remains in place, the Peace Corps is free to rescind our agreement and withhold or delay OIG access to sexual assault reports. Moreover, its very existence sets a dangerous precedent whereby any agency may withhold information by deciding to interpret a law as overriding the IG Act.

Allowing agencies to unilaterally decide when they can or cannot release information to the IG presents a clear conflict of interest. Not only that, it forces the IG to spend its limited time and resources wrangling with the agency to obtain information – as I have done for over two years. Taxpayers – and volunteer victims of sexual assault in particular – deserve better.

¹⁰Management Advisory Report: Agency Policies Related to volunteer Sexual Assault Allegations: http://files.peacecorps.gov/multimedia/pdf/policies/PCIG_Agency_Policies_Related_to_Volunteer_Sexual_Assault_Allegations.pdf

While the Peace Corps withdrawing its legal opinion would resolve our access issue, it will do nothing to help other IGs who are denied full access to agency records. I appreciate the Committee's efforts to help us on our quest for access – for the sake of the Peace Corps, volunteer victims of sexual assault, and the entire IG community.

Kathy A. Buller
Inspector General
Peace Corps

Ms. Kathy A. Buller was named by the Director to be the Inspector General of the Peace Corps on May 25, 2008. Ms. Buller has 28 years of experience in the Inspector General community. She began her civil service career with the U.S. Agency for International Development as an attorney advisor in the Office of General Counsel in 1983. Ms. Buller later became a project officer with the Office of Administration of Justice and Democratic Development working to improve Latin American and Caribbean justice systems. In 1986, Ms. Buller transferred to the Office of Inspector General where she became the Deputy Legal Counsel and ultimately the Assistant Inspector General for Resource Management. In August 1998, Ms. Buller accepted the Senior Executive Service position as the Chief Counsel to the Inspector General for the Social Security Administration where she remained until becoming the Peace Corps Inspector General.

As a member of the Council of Inspectors General on Integrity and Efficiency, Ms. Buller is a member of the Executive Council, co-chair of the Inspections and Evaluations Committee and a member of the Legislation Committee. In 2009 she was appointed to the Government Accountability Office Advisory Council on Government Auditing Standards. During her career in the Inspector General community she also served as past Chair of the Council of Counsels to the Inspectors General and received numerous awards including the 2004 Glenn/Roth Exemplary Service Award given jointly by the President's Council on Efficiency and Integrity and the Executive Council on Integrity and Efficiency.

Ms. Buller attended Creighton University in Omaha, Nebraska, where she received a Bachelor of Arts degree in 1977 with majors in Political Science and Philosophy and a Juris Doctor degree in 1981. She continued her legal education and received an LLM in International and Comparative Law from Georgetown University in 1985.