



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

APR 18 2012

The Honorable Doc Hastings  
Chairman, Committee on Natural Resources  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

On April 11, 2012, the Office of Inspector General (OIG) received a subpoena from the House Committee on Natural Resources (Committee) commanding production of:

Unredacted and complete copies of:

1. All documents identified on the enclosure (Bates number 00032227 SOL-WDC-B01-00001-00000I) to the Department of the Interior's October 13, 2011 letter to the Committee relating to the May 27, 2010 Department report entitled, "Increased Safety Measures for Energy Development on the Outer Continental Shelf."

These documents were created or obtained by the Department of the Interior (DOI or Department) relative to the May 27, 2010 report and Executive Summary to the report. In the Executive Summary, the Secretary of the Interior recommended a six-month moratorium in the Gulf of Mexico, following the *Deepwater Horizon* disaster. Despite requests by the Committee, followed by a subpoena, the Department has declined to provide these documents to the Committee, saying that they "implicate important Executive Branch confidentially interest."

For the reasons we have conveyed to Committee staff multiple times, and describe in detail below, I respectfully refer the Committee back to the Department for production of the subject documents.

I want to clarify at the outset, however, that neither DOI political appointees nor any other DOI employees interfered with the OIG investigation at issue or ordered the OIG to withhold the subject documents. Rather, the OIG followed long-standing protocol in the handling and disposition of the documents at issue, a process that ensures the integrity of the access authority granted to Inspectors General in the Inspector General Act of 1978, as amended (IG Act).

The IG Act envisions a unique and carefully calibrated role for each OIG. While organizationally situated within the Executive Branch and DOI, this OIG also maintains a high degree of independence from DOI, in order to provide effective oversight of its programs and operations without interference from the Secretary or other departmental officials. Among other powers and responsibilities, an important tool enabling our unimpeded oversight is our authority

under the IG Act to have unfettered “access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the Department relating to its programs and operations.” 5 U.S.C. App. 3 Section 6(a)(1). The IG Act does not authorize Inspectors General to waive privileges asserted by a department or agency of the Executive Branch.

Although this language is quite clear in its intent, our access to Department documents has been enhanced by the force of the DOI Secretary’s commitment to cooperating with the OIG, as memorialized most recently in an April 20, 2010 directive (copy enclosed). This commitment to provide the OIG unfettered access to all manner of documents and information is something we have secured from each of the last three Secretaries, including Secretary Gale Norton, Secretary Dirk Kempthorne, and Secretary Ken Salazar.

The Secretary’s directive notes that OIG access extends to “information that may be privileged, confidential, or otherwise exempt from disclosure under law.” The directive and the DOI Manual reflect an important understanding between the OIG and the rest of the Department that disclosure of privileged information by the Department to the OIG does not constitute a waiver of the privilege. This understanding, and the protocol that arises from it, promotes the free flow of information to the OIG and allows us to execute our oversight responsibilities to the fullest extent possible under the IG Act. One result of this arrangement is that oversight committees such as yours have the benefit of truly probing OIG reports that are based on examination of all relevant Department information, even information that may be subject to a cognizable claim of privilege.

The information access protocol we employ is not unique to this OIG. Rather, it is a long-standing practice in the Inspector General community that source documents belonging to an agency or department, obtained pursuant to OIG statutory authority, not be released by the OIG, as they are not the OIG’s documents. Furthermore, if privilege attaches to Department documents, the privilege is not the OIG’s to waive.

Were the OIG to release documents that “implicate important Executive Branch confidentially interest,” as articulated by the Department in its October 13, 2011 letter to you, we believe that we would compromise our own ability to obtain information from the Department that is essential for conducting robust oversight. Such a release of documents could have the same negative impact on the entire Inspector General community.

I do not take lightly my decision to decline to provide the documents requested, yet I hope the Committee can appreciate the important principle that I have described here. Our unfettered access to information and documents created and held by the Department is of paramount importance to our success in performing our oversight role. I look forward to future opportunities to assist your Committee in exercising its oversight role.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary L. Kendall" with a stylized flourish at the end.

Mary L. Kendall  
Acting Inspector General

Enclosure