

United States Senate

November 16, 2020

Mr. Sean O'Donnell
Acting Inspector General
Department of Defense
4800 Mark Center Drive
Alexandria, VA. 22350-1500

Dear Acting Inspector General O'Donnell:

We are writing to request that you investigate the process for the recent selection for the civil service position of General Counsel to the National Security Agency (NSA). We have the utmost interest in ensuring the integrity in the selection process for top intelligence officials, and believe it would be improper for any candidate to be sworn into office until such an investigation has been completed.

The publicly reported facts, if accurate, constitute prima facie evidence of improper political influence in the selection for the top legal position at NSA or, alternatively, indicate possible irregularities which would be of great concern to our committees. First, press accounts have indicated the White House may have inappropriately influenced the selection of what is supposed to be a merit-based, apolitical civil service position.

Second, while solicitation for the position was issued in January 2020 and candidates interviewed beginning in May, a selection was made on November 9, 2020, less than a week following the Presidential election and mere moments after the sitting Secretary of Defense had been fired. This timing is inherently suspect and requires further investigation.

Third, the NSA General Counsel position has historically been held by individuals with extensive experience in the federal government and private sector. According to press reports, the other candidates have professional backgrounds consistent with previous occupants of the office, including decades of experience relevant to managing intelligence community lawyers. In contrast, the reported selectee graduated law school in 2011 and his prior experience is limited to political roles on Capitol Hill and in the White House National Security Council.

The combination of timing, comparative lack of experience of the candidate, the reported qualifications of the other finalists, and press accounts of White House involvement create a perception that political influence or considerations may have played an undue role in a merit-based civil service selection process. Because this position does not require the advice and consent of the United States Senate, it is imperative that it be safeguarded by appropriately apolitical processes.

With these facts as background, we specifically ask you respond to the following questions:

- What process governed the selection of the new General Counsel, including the identification of final candidates and the determination of their qualifications?
- Were safeguards to prevent political appointees from inappropriately “burrowing” into the civil service applied?
- Is there evidence of White House interference or influence in this selection process? Did communications between the White House and the Department of Defense on the subject comply with applicable civil service requirements? Do any participants in any part of the selection process believe political considerations or pressure influenced the process?
- Was there an independent review by the Office of Personnel Management (OPM)’s Qualification Review Board (QRB) of the selected candidate’s qualifications? If so, when was the selected candidate’s package first submitted to the OPM QRB, and when did the QRB approve the candidate?
- Did the Department of Defense General Counsel consult with the Inspector General, or Federal or State law enforcement agencies, to determine whether any relevant allegations of misconduct by any of the candidates existed and remained unresolved prior to making the selection?
- Did the selected candidate go through the normal selection process to be a member of Defense Intelligence Senior Executive Service (DISES)?

- Was this appointment made under the authority granted to the Secretary of Defense to appoint a limited number of individuals to DoD SES positions using the alternative qualification review process authorized by section 1009 of the National Defense Authorization Act for Fiscal Year 2019?
- What was the timeline in which the panel rendered its selection and ultimately was decided on by the General Counsel of the Defense Department?

We appreciate your prompt attention to this important matter.

Sincerely,



Mark R. Warner
Vice Chairman
Senate Select Committee on Intelligence



Jack Reed
Ranking Member
Committee on Armed Services