

July 10, 2003

Lisa Redman
Acting Assistant Inspector General for Investigations
Department of Homeland Security
1120 Vermont Avenue, N.W.
Washington, D.C. 20005

Dear Ms. Redman:

I am writing to urge you to reconsider your decision to close your investigation into the use of Department of Homeland Security (DHS) resources to assist the search for missing Texas legislators. I am troubled that your investigation has left many questions unanswered about the involvement of DHS and its Air and Marine Interdiction Coordination Center (AMICC) in this partisan political dispute – and failed to garner any information about the Texas Department of Public Safety's (DPS's) apparently intentional misuse of DHS resources – and am greatly disappointed that you failed to make any recommendations for preventing such conduct from occurring again or taking action against those who sought to misuse the Department's authority.

As you know, I wrote to Secretary Ridge on May 15, 2003 to ask that DHS investigate the possible misuse of its resources to assist one side in what was a local partisan political dispute. After DHS Office of Inspector General (OIG) opened an investigation into the matter, I wrote again on May 22, 2003 to urge that you include in this investigation the subsequently revealed destruction of relevant documents by the Texas DPS. OIG released a report that purported to conclude the investigation on June 16, 2003. To my dismay, this 3-page report reflects an investigation that appears to have been exceedingly narrow in scope and distressingly conclusory in its analysis.

The OIG report concluded that the call received by AMICC from DPS was typical of 30-40 requests for assistance that AMICC receives in an ordinary day; that the assistance provided by AMICC personnel was limited to 40 minutes of telephone calls plus a series of conversations between an AMICC Detection Systems Specialist and his supervisors and was therefore nominal; and that the actions of AMICC personnel were appropriate. Neither the investigation nor the report addressed the issue of the conduct of the Texas DPS; in lieu of any investigation, the matter of DPS's document destruction was referred to the San Antonio field office of the FBI.

Unfortunately, the report and accompanying exhibits reveal a number of basic flaws in OIG's investigation of this matter, including the following:

1. Failure to determine critical facts. Your conclusions are based in substantial part on the assertion that the request for assistance in this case was “typical” and that AMICC receives such calls “at least thirty times a day.” (OIG Report, Synopsis at 2). These assertions, however, appear wrong. As could apparently easily be determined, AMICC receives nowhere near that number of calls about missing aircraft. Charles Stallworth, Director of the Air and Marine Interdiction Division, which oversees AMICC, explained in a briefing to Senate staff and confirmed in a subsequent telephone conversation with a member of my staff that, while AMICC does receive 30-40 calls per day from law enforcement officials, such calls usually involve reports of suspicious aircraft that are suspected of carrying illegal drugs across the border or raise concerns about possible involvement in terrorism. While Mr. Stallworth could not provide the precise number of calls AMICC receives about missing airplanes, he guessed there were “not many.” Moreover, he noted that when such calls are received, they are usually referred to the Federal Aviation Administration, whose mission includes conducting search and rescue for missing airplanes. Although your staff interviewed Mr. Stallworth and spoke with other AMICC employees about the number of calls received from law enforcement officials, apparently no attempt was made to determine the nature of these calls before concluding that the call from DPS was “typical” – despite the fact that this characterization is key to your conclusion that DHS’s response was appropriate.

2. Failure to independently verify information. DHS OIG did little, if anything, to independently verify the assertions of those it interviewed, instead assuming the credibility of virtually all statements it received. Thus, for example, it is apparent from the report, and confirmed in your briefing of my staff, that DHS OIG accepted the statements of the AMICC detection systems specialist who received the call from DPS that he did not know that the call from DPS involved anything other than legitimate concern about the safety of an airplane. Nonetheless, there are several yellow flags in the transcripts of the telephone conversations involving the search for the Texas plane that suggest that the AMICC specialist, if he did not know of the true purpose of the DPS request, perhaps should have known it. In a phone conversation with an airport official in Plainview, Texas, for instance, the airport official tells the AMICC specialist that “Yeah, I’m kind of familiar with that whole – deal. . . . It made the paper today.” But instead of wondering how a plane that supposedly just went missing could possibly have already made that morning’s papers, the AMICC specialist dismissed the comment, saying “Okay. I don’t know what’s going on. I’m just trying to find the people that’s all.” (OIG Report, Exhibit 8 at 13). The airport official with whom he spoke was subsequently quoted in *The Washington Post* as saying “There was never any safety concern, or indication that it was missing or overdue. The guy said at the end, ‘This is just somebody looking for politicians they can’t find.’”¹ Yet when my staff asked you whether you had interviewed this airport official or

¹ R. Jeffrey Smith, “In Texas Feud, a Plane Tale of Intrigue,” *The Washington Post*, June 7, 2003.

had taken any other action, other than listening to the tape of the conversation, to confirm that the AMICC specialist really was not aware of the true purpose of the call, you indicated that you had not.

Similarly, DHS OIG appears not to have engaged in any meaningful inquiry to determine whether or not laws or DHS policies had been violated by the involvement of AMICC personnel in the search for the missing Texas legislators. At a minimum, assisting in this local political dispute would seem to fall outside AMICC's mission, which, as part of the Air and Marine Interdiction Division, is described on the Division's web site as to "Protect the Nation's borders and the American people from the smuggling of narcotics and other contraband with an integrated and coordinated air and marine interdiction force." Nonetheless, individuals interviewed by OIG staff apparently were simply asked a conclusory question – "Were legal requirements and internal guidelines for conducting surveillance complied with?" – and responded, unsurprisingly, in the affirmative (*see, e.g.*, OIG Report, Exhibits 4 and 5). These responses were apparently taken at face value by OIG. The report itself contains no discussion of the legal requirements surrounding the actions by DHS personnel and only a superficial reference to the procedures set forth in AMICC's training and operations manual. There is no evidence that DHS OIG made any independent effort to determine whether the practices did in fact comport with applicable laws, rules and procedures.

This is not to suggest that AMICC officials were not credible or that they were necessarily engaged in any wrongdoing. A thorough and professional investigation, however, would ordinarily be expected to have included attempts to independently verify the assertions of even presumably credible witnesses and to make an independent analysis of legal requirements.

3. Misapprehension of the wrong committed. The DHS OIG report dismissively concludes that because only a relatively small amount of time was spent by AMICC personnel attempting to find the Texas state legislators that no misdeeds were committed. This ignores the fact the AMICC enlisted local officials in its search for the plane, but, more importantly, this reflects a fundamental misunderstanding of the harm done in this case. The core issue here is not how much time AMICC or other DHS personnel spent on this matter, but whether it was appropriate for federal officials to use their access to information, their ability to activate local officials and the weight of federal resources to try to track down a private plane that was not alleged to be involved in any criminal activity nor was in any distress. That is to say, it is a question of the misuse of federal authority.

This concern is of importance because the new Department of Homeland Security and its constituent agencies, like many government agencies, has the power and authority to find out information that is not generally available to the public. As I am sure you are aware, concerns have been raised by the press and the public about the potential misuse of such information.

Evidence of actual misuse – whether malicious or inadvertent and regardless of the amount of time expended – can only increase such fears and has the potential to significantly impair DHS’s credibility going forward. Just as importantly, it would not be surprising if the next call from AMICC to an airport official for help were to be greeted with skepticism – possibly jeopardizing efforts to pursue the Department’s true and legitimate mission. The dismissiveness with which the report addressed these concerns does not bode well for future oversight of the use of the Department’s considerable powers.

4. Failure to make recommendations to prevent future misuse of DHS resources.

Looking at AMICC’s performance in this matter in even the very best light for the agency, it appears that individuals in the Texas DPS were able to use AMICC to misappropriate DHS’s resources, authority and access in order to accomplish their own partisan political ends. Nonetheless, DHS OIG deliberately chose not to recommend or even seriously consider any improvements that might be made to prevent outside individuals from misusing DHS resources in the future, such as procedures to verify the identity of a requestor and the legitimacy of a request for assistance. In your conversations with my staff, you have promised an additional report on some of these issues, but even this will apparently be limited to AMICC and will not seek lessons for the rest of the Department – whose resources, presumably, are at least as subject to exploitation as those of AMICC. I believe that the failure of DHS OIG to make recommendations to prevent the future misuse of Department resources is an abdication of one of the essential responsibilities of an Inspector General.

5. Failure to propose any remedy for DPS wrongdoing. Whatever one concludes about the appropriateness of the actions of DHS personnel, it seems clear that Texas DPS officials not only sought to misuse the Department’s resources but also, as evidenced by the interview reports contained in the exhibits to the report, refused to cooperate in your subsequent investigation. This, of course, is in addition to DPS’s reported destruction of documents that may have been relevant to your investigation. Nonetheless, your office, concluding that any harm was “*de minimis*” (OIG Report at 3), has not seen fit to examine this egregious and possibly illegal conduct on the part of DPS. You suggested to my staff that you had no authority to compel DPS to cooperate with your investigation and ended your efforts at that conclusion. You did not appear to have considered, for example, whether there were discretionary benefits or privileges that DPS received from AMICC or DHS that could have appropriately been suspended unless DPS cooperated in the investigation. Moreover, you failed to make any recommendation to the Department to address DPS’s underlying deception – whether in the form of preventive action (such as additional safeguards that should be followed prior to accepting a DPS request) or punitive measures. Your inaction leaves DPS free to continue using – and apparently abusing – DHS resources.

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In fact, the only step you took with respect to DPS was to refer its conduct to the San Antonio field office of the FBI “for whatever action they deemed appropriate” (OIG Report at 3). Your own investigation, however, reveals that this is an entirely meaningless gesture: in an exhibit attached to the report are statements by an FBI official in that office indicating that the FBI had no intent of getting involved in this matter (OIG Report, Exhibit 16). In your subsequent briefing of my staff, you confirmed that you had no reason to believe that the FBI field office to which you had referred the matter would in fact pursue it. The result is that DHS OIG has confirmed that a wrong was committed – that is, DPS’s misuse of DHS resources – but has left the public without a remedy.

I ask that DHS OIG reopen its investigation in order to conduct the sort of thorough and meaningful inquiry that I requested and that the American people deserve. If you have any questions about this matter, please feel free to contact Beth Grossman of my staff at 202-224-9256.

Sincerely,

Joseph I. Lieberman
Ranking Member

cc: The Honorable Susan M. Collins
Chairman