

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	
v.)	Misc. No.
)	
THE INSTITUTE FOR COLLEGE ACCESS & SUCCESS,)	
)	
Respondent.)	
)	

**MEMORANDUM IN SUPPORT OF UNITED STATES' PETITION FOR
SUMMARY ENFORCEMENT OF INSPECTOR GENERAL SUBPOENA**

This is a summary proceeding filed by petitioner, the United States of America (United States), to obtain judicial enforcement of a subpoena *duces tecum* issued by the Office of Inspector General (OIG) of the United States Department of Education (ED) to respondent The Institute for College Access & Success (TICAS). The subpoena was issued pursuant to an investigation by the OIG into whether the former ED Deputy Undersecretary Robert Shireman violated Federal ethics laws by engaging in certain activities involving his former employer TICAS during the course of his employment with the Department, in violation of 18 U.S.C. § 205(a)(2).

Introduction

As explained in more detail in the Declaration executed by Lisa M. Foster, Special Agent for the OIG (SA Foster Decl.), the OIG is trying to determine whether former ED Deputy Undersecretary Robert Shireman violated Federal ethics laws, specifically 18 U.S.C. § 205(a)(2). The OIG therefore served a *duces tecum* subpoena on TICAS to obtain information pertinent to Shireman's involvement with TICAS during the time of his appointment at ED. SA Foster Decl.

Attachment No. 1. Specifically, the subpoena contains three numbered document requests seeking (1) any communications between ED Deputy Undersecretary Shireman and TICAS from the period of February 3, 2009, to February 11, 2011 (request item 1); (2) documents related to ED Deputy Undersecretary Shireman and rulemakings negotiated by ED (request item 2); and (3) communications and documents associated with the April 2010 conference hosted by TICAS, which was attended by ED Deputy Undersecretary Shireman (request item 3). *Id.*

On July 19, 2012, counsel for TICAS sent a letter to Special Agent Lisa Foster objecting to the subpoena, but informing Special Agent Foster that it would “voluntarily” comply. SA Foster Decl. at ¶ 14. On August 8, 2012, TICAS responded to the subpoena, providing emails and documents relating to preparations for the meeting it held on April 29-30, 2010 (request item 3). However, TICAS failed to provide any information in regards to request items 1 and 2. SA Foster Decl. at ¶¶ 15-16, 19.

On August 20, 2012, Special Agent Lisa Foster followed up with TICAS’s legal counsel and requested the remaining documents covered by the subpoena. SA Foster Decl. at ¶¶ 16-17. Counsel for TICAS failed to respond in any manner and further failed to produce any further documents. SA Foster Decl. at ¶¶ 18-19.

More than six months have passed since the subpoena was served. Although TICAS has produced some documents, it has failed to complete the production. The OIG is entitled to full compliance with the subpoena.

Failure To Comply With The Subpoena

Administrative agencies in general and their respective Offices Inspector General in particular have broad investigatory and subpoena power. See, e.g., Resolution Trust Corp. v. Thornton, 41 F.3d 1539, 1544 (D.C. Cir. 1994) (“Administrative agencies wield broad power to

gather information through the issuance of subpoenas."); *id.* ("Like a grand jury, an agency 'can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.'") (citation omitted); Winters Ranch Partnership v. Viadero, 123 F.3d 327, 330 (5th Cir. 1997) ("Congress conferred very broad audit, investigatory, and subpoena powers on each Inspector General, as an independent and objective unit of the department or agency, to help promote efficiency and prevent fraud, waste, abuse, and mismanagement in federal government programs"); 5 U.S.C. app. 3 §§ 4(a)(1)-(5) (authorizing Offices of Inspector General to conduct investigations, provide reports, and make recommendations regarding, among other things, fraud and abuse in their agencies' programs and operations); *id.* at § 6(a)(4) (authorizing Offices of Inspectors General to subpoena documents and other information, and to enforce their subpoenas in United States District Courts).

The OIG obtained information that raised questions as to whether former ED Deputy Undersecretary Robert Shireman violated Federal ethics laws by engaging in certain activities involving his former employer TICAS during the course of his employment with the Department. SA Foster Decl. at ¶¶ 8-9. The OIG obtained information indicating that, during the course of Deputy Undersecretary Shireman's appointment as the Deputy Undersecretary, there were email communications between Deputy Undersecretary Shireman and TICAS, and that Deputy Undersecretary Shireman used his TICAS email account. *Id.* The OIG therefore began an investigation and issued a subpoena seeking information from TICAS pertaining to whether the former ED Deputy Undersecretary Robert Shireman violated Federal ethics laws by engaging in certain activities involving his former employer TICAS during the course of his employment with the Department. *Id.*

The subpoena sought documents that would allow the OIG to evaluate ED Department Undersecretary Shireman's conduct, including documents, emails, and correspondence pertaining to Deputy Undersecretary Shireman's involvement with TICAS during the time of his appointment with ED. SA Foster Decl. at Attachment 1.

By not providing full production in response to the subpoena request, TICAS has prevented the OIG from examining all information regarding ED Deputy Undersecretary Shireman and his involvement or communication with TICAS.

All of the subpoena's requests seek information pertaining to whether the former ED Deputy Undersecretary Shireman violated Federal ethics laws by engaging in certain activities involving his former employer TICAS during the course of his employment with the Department in violation of 28 U.S.C. § 205. The subpoena therefore is enforceable because it is directly relevant to an OIG investigation regarding possible fraud, waste, or abuse within its agency. See, e.g., Equal Employment Opportunity Commission v. Technocrest Systems, Inc., 448 F.3d 1035, 1040 (8th Cir. 2006) (“[A] district court should enforce an administrative subpoena if the information sought is reasonably relevant to an authorized investigation.”) (citing United States v. Morton Salt Co., 338 U.S. 632, 652 (1950); Donovan v. Shaw, 668 F.2d 985, 989 (8th Cir.1982); Equal Employment Opportunity Commission v. Chrysler Corp., 567 F.2d 754, 755 (8th Cir. 1977)); Resolution Trust Corp., 41 F.3d at 1544 (“We consider only whether ‘the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.’”) (citing Morton Salt Co., 338 U.S. at 652).

Conclusion

For the foregoing reasons, the United States respectfully requests that the Court enter an Order granting the United States' Petition For Summary Enforcement of Inspector General Subpoena and:

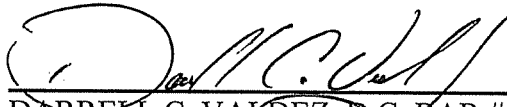
1. Order TICAS to produce to the OIG, within ten (10) calendar days of the entry of the Court's Order, all items described in the subpoena; and
2. Granting such other and further relief to the United States that this Court deems necessary and appropriate, pursuant to the authority of this Court and 28 U.S.C. § 216.

Respectfully submitted,

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