



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

John F. Sopko
Special Inspector General

May 20, 2014

Dr. Arthur B. Keys, Jr.
President and Chief Executive Officer
International Relief & Development

Dear Dr. Keys:

I write in response to IRD's letter of May 19, 2014, signed by IRD General Counsel Jason Matechak. Mr. Matechak's letter stated that he and SIGAR had "come to an understanding" regarding IRD's use of confidentiality provisions in employee separation agreements. The purpose of this letter is to notify you that we believe Mr. Matechak's letter does not accurately describe SIGAR's ongoing investigation of IRD's efforts to prohibit its employees from providing critical information to the "officials of any government."¹ SIGAR has not agreed to any "understanding" with IRD. To the contrary, we are actively seeking information concerning IRD's compliance with whistleblower protection laws and regulations.

Although Mr. Matechak's "preliminary response" to SIGAR on May 15, 2014, included several pages of background materials, neither that letter nor his May 19, 2014, response fully addressed the issues raised in SIGAR's letter of May 5, 2014. In particular, Mr. Matechak's responses indicate that IRD has declined to notify its former employees that the confidentiality provisions of the separation agreements they signed are null and void with regard to their rights at whistleblowers. Instead, Mr. Matechak indicated that 49 former employees were e-mailed in order to:

[C]larify that the confidentiality provisions in the separation agreement are not meant to preclude former employees from participating in a government audit, review, or investigation and to verify that IRD would not seek to enforce the separation agreement in a manner that would run afoul of the False Claims Act.²

This statement does not fully address SIGAR's concern that IRD is attempting to discourage current and former employees from pursuing their rights and remedies under federal whistleblower laws. Mr. Matechak's statement that the confidentiality provisions "are not meant to preclude former employees from participating in a government audit, review, or investigation"³ omits instances in which a whistleblower provides information to SIGAR or another federal agency prior to the initiation of a formal inquiry. This omission is troubling because, as you know, the proactive disclosure of information is what often prompts the initiation of government audits, reviews, and investigations in the first place.

¹ IRD, Confidential Separation Agreement and General Release.
<http://apps.washingtonpost.com/g/page/world/ird-confidentiality-agreement-warns-against-making-negative-statements/997/>.

² Letter of Jason Matechak, Senior Vice President & General Counsel, to Jack Mitchell, Director of the Office of Special Projects (May 19, 2014).

³ *Id.*

Moreover, Mr. Matechak's statement gives the false impression that SIGAR is only concerned about whistleblowers exercising their rights under the False Claims Act. To the contrary, statutes such as 41 U.S.C. § 4712 provide significant additional protections for whistleblowers who are the victims of employer retaliation. Section 4712 prohibits employers from discharging, demoting or otherwise discriminating against an employee who discloses information to Congress, the Inspectors General and other federal authorities. Significantly, this section also states that the "rights and remedies provided for in this section may not be waived by any agreement, policy, form or condition of employment." Therefore, agreements between IRD and its employees should not only take into account the protections of the False Claims Act, but should also clearly indicate that they do not in any way limit the rights and remedies afforded by the whole host of federal laws and regulations designed to protect whistleblowers.

Section 4712 also requires the heads of agencies to ensure that the recipients of U.S. taxpayer dollars inform their employees in writing of their rights and remedies as potential whistleblowers. Therefore, it is additionally troubling that IRD omitted such information from not only its separation agreements, but also from its *Code of Ethics and Business Conduct*. Mr. Matechak's suggestion that the *Compliance Matters!* article sent to IRD employees on March 4, 2014, is evidence of IRD's support for whistleblowers is similarly misleading. Rather than informing employees of their rights to provide information to Congress and other federal authorities concerning matters of waste, fraud and abuse, the article merely directs them to report "fraud, wasted [sic], and abuse to the [IRD] Hotline or contact managerial staff."⁴

The representations made in Mr. Matechak's response letters to SIGAR, including the assertion that IRD is "commencing a review to update its Code of Business Ethics and Conduct as a part of this exercise,"⁵ indicate that IRD has not yet fully disclosed the extent of its compliance with federal whistleblower protections. Therefore, in light of IRD's apparent reluctance to fully address the issues raised in SIGAR's letter of May 5, 2014, I request the following information:

1. Copies of the complete separation agreements for all IRD employees who have entered into such an agreement with IRD since 2004.
2. Full contact information (i.e., name, address, telephone and e-mail) for all 49 former IRD employees who signed separation agreements containing confidentiality provisions.
3. Copies of all e-mails or any other correspondence sent to each of the 49 former employees explaining the scope and enforceability of the confidentiality provisions of the separation agreements.
4. A list of all IRD contracts, cooperative agreements, and grant agreements with USAID, the Department of State, and any other U.S. government agency that each of the 49 former employees referenced above was involved in.
5. A clear statement as to whether IRD has ever sought to enforce the confidentiality provisions of its separation agreements with former employees. If IRD has sought to enforce these provisions, please identify each former employee involved and provide detailed descriptions of the circumstances of each enforcement attempt.

⁴ *Compliance Matters!*, "Whistleblower Protection" (March 4, 2014).

⁵ Letter of Jason Matechak, Senior Vice President & General Counsel, to Jack Mitchell, Director of the Office of Special Projects (May 15, 2014).

Please provide the requested information within 14 days of the date of this letter to John Arlington, General Counsel, at (703) 545-5990 or john.g.arlington.civ@mail.mil. Please do not hesitate to contact him should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.F. Sopko', with a long horizontal flourish extending to the right.

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

cc:

The Honorable Dr. Rajiv Shah
Administrator, U.S. Agency for International Development

May 19, 2014

VIA ELECTRONIC MAIL ONLY

Mr. Jack Mitchell
Director of the Office of Special Projects
Special Inspector General for Afghan Reconstruction
1550 Crystal Drive, 9th Floor
Arlington, VA 22202

**Re: International Relief and Development
Separation Agreement/Whistleblower Protection Issue
Final Response**

Dear Mr. Mitchell,

Thank you for confirming that you have had an opportunity to review International Relief & Development (IRD)'s May 15, 2014 preliminary response to Mr. Sopko's May 5, 2014 letter to Dr. Keys. I appreciated our telephone conversations on May 15th and 16th and I am glad that we were able to come to an understanding as to IRD's actual use of confidentiality provisions in separation agreements especially in light of the *Compliance Matters!* article on "Whistleblower Protection," issued to all IRD employees on March 4, 2014.

Following-up on our discussions, I have been advised that since 2004, IRD entered into separation agreements with 83 former employees. Of these 83 separation agreements 49 included the language of concern in Mr. Sopko's letter. And of these 49 former employees, 7 held positions in Afghanistan for IRD. IRD has e-mailed these 49 former employees to clarify that the confidentiality provisions in the separation agreement are not meant to preclude former employees from participating in a government audit, review, or investigation and to verify that IRD would not seek to enforce the separation agreement in a manner that would run afoul of the False Claims Act.

Please let us know if you have any questions or concerns. We look forward to meeting with you at your convenience.

Sincerely,



Jason Matechak
Senior Vice President & General Counsel
International Relief & Development

cc: Mr. Michael Carroll, USAID Inspector General
Douglas Kramer, Esq., USAID General Counsel



May 15, 2014

VIA ELECTRONIC MAIL AND REGULAR MAIL

Mr. Jack Mitchell
Director of the Office of Special Projects
Special Inspector General for Afghan Reconstruction
1550 Crystal Drive, 9th Floor
Arlington, VA 22202

**Re: International Relief and Development
Separation Agreement/Whistleblower Protection Issue
Preliminary Response**

Dear Mr. Mitchell,

International Relief & Development (IRD) has received Mr. Sopko's May 5, 2013, letter to Dr. Keys regarding the recent article in the *Washington Post*. We understand SIGAR's concern regarding IRD's use of separation agreements based on how confidentiality commitments were portrayed in the article. I assure you that IRD has never had a policy prohibiting employees from informing government officials of critical information. Nor does IRD use confidentiality agreements to prohibit employees from talking to U.S. government officials.

As we prepare our May 19th response, we would like to provide SIGAR with this preliminary response, whose purpose is to demonstrate that IRD has a corporate culture and compliance code that promote disclosure, and to provide an overview of our efforts to update IRD separation agreements to address SIGAR's concerns.

IRD Protects the Rights of Whistleblowers

IRD's *Code of Business Ethics and Conduct* is based on principals that are easily understood by our employees around the world: 1) do what is right, 2) obey the law, 3) comply with donor requirements, 4) work responsibly, 5) protect company reputation and assets, and 6) respect the beneficiaries of our work.¹

Contrary to the impression created by the article, IRD's Code requires employees to report incidents of alleged impropriety promptly. It also makes clear that reporting may be directly through management, to IRD's Chief Compliance Officer, or anonymously through the IRD Hotline. IRD promotes its Hotline aggressively. On the IRD website, the compliance page (www.ird.org/about-us/compliance) states "To report fraud, waste, or abuse in an IRD program, call 703-957-1500 or email hotline@ird-

¹ See attachment A: *Code of Business Ethics and Conduct*. (IRD is commencing a review to update its Code of Business Ethics and Conduct as part of this exercise).



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dc.org. Reporting is confidential and may be made anonymously.” IRD also promotes the Hotline through posters placed prominently throughout headquarters and field offices and through internal staff publications such as *Compliance Matters!*, a weekly e-publication issued by IRD’s Chief Compliance Officer and through IRD’s internal staff newsletter, *Inside Voices*, which is published monthly and sent to all staff by the CEO.²

IRD’s policy that staff report allegations of impropriety is part of IRD’s standard new employee training package.³ The policy to report allegations is also the subject of standalone training.⁴ In fact, a month before the *Washington Post* story was published, IRD issued a *Compliance Matters!*, which referred to a recent case of a government contractor’s confidentiality agreements:⁵

One of the nation’s largest government contractors was recently the subject of a [US national newspaper](#) story because it allegedly required employees seeking to report fraud to sign internal confidentiality statements barring them from speaking to anyone about their allegations, including government investigators and prosecutors. A whistleblower employee of the firm is suing because, according to his attorneys, such statements violate the federal False Claims Act and other laws designed to shield whistleblowers.

IRD’s [Code of Business Ethics and Conduct \(Section III.B\)](#) requires employees to report all instances of fraud, corruption, or waste. IRD’s policies protect staff members from retaliation when they report in good faith. IRD also has strong [whistleblower protections](#) in place. (On the other hand, false or malicious reporting is a violation of the Code of Business Ethics and Conduct.)

Report fraud, waste[], or abuse to the [Hotline](#) or contact managerial staff. Contact compliance@ird-dc.org with any other questions.

In addition to its mandatory disclosure policy, IRD has a clear process for addressing compliance issues raised through management reporting or the Hotline.⁶ IRD’s internal review procedures have

² See attachment B: *Compliance Matters!*, Hotline posters.

³ See attachment C: New Entry Training Presentation, pp. 18–19.

⁴ See attachments D–F: Incident Reporting, Management, and Disclosures; *Compliance Matters!*, “Whistleblower Protection,” June 12, 2013; and Whistleblower Protection Training (transmitted with the June 12, 2013, edition of *Compliance Matters!*, pp. 4–6.

⁵ See attachment G: *Compliance Matters!* “Whistleblower Protection,” March 4, 2014.

⁶ See attachments H–K: *Compliance Matters!*, “Incident Review Process,” May 17, 2011; Review Process Map attached to the May 17, 2011, *Compliance Matters!*; *Compliance Matters!*, “Internal Review Policy and Procedures,” May 9, 2013); and Internal Review Policy and Procedures attached to the May 9, 2013, *Compliance Matters!*



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resulted in the submission of 39 disclosures to donors since 2010. For example, one internal disclosure resulted in IRD's attempt to recover funds diverted by a former finance manager in Sudan. IRD secured the debarment of the former employee, won an arbitral award against the former employee, and has attached the former employee's properties in Australia.⁷ While the case against the former employee is ongoing, IRD's efforts provide a strong deterrent to others who may wish to try to help themselves to development dollars.⁸

Contrary to the impression created by the *Washington Post* article, IRD has a strong policy requiring employees to raise issues and a track record of affirmatively reporting impropriety to its donors and taking action against those who fail to abide by our *Code of Business Ethics and Conduct*.

IRD Has Adjusted the Language of its Separation Agreements.

As noted, the *Washington Post* article created the impression that IRD uses confidentiality agreements to preclude employees from disclosing fraud, waste, and abuse to government officials. What is true is that IRD has on occasion used separation agreements for some employees leaving IRD. Based on our preliminary review – which we are now verifying – IRD has entered into just over 100 separation agreements with departing employees since 2004. (Not all departing employees receive severance or enter into separation agreements with IRD.)

The confidentiality provisions of these severance agreements essentially require that 1) departing employees abstain from disparaging or defaming IRD or 2) disclosing confidential or business proprietary information. The intent of the severance agreements IRD used was to protect legitimate confidential information and to affirm the departing employee's commitment not to slander or defame IRD.

While the separation agreements were used for legitimate purposes, IRD has never sought to enforce a confidentiality provision involving a government audit, review, or investigation. As long as former employees who have signed a separation agreement do not disparage IRD or reveal corporate confidences, they are free to share their experiences with anyone – including government officials and the media.

However, based on the concerns raised before publication of the *Washington Post* article, IRD agreed that its intent could have been clearer, obtained opinions on the legality of the severance agreement

⁷ See attachment L: Denied Parties Listing for Former IRD Employee Godfrey Ladu, Arbitral Award finding for IRD, Judgment of the Eastern District of Virginia finding for IRD, Fourth Circuit Court of Appeals Decision denying Mr. Ladu's appeal, Australian Federal Court Order Upholding U.S. Arbitration, Liens on Ladu Properties in Australia.

⁸ The funds IRD is pursuing are its own. The diverted funds were not charged to the donor.



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template, and decided to update the template separation agreement.⁹ The separation agreement template has been rewritten to provide greater clarity as to the intent of the confidentiality provisions and to highlight IRD's desire for individuals to disclose allegations of impropriety. Please note section 4 (highlighting what is released); section 6 (including express exclusions from the general release); sections 8-10 (addressing confidentiality and creating an express exception for disclosures to government officials); and section 11 (excluding disclosures from the Mutual Non-disparagement provision). We trust these changes address the concerns raised in Mr. Sopko's letter, but we remain open to SIGAR's feedback on the changes made.

Please let us know if you have any questions or comments on this initial response. IRD will provide a final response by May 19, 2014, as requested. I would be pleased to meet with you in person to discuss IRD policies and procedures, or any of the changes to the template separation agreement we have outlined here.

As with all external inquiries, IRD welcomes the opportunity to reexamine its practices so that it can be the best implementing partner it can be for both our donors and the ultimate beneficiaries of our work. We look forward to our continued cooperation with SIGAR.

Sincerely,

Jason Matechak
Senior Vice President & General Counsel
International Relief & Development

cc: Douglas Kramer, Esq.
USAID General Counsel

Mr. Michael Carroll
USAID Inspector General

Mr. Aman Djahanbani
USAID Sr. Procurement Executive.

⁹ See attachment M, copy of proposed revised draft separation agreement.



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

John F. Sopko
Special Inspector General

May 5, 2014

Dr. Arthur B. Keys, Jr.
President and Chief Executive Officer
International Relief and Development
1621 North Kent Street
Suite 400
Arlington, VA 22209

Dear Dr. Keys:

An article in today's Washington Post raises concerns about your company's work on reconstruction projects in Afghanistan on behalf of the U.S. Agency for International Development (USAID).¹ The article reports, among other things, that International Relief & Development (IRD) has attempted to use confidentiality agreements as a way of prohibiting its employees from making critical statements about IRD to "funding agencies" or "officials of any government."²

Although the article notes that IRD may now be revising this policy, your company's conduct raises serious questions regarding its commitment to transparency and to government oversight of the hundreds of millions of dollars in U.S. taxpayer funds IRD receives from USAID. In particular, IRD's policy of prohibiting employees from informing government officials of critical information appears to violate the False Claims Act, 31 U.S.C. §§ 3729–3733, federal whistleblower statutes, and the Federal Acquisition Regulation.

As a former Federal prosecutor and in my current position as Special Inspector General for Afghanistan Reconstruction, I am well aware of the courage it takes for employees of government contractors to report waste, fraud, and abuse of government funds. The threat of retaliation for reporting problems to oversight agencies is all too real. I am simply not willing to tolerate an attempt to institutionalize employee intimidation. Therefore, I am initiating an inquiry into these allegations.

To aid in our inquiry, please provide the following information:

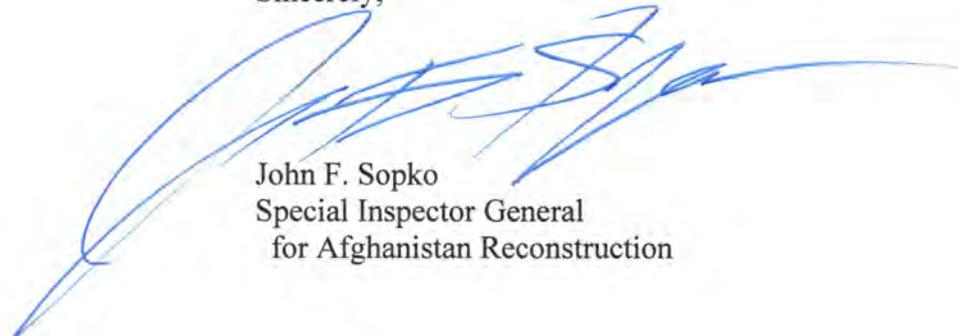
¹ Scott Higham, Big budgets, little oversight in war zones, *The Washington Post*, May 4, 2014.
http://www.washingtonpost.com/investigations/doing-well-by-doing-good-the-high-price-of-working-in-war-zones/2014/05/04/2d5f7ca8-c715-11e3-9f37-7ce307c56815_story.html.

² IRD, Confidential Separation Agreement and General Release.
<http://apps.washingtonpost.com/g/page/world/ird-confidentiality-agreement-warns-against-making-negative-statements/997/>.

1. Has IRD asked its current or former officers and employees to sign the confidentiality agreement referenced in the Washington Post report or any similar agreement? If so, please provide the number of current and former officers and employees who have been asked to sign this agreement or any similar confidentiality agreement.
2. The Washington Post quotes IRD as claiming that it “is changing its policy to ensure that [IRD’s] policies confirm to the latest developments in employment law.” Does this mean that IRD will no longer include confidentiality provisions in future employment or post-employment agreements?
3. Has IRD notified all current and former officers and employees that confidentiality agreements of this nature are prohibited by law and are therefore null and void?
4. Please provide a certification that IRD has notified all current and former officers and employees that any such confidentiality agreement entered into with IRD is prohibited by law and is therefore null and void. Please provide this certification no later than May 19, 2014.

Please address your responses and provide appropriate points of contact within 14 days of the date of this letter to Jack Mitchell, Director of the Office of Special Projects, at (703) 545-5964 or john.h.mitchell161.civ@mail.mil. Please do not hesitate to contact him should you have any questions about this request.

Sincerely,



John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

cc:

The Honorable Dr. Rajiv Shah
Administrator, U.S. Agency for International Development