



**SIGAR**

Office of the Special Inspector General  
for Afghanistan Reconstruction

July 30, 2014

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

Dear Dr. Keys:

I write regarding Mr. Dubelier's letter dated June 3, 2014, which responded to SIGAR's May 20, 2014 request for documents and information related to International Relief & Development's ("IRD") attempts to prevent disclosure of critical information to U.S. government officials.

After reviewing the documents provided by Mr. Dubelier, I remain concerned that IRD is acting improperly to limit the rights of potential whistleblowers to report instances of waste, fraud, and abuse. The purpose of this letter is to reiterate SIGAR's concerns regarding IRD's use of unacceptable gag provisions in its separation agreements and to request that IRD take immediate steps to comply with federal laws and policies protecting whistleblowers.

SIGAR's letter of May 20 requested, among other things, that IRD provide copies of all separation agreements signed by IRD employees since 2004. After reviewing the 81 agreements provided by Mr. Dubelier, my office determined that 48 of those agreements contain unacceptable gag provisions that attempt to limit the whistleblower rights of former IRD employees.

SIGAR's letter of May 20 also requested copies of all correspondence between IRD and its former employees explaining the scope and enforceability of those gag provisions. Mr. Dubelier's letter states that IRD sent emails to the 48 former employees on May 19, 2014 to explain the scope and enforceability of the gag provisions contained in their separation agreements. However, the emails failed to explicitly state that those gag provisions are null and void with regard to the former employees' rights as potential whistleblowers.

The emails sent to the 48 former employees also failed to clearly affirm their rights under the False Claims Act (31 U.S.C. § 3729 *et seq.*) and neglected to mention the expansion of whistleblower protections under 41 U.S.C. § 4712. Moreover, IRD failed to inform its former employees that they have the right to make proactive disclosures of information to government officials prior to the initiation of a formal government inquiry. IRD also failed to inform its former employees that under 41 U.S.C. § 4712 individuals can make protected disclosures to numerous government officials, including Members of Congress and Inspectors General, among others. In addition, IRD neglected to mention that employees' "rights and remedies provided for [by 41 U.S.C. § 4712] . . . may not be waived by any agreement, policy, form or condition of employment."<sup>1</sup>

Given IRD's persistent resistance to notifying its former employees of their rights as potential whistleblowers, I request that IRD send a letter to the 48 former employees it compelled to sign separation agreements with gag provisions and inform them of their rights under the False Claims

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<sup>1</sup> 41 U.S.C. § 4712.

Act and 41 U.S.C. § 4712. I also request that IRD include appropriate language related to 41 U.S.C. § 4712 in all of its future separation agreements. Such language should include an unambiguous statement that no provision of the separation agreement will be construed as a waiver of their rights under 41 U.S.C. § 4712 or any other law protecting whistleblowers. Please provide a copy of your newly revised standard separation agreement once these changes have been made.

In addition to expanding federal whistleblower protections, 41 U.S.C. § 4712 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. In response to SIGAR's inquiry into IRD, USAID has stated that all recipients of USAID awards are required to inform their employees of federal whistleblower protections.<sup>2</sup> In light of IRD's history of providing inaccurate and limited information to its employees concerning their rights as potential whistleblowers, I request that IRD provide evidence that it has notified its current employees of their rights under 41 U.S.C. § 4712 and provided them with a list of all the government offices authorized to receive protected disclosures of information.

Finally, IRD mentioned in its May 15, 2014 letter to SIGAR that it is "commencing a review to update its Code of Business Ethics and Conduct as a part of this exercise."<sup>3</sup> SIGAR welcomes this review and recommends that IRD update its training materials and employee manuals to fully reflect the protections afforded by the False Claims Act and 41 U.S.C. § 4712. SIGAR expects that these materials will comply with the requirements articulated recently by USAID's procurement executive. Please provide copies of IRD's revised code of business ethics and conduct. Please also provide the results of IRD's "review," including any determination related to IRD's compliance or noncompliance with whistleblower laws and any information concerning IRD's efforts to enforce the "confidentiality provisions" of its separation agreements.

Please provide the requested information within 14 days of the date of this letter to John G. Arlington, General Counsel, at [REDACTED] or [REDACTED]. Please do not hesitate to contact him should you have any questions.

Sincerely,



John F. Sopko  
Special Inspector General  
for Afghanistan Reconstruction

cc:

Eric A. Dubelier  
Reed Smith LLP  
1301 K Street, N.W.  
Suite 1100 - East Tower  
Washington, D.C. 20005

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<sup>2</sup> USAID Procurement Executive's Bulletin No. 2014-02, Pilot Program for Enhancement of Employee Whistleblower Protections (May 9, 2014).

<sup>3</sup> Letter of Jason Matechak, IRD Senior Vice President & General Counsel, to Jack Mitchell, SIGAR Director of the Office of Special Projects (May 15, 2014).

Eric A. Dubelier

Direct Phone: +1 [REDACTED]

Email: [REDACTED]

## CONFIDENTIAL RESPONSE TO SIGAR REQUEST – EXEMPT FROM FOIA DISCLOSURE

June 3, 2014

### Via UPS and Electronic Mail

John F. Sopko  
Special Inspector General  
SIGAR  
1550 Crystal Drive  
9th Floor  
Arlington, Virginia 22202

John Arlington  
General Counsel  
SIGAR  
1550 Crystal Drive  
9th Floor  
Arlington, Virginia 22202

### International Relief & Development

Dear Mr. Sopko and Mr. Arlington:

As I advised your office by electronic mail on June 2, 2014, this firm represents International Relief & Development (“IRD”) in connection with responding to correspondence from your office dated May 20, 2014. Enclosed is a disk containing the documents responsive to your requests. These documents have been labeled IRD\_000001 – IRD\_000402.

As this letter and the enclosed documents are being provided in response to your letter request, our expectation is that this letter and the contents of the enclosed disk will not be publicly disclosed. See Council of the Inspectors General on Integrity and Efficiency, Quality Standards for Investigations at 8 (Nov. 15, 2011); Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority at 4, 10; United States Attorneys’ Manual §§ 1-7.530, 1-7.600. Furthermore, please note that the enclosed documents contain information that is identifiable to a specific individual and contained in personnel files of the relevant individuals. As such, these documents are exempt from disclosure under FOIA. See 5 U.S.C. §552(a); 77 Fed. Reg. 38363; 5 U.S.C. § 552(b)(6). The documents have been labeled as “Confidential, Proprietary, Containing Personal Identifying Information – FOIA Exempt.”

Please note that the May 19, 2014 letter from Jason Matechak, Senior Vice President and General Counsel of IRD, referred to 83 separation agreements between IRD and former employees since

John Arlington  
John F. Sopko  
June 3, 2014  
Page 2

2004; 49 of which contain confidentiality provisions about which you have expressed an objection. These figures were based on preliminary information and were not precise. Our review has determined that there were 81 separation agreements entered into since 2004, 48 of which contained such confidentiality provisions.

In response to Request 1 in your letter, we are producing the 81 separation agreements between IRD and former employees since 2004. Please note approximately 90% of these former employees did not work on Afghanistan projects.

In response to Request 2, we are producing contact information that is currently available to IRD for each of the 48 former employees who entered into separation agreements that contained confidentiality provisions about which you have expressed an objection. Please note that in two of these agreements both parties agreed not to disclose the existence of the agreement or any of its terms to anyone other than his immediate family members, attorneys, accountants, financial advisors, local or federal tax authorities or as required by law. We believe that this response to your letter request is required by law and IRD is disclosing the existence and content of the agreements to SIGAR based on that belief. These two agreements are labeled IRD\_000103 and IRD\_000126.

With respect to Request 3, we are producing copies of email correspondence sent on May 19, 2014 to the 48 former employees listed in response to Request 2 regarding the confidentiality provisions in their separation agreements. Please note that of the emails that were sent, five emails were returned as undeliverable. For three of these five former employees, IRD located current email addresses and resent the email. For the other two former employees, IRD does not have an active email address. Finally, there were another three emails which were not returned as undeliverable, but which IRD determined that there was a typo in the address in the original email. For each of these, on June 2, 2014, IRD sent an email to the correct address. Additionally, in preparation for this production, we realized that the email was not sent on May 19<sup>th</sup> to one individual, and that email was sent today. Copies of all of these messages are included in this production. To the extent that you have objections to the substance of these emails, we are willing to discuss sending a supplemental email to these former employees. We are happy to discuss that issue with you by telephone.

In response to Request 4, we are producing a list of all of the IRD projects on which the former employees who signed separation agreements that included confidentiality provisions were involved. This list was compiled based on project billing information and includes any project to which these employees billed any amount of time. Please note that there are 21 former employees on this list. That is because the remaining employees worked on indirect operational functions and their time was not billed to specific projects. These individuals may have worked on multiple projects throughout their employment, but their time was billed as overhead.

CONFIDENTIAL RESPONSE TO SIGAR REQUEST –  
EXEMPT FROM FOIA DISCLOSURE

John Arlington  
John F. Sopko  
June 3, 2014  
Page 3

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With respect to Request 5, we are not aware at this time of IRD attempting to enforce the confidentiality provisions about which you have expressed an objection. If you are aware of any such case, please let us know and we will investigate that issue.

Please do not hesitate to contact me if you have any questions regarding the enclosed response to your request.

Very truly yours,

A handwritten signature in blue ink, appearing to read "E. Dubelief", with a long horizontal flourish extending to the right.

Eric A. Dubelief

Enclosure