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United States Government Accountability Office
Washington, DC 20548

B-317252

January 30, 2009

The Honorable Debbie Wasserman Schultz
Chair
Subcommittee on Legislative Branch Appropriations
Committee on Appropriations
House of Representatives

The Honorable Robert B. Aderholt
Ranking Minority Member
Subcommittee on Legislative Branch Appropriations
Committee on Appropriations
House of Representatives

Subject: *United States Capitol Police—Deployment of Personnel*

In a letter dated September 23, 2008, the Subcommittee requested our opinion on whether the United States Capitol Police (USCP) complied with the applicable statute, 2 U.S.C. § 1978, when it deployed personnel to Texas following Hurricane Ike. Letter from Debbie Wasserman Schultz, Chair, and Tom Latham, Former Ranking Member, House Committee on Appropriations, Subcommittee on Legislative Branch, to Gene Dodaro, Acting Comptroller General, GAO, Sept. 23, 2008. The Subcommittee also asked that we review USCP deployments conducted since 2005 and determine whether those deployments complied with the statute. *Id.*

The deployment, which began on September 14, 2008, occurred without USCP providing prior notification to the Committees on Appropriations as generally required under 2 U.S.C. § 1978. *Id.* We conclude that because the deployment was conducted for the purpose of responding to an emergency, which is one of the exceptions to the notification provisions, USCP was not required under the statute to provide prior notification to the Committees. With regard to the second question, USCP does not keep records of deployments for which it deems notification not required, and thus we were unable to conduct a general review of these deployments for compliance with the statute.

Our practice when issuing opinions is to obtain the views of the relevant agency to establish a factual record and to establish the agency's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and*

Opinions, GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at* www.gao.gov/legal/resources.html. In this regard, USCP provided its legal views and relevant factual material. Letter from Gretchen E. DeMar, General Counsel, USCP, to Susan A. Poling, Managing Associate General Counsel, GAO, Dec. 12, 2008 (DeMar Letter). We also spoke with USCP officials about the issues raised. In response to our request, the Office of the Chief Administrative Officer (CAO) of the House of Representatives also provided its views regarding the circumstances surrounding the deployment. Letter from Timothy P. Blodgett, Administrative Counsel, Office of the Chief Administrative Officer, to Susan A. Poling, Managing Associate General Counsel, GAO, *Re: B-317252*, Dec. 5, 2008 (Blodgett Letter).

BACKGROUND

On September 10, 2008, the Governor of Texas declared an emergency in anticipation of Hurricane Ike making landfall near Galveston and moving inland toward Houston. DeMar Letter, at 2. On the same day, President Bush declared an emergency to allow federal assistance to the state. In preparation for the hurricane, the CAO Business Continuity and Disaster Recovery team began monitoring 13 congressional districts in order to adequately assess district office functionality after the hurricane's landfall. Blodgett Letter, at 1. The Office of the CAO states that it was working in conjunction with the General Services Administration to keep the impacted offices functioning. *Id.* On September 11, Galveston and low lying areas of Houston were ordered evacuated. *Id.* Hurricane Ike came ashore as a category 2 hurricane in the Galveston area on or about September 12, causing considerable damage to the Southeast Texas area. *Id.*

Late on Friday, September 12, the U.S. House of Representatives Sergeant-at-Arms contacted the Assistant Chief of Police, USCP, at his home to inform the Assistant Chief that Congressman Nick Lampson had requested that the Office of the CAO deploy its Disaster Recovery Team and mobile communications vehicles to support the congressional district office in assisting constituents in Houston during the emergency.¹ DeMar Letter, at 2--3. These vehicles were to be used to provide telephone and electric connectivity to the district offices impacted by the hurricane so that those offices could conduct business. Blodgett Letter, at 3. The Sergeant-at-Arms requested that USCP provide liaison support with local law enforcement organizations and protection and security for congressional personnel and equipment. DeMar Letter, at 3.

¹ After the September 11 terrorist attacks, the U.S. House of Representatives and the U.S. Senate purchased emergency communications and support vehicles to enable Congress to continue its legislative functions should relocation from Capitol buildings and grounds be necessary. DeMar Letter, at 2. According to USCP, the Capitol Police Board had also directed, on a case-by-case basis, that USCP provide liaison support, protection, and security during an escort of such vehicles in the event that relocation is necessary. *Id.*

Subsequently, the Assistant Chief spoke to a member of the CAO staff who indicated that the CAO personnel would like to depart on Sunday, September 14. *Id.* The Assistant Chief then directed the USCP Dignitary Protection Division to assign two agents to provide escort liaison, protection, and security services. *Id.*

The communications vehicles and USCP escort departed Washington, D.C. on September 14. Upon arrival in Houston, the agents established a liaison with the Houston Police Department and worked with U.S. Air Force security police at Ellington Air Force Base, which was to be used to set up temporary office space for impacted congressional districts. *Id.* at 3–4. The agents returned to Washington with the U.S. House of Representatives vehicles and personnel on Tuesday, September 23.

ANALYSIS

Hurricane Ike Deployment

The first question presented is whether the USCP complied with 2 U.S.C. § 1978 when it deployed personnel to Texas following Hurricane Ike. Generally, the authority of the USCP to make arrests and otherwise enforce the laws is limited to the Capitol buildings and grounds as well as the surrounding area. 2 U.S.C. § 1967. At issue here is 2 U.S.C. § 1978, which provides that—

“[t]he Chief of the Capitol Police may not deploy any officer outside of the areas established by law for the jurisdiction of the Capitol Police unless—

- (1) the Chief provides prior notification to the Committees on Appropriations of the House of Representatives and Senate of the costs anticipated to be incurred with respect to the deployment; and
- (2) the Capitol Police Board gives prior approval to the deployment.”

2 U.S.C. § 1978(a).

Subsection (b) of section 1978 provides, however, that these requirements for notification and prior approval do not apply to deployments for—

“any of the following purposes:

- (1) Responding to an imminent threat or emergency.
- (2) Intelligence gathering.

(3) Providing protective services.”

2 U.S.C. § 1978(b).

USCP did not notify the Committees of the deployment or its anticipated cost prior to the Texas deployment. On September 13, 2008, however, the day before the deployment, the Office of the Sergeant-at-Arms sent an e-mail to the Committee on Appropriations for the House of Representatives and the Committee on House Administration, advising the Committees of the planned deployment. This e-mail did not include a cost estimate. Because USCP did not provide the prior notification, the issue for our consideration is whether the deployment falls within one of the subsection (b) exceptions. USCP states that it believes that the circumstances constituted an emergency under the statute and, therefore, USCP was not required to provide prior notification of anticipated costs.

USCP states specifically that the “deployment was in response to an emergency declared by the President and the Governor of Texas in anticipation of the landfall of Hurricane Ike in the Galveston area and its projected path toward Houston.” DeMar Letter, at 4. USCP notes that at the time of the deployment, the state of civil order and law enforcement services in the affected area was unknown. *Id.* at 3. What was known was that “a number of Member offices had been rendered uninhabitable by Hurricane Ike.” *Id.* The purpose of the deployment was to respond “to the emergency conditions that existed . . . in the aftermath of Hurricane Ike.” *Id.* at 2. USCP acknowledges that the phrase “responding to an imminent threat or emergency” is not defined, and notes that determining what constitutes an emergency depends upon “the facts of the particular event.” *Id.* at 5. USCP points out further that, in assessing its potential response to an emergency situation, USCP considers whether there is a direct nexus to its primary mission. It states that circumstances covered by the exception would likely include those requiring an “immediate response to an unknown or known highly volatile circumstance.” *Id.* USCP concludes that the deployment at issue was covered by the emergency exception.

Based on our understanding of the circumstances and the language of the statute, “responding to an imminent threat or emergency,” we find USCP’s conclusion that it was not required to notify the Appropriations Committees of the anticipated costs to be a reasonable one. The clear purpose of the deployment was to respond to the declared emergency² by protecting critical assets and personnel that were needed to restore the operations of congressional offices. The record shows that USCP’s actions were taken in response to a specific and time-sensitive request by a member of the Capitol Police Board in support of the Office of the CAO’s efforts to provide electricity, telephone services, and network connectivity requested by a Member of Congress whose local office had been rendered useless by the hurricane. According to USCP, Congressman Lampson was on site, assisting his constituents, throughout

² The Subcommittee also asked whether an “emergency” declared by the CAO is a covered exception under the statute. In response to our request, CAO stated that, in fact, the CAO did not declare an emergency. Blodgett Letter, at 3.

the time that the agents were deployed to Texas.³ Moreover, staff in some areas were banned from even going to their work site to determine if the office was functional. Blodgett Letter, at 3. In addition to providing security and protection, USCP agents were needed to interact with other law enforcement officials who themselves were operating in a disaster area under extremely difficult circumstances.

As USCP points out, the statute does not contain a definition of the phrase “responding to an imminent threat or emergency,” and USCP has not attempted to define the phrase in implementing guidance or instructions. The legislative history does not explain what Congress intended regarding what constitutes an emergency. For example, should this exception be interpreted as limited to deployments in which immediate action is necessary to prevent the loss of life or property, or are deployments to provide assistance in the aftermath of an event also covered as a response to an emergency? We generally will not object to an agency’s reasonable interpretation of a statute it is charged with administering. *See* 71 Comp. Gen 310 (1992). Under these circumstances, we have no basis to object to USCP’s view that the deployment was conducted for the purpose of “responding to an emergency” under 2 U.S.C. § 1978, and thus the requirement for prior notification did not apply to this deployment.

Nevertheless, we think that USCP, in the future, should advise the Committees of the costs of emergency deployments as soon as practicable. Congress, in section 1978, has made clear its interest in having information on the costs of deployments, but also made clear that the delivery of information should not interfere with an effective response to an emergency. USCP might accommodate both interests by providing the information as early as practicable, even if that is after the fact.

USCP Deployments Since 2005

The Subcommittee also asked GAO to review USCP deployments conducted since 2005 to determine whether those deployments complied with the notice requirement of the statute. As part of developing the record in this matter, we asked USCP to identify all deployments conducted since 2005 and, for each deployment, provide a copy of the notice provided to the relevant Committees. Letter from Susan A. Poling, Associate General Counsel, GAO, to Gretchen DeMar, General Counsel, USCP, Nov. 12, 2008, at 2. We requested further that, if prior notice was not given, USCP identify the authority for the deployment and the circumstances supporting it. *Id.*

In response to our request, USCP provided copies of notification letters for 17 deployments conducted since 2005. We have enclosed a list identifying those deployments. These include a deployment to Mississippi after Hurricane Katrina, deployment of officers to assist the United States Park Police on the National Mall to supplement the D.C. summer crime emergency declared by the Metropolitan Police, and deployment of officers to execute an arrest warrant outside the U.S. Capitol

³ USCP is authorized “to protect, in any area of the United States, the person of any member of Congress.” 2 U.S.C. § 1966.

grounds but within the District of Columbia for fraud related to Wright Patman Congressional Federal Credit Union. DeMar Letter, at Attachments B, K, and M. Most of the documented examples are deployments for ceremonial reasons, for example, funerals, Police Week activities, or prayer breakfasts and conferences.

However, USCP acknowledges that there are other activities or deployments for which it believes notice was not required. USCP told us that it does not maintain a record for these activities or deployments and could not provide any information about the deployment or activity, including its purpose, date, or cost. These activities appear to fall into two categories: deployments covered by an exception under the statute, and activities conducted “off of Capitol Hill” but that should not be understood to constitute a “deployment” triggering the approval and notification requirements under the statute. *See* DeMar Letter, Attachment A, Memorandum from Chief Terrance W. Gainer to the Capitol Police Board, Sept. 20, 2005 (2005 Memorandum). The first category includes, for example, deployments to respond to emergencies, as well as deployments to provide protective services to Members outside of the Capitol and surrounding area. USCP advises us that it is common for officers to assist other local law enforcement entities in emergency situations, and notification is not required under the statute. Because prior approval and notification is not required for these deployments and there are no other requirements to document such activities, USCP states that it does not maintain records of these deployments.

The other category consists of activities that USCP does not believe are encompassed by the term “deployment,” and thus prior notification would not be required for these activities. In the 2005 memorandum, USCP attempted to address the scope of the term “deployment” by identifying specific activities that it believed should not be considered a deployment for purposes of the statute. It appears, however, that the memorandum was not fully adopted or implemented, and there currently is not a common understanding of the scope of this term as used in 2 U.S.C. § 1978. With the memorandum, USCP sought written approval from the Capitol Police Board to allow officers “to conduct USCP business off Capitol grounds” for a wide range of activities without obtaining prior approval from the Board or providing prior notification to the Committees. The activities listed include “training and conferences,” funerals of USCP employees or former employees or “line of duty deaths for law enforcement or fire personnel” in the immediate Washington metropolitan area, Police Memorial Week activities, participation in Inaugural, State of the Union, and national security event planning and operations that affect Congress, and “competitions and judging of competitions that validate USCP training and special operations.” *Id.* The memorandum listed other activities that USCP considers deployments and thus, for these activities, prior notice is to be provided. These included “[l]aw [e]nforcement assistance to other agencies wherein our police powers are exercised,” participation in funerals for non-USCP individuals, and competitions or judging of competitions “that are not related to validating [USCP] programs.” *Id.* USCP states that this memorandum was approved by the Capitol Police Board, but not by the Committees. DeMar Letter, at 5.

USCP characterizes this memorandum as seeking to establish a “formalized process for deployment approval and notification.” DeMar Letter, at 5. When this process did not receive the approval of the Committees, however, it appears that USCP decided not to follow the terms of the memorandum, but instead chose to provide notification when USCP was “requested to be off Capitol grounds to perform functions that do not have a direct nexus to the mission of the Department.” *Id.* at 5–6. It is unclear, on this record, whether or how this “direct nexus” criterion relates to the categories of activities outlined in the memorandum. Further complicating matters, USCP states that in “the last few years, the Committees have verbally communicated to the USCP that local funeral attendance by the Ceremonial Unit, agency training, or participation in local events related to Police Week generally do not require formal notification to the Committees.” DeMar Letter, at 6. Again, it is unclear how these categories of activities relate to those in the memorandum or whether this informal agreement essentially supersedes the memorandum. Regardless, without records of the various activities or deployments undertaken, we cannot assess whether USCP should have given prior notice to the Appropriations Committees or whether the activities or deployments are within the scope of 2 U.S.C. § 1978(a) or whether they properly fall under the exceptions in 2 U.S.C. § 1978(b).

CONCLUSION

The USCP deployment to Texas in September 2008 was covered by the emergency exception to the general statutory requirement to provide notification of anticipated costs prior to a deployment outside of the areas established by law for the jurisdiction of the Capitol Police. There appears to be some uncertainty, however, of USCP’s interpretation of section 1978. We recommend, therefore, that USCP establish and consistently implement a written policy on what constitutes “a deployment outside of the areas established by law for the jurisdiction of the Capitol Police” and what constitutes an emergency under the statute. USCP should, in the future, also provide the Committees cost information on emergency deployments as early as practicable, even if it is after the deployment. Finally, we recommend that USCP advise the Committees of its interpretation of the statute and ask the Committees what additional information the Committees might require from USCP for oversight purposes.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gary L. Keplinger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary L. Keplinger
General Counsel

Enclosure

ENCLOSURE

**United States Capitol Police
Deployment Notifications since 2005**

Event Date	Cost	Purpose
September 9, 2005	\$296,000	Assist in the response and recovery from Hurricane Katrina
May 13, 2006	\$4,800	Funeral of Fairfax County Police Detective Vicky Armel
May 13--16, 2006	\$9,000	Police Week Activities
May 20, 2006	\$4,800	Funeral of Fairfax County Master Patrol Officer Michael Garbarino
May 26, 2006	*	Funeral of Baltimore City Officer Anthony Byrd
June 7, 2006	*	Make-a-Wish Foundation
June 8, 2006	*	National Hispanic Prayer Breakfast and Conference
July 21, 2006	\$12,000	Violent Crime Task Force
July 27--September 30, 2006	\$80,000	Assist United States Park Police on the National Mall during Summer Crime Emergency
November 13, 2006	*	U.S. Attorney's Office Awards Ceremony
April 3, 2007	**	Execute Arrest Warrant
May 8, 2007	*	Police Week Activities
June 15, 2007	*	Presentation of Colors at 2007 National Hispanic Prayer Breakfast
June 22, 2007	*	Funeral of Howard County Police Officer Scott Wheeler
July 12, 2007	\$225	The Humane Society of Charles County Careers with Animals
October, 15, 2008	*	National Law Enforcement Officer's Memorial Fund's 17 th Annual Wreath Laying Ceremony
November 13, 2008	*	U. S. Attorney's Office Awards Ceremony

* The notification letters stated that no additional duty was required during this event

** The notification letter did not include cost information