



U.S. Department of Justice

Office of the Inspector General

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February 3, 2015

The Honorable Harold Rogers  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
H-305, The Capitol  
Washington D.C. 20515

The Honorable Nita Lowey  
Ranking Member  
Committee on Appropriations  
U.S. House of Representatives  
1016 Longworth House Office Building  
Washington D.C. 20515

The Honorable Thad Cochran  
Chairman  
Committee on Appropriations  
United States Senate  
S128, The Capitol  
Washington D.C. 20510

The Honorable Barbara Mikulski  
Vice Chairwoman  
Committee on Appropriations  
United States Senate  
142 Dirksen Senate Office Building  
Washington D.C. 20510

Dear Chairmen, Vice Chairwoman, and Ranking Member:

This letter is to report to the Committees on Appropriations, as required by Section 218 of the Department of Justice Appropriations Act, 2015, Pub. L. No. 113-235, § 218, 128 Stat. 2130, 2200 (2014), that the Federal Bureau of Investigation (FBI) has failed, for reasons unrelated to any express limitation in Section 6(a) of the Inspector General Act (IG Act) to provide the Department of Justice Office of the Inspector General (OIG) with timely access to certain records. The OIG requested these records in connection with two investigations being conducted by the OIG under the Department's Whistleblower Protection Regulations for FBI Employees, 28 C.F.R. pt. 27.

As you are aware, Section 218 provides:

No funds provided in this Act shall be used to deny the Inspector General of the Department of Justice timely access to all records, documents, and other materials in the custody of the Department or to prevent or impede the Inspector General's access to such records, documents and other materials, unless in accordance with an express limitation of section 6(a) of the Inspector General Act, as amended, consistent with the plain language of the Inspector General Act, as amended. The Inspector General of the Department of Justice shall report to the Committees on Appropriations within five calendar days of any failures to comply with this requirement.

*Id.*

The unfulfilled document requests that cause the OIG to make this report were sent to the FBI on September 26, 2014, and October 29, 2014, respectively. Since that time, the FBI has made partial productions in both matters, and there have been multiple discussions between the OIG and the FBI about these requests, resulting in the OIG setting a final deadline for production of all material of February 2, 2015.

On February 2, 2015, the FBI informed the OIG that it would not be able to produce the remaining records by the deadline and that it would need until later this week in one of the whistleblower investigations to do so, and sometime later next week in the second whistleblower investigation to do so. The primary reason for the FBI's inability to meet the deadline set by the OIG for production is the FBI's desire to continue its review of e-mails requested by the OIG to determine whether they contain any information which the FBI maintains the OIG is not legally entitled to access, such as grand jury, Title III electronic surveillance, and Fair Credit Reporting Act information. The FBI further informed the OIG that, for any such information it identified, it would need the authorization of the Attorney General or Deputy Attorney General in order to produce the information to the OIG. However, Section 6(a) of the IG Act does not contain an express limitation of the OIG's access to these categories of information. Moreover, even if the Department's leadership were to give such authorization, which it has indicated it would do, a process allowing the OIG access to records of the Department only when granted permission by the Department's leadership is inconsistent with the OIG's independence, as reflected in Section 6(a) of the IG Act and Section 218 of the Appropriations Act.

Section 218 of the Appropriations Act does not permit the use of funds appropriated to the Department of Justice to deny the OIG access to records in the custody of the Department unless in accordance with an express limitation of Section 6(a) of the IG Act. The IG Act, Section 6(a), does not expressly or otherwise limit the OIG's access to the categories of information the FBI maintains it must review before providing records to the OIG. For this reason, we are reporting this matter to the Appropriations Committees in conformity with Section 218.

We will continue to work to resolve this matter, and will keep the Committees apprised of our progress. If you have any questions, please feel free to contact me or Chief of Staff Jay Lerner at (202) 514-3435.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael E. Horowitz".

Michael E. Horowitz  
Inspector General

cc: The Honorable Jason Chaffetz  
Chairman, Committee on Oversight and  
Government Reform  
U.S. House of Representatives

The Honorable Elijah Cummings  
Ranking Member, Committee on Oversight and  
Government Reform  
U.S. House of Representatives

The Honorable Ron Johnson  
Chairman, Committee on Homeland Security and  
Governmental Affairs  
United States Senate

The Honorable Thomas Carper  
Ranking Member, Committee on Homeland Security and  
Governmental Affairs  
United States Senate

The Honorable Bob Goodlatte  
Chairman, Committee on the Judiciary  
U.S. House of Representatives

The Honorable John Conyers, Jr.  
Ranking Member, Committee on the Judiciary  
U.S. House of Representatives

The Honorable Charles Grassley  
Chairman, Committee on the Judiciary  
United States Senate

The Honorable Patrick Leahy  
Ranking Member, Committee on the Judiciary  
United States Senate

The Honorable John Culberson  
Chairman, Subcommittee on Commerce, Justice, Science and  
Related Agencies  
Committee on Appropriations  
U.S. House of Representatives

The Honorable Chaka Fattah  
Ranking Member, Subcommittee on Commerce, Justice, Science  
and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives

The Honorable Richard Shelby  
Chairman, Subcommittee on Commerce, Justice, Science,  
and Related Agencies  
Committee on Appropriations  
United States Senate