



U.S. Department of Justice

Office of the Inspector General

February 25, 2015

The Honorable Hal Rogers
Chairman
Committee on Appropriations
U.S. House of Representatives
Rayburn House Office Building
Washington D.C. 20515

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

The Honorable Thad Cochran
Chairman
Committee on Appropriations
United States Senate
Hart Senate Office Building
Washington D.C. 20510

The Honorable Barbara Mikulski
Vice Chairwoman
Committee on Appropriations
United States Senate
Hart 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 its pending review of the FBI's use of information derived from the National Security Agency's collection of telephony metadata obtained from certain telecommunications service providers under Section 215 of the Patriot Act. The timeliness of production is particularly important given that Section 215 of the Patriot Act is set to expire in June of this year.

As you are aware, Section 218 of the Appropriations Act 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 request that causes the OIG to make this report was sent to the FBI on October 10, 2014. Since that time, the FBI has made partial productions in this matter, and there have been multiple discussions between the OIG and the FBI about this request, resulting in the OIG setting a deadline for production of all material of January 23, 2015.

On January 27, 2015, the FBI informed the OIG that it would need an extension of time for completing production, but was unable to provide an estimate of how much additional time was needed. More recently, the FBI informed the OIG that it will take several additional weeks to complete production of a portion of the outstanding material and potentially longer to complete the balance. One of the reasons 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 that 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. It has been the FBI's position in other cases 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, a process allowing the OIG access to records of the Department only when granted permission by the Department's leadership is inconsistent with Section 6(a) of the IG Act, OIG independence, 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 of the Appropriations Act.

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,



Michael E. Horowitz
Inspector General

cc: The Honorable John Culberson
Chairman, Subcommittee on Commerce, Justice, Science, and
Related Agencies
Committee on Appropriations
United States House of Representatives

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

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

The Honorable Jason Chaffetz
Chairman, Committee on Oversight and
Government Reform
United States House of Representatives

The Honorable Elijah Cummings
Ranking Member, Committee on Oversight and
Government Reform
United States 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
United States House of Representatives

The Honorable John Conyers, Jr.
Ranking Member, Committee on the Judiciary
United States 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