



# OFFICE OF THE INSPECTOR GENERAL

## U.S. Department of Justice

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### **DOJ OIG Releases Report on the Accuracy of FBI Statements Concerning its Capability to Access Data on an iPhone Seized During the San Bernardino Terror Attack Investigation**

Department of Justice (DOJ) Inspector General Michael E. Horowitz announced today the release of an 11-page report regarding an inquiry into whether officials of the Federal Bureau of Investigation (FBI) made inaccurate statements to Congress or caused inaccurate statements to be filed in court regarding the FBI's capabilities to access data on an iPhone seized during the investigation of the December 2, 2015, San Bernardino, California terror attack. The DOJ Office of the Inspector General (OIG) conducted the inquiry after a senior FBI official expressed concerns that (1) a unit within the FBI's Operational Technology Division (OTD) may have had techniques available to access the iPhone that it did not employ, and (2) the unit was indifferent to the fact that FBI leadership and others were testifying to Congress, and filing affidavits in court, that the FBI had no such capability.

As described in today's report, the OIG found no evidence that the FBI had the capability to access data on the iPhone at the time of former FBI Director James Comey's February and March 2016 congressional testimony or the February 16, 2016, initial court filing requesting involuntary assistance from Apple, Inc. to access the phone. Therefore, we determined that the testimony and initial court filing were not inaccurate when made.

However, we also concluded that, within the FBI, there were misunderstandings and incorrect assumptions that people and units in OTD were effectively communicating and coordinating from the outset to achieve a technical solution to access the iPhone data, and that all possible technical solutions had been researched prior to the testimony and court filing. Specifically:

- The OIG identified information indicating that the Chief of the Remote Operations Unit (ROU), one of the key units responsible for exploiting mobile devices for OTD, was not tasked to assist with the iPhone before then-Director Comey's testimony in February 2016. The ROU is the unit that ultimately obtained a solution for accessing the iPhone from the outside party. We received conflicting testimony regarding whether ROU was part of the early efforts to find a solution to access the iPhone data, and we learned that, unbeknownst to anyone in the FBI, the ROU Chief had only just begun the process of looking for a possible solution to the problem on the eve of the application for a court order being filed — a filing predicated in part on the notion that technical assistance from Apple was necessary to search the contents of the device.

- The OIG received varying testimony from OTD managers on key issues, including, among other issues, whether collaboration between OTD units was encouraged or discouraged, and whether vendors should be part of any outreach effort. The OTD managers' testimony suggested that they were not on the same page regarding the search for a technical solution to access the iPhone data. We believe this disconnect within OTD resulted in a delay in seeking and obtaining assistance from the ROU Chief and the outside party that ultimately proved fruitful. As a result of the belatedly-obtained technical solution, the government was required to withdraw its court filing stating that it could not access the iPhone in this critical case, and by implication in other cases, without first compelling cooperation from the manufacturer.

The FBI has reported to the OIG that it is in the process of reorganizing the units within OTD to consolidate resources and improve coordination between the units that work on computer and mobile devices. Today's report recommends that the FBI finalize the reorganization and take any other actions necessary to ensure the full coordination that the FBI's investigations demand.

**Report:** Today's report can be found on the OIG's website under "Recent Reports" at the following link: <https://oig.justice.gov/reports/2018/o1803.pdf>.

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