



U.S. Department of Justice Office of the Inspector General

Report to Congress on Implementation of Section 1001 of the USA PATRIOT Act

(as required by Section 1001(3) of Public Law 107-56)

April 2013

Section 1001 of the USA PATRIOT Act (Patriot Act), Public Law 107-56, directs the Office of the Inspector General (OIG) of the U.S. Department of Justice (DOJ or Department) to undertake a series of actions related to claims of civil rights or civil liberties violations allegedly committed by DOJ employees. It also requires the OIG to provide semiannual reports to Congress on the implementation of the OIG's responsibilities under Section 1001. This report, the 22nd since enactment of the legislation in October 2001, summarizes the OIG's Section 1001-related activities from July 1, 2012, through December 31, 2012.

I. INTRODUCTION

The OIG is an independent entity within the DOJ that reports to both the Attorney General and Congress. The OIG's mission is to investigate allegations of waste, fraud, and abuse in DOJ programs and personnel and to promote economy and efficiency in DOJ operations.

The OIG has jurisdiction to review programs and personnel in all DOJ components, including the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Federal Bureau of Prisons (BOP), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the U.S. Marshals Service (USMS), and the U.S. Attorneys' Offices.¹

The OIG consists of the Immediate Office of the Inspector General and the following divisions and offices:

- **Audit Division** conducts independent audits of Department programs, computer systems, and financial statements.
- **Evaluation and Inspections Division** conducts program and management reviews that involve on-site inspection, statistical analysis, and other techniques to review Department programs and activities and make recommendations for improvement.
- **Investigations Division** investigates allegations of bribery, fraud, abuse, civil rights violations, and violations of other criminal laws and

¹ The OIG has authority to investigate allegations of criminal wrongdoing or administrative misconduct by any Department employee, except for "allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice." 5 U.S.C. App. 3 § 8E(b)(2)-(3).

administrative procedures that govern Department employees, contractors, and grantees.

- **Oversight and Review Division** blends the skills of attorneys, investigators, and program analysts to investigate or review high profile or sensitive matters involving Department programs or employees.
- **Management and Planning Division** provides planning, budget, finance, personnel, training, procurement, automated data processing, computer network communications, and general support services for the OIG.
- **Office of General Counsel** provides legal advice to OIG management and staff. In addition, the office drafts memoranda on issues of law; prepares administrative subpoenas; represents the OIG in personnel, contractual, and legal matters; and responds to Freedom of Information Act requests.

The OIG has a staff of approximately 440 employees, about half of whom are based in Washington, D.C., while the rest work from 16 Investigations Division field and area offices and 6 Audit Division regional offices located throughout the country.

II. SECTION 1001 OF THE PATRIOT ACT

Section 1001 of the Patriot Act provides the following:

The Inspector General of the Department of Justice shall designate one official who shall —

- (1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice;
- (2) make public through the Internet, radio, television, and newspaper advertisements information on the responsibilities and functions of, and how to contact, the official; and
- (3) submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on a semi-annual basis a report on the implementation of this subsection and detailing any abuses described in paragraph (1), including a description

of the use of funds appropriations used to carry out this subsection.

III. CIVIL RIGHTS AND CIVIL LIBERTIES COMPLAINTS

Section 1001 requires the OIG to “review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice.”

The OIG’s Investigations Division manages the OIG’s Section 1001 investigative responsibilities. The two units with primary responsibility for coordinating these activities are Operations Branch I and Operations Branch II, each of which is directed by a Special Agent in Charge and two Assistant Special Agents in Charge (ASAC).² In addition, these units are supported by Investigative Specialists and other staff assigned to the Investigative Support Branch, who divide their time between Section 1001 and other responsibilities.

The Investigations Division receives civil rights and civil liberties complaints via mail, e-mail, telephone, and facsimile. Upon receipt, Division ASACs review the complaints and assign an initial disposition to each matter, and Investigative Specialists enter the complaints alleging a violation within the investigative jurisdiction of the OIG or another federal agency into an OIG database. Serious civil rights and civil liberties allegations relating to actions of DOJ employees or contractors are typically assigned to an OIG Investigations Division field office, where special agents conduct investigations of criminal violations and administrative misconduct.³ Occasionally, complaints are assigned to the OIG’s Oversight and Review Division for investigation.

Given the number of complaints OIG receives compared to its limited resources, the OIG does not investigate all allegations of misconduct against DOJ employees. The OIG refers many complaints involving DOJ employees to internal affairs offices in DOJ components such as the FBI Inspection Division, the DEA Office of Professional Responsibility, and the BOP Office of Internal Affairs. In certain referrals, the OIG requires the components to report the

² These units also coordinate the OIG’s review of allegations of misconduct by Department employees: the Operations Branch I has primary responsibility for matters involving the BOP, USMS, and the U.S. Attorney’s Offices; the Operations Branch II has primary responsibility for matters involving the FBI, DEA, and ATF.

³ The OIG can pursue an allegation either criminally or administratively. Many OIG investigations begin with allegations of criminal activity but, as is the case for any law enforcement agency, do not result in prosecution. When this occurs, the OIG may continue the investigation and treat the matter as a case for potential administrative discipline. The OIG’s ability to handle matters criminally or administratively helps to ensure that a matter can be pursued administratively even if a prosecutor declines to prosecute a matter.

results of their investigations to the OIG. In most cases, the OIG notifies the complainant of the referral.

Many complaints the OIG receives involve matters outside its jurisdiction, and when those matters identify a specific issue for investigation, the OIG forwards them to the appropriate investigative entity. For example, complaints of mistreatment by airport security staff or by the Border Patrol are sent to the Department of Homeland Security OIG. The DOJ OIG also has forwarded complaints to the Offices of Inspectors General at the Department of Defense, the Department of Veterans Affairs, and the Department of Labor. Allegations related to the authority of a DOJ attorney to litigate, investigate, or provide legal advice are referred to the DOJ Office of Professional Responsibility. Allegations related solely to state and local law enforcement or government officials that raise a federal civil rights concern are forwarded to the DOJ Civil Rights Division.

When an allegation received from any source involves a potential violation of federal civil rights statutes by a DOJ employee, the OIG discusses the complaint with the DOJ Civil Rights Division for possible prosecution. In some cases, the Civil Rights Division accepts the case and requests additional investigation by either the OIG or the FBI. In other cases, the Civil Rights Division declines prosecution and either the OIG or the appropriate DOJ internal affairs office reviews the case for possible administrative misconduct.

A. Complaints Processed During This Reporting Period

Between July 1, 2012 and December 31, 2012, the period covered by this report, the OIG processed **442** new civil rights or civil liberties complaints.⁴

Of these complaints, **399** did not fall within the OIG's jurisdiction or did not warrant further investigation. The vast majority (365) of these complaints involved allegations against agencies or entities outside the DOJ, including other federal agencies, local governments, or private businesses. When possible, the OIG referred those complaints to the appropriate entity or advised complainants of the entity with jurisdiction over their allegations. Some complaints (34) raised allegations that were not suitable for investigation by the OIG and could not be referred to another agency for investigation, generally because the complaints failed to identify a subject or agency.

The OIG found that the remaining **43** of the 442 complaints it received involved DOJ employees or DOJ components and included allegations that required further review. The OIG determined that **37** of these complaints

⁴ These complaints include all matters in which the complainant made any mention of a civil rights or civil liberties violation, even if the allegation was not within the OIG's jurisdiction.

raised management issues generally unrelated to the OIG’s Section 1001 duties and, consequently, referred these complaints to DOJ components for appropriate handling. Examples of complaints in this category included allegations by federal prisoners about the general prison conditions and by others that the FBI did not initiate an investigation into particular allegations.

The OIG identified a total of **6** complaints warranting further investigation to determine whether Section 1001-related abuses occurred. The OIG investigated **1** of the complaints and referred the other **5** complaints to the BOP for further investigation. The next section of this report describes the substance of these 6 complaints. Notably, none of the complaints processed during this reporting period specifically alleged misconduct by DOJ employees relating to the use of authorities contained in the Patriot Act.

The following is a synopsis of the new complaints processed during this reporting period involving DOJ employees or components, including allegations requiring further review:

Complaints processed	442
Complaints not within OIG’s jurisdiction or not warranting further review	399
Total complaints within OIG’s jurisdiction warranting review	43
Management issues referred to DOJ components for handling	37
Possible Section 1001 complaints warranting investigation by OIG	1
Possible Section 1001 complaints warranting investigation by DOJ components	5

B. Section 1001 Complaints

1. Investigations Opened During This Reporting Period

During this reporting period, the OIG opened one Section 1001-related investigation and referred **5** Section 1001-related complaints to the BOP for investigation, all of which remain pending. The OIG has requested that, upon completion of the investigation of each referred complaint, BOP provide the OIG a copy of its investigative report.

a. *OIG Investigation*

- A BOP inmate alleged that two correctional officers harassed inmates who were practicing religious observances during Ramadan. The inmate alleged that the correctional officers approached him and other Muslim inmates and threw their religious meals into the garbage while uttering racial slurs. The inmate alleged that one of the correctional officers has racist attitudes towards black and Muslim inmates and has openly expressed them.

b. *Continuing BOP Investigations*

- A BOP inmate alleged that the inmate's correctional institution discriminates against Muslim inmates. The inmate alleged that the institution does not employ a Muslim chaplain and has not attempted to find one; that Muslim inmates are prohibited from studying together, from studying outside of their assigned cells, and from praying at work; and that other religious groups are permitted to receive religious materials from volunteers and guests but Muslim inmates are not. The inmate further alleged that Muslims face a hostile environment at the institution and noted that other inmates have previously filed similar complaints alleging harassment, retaliation, and discrimination against the same institution.
- A BOP inmate alleged that a correctional officer was passing out Ramadan meals without bread. When several inmates asked the correctional officer to call food service for the bread, he responded by expressing unwillingness to accommodate the religious needs of the Muslim inmates. The inmate also alleged that the correctional officer refused to give him his mail.
- A BOP inmate alleged that a correctional officer exhibits a pattern of racist and discriminatory behavior toward him and other Muslim inmates by harassing them, "trashing" their cells, and repeatedly singling them out for cell searches, yet treats non-Muslim inmates with respect.
- Three BOP inmates alleged that two correctional officers acted unprofessionally while they were escorting the inmates from religious services to their housing units during Ramadan. Allegedly, one of the correctional officers made comments about killing Muslims when he was overseas, and the other correctional officer compared Muslims to dogs and stated that he hated dogs.

- A BOP inmate alleged that a correctional officer insulted him and his religion by making harsh and derogatory statements to him about his headdress, deliberately mispronouncing the name “Allah,” and boasting of military action taken by the United States in the Middle East.

2. Pending Investigations Opened During Previous Reporting Periods

a. Complaints Referred to BOP

The OIG referred the following five complaints to the BOP for investigation during a prior reporting period; the investigations remain open. The OIG has requested that BOP provide a copy of its investigative report upon completion of the investigation of each referred complaint.

- A BOP inmate alleged that after he filed a grievance against a BOP chaplain for allegedly interfering with his right to practice the Islamic faith, the chaplain then accused the inmate of “starting a terrorist cell,” resulting in the inmate being placed in segregated housing. The inmate also alleged that after filing another grievance alleging retaliation, he was again sent to segregated housing. Additionally, the inmate alleged that after an internal investigation at the prison determined that the allegations against him were false, the BOP took no action against the staff and instead transferred the inmate twice, leaving him thousands of miles from his family.
- A BOP inmate alleged that a correctional officer used a racial slur, confiscated his *kufi* for no reason, and referred to the *kufi* as a “terrorist cap.” The inmate further alleged that two other correctional officers witnessed the correctional officer threaten and approach the inmate in an aggressive manner.
- A BOP inmate alleged that a correctional officer used profanity towards inmates and treated black Muslim inmates harshly because of their religious beliefs. The inmate also alleged that BOP staff intentionally destroyed his written correspondence.
- An inmate alleged that a BOP correctional officer harassed Muslim inmates and interfered with their attendance at religious services. The inmate further alleged that the correctional officer made hostile and harassing sexual

comments to the inmates and touched them in an inappropriate manner.

- A Muslim inmate alleged that: his religious diet was suspended; he was placed in “racial segregation” because of lies fabricated by the BOP chaplain and his assistant; BOP staff tampered with his legal mail and obstructed calls to his attorneys; BOP staff censured his participation during Islamic services and studies; the BOP inappropriately classified him as an international terrorist; and a BOP lieutenant told him that the prison staff hated him.

3. Previously Opened Investigations Closed During This Reporting Period

The OIG completed its investigations of one Section 1001-related matter opened in a prior period. Additionally, the BOP completed investigations of **3** Section 1001-related complaints previously referred by the OIG in prior periods. Upon completion of the investigation of each referred complaint, the BOP provided the OIG a copy of its investigative report.

a. Closed OIG Investigation

- The OIG investigated allegations by three BOP inmates that Muslim inmates housed in a BOP Communications Management Unit (CMU) were subjected to discriminatory and retaliatory measures by BOP staff because of their faith and “ethnic identity.” Each inmate submitted an identical letter citing 26 examples of discrimination and retaliatory treatment. When interviewed by the OIG, the inmate who wrote the letter stated that he had not personally experienced many of the allegations of mistreatment but listed them because other Muslim inmates had elected him as a spokesperson. The other two inmates stated that they submitted the letter because they agreed with the first inmate’s allegations. The two correctional officers named in the complaint denied the allegations of discrimination and retaliation. The OIG’s investigation found no evidence to support the allegations, and after reviewing BOP and institutional policy, the OIG determined that the correctional officers had acted within the scope of their responsibility. The OIG provided its report of investigation to the BOP.

b. Closed BOP Investigations

- A Muslim inmate alleged that he feared that BOP correctional officers would pay someone to kill or assault him or that his cellmate would assault him because staff told the cellmate he was not being moved because of the complainant. The inmate further alleged that several complaints related to his torture have been ignored; that a correctional officer deliberately served him pork; and that he was denied medical treatment for nerve damage to his hand as a result of misapplication of restraints. The inmate also alleged that a correctional officer used a racial slur. BOP attempted to interview the inmate regarding his allegations, but he refused. Because the inmate had several different cellmates, BOP was unable to determine which former cellmate was allegedly encouraged to assault him. The two correctional officers identified in the complaint denied the allegations against them. The correctional officer who allegedly intentionally served the inmate a pork meal recalled inadvertently giving the inmate the wrong meal because the meals were not properly marked, but she told BOP that she immediately corrected the error. The second correctional officer told BOP that he had no recollection of the incidents described in the complaint. He further told BOP that he did not threaten or assault the inmate, use a racial slur, or write a false incident report. BOP's review of the inmate's disciplinary history found that he had been found guilty of the incident report in question and had been appropriately sanctioned. BOP's investigation revealed no evidence to support the inmate's other allegations. BOP concluded that the inmate's allegations were unsubstantiated and closed its investigation.
- A BOP inmate alleged that a recreation specialist threatened and harassed Muslim inmates by threatening to write incident reports on any inmate found praying in the recreation area of the prison, but did not take the same actions with regard to inmates of other faiths. The inmate also alleged that the specialist made comments such as "I don't like fake Muslims" in the presence of other inmates. The BOP interviewed the recreation specialist, who stated that he counseled the inmates several times prior to issuing them an incident report, and that he explained to the inmates that they could not participate in a prayer group larger than two while in the recreation yard. He also told the BOP that he has treated inmates of all faiths similarly, and that he never used the term "fake Muslim." BOP's investigation found that the institution's Recreation Department Rules, which are posted in the recreation area,

state that (1) religious ceremony is not allowed in recreation, and that (2) religious prayer group (three or more) activity is prohibited in all recreation areas. Additionally, BOP found that none of the inmates interviewed as witnesses heard the recreational specialist use the term “fake Muslim.” BOP concluded there was insufficient evidence to substantiate the allegations and closed its investigation.

- A BOP inmate alleged that he was placed in solitary confinement in a special housing unit (SHU) during the investigation of an unspecified incident between another Muslim inmate and a correctional officer. According to the inmate, he was placed in the SHU because he was a Muslim, and he has been held there for additional time as retaliation for filing a lawsuit. He also alleged that while in segregation, he was denied access to his family, was told by a case manager that his name did not appear on a roster of inmates at the institution, and was not informed of the status of the underlying investigation. He further alleged that prison staff destroyed his legal materials. Two staff members identified in the inmate’s complaint each denied the allegations during interviews with BOP. One of the staff members also told BOP that the inmate had been placed in the SHU for his own protection due to threats from other inmates. BOP interviewed the inmate, who consented to the interview but declined to complete and sign an affidavit. The inmate repeated his allegations but also acknowledged that he had been returned to the SHU for his own protection after receiving threats from other inmates. BOP’s investigation found that a threat assessment report had recommended that the inmate be transferred to another institution, but that the recommendation had been denied due to the short time left until the completion of the inmate’s sentence. BOP concluded there was insufficient evidence to substantiate the allegations and closed its investigation.

IV. OTHER ACTIVITIES RELATED TO POTENTIAL CIVIL RIGHTS AND CIVIL LIBERTIES ISSUES

The OIG conducts other reviews that go beyond the explicit requirements of Section 1001 in order to implement more fully its civil rights and civil liberties oversight responsibilities. The OIG has completed or is conducting several such reviews that relate to the OIG’s duties under Section 1001. These reviews are discussed in this section of the report.

A. Review of the FBI's Activities Under Section 702 of the Foreign Intelligence Surveillance Act Amendments Act of 2008

In September 2012, the OIG issued a classified report examining the FBI's activities under Section 702 of the Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2008 (FAA). The FAA authorizes the targeting of non-U.S. persons reasonably believed to be outside the United States for the purpose of acquiring foreign intelligence information. As required by the FAA, the OIG reviewed the number of disseminated FBI intelligence reports containing a reference to a U.S. person identity, the number of U.S. person identities subsequently disseminated in response to requests for identities not referred to by name or title in the original reporting, the number of targets later determined to be located in the United States, and whether communications of such targets were reviewed. In addition, the OIG reviewed the FBI's compliance with the targeting and minimization procedures required under the FAA.

The final report was delivered to the relevant Congressional oversight and intelligence committees, as well as leadership offices. Because the report was classified, its contents could not be disclosed to the public.

B. Review of the Department's Use of Material Witness Warrants

The OIG is reviewing the Department's use of the material witness warrant statute, 18 U.S.C. § 3144. Pursuant to the OIG's responsibility under Section 1001 of the Patriot Act, the OIG is investigating whether the Department's post-9/11 use of the statute in national security cases violated civil rights and civil liberties. The OIG is also examining the Department's controls over the use of material witness warrants and trends in the use of material witness warrants over time, as well as issues such as length of detention, conditions of confinement, and access to counsel.

C. Review of the FBI's Use of National Security Letters, Section 215 Orders, and Pen Register and Trap-and-Trace Authorities under FISA from 2007 through 2009

The OIG is again examining the FBI's use of national security letters (NSLs) and Section 215 orders for business records. Among other issues, this review is assessing the FBI's progress in responding to the OIG's recommendations in its first and second reports on the FBI's use of NSLs, and in its report on the FBI's use of exigent letters and other informal requests for telephone records. A focus of this review is the NSL subsystem, an automated workflow system for NSLs that all FBI field offices and Headquarters divisions have been required to use since January 1, 2008, and the effectiveness of the subsystem in reducing or eliminating noncompliance with applicable authorities. The current review is also examining the number of NSLs issued and Section 215 applications filed by the FBI between 2007 and 2009, and any

improper or illegal uses of these authorities. In addition, the review is examining the FBI's use of its pen register and trap-and-trace authority under FISA.

D. Audit of the FBI's Management of Terrorist Watchlist Nominations and Encounters with Watchlisted Subjects

The OIG is continuing its audit of the FBI's management of terrorist watchlist nominations and encounters with watchlisted subjects. In fiscal years 2008 and 2009, the OIG conducted two audits related to the FBI terrorist watchlist nomination practices. In these audits, the OIG found that the FBI's procedures for processing international terrorist nominations were, at times, inconsistent and insufficient, causing watchlist data used by screening agencies to be incomplete and outdated. The OIG found that the FBI failed to nominate for watchlisting many subjects of its terrorism investigations, did not nominate many others in a timely manner, and did not update or remove watchlist records as required. As a result of these reviews, the FBI reported that it had undertaken several initiatives and implemented new processes and guidelines to enhance its watchlisting system.

The current objectives of the OIG's audit are to: (1) assess the impact of recent events on the FBI's watchlisting system, and (2) evaluate the effectiveness of the initiatives recently implemented by the FBI to ensure the accuracy, timeliness, and completeness of the FBI's watchlisting practices, including watchlist nominations, modifications, and removals.

E. Audit of the FBI's Foreign Terrorist Tracking Task Force

As of December 31, 2012, the OIG was conducting an audit of the FBI's Foreign Terrorist Tracking Task Force (FTTTF).⁵ The FTTTF was created in October 2001 pursuant to Homeland Security Presidential Directive-2 (HSPD-2). According to HSPD-2, the FTTTF is to coordinate programs with other federal agencies to: (1) deny entry into the United States of aliens associated with, suspected of being engaged in, or supporting terrorist activity; and (2) locate, detain, prosecute, or deport any such aliens already present in the United States.

The objectives of this audit are to determine whether the FBI: (1) has implemented a viable FTTTF strategy to locate and track suspected terrorists and their supporters, including coordination with FBI headquarters and field offices to enhance national security investigations; and (2) is following Department privacy policies in its management of information.

⁵ This audit report was completed in March 2013. The results of the audit will be described in our next Section 1001 report, which will cover the time period of January 1 through June 30, 2013.

V. EXPENSE OF IMPLEMENTING SECTION 1001

Section 1001 requires the OIG to include in this report “a description of the use of funds appropriations used to carry out this subsection.”

During this reporting period, the OIG spent approximately \$823,975 in personnel costs, \$3,216 in travel costs, and \$100 in miscellaneous costs, for a total of \$827,291 to implement its responsibilities under Section 1001. The total personnel and miscellaneous costs reflect the time and funds spent by OIG special agents, inspectors, and attorneys who have worked directly on investigating Section 1001-related complaints, conducting special reviews, and implementing the OIG’s responsibilities under Section 1001.