



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

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

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

March 2016

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 summarizes the OIG's Section 1001-related activities from July 1, 2015, through December 31, 2015.

## 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.<sup>1</sup>

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, financial statements, and DOJ-awarded grants and contracts.
- **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.
- **Investigations Division** investigates allegations of bribery, fraud, abuse, civil rights violations, and violations of other criminal laws and administrative procedures that govern Department employees, contractors, and grantees.

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<sup>1</sup> 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).

- **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 more than 400 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).<sup>2</sup> 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.<sup>3</sup> Occasionally, complaints are assigned to the OIG’s Oversight and Review Division for investigation.

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

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<sup>2</sup> 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. Attorneys’ Offices; the Operations Branch II has primary responsibility for matters involving the FBI, DEA, and ATF.

<sup>3</sup> 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.

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 Health and Human Services, the Department of Veterans Affairs, and the Department of Education. 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, 2015, and December 31, 2015, the period covered by this report, the OIG processed **403** new civil rights or civil liberties complaints.<sup>4</sup>

Of these complaints, **346** did not fall within the OIG's jurisdiction or did not warrant further investigation. The vast majority (320) 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 (26) 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 **57** of the 403 complaints it received involved DOJ employees or DOJ components and included allegations that required further review. The OIG determined that **47** of these complaints raised management issues generally unrelated to the OIG's Section 1001 duties

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<sup>4</sup> 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.

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 **10** complaints warranting further investigation to determine whether Section 1001-related abuses occurred. The OIG referred these 10 complaints to the appropriate DOJ components for further investigation. The next section of this report describes the substance of these 10 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	<b>403</b>
Complaints not within OIG's jurisdiction or not warranting further review	<b>346</b>
Total complaints within OIG's jurisdiction warranting review	<b>57</b>
Management issues referred to DOJ components for handling	<b>47</b>
Possible Section 1001 complaints warranting investigation by OIG	<b>0</b>
Possible Section 1001 complaints warranting investigation by DOJ components	<b>10</b>

## **B. Section 1001 Complaints**

### **1. Investigations Opened During This Reporting Period**

During this reporting period, the OIG referred 9 Section 1001-related complaints to the BOP for investigation, of which 7 remain pending and 2 are closed. The OIG also referred 1 Section 1001-related complaint to the FBI for investigation, which has been completed. The OIG has requested that, upon completion of the investigation of

each referred complaint, these components provide the OIG a copy of the investigative report.

**a. Continuing BOP Investigations**

- A BOP inmate alleged that when he was released to a Residential Re-entry Center (RRC), staff taunted him about his religious beliefs and told him he would not be provided access to a mosque, halal food, religious materials, or accommodations for Ramadan. The inmate also alleged that this RRC granted approvals for inmates to relocate to home confinement on a racially discriminatory basis, and that he was retaliated against for filing a discrimination lawsuit naming RRC staff.
- A BOP inmate alleged that a BOP employee made racially disparaging comments about various inmates and called two inmates “terrorists” based on their religious affiliation.
- A BOP inmate alleged that correctional officers destroyed his Koran and used racially and religiously derogatory language during a verbal altercation.
- A BOP inmate alleged that he was discriminated against because of his religious identification, that a correctional officer searched his cell and confiscated his property on this basis, and that the officer refused to wear rubber gloves when handling inmates’ food during Ramadan. The inmate further alleged that he was confined to a segregated housing unit because of his discrimination complaints.
- A BOP inmate alleged that BOP did not base transfer decisions on consistent standards of behavior, which resulted in the unfair treatment of a Muslim inmate and more favorable transfer locations for non-Muslim inmates.
- A BOP inmate alleged that a BOP food service staff member treated inmates differently based on their religion and stated, “I hate Muslims” when the inmate tried to report inadequate portion sizes in the Ramadan meal.
- A BOP inmate alleged that a correctional officer interrupted his prayer, opened his cell door and made threatening and offensive remarks about Islam, and then called the inmate a coward for not defending his faith in an effort to provoke the inmate.

### **b. Completed BOP Investigations**

- A BOP inmate alleged that after a disagreement with a correctional officer about his property being confiscated following a search of his cell, the correctional officer used a racial and religious slur and made reference to her dislike of black Muslims. BOP interviewed the correctional officer, who denied the allegations. The inmate did not identify any witnesses to the incident. BOP determined that the allegations were not substantiated and closed its case.
- A BOP inmate alleged that a BOP chaplain violated the religious rights of Muslim inmates when he confiscated two Islamic religious books claiming they contained “terrorism material.” According to the BOP’s report, the chaplain provided an affidavit stating that it is his responsibility to verify Chapel library books do not violate BOP policy, and he removed the books in question out of concern that they contained extremist material. The chaplain stated that he found several violations of BOP policy and sent the books to the BOP Central Office to be reviewed by subject matter experts. The chaplain further stated that he does not discriminate against the Islamic religion. BOP’s report stated that the inmate was not interviewed because he had been released from custody and could not be contacted. BOP determined that the allegations were not substantiated and closed its investigation.

### **c. Completed FBI Investigation**

- The DOJ Office of Professional Responsibility (DOJ OPR) referred to the OIG information indicating that, during an investigation into whether DEA and FBI agents had racially profiled certain individuals based on their religion and national origin, and questioned subjects about whether they were affiliated with a mosque, an FBI supervisor said that it was normal practice for agents to question subjects and defendants about their affiliation with a mosque. After reviewing the information from DOJ OPR and FBI policy, the FBI determined that the matter did not warrant the opening of an administrative inquiry, and it recommended counseling the supervisor. The FBI’s closing documentation also stated that it is not the FBI’s normal practice to question the public about their religious affiliation, and that while the FBI can consider an individual’s religious affiliation under certain circumstances, there must exist an independent authorized law enforcement or

national security purpose for initiating such an investigative activity.

## **2. Pending Investigations Opened During Previous Reporting Periods**

### **a. Complaints Referred to BOP**

The OIG referred the following 6 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 during Ramadan two correctional officers intentionally delivered his breakfast two hours late, made derogatory comments against Muslims, threw milk on him, and destroyed his property, including Islamic literature.
- A BOP inmate alleged that while being transported to an outside hospital, a correctional officer threatened him and called him religiously derogatory names; another correctional officer left him outside in the cold for 10-15 minutes, denied him use of the bathroom, and inappropriately squeezed his handcuff; and a third correctional officer made reference to killing him.
- A BOP inmate alleged that after he refused orders to “cuff up” and instead laid down on the floor of his cell, correctional officers entered the cell and began kicking him in the side and stomach while calling him a derogatory racial and religious name. The inmate further alleged that he was subsequently placed in the Special Housing Unit (SHU), where he was denied medical care and placed in restraints for an extended period of time.

- A BOP inmate alleged that a correctional officer yelled, used obscenities, and made insulting comments about the inmate's hijab during a medical trip.
- A BOP inmate alleged that multiple correctional officers have threatened, abused, and discriminated against him because he is Muslim by, among other things: encouraging other inmates to attack him; depriving him of food, showers, and recreation; making threatening and derogatory comments about Muslims; pushing and tripping him so he would fall down the stairs; and applying restraints too tightly.

### **3. Previously Opened Investigations Completed During This Reporting Period**

#### **a. *OIG Investigation***

The OIG completed its investigation into the following complaint, which was previously referred to and investigated by the BOP.

- A Muslim inmate alleged that two BOP correctional officers called him a “Muslim terrorist” and a “terrorist bomber”; that he suffered physical abuse when an unidentified officer assaulted him while he was in full restraints; and that his wheelchair was not properly secured when he was transported to a hospital in a government vehicle, resulting in physical injury. This matter was initially referred to BOP for investigation. However, BOP was unable to interview the complainant and an inmate identified by the complainant as a witness before their release from BOP custody. After reviewing BOP's investigative report, the OIG determined that additional investigative work was warranted and initiated an investigation. The inmate declined the OIG's request for an interview, citing pending civil litigation against BOP. The OIG interviewed an inmate witness, who stated that he heard someone refer to the inmate as a “terrorist” but did not know who made the comment or see any physical assault against the inmate. The OIG interviewed a now-retired correctional officer named in the complaint who was not interviewed by BOP. He stated that he did not recognize the inmate from a photo, and he denied assaulting or making any derogatory comments to any inmates. Additionally, this correctional officer stated that he was not listed on the prison staff roster on the day of the alleged assault, which the BOP confirmed. Two other BOP staff members listed on the roster at the time of the alleged incident also denied the allegations. The

OIG determined that its findings were consistent with the BOP's investigative report, concluded that it had not found sufficient evidence to corroborate the allegations, and closed the investigation.

**b. BOP Investigations**

The BOP completed investigations of 5 Section 1001-related complaints that were referred by the OIG in prior reporting periods. The BOP provided the OIG with copies of its investigative reports upon completion of their investigations.

- A BOP inmate alleged that, during a pat search, a correctional counselor made an insulting remark about his religious headgear and initiated a confrontation about his religion while shouting obscenities at the inmate. The BOP interviewed the counselor, who stated that she asked the inmate about how he was wearing his kufi but denied the inmate's allegations about her conduct. Two staff witnesses who recalled the interaction submitted sworn affidavits stating that they did not recall the correctional counselor threatening the inmate in the alleged manner. BOP determined that the allegations were not substantiated and closed its case.
- A Muslim inmate alleged that after requesting a reason for being ordered to submit to a visual search a BOP correctional officer pushed him to the ground. The inmate also alleged that as he was being escorted to the lieutenants' office, the correctional officer pushed the inmate face first into a fence. The inmate further alleged that the correctional officer referred to him using a racial slur and made other derogatory and threatening statements about Muslims. The BOP interviewed the correctional officer, who stated that he had been involved in an Immediate Use of Force incident involving the inmate in his cell, during which he placed the inmate on the floor because the inmate became belligerent and grabbed the correctional officer's arm in an attempt to get out of his cell. The correctional officer denied pushing the inmate's face into a fence, and he denied using racial slurs or making other derogatory comments about Muslims. Two staff witnesses told the BOP that they did not hear the correctional officer make the alleged inappropriate comments or see him shove the inmate's face into a fence. BOP's investigation noted that the After Action Review Report concluded that the officer's use of force was reasonable and appropriate, and that the Health Services Clinical Encounter report noted that the inmate did not receive any injuries during

the encounter. BOP determined that the allegations were not substantiated and closed its investigation.

- A Muslim inmate alleged that following a search of his cell, a correctional officer threatened to bring a gun into a BOP facility to kill the inmate, referred to the inmate using racial slurs, and made reference to his dislike of black Muslims. The BOP interviewed the correctional officer, who denied the inmate's allegations. Three correctional officers who were on duty at the time of the incident were also interviewed. Two did not recall having a discussion with the inmate about the correctional officer. The third witness remembered a verbal altercation between the correctional officer and the inmate during which the inmate became very loud and irate, but he believed that was common for the inmate, and he said he was not present for any conversations that may have occurred between the subject correctional officer and the inmate. BOP determined that the allegations were not substantiated and closed its investigation.
- A BOP inmate alleged that a Lieutenant accused him of being in ISIS and Al-Qaeda. When the inmate explained to the Lieutenant that he is a Sikh, the Lieutenant became more verbally aggressive towards him. BOP interviewed the Lieutenant, who denied the allegations and stated that he does not discriminate against inmates based on their race, ethnicity, or religious beliefs. An officer who was on duty the day of the alleged incident told the BOP that she did not hear the Lieutenant make the alleged unprofessional comments. BOP determined that the allegations were unsubstantiated and closed its case.
- A BOP inmate alleged that a BOP staff member made religiously derogatory statements to him and another inmate, and threatened to move the inmates to the SHU or transfer them to prisons farther from their families, for reading the Koran in the prison library. BOP interviewed the complainant inmate, who repeated the allegations, and also a second inmate who witnessed the events. According to the BOP, the second inmate alleged that the staff member had made some, but not all, of the derogatory remarks, including saying to them that the library was not a "zoo." The second inmate did not allege that the staff member had threatened to move the inmates to the SHU or transfer them. BOP also interviewed the subject staff member and a staff witness. The subject staff member denied the allegations against him, but acknowledged stating that the

library was not a “zoo” and stated that he said this in response to three inmates engaged in horseplay on the floor. The staff member also acknowledged that he may have mentioned that the library is not a place for group study of religion. The staff witness told the BOP that he remembered the subject staff member using the “zoo” language but stated that the subject staff member did not make any threats or derogatory statements about religion. He also remembered the subject staff member telling the inmates that the library was not a place for group religious study, which the staff witness believed was an appropriate response to the situation. BOP determined that the allegations were unsubstantiated 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 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. FBI’s Involvement in the National Security Agency’s Bulk Telephony Metadata Collection Program**

The OIG is reviewing the FBI’s use of information derived from the National Security Agency’s (NSA) collection of telephony metadata obtained from certain telecommunications service providers under Section 215 of the Patriot Act. The review will examine the FBI’s procedures for receiving, processing, and disseminating leads the NSA develops from the metadata, and any changes that have been made to these procedures over time. The review will also examine how FBI field offices respond to leads, and the scope and type of information field offices collect as a result of any investigative activity that is initiated. In addition, the review will examine the role the leads have had in FBI counterterrorism efforts.

##### **B. DEA’s Use of Administrative Subpoenas**

The OIG is examining the DEA’s use of administrative subpoenas to obtain broad collections of data or information. The review will address the legal authority for the acquisition or use of these data collections; the existence and effectiveness of any policies and procedural safeguards established with respect to the collection, use, and retention of the data; the creation, dissemination, and usefulness of any products generated from the data; and

the use of “parallel construction” or other techniques to protect the confidentiality of these programs.

### **C. FBI’s Use of Section 215 Orders in 2012 through 2014**

The OIG is examining the FBI’s use of Section 215 authority under the Foreign Intelligence Surveillance Act (FISA) in 2012 through 2014. The current review will examine, among other things, the effectiveness of Section 215 as an investigative tool and the FBI’s compliance with the minimization procedures the Department approved and implemented in 2013. This review is required under Section 108 the *Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015*, also referred to as the USA FREEDOM Act of 2015.

### **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 \$401,541 in personnel costs and \$5,300 in miscellaneous costs, for a total of \$406,841 to implement its responsibilities under Section 1001. The total personnel and miscellaneous costs reflect the time and funds spent by OIG special agents, attorneys, auditors, inspectors, program analysts, and paralegals who have worked directly on investigating Section 1001-related complaints, conducting special reviews, implementing the OIG’s responsibilities under Section 1001, and overseeing such activities.