



# 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)*

September 2017

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 January 1, 2017, through June 30, 2017.

## 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 460 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.” While the phrase “civil rights and civil liberties” is not specifically defined in the Patriot Act, the OIG has looked to the “Sense of Congress” provisions in the statute, namely Sections 102 and 1002, for context. Sections 102 and 1002 identify certain ethnic and religious groups who would be vulnerable to abuse due to a possible backlash from the terrorist attacks of September 11, 2001, including Muslims, Arabs, Sikhs, and South Asians.

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 one or 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

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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.

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.

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 January 1, 2017, and June 30, 2017, the period covered by this report, the OIG processed **622** new civil rights or civil liberties complaints.<sup>4</sup>

Of these complaints, **572** did not fall within the OIG's jurisdiction or did not warrant further investigation. The vast majority (522) 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 (50) 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 **50** of the 622 complaints it received involved DOJ employees or DOJ components and included allegations that

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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.

required further review. The OIG determined that **48** of these complaints 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 **2** complaints warranting further investigation to determine whether Section 1001-related abuses occurred. The OIG referred these 2 complaints to the appropriate DOJ component for further investigation. The next section of this report describes the substance of these 2 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>622</b>
Complaints not within OIG’s jurisdiction or not warranting further review	<b>572</b>
Total complaints within OIG’s jurisdiction warranting review	<b>50</b>
Management issues referred to DOJ components for handling	<b>48</b>
Possible Section 1001 complaints warranting investigation by OIG	<b>0</b>
Possible Section 1001 complaints warranting investigation by DOJ components	<b>2</b>

## **B. Section 1001 Complaints**

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

During this reporting period, the OIG referred 2 Section 1001-related complaints to the BOP for investigation, 1 of which remains pending. The OIG has requested that, upon completion of the investigation of

each referred complaint, that BOP provide the OIG a copy of the investigative report.

**a. Continuing BOP Investigation**

- A BOP inmate alleged that a correctional officer made degrading comments about his Muslim faith, physically assaulted him, and filed a false report about the incident.

**b. Completed BOP Investigation**

- A BOP inmate alleged that during a cell inventory, a correctional officer threw away his personal property, including religious items. He further alleged that when he inquired about the property, another correctional officer made inappropriate comments about the inmate's Muslim religion. The complainant identified two inmate witnesses. The first inmate witness made inconsistent statements to BOP investigators about which correctional officer disposed of the property, and BOP determined that the location of the inmate's cell made it improbable that he could have witnessed the inventory. The second inmate witness stated that he did not remember seeing or hearing the alleged events. Both correctional officers identified by the complainant denied the allegations against them, as did a third correctional officer listed on an inmate property record. BOP determined that the allegations were not substantiated and closed its investigation.

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

**a. Complaints Referred to BOP**

The OIG referred the following 10 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 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 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 a correctional officer confiscated a news article containing contact information for the American Jewish Council and asked why a Muslim inmate would want to contact a Jewish group. The inmate further alleged that another correctional officer harassed him for reporting the incident; that the first correctional officer later stated, “this is what you get for being Muslim”; and that another inmate heard that correctional officer saying how the prison staff will “get” the inmate.
- Several BOP inmates alleged that BOP staff locked rooms containing microwaves so that Muslim inmates would not have access when they broke Ramadan fast. The inmates also alleged that they were not permitted to worship in the chapel and instead had to worship in the gymnasium.
- A BOP inmate alleged that he and other Muslim prisoners have been harassed and retaliated against by a BOP employee ever since the inmate settled a lawsuit with the BOP regarding Muslim inmates’ right to wear their pants above the ankle.
- A BOP inmate alleged that he has experienced constant discrimination and humiliation by BOP staff because of his religious beliefs. The inmate specifically alleged that he was prohibited from participating in congregational prayers, and that a correctional officer made several derogatory remarks about Islam and intentionally disrupted the inmate’s prayers.



- A BOP inmate alleged that all Ramadan participants at the inmate's institution have been subjected to harassment and prejudice by being targeted for full body pat down searches without cause and being subjected to inappropriate remarks about their religion.
- A BOP inmate alleged that a BOP employee yelled at him when he tried to enter the chapel at his designated worship time and also prevented other inmates from entering the chapel. The inmate also alleged that the same employee humiliated and yelled at Muslims in the cafeteria for wearing their kufis, which, according to the inmate, is permitted by BOP.

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

#### **a. BOP Investigations**

The BOP completed investigations of 4 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 its investigations.

- A BOP inmate alleged that BOP staff verbally harassed him; spit chewing tobacco in his food, causing him to go on a food strike; refused him access to the law library and recreational time; and tampered with his mail because they believed he had possessed an ISIS flag and was a radical Muslim with ISIS sympathies. BOP attempted to obtain a sworn statement from the inmate and he declined. BOP interviewed all evening watch staff assigned to the SHU during the timeframe of the alleged incidents. All staff interviewed provided sworn affidavits denying that they made the alleged statements, spit in his food trays, denied him access to the law library or recreation time, or tampered with his mail. BOP determined that the allegations were not substantiated and closed its investigation.
- A BOP inmate alleged that a BOP food services employee denied his request to work in food service based solely on the inmate's religious beliefs, and did not allow Muslim inmates participating in Ramadan to prepare their own food, even though doing so had been approved by the Food Services Administrator. The inmate also alleged that Muslim inmates had to use leftovers to prepare their meals. BOP interviewed the two inmate witnesses and one staff witness identified by the complainant and all three witnesses denied having heard or seen the alleged

discriminatory conduct. The Food Services Administrator was also interviewed and stated her belief that the inmate was removed from his food services position because he was attempting to prepare the Ramadan meal during unauthorized times. She further stated that, after the complainant was removed from his detail, other Muslim inmates continued to prepare the Ramadan meal. The subject food services employee denied ordering staff or inmates to prepare the Ramadan meal with leftover food, preventing Muslims from participating in the preparation of the Ramadan meal, and all other allegations against him. BOP determined that the allegations were not substantiated and closed its investigation.

- A BOP inmate alleged he had been the victim of retaliation, fabricated incident reports, excessive force, medical neglect, and that his legal property and religious items were thrown out because he is Muslim and because of his foreign political affiliations. BOP attempted to interview the inmate; however, he refused to provide an affidavit or statement. Because the inmate refused to be interviewed, and failed to identify any staff who acted improperly, BOP determined that the allegations were not substantiated and closed its investigation.
- A BOP inmate alleged that a cook supervisor discriminated against Muslim inmates by removing their names from a religious meal program, removing items frequently purchased by inmates from the commissary inventory, and refusing to provide inmates in the religious meal program desserts that are wrapped and protected from contamination. BOP's investigation revealed that the inmate was removed from the religious meal list by the Religious Services Department for 30 days after he was observed taking a regular meal tray instead of a religious meal tray, and that he had been notified of the reason for his removal. The cook supervisor denied the allegations against him and denied discriminating against the inmate. He further stated that desserts are not included on the required menu for religious meals, and that he does not have access or authorization to review inmate commissary accounts to monitor purchases and identify commonly purchased items. BOP determined that the allegations were not substantiated 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. 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.

#### **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 \$226,189 in personnel costs and \$883 in miscellaneous costs, for a total of \$227,072 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.