



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535-0001

April 15, 2015

Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This is in response to your letters to Director Comey dated February 26 and March 6, 2015 regarding the Department of Justice (DOJ) Inspector General's assertion that the FBI has improperly withheld information from his office in four specific matters. The FBI takes very seriously our obligation to enable Congress and the Inspector General to conduct effective oversight of all of our activities.

As you may be aware, we have a good faith disagreement with the Office of the Inspector General (OIG) regarding what the law requires with respect to providing FBI documents that have been obtained pursuant to provisions of law such as Rule 6(e) of the Federal Rules of Criminal Procedure (regarding grand jury materials); the Wiretap Act (Title III); and the Fair Credit Reporting Act (FCRA). We have been completely transparent with the OIG and the leadership of DOJ with respect to that legal disagreement. Indeed, in order to resolve the disagreement, consistent with standard Department practice, the Office of the Deputy Attorney General has asked the Office of Legal Counsel (OLC) to render an opinion as to the correct reading of the law. As we await the OLC opinion or other dispositive guidance, in order to comply with the Inspector General Act *and* all other applicable provisions of law, we must conduct a legal review of the large volume of documents that we regularly produce to the OIG. Because we are conducting those reviews to facilitate our production of the materials the Inspector General's office has requested in a manner consistent with law, we do not believe that we are in violation of section 218 of the fiscal year 2015 Department of Justice Appropriations Act, the Anti-Deficiency Act, or the Inspector General Act.

We understand that that Inspector General and his office are concerned that such reviews delay us in providing documents to him. Indeed, FBI leadership has met personally with the Inspector General to discuss his concerns. Because of our commitment to improve our efficiency with respect to these reviews, the Deputy Director instructed our internal business process consulting group to rigorously evaluate our processes to make sure that we are as effective and efficient as possible in providing the Inspector General with requested documents in a timely fashion, consistent with our interpretation of the law. Based on the consulting group's recommendations, we expect that the Deputy Director will implement changes that are intended to improve our performance.

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The current status of the matters described in the Inspector General's four reports to Congress is as follows:

With regard to the two whistleblower matters that the Inspector General raised in his February 3, 2015, letter, the FBI provided the requested emails to the OIG by February 13, 2015. We produced 15,416 emails with their attachments. Consistent with the legal concerns discussed above, we withheld one partial sentence in one email and produced 109 emails without attachments based on our determination that additional process was required for the attachments. Although these documents were technically responsive to the OIG's document request due to the broad search terms the OIG provided, they did not appear to relate to the matters under review. However, to ensure that we were complying with the OIG's request, we offered to undertake that additional process if the Inspector General determined that he needed the remaining documents to complete his work. Although the Inspector General has stated that these document requests remain unfulfilled, the OIG has not indicated that the information contained in these additional documents is necessary for this review.

The Inspector General's February 19, 2015, letter related to a request for emails concerning the Drug Enforcement Administration's use of administrative subpoenas. In order to identify the emails the OIG was seeking, we collected over 500,000 emails belonging to 22 custodians on both the Secret and the unclassified enclaves for a 29 month period. Only 2,527 of those 500,000 contained the OIG's search terms. The collection of emails was completed February 9, 2015. Eighteen days later, on February 27, 2015, we produced 2,513 emails, including attachments. In addition, consistent with the legal concerns described above, we produced seven emails without attachments and seven with the attachments partially redacted. Although these documents were technically responsive to the OIG's document request due to the broad search terms the OIG provided, they did not appear to relate to the matters under review. Once again, we offered to undertake any additional process necessary to allow us to provide the remaining material to the OIG if it believed that the material was necessary for the office to complete its review. The OIG reviewed the seven emails and requested that we undertake that additional process, which is underway.

The Inspector General's February 25, 2015, letter related to a request for emails that the OIG made in furtherance of its review of the FBI's use of information collected by the National Security Agency. Many months before the OIG requested the emails that serve as the basis of this letter, the FBI was working constructively with OIG staff and had already produced many documents and made FBI personnel available for interviews and meetings with the OIG. With regard to the emails, the FBI had produced 9,887 emails electronically pulled from the FBI's Secret enclave in response to this request. In March and early April, the FBI produced more than 4,500 additional emails. As of mid-April, fewer than 2,300 Secret emails were still being processed. In addition, the FBI is processing approximately 4,700 emails collected on the Top Secret network. An atypically high percentage of these classified documents require review and consultations with other agencies because the FBI is not the originator of many of these documents. Notwithstanding the material provided to date, much of which we expect is the

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material that is most relevant to the OIG's review, the FBI is prioritizing the final productions in response to this request and has been in regular contact with the OIG with updates.

The Inspector General's March 4, 2015, letter related to a request for emails that the OIG made in furtherance of its review of the FBI's security clearance adjudication and revocation process. By the time the Inspector General sent this letter, the FBI had already produced more than 3,000 emails in response to the OIG's various requests in this matter. On March 20, the FBI completed its production of the final 83 emails that contained various categories of protected information, including grand jury, non-FBI Originator Controlled information, and juvenile victim information, in some emails redacting that information and in others not including attachments. In addition, a small number of these attachments contained unrelated but highly sensitive counterintelligence information. As in the cases discussed previously, we provided these 83 emails consistent with the concerns described above and with the same offer to undertake whatever additional process might be required to allow us to provide the remaining material if the OIG believed that material was relevant to its review. Although the Inspector General has stated that these document requests remain unfulfilled, the OIG has not indicated that the information contained in these 83 documents is necessary for this review.

The FBI is committed to working with the OIG to ensure that it receives the documents necessary to complete its reviews. A recent example of this cooperation is a document request in connection with an unrelated matter that the FBI received on February 26. In that case, the FBI provided all the requested emails within the OIG's requested deadline. I am confident that moving forward we will continue to build on this success.

We appreciate your continued support of the FBI and its mission.

Sincerely,



Stephen D. Kelly
Assistant Director
Office of Congressional Affairs

① Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510