

Senator Chuck Grassley

Michael Horowitz

**Nominee, Inspector General, United States Department of Justice
Follow-up Questions for the Record**

- (1) In partial response to my previous question 1(a), you stated that “the OLC opinion is well written and its reasoning is clearly explained...” Why do you think that the page-and-a-half “legal opinion” with no citation to legal authority is “well written?”

Answer: My comment that the opinion was “well written” was a stylistic reference. As I noted in my response, it would have been helpful for the opinion to have included comprehensive legal citations.

- (2) What portion of the OLC opinion of December 5, 2001, in your view, clearly explains the statutory basis for distinguishing between disclosures in response to a certain requestor and disclosure *to a Committee* for purposes of the Congressional exemption?

Answer: The opinion first cites to the exception in the Privacy Act which authorizes disclosure “to either House of Congress, or, to the extent of a matter within its jurisdiction, any committee or subcommittee thereof” It then goes on to state, without citation, that “each House of Congress exercises its investigative and oversight authority through delegations of authority to its committees, which act either through requests by the committee chairman, speaking on behalf of the committee, or through some other action by the committee itself. As a general matter, ranking minority members are not authorized to make committee requests, act as the official recipient of information for a committee, or otherwise act on behalf of a committee.” The opinion finally notes, again without citation, that “[t]he disclosure still cannot be viewed as being made to the committee unless the disclosure has been authorized by the committee or its chairman.” Thus, in my view, while the opinion’s reasoning is clearly explained, it is not accompanied by legal citations.

- (3) In response to my previous question 2(a), you stated that “In a situation where an OLC opinion on a matter of importance to the Office was determined to be incorrect by the General Counsel and the General Counsel also concluded that the Office was not bound by the opinion, I would concur in the determination assuming I agreed with the analysis.”

- a. What would you do if you disagreed with the General Counsel’s opinion?

Answer: As the head of the Office, the Inspector General is obligated to make the final decision for the Office. Accordingly, if confirmed, I would make the decision that I personally believed was the correct decision.

b. What would you do if you were unsure of the correct legal analysis?

Answer: If I was still uncertain about the correct legal analysis after receiving the General Counsel's opinion, I would ask to have conducted whatever additional legal analysis was necessary in order to give me sufficient comfort to reach the legally-correct decision.

(4) Does your reference to "a matter of importance to the Office" mean that you would generally defer to OLC opinions rather than rely on your own counsel's independent legal analysis?

Answer: No, it does not.

(5) Would you consider the interpretation of the Privacy Act exemption in the context of a disclosure to the Committee upon request of the Ranking Minority Member "a matter of importance to the Office?"

Answer: Yes, I would.

(6) Although other Offices of Inspector General have disclosed Privacy Act information to Committees under the exemption at the request of the Ranking Member, the Justice Department's OIG has generally followed the OLC opinion's analysis in the past. What weight would you give to the Office's previous practice?

Answer: It would be one factor to consider, although, if confirmed, I would want to understand what the basis was for the Office's past practice.

(7) In light of *Devine* and given the likelihood of requests for disclosure *to the Committee* (in contradistinction to requests for disclosure only to the Ranking Member), this issue will almost certainly recur with some frequency. Will you wait until the issue next arises or will you commit to re-evaluating this issue immediately, if confirmed?

Answer: If confirmed, I intend to ask the Office's General Counsel to promptly review this issue and to provide me with a legal analysis so that the Office can be prepared to respond if and when the issue arises.

(8) In the event that you decide to follow the OLC opinion and the previous practice of the Justice Department OIG despite the plain language of the statute and the contrary legal authority in *Devine*, will you commit to assist in developing draft legislative language that

would provide enough additional clarity to the exemption that you would respond fully to future requests from the Ranking Members?

Answer: If confirmed, I would be prepared to have the Office provide that legislative drafting assistance as it related to requests made to the Office.