

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
JEFF FLAKE, ARIZONA
DAVID VITTER, LOUISIANA
DAVID A. PERDUE, GEORGIA
THOM TILLIS, NORTH CAROLINA

PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

March 6, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable James B. Comey
Director
Federal Bureau of Investigation
935 Pennsylvania Ave., N.W.
Washington, D.C. 20535

Dear Director Comey:

As I informed you in my February 26, 2015 letter, the Justice Department's Office of the Inspector General (OIG) submitted three reports last month pursuant to Section 218 of the 2015 Department of Justice Appropriations Act, each noting a failure of the Federal Bureau of Investigation (FBI) to provide the OIG with timely access to records, as required by law.¹ On March 4, 2015, the OIG submitted a *fourth* Section 218 report. According to this report, the FBI failed to provide the OIG with timely access to records sought in connection with the OIG's review of the FBI's security clearance adjudication process.²

As explained in my previous letter, conducting lengthy internal reviews or seeking permission from senior officials before granting access to records unnecessarily delays the work of the OIG and conflicts with the statutory right of access guaranteed to that office. It also circumvents our oversight authority, which the law explicitly reserves for Congress through the notice requirement.³ Inaction or delay in response to a document request allows the Department's leadership to indefinitely prevent a review sought by the OIG, without having to report to Congress as the law requires.⁴

¹ Letter from Michael Horowitz, Inspector General, U.S. Department of Justice, to Sen. Comm. on Appropriations and House Com. on Appropriations (Feb. 3, 2015); Letter from Michael Horowitz, Inspector General, U.S. Department of Justice, to Sen. Comm. on Appropriations and House Com. on Appropriations (Feb. 19, 2015); Letter from Michael Horowitz, Inspector General, U.S. Department of Justice, to Sen. Comm. on Appropriations and House Com. on Appropriations (Feb. 25, 2015); Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130, (2014), at Div. B, Title II, Sec. 218.

² Letter from Michael Horowitz, Inspector General, U.S. Department of Justice, to Sen. Comm. on Appropriations and House Com. on Appropriations (March 4, 2015).

³ 5 U.S.C. App. § 8E(a)(3).

⁴ *Id.*

Moreover, Section 218 plainly contemplates that OIG shall have access “to *all* records, documents, and other materials,” subject to the sole limitation of Section 6(a) of the IG Act.⁵ Section 6(a) does not limit the OIG’s access to the categories of records the FBI has identified. Accordingly, despite my February 26, 2015 letter alerting you to this problem, the FBI appears to be engaging in a continuing pattern of violating the restriction on appropriations in Section 218.

Thus, please include in your answers to the questions in my February 26th letter information related to this latest Section 218 notice in addition to the three previous notices.

Should you have any questions, please contact Jay Lim of my Committee staff at (202) 224-5225. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on the Judiciary

cc: The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice

The Honorable Karl R. Thompson
Acting Assistant Attorney General
Office of Legal Counsel, U.S. Department of Justice

The Honorable Patrick Leahy
Ranking Member
Senate Committee on the Judiciary

The Honorable Harold Rogers
Chairman
Committee on Appropriations, U.S. House of Representatives

The Honorable Nita Lowey
Ranking Member
Committee on Appropriations, U.S. House of Representatives

The Honorable Thad Cochran
Chairman
Committee on Appropriations, U.S. Senate

⁵ Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130, (2014), at Div. B, Title II, Sec. 218 (emphasis added).

The Honorable Barbara Mikulski
Vice Chairwoman
Committee on Appropriations, U.S. Senate

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform, U.S. House of Representatives

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform, U.S. House of Representatives

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs, U.S. Senate

The Honorable Thomas Carper
Ranking Member
Committee on Homeland Security and Governmental Affairs, U.S. Senate

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary, U.S. House of Representatives

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary, U.S. House of Representatives

The Honorable John Culberson
Chairman
Subcommittee on Commerce, Justice, Science and Related Agencies
Committee on Appropriations, U.S. House of Representatives

The Honorable Chaka Fattah
Ranking Member
Subcommittee on Commerce, Justice, Science and Related Agencies
Committee on Appropriations, U.S. House of Representatives

The Honorable Richard Shelby
Chairman
Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations, U.S. Senate

The Honorable Barbara Mikulski
Ranking Member
Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations, U.S. Senate

The Honorable Rob Portman
Chairman
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs, U.S. Senate

The Honorable Claire McCaskill
Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs, U.S. Senate