



August 28, 2015

The Honorable Charles E. Grassley  
Chairman  
U.S. Senate Committee on the Judiciary

The Honorable Patrick Leahy  
Ranking Member  
U.S. Senate Committee on the Judiciary

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

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

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

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

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

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

The Honorable John Cornyn  
Senator  
U.S. Senate Committee on the Judiciary

The Honorable Claire McCaskill  
Senator  
U.S. Senate Committee on Homeland  
Security and Governmental Affairs

The Honorable Thom Tillis  
Senator  
U.S. Senate Committee on the Judiciary

The Honorable Amy Klobuchar  
Senator  
U.S. Senate Committee on the Judiciary

Dear Chairmen, Ranking Members, and distinguished Senators,

On behalf of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), thank you for your efforts to ensure that Inspectors General have complete and immediate access to agency records. The Office of Legal Counsel (OLC) opinion concluding that Section 6(a) of the Inspector General Act of 1978, as amended (IG Act),<sup>1</sup> does not entitle the Inspector General of the Department of Justice (DOJ-IG) to obtain independent access to grand jury, wiretap, and

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<sup>1</sup> 5 U.S.C. app. §6(a) (providing that Inspector Generals shall have access to “all” records which relate to the programs and operations of the agency the Inspector General oversees).

credit information in the Department of Justice’s (DOJ’s) possession that is necessary to DOJ-IG’s oversight represents a threat to not only the independence of the DOJ-IG, but to that of all Inspectors General. The OLC’s restrictive reading of the IG Act creates a serious challenge to our collective ability to have the timely and independent access to agency records that is central to our ability to uphold the oversight principle at the core of the IG Act.

Prior to and following the hearing before the U.S. Senate Committee on the Judiciary on August 5, 2015,<sup>2</sup> and pursuant to your letter to the DOJ-IG and to the Deputy Attorney General dated August 13, 2015, requesting recommended legislative language that would ensure Inspectors General have access to all agency records, we have had constructive dialogue with the DOJ regarding such language. Although the DOJ is still working on its draft legislation, as it stated in its letter to you dated August 24, 2015, we have consulted with the Inspector General community and CIGIE has developed proposed legislative language to address the concerns raised by the OLC opinion.

In order to affirm the decades-long understanding that Inspectors General shall have access without delay to all information and data in an agency’s possession that an Inspector General deems necessary to execute its oversight functions under the law, CIGIE proposes the following legislative language:

Section 6(a) of the Inspector General Act of 1978 (5 U.S.C. App. § 6(a)) is amended—

(a) by renumbering paragraph (1) as subparagraph (1)(A) and replacing it with the following:

“(1)(A) to have timely and independent access to all records, reports, audits, reviews, documents, papers, recommendations, data and data systems, or other materials in any medium or format available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act; and”

(b) by inserting after newly designated subparagraph (1)(A) the following:

“(B) to have access under subparagraph (A) notwithstanding any other provision of law, except any provision of law enacted by Congress that expressly refers to the Inspector General and expressly limits the Inspector General’s right of access. The Inspector General shall ensure compliance with statutory limitations on disclosure relevant to the information provided by the establishment under this section.”

By adopting this proposed legislative language, Congress would affirm a bedrock principle of the IG Act, that Inspectors General have access to all agency records and information necessary in the performance of their independent oversight responsibilities.

Thank you for your consideration of our proposal, as well as the important oversight challenges that Inspectors General face. We appreciate your continued efforts to strengthen the

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<sup>2</sup> U.S. Senate Committee on the Judiciary, “‘All’ Means ‘All’: The Justice Department’s Failure to Comply With Its Legal Obligation to Ensure Inspector General Access to All Records Needed For Independent Oversight,” August 5, 2015.

independence and integrity of the Inspector General community, and we look forward to working with you closely on the proposed legislation.

Sincerely,



Michael E. Horowitz  
Inspector General, U.S. Department of Justice  
Chair, CIGIE



Kathy A. Buller  
Inspector General, The Peace Corps  
Chair, CIGIE Legislation Committee

**CC:**

The Honorable Sally Quillian Yates  
Deputy Attorney General

**Congress of the United States**  
**Washington, DC 20510**

August 13, 2015

**VIA ELECTRONIC TRANSMISSION**

The Honorable Sally Quillian Yates  
Deputy Attorney General  
U.S. Department of Justice  
Washington, D.C. 20530

The Honorable Michael Horowitz  
Inspector General  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Deputy Attorney General Yates and Inspector General Horowitz:

Last month, the Department of Justice (DOJ) made public an Office of Legal Counsel (OLC) opinion that allows DOJ to withhold access to certain records sought by DOJ's Office of Inspector General. Under the OLC opinion, and subsequent guidance provided by the Office of the Deputy Attorney General, the DOJ Inspector General must now obtain agency permission to access certain documents related to grand jury testimony, Title III wiretaps, and the Fair Credit Reporting Act. This opinion undermines the long-standing presumption that Inspectors General have access to any and all information that they deem necessary for effective oversight, as specified in the Inspector General Act of 1978.<sup>1</sup>

On August 5, 2015, the Senate Judiciary Committee convened a hearing entitled, "'All' Means 'All': The Justice Department's Failure to Comply with Its Legal Obligation to Ensure Inspector General Access to All Records Needed for Independent Oversight."<sup>2</sup> This hearing brought to light serious questions about the effect the OLC opinion would have on the independence and effectiveness of the Office of Inspector General, not just at the Department of Justice but also across the federal government.<sup>3</sup> The opinion has already been relied on by other federal agencies to prevent their Inspectors General complete and timely access to documents

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<sup>1</sup> 5 U.S.C. app. § 6(a)(1) (specifying that each Inspector General is authorized to have "access to all records" which relate to "programs and operations with respect to which that Inspector General has responsibilities.").

<sup>2</sup> U.S. Senate Committee on the Judiciary, "'All' Means 'All': The Justice Department's Failure to Comply With Its Legal Obligation to Ensure Inspector General Access to All Records Needed For Independent Oversight," August 5, 2015, <http://www.judiciary.senate.gov/meetings/all-means-all-the-justice-departments-failure-to-comply-with-its-legal-obligation-to-ensure-inspector-general-access-to-all-records-needed-for-independent-oversight>; see also Letter from Sen. Richard Shelby, Chairman, and Sen. Barbara Mikulski, Ranking Member, Subcommittee on Commerce, Justice, Science, and Related Agencies, Sen. Comm. on Appropriations (July 30, 2015).

<sup>3</sup> *Id.*

necessary to conduct audits and investigations.<sup>4</sup> It is apparent that Congress needs to act to ensure that Inspectors General have complete and immediate access to all records in the possession of their respective agencies, unless a statute restricting access to documents expressly states that the provision applies to Inspectors General.

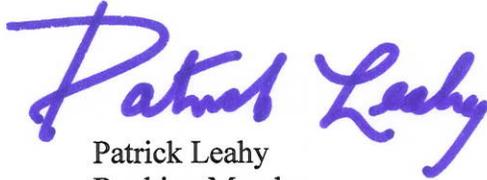
We understand the Office of the Deputy Attorney General and the Office of Inspector General have been working collaboratively on legislative language to address this issue. Accordingly, by no later than August 28, 2015, please provide your recommended legislative language that would ensure Inspectors General have access to all Department records, notwithstanding limitations contained in any of the potentially hundreds of provisions of law or any common-law privilege that might otherwise arguably limit such disclosure.<sup>5</sup>

Thank you for your immediate attention to this matter.

Sincerely,



Charles E. Grassley  
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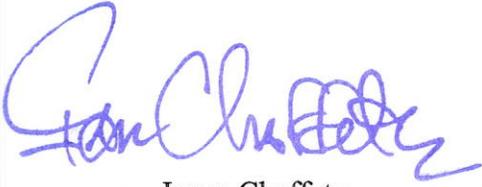


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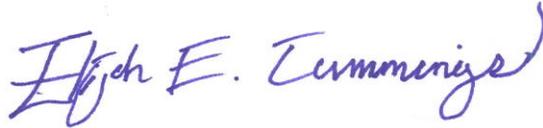
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<sup>4</sup> *Id.*

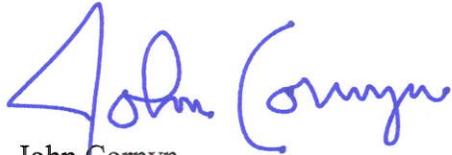
<sup>5</sup> *See, e.g.*, Congressional Research Service, Memorandum to the Senate Committee on the Judiciary, "Selected Statutory Nondisclosure Provisions," July 31, 2015 (identifying more than 30 distinct statutory nondisclosure provisions not cited in the OLC opinion and referencing "a larger list of nondisclosure provisions identified in preliminary research . . .").



Jason Chaffetz  
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Committee on Oversight and  
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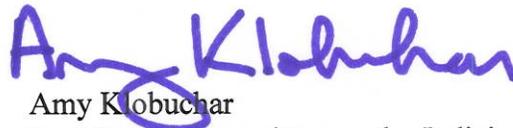
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