



# 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)*

February 2008

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 – the twelfth since enactment of the legislation in October 2001 – summarizes the OIG's Section 1001-related activities from July 1, 2007, through December 31, 2007.

## I. INTRODUCTION

According to the Inspector General Act, 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. Attorneys' Offices, and other DOJ components.<sup>1</sup>

The OIG consists of the Immediate Office of the Inspector General and the following divisions and offices:

- **Audit Division** is responsible for independent audits of Department programs, computer systems, and financial statements.
- **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 and make recommendations for improvement.
- **Investigations Division** is responsible for investigating 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 can investigate allegations of misconduct by any Department employee, except for allegations of misconduct by attorneys (or investigators working under the direction of Department attorneys) acting in their capacity to litigate, investigate, or provide legal advice. See Pub. L. 107-273 § 308, 116 Stat. 1784 (Nov. 2, 2002).

- **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 approximately 400 employees, about half of whom are based in Washington, D.C., while the rest work from 16 Investigations Division field and area offices and 7 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**

*Review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice.*

The OIG's Special Operations Branch in its Investigations Division manages the OIG's investigative responsibilities outlined in Section 1001.<sup>2</sup> The Special Agent in Charge who directs this unit is assisted by three Assistant Special Agents in Charge (ASAC), one of whom assists on Section 1001 and DEA matters, a second who assists on FBI matters, and a third who provides support on ATF cases. In addition, five Investigative Specialists support the unit and divide their time between Section 1001 and FBI/DEA/ATF responsibilities.

The Special Operations Branch receives civil rights and civil liberties complaints via mail, e-mail, telephone, and facsimile. The complaints are reviewed by an Investigative Specialist. After review, each complaint is entered into an OIG database and a decision is made concerning its disposition. The more serious civil rights and civil liberties allegations that relate to actions of DOJ employees or DOJ contractors normally are assigned to an OIG Investigations Division field office, where OIG special agents conduct investigations of criminal violations and administrative misconduct.<sup>3</sup> Some complaints are assigned to the OIG's Oversight and Review Division for investigation.

Given the number of complaints received 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 Affairs for handling. 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 received by the OIG involve matters outside our jurisdiction. The ones that identify a specific issue for investigation are forwarded to the appropriate investigative entity. For example, complaints of mistreatment by airport security staff or by the border patrol are sent to the

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<sup>2</sup> This unit also is responsible for coordinating the OIG's review of allegations of misconduct by employees in 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 end in prosecution. When this occurs, the OIG is able to 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 criminally.

Department of Homeland Security (DHS) OIG. We also have forwarded complaints to the OIGs of the Social Security Administration, the Equal Employment Opportunity Commission, and the United States Postal Service. In addition, we have referred complainants to state Departments of Correction that have jurisdiction over the subject of the complaints.

When an allegation received from any source involves a potential violation of federal civil rights statutes by a DOJ employee, we discuss 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 either by 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 This Reporting Period**

From July 1, 2007, through December 31, 2007, the period covered by this report, the OIG processed **482** Section 1001-related complaints.<sup>4</sup>

Of these complaints, we concluded that **355** did not fall within the OIG's jurisdiction or did not warrant further investigation. Approximately **282** of these 355 complaints involved allegations against agencies or entities outside of the DOJ, including other federal agencies, local governments, or private businesses. When possible, we referred those complaints to the appropriate entity or advised complainants of the entity with jurisdiction over their allegations. The remaining **73** of the 355 complaints raised allegations that, on their face, did not warrant investigation. Complaints in this category included, for example, allegations that FBI agents manipulated the social interactions of a complainant and subjected another complainant to unknown forms of aggression through manipulation of the radio spectrum.

The remaining **127** of the 482 total complaints involved DOJ employees or components and included allegations that required further review. We determined that **120** complaints raised management issues that generally were not related to our Section 1001 duties, and we referred these complaints to DOJ components for appropriate handling. Examples of complaints in this category included inmates' allegations about the general conditions at federal prisons, and complaints that the FBI did not initiate an investigation into particular allegations.

The OIG identified the **7** remaining complaints as matters that we believed warranted an investigation to determine if Section 1001-related abuse occurred. **One** of the matters is being investigated by the OIG, **6** of the matters

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<sup>4</sup> This number includes all complaints in which the complainant makes any mention of a Section 1001-related civil rights or civil liberties violation, even if the allegation is not within the OIG's jurisdiction.

were referred to the BOP for investigation. We discuss the substance of these 7 complaints in the next section of this report.

None of the 482 complaints we processed during this reporting period specifically alleged misconduct by DOJ employees relating to use of a provision in the Patriot Act.

The following is a synopsis of the complaints processed during this reporting period:

<b>Complaints processed:</b>	<b>482</b>
<b>Unrelated complaints:</b>	<b>355</b>
<b>Total complaints within OIG's jurisdiction warranting review:</b>	<b>127</b>
• <b>Management issues:</b>	<b>120</b>
• <b>Possible Section 1001 matters warranting investigation:</b>	<b>7</b>

## **B. Section 1001 Cases This Reporting Period**

### **1. New matters**

During this reporting period, the OIG opened one new Section 1001 investigation. Additionally, the OIG referred six Section 1001-related complaints to the BOP for investigation. For each of those referrals, we requested that the BOP provide the OIG with a copy of its investigative reports upon completion of the investigations.

The following is a summary of the new matter opened by the OIG this reporting period:

- The OIG is investigating allegations that BOP employees violated the civil rights of the spouse of a Muslim inmate when she visited her husband at a BOP facility. The complainant alleged that she was unfairly targeted for personal searches and unnecessary document requests because of her Muslim-related religious clothing.

The following six complaints were referred to the BOP for investigation:

- An inmate alleged that the BOP unfairly imposed special administrative sanctions on him because of his ethnicity. The BOP

Office of Internal Affairs determined that the United States Attorney's Office had requested that special administrative measures be imposed on the inmate for appropriate reasons. The allegation was, therefore, unsubstantiated.

- An inmate alleged that he is being verbally abused by BOP staff because he is Muslim. The OIG is awaiting the result of BOP's investigation.
- An inmate who is originally from Pakistan alleged that he has been discriminated against by BOP employees because of his race and religion. The inmate alleged that he has been transferred several times and unfairly placed in the Special Housing Unit (SHU). The inmate alleged that while he was in the SHU he was harassed by correctional officers, did not receive timely medical treatment, had his legal documents confiscated, and was forced to sleep on dirty bed linens. The OIG is awaiting the result of BOP's investigation.
- A Muslim inmate alleged that when he returned to his cell after it had been searched, he noticed that his Koran had been moved to the floor and stepped on. The OIG is awaiting the result of BOP's investigation.
- A Muslim inmate alleged that ever since he arrived at a BOP facility he has been subjected to "administrative sanctions and racial epithets" on an ongoing basis. The OIG is awaiting the result of BOP's investigation.
- An inmate alleged that a BOP chaplain was teaching an "extreme radical terrorist style of Islam and breeding terrorists." The inmate alleged that he and his father were unnecessarily placed in the SHU because they complained about the chaplain. The inmate further alleged that a BOP employee called him and his father "terrorists." The OIG is awaiting the result of BOP's investigation.

## **2. Cases opened during previous reporting periods that the OIG continues to investigate**

- The OIG is investigating allegations that a BOP inmate was physically and verbally abused by correctional officers because he is Arab and Muslim. The complaint includes allegations that the inmate was pushed against a wall, placed in a cold cell with water on the floor, that his undergarments were confiscated and replaced with undergarments with holes, and that his legal documents were confiscated and "misplaced." The OIG investigation is ongoing.

- The OIG is investigating allegations from a BOP inmate that correctional officers came into his cell in the SHU during a routine movement of the inmate to another cell and referred to the complainant and his cellmate as “camel jack” and “Saddam Hussein.” The inmate further alleged that when he asked the correctional officers not to speak to him in that manner, they assaulted him. The complainant alleged that when he tried to file a complaint with the BOP, he was told that an investigation could take up to 6 months, during which time he would be placed in the general population where the word would get out that he was a snitch. The OIG investigation is ongoing.

### **3. Investigations closed during this reporting period**

- The OIG referred to the BOP for investigation allegations that a Muslim inmate’s civil rights were violated because BOP staff ordered him to remove his Kufi and ordered him not to pray in the prison library. The BOP Office of Internal Affairs investigation did not substantiate the allegations. The BOP staff members denied the allegations and no other evidence supported the complaint.
- The OIG referred to the BOP for investigation allegations that a BOP employee threatened to “expropriate” the inmate’s religious beads; tried to “malign” the inmate’s character by discussing his alleged terrorist ties and nationality in front of other inmates; used excessive force on the inmate; and verbally abused him. The inmate also filed a tort claim alleging that some of his property was lost while he was in segregation. The BOP Office of Internal Affairs investigation did not substantiate the allegations. The BOP employee denied engaging in the alleged conduct and none of the purported witnesses to the incidents corroborated the complainant’s allegations.
- The OIG referred to the FBI for investigation allegations that the Arab-Muslim residents of a metropolitan area were subjected to unspecified harassment and insults by local FBI personnel. The complainant alleged that one specific FBI agent, whom he failed to identify, exhibited racist behavior about the Arab-Muslim residents, and threatened members of the Arab-Muslim community with arrest. The FBI Inspection Division determined that the complainant’s allegations were not sufficiently specific to warrant initiation of an 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 initiated or continued several such special reviews that relate to the OIG's duties under Section 1001. These reviews are discussed in this section of the report.

### **A. Review of the FBI's Use of National Security Letters and Ex Parte Orders for Business Records**

On March 9, 2007, as required by the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109-177) (Patriot Reauthorization Act), the OIG issued two reports that examined the FBI's use of two authorities established or amended by the Patriot Act:

- (1) the FBI's authority to issue national security letters to obtain – without a court order – certain categories of records from third parties, including telephone toll billing records, electronic communication transactional records, financial records, and credit information; and
- (2) the FBI's authority to obtain business records from third parties by applying for ex parte orders issued by the Foreign Intelligence Surveillance Court pursuant to Section 215 of the Patriot Act.

The Patriot Reauthorization Act directed the OIG to review the extent to which the FBI has used these authorities; any bureaucratic impediments to their use; how effective these authorities have been as investigative tools and in generating intelligence products; how the FBI collects, retains, analyzes, and disseminates information derived from these authorities; whether and how often the FBI provided information derived from these authorities to law enforcement officials for use in criminal proceedings; and whether there has been any improper or illegal use of these authorities. See Sections 106A and 119 of Public Law 109-177.

In our last semiannual report to Congress on Implementation of Section 1001 of the USA PATRIOT Act, we summarized the scope of the reviews and recommendations made in our March 2007 reports examining the FBI's use of national security letters (NSL) from 2003 through 2005, and Section 215 orders from 2002 through 2005. The OIG produced classified reports on the use of NSLs and Section 215 authority and provided these classified reports to Congress and to the Intelligence Oversight Board of the President's Foreign Intelligence Advisory Board. We also released publicly unclassified versions of these reports.

As previously reported to Congress, pursuant to the Patriot Reauthorization Act, the OIG is continuing its review of the FBI's use of NSLs and Section 215 orders in 2006. We will issue shortly our reports describing the FBI's use of NSLs and Section 215 orders for business records in 2006. Our NSL report will also describe the FBI's and the Department's response to the OIG's recommendations in our first NSL report as well as other measures that the Department and the FBI have implemented or proposed to address the serious misuse of NSL authorities that our first report described.

We also are completing a detailed investigation of the FBI's use of exigent letters, a practice that we generally described in our first NSL report. The results of that investigation will be described in a separate report, which will be completed in the next several months.

**B. Review of the Department's Involvement with the National Security Agency's Terrorist Surveillance Program or Warrantless Surveillance Program**

The OIG is reviewing the Department's involvement with the National Security Agency (NSA) program known as the "terrorist surveillance program" or "warrantless surveillance program." This ongoing review is examining the Department's controls and use of information related to the program and the Department's compliance with legal requirements governing the program.

**C. Review of FBI Conduct Relating to Detainees in Military Facilities in Guantanamo Bay and Iraq**

The OIG has completed a draft of its review of FBI employees' observations and actions regarding alleged abuse of detainees at Guantanamo Bay, Iraq, and Afghanistan. In late October, the OIG's draft report, which has classified material in it, was provided to the FBI, the DOJ, the Department of Defense, and the Central Intelligence Agency (CIA) for comment on factual accuracy and a sensitivity/classification review. That interagency review for factual accuracy and classification has been slow and is still ongoing. We will provide the classified report to the appropriate oversight committees of Congress when it is completed. We also are working to issue publicly an unclassified summary of our review.

In this review, the OIG examined whether FBI employees participated in any incident of detainee abuse, whether FBI employees witnessed incidents of abuse, whether FBI employees reported any abuse, and how those reports were handled by the FBI. The OIG interviewed detainees, FBI employees, and military personnel at Guantanamo. In addition, the OIG administered a detailed questionnaire to more than 1,000 FBI employees who served assignments at Guantanamo Bay, in Iraq, and in Afghanistan. The questionnaire requested information on what the FBI employees observed,

whether they reported observations of concern, and how those reports were handled.

#### **D. Review of the FBI's Investigation of Certain Domestic Advocacy Groups**

The OIG is continuing to review allegations that the FBI targeted domestic advocacy groups for scrutiny based solely upon their exercise of rights guaranteed under the First Amendment of the United States Constitution. The review is examining allegations regarding the FBI's investigation, and the predication for any such investigation, of groups including the Thomas Merton Center, Greenpeace, and People for the Ethical Treatment of Animals (PETA). Our review of the domestic advocacy groups is similar in focus to the OIG's April 2006 review of the FBI's investigation of potential protesters at the 2004 Democratic and Republican National Conventions.

#### **E. Follow-up Audit of the Terrorist Screening Center**

In September 2007, the OIG completed a follow-up to our 2005 audit of the Terrorist Screening Center (TSC), a multi-agency effort administered by the FBI to consolidate terrorist watchlists and provide 24-hour, 7-day a week responses for screening individuals. The follow-up audit concluded that the TSC has made improvements since our previous audit was completed, but weaknesses still existed in several watchlist processes and significant deficiencies remained in the data contained in the consolidated terrorist watchlist. The OIG made 18 recommendations to help the FBI improve TSC operations and the quality of its watchlist data.

#### **F. Audit of the Department's Watchlist Nomination Process**

The OIG is currently conducting an audit of the processes used throughout the Department for nominating individuals to the consolidated terrorism watchlist maintained by the TSC. This audit is examining the specific policies and procedures of Department components for nominating individuals to the consolidated watchlist. The audit also is reviewing the training provided to the individuals who are involved in the nominating process. The Department components we are reviewing include the FBI, the DEA, the ATF, and the United States Marshals Service (USMS). We are conducting this review in conjunction with other Intelligence Community OIGs, who are examining the watchlist nomination process in their agencies.

## **V. EXPENSE OF IMPLEMENTING SECTION 1001**

Section 1001 requires the OIG to:

*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...including a description of the use of funds appropriations used to carry out this subsection.*

During this reporting period, the OIG spent approximately \$1,790,114 in personnel costs, \$17,719 in travel costs (for investigators to conduct interviews), and \$34,472 in miscellaneous costs, for a total of \$1,842,305 to implement its responsibilities under Section 1001. The total personnel and travel costs reflect the time and funds spent by OIG special agents, inspectors, and attorneys who have worked directly on investigating Section 1001-related complaints, conducting special reviews, and implementing the OIG's responsibilities under Section 1001.