

Obama Administration Frustrates Inspectors General on Records Access

By Charles S. Clark

February 3, 2015

A little-noticed passage in President Obama's fiscal 2016 budget is combining with delays by FBI records managers to frustrate inspectors general and their congressional allies in their efforts to clarify the watchdogs' authority to gain full access to agency documents.

A Tuesday hearing by the House Oversight and Government Reform Committee was intended as an update to testimony given last September by three inspectors general who believed they had been thwarted in their efforts to review internal records by agency leaders. The agency officials cited statutory authority they believed takes precedence over the independent auditors' privileges outlined in the 1978 Inspector General Act.

But Justice Department Inspector General Michael Horowitz announced during the hearing that he had just sent a letter to congressional appropriators complaining that the FBI had failed to turn over key records in several whistleblower cases by the deadlines, an apparent violation of a provision inserted in December's "cromnibus" spending measure that denied funds to the Justice Department for use in blocking IGs' access to records.

That very provision, two Republican House Members pointed out, was earmarked as "no longer necessary" in the newly released Obama budget in a table of general fiscal provisions not continued in fiscal 2015. The administration's explanation was that the Justice Department "is unaware of any specific materials that the OIG believed necessary to its reviews, but to which the OIG had not been granted access." The department promised to work with the IG on statutory language to address concerns.

Horowitz, as the newly elected chairman of the inspectors general council, has been [pressing](#) for resolution from either Congress or Justice's Office of Legal Counsel to clarify the authority he and other IGs believe they have for timely access to agency records.

The FBI and other agencies, however, have cited other laws involving national security and personal privacy that prevent officials from releasing all documents to IGs without lengthy review by agency leaders. Congress is likely to resume consideration of a bipartisan bill introduced last year to beef up inspectors general enforcement powers.

Oversight Chairman Jason Chaffetz, R-Utah, convened the hearing by stressing that the IG Act gives watchdogs "unfettered access to *all* agency records." He cited an example of "stonewalling" involving a senior Environmental Protection Agency employee who had been accused of sexual harassment of some 16 women since 2004 as well as inappropriate handling of classified information. "People get in hot water, and then immediately file retirement papers," Chaffetz said.

Arthur Elkins Jr., EPA's inspector general, confirmed that this employee was under investigation and had been instructed by EPA officials to talk to the IG staff, only to retire that same day. "Over the years, the trust piece has been rocked," Elkins said after testifying about resistance to his staff at the EPA intelligence office and the Chemical Safety

Board. “One specific impediment to being able to reach agreement previously was a memorandum of understanding that the EPA had entered into unilaterally with the Federal Bureau of Investigation,” he said. “The OIG was not party to, nor was it consulted in, creating that MOU. The EPA asserted that the MOU precluded it from sharing information with the OIG.”

A similar memorandum of understanding is in place at the Peace Corps, IG Kathy Buller said. “The revisions the Peace Corps made to the access-denying policies and procedures as a result of the MOU are a good step forward,” she said, describing how a 2011 law intended to protect the privacy of Peace Corps volunteers who are sexually assaulted overseas is cited as a reason for the agency’s shielding of some internal documents from IG auditors.

Her staff and agency staff, Buller added, “are now confused about communicating with the IG” on sensitive issues involving sexual assault. I remain concerned about the appropriateness of my office having to enter into an MOU to obtain information we are entitled to by law and that we need to fulfill our statutory duties. Therefore, we see this agreement as a temporary fix to obtain information while we seek agency or congressional action.”

The next step in the process is unclear. Horowitz is waiting for a ruling from the Justice Department Office of Legal Counsel, which may come this spring or later. “Delaying or denying access to agency documents imperils an IG’s independence, and impedes our ability to provide the effective and independent oversight that saves taxpayers money and improves the operations of the federal government,” Horowitz said.

Committee Ranking Member Rep. Elijah Cummings, D-Md., told the IGs, “I understand your frustration when you are not getting the documents you request. I empathize with you when agencies cite various other federal statutes with competing interests, and the system seems to slow to a crawl.” But he also said he did “not want to downplay the interests of the agencies. They are sometimes put in difficult positions too. Congress orders them to protect information from unauthorized disclosure, and we are not always clear about whether that includes the IGs too.”

Cummings said he and staff have been meeting with all parties and are hoping for a negotiated agreement before any new laws are written. “We need a resolution, and we need it soon,” he said.

Lawmakers of both parties used the IG hearing to bring up the 18-month-old controversy over the Internal Revenue Service’s “targeting” of conservative nonprofits applying for tax-exempt status, an issue first exposed by the Treasury Inspector General for Tax Administration.

Rep. Jim Jordan, R-Ohio, tried unsuccessfully to get Horowitz to weigh in on why the Justice Department had not prosecuted former Exempt-Organizations Division director Lois Lerner in the case. Reps. Gerry Connolly, D-Va., and Matt Cartwright, D-Pa., similarly met with reluctance from Horowitz when they asked for more detail on the inspector general council’s probe of TIGTA J. Russell George for alleged pro-Republican bias in his agency’s audit of the IRS division central to the scandal.

(Image via [sergign](#) / Shutterstock.com)

By Charles S. Clark

February 3, 2015

<http://www.govexec.com/management/2015/02/obama-administration-frustrates-inspectors-general-records-access/104496/>