



Office of the Inspector General
U.S. Department of Justice



**180 Day Report to Congress on the Impact of
Section 540 of the Commerce, Justice, Science, and
Related Agencies Appropriations Act, 2016**

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180 DAY REPORT TO CONGRESS ON THE IMPACT OF SECTION 540 OF THE COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS ACT, 2016

Section 540 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016, Pub. L. No. 114-113, §540, 129 Stat. 2242, 2332 (2015) (the Act), prohibits the Department of Justice (DOJ) from spending appropriated funds to deny the DOJ Office of the Inspector General (OIG) access to records. The Joint Explanatory Statement that accompanied the Act further requests that the Inspector General report to Congress on the effectiveness of Section 540 within 180 days of enactment of this Act. The OIG submits this report in order to fulfill this reporting requirement. Specifically, the Act states that:

No funds provided in this Act shall be used to deny an Inspector General funded under this Act timely access to any records, documents, or other materials available to the department or agency over which that Inspector General has responsibilities under the Inspector General Act of 1978, or to prevent or impede that Inspector General's access to such records, documents, or other materials, under any provision of law, except a provision of law that expressly refers to the Inspector General and expressly limits the Inspector General's right of access. A department or agency covered by this section shall provide its Inspector General with access to all such records, documents, and other materials in a timely manner. Each Inspector General shall ensure compliance with statutory limitations on disclosure relevant to the information provided by the establishment over which that Inspector General has responsibilities under the Inspector General Act of 1978.

The statute further requires the Inspectors General covered in this section to report to the Committees on Appropriations within five calendar days of any failures to comply with this requirement.

This Act follows a similar provision, Section 218, which was included in the Department of Justice Appropriations Act for fiscal year (FY) 2015 that was passed by Congress in December 2014. Section 218 prohibited the use of appropriated funds to deny the OIG timely access to information. Pursuant to the requirement in Section 218, in June 2015, the OIG submitted a six month report to Congress describing DOJ's compliance with Section 218. That OIG report, entitled "180 Day Report to Congress on the Impact of Section 218 of the Department of Justice Appropriations Act for Fiscal Year 2015," can be found on the OIG website: <https://oig.justice.gov/press/2015/2015-06-16.pdf>. However, in July 2015, an opinion by the DOJ Office of Legal Counsel (OLC) found that Section 6(a) of the Inspector General Act did not authorize disclosure to the OIG of certain records in the DOJ's possession and concluded that Section 218 was "best read to permit adherence to the disclosure restrictions" that had been followed by the Department regarding those categories of records. In short, this DOJ opinion rendered Section 218 meaningless.

Impact of Section 540

The OIG has found that since it was enacted in December 2015, Section 540 has had a positive impact on our ability to get timely access to records from Department components. Since December 2015, the OIG, to its knowledge, has not been denied access to Department documents or experienced excessive delays due to objections to the OIG's right to access documents.

Additionally, on April 27, 2016, the OLC issued another opinion, this time addressing the effect of Section 540 on the OIG's access rights. In contrast to its opinion from July 2015 interpreting Section 218, the April 2016 OLC opinion concluded that Section 540 "effectively prohibits the Department of Justice, for the remainder of fiscal year 2016, from denying the [OIG] timely access to materials requested by the OIG, or preventing or impeding OIG's access to" grand jury, wiretap, and credit information. Subsequently, the Deputy Attorney General instructed Department component heads in a memorandum dated May 2, 2016, that at least for programs funded by FY 2016 appropriations, the Department and its components may now produce these materials to the OIG without additional procedures or delay, and regardless of whether the other statutes would otherwise prohibit the disclosure.

In order to conduct effective oversight, an OIG must consistently have timely and complete access to documents and materials needed for its audits, reviews, and investigations. Delaying or denying access to agency documents imperils an OIG'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. Actions that limit, condition, or delay access have profoundly negative consequences for our work: they make us less effective, encourage other agencies to take similar actions in the future, and erode the morale of the dedicated professionals that make up our staffs.

We appreciate Congress's support for the OIG's authority to obtain timely and complete access to agency documents by including Section 540 in the FY 2016 Appropriations law. Section 540 clearly demonstrates Congress's intent that OIGs must have timely and complete access to agency documents. Indeed, as a result of Section 540, for the first time since 2010, when the Federal Bureau of Investigation began raising legal objections to producing certain records to the OIG, Department components must ensure that appropriated funds are not used to deny the OIG timely access to "all" records in their possession that are necessary for the OIG to conduct its oversight function. Section 540 defeats any claim by Department components that the Inspector General Act does not entitle the OIG to access "all" records in their possession. However, a permanent solution beyond FY 2016 is necessary to ensure that the OIG and all federal Inspectors General can conduct their oversight work and continue to have complete and timely access to documents. Currently, the IG Empowerment Act, which is pending in the House of Representatives (H.R. 2395) and in the Senate (S. 579), which has been incorporated into the Bolster Accountability to Drive Government Efficiency and Reform Washington Act (S. 3011), would grant the OIG authority to access all

agency documents unless a provision of law expressly restricts our access, without regard to what year's appropriated funds might be used to restrict access and would apply to all IGs throughout the community. The OIG looks forward to working with Congress to achieve such a permanent solution, thereby ensuring our ability to conduct our important oversight work.

The Department of Justice Office of the Inspector General (DOJ OIG) is a statutorily created independent entity whose mission is to detect and deter waste, fraud, abuse, and misconduct in the Department of Justice, and to promote economy and efficiency in the Department's operations. Information may be reported to the DOJ OIG's hotline at www.justice.gov/oig/hotline or (800) 869-4499.



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