

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

Report to Congress on Implementation of Section 1001 of the USA PATRIOT Act

(as required by Section 1001(3) of Public Law 107-56)

September 2014

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 summarizes the OIG's Section 1001-related activities from January 1, 2014, through June 30, 2014.

I. INTRODUCTION

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. Marshals Service (USMS), and the U.S. Attorneys' Offices.¹

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

- **Audit Division** conducts 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** investigates allegations of bribery, fraud, abuse, civil rights violations, and violations of other criminal laws and administrative procedures that govern Department employees, contractors, and grantees.

¹ The OIG has authority to investigate allegations of criminal wrongdoing or administrative misconduct by any Department employee, except for "allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice." 5 U.S.C. App. 3 § 8E(b)(2)-(3).

- **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 more than 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 6 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

Section 1001 requires the OIG to "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 Investigations Division manages the OIG's Section 1001 investigative responsibilities. The two units with primary responsibility for coordinating these activities are Operations Branch I and Operations Branch II, each of which is directed by a Special Agent in Charge and two Assistant Special Agents in Charge (ASAC).² In addition, these units are supported by Investigative Specialists and other staff assigned to the Investigative Support Branch, who divide their time between Section 1001 and other responsibilities.

The Investigations Division receives civil rights and civil liberties complaints via mail, e-mail, telephone, and facsimile. Upon receipt, Division ASACs review the complaints and assign an initial disposition to each matter, and Investigative Specialists enter the complaints alleging a violation within the investigative jurisdiction of the OIG or another federal agency into an OIG database. Serious civil rights and civil liberties allegations relating to actions of DOJ employees or contractors are typically assigned to an OIG Investigations Division field office, where special agents conduct investigations of criminal violations and administrative misconduct.³ Occasionally, complaints are assigned to the OIG's Oversight and Review Division for investigation.

Given the number of complaints OIG receives 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. 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 the OIG receives involve matters outside its jurisdiction, and when those matters identify a specific issue for investigation,

² These units also coordinate the OIG's review of allegations of misconduct by Department employees: the Operations Branch I has primary responsibility for matters involving the BOP, USMS, and the U.S. Attorney's Offices; the Operations Branch II has primary responsibility for matters involving the FBI, DEA, and ATF.

³ 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 result in prosecution. When this occurs, the OIG may 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.

the OIG forwards them to the appropriate investigative entity. For example, complaints of mistreatment by airport security staff or by the Border Patrol are sent to the Department of Homeland Security OIG. The DOJ OIG also has forwarded complaints to the Offices of Inspectors General at the Department of Health and Human Services, the Department of Veterans Affairs, and the Department of Education. Allegations related to the authority of a DOJ attorney to litigate, investigate, or provide legal advice are referred to the DOJ Office of Professional Responsibility. Allegations related solely to state and local law enforcement or government officials that raise a federal civil rights concern are forwarded to the DOJ Civil Rights Division.

When an allegation received from any source involves a potential violation of federal civil rights statutes by a DOJ employee, the OIG discusses 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 by either 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 During This Reporting Period

Between January 1, 2014, and June 30, 2014, the period covered by this report, the OIG processed **448** new civil rights or civil liberties complaints.⁴

Of these complaints, **387** did not fall within the OIG's jurisdiction or did not warrant further investigation. The vast majority (332) of these complaints involved allegations against agencies or entities outside the DOJ, including other federal agencies, local governments, or private businesses. When possible, the OIG referred those complaints to the appropriate entity or advised complainants of the entity with jurisdiction over their allegations. Some complaints (55) raised allegations that were not suitable for investigation by the OIG and could not be referred to another agency for investigation, generally because the complaints failed to identify a subject or agency.

The OIG found that the remaining **61** of the 448 complaints it received involved DOJ employees or DOJ components and included allegations that required further review. The OIG determined that **53** of these complaints raised management issues generally unrelated to the OIG's Section 1001 duties and, consequently, referred these complaints to DOJ components for appropriate handling. Examples of complaints in this category included allegations by federal prisoners about the general prison conditions, and by others that the FBI did not initiate an investigation into particular allegations.

⁴ These complaints include all matters in which the complainant made any mention of a civil rights or civil liberties violation, even if the allegation was not within the OIG's jurisdiction.

The OIG identified a total of **8** complaints warranting further investigation to determine whether Section 1001-related abuses occurred. The OIG investigated **1** of these complaints and referred the other **7** complaints to the BOP for further investigation. The next section of this report describes the substance of these 8 complaints. Notably, none of the complaints processed during this reporting period specifically alleged misconduct by DOJ employees relating to the use of authorities contained in the Patriot Act.

The following is a synopsis of the new complaints processed during this reporting period involving DOJ employees or components, including allegations requiring further review:

Complaints processed	448
Complaints not within OIG's jurisdiction or not warranting further review	387
Total complaints within OIG's jurisdiction warranting review	61
Management issues referred to DOJ components for handling	53
Possible Section 1001 complaints warranting investigation by OIG	1
Possible Section 1001 complaints warranting investigation by DOJ components	7

B. Section 1001 Complaints

1. Investigations Opened During This Reporting Period

During this reporting period, the OIG opened **1** Section 1001-related investigation, which has been closed. The OIG also referred **7** Section 1001-related complaints to the BOP for investigation, all of which remain pending. The OIG has requested that, upon completion of the investigation of each referred complaint, BOP provide the OIG a copy of its investigative report.

a. Completed OIG Investigation

• A Muslim inmate alleged numerous incidents of harassment and abuse by BOP correctional officers. These allegations

included that a correctional officer threw the inmate's Koran in a toilet and purposely issued him a stained and soiled mattress. The inmate also alleged that another correctional officer demanded that the inmate put himself in handcuffs for a cell search, and when the inmate refused because he believed the officer would injure him, the correctional officer falsely reported that the inmate had threatened him, causing him injuries from being placed in ambulatory restraints for 24 hours. The inmate further alleged that his medical records were falsified by recording that he suffered no injuries. The OIG interviewed the inmate, who repeated his allegations but also stated that he had not witnessed the correctional officer throwing his Koran into the toilet. The OIG's inspection of the inmate's Koran did not identify observable damage. The OIG conducted compelled interviews with the subjects, all of whom denied the inmate's allegations. The OIG's review of the BOP incident report for the cell search found that the use of ambulatory restraints had been authorized by the Warden because the inmate had become disruptive, displayed signs of imminent violence, and refused to be placed in hand restraints. Twelve witnesses submitted statements that corroborated the information contained in the incident report, and a Health Services Clinical Encounter Report stated that the inmate had sustained no injuries during the incident. The OIG determined that the allegations were not substantiated and closed its investigation.

b. Continuing BOP Investigations

- A Muslim inmate alleged that after requesting a reason for being ordered to submit to a visual search a BOP correctional officer pushed him to the ground and subsequently pushed his face into a fence. The inmate further alleged that the correctional officer referred to him using a racial slur and made other derogatory and threatening statements about Muslims.
- A Muslim inmate alleged that two BOP correctional officers called him a "Muslim terrorist" and a "terrorist bomber"; that he suffered physical abuse when an unidentified officer assaulted him while he was in full restraints; and that his wheelchair was not properly secured when he was transported in a government vehicle, resulting in physical injury.
- A BOP inmate alleged that, while the inmate was recovering from surgery, a Health Services Administrator inappropriately searched his person while cursing at the inmate. The inmate

further alleged that the Health Services Administrator deliberately and maliciously threw the inmate's Koran on the floor.

- A Muslim inmate alleged that a correctional officer threatened to bring a gun into a BOP facility to kill the inmate, referred to the inmate using racial slurs, and made reference to his dislike of black Muslims.
- An inmate alleged that a BOP correctional officer is disrespectful toward Muslim inmates and threw away the inmate's religious headwear. The inmate also alleged that the officer has refused to allow the inmate to correspond with the courts about his case and that his outgoing mail is at times returned to him opened.
- An inmate alleged that a correctional officer discriminated against Muslim inmates by disrupting a prayer service without justification and telling the inmates to stop praying.
- A Muslim inmate alleged that a disciplinary hearing officer threatened him, cursed at him, made derogatory statements about Muslims, and did not properly conduct a hearing.

2. Pending Investigations Opened During Previous Reporting Periods

a. OIG Investigation

The OIG opened the following investigation during a prior reporting period; the investigation remains open.

• Six BOP inmates alleged that a correctional officer referred to the inmates as rats and implied that they deserved to be killed; poured oats into their property bags, causing rats to raid the bags; disposed of their personal property, including religious items; and placed inappropriate photographs inside a Koran. The inmates further alleged that the correctional officer made disrespectful noises and jokes outside the room where they were praying. One inmate alleged that the correctional officer encouraged him to listen to an evangelical Christian radio station.

b. Complaints Referred to BOP

The OIG referred the following **5** complaints to the BOP for investigation during a prior reporting period; the investigations

remain open. The OIG has requested that BOP provide a copy of its investigative report upon completion of the investigation of each referred complaint.

- A BOP inmate alleged that several correctional officers referred to him using a racial and ethnic slur, and threatened to kill him because he asked why his food tray was not delivered on time.
- A BOP inmate alleged that after he filed a grievance against a BOP chaplain for allegedly interfering with his right to practice the Islamic faith, the chaplain then accused the inmate of "starting a terrorist cell," resulting in the inmate being placed in segregated housing. The inmate also alleged that after filing another grievance alleging retaliation, he was again sent to segregated housing. Additionally, the inmate alleged that after an internal investigation at the prison determined that the allegations against him were false, the BOP took no action against the staff and instead transferred the inmate twice, leaving him thousands of miles from his family.
- An inmate alleged that, based on racial animus, a BOP employee made disrespectful and highly offensive comments that other inmates could hear in an effort to humiliate and provoke the inmate. The inmate also alleged that the employee refused to report an injury to the inmate's wrists caused by handcuffs.
- An inmate alleged that a correctional officer made derogatory racial and religious statements about Muslims and arbitrarily refused to allow inmates to attend a special Muslim service. The inmate further alleged that the officer taunted the complainant about religious matters, made false allegations against the complainant, and confiscated his ID, which resulted in the inmate not being able to participate in programs or services.
- An inmate alleged that a chaplain denied him and other Muslim inmates basic rights in violation of BOP policy, such as being able to pray at job sites and participating in religious rituals.

3. Previously Opened Investigations Completed During This Reporting Period

The BOP completed investigations of **5** Section 1001-related complaints that were referred by the OIG in prior reporting periods.

Upon completion of the investigation of each referred complaint, the BOP provided the OIG a copy of its investigative report.

a. BOP Investigations

- An inmate alleged that two correctional officers singled out four Muslim inmates for discriminatory actions such as cell searches and the confiscation and mishandling of religious materials. The inmate further alleged that officers made false statements about the Muslim inmates to non-Muslim inmates in an effort to incite violence between the two groups. BOP attempted to interview the inmate but he refused to provide an affidavit and said that he did not recall the incident. The correctional officers all denied the allegations. BOP determined the allegations were not substantiated and closed its investigation.
- Two inmates alleged that correctional officers harassed and • disrespected Muslim inmates by conducting retaliatory searches of their cells and persons, intimidating them during prayer time, and attempting to deny them access to religiously appropriate meals. One of the inmates also alleged that a correctional officer threw a padlock at a Muslim inmate while he was sleeping, although during an interview with BOP this inmate admitted that he did not witness this incident. BOP interviewed two BOP staff witnesses who recalled reviewing an inmate complaint at the time of this incident, but both witnesses stated that there was no mention in the complaint of a correctional officer throwing a padlock at an inmate. These witnesses also recalled reviewing video of the alleged incident, which they said did not show a correctional officer throwing anything inside the inmate's cell. The video of the incident was not available to investigators because it had been overwritten consistent with BOP policy and practice. The witnesses further stated that they discussed the contents of the complaint and the video with the Warden. During BOP interviews, the correctional officers denied all of the allegations against them. BOP determined there was insufficient evidence to substantiate the allegations and closed its investigation.
- A BOP inmate alleged that a BOP Intelligence Research Specialist discriminated against him based on his religion. The inmate alleged that the employee referred to a Muslim prayer in a derogatory manner, mocked the traditional Muslim greeting, and referred to Muslim inmates as "terrorists" and "fundamentalists." The inmate also alleged that the employee has repeatedly called him "Osama bin Laden," and mocked him

for wearing a beard. Additionally, the inmate alleged that the employee had other staff write false incident reports about the inmate in an effort to harass him, and endangered the inmate's life by telling other inmates that he provided information about an incident involving another inmate. BOP interviewed the inmate, who restated his allegations but refused to provide an affidavit. BOP also interviewed the Intelligence Research Specialist, who denied the allegations, as well as several BOP staff witnesses, none of whom provided evidence in support of the allegations. BOP determined that the allegations were not substantiated and closed its investigation.

- A BOP inmate alleged that a correctional officer openly mocked the Islamic faith and interfered with Muslim inmates practicing their religion. The inmate alleged that the correctional officer threatened to take disciplinary action against him if he performed the Muslim call to prayers, or prayed with or at the same time as other Muslims. BOP interviewed the correctional officer, who denied the allegations, stating that he never mocked the inmate's faith and that he treats all inmates equally. BOP also interviewed a senior correctional officer who worked in the same unit who did not recall the correctional officer ever showing prejudice towards Muslim inmates. The inmate provided an affidavit stating that he had nothing to add to his original allegations. BOP determined the allegations were not substantiated and closed its investigation.
- A BOP inmate alleged that a unit manager used profanity towards inmates and treated black Muslim inmates harshly because of their religious beliefs. The inmate also alleged that BOP staff intentionally destroyed his written correspondence. The inmate further alleged that during cell searches the unit manager intentionally placed prayer rugs and Korans on the floor and kicked them, and threw the inmates' religious headwear in a manner intended to be disrespectful to the Islamic religion. The inmate declined to be interviewed by BOP investigators and declined to identify additional witnesses to corroborate his allegations. BOP interviewed the unit manager, who denied the inmate's allegations and stated that he typically places prayer rugs and Korans on the bed during cell searches. BOP determined that the allegations were not substantiated and closed its 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 completed or is conducting several such reviews that relate to the OIG's duties under Section 1001. These reviews are discussed in this section of the report.⁵

A. Audit of the FBI's Management of Terrorist Watchlist Nominations

The OIG issued an audit report evaluating the impact on the FBI's watchlisting system of the failed terrorist attack on December 25, 2009, and assessing the effectiveness of FBI initiatives implemented between 2009 and 2012 to ensure the accuracy, timeliness, and completeness of the FBI's watchlisting practices, including watchlist nominations and removals.

Although the perpetrator of the failed terrorist attack was known to the U.S. government, he was not on the consolidated terrorist watchlist. The OIG report details that, as a result, the Watchlist Community took a series of actions to address immediate threats and improve the watchlist process. Specifically, the Terrorist Screening Center (TSC), a multi-agency effort administered by the FBI whose mission is to consolidate terrorist watchlists and provide around-the-clock support to screening personnel, was directed to make a series of temporary modifications to the watchlist status of several groups of individuals. Overall, the OIG found that the TSC responded commendably to the attempted terrorist attack and worked diligently to overcome policy weaknesses that the attack had exposed, as well as associated technical and procedural problems that arose. However, the OIG also determined that the watchlist modifications were not communicated and documented effectively, and that the TSC was unable to readily identify individuals who met the threat-based watchlist criteria or easily generate a listing of all of the watchlist records that were modified. In July 2010, the TSC and the Watchlist Community (which consists of multiple agencies) developed new policies and procedures to cover a similar event in the future.

The OIG also found that, generally, the improvements implemented by the FBI as a result of previous OIG audits helped to ensure that the watchlist is more complete, accurate, and current. However, we also found that certain FBI watchlist policies provided case agents with guidance that was inconsistent with the Watchlist Community's Watchlist Guidance, and that FBI policy unduly restricted the FBI's nominations to the watchlist. When the OIG made

⁵ Our March 2014 Section 1001 Patriot Act Report described the OIG's ongoing work on an audit of the Department's use of and support for unmanned aircraft systems. Because this work is not related to reportable issues under the Act, it is not included in this report.

this concern known to the FBI during the course of this audit, the FBI revised its watchlisting nomination guidelines, but the OIG believes that the policy still provides FBI personnel with inconsistent directions that could cause terrorism information to not be available to the Watchlist Community.

The OIG also found that the FBI's time requirements for the submission of watchlist actions could be strengthened, and that the FBI's database for submitting, monitoring, and tracking non-investigative subject nominations could be improved. The OIG made 12 recommendations to assist the FBI in strengthening its watchlist-related operations and practices. The FBI agreed with the recommendations and reported that it has begun corrective action.

B. Review of the Department's Use of Material Witness Warrants

The OIG is reviewing the Department's use of the material witness warrant statute, 18 U.S.C. § 3144, which provides for the arrest and detention of a person if his testimony "is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena."⁶ With a particular focus on post-September 11 terrorism cases, the OIG is evaluating whether the statute has been used in an arbitrary, overbroad, or otherwise abusive manner. We are also examining whether the information presented to the courts to justify the detention of particular witnesses fairly reflected the underlying information known to the Department and the FBI at the time; whether procedural safeguards have provided meaningful protections to detained witnesses; and whether the conditions under which selected witnesses were confined were consistent with relevant statutes, regulations, and rules.

C. Review of the FBI's Use of National Security Letters, Section 215 Orders, and Pen Register and Trap-and-Trace Authorities under the Foreign Intelligence Surveillance Act from 2007 through 2009

The OIG is examining the FBI's use of national security letters (NSL) and Section 215 orders for business records.⁷ Among other issues, this review is assessing the FBI's progress in responding to the OIG's recommendations in its 2007 and 2008 reports on the FBI's use of NSLs and Section 215 authority, and in its 2010 report on the FBI's use of exigent letters and other informal requests for telephone records. A focus of this review is the NSL subsystem, an automated workflow system for NSLs that all FBI field offices and Headquarters

⁶ This report was completed in September 2014. The results of the review will be described in our next Section 1001 Patriot Act report, which will cover the time period of July 1 through December 31, 2014.

⁷ A report describing the FBI's use of NSLs was completed in August 2014. The results of the review will be described in our next Section 1001 Patriot Act report, which will cover the time period of July 1 through December 31, 2014.

divisions have been required to use since January 1, 2008, and the effectiveness of the subsystem in reducing or eliminating noncompliance with applicable authorities. The current review is also examining the number of NSLs issued and Section 215 applications filed by the FBI between 2007 and 2009, and any improper or illegal uses of these authorities. In addition, the review is examining the FBI's use of its pen register and trap-and-trace authority under the Foreign Intelligence Surveillance Act.

D. FBI's Involvement in the National Security Agency's Bulk Telephony Metadata Collection Program

The OIG is reviewing the FBI's use of information derived from the National Security Agency's (NSA) collection of telephony metadata obtained from certain telecommunications service providers under Section 215 of the Patriot Act. The review will examine the FBI's procedures for receiving, processing, and disseminating leads the NSA develops from the metadata, and any changes that have been made to these procedures over time. The review will also examine how FBI field offices respond to leads, and the scope and type of information field offices collect as a result of any investigative activity that is initiated. In addition, the review will examine the role the leads have had in FBI counterterrorism efforts.

E. DEA's Use of Administrative Subpoenas

The OIG is examining the DEA's use of administrative subpoenas to obtain broad collections of data or information. The review will address the legal authority for the acquisition or use of these data collections; the existence and effectiveness of any policies and procedural safeguards established with respect to the collection, use, and retention of the data; the creation, dissemination, and usefulness of any products generated from the data; and the use of "parallel construction" or other techniques to protect the confidentiality of these programs.

V. EXPENSE OF IMPLEMENTING SECTION 1001

Section 1001 requires the OIG to include in this report "a description of the use of funds appropriations used to carry out this subsection."

During this reporting period, the OIG spent approximately \$397,448 in personnel costs, \$10,580 in travel costs, and \$100 in miscellaneous costs, for a total of \$408,128 to implement its responsibilities under Section 1001. The total personnel and miscellaneous costs reflect the time and funds spent by OIG special agents, attorneys, auditors, inspectors, program analysts, and paralegals who have worked directly on investigating Section 1001-related complaints, conducting special reviews, implementing the OIG's responsibilities under Section 1001, and overseeing such activities.