

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515–6216
One Hundred Sixteenth Congress

May 1, 2020

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue NW, Suite 4706
Washington, D.C. 20530

Dear Inspector General Horowitz:

We continue to closely follow the Department of Justice Office of Inspector General’s (OIG) examination of the Federal Bureau of Investigation’s (FBI) Foreign Intelligence Surveillance Act (FISA) applications targeting U.S. Persons. We appreciate the recent telephone briefing that the OIG provided to the Committee about the OIG’s March 30th Management Advisory Memorandum.¹ We write to ask that the OIG seek additional information from the FBI about its FISA applications targeting U.S. Persons.

In December 2019, in the wake of finding significant FBI misconduct in FISA applications to surveil former Trump campaign associate Carter Page, the OIG initiated a comprehensive audit of FISA applications targeting U.S. Persons.² On March 30, while this audit was ongoing, the OIG issued a rare Management Advisory Memorandum to alert the Justice Department, FBI, and Congress of substantial concerns stemming from the OIG’s preliminary review, including serious deficiencies in all 29 FISA applications reviewed.³

The Memorandum detailed substantial FBI noncompliance with Woods Procedures, a safeguard designed to minimize factual inaccuracies in FISA applications by requiring the FBI maintain supporting documentation for each factual assertion in the application.⁴ Specifically, the OIG found unsupported, uncorroborated, or inconsistent information in the Woods files of all

¹ Telephone Briefing with Staff, Off. of Insp. Gen., Dep’t of Justice (April 21, 2020) [hereinafter “OIG Telephone Briefing”]; see Dep’t of Justice Off. of Inspector Gen., Management Advisory Memorandum for the Director of the Federal Bureau of Investigation Regarding the Execution of Woods Procedures for Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons (Mar. 2020). [hereinafter “Management Advisory”].

² See Management Advisory, *supra* note 1, at 1-2; Dep’t of Justice Off. of Inspector Gen., Review of Four FISA Applications and Other Aspects of the FBI’s Crossfire Hurricane Investigation (Dec. 2019); “*Protecting those who blow the whistle on government wrongdoing*”: Hearing Before the S. Comm. on Gov’t Operations, of the H. Comm. on Oversight & Reform 116th Cong. (2019) (statement of Michael E. Horowitz, Inspector Gen., Dep’t of Justice) (“We are doing a follow up audit because one of the questions we had coming away from this was, is this happened – did this happen only in this case...”).

³ See Management Advisory, *supra* note 1, at 7-8.

⁴ *Id.* at 3.

25 surveillance applications on U.S Persons that the OIG was able to review.⁵ The FBI was unable to locate the Woods files for four additional files that the OIG had requested—meaning the OIG could not review those applications.⁶ As of April 21, the OIG reported to the Committee that FBI had not yet located or followed-up on these four missing Woods files.⁷ In the 25 Woods files that the OIG was able to review, the OIG “identified an average of about 20 issues per application,” with 65 issues in one FISA application alone.⁸

The OIG informed the Committee that the 29 FISA applications reviewed were a representative sample of FISA applications targeting U.S. Persons during the relevant period of the audit, 2014 to 2019.⁹ The OIG concluded that based on the FBI’s systemic noncompliance with its Woods Procedures, the OIG “lack[ed] confidence” that the FBI is achieving the “‘scrupulously accurate’ standard for FISA applications” submitted to the Foreign Intelligence Surveillance Court.¹⁰ In fact, in response to the OIG Memorandum, the Court agreed, opining that “[i]t would be an understatement to note that such lack of confidence appears well founded.”¹¹

As Congress continues to consider reauthorization of—and reforms to—FISA, we would benefit from a thorough OIG examination of the FBI’s adherence to Woods Procedures in FISA. Accordingly, we request that the OIG seek a progress report from the FBI by May 15, 2020, on the following topics:

1. Changes, if any, that the FBI has made to its Woods Procedures directly as a result of the OIG’s Management Advisory Memorandum dated March 30, 2020;
2. The steps, if any, that the FBI has undertaken to locate the four missing Woods files;
3. If FBI is unable to locate the four missing Woods files, a detailed explanation from the FBI for why it is unable to locate the Woods files; and
4. Details about how, if at all, the FBI used information collected from the 29 FISA applications in non-FISA contexts, including but not limited to criminal indictments, sentencing memoranda, non-FISA search warrants, and other court filings.

⁵ *Id.* at 7.

⁶ *Id.*

⁷ OIG Telephone Briefing, *supra* note 1.

⁸ Management Advisory, *supra* note 4, at 7.

⁹ OIG Telephone Briefing, *supra* note 1.

¹⁰ *See* Management Advisory, *supra* note 4, at 8 (“As a result, we do not have confidence that the FBI has executed its Woods Procedures in compliance with FBI policy, or that the process is working as it was intended to help achieve the ‘scrupulously accurate’ standard for FISA applications.”).

¹¹ Order, *In re Accuracy Concerns Regarding FBI Matters Submitted to the FISC*, No. Misc. 19-02, 2 (FISA Ct. April 3, 2020).

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We also respectfully request that you provide an estimated timeframe of when the OIG anticipates completing various phases of its audit, including when the OIG anticipates releasing the audit report. We appreciate your prompt attention to these requests.

Sincerely,



Jim Jordan
Ranking Member

cc: The Honorable Jerrold L. Nadler, Chairman
The Honorable William P. Barr, Attorney General, Department of Justice
The Honorable Christopher A. Wray, Director, Federal Bureau of Investigation