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United States Government Accountability Office  
Washington, DC 20548

November 30, 2007

The Honorable James M. Turner  
Acting Director  
National Institute of Standards and Technology  
U.S. Department of Commerce  
100 Bureau Drive, Mail Stop 1000  
Gaithersburg, MD 20899-1000

Dear Mr. Turner:

In response to a request from several members of Congress, including the Chairman of the House Committee on Energy and Commerce and the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, GAO is performing a review of the efforts of the Department of Homeland Security (DHS) to devise a system to detect, interdict, and deter nuclear smuggling. The purpose of this letter is to seek your immediate cooperation and assistance in arranging for us to receive National Institute of Technology (NIST) records necessary for our review.

As you know, the Domestic Nuclear Detection Office (DNDO) of DHS is developing Advanced Spectroscopic Portal (ASP) radiation monitors to succeed the current generation of radiation detection equipment. Earlier this year, DNDO conducted testing of several radiation monitors at the Nevada Test Site. At DHS' request, NIST has analyzed the test data and has prepared, or is preparing, a final test report for DHS.

Beginning in August 2007 and continuing through September, October, and November, we have made requests to NIST for certain records related to the most recent tests, including the test results. The records we have requested are essential to our assessment of DHS' efforts to develop and deploy the ASP monitors. To date, NIST has provided none of the requested records. In addition to these records, to ensure the reliability of the requested data, we are now requesting additional records related to any alleged destruction, deletion, or modification of NIST data. A list of the records we are requesting is attached.

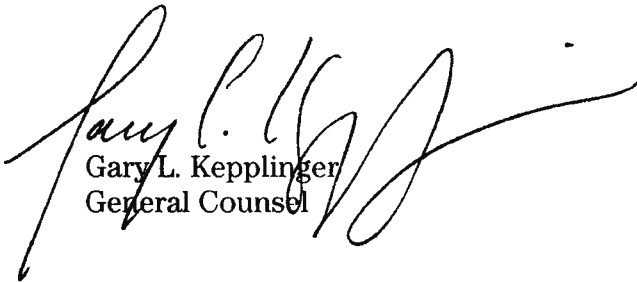
GAO is conducting this review pursuant to 31 U.S.C. §§ 712 and 717. Under 31 U.S.C. § 716(a), we have a statutory right of access to agency records, such as these, that are necessary to conduct our work, including records which may be classified, sensitive, draft, deliberative, and/or pre-decisional. GAO is statutorily required by 31 U.S.C. § 716(e)(1) to maintain the same degree of confidentiality with respect to these records as is NIST.

We ask that NIST provide the requested records no later than Friday, December 7, 2007. If a portion of the records is available for production before others, please provide those records immediately on a "rolling" basis. If a record is currently in draft form, please provide the draft immediately and provide the final record as soon as it is completed.

If there are any legal objections to providing the requested records, please identify those objections immediately.

Please contact me at (202) 512-5400 or Managing Associate General Counsel Susan D. Sawtelle at (202) 512-6417 if you wish to discuss this matter.

Sincerely yours,



Gary L. Keplinger  
General Counsel

cc: Michael R. Rubin

**Attachment to November 30, 2007 GAO Letter to NIST Acting Director James M. Turner**

GAO requests that NIST provide the following records no later than December 7, 2007:

**GAO's Previous Data Request**

All of the following requests pertain to the so-called Phase 3 and "blind" tests:

- Any and all final test reports and any and all draft test reports prepared by NIST employees, including but not limited to: (a) a NIST report dated on or about October 5, 2007, concerning the tests; and (2) draft test reports dated on or about July 16 and 18, August 2, 6, 17, 23, 24, and 29, and September 6, 2007.
- Any and all NIST analyses of the test data.
- Any and all directives, memoranda, correspondence or other communications between DNDO and NIST concerning NIST's test reports or test analyses.
- Any and all NIST tabulations of the test data.
- Any and all notes, workpapers, e-mails, or other records of NIST analysts or other NIST employees concerning the tests, analyses of the test data, or test results.
- Any and all notes, workpapers, e-mails, or other records of NIST analysts or other NIST employees concerning and any meetings, correspondence, or other communications with any DNDO employees concerning the tests, test data, or test results.
- Any and all records reflecting or relating to telephone conversations between NIST and DNDO employees occurring between August 1, 2007 and November 22, 2007 concerning the tests, test data, or test results.
- Any and all of the raw test data in the form that NIST received it.

**GAO's Current Data Request to Verify Data Reliability**

- Any and all e-mails, notes, workpapers, correspondence, or other records relating or referring to communications between DNDO and NIST employees, or among DNDO or NIST employees, concerning alleged requests for, and actual, destruction, deletion, reformatting, relocation, or safeguarding of the Phase 3 or blind tests, test data, or test results, and/or analysis of any of the foregoing. This includes but is not limited to documentation relating or referring to any request, suggestion, directive, or order by DNDO employee Dr. Blumenthal to any NIST analyst or other employee, on or about September 20, 2007 or October 31, 2007.
- Any and all records reflecting or relating to data or other documents, which refer or relate to the foregoing Phase 3 or blind tests, test data, test results, and/or analysis of any of the foregoing, which were destroyed, deleted, reformatted,

relocated, or safeguarded by any NIST employee in response to communications with any DNDO employee.

- Any and all directives, memoranda, or other records documenting NIST protocols or practices for storage of classified or sensitive material and for destruction, deletion, reformatting, relocation, or safeguarding of classified or sensitive information pertaining or applied to the Phase 3 and blind tests, test data, test results, or test reports.
- Any and all directives, memoranda, or other records documenting NIST protocols or practices for storage of classified or sensitive material and for destruction, deletion, reformatting, relocation, or safeguarding of classified or sensitive information pertaining or applied to the so-called Phase 1 tests performed in 2007 and the so-called “down-select” tests performed in 2005, and related test data, test results, or test reports.
- Any and all directives, memoranda, or other records documenting NIST protocols or practices for indicating NIST authorship of or participation in analyses or reports prepared for other federal agencies.