



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

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

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

February 2009

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 – the fourteenth since enactment of the legislation in October 2001 – summarizes the OIG's Section 1001-related activities from July 1, 2008, through December 31, 2008.

## 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. Attorneys' Offices, and other DOJ components.<sup>1</sup>

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

- **Audit Division** is responsible for 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** is responsible for investigating allegations of bribery, fraud, abuse, civil rights violations, and violations of other criminal laws and administrative procedures that govern Department employees, contractors, and grantees.
- **Oversight and Review Division** blends the skills of attorneys, investigators, and program analysts to investigate or review high

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<sup>1</sup> The OIG can investigate allegations of 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 . . . ." See 5 U.S.C. App. 3 §8E(b)(3).

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 approximately 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 7 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**

*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 Special Operations Branch in its Investigations Division manages the OIG's investigative responsibilities outlined in Section 1001.<sup>2</sup> The Special Agent in Charge who directs this unit is assisted by three Assistant Special Agents in Charge (ASAC), one of whom assists on Section 1001 matters, a second who assists on FBI matters, and a third who provides support on DEA and ATF cases. In addition, five Investigative Specialists support the unit and divide their time between Section 1001 and FBI/DEA/ATF responsibilities.

The Special Operations Branch receives civil rights and civil liberties complaints via mail, e-mail, telephone, and facsimile. The complaints are reviewed by an Investigative Specialist. After review, each complaint is entered into an OIG database and a decision is made concerning its disposition. The more serious civil rights and civil liberties allegations that relate to actions of DOJ employees or DOJ contractors normally are assigned to an OIG Investigations Division field office, where OIG special agents conduct investigations of criminal violations and administrative misconduct.<sup>3</sup> Some complaints are assigned to the OIG's Oversight and Review Division for investigation.

Given the number of complaints received 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 for handling. 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 received by the OIG involve matters outside our jurisdiction. The ones that identify a specific issue for investigation are forwarded to the appropriate investigative entity. For example, complaints of mistreatment by airport security staff or by the border patrol are sent to the

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<sup>2</sup> This unit also is responsible for coordinating the OIG's review of allegations of misconduct by employees in the FBI, DEA, and ATF.

<sup>3</sup> 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 end in prosecution. When this occurs, the OIG is able to 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 criminally.

Department of Homeland Security (DHS) OIG. We also have forwarded complaints to the OIGs of the Equal Employment Opportunity Commission, the Department of State, the Internal Revenue Service, and the Department of Education. In addition, we have referred complainants to state Departments of Correction that have jurisdiction over the subject of the complaints.

When an allegation received from any source involves a potential violation of federal civil rights statutes by a DOJ employee, we discuss 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 either by 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 This Reporting Period**

From July 1, 2008, through December 31, the period covered by this report, the OIG processed **516** Section 1001-related complaints.<sup>4</sup>

Of these complaints, we concluded that **338** did not fall within the OIG's jurisdiction or did not warrant further investigation. Approximately 270 of these 338 complaints involved allegations against agencies or entities outside of the DOJ, including other federal agencies, local governments, or private businesses. When possible, we referred those complaints to the appropriate entity or advised complainants of the entity with jurisdiction over their allegations. The remaining 68 of the 338 complaints raised allegations that, on their face, did not warrant investigation. Complaints in this category included, for example, allegations that the FBI was harassing individuals through the use of electromagnetic, chemical, and electronic mind control devices.

The remaining **178** of the 516 total complaints involved DOJ employees or components and included allegations that required further review. We determined that **170** complaints raised management issues that generally were not related to our Section 1001 duties, and we referred these complaints to DOJ components for appropriate handling. Examples of complaints in this category included inmates' allegations about the general conditions at federal prisons and complaints that the FBI did not initiate an investigation into particular allegations.

The OIG identified the **8** remaining complaints as matters that we believed warranted an investigation to determine if Section 1001-related abuse occurred. One of the eight matters was investigated by the OIG and we

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<sup>4</sup> This number includes all complaints in which the complainant makes any mention of a Section 1001-related civil rights or civil liberties violation, even if the allegation is not within the OIG's jurisdiction.

referred the other seven matters to the BOP for investigation. We discuss the substance of these 8 complaints in the next section of this report.

None of the 516 complaints we processed during this reporting period specifically alleged misconduct by DOJ employees relating to use of a provision in the Patriot Act.

The following is a synopsis of the complaints processed during this reporting period:

<b>Complaints processed:</b>	<b>516</b>
<b>Unrelated complaints:</b>	<b>338</b>
<b>Total complaints within OIG's jurisdiction warranting review:</b>	<b>178</b>
• <b>Management issues:</b>	<b>170</b>
• <b>Possible Section 1001 matters warranting investigation:</b>	<b>8</b>

## **B. Section 1001 Cases This Reporting Period**

### **1. New matters**

During this reporting period, the OIG opened one new Section 1001 investigation. Additionally, the OIG referred 7 Section 1001-related complaints to the BOP for investigation.

The following is a summary of the new matter opened by the OIG during this reporting period:

- The OIG investigated a Muslim inmate's allegation that he was retaliated against by BOP staff for filing a federal lawsuit against staff members of two BOP facilities. As a result, the complainant alleged that he was placed in segregation, his mail and e-mail were unnecessarily delayed, he was labeled a terrorist, he was pushed into a wall by a correctional officer, and he was subjected to alcohol testing more often than other inmates. The OIG interviewed the inmate and he provided an affidavit alleging the above misconduct. Subsequent to his interview, the inmate withdrew all claims against BOP staff and cited emotional distress as the reason for his false allegations.

The following 7 complaints were referred by the OIG to the BOP for investigation during this reporting period. The investigations of 4 of these matters are continuing. BOP completed its investigations of the other 3 matters and concluded that the complaints were not substantiated. For each of these referrals, we requested that the BOP provide the OIG with a copy of its investigative report upon completion of the investigation.

Continuing investigations:

- The spouse of a Muslim inmate alleged that she was mistreated by BOP staff when she visited her husband because she is Muslim. The complainant alleged that on one occasion she was ordered to remove her bra when a metal detector alerted as she entered the facility. The complainant also alleged that BOP staff treated her differently from another female visitor who was not Muslim. Specifically, she complained that she was subjected to a physical search while the other female visitor was only required to be screened by a hand-held metal detector. The BOP's investigation of this matter is ongoing.
- A Muslim inmate alleged that a BOP facility did not provide adequate locations within the housing unit for prayer. The inmate also claimed that he and other Muslim inmates were forced to work during times when they are required by their religion to pray, and that they were not permitted to bring their prayer rugs to their job sites within the facility. The inmate alleged further that BOP staff interrupted him when he attempted to pray in the recreation yard or in other areas of the facility, reportedly telling him that BOP rules do not allow prayer in public locations where inmates congregate or at job sites. Finally, the inmate also alleged that the facility does not offer a Halal diet, and as a result he is forced to eat foods prohibited by his religion. The BOP's investigation of this matter is ongoing.
- An inmate alleged that he and another inmate were verbally abused by a correctional officer because they are Muslim. The inmate also alleged that another correctional officer issued him 14 days of "extra duty" "for what Muslims did on 9/11." The BOP is investigating these allegations.
- An inmate alleged that a BOP correctional officer ridiculed his Muslim faith and made derogatory and disparaging remarks about Islam. The correctional officer allegedly told the inmate that Muslim inmates should not have special rights in prison and that all inmates should be required to eat the same food. The inmate alleged further that the correctional officer told the inmate that the

Prophet Mohammad was only a man. The inmate also alleged that BOP personnel conspired illegally to prevent him from consuming a diet in accordance with his religious beliefs. The BOP continues to investigate this matter.

BOP investigations that have been closed:

- An inmate alleged that a correctional officer “maliciously” searched his cell, threw his Koran on the floor, and spit tobacco juice on it. The inmate and his cellmate were interviewed. Neither witnessed the correctional officer throw the Koran on the floor or spit on it, and the correctional officer denied the allegations. The BOP concluded that the allegations were unsubstantiated.
- An inmate alleged that a correctional officer refused to give him ice for his drinking water for three days and told him that he did not deserve such luxuries and that he should suffer. The inmate alleged that the same correctional officer “gives problems” to all Muslim inmates. BOP’s investigation revealed that the inmate was not given ice because he failed to follow a correctional officer’s instructions, became verbally abusive, and threw ice buckets at the correctional officer. Additionally, the correctional officer denied making the alleged comments or harassing any inmate. The BOP concluded that the allegations were unsubstantiated.
- An inmate alleged that a correctional officer forcibly removed his religious headwear and threw it on the floor. BOP’s investigation revealed that the inmate’s religious headwear was actually a bedsheet and that the inmate had been previously warned by BOP staff not to wear his bedsheet while outside his cell. The BOP concluded that this allegation was unsubstantiated.

## **2. Cases referred to BOP during previous reporting periods that the OIG continues to monitor**

The OIG referred the following 4 complaints to the BOP for investigation during a prior reporting period. The investigations of 2 of these matters are completed, with BOP finding that the allegations were substantiated. The OIG continues to monitor the ongoing BOP disciplinary proceedings in these matters. BOP completed its investigations of the 2 other matters and concluded that the complaints were not substantiated. For each of these referrals, we requested that the BOP provide the OIG with a copy of its investigative report upon completion of the investigation.

- An inmate alleged that he has been subjected to continuous discrimination and verbal abuse by BOP employees because he is



from Afghanistan. The BOP's investigation sustained the allegation of unprofessional conduct against two BOP employees, and this matter is pending disciplinary action.

- A BOP employee alleged that he was being verbally abused by BOP staff because he is Muslim. The BOP's investigation substantiated that a correctional officer acted unprofessionally during a conversation with the complainant. However, the complainant's allegation that the correctional officer and others made disparaging remarks to him about his national origin and sexual relations with his wife were not substantiated. This matter is pending disciplinary action.
- An inmate alleged that a BOP physician's assistant refused to provide him with medical treatment and called him a terrorist. The inmate further alleged that the physician's assistant made false entries to his medical records chart that tarnished his character. The BOP continues to investigate this matter.
- An inmate who is originally from Pakistan alleged that he has been discriminated against by BOP employees because of his race and religion. The inmate alleged that he has been transferred several times and unfairly placed in the Special Housing Unit, where he was harassed by correctional officers, did not receive timely medical treatment, had his legal documents confiscated, and was forced to sleep on dirty bed linens. The BOP continues its investigation of this matter.

### **3. Previously opened investigations closed during this reporting period**

The OIG closed 2 Section 1001-related investigations during this reporting period that had been opened in an earlier period. Those cases are summarized below:

- The OIG investigated allegations that a BOP inmate was physically and verbally abused by correctional officers because of his Arab ethnicity and Muslim faith. For example, the inmate alleged that correctional officers pushed him against a wall, placed him in a cold cell with water on the floor, confiscated his undergarments and replaced them with undergarments with holes, and confiscated his legal documents and "misplaced" them. The OIG investigation substantiated some of the allegations. The OIG investigation concluded that the inmate was subjected to verbal abuse by two correctional officers because of his ethnicity and

religion, and that one of the correctional officers physically abused the inmate by pushing him into a wall. The OIG investigation did not find sufficient evidence to substantiate the other allegations. The OIG provided its findings to the BOP for appropriate disciplinary action.

- The OIG investigated an inmate's allegations that a BOP employee called an inmate a "nigger" and a "towelhead Taliban," punched him in the face, and shoved him into a shower stall. The inmate further alleged that he requested an injury assessment but did not receive one. During the course of the investigation, the inmate refused to submit to a polygraph examination and then admitted that he had fabricated the allegations.

BOP completed its investigations of 5 Section 1001-related matters during this reporting period that had been referred by the OIG in prior periods. For each of these referrals, we requested that the BOP provide the OIG with a copy of its investigative report upon completion of the investigation.

- An inmate complained to the BOP and in a lawsuit he filed in federal court that BOP officials unfairly classified him as an Islamic extremist and placed him on the "International Terrorist Watch List" in retaliation for his Islamic writings. The inmate complained further that after the court ordered his transfer to another facility so he could be closer to his family, the BOP increased his security classification, rendering him ineligible for the transfer. The BOP's investigation found that location of the inmate's housing was determined by the Designation Computation Center (DSCC). The DSCC did not follow the court's housing recommendation because the recommended facility was overcrowded. The BOP investigation concluded that the inmate's security level was assessed when he arrived at the facility according to objective standards. The inmate was designated as medium security. Subsequent re-scoring of the inmate's custody classification again resulted in the determination that he was within the medium classification range. The BOP concluded there was insufficient evidence to substantiate the inmate's allegations.
- The OIG referred to the BOP for investigation an allegation from the wife of a Muslim inmate that BOP staff wrongly reported that she and her husband engaged in a sexual act while in the visiting room of a BOP facility, which resulted in the complainant losing her visitation rights and her husband being placed in the Special Housing Unit. The complainant alleged that the BOP was discriminating against her and her husband because of their Islamic faith. The BOP's investigation determined that a BOP

employee observed what he believed was sexual contact between the inmate and his visitor. However, the videotape that was supposed to be filming the visiting room was blank. Because the inmate had two prior sustained incidents of engaging in sexual acts on his record, and because the BOP employee was insistent about what he had witnessed, the BOP staff terminated the visit and imposed discipline on the inmate. With respect to the complaint from the inmate's wife, the BOP concluded there was insufficient evidence to substantiate the allegation that BOP employees acted in a discriminatory manner.

- The OIG referred to the BOP for investigation allegations made by an inmate that the BOP placed him in a Medium High security facility when his security classification was designated as "low," that he was regularly called a terrorist by BOP staff members, that he has been subjected to "administrative sanctions and racial epithets" on a regular basis, and that he was required to use a phone in a correctional officer's office rather than the phone in his housing unit. The BOP's investigation determined that the inmate was in the correct security facility based on his "security threat assignment," and that his telephone privileges were restricted to use of a specifically designated telephone. The BOP's investigation also reported that the inmate was unable to provide any witnesses to corroborate his allegations. The BOP concluded there was insufficient evidence to substantiate the allegations.
- The OIG referred to the BOP for investigation allegations by an inmate that he and his father were unfairly placed in the Special Housing Unit for 8 months and that a correctional officer called him and his father "terrorists" and told them that no one cared about them. When interviewed by BOP investigators, the correctional officer denied calling the inmate a terrorist or making any other inappropriate comments to the inmate. The BOP's investigation also determined that the inmate had been the subject of a separate investigation based on allegations that he was engaged in radicalization and recruitment activities within the prison facility, and that the inmate was placed in the Special Housing Unit in connection with those allegations. The BOP concluded there was insufficient evidence to substantiate the inmate's complaint.
- An inmate alleged that he was being harassed and discriminated against by BOP correctional officers because he is Muslim and of Pakistani origin. Specifically, the inmate alleged that his telephone privileges were suspended because of his language; he was placed in the Special Housing Unit without explanation; his non-English

mail was delayed for up to 2 months; and he was forced to work at his job for long periods of time, which did not leave him with sufficient time to practice his religion. The BOP's investigation determined that specific security concerns about the inmate resulted in his housing placement, job assignment, and restrictions on his communications. In addition, the correctional officers involved denied that they harassed or discriminated against the inmate because of his religion or ethnicity. The BOP concluded there was insufficient evidence to substantiate the allegations.

#### **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 initiated or continued several such special reviews that relate to the OIG's duties under Section 1001. These reviews are discussed in this section of the report.

##### **A. Review of the FBI's Use of Exigent Letters and Other Improper Requests for Telephone Records**

As a follow-up to our reviews of the FBI's use of national security letters (NSL), the OIG is investigating the FBI's use of exigent letters and other improper requests to obtain telephone records. In our first report on NSLs, issued in March 2007, we reported on a practice by which the FBI used over 700 exigent letters rather than NSLs to obtain telephone toll billing records. We determined that by issuing exigent letters the FBI circumvented the NSL statutes and violated the Attorney General's Guidelines and internal FBI policy. Our investigation is examining in greater detail the FBI's use of exigent letters and its issuance of "blanket" NSLs used to "cover" or validate the information obtained from exigent letters and other improper requests.

##### **B. Review of the Department's Involvement with the National Security Agency's Terrorist Surveillance Program or Warrantless Surveillance Program**

The OIG is reviewing the Department's involvement with the National Security Agency (NSA) program known as the "terrorist surveillance program" or "warrantless surveillance program." This ongoing review is examining the Department's controls over and use of information related to the program and the Department's compliance with legal authorities governing the program.

The Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 (FISA Amendments Act) requires intelligence community inspectors

general, including the Department of Justice OIG, to conduct a comprehensive review of the terrorist surveillance program. The law specifies that the Inspectors General avoid duplication and delay by coordinating their reviews of the program. The Inspectors General involved have begun coordination to comply with the requirements of the Act. The Department of Justice OIG is coordinating its review with the other Inspectors General.

### **C. The FBI's Terrorist Threat and Suspicious Incident Tracking System**

In November 2008, the OIG issued an audit that evaluated the FBI's principal automated tracking system – the Guardian Threat Tracking System (Guardian) – that follows up on terrorist threats and suspicious incidents. From July 2004 through November 2007, Guardian documented almost 108,000 potential terrorism-related threats, reports of suspicious incidents, and terrorist watchlist encounters.

Guardian assigns responsibility for follow up on counterterrorism threats and suspicious incidents to FBI field offices, and can also be used to distribute immediate threat information to users. Guardian is also capable of analyzing threat information for trends and patterns.

The OIG audit concluded that Guardian represents a significant improvement over how the FBI previously tracked and handled threat information by allowing users to enter suspicious activity and threat information and manage threat assessments through an improved workflow process. However, the OIG review found that Guardian requires better oversight to enhance its functionality and value and to better ensure accuracy, timeliness, and completeness of the information entered into the tracking system.

The FBI has also developed E-Guardian, a complementary threat-tracking system that will allow state and local law enforcement to share local terrorism incident information with the FBI, as well as receive nationwide unclassified terrorism incident information from Guardian. However, the OIG review found that the deployment of E-Guardian has been delayed for about one year.

The audit made seven recommendations to improve the FBI's tracking of terrorist threats and suspicious incidents. Recommendations include ensuring that supervisors review and close out all Guardian incidents, affirming that high-priority and urgent threats from ongoing counterterrorism cases are included in Guardian, developing and incorporating performance measures to support the resolution of terrorist threats and suspicious incidents, and developing and implementing a timetable that ensures technical patches enhance the optimal system operation of Guardian, and that the patches are

completed in a timely manner. The FBI concurred with all of our recommendations and has implemented measures to address them.

#### **D. The FBI's Watchlist Nomination Practices**

The OIG is conducting an audit that relates to our March 2008 review of the Department's processes for nominating individuals to the consolidated terrorism watchlist maintained by the TSC. This audit is examining whether subjects of open FBI cases are appropriately and timely watchlisted and whether watchlist records are updated with new identifying information as required. The audit is also examining whether subjects of closed FBI investigations are appropriately removed from the consolidated terrorist watchlist in a timely manner.

#### **V. EXPENSE OF IMPLEMENTING SECTION 1001**

Section 1001 requires the OIG to:

*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...including a description of the use of funds appropriations used to carry out this subsection.*

During this reporting period, the OIG spent approximately \$1,143,889 in personnel costs, \$3,811 in travel costs (for investigators to conduct interviews), and \$1,896 in miscellaneous costs, for a total of \$1,149,596 to implement its responsibilities under Section 1001. The total personnel and travel costs reflect the time and funds spent by OIG special agents, inspectors, and attorneys who have worked directly on investigating Section 1001-related complaints, conducting special reviews, and implementing the OIG's responsibilities under Section 1001.