Congress of the United States
Washington, DC 20510

August 13, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Sally Quillian Yates
Deputy Attorney General
U.S. Department of Justice
Washington, D.C. 20530

The Honorable Michael Horowitz
Inspector General
U.S. Department of Justice
Washington, D.C. 20530

Dear Deputy Attorney General Yates and Inspector General Horowitz:

Last month, the Department of Justice (DOJ) made public an Office of Legal Counsel (OLC) opinion that allows DOJ to withhold access to certain records sought by DOJ's Office of Inspector General. Under the OLC opinion, and subsequent guidance provided by the Office of the Deputy Attorney General, the DOJ Inspector General must now obtain agency permission to access certain documents related to grand jury testimony, Title III wiretaps, and the Fair Credit Reporting Act. This opinion undermines the long-standing presumption that Inspectors General have access to any and all information that they deem necessary for effective oversight, as specified in the Inspector General Act of 1978.[1]

On August 5, 2015, the Senate Judiciary Committee convened a hearing entitled, "'All' Means 'All': The Justice Department's Failure to Comply with Its Legal Obligation to Ensure Inspector General Access to All Records Needed for Independent Oversight."[2] This hearing brought to light serious questions about the effect the OLC opinion would have on the independence and effectiveness of the Office of Inspector General, not just at the Department of Justice but also across the federal government.[3] The opinion has already been relied on by other federal agencies to prevent their Inspectors General complete and timely access to documents

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[1] 5 U.S.C. app. § 6(a)(1) (specifying that each Inspector General is authorized to have "access to all records" which relate to "programs and operations with respect to which that Inspector General has responsibilities.").
[2] U.S. Senate Committee on the Judiciary, "'All' Means 'All': The Justice Department's Failure to Comply With Its Legal Obligation to Ensure Inspector General Access to All Records Needed For Independent Oversight," August 5, 2015, http://www.judiciary.senate.gov/meetings/all-means-all-the-justice-departments-failure-to-comply-with-its-legal-obligation-to-ensure-inspector-general-access-to-all-records-needed-for-independent-oversight; *see also* Letter from Sen. Richard Shelby, Chairman, and Sen. Barbara Mikulski, Ranking Member, Subcommittee on Commerce, Justice, Science, and Related Agencies, Sen. Comm. on Appropriations (July 30, 2015).
[3] *Id.*

necessary to conduct audits and investigations.[4] It is apparent that Congress needs to act to ensure that Inspectors General have complete and immediate access to all records in the possession of their respective agencies, unless a statute restricting access to documents expressly states that the provision applies to Inspectors General.

We understand the Office of the Deputy Attorney General and the Office of Inspector General have been working collaboratively on legislative language to address this issue. Accordingly, by no later than August 28, 2015, please provide your recommended legislative language that would ensure Inspectors General have access to all Department records, notwithstanding limitations contained in any of the potentially hundreds of provisions of law or any common-law privilege that might otherwise arguably limit such disclosure.[5]

Thank you for your immediate attention to this matter.

Sincerely,

Charles E. Grassley
Chairman
U.S. Senate Committee on the Judiciary

Patrick Leahy
Ranking Member
U.S. Senate Committee on the Judiciary

Ron Johnson
Chairman
U.S. Senate Committee on Homeland Security and Governmental Affairs

Tom Carper
Ranking Member
U.S. Senate Committee on Homeland Security and Governmental Affairs

Bob Goodlatte
Chairman
U.S. House of Representatives Committee on the Judiciary

John Conyers
Ranking Member
U.S. House of Representatives Committee on the Judiciary

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[4] *Id.*

[5] *See, e.g.*, Congressional Research Service, Memorandum to the Senate Committee on the Judiciary, "Selected Statutory Nondisclosure Provisions," July 31, 2015 (identifying more than 30 distinct statutory nondisclosure provisions not cited in the OLC opinion and referencing "a larger list of nondisclosure provisions identified in preliminary research . . . .").

Jason Chaffetz
Chairman
U.S. House of Representatives
Committee on Oversight and
Government Reform

Elijah Cummings
Ranking Member
U.S. House of Representatives
Committee on Oversight and
Government Reform

John Cornyn
U.S. Senate Committee on the Judiciary

Claire McCaskill
U.S. Senate Committee on Homeland
Security and Governmental Affairs

Thom Tillis
U.S. Senate Committee on the Judiciary

Amy Klobuchar
U.S. Senate Committee on the Judiciary