



December 14, 2015

Senator Chuck Grassley
135 Hart Senate Office Building
Washington, D.C. 20510

Senator Claire McCaskill
730 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley and Senator McCaskill:

The Project On Government Oversight (POGO) is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government. Recognizing the vital role that Inspectors General (IG) play, POGO has investigated and worked to improve the IG system since 2006. This work includes multiple reports on the IG system, maintaining an IG vacancy tracker, and working with Congress to incorporate needed reforms in the Inspector General Act of 2008.¹ In light of this work, we are writing to thank you for introducing the Inspector General Empowerment Act of 2015, and to urge Congress to quickly pass this important legislation.

Inspectors General can make all the difference when it comes to creating a better government, but Congress needs to ensure that IGs have access to all the information they need to do their job effectively. Federal agencies have begun to unreasonably challenge IGs' statutory right to access agency data in attempts to prevent embarrassing events from coming to light. It is essential that Congress act quickly to pass the Inspector General Empowerment Act of 2015 to prevent the overbroad interpretation of restrictions on IG authority from becoming accepted law, allowing current and future waste, fraud, and abuse to remain hidden.

In order to serve as the eyes and ears of Congress, an IG office must have an unrestricted view of the agency it oversees. This principle is enshrined in Section 6(a)(1) of the Inspector General Act, which states that each IG office shall have "access to all records, reports, audits, reviews, documents, papers, recommendations, or other material... which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act."² It seems crystal clear that "all" means all, but some agencies have fought back against that idea.

¹ Project On Government Oversight, [Inspectors General: Many Lack Essential Tools for Independence](#), February 26, 2008; Project On Government Oversight, [Inspectors General: Accountability is a Balancing Act](#), March 20, 2009; Project On Government Oversight, [Testimony of POGO's Danielle Brian before the Senate Homeland Security and Governmental Affairs Committee on "Strengthening the Unique Role of the Nation's Inspectors General,"](#) July 11, 2007; and Project On Government Oversight, [Watching the Watchdogs: The Good, The Bad, and What We Need from the Inspectors General](#), January 14, 2014.

² [Inspector General Act of 1978](#), as Amended, § 6(a)(1), Appendix to U.S.C. Title 5. (Downloaded December 4, 2015) (Hereinafter Inspector General Act)

The most blatant rejection of “all means all” can be found in the July 2015 opinion by the Department of Justice’s (DOJ) Office of Legal Counsel (OLC) that improperly limits IG access and caters to agency resistance to necessary oversight. If left unchallenged, this opinion will allow agencies’ incorrect interpretation of Section 6(a)(1) to become *de facto* law.³ The OLC’s opinion states that the unfettered access afforded by Section 6(a) of the Inspector General Act is superseded by specific restrictions on the dissemination of Title III, grand jury, and FCRA information. The OLC concluded, for instance, that the IG office may not be entitled to obtain these records when conducting financial audits and other administrative and civil reviews that are only tangentially related to DOJ’s criminal and law enforcement activities. POGO disagrees with this interpretation because it rests upon a clear misreading of the common language Congress made clear in the law.

Congressional leaders on both sides of the aisle have rightly condemned the OLC’s opinion, according to which “all records” does not mean “all records.”⁴ POGO believes this OLC opinion makes a mockery of the entire IG system: these offices cannot possibly be effective watchdogs on behalf of Congress and the American public if agencies restrict IG access and force them to negotiate with agency leaders for access on a case-by-case basis.⁵ Agency records provide the raw materials IG offices need to fulfill their statutory responsibilities. The very purpose of having an independent IG is undermined if the office has to seek the agency’s permission in order to carry out its mission. Unless Congress acts quickly, this OLC opinion will gut the IG system and prevent meaningful oversight.

While many federal agencies handle records that are highly sensitive and legitimately withheld from public dissemination, that does not mean they should be withheld from IG offices, or by extension from Congress, both of which offer independent oversight and recommendations to improve agency operations. Secret agency programs are particularly susceptible to waste, fraud, and abuse, but IG offices cannot uncover or correct these problems without access to agency records. Agency actions that deny access to those records violate our system of checks and balances, and do so unduly, as IGs have proven they can responsibly handle sensitive information.

For example, the DOJ Office of the Inspector General (OIG) has shown that it can effectively and responsibly oversee the most sensitive DOJ operations without jeopardizing law enforcement actions. It has reviewed grand jury materials and other sensitive records when it examined the FBI’s potential targeting of domestic advocacy groups,⁶ the FBI’s efforts to access records of reporters’ toll calls during a media leak probe,⁷ the President’s Surveillance Program,⁸ and the firing of U.S. Attorneys,⁹ among other important and high-profile cases.¹⁰

³ Department of Justice, Office of Legal Counsel, [Memorandum Opinion for the Deputy Attorney General: The Department of Justice Inspector General’s Access to Information Protected by the Federal Wiretap Act, Rule 6\(e\) of the Federal Rules of Criminal Procedure, and Section 626 of the Fair Credit Reporting Act](#), July 20, 2015. (Downloaded December 9, 2015) (Hereinafter OLC Opinion)

⁴ Senator Chuck Grassley, [“Grassley, Johnson, Goodlatte, Conyers Concerned about New Opinion that Denies Records to Inspectors General, Blocks Oversight, and Circumvents Congressional Intent,”](#) July 23, 2015. (Downloaded December 9, 2015)

⁵ Project On Government Oversight, [“Department of Justice’s Decision Undercuts, Weakens Federal Watchdogs,”](#) July 24, 2015.

⁶ Department of Justice, Office of the Inspector General, [A Review of the FBI’s Investigations of Certain Domestic Advocacy Groups](#), September 2010. (Downloaded December 4, 2015)

⁷ Department of Justice, Office of the Inspector General, [A Review of the Federal Bureau of Investigation’s Use of Exigent Letters and Other Informal Requests for Telephone Records](#), January 2010. (Downloaded December 8, 2015)

Congress needs to clarify that IG offices must be granted access to all agency records notwithstanding any other existing or future law or any other prohibition on disclosure, including but not limited to: 1) the federal rules of criminal procedure; 2) Title III; 3) the FCRA; and 4) laws such as the Kate Puzey Act that restrict the dissemination of personally identifiable information. In addition, Congress should specify that agencies do not waive the attorney-client or other common law privileges when records are turned over to IG offices. The Inspector General Empowerment Act of 2015 addresses this issue and corrects the troublesome OLC memo. However, until Congress passes the bill, that memo can be and has been used to block oversight.

The bill also addresses other improper challenges to IG access. Under the Computer Matching and Privacy Protection Act (CMPPA), IGs must get approval from agency leaders in order to match the computer records of one federal agency against other federal and non-federal records. The Inspector General Empowerment Act of 2015 would exempt IG offices from the CMPPA so they can access records at other agencies without getting approval from the very officials they are supposed to oversee. Additionally, under current law, IGs can only compel testimony from federal employees. This means that former federal employees, contractors, or grant recipients can refuse to testify before an IG in the course of an investigation. This bill would provide IGs with testimonial subpoena power over these individuals, and allow for fuller and more effective oversight of federal programs and agencies.

In the light of the erroneous July OLC opinion, it is urgent that Congress act now to make sure IGs have the ability to function as intended. Not correcting this precedent now will cripple current and future IGs and in turn limit Congress's and the public's ability to oversee the executive branch and hold it accountable.

Sincerely,



Danielle Brian
Executive Director

Cc: Senator Kelly Ayotte, Senator Tammy Baldwin, Senator Thomas Carper, Senator Susan Collins, Senator John Cornyn, Senator Joni Ernst, Senator Deb Fischer, Senator Ron Johnson, Senator Mark Kirk, Senator James Lankford, Senator Barbara Mikulski, Senator Ron Wyden

⁸ Offices of Inspector General of the Department of Defense, Department of Justice, Central Intelligence Agency, National Security Agency, and Office of the Director of National Intelligence, [Unclassified Report on the President's Surveillance Program](#), July 10, 2009. (Downloaded December 4, 2015)

⁹ Department of Justice, Office of the Inspector General, [An Investigation into the Removal of Nine U.S. Attorneys in 2006](#), September 2008. (Downloaded December 8, 2015)

¹⁰ Department of Justice, Office of the Inspector General, ["The OIG's Legal Views Regarding Access to Information"](#) (Hereinafter "The OIG's Legal Views"), attached to Statement of Michael E. Horowitz, Inspector General, Department of Justice, before the House Committee on Oversight and Government Reform concerning "Obstructing Oversight: Concerns from Inspectors General," September 10, 2014, p. 7 of pdf (Hereinafter Horowitz Statement); and Department of Justice, Office of the Inspector General, "Summary of the Department of Justice Office of the Inspector General's Position Regarding Access to Documents and Materials Gathered by the Federal Bureau of Investigation," attached to Horowitz Statement, October 2011, p. 17 of pdf. (Hereinafter "Summary of OIG's Position") (All downloaded December 9, 2015)