

MICHAEL HOROWITZ' MONTHLY COMPLAINT ABOUT FBI AND DEA STONEWALLING

The House Oversight Committee is having a hearing on the problems law enforcement agencies have with sexual harassment and misconduct, as reported by DOJ's Inspector General. DEA Administrator Michele Leonhart will be offering amusing testimony about how the DEA has given its Agents clear instructions that they're really the best evah™ but they need to stop breaking the law.

But because I'm an IG nerd, I'm as interested in what has become a monthly event during DOJ Inspector General Michael Horowitz' tenure, when he provides details of FBI and DEA's latest stonewalling of oversight. Here's today's version:

Further, we cannot be completely confident that the FBI and the DEA provided us with all information relevant to this review. When the OIG finally received from the FBI and DEA the requested information without extensive redactions, we found that it still was incomplete. For example, we determined that the FBI removed a substantial number of cases from the result of their search and provided additional cases to the OIG only after we identified some discrepancies. These cases were within the scope of our review and should have been provided as requested. Likewise, the DEA also provided us additional cases only after we identified some discrepancies. In addition, after we completed our review and a draft of the report, we learned that the DEA used only a small fraction of the terms we had provided to search

its database for the information needed for our review. Rather than delay our report further, we decided to proceed with releasing it given the significance of our findings.

We also determined that the DEA initially withheld from us relevant information regarding an open case involving overseas prostitution. During a round of initial interviews, only one interviewee provided us information on this case. We later learned that several interviewees were directly involved in the investigation and adjudication of this matter, and in follow-up interviews they each told us that they were given the impression by the DEA that they were not to talk to the OIG about this case while the case was still open. In order to ensure the thoroughness of our work, the OIG is entitled to receive all information in the agency's possession regardless of the status of any particular case.

As I have testified on multiple occasions, in order to conduct effective oversight, an Inspector General must have timely and complete access to documents and materials needed for its audits, reviews, and investigations. This review starkly demonstrates the dangers inherent in allowing the Department and its components to decide on their own what documents they will share with the OIG, and even whether the Inspector General Act requires them to provide us with requested information. The delays experienced in this review impeded our work, delayed our ability to discover the significant issues we ultimately identified, wasted Department and OIG resources during the pendency of the dispute, and affected our confidence in the completeness of our review.

This was not an isolated incident. Rather, we have faced repeated instances over the past several years in which our timely access to records has been impeded, and we have highlighted these issues in our reports on very significant matters such as the Boston Marathon Bombing, the Department's use of the Material Witness Statute, the FBI's use of National Security Letters, and ATF's Operation Fast and Furious.

The Congress recognized the significance of this impairment to the OIG's independence and ability to conduct effect oversight, and included a provision in the Fiscal Year 2015 Appropriations Act – Section 218 – which prohibits the Justice Department from using appropriated funds to deny, prevent, or impede the OIG's timely access to records, documents, and other materials in the Department's possession, unless it is in accordance with an express limitation of Section 6(a) of the IG Act. Despite the Congress's clear statement of intent, the Department and the FBI continue to proceed exactly as they did before Section 218 was adopted – spending appropriated funds to review records to determine if they should be withheld from the OIG. The effect is as if Section 218 was never adopted. The OIG has sent four letters to Congress to report that the FBI has failed to comply with Section 218 by refusing to provide the OIG, for reasons unrelated to any express limitation in Section 6(a) of the IG Act, with timely access to certain records.

We are approaching the one year anniversary of the Deputy Attorney General's request in May 2014 to the Office of Legal Counsel for an opinion on these matters, yet that opinion

remains outstanding and the OIG has been given no timeline for the issuance of the completed opinion. Although the OIG has been told on occasion over the past year that the opinion is a priority for the Department, the length of time that has now passed suggests otherwise. Instead, the status quo continues, with the FBI repeatedly ignoring the mandate of Section 218 and the Department failing to issue an opinion that would resolve the matter. The result is that the OIG continues to be prevented from getting complete and timely access to records in the Department's possession. The American public deserves and expects an OIG that is able to conduct rigorous oversight of the Department's activities. Unfortunately, our ability to conduct that oversight is being undercut every day that goes by without a resolution of this dispute.

At some point, Congress is going to have to decide whether it will use the power of the purse – as they have authorized by statute – to force DEA and FBI to meet the same standards of disclosure that mere citizens would be required if DEA and FBI were investigating them.

Until then, we should just assume FBI and DEA are breaking the law.