



# 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)*

August 15, 2006

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 ninth since enactment of the legislation in October 2001 – summarizes the OIG's Section 1001-related activities from January 1, 2006, through June 30, 2006.

## I. INTRODUCTION

According to the Inspector General Act, 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** provides an alternative mechanism to traditional audits and investigations to review Department programs and activities.
- **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 by attorneys (or investigators working under the direction of Department attorneys) acting in their capacity to litigate, investigate, or provide legal advice. See Pub. L. 107-273 § 308, 116 Stat. 1784 (Nov. 2, 2002).

profile or sensitive matters involving Department programs or employees.

- **Management and Planning Division** assists the OIG by providing services in the areas of planning, budget, finance, personnel, training, procurement, automated data processing, computer network communications, and general support.
- **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 and DEA matters, a second who assists on FBI matters, and a third who provides support on ATF cases. In addition, four 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, the 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 (OIA) for appropriate 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 are sent to the Department of Homeland

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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.

Security (DHS) OIG. We also have forwarded complaints to the OIGs at the Department of Veterans Affairs, Department of State, United States Postal Service, Department of Defense, Department of the Treasury, Social Security Administration, Department of Education, the Equal Employment Opportunity Commission, and Administrative Office of the U.S. Courts. In addition, we have referred complainants to several state and local Department of Corrections offices 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, the complaint is discussed with the DOJ Civil Rights Division for possible prosecution. In some cases, the Civil Rights Division accepts the case and requests additional investigation by either the OIG or the FBI. In other cases, the Civil Rights Division declines prosecution.

### **A. Complaints Processed This Reporting Period**

From January 1, 2006, through June 30, 2006, the period covered by this report, the OIG processed **803** complaints that were sent primarily to the OIG's Section 1001 e-mail or postal address.<sup>4</sup>

Of these complaints, we concluded that **647** did not fall within the OIG's jurisdiction or did not warrant further investigation. Slightly more than half of the complaints – **336** of the 647 – involved allegations against agencies or entities outside of the DOJ, including other federal agencies, local governments, or private businesses. We referred those complaints to the appropriate entity or advised complainants of the entity with jurisdiction over their allegations. The remaining **311** complaints raised allegations that, on their face, did not warrant an investigation. For example, complaints in this category included frivolous allegations that FBI agents implanted a global positioning system into a complainant's body or controlled an individual's sleep cycle.

The remaining **156** of the 803 complaints involved DOJ employees or components and included allegations that required further review. We determined that, of those complaints, **143** raised management issues not related to our Section 1001 duties, and we referred them to DOJ components for appropriate handling. Examples of complaints in this category included inmates' allegations about the general conditions at federal prisons or complaints that the FBI did not initiate an investigation into a particular complainant's allegations.

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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.

**Five** of the 156 complaints did not provide sufficient detail to make a determination whether an abuse was alleged. We requested further information but did not receive responses from these 5 complainants.

The OIG identified **8** matters out of the 156 that we believed warranted an investigation to determine if a Section 1001-related abuse occurred. We referred **6** of the matters to the BOP for investigation and **2** to the FBI. We discuss the substance of these eight complaints in the next section of this report.

None of the 803 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 new complaints processed during this reporting period:

<b>Complaints processed:</b>	<b>803</b>
<b>Unrelated complaints:</b>	<b>647</b>
<b>Total complaints within OIG's jurisdiction warranting review:</b>	<b>156</b>
• <b>Management issues:</b>	<b>143</b>
• <b>OIG unsuccessfully sought further details:</b>	<b>5</b>
• <b>Section 1001 matters warranting review:</b>	<b>8</b>

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

### **1. New matters**

As mentioned previously, the OIG referred six Section 1001 complaints to the BOP and two to the FBI for investigation during this reporting period. The OIG requested that these components provide the OIG a copy of their investigative reports upon completion of the investigations. The complaints involve the following allegations:

- An Arab inmate alleged that a BOP employee called the inmate Osama bin Laden and suggested that he was going to post the inmate's picture at the Post Office next to pictures of other wanted terrorists.

- An inmate allegedly overheard a BOP employee saying that he hated all Muslims and that this employee purposely wiped a Muslim inmate's religious food tray with the hand he was using to serve pork to other inmates.
- A BOP inmate alleged that a correctional officer made comments to him that Muslims cannot be trusted, that Muslims in Iraq receive better treatment than they deserve, and that Islam is a terrorist religion.
- A Muslim inmate complained that a correctional officer questioned him about his religious attire, threatened to take his religious beads, and placed him in danger by discussing his nationality and alleged terrorist ties in the presence of other inmates. The inmate also alleged that on another occasion he was not permitted to attend Ramadan feast because he left the dining hall to smoke a cigarette.
- A Muslim inmate alleged that after his family members mistakenly left their personal identification cards at a BOP facility following a visit, BOP staff destroyed the identification cards. The Muslim inmate also alleged that he had been singled out for harassment and that his civil rights were being violated by the BOP not allowing him to meet with his attorney because he refused to submit to strip searches which he claimed violated his Muslim beliefs.
- A Muslim inmate complained that he received an incident report for participating in a hunger strike and was placed in a BOP facility's Special Security Unit. The inmate alleged that he is not permitted to shave, cut his nails, use a comb, or receive a haircut. He also alleged that he did not receive his monthly telephone call or newspapers. Additionally, the inmate alleged that he does not have access to legal materials despite a court order stating that the BOP is to provide him with such materials so that he can adequately prepare for legal proceedings.
- A complaint received from a citizen claimed that FBI and Department of Homeland Security agents illegally searched the citizen's home by using a search warrant secured with materially misleading information. In addition, the citizen alleged that federal agents may have improperly searched his family's business. The complainant also alleged that the FBI inappropriately placed him on the "No Fly" list.
- A complaint alleged that members of the Arab Muslim community in a metropolitan area are being harassed, insulted, and victimized by local FBI agents.

## **2. OIG investigations closed during this reporting period**

- The OIG investigated allegations made by an Egyptian national who was arrested on September 12, 2001, in connection with the investigation of the September 11 terrorist attacks and who was cleared of any involvement in terrorist activities. He alleged that during his detention at a BOP facility he was subjected to a body cavity search in the presence of numerous people, including several females; placed alone in a cell under severe restrictions for more than 2 months; and had his ability to practice his religion undermined intentionally by the prison staff. The OIG also investigated allegations that BOP staff failed to properly maintain and safeguard videotapes of this inmate during his detention.

The investigation revealed that several correctional officials violated BOP procedures in processing the male detainee into the facility by conducting a body cavity search in the vicinity of female staff. We also found that the correctional officers later tried to conceal their role in this incident. In addition, the investigation found evidence of mishandling of the original videotape of the inmate's processing at the BOP facility. The OIG also found that poor management by BOP managers resulted in the improper collection, documentation, and safeguarding of the videotapes.

In April 2004, the OIG presented this matter to the U.S. Attorney's Office for prosecution, and it declined prosecution in December 2005. The OIG provided its report of investigation to the BOP for appropriate administrative action.

- The OIG investigated allegations raised by a Muslim inmate in a BOP correctional facility that as he was praying in the facility's library a correctional officer ordered him to stop, made derogatory remarks about his religious beliefs, issued him an incident report, and placed him in solitary confinement. The investigation did not support the allegation that the inmate was physically or verbally abused. However, the OIG determined that the BOP does not have a policy designating where and when inmates can pray. Because staff discretion currently dictates where an inmate is authorized to pray, there appears to be a perception among some inmates of religious discrimination. The OIG provided its report of investigation to the BOP. In addition, we also recommended that the BOP establish a standard policy relating to the location and length of inmates' religious observances for all denominations.
- The OIG investigated allegations made by a BOP inmate that correctional officers in a BOP facility humiliated and abused Muslim inmates because of the officers' hatred of Muslims. The inmate alleged that correctional officers used excessive force on him, gave other inmates permission to assault him, and then covered up the incidents. The inmate also alleged

that BOP staff improperly denied him showers, social visits, and the right to attend religious services. The inmate further alleged that other Muslim inmates were also abused and that he was retaliated against for cooperating with the OIG investigation. The investigation found insufficient evidence to substantiate any of the inmate's allegations, and the Civil Rights Division declined prosecution. The OIG provided its report of investigation to the BOP.

- The OIG investigated a complaint from a former Muslim BOP correctional officer who alleged that staff members at a BOP facility referred to certain inmates as terrorists, displayed offensive posters depicting Muslim prisoners throughout the facility, referred to him as "Bin Laden," and posted a picture of an eagle with its middle finger raised which read "Jihad this." The investigation did not substantiate the allegations. The OIG provided its report of investigation to the BOP.
- The OIG directed the BOP to investigate allegations that a Muslim inmate was denied confidential attorney-client meetings, had his legal mail opened by staff, had his telephone calls monitored, and was subjected to verbal abuse. The complaint alleged that the BOP improperly designated the inmate as a terrorist and placed him under special administrative procedures, even though a federal judge determined that the inmate was not a national security risk. Allegedly, the warden refused to respond to inquiries regarding the basis for the administrative restrictions. The BOP Office of Internal Affairs investigation found insufficient evidence to support the allegations, except for one. The investigation found sufficient evidence to support the allegation that a BOP employee used profane language with the inmate during a verbal exchange. The BOP has initiated administrative proceedings regarding this substantiated allegation.

#### **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. Using this approach, the OIG has initiated or continued several special reviews that relate to the OIG's duties under Section 1001. We also report on a DOJ OPR ongoing review during this reporting period.

##### **A. Review of the FBI's Use of National Security Letters and Ex Parte Orders for Business Records**

In December 2005, the OIG initiated a review examining the FBI's use of two authorities amended by the Patriot Act:

(1) the FBI's authority to issue National Security Letters to obtain certain categories of records from third parties, including telephone toll and transactional records, financial records, and consumer reports; and

(2) the FBI's authority to obtain business records from third parties by applying for ex parte orders issued by the Foreign Intelligence Surveillance Court pursuant to Section 215 of the Patriot Act.

This review is required by the USA Patriot Improvement and Reauthorization Act of 2005 (Public Law 109-177). This law directs the OIG to review the extent to which the FBI has used these authorities; any bureaucratic impediments to their use; how effective these authorities have been as investigative tools and in generating intelligence products; how the FBI collects, retains, analyzes, and disseminates information derived from these authorities; whether and how often the FBI provided information derived from these authorities to law enforcement entities for use in criminal proceedings; and whether there has been any improper or illegal use of these authorities. See Sections 106A and 119 of Public Law 109-177.

In this review, the OIG is examining the FBI investigative files, interviewing FBI and other DOJ officials, visiting FBI field offices, and analyzing the FBI's use of these authorities in the last several years. According to the law, the OIG is required to report the results of its review by March 2007.

## **B. Recommendations in the September 11 Detainee Report**

In June 2003, the OIG issued a report entitled, "The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks." In that report, the OIG made 21 recommendations related to issues under the jurisdiction of the FBI, the BOP, and leadership offices at the DOJ, as well as immigration issues now under the jurisdiction of the DHS. As of this reporting period, 20 of the recommendations have been resolved. The one open recommendation calls for the Department and the DHS to enter into a memorandum of understanding (MOU) to formalize policies, responsibilities, and procedures for managing a national emergency that involves alien detainees. After the OIG's issuance of the report, the DOJ and DHS agreed with the recommendation and began negotiating over language in the MOU to implement the recommendation. However, more than two years after the OIG made the recommendation, the MOU still has not been completed. As of July 2006, we were informed that discussions between the Department and the DHS over the language of this MOU remain ongoing.

### **C. The FBI's Interviews of Potential Protesters in Advance of the 2004 National Political Conventions**

In April 2006, the OIG issued a report on the FBI's use of its investigative authorities to conduct interviews of potential protesters in advance of the 2004 national political conventions. News articles in 2004 stated that the FBI had questioned political demonstrators across the United States in connection with threatened violent and disruptive protests at the Republican and Democratic National Conventions held in the summer of 2004. The initial article stated that dozens of people had been interviewed in at least six states, including anti-war demonstrators and political demonstrators and their friends and family members. The FBI issued a statement responding to these allegations which stated in part: "The FBI is not monitoring groups, or interviewing individuals, unless we receive intelligence that such individuals or groups may be planning violent and disruptive criminal activity or have knowledge of such activity."

Following publication of the news articles, several members of Congress requested that the OIG initiate an investigation into "possible violations of First Amendment free speech and assembly rights by the Justice Department in connection with their investigations of possible protests at the Democratic and Republican political conventions in Boston and New York and other venues." In response, the OIG initiated an examination of the FBI's use of its investigative authorities to conduct interviews in advance of the national political conventions and the FBI's monitoring of protest groups in connection with the national political events. During the course of its review, the OIG interviewed more than two dozen FBI headquarters and field personnel and examined approximately 10,000 pages of documents.

The OIG's review did not substantiate the allegations that the FBI improperly targeted protesters for interviews in an effort to chill the exercise of their First Amendment rights at the 2004 national political conventions. The OIG concluded that the FBI's interviews of potential convention protesters and other related interviews, together with its related investigative activities, were conducted for legitimate law enforcement purposes and were based upon a variety of information associated with possible bomb threats and other violent criminal activities.

The OIG found that nearly all of the FBI's protester-related investigative activity was devoted to addressing 17 distinct threats to the conventions falling within the FBI's domestic terrorism program. The report concluded that the FBI addressed each threat in accordance with the Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations (General Crimes Guidelines). In addition, the review identified seven terrorism enterprise investigations not initiated in connection with the conventions that generated convention-related criminal intelligence.

The OIG concluded that the investigative techniques used to obtain this intelligence were a logical outgrowth of the underlying investigations and that the investigative activity was undertaken in a manner consistent with the requirements of the General Crimes Guidelines.

With respect to the protester-related interviews, the OIG's investigation revealed that the FBI identified 74 persons and the residents of 3 addresses for contact who satisfied the following criteria: 1) they were likely convention demonstrators or, through affiliation with one or more organizations or persons, were individuals with access to information about potential protest activity at the conventions; and 2) they were persons whom the FBI reasonably believed had, or might have, knowledge about planned criminal acts at the conventions. In addition, the FBI contacted and interviewed eight individuals in an attempt to locate persons who satisfied the two criteria above. Of the individuals targeted for contact, the FBI was successful in locating 60 persons in 9 states, 41 of whom consented to interviews and provided the FBI with information. The OIG concluded that the FBI's contacts with these individuals were appropriate and occurred in response to the 17 threats of criminal activity.

#### **D. Review of the FBI's Investigation of Certain Domestic Advocacy Groups**

In June 2006, the OIG initiated a review to examine allegations that the FBI targeted domestic advocacy groups for scrutiny based solely upon their exercise of rights guaranteed under the First Amendment of the United States Constitution. The review will examine allegations regarding the FBI's investigation, and the predication for any such investigation, of certain domestic advocacy groups including the Thomas Merton Center, Greenpeace, and People for the Ethical Treatment of Animals (PETA). Our review of the domestic advocacy groups will be similar in focus to the OIG's review of the FBI's investigation of potential protesters at the 2004 Democratic and Republican National Conventions.

#### **E. Review of FBI Conduct Relating to Detainees in Military Facilities in Guantanamo Bay and Iraq**

The OIG is reviewing FBI employees' observations and actions regarding alleged abuse of detainees at Guantanamo Bay, Abu Ghraib prison, and other venues controlled by the U.S. military. The OIG is examining whether FBI employees participated in any incident of detainee abuse, whether FBI employees witnessed incidents of abuse, whether FBI employees reported any abuse, and how those reports were handled by the FBI. In addition, the OIG is assessing whether the FBI inappropriately retaliated against or took any other inappropriate action against any FBI employee who reported any incident of abuse.

As part of this ongoing review, the OIG has interviewed detainees, FBI employees, and military personnel at Guantanamo. In addition, the OIG has administered a detailed questionnaire to approximately 1,000 FBI employees who served assignments at Guantanamo Bay, in Iraq, and Afghanistan. The questionnaire requested information on what the FBI employees observed, whether they reported observations of concern, and how those reports were handled. The OIG has received over 900 responses to its questionnaire. The OIG investigative team is in the process of drafting the report summarizing the results of the investigation.

#### **F. FBI's Reporting of Possible Intelligence Violations to the President's Intelligence Oversight Board**

In the OIG's March 2006 Section 1001 report, we described our examination of the FBI's process for reporting possible violations involving intelligence activities to the Intelligence Oversight Board (IOB). The examination focused on fiscal years 2004 and 2005. As set forth in the last report, the FBI made 108 reports of possible violations to the IOB for fiscal years 2004 and 2005.

The FBI's reports to the IOB describe incidents that generally fell into one or more of the following three categories: (1) improper utilization of authorities under FISA; (2) failure to adhere to Attorney General Guidelines or implementing FBI policy; and (3) improper utilization of authorities involving National Security Letters. The matters reported to the IOB encompassed a broad range of intelligence activities used by the FBI, although most of the possible violations involved electronic surveillance.

The OIG continues to monitor the FBI's handling of IOB matters. We intend to update our review in the next Section 1001 report.

#### **G. Material Witness Warrants**

As we described in our last report, DOJ OPR has opened an inquiry regarding the DOJ's use of material witness warrants. This review was opened after the American Civil Liberties Union and Human Rights Watch issued a report in June 2005 entitled "Witness to Abuse: Human Rights Abuses under the Material Witness Law since September 11." The report reviewed a number of material witness cases and alleged that the material witness law had been misused to hold suspects in cases where there was insufficient evidence to charge them criminally; a number of witnesses were not brought promptly before a judge, were denied counsel, or were not provided with the reason for their arrest; the government had improperly alleged that every witness was a flight risk; the government had conducted abusive interrogations; and many of the judicial proceedings were improperly conducted in secret.

Based on the allegations in the report, DOJ OPR opened an inquiry regarding the allegations concerning 13 individuals, and one group of 8 individuals detained together. Some of these matters involved allegations that individuals were held for long periods of time on material witness warrants with no effort to obtain their testimony. Several of these individuals were later charged criminally or deported based on immigration violations. Other matters involved the alleged failure to bring individuals before a court within the required time frame and failure to inform witnesses of the basis for their arrest. According to DOJ OPR, its inquiry remains ongoing.

## **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 \$1,388,726 in personnel costs, \$51,485 in travel costs (for investigators to conduct interviews), and \$1,552 in miscellaneous costs, for a total of \$1,441,726 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.