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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
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October 20, 2009

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20535

Dear Attorney General Holder:

We write today regarding a number of outstanding requests for information that have been submitted to the Department of Justice over the last several years. Specifically, the attached chart prepared by Senator Grassley details numerous requests from questions submitted at oversight hearings conducted by the Committee on the Judiciary and letters submitted seeking answers to specific oversight inquiries. Some of the requests outlined in the chart have been outstanding for a significant length of time, and the Committee needs this information to conduct its business.

The chart outlines the specific information requested, the date the request was made, the date a response was due, the date of any response received, as well as Senator Grassley's statement about the reply and comments as to why he believes any responses that were provided were not responsive to the inquiry.

We appreciated your statement at your confirmation hearing before the Committee that if confirmed as Attorney General, you would "do all [you] can, and, to make sure that [you] respond fully...and in a timely fashion" to Congressional oversight inquiries. In that spirit, we ask that you work with Senator Grassley to address these outstanding requests expeditiously.

Thank you for your prompt attention to these matters. Please do not hesitate to contact our offices should you have specific questions regarding any of the outstanding requests.

Sincerely,



PATRICK LEAHY
Chairman

Attachment



CHARLES E. GRASSLEY
United States Senator

Req. Date	Request	Reply Date	Reply	Comments
1/23/2006	Letter: 7 questions/document requests related to a possible double standard in the FBI's disciplinary process and cases involving former FBI agent Cecilia Woods and her supervisor, the FBI's Legal Attaché in Panama.	3/8/2006	The reply provided only some of the documents requested (those sought in request #7), but failed to address any of the specific questions on the grounds that "the FBI is a party in a pending administrative proceeding relating to the allegations raised by Ms. Woods."	The administrative proceeding, which was an EEO case filed by Ms. Woods, has long since been completed and is no longer pending. Accordingly, there is no longer a reason to withhold answers to questions 1-4. Moreover, that rationale was never applicable to questions 5 and 6, which were not answered.
5/2/2006	QFRs: Senate Judiciary Hearing "Oversight of the Federal Bureau of Investigation" Q. 39 "identify and describe any and all agent surveys or questionnaires conducted by the FBI, outside consultants, or independent entities."	7/30/2006	Reply to Q. 39: the FBI does not track the circulation of surveys or questionnaires.	Re: Q. 39. Regardless of whether the FBI proactively tracks such questionnaires, it should be able to identify questionnaires that have been submitted to all or a representative sample of FBI agents, especially any such survey conducted on behalf of the FBI by outside consultants. It should also be able to identify any such surveys conducted by independent entities such as the FBI agents association, the IG, or GAO.
6/12/2006	QFRs: Senate Judiciary Hearing "Oversight of the Federal Bureau of Investigation" Q. 33(a-c) sought information about the FBI employees who reportedly leaked information to the New York Times about Dr. Stephen Hatfill being a "person of interest" in the Amerithrax investigation.	6/14/2007	Reply to Q. 33(a-c) refused to provide the requested information on the grounds that it pertained to pending litigation.	Re: Q. 33(a-c) the pending litigation has since been settled.
1/16/2007	Letter: Determine whether reported Abbot Laboratories drug pricing practices violate anti-trust laws.	2/21/2007	Referred to FTC for potential civil violations w/o explanation of why potential price fixing was not criminal and thus in DOJ's jurisdiction.	Largely responsive, but still need to know whether FTC has since referred to DOJ any evidence of criminal conduct.
1/18/2007	QFRs: Senate Judiciary Hearing "Oversight of the Federal Bureau of Investigation" Q. 417-419 sought information about steps the DOJ has taken to determine the sources of leaks of sensitive case information in the Amerithrax case.	4/5/2007	Replies to Q. 417-419 refused to provide the requested information on the grounds that it pertained to pending litigation.	Re: Q. 417-419 the pending litigation has since been settled.

2/26/2007	Letter: 5 questions related to the case of Agent Jane Turner following a jury verdict substantiating her allegations that FBI supervisors falsified negative performance reviews in retaliation for filing an EEO action.	3/15/2007	Reply failed to address any of the 5 questions on the grounds that "the matter is subject to pending post judgment motions in at the trial level." The reply cites replies to QFRs from May 2006 hearing provided Nov 2006 to SJC.	Pending post trial motions are not a valid reason for withholding responses, but even if they were, the request remains open pending the completion of the motions.
3/19/2007	Letter: Any and all unclassified emails related to exigent letters. Follow-up letter sent 6/25/2008, seeking compliance.	3/26/2007	Reply indicated FBI was "in the process of compiling these documents." Another reply with partial document production sent 10/26/2007 stating, "we anticipate providing additional documents as this review continues." A third reply sent 8/29/2008 said that b/c of OIG review the remaining documents were "not yet available for production."	More than two-and-a-half years later, production of the documents is still incomplete. Although a small subset (15 pages) of emails was produced, the balance is being withheld pending the completion of the OIG review of exigent letters, which has been repeatedly delayed despite multiple assurances that it was near completion. Congress need not wait months or years for the OIG to complete its work before seeking information on its own. This was implicitly admitted by the production of the first 15 pages of emails, which were also produced during the pendency of the OIG review.
3/27/2007	QFRs: Senate Judiciary Hearing "Oversight of the Federal Bureau of Investigation" QFRs: Q. 64-83 sought information regarding the Michael German case. Follow-up emails on 2/29/2008 and 3/8/2008 sought "more responsive replies" to: (1) Q 74(a-f) regarding other derogatory information in FBI files on Subject #2, (2) Q 78-81 regarding other derogatory information in FBI files on either subject, and (3) Q 83(a-b) regarding the FBI's public statements	1/25/2008	The replies to Q. 64-83 were provided under separate cover and marked "for official use only" with limited portions marked "secret." The replies to many of the QFRs referenced a two-paragraph reply to Q. 64(a). The referenced paragraphs describe the review of the Michael German matter by OIG and reassert the FBI's conclusion that "the totality of the facts did not support the premise that an Islamic militant group and a white supremacist were working, or were planning to worked, together in pursuit of terrorist goals."	The provision of answers under separate cover, grouping a few classified answers with a large amount of unclassified material marked "for official use only" appears to be an attempt to inappropriately impose access controls on unclassified material. The references back to the answer to Q. 64(a) are non-responsive as to Q. 74(a-f), 78-81, and 83(a-b).
9/6/2007	Letter: 4 questions related to emails documenting threats of retaliation against FBI whistleblowers, including Bassem Youssef.	9/25/2007	Reply failed to address question #2 and failed to fully address question #4, indicating merely that the matter had been referred first to IIS and then taken by the OIG under its right of first refusal.	Still need a full accounting of when this reached the Director's personal attention, as well as what steps were ultimately taken by the FBI to hold accountable those making inappropriate, threatening comments regarding retaliation against FBI whistleblowers.

1/10/2008	Letter: Sought an explanation of why the FBI rejected four of the OIG's 16 recommendations to address lack of financial controls on confidential case funds which led to loss of evidence for failure to pay telecommunications providers for services necessary to collect information pursuant to both FISA and criminal warrants.	2/26/2008	Reply merely documented that a briefing occurred.	Need an update on implementation of the OIG recommendations and documentation of why four of the recommendations were rejected.
3/5/2008	QFRs: Senate Judiciary Hearing "Oversight of the Federal Bureau of Investigation" Q. 84(a-d) sought specific information about the use of "umbrella files" and "blanket National Security Letters"	9/17/2008 (Next FBI Oversight Hearing in Senate Judiciary Committee)	DOJ submitted some replies to questions from the Committee on September 16, 2008. That document stated that the Department was "working expeditiously to provide the remaining responses and will forward them to the Committee as soon as possible." To date, those responses have not yet been received.	Senator Grassley, along with every other member of the Judiciary Committee, awaits responses from the Department. Specifically, questions 83, 85, 86, 87, 88, 89, 93, 94, 95, 96 all remain outstanding. These are serious questions that need responses immediately. Further, response to question 84 indicates that the matter was under investigation by the OIG and therefore a response could not be provided. However, Congress need not wait months or years until an OIG investigation is complete in order to obtain information about the matter from the Executive Branch. Moreover, in the intervening time period based upon the Department's delay in responding to these questions, the OIG has issued another report on National Security Letters. Please update this response based upon information that is no longer part of that investigation.
7/9/2008	QFRs: Senate Judiciary Hearing "Oversight of the Department of Justice" Q. 126-128 sought information related to the Jane Turner case, following up the accuracy of previous answers provided to the Committee	12/22/2008 (part 1) 1/17/2009 (part 2)	The replies to Q. 126-128 merely stated the matter was "under review" and that an answer would be provided to Ms. Turner's attorney.	Answers need to be provided to the Committee. The questions concern the accuracy of previous replies from the Department and important issues regarding whether and to what extent FBI officials who participate in EEO or whistleblower retaliation have been held accountable.
8/7/2008	Letter: 18 questions related to anthrax investigation.	3/5/2009	Replied to the 18 questions, but failed to fully respond to questions 4, 6, and 16.	Largely responsive. However, the reply to #4 does not explain why DOJ waited until after the settlement to inform Dr. Hatfill that he had been eliminated as a suspect. The reply to #6 does not provide the dates and results of polygraph exams given to Dr. Ivins, citing the circular and conclusory reason that DOJ will only release the details that it has already chosen to release. The reply to #16 does not indicate whether an indictment had been drafted at the time of Dr. Ivins' death, claiming "the FBI cannot comment further on internal Department deliberations" – despite the fact that the reply is signed by the DOJ OLA rather than the FBI.

9/17/2008	<p>QFRs: Senate Judiciary Hearing "Oversight of the Federal Bureau of Investigation"</p> <p>Q. 4 reiterated a document request from a letter co-signed by House Judiciary Chairman for documents related to potential retaliation against B. Youssef following Congressional testimony.</p> <p>Q. 11 seeks information about polygraph exams on Dr. Ivins in the anthrax investigation.</p>	3/25/2009 (Next FBI Oversight Hearing in Senate Judiciary Committee)	<p>DOJ submitted responses on 4/27/2009, but failed to answer specific questions.</p> <p>Q. 4 it would be "inappropriate for the FBI to comment" during pending DOJ/OPR inquiry.</p> <p>Q. 11 except for the documents already released, the FBI "cannot provide further information while this matter is pending."</p>	<p>(1) In response to Grassley question 1, the FBI answered "DOJ requested the opportunity to provide consolidated responses on behalf of all involved DOJ components. The FBI has provided its input to DOJ for the preparation of that consolidated response." That response has never been provided by DOJ.</p> <p>(2) Response to Grassley #2 (d) fails to answer the question asked regarding funding.</p> <p>(3) Grassley #4 – response is non-responsive. The question does not seek comment on the case, it seeks information about the document request.</p> <p>(4) Grassley #11—the response is essentially that DOJ does not comment on ongoing investigations except when it does (as it has here). That response is unhelpful. Moreover, the matter is no longer pending in any real sense as the primary suspect is dead. DOJ released substantial information about the case already. Withholding specific information sought by Congress under these circumstances creates the appearance that DOJ has selectively released information and is unwilling to be open about the entire record in this historically significant case. The answers may have significant implications for Congressional consideration of policies related to polygraph examinations.</p> <p>(5) Grassley #26 – see #4.</p> <p>(6) Grassley #27—response is non-responsive – see #2 above.</p>
10/22/2008	<p>Letter: 7 questions related to the termination of former Agent Elizabeth Morris following her EEO complaint and report of a fellow agent for alleged misuse of subpoena authority to seek records not relevant to any investigation.</p>	3/13/2009	<p>Reply discussed procedure and failed to answer substantive questions about the OPR investigative process, citing an alleged "policy of not disclosing non-public information from OPR investigations."</p>	<p>In order to conduct oversight of the OPR process, it is necessary to obtain answers to all seven questions. There is no basis in law for claiming that OPR is immune from Congressional inquiry.</p>
3/25/2009	<p>QFRs: Senate Judiciary Hearing "Oversight of the Federal Bureau of Investigation"</p> <p>Q. 42 asked how and why DOJ chose not to respond to certain questions from the March 2008 oversight hearing.</p> <p>Q. 44(a-e) sought information on the acquisition and sharing of records from Bank of America in the Countrywide loan investigation.</p>	9/16/2009	<p>DOJ submitted responses on 9/15/2009</p> <p>Q. 42 DOJ is working with Grassley staff on outstanding requests.</p> <p>Q. 44(a-e) refused to answer on the grounds that the matter is pending.</p>	<p>(1) Response to Grassley #42 is non-responsive. The question asked how DOJ determined what selective responses to provide. That question was not answered.</p> <p>(2) Response to Grassley 44(a-e) is non-responsive. The questions merely sought procedural information necessary to assess the level of cooperation from Bank of America and the level of information sharing with other interested federal law enforcement. The answers would not implicate any "privacy interests" or "impede the investigation" as asserted by the reply.</p> <p>(3) Responses to Grassley 45(a-d) are non-responsive. The answers do not explain with Director Mueller knew that Dr. Hatfill had been eliminated as a suspect, they do not explain why neither he nor the public were informed that he had been eliminated (in light of the public identification of him). The answers do not address whether the lawsuit was a factor in the decision not to inform Hatfill or the public he had been ruled out. And, the answers do not address the timing of the notification to Dr. Hatfill's lawyers coming only after the settlement.</p>