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Obama Administration Hinders FBI Whistleblower Protections & Inspector General Oversight

By: [Kevin Gosztola](#) Wednesday February 4, 2015 4:55 pm



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The FBI withholds records the inspector general for the Justice Department should legally be able to access, and, in the process, has impacted the ability of the office to review whistleblower allegations and claims of retaliation. President Barack Obama's administration has apparently supported this position, which hinders an office that is supposed to provide independent oversight.

Justice Department Inspector General (IG) Michael Horowitz testified at a House Oversight & Government Reform Committee [hearing](#) on February 3. He expressed concern, along with IGs from the Environmental Protection Agency and the Peace Corps, that agencies are improperly withholding documents from their offices.



Michael Horowitz, Justice Department Inspector General testifying before House Oversight & Government Reform Committee

The IG Act, passed by Congress in 1978, states clearly that IGs are "authorized to have access to all records, reports, audits, reviews, documents, papers, recommendations or other materials." They are to be given access without any exception so they can conduct oversight. Yet, in August 2014, forty-seven of the 72 IGs in government signed a letter urging Congress to reaffirm the intent of the law, which is that offices are to have "timely and unimpeded access to all records available to an agency that relate to that Inspector General's oversight activities." [\[PDF\]](#)

Horowitz explained during the committee hearing that the FBI general counsel adopted a legal position in 2010, where the IG for the Justice Department could no longer have access to "grand jury, Title III electronic surveillance, and Fair Credit Reporting Act information, because of disclosure limitations in statutes other than the IG Act." But the IG had been able to access these records before 2010 without any issues whatsoever. What changed?

The new posture by the FBI (and allowed by the wider Justice Department) means the IG office is wasting time and resources negotiating with FBI officials for access to records.

There are further delays because the IG employees have to go to the Deputy Attorney General or

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Attorney General for permission to access materials. The Deputy Attorney General or Attorney General then makes a decision to allow access when they decide the oversight will be helpful to their management. It effectively transforms the choice to conduct a review into their decision instead of the IG office's decision.

"If we have to go through the agency leadership to decide whether we get records, that's a serious problem undermining our independence," Horowitz stated.

Horowitz claimed his office has been working to "move forward on a whistleblower retaliation allegation involving an FBI employee and the FBI wants to first review the documents to see if we're legally entitled" to access. That is a cause of "great concern." Prompt access to records is necessary for there to be whistleblower protections.

He indicated that an issue has been access to records related to programs, which fall under the Foreign Intelligence Surveillance Act (FISA) and PATRIOT Act. The FBI has challenged whether the IG should be able to review "raw data" from FISA.

"So, what Congress has asked us to do is oversee the FBI's authorities in those areas to make sure they're exercised appropriately. To do that we have to know that we're getting everything and we're getting everything promptly."

Congress took action in December 2014 and included a provision in the budget that prohibits the Justice Department from "using appropriated funds to deny, prevent or impede the DOJ OIG's timely access to records, documents and other materials in the Department's possession." It has helped, but President Barack Obama would like to have the provision repealed.

Obama's new budget suggests, "The Department is unaware of any specific materials the OIG believed necessary to its reviews but to which the OIG has not been granted access."

This is deceptive, as Horowitz explained, because it "glosses over" how the IG's office ultimately obtains documents at issue. The FBI seeks permission from the Deputy Attorney General or Attorney General. They are not just handed over as the records should be when requested.

As these offices review allegations of waste, fraud, abuse and/or misconduct to determine if they are accurate, they are impeded when documents are not provided quickly. It makes it difficult to fix and address corruption. It reinforces a culture that encourages clampdowns on employees who challenge conduct or policies within the agency.

The Justice Department [rejected](#) a number of key reforms "whistleblower advocates" urged the agency to adopt last year. The Office of Attorney Recruitment and Management (OARM), which handles claims of whistleblower retaliation under FBI whistleblower regulations, decided it would make it possible for "compensatory damages" to be awarded. There are now more people an FBI employee can go to and make a protected whistleblower disclosure. However, it did not adopt "judicial review, the incorporation of administrative law judges, time limits for decisions on cases, hearings upon request and a requirement that federal government employees be produced to provide testimony if it would be relevant to resolving a case.

Justice Department whistleblower and director of National Security & Human Rights division at the Government Accountability Project (GAP), Jesselyn Radack, told Firedoglake these are "hallmarks of due process," and, "as long as the Justice Department is the prosecutor, judge and jury, whistleblowers, who challenge the most politically sensitive wrongdoing, will have a hard time finding justice."

The Whistleblower Protection Act (WPA), passed in 1989, was long ignored by the FBI and Justice Department, even though it required the Attorney General to regulate FBI whistleblowers in a manner consistent with the WPA. Not until 1997 was any action taken to implement some kind of whistleblower protections.

An FBI legislative affairs official in 2014 suggested to Senator Chuck Grassley—when he raised concerns about the Insider Threat Program intercepting whistleblower communications—that whistleblowers should register with the Program in order to be protected. This just shows how the FBI is not open to accountability whether it come from whistleblowing or oversight by an IG.

Finally, the Obama administration has branded itself the "Most Transparent Administration Ever" yet time and time again there are examples such as this that show how transparent it is that the administration is not really in favor of transparency. Instead, the administration endorses a position that promotes violations of an unambiguous law intended to enhance a system of checks and balances in government. By doing so, entire Executive Branch agencies are able to escape accountability. It also becomes harder for whistleblowers to find protection if they take their claims to an inspector general's office.

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*Horowitz's full submitted testimony can be found [here](#).

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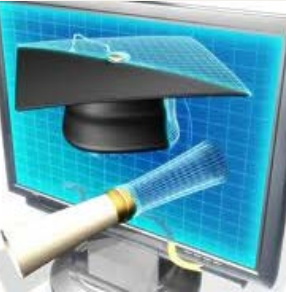
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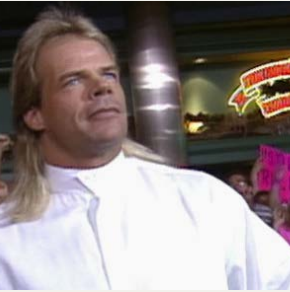
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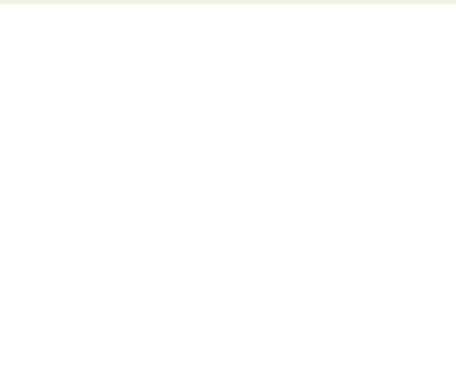
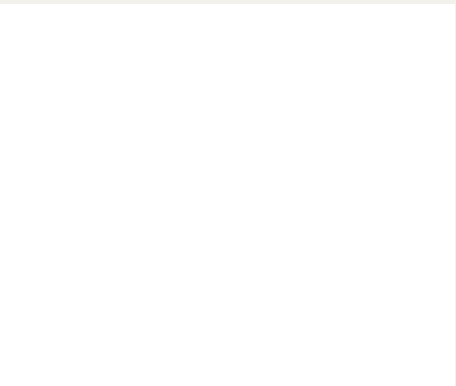
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13 Responses to “Obama Administration Hinders FBI Whistleblower Protections & Inspector General Oversight”

[jgordon](#) February 4th, 2015 at 10:18 pm 1

Indicative of a fragile and crumbling empire, nothing these guys do can stand up to the light of day.

“Well you may throw your rock and hide your hand
Workin’ in the dark against your fellow man
But as sure as God made black and white
What’s done in the dark will be brought to the light”

-Johnny Cash

The problem for the empire of course is that not everyone who works for it is a sociopath, and not everyone in the public is gullible—so there will always be those will to expose crimes and those who can appreciate the criminals for what they are.

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erik February 4th, 2015 at 10:33 pm

2

Look, President Obama will only be our President for two more years. I think that the people living in America should just accept that and let him do what he wants. He did win twice and at this point at least he's trying to do some things that Progressivist enjoy having him do. Apparently he quite fervently despises Hilary and the 'news' tells us that he strongly supports Elizabeth Warren, presumably because she will carry out his agenda even after surrendering power. I realize that not all smart Progressives of the modern era agree with every sniveling detail of President Obama's agenda, however we must "eat our peas" and accept his reincarnation as a true hero of the socialist left as he fights not only inequality, but all injustices among us. His mission to "build" the middle class is quite adacious and besides protecting us from putin and ISIS, the guy is fighting climate change as well.

We need to just deal with it.

Maybe Biden/Warren? We'd all like to see Warren take over but a foot in the door might be better than walker or bush III.

It's just a damn good thing the enemy is such a joke. If the people who live in America had something other than a lesser of two evils choice though then I guess it just wouldn't really be America anymore huh?

Oh well.

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lanB February 4th, 2015 at 11:33 pm

3

In response to erik @ 2

Look, President Obama will only be our President for two more years. I think that the people living in America should just accept that and let him do what he wants.

Wait, what? This is irony, no? The article is about Inspector Generals being denied any oversight over agencies they are supposed to watch over and adjudicate. Are saying our government should not have any internal mechanisms for whistleblowing or policing corruption because Obama? Or....

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erik February 4th, 2015 at 11:56 pm

4

In response to lanB @ 3

Are saying our government should not have any internal mechanisms for whistleblowing or policing corruption because Obama? Or....

What I'm saying is that all the hoopla over matters of Federal authority need to take a back seat to the demands of governing. Often so called 'whistleblowers' are actually disgruntled misfit's with an agenda, or in many cases even moles placed by either the enemy or even in some cases foreign agents.

We need to trust President Obama to attack republicon efforts to impose even more severe austerity and to resist their vile scheming to assist the koch brothers in destroying the planet.

Bickering about national security issues and Federal efforts to administer justice to those found guilty of leaking secret government information is not very productive and could lead to serious setbacks in efforts to insure that World Leaders can protect everyone and help us be safe prosperous.

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Kevin Gosztola February 5th, 2015 at 12:32 am

5

In response to erik @ 4

Often so called 'whistleblowers' are actually disgruntled misfit's with an agenda, or in many cases even moles placed by either the enemy or even in some cases foreign agents.

Name a few. If it happens so often, name some. Who are these moles?


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Kim Lyvang February 5th, 2015 at 1:01 am

6

I'm starting to wonder if the president is really in control. Obama says things that make the average person happy. The two parties fight over everything. The odd little thing is thrown our way. But who gains in the end? Not us. I hate to use this analogy: Hitler used the same. Corporations use everything they can to get control. They made Hitler strong. After the war they made the US strong. And the USSR. Now religion is being used to extend war to benefit the corporations and keep the average person

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[shootthatarrow](#) February 5th, 2015 at 8:22 am

7

In response to [erik @ 2](#)

... Sorry Erik but this comment @ #2 you have put together moves in several wrong directions while dredging up some vintage Obot and DemHack politics dreck. Your comment @ #2 Erik reveals woefully mistaken Obot and DemHack tilted seeing and thinking which you evidently have been gaming in the many comments you have been making here at FDL.

>>> Commenting Credibility? It is knowable Erik that you have been sliding along with your On and Off "snark" framing here at FDL in and with your comments — going to call BS here on all that Erik.

>>> Commenting Credibility? Not seeing it in your comments here at FDL Erik. Going forward will count you as being a Obot / DemHack who willfully does both despite all the evidence and record in being Barack Obama and the WallSt./ MIC Democrats have put out and down since 2000. See Erik comments @ # 2 and @ # 4 which both lay this out plainly enough. Done with the snark slack being reeled out.

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[bluewombat](#) February 5th, 2015 at 9:46 am

8


I continue to think (hope?) that Obama isn't as horrible a president as G.W. Bush, but he's certainly a more spectacular hypocrite.

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[bluewombat](#) February 5th, 2015 at 9:47 am

9

Don't let's feed the troll, people.

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[shootthatarrow](#) February 5th, 2015 at 10:18 am

10

In response to [bluewombat @ 8](#)

... So ... Barack Obama being a War Monger, a War Criminal and a Liar and the guy who beat down Chelsea Manning cuz showing and telling the truth is a NO GO with Barack Obama is OK with you cuz Barack Obama — the guy who let Bush and Cheney slide after becoming POTUS on Jan.20,2009 — the guy who has been doing / is still doing what Bush / Cheney were doing or expanding it — still gets a pass with you cuz you think and want to hope Barack Obama is less horrible?

>>> This would seem to be some IOKIYAAD being peddled despite the knowable evidence / record of what and who Barack Obama is.

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[JamesJoyce](#) February 5th, 2015 at 11:36 am

11

In response to [shootthatarrow @ 10](#)

Speaking of evidence and records?

Why did thousands of Americans land on a beach in Europe? Maybe we should be asking this question, given the realities we see today.


I'm beginning to wonder if Americans have any sense or understanding of history. Must be all those very successful business models, predicate in large part on addiction, which have stripped the collective conscience of a society of reason, in return for conditioned convenience? Say drastically cheaper gasoline, like a bell's, then the conditioned response, like a dog.

It is just like Bush said after 911!

"Go fill your gas tank and go shopping. We will take care of the bad guys?"

Now some folks can actually buy a bagel and eat it instead of buying gasoline and wasting 80% of it.

You know, walking 21 miles to and fro' work may not be fast but it sure is a better value in the long run...

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[JamesJoyce](#) February 5th, 2015 at 11:51 am

12

In response to [erik @ 2](#)

[Maybe Biden/Warren?](#)

I like Radical Republicans, who ended a energy monopoly. The current Repugs suffer from dementia! The "Hillary," is corporate's girl.

The middle class needs some "Radical Americans," to put corporate back in a box, as Scott's rights were finally protected by executive order and constitutional amendment put forth by Radical Republicans whose fear of the slavocracy was real! We are still working on that energy monopoly's monopolistic tendency, but Roberts thinks its all kosher at luncheon counters across the land!

DO I trust the corptocracy and the undue influence of money being protected by the SCOTUS! FUCK NO! Do you erik? Anyone here???

History shows us how the US Government failed to protect Scott. This is the precedent. Money is speech as Scott was inferior, because of skin color? Now all citizens are subordinate to the power of corporate money, as Scott was rendered subordinate to monopoly on energy.

Deja Vu! Our founders vomit...

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kapock February 5th, 2015 at 6:38 pm 13

Recall also the recent news that much of the continuing U.S. military "training" presence (or whatever it's supposed to be) has now been classified, so the Special I.G. for Afghanistan can no longer do his job.

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