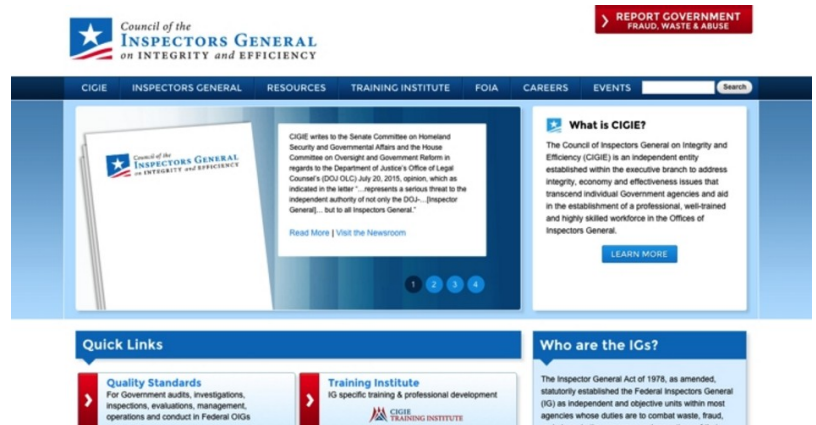




Written by [Raven Clabough](#) on August 5, 2015

Inspectors General Want Law to Ensure Access to Records

On August 3, the Council of the Inspectors General on Integrity and Efficiency sent a [letter](#) to congressional leaders asking them to pass legislation to reverse a controversial decision made on July 20 by the Justice Department regarding access by Inspectors General to sensitive information. The Justice Department's Office of Legal Counsel is now requiring investigators to get special permission to review sensitive documents from the agencies they are monitoring, [Fox News reports](#).



Politico reports that the current practice was initiated by Attorney General Eric Holder and former Deputy Attorney General James Cole and requires the IG's office to seek permission before gaining access to certain records.

Inspectors general are called upon to perform audits and internal reviews of government agencies, and assigned to major investigations such as that of the IRS scandal and personal e-mail use at the State Department. However, inspectors general have complained to Congress that the agencies they were tasked to oversee have refused to release documents critical to their investigations.

The *Washington Post* notes that Congress made an effort to improve watchdogs' access to sensitive records with a rider on Congress' 2015 DOJ appropriations act.

Still, the legal dispute was put to the Office of Legal Counsel (OLC), which the *Post* notes "acts as a kind of supreme court for the executive branch." The July 20 decision from the OLC ruled that neither the law establishing the Inspectors General office nor Congress' appropriations provision gives IGs access to all DOJ information. The OLC determined that wiretap law and grand-jury secrecy rules prevent the release of information for investigations.

According to the OLC memo, federal statutes "forbid disclosures that have either an attenuated or no connection with the conduct of the department's criminal law enforcement programs or operations," and the Fair Credit Reporting Act "forbids disclosures that have either an attenuated or no connection with the approval or conduct of foreign counterintelligence investigations."

Inspectors general are now concerned that the OLC decision will further impede their ability to function as independent investigators.

"As a result of the OLC's opinion, the OIG will now need to obtain Justice Department permission in order to get access to important information in the Department's files — putting the agency over which the OIG conducts oversight in the position of deciding whether to give the OIG access to the information necessary to conduct that oversight," the Inspector General's office said in a statement. "The conflict with the principles enshrined in the Inspector General Act could not be clearer and, as a result, the OIG's work will be adversely impacted."

Following the ruling, DOJ Inspector General Michael Horowitz was vocal in his opposition, as he opined, "Congress meant what it said when it authorized inspectors general to independently access 'all'



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documents necessary to conduct effective oversight.... Without such access, our office's ability to conduct its work will be significantly impaired."

Horowitz notes that numerous requests for records have been blocked or delayed by federal agencies even before the July 20 ruling, including in the controversial Fast and Furious case involving the federal government's gunwalking scheme that lost track of over 1,000 government-issued guns and resulted in the death of a U.S. Border Patrol agent. Horowitz has also testified that the request process dragged on for months in the investigation into Drug Enforcement Administration agents' attendance at sex parties, a probe that resulted in the resignation of the DEA chief.

Testifying before Congress, Horowitz complained that the FBI had refused to release important records in a number of whistleblower cases, citing national security and privacy laws.

Inspectors general are calling upon members of Congress to restore their ability to adequately perform their tasks by passing a law that would "unambiguously state and provide what we in the Inspector General community have long understood — that no law or provision restricting access to information applies to Inspectors General unless the law or provision expressly so states."

According to the IGs, restricting access to so-called sensitive information ultimately undermines the work that their offices are meant to do.

"Without timely and unfettered access to all necessary information, Inspectors General cannot ensure that all government programs and operations are subjected to exacting and independent scrutiny," the letter said. "Refusing, restricting, or delaying an Inspector General's independent access may lead to incomplete, inaccurate, or significantly delayed findings and recommendations, which in turn may prevent the agency from promptly correcting serious problems and pursuing recoveries that benefit taxpayers, and deprive Congress of timely information regarding the agency's activities."

The letter goes on to say the restrictions could "impede or otherwise inhibit investigations and prosecutions" related to agency operations.

DOJ spokeswoman Emily Pierce defended the OLC ruling, claiming investigators would still get access to sensitive information. "The Department has long held the position that the Inspector General should have access to all the information it needs to perform its essential oversight function.... Consistent with this view, Department leadership has implemented procedures to ensure that the Inspector General receives sensitive law enforcement information in a timely manner," she said in a statement. Of course, she failed to explicitly state that it would have to be with the approval of the DOJ.

There is already support in Congress to overturn the OLC ruling. Fox News reports that Senators Chuck Grassley (R-Iowa) and Ron Johnson (R-Wis.) as well as Representatives Bob Goodlatte (R-Va.) and John Conyers (D-Mich.) have targeted the DOJ rule as a clear violation of the Inspector General Act of 1978.

"The department's refusal to provide records on a timely basis as required by law wastes months in bureaucratic roadblocks and frustrates the independent oversight Congress created inspectors general to provide," they said in a joint statement.

Senator Grassley, who serves as the Senate Judiciary Committee Chairman, remarked, "The clear command of [the 1978 Inspector General Act] is being ignored far too often by agencies across the executive branch."

Grassley also pointed to the ruling as an effort by the OLC to overstep its boundaries and undermine congressional efforts. "By this opinion's tortured logic, 'all records' does not mean 'all records,' and



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Congress's recent attempt to underscore our original intent with an appropriations restriction is nothing but a nullity," he said.



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