



U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

May 2, 2016

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM:

Sally Q. Yates
Deputy Attorney General

SUBJECT:

Updated Procedures Regarding Document Requests from the
Office of the Inspector General

As you are all aware, responding to the Department of Justice Office of Inspector General's (OIG's) requests is of the highest priority. In memoranda dated April 23, 2015, and July 27, 2015, I implemented procedures – consistent with then-existing law – regarding the disclosure of information protected by the Federal Wiretap Act, Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 18 U.S.C. §§ 2510-2522 (2012) (Title III); Federal Rule of Criminal Procedure 6(e) (Rule 6(e)); or 15 U.S.C. § 1681u (Section 626 of the Fair Credit Reporting Act) (FCRA) to OIG personnel. Those procedures were designed to ensure both that OIG received information promptly and that Department components and agencies adhered to existing legal requirements imposed by Title III, Rule 6(e), and section 626 of FCRA. Because the legal landscape in this area has since changed, I am issuing this new memorandum containing updated procedures designed to ensure that the Inspector General receives the documents he needs to complete his reviews in a timely manner.

On December 18, 2015, the President signed the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016, Pub. L. No. 114-113, div. B, 129 Stat. 2242 (“CJS Appropriations Act”), which included language regarding access by OIG to the Department's documents and information. On April 27, 2016, the Office of Legal Counsel (OLC) issued a memorandum (2016 OLC Opinion) concerning the Department's legal authority to grant OIG access to materials protected by Title III, Rule 6(e), or section 626 of FCRA in light of the CJS Appropriations Act. This memorandum sets forth guidance consistent with the 2016 OLC Opinion, and supersedes the guidance I issued on April 23, 2015, and July 27, 2015.¹

As explained in the 2016 OLC Opinion, in light of the enactment of the CJS Appropriations Act, the Department may now disclose to OIG documents and other materials

¹ This memorandum is operational so long as the operative language in section 540 of the CJS Appropriations Act remains in effect.

protected by Title III, Rule 6(e), or section 626 of FCRA without any additional procedures or delay, and regardless of whether those statutes would otherwise prohibit the disclosure.² In addition, the CJS Appropriations Act stipulates that OIG shall report to the Committees on Appropriations of the House of Representatives and the Senate within five calendar days of any failure to produce requested documents to OIG. Accordingly, please work with OIG to develop reasonable deadlines for any document productions and ensure that you notify them immediately of any potential delays in your productions.³

Pursuant to the CJS Appropriations Act, OIG must “ensure compliance with statutory limitations on disclosure relevant to the information provided by the [Department].” CJS Appropriations Act § 540. To assist OIG in complying with this requirement, you should notify OIG when the documents you are producing contain information protected from disclosure by Title III, Rule 6(e), or section 626 of FCRA. In some cases, in order to ensure compliance with deadlines for production to OIG, it may be necessary to make such a notification after the documents have already been produced to OIG.⁴

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If questions arise at any time during this process, please contact my office for assistance. Thank you for your attention to this important matter

² Although the 2016 OLC Opinion addresses only Title III, Rule 6(e), and section 626 of FCRA, the CJS Appropriations Act permits you to disclose to OIG documents otherwise protected from disclosure by statute, unless the specific statutory provision at issue “expressly refers to the Inspector General and expressly limits the Inspector General’s right of access.” CJS Appropriations Act § 540. If you have questions about specific documents or statutory provisions, please immediately contact my office for guidance.

³ As explained in the 2016 OLC Opinion, if a component receives a request from OIG for documents that are in the sole custody of an employee paid exclusively with funds appropriated by statutes other than the CJS Appropriations Act, the component may be limited in its ability to provide to OIG documents protected from disclosure by Title III, Rule 6(e), or section 626 of FCRA without first taking additional steps. In such a situation, the component should immediately inform my office so that I can ensure that OIG timely receives access to those materials.

⁴ Nothing in this memo or the 2016 OLC Opinion eliminates or reduces your obligations regarding the handling of classified information.