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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

October 15, 2018

VIA ELECTRONIC TRANSMISSION

The Honorable Michael K. Atkinson
Inspector General
Office of the Inspector General for the Intelligence Community
Washington, DC 20511

Dear Inspector General Atkinson:

I write regarding the failure of the Office of the Inspector General for the Intelligence Community (IC IG) to follow federal regulations and Executive Order 13526 in responding to a declassification request I first made over four years ago. On April 14, 2014, I wrote to Directors Brennan and Clapper, copying Inspector General McCullough and Inspector General Buckley, among others, regarding two Congressional Notifications (CNs) that the IC IG had sent to Capitol Hill.¹ The first CN was dated March 28, 2014, and had the unclassified subject line “Whistleblower Communications.” The second CN was dated March 31, 2014, and had the unclassified subject line “Whistleblower Communications – Clarification.” Both documents were classified SECRET/NOFORN. Among other requests, my April 2014 letter specifically asked that the CNs be declassified as soon as possible.² However, the IC IG did not create declassified versions of the documents in response, nor did it provide me a notification of a final declassification determination, nor do I have any reason to believe that the IC IG even conducted the Mandatory Declassification Review required by Executive Order 13526 and its implementing regulations. In fact, the ODNI’s Mandatory Declassification Review Log covering that time does not contain any entry for my request.³

¹ Available at: <https://www.grassley.senate.gov/sites/default/files/judiciary/upload/Declassification%2C%2004-14-14%2C%20letter%20to%20Brennan%2C%20Clapper.pdf>.

² The letter requested the production of all documents referenced in the CNs, a briefing by appropriate agency staff familiar with the facts described in the CNs, and the declassification of the CNs themselves. While the CNs are IC IG documents, the underlying circumstances involved other agencies, which is why the letter was sent to other recipients in addition to the IC IG. For purposes of the declassification request, even if those agencies have equities in the information within the IC IG’s CNs, pursuant to 32 C.F.R. § 2001.33(a)(2)(ii), it is the IC IG’s responsibility to refer the request to the other agencies and relay the classification determination to the requestor: “The referring agency is responsible for collecting all agency review results and informing the requestor of any final decision regarding the declassification of the requested information[.]”

³ ODNI Mandatory Declassification Review Log, April 2005 – November 2016; available at: <https://www.dni.gov/files/documents/FOIA/DF-2017-00034.pdf>.

Three years later, on April 5, 2017, I sent a letter following up on this issue to Inspector General McCullough, Acting Inspector General Sharpley, Director Pompeo, and Director Coats. I noted that my declassification request from 2014 had still gone unanswered, and explicitly referenced the requirements of Executive Order 13526.⁴ I noted that under 32 C.F.R. § 2001.33, “[i]n responding to mandatory declassification review requests, agencies shall make a final determination **within one year from the date of receipt.**”⁵ I reiterated my declassification request, and additionally made a formal classification challenge under Section 1.8 of Executive Order 13526 as an authorized holder of the classified information in question. While elements of the intelligence community eventually provided a classified briefing related to the underlying factual issues in the CNs, the IC IG nonetheless again failed to declassify the documents as requested. Once again, I have no reason to believe IC IG undertook the mandatory declassification review process required by the regulations. The one-year deadline to that follow-up letter again came and went without a final declassification determination.

As I have repeatedly noted, the information contained in the two CNs raises serious policy implications as well as potential Constitutional separation-of-powers issues. The CNs do not appear to contain any information about sources or methods, and there is a strong public interest in their content. I do not believe they need to be classified at all and they should be released in their entirety. Even if the IC IG disagrees, and believes some portion of the information does need to remain classified, it is still obligated to conduct a line-by-line analysis as part of the declassification review process and segregate all information that can be released. In fact, 32 C.F.R. § 2001.33 explicitly states:

When information cannot be declassified in its entirety, agencies shall make reasonable efforts to release, consistent with other applicable laws, those declassified portions of the requested information that constitute a coherent segment. ... Agencies receiving mandatory review requests are expected **to conduct a line-by-line review** of the record(s) for public access and are expected to release the information to the requestor.

As Section 1.7 of Executive Order 13526 states, “[i]n no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to ... conceal violations of law ... [or to] prevent embarrassment to a person, organization, or agency.”

Nearly four and a half years have passed since I made my initial declassification request. The rules require the IC IG to respond within one. Simply put, the IC IG has failed to comply with its legal obligations. As a matter of respect for a co-equal branch of government, my declassification request should have been processed in a timely manner. But the IC IG has not even afforded me the basic declassification processes due to every American citizen. Please investigate this failure and provide the Committee with an explanation by October 29, 2018. Please also comply with my original request, declassify the referenced CNs to the greatest extent possible, and produce them to the Committee by that date.

⁴ Available at: <https://www.judiciary.senate.gov/download/2017-04-05-ceg-to-odni-cia-follow-up-on-whistleblower-communications>.

⁵ The implementing regulations specific to ODNI state: “ODNI will respond to requestors within one year of the receipt of the requests.” 32 C.F.R. § 1704.9(c).

Thank you for your prompt attention to this matter. If you have any questions, please contact Patrick Davis of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

cc: The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary

Ms. Patricia Gaviria
Director of the Information Management Division
Office of the Director of National Intelligence

Mr. Michael Lavergne
Information and Privacy Coordinator
Central Intelligence Agency