

# Congress of the United States

## House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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June 9, 2016

The Honorable Martin J. Gruenberg  
Chairman  
Federal Deposit Insurance Corporation  
550 17th Street NW  
Washington, DC 20429

Dear Mr. Gruenberg,

The Committee on Science, Space, and Technology is continuing its oversight of recent cybersecurity events at the Federal Deposit Insurance Corporation (FDIC).<sup>1</sup> As you know, the Committee has written several letters to you, requesting documents and communications on recent cybersecurity breaches, as well as the FDIC's attempts to circumvent providing full and complete responses to the Committee's requests.<sup>2</sup> In the past few days, the Committee learned that following the FDIC's attempt to provide a full and complete response to the Committee's letters dated April 8, 2016, and April 20, 2016, as well as its search for documents and communications responsive to the Committee's May 24, 2016, letter,<sup>3</sup> the FDIC's search for materials yielded a substantial amount of internal Office of Inspector General (OIG) communications. Not only is the Committee deeply troubled that the FDIC continues to withhold pertinent and responsive information to its cybersecurity posture from production to the Committee, the Committee is even more concerned by the FDIC's gathering and review of internal OIG communications.

Following the Committee's receipt of the FDIC's responses to the April 8, 2016, and April 20, 2016, letters; which your staff certified were full and complete responses to each of the letters; subsequent discussions with the OIG indicated that a substantial number of documents

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<sup>1</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., to Hon. Martin Gruenberg, Chairman, Fed. Deposit Insurance Corp. (Apr. 8, 2016) [hereinafter Letter, Apr. 8, 2016]; Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., to Hon. Martin Gruenberg, Chairman, Fed. Deposit Insurance Corp. (Apr. 20, 2016) [hereinafter Letter, April 20, 2016]; Letter from Hon. Lamar Smith, Chairman & Hon. Barry Loudermilk, Chairman, Subcomm. on Oversight, H. Comm. on Science, Space, & Tech., to Hon. Martin Gruenberg, Chairman, Fed. Deposit Insurance Corp. (May 10, 2016); Letter from Hon. Lamar Smith, Chairman & Hon. Barry Loudermilk, Chairman, Subcomm. on Oversight, H. Comm. on Science, Space, & Tech., to Hon. Martin Gruenberg, Chairman, Fed. Deposit Insurance Corp. (May 24, 2016) [hereinafter Letter, May 24 2016]; H. Comm. on Science, Space, & Tech., *FDIC Data Breaches: Can Americans Trust that Their Private Banking Information is Secure?*, 114<sup>th</sup> Cong. (May 12, 2016).

<sup>2</sup> Letter, Apr. 8, 2016, *supra* note 1; Letter, Apr. 20, 2016, *supra* note 1; Letter, May 24, 2016, *supra* note 1.

<sup>3</sup> *Id.*

were withheld by the agency. After the Committee received over 880 pages of additional materials from the OIG that were withheld by the agency, the Committee learned during later discussions with the FDIC that your staff never conducted a search for all agency records responsive to the Committee's request, never used any search terms for a communications search, and never searched the main database system for communications responsive to the Committee's requests. The agency's decision not to conduct a good faith search for documents raises significant questions about the veracity of the statements made to the Committee that the agency produced all documents and communications responsive to the request.

After a series of discussions with the FDIC, your staff agreed to conduct an extensive search for all materials responsive to the Committee's requests. Although the Committee was led to believe that the agency would comply with the Committee's requests after enjoying an extra two months to identify and produce all responsive materials, the Committee learned from the OIG that during the agency's search for materials, it gathered a substantial set of internal OIG communications. This information raises serious concerns about the FDIC OIG's ability to conduct its work in an independent manner, as mandated by the Inspector General Act of 1978 (IG Act).<sup>4</sup> Also troublesome is the fact that your staff has not been forthcoming with informing the Committee that the agency's search for documents yielded a substantial number of internal OIG documents. The agency's continued lack of transparency and responsiveness to the Committee raises serious concerns about whether the agency is attempting to skirt congressional oversight and avoid answering questions not only about its cybersecurity posture, but about its willingness to ensure that internal OIG communications, as well as communications by those within the agency that may communicate with the OIG are kept confidential.

As you should know, since the passage of the IG Act, the community of Inspectors General has played an integral role in identifying and rooting out waste, fraud, abuse, and mismanagement in Executive Branch departments and agencies across the federal government.<sup>5</sup> The Act created independent OIGs to investigate, oversee, and recommend programmatic changes to improve the function and efficiency of federal government programs and operations.<sup>6</sup> The independence of OIGs is not only mandated by the IG Act, but is imperative to facilitating the OIG's work. The lack of an independent OIG could potentially compromise the OIG's ability to conduct its work in a manner uninhibited by the very agency it was created to oversee. The FDIC's gathering of internal OIG materials runs counter to the independence mandated by the IG Act.

Upon reviewing the set of documents produced by the agency on June 7, 2016, the Committee noticed a distinct watermark included on each page of the production. The FDIC's inclusion of the watermark is not only inconsistent with previous productions to the Committee, but also with the Committee's Instructions for Responding to Requests, included with document request letters sent to the agency. Given the Committee's concerns about potential retaliation against whistleblowers discussed in previous letters to the FDIC, the FDIC's inclusion of a novel watermark raises serious questions about whether the agency is attempting to identify the source

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<sup>4</sup> 5 U.S.C. App. § 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

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of Committee materials. Additionally, included in the set of materials are communications between OIG officials and agency employees. This raises serious concerns about whether the FDIC is attempting to identify confidential OIG informants. Again, we remind you and your staff of the protections for whistleblowers found in the Whistleblower Protection Act. Any action taken against whistleblowers not only has a chilling effect on the willingness of federal employees to report waste, fraud, and abuse, but is unlawful. As the Committee has informed you previously, it takes seriously any concerns regarding retaliation or reprisal against whistleblowers and will investigate accordingly, if allegations are brought to the Committee's attention.

Finally, the Committee requests that the agency promptly inform the Committee of the following:

- 1) What actions, at an agency-wide level, are being taken to protect whistleblowers,
- 2) What actions are being taken to protect internal OIG communications, and
- 3) What actions are being taken to protect communications exchanged between OIG officials and agency employees.

Please contact Committee staff by noon on June 13, 2016, with all information responsive to these requests.


The Committee on Science, Space, and Technology has jurisdiction over the National Institute of Standards and Technology which develops cybersecurity standards and guidelines to support the implementation of and compliance with FISMA as set forth in House Rule X.

If you have any questions about this request, please contact Lamar Echols or Caroline Ingram at 202-225-6371. Thank you for your attention to this matter.

Sincerely,



Lamar Smith  
Chairman



Barry Loudermilk  
Chairman  
Subcommittee on Oversight

cc: The Honorable Eddie Bernice Johnson, Ranking Minority Member  
The Honorable Don Beyer, Ranking Member, Subcommittee on Oversight