

United States Senate
WASHINGTON, DC 20510

January 23, 2018

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Dear Inspector General Horowitz:

The Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary are conducting oversight of the Federal Bureau of Investigation (FBI) and the FBI's investigation of classified information on former Secretary of State Hillary Clinton's private email server. We write to request information about the loss of FBI records connected to this investigation.

On January 12, 2017, the Department of Justice Office of Inspector General (DOJ OIG) announced an investigation of "allegations that Department or FBI policies or procedures were not followed in connection with, or in actions leading up to or related to, the FBI Director's public announcement on July 5, 2016, and the Director's letters to Congress on October 28 and November 6, 2016 and that certain underlying investigative decisions were based on improper considerations."¹

On December 6, 2017, we wrote to you concerning the DOJ OIG discovery of text messages between FBI employees Lisa Page and Peter Strzok.² Your response, dated December 13, 2017, suggested that DOJ OIG received all text messages between Ms. Page and Mr. Strzok from November 30, 2016 to July 28, 2017. You wrote:

In gathering evidence for the OIG's ongoing 2016 election review, we requested, consistent with standard practice, that the FBI produce text messages from the FBI-issued phones of certain FBI employees involved in the Clinton email investigation based on search terms we provided. After finding a number of politically-oriented text messages between Page and Strzok, the OIG sought from the FBI all text messages between Strzok and Page from their FBI-issued phones through November 30, 2016, which covered the entire period of the Clinton email server investigation. The FBI produced these text messages on July 20, 2017. Following our review of those text messages, **the OIG expanded our request to the FBI to include all text messages between Strzok and Page from November 30, 2016, through the date of the document request, which was**

¹ DOJ OIG Announces Initiation of Review, Jan. 12, 2017, available at <https://oig.justice.gov/press/2017/2017-01-12.pdf>.

² Letter from Sen. Ron Johnson, Chairman, S. Comm. on Homeland Security and Gov't Affairs, and Sen. Charles Grassley, Chairman, S. Comm. on Judiciary, to Michael E. Horowitz, Inspector Gen., Dep't of Justice (Dec. 6, 2017).

July 28, 2017. The OIG received these additional messages on August 10, 2017.³

On January 19, 2018, the Department of Justice produced to Congress 384 pages of text messages exchanged between Ms. Page and Mr. Strzok.⁴ According to a cover letter accompanying the documents, the FBI did not preserve text messages between Ms. Page and Mr. Strzok between approximately December 14, 2016 and May 17, 2017.⁵ The cover letter explained:

The Department wants to bring to your attention that the FBI’s technical system for retaining text messages sent and received on FBI mobile devices failed to preserve text messages for Mr. Strzok and Ms. Page from December 14, 2016 to approximately to May 17, 2017. The FBI has informed [the Department of Justice] that many FBI-provided Samsung 5 mobile devices did not capture or store text messages due to misconfiguration issues related to rollouts, provisioning, and software upgrades that conflicted with the FBI’s collection capabilities. The result was that data that should have been automatically collected and retained for long-term storage and retrieval was not collected.⁶

These statements—that DOJ OIG requested “all text messages between Strzok and Page from November 30, 2016, [to] July 28, 2017,”⁷ received them on August 10, 2017, and that the FBI “failed to preserve text messages from Mr. Strzok and Ms. Page from December 14, 2016, to approximately May 17, 2017”⁸—need to be reconciled. During a phone call on January 22, 2018, DOJ OIG staff indicated that the FBI did not produce text messages between Mr. Strzok and Ms. Page from December 14, 2016, to May 17, 2017.⁹

Accordingly, to understand fully the scope of text messages in the possession of the DOJ OIG, we respectfully request that you please provide the following information and material:

1. Is it accurate that the FBI failed to provide to DOJ OIG text messages between Mr. Strzok and Ms. Page from December 14, 2016, to May 17, 2017 due to technical errors that prevented the texts from being archived in the FBI’s records preservation system?

³ Letter from Michael E. Horowitz, Inspector Gen., Dep’t of Justice, to Sen. Ron Johnson, Chairman S. Comm. on Homeland Security and Gov’t Affairs, and Sen. Charles Grassley, Chairman, S. Comm. on Judiciary (Dec. 13, 2017).

⁴ Letter from Stephen Boyd, Assistant Attorney Gen. for Legislative Affairs, Dep’t of Justice, to Sen. Ron Johnson, Chairman, S. Comm. on Homeland Security and Gov’t Affairs (Jan. 19, 2018). The letter also included 384 pages of text messages between Mr. Strzok and Ms. Page.

⁵ *Id.*

⁶ *Id.*

⁷ Letter from Michael E. Horowitz, *supra* note 3.

⁸ Letter from Stephen Boyd, *supra* note 4.

⁹ Phone call with Dep’t of Justice Off. of Inspector Gen. staff (Jan. 22, 2018).

- a. Has the FBI also been unable to provide the texts from any other source, such as the physical phones, carrier records, or any other source?
 - b. Has the OIG requested texts of other FBI personnel during the same time period? If so, has the FBI also been unable to produce texts of others as well or is the missing text problem limited to these two employees?
 - c. On what date did the OIG request access to messages for that time period from the FBI?
 - d. Did the FBI notify the OIG of the missing text messages between Mr. Strzok and Ms. Page? If so, on what date? If not, how and on what date did the OIG discover that messages were missing?
 - e. Did the DOJ OIG notify the office of the Deputy Attorney General of the missing text messages between Mr. Strzok and Ms. Page? If so, on what date?
 - f. Please explain why the DOJ OIG did not notify Congress of the missing text messages.
2. Please produce all communications between DOJ OIG, DOJ, and the FBI referring or relating to the missing text messages.
 3. The Attorney General said in a statement yesterday that your office was already undertaking a review of the circumstances that led to the FBI's failure to preserve and provide texts to the OIG. On what date did that review begin, and what is the scope and methodology of that OIG review?
 4. Has the DOJ OIG been successful in retrieving any of the missing text messages from any other source?
 5. Does the OIG have the necessary authorities, resources, and capabilities to obtain the missing texts from another source? If not, please identify any gaps in your office's ability to do so.
 6. In the most recent batch of texts, Mr. Strzok and Ms. Page frequently indicate that they are also communicating about work-related matters via apparently personal accounts on Apple's encrypted iMessage texting system, as well as through Gmail. Does the OIG have the necessary authorities, resources, and capabilities to obtain any federal records that may reside in those personal accounts? If not, please explain any gaps in your ability to do so.
 7. Has the OIG asked Mr. Strzok or Ms. Page to voluntarily provide any information from their personal accounts? If so, have they been cooperative? If the OIG has not asked, please explain why not.

8. Has the DOJ OIG interviewed Mr. Strzok or Ms. Page?
9. Has the DOJ OIG interviewed employees of the FBI's Information Technology office regarding the loss of text messages?

Please respond to this letter as soon as possible but no later than January 29, 2018.

Thank you for your attention to this matter. If you have any questions about this request, please contact Kyle Brosnan or Brian Downey of the Senate Homeland Security and Governmental Affairs Committee staff at (202) 224-4751 or Josh Flynn-Brown of the Senate Judiciary Committee staff at (202) 224-5225.

Sincerely,



Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs



Charles E. Grassley
Chairman
Committee on the Judiciary

cc: The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary