

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

March 31, 2017

The Honorable Chuck Rosenberg  
Acting Administrator  
Drug Enforcement Administration  
700 Army Navy Drive  
Arlington, VA 22202

Dear Mr. Rosenberg:

The Drug Enforcement Administration's (DEA) consistent failure to adequately manage its confidential source program has been the subject of OIG reports since May 2005.<sup>1</sup> In its January 8, 2016, letter, the Committee on Oversight and Government Reform (Committee) raised specific questions about a July 2015 Department of Justice Office of the Inspector General (OIG) audit that found DEA's policies on confidential sources did not meet the standards set forth in the "Attorney General's Guidelines Regarding the Use of Confidential Informants" (DOJ Guidelines).<sup>2</sup> The audit also concluded that DEA exercised poor oversight over its confidential source program.<sup>3</sup>

These findings were not limited to a single audit report. In fact, the OIG's findings were consistent with a 2015 Government Accountability Office (GAO) report that also noted DEA's non-compliance with DOJ Guidelines.<sup>4</sup> Moreover, in September 2016, the OIG released another audit of DEA's management and oversight of its confidential source program.<sup>5</sup> Like the earlier OIG report, this report also detailed significant areas of concern over DEA's management and oversight of its confidential source policy. Last week, the OIG released a classified addendum to its 2016 report.<sup>6</sup> The addendum focused on DEA's use of confidential sources in its Intelligence

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<sup>1</sup> INSPECTOR GEN., DEP'T OF JUSTICE, AUDIT DIV. 05-25, THE DRUG ENFORCEMENT ADMINISTRATION'S PAYMENTS TO CONFIDENTIAL SOURCES (2005).

<sup>2</sup> Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, to Hon. Chuck Rosenberg, Acting Administrator, Drug Enforcement Admin. (Jan. 8, 2016).

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

<sup>4</sup> GOV'T ACCOUNTABILITY OFFICE, GAO 15-807, UPDATES TO POLICY AND ADDITIONAL GUIDANCE WOULD IMPROVE OVERSIGHT BY DOJ AND DHS AGENCIES (2015).

<sup>5</sup> INSPECTOR GEN., DEP'T OF JUSTICE, AUDIT DIV. 16-33, AUDIT OF THE DRUG ENFORCEMENT ADMINISTRATION'S MANAGEMENT AND OVERSIGHT OF ITS CONFIDENTIAL SOURCE PROGRAM (2016).

<sup>6</sup> INSPECTOR GEN., DEP'T OF JUSTICE, AUDIT DIV. 16-33a, PUBLIC SUMMARY OF THE ADDENDUM OF THE AUDIT OF THE DRUG ENFORCEMENT ADMINISTRATION'S MANAGEMENT AND OVERSIGHT OF ITS CONFIDENTIAL SOURCE PROGRAM (2017).

Division program. The public summary of the addendum stated: “[I]t is essential that the DEA . . . develop a legally sound and formal oversight process for the DEA to follow when it explores and potentially utilizes confidential sources for these types of activities.”<sup>7</sup>

In response to the Committee’s January 2016 letter, DEA provided briefings about revisions to its guidelines for using confidential sources, both while those revisions were ongoing and after the revisions were approved by DOJ.<sup>8</sup> As the principal investigative committee in the U.S. House of Representatives and, pursuant to its authority under House Rule X to investigate “any matter” at “any time,” on November 30, 2016, the Committee held a hearing on DEA’s confidential source program. According to written testimony from DEA’s then-Chief Inspector Robert W. Patterson, DEA’s revised confidential source policy “addressed all of the issues identified by GAO and OIG.”<sup>9</sup> In addition, Mr. Patterson’s written testimony revealed that the revised confidential source policy was “subsequently published for DEA personnel and at the same time, a corresponding global message was broadcast to all employees to highlight notable changes to the policy.”<sup>10</sup> Finally, Mr. Patterson’s testimony noted that DEA gave in-depth training on the policy, the material was incorporated into the DEA Academy’s curricula for new hires,<sup>11</sup> and that a copy had been provided to the OIG.<sup>12</sup>

During the hearing, and in part because of these representations, the Committee requested that it be provided with a copy of the revised policy.<sup>13</sup> However, in the four months since, DEA has provided the Committee only with an *in camera* review coupled with onerous restrictions, such as prohibiting “verbatim notes” or any efforts to “otherwise seek to record the information contained in the policy.” As a gesture of good faith and professionalism, Committee staff reviewed the materials *in camera* on March 30, 2017. Now, having reviewed the documents, the terms DEA unilaterally imposed on the Committee are unworkable and the Committee believes it is imperative that DEA produce the entirety of its revised confidential source policy immediately.

As soon as possible, but not later than 10:00 a.m. on April 4, 2017, please provide the Committee with copies of all documents purporting to be policies or procedures related to confidential sources or informants, including all documents made available to the Committee for *in camera* review on March 30, 2017, in room 2157 of the Rayburn House Office Building. The Committee expressly reserves its right to employ compulsory process to obtain the documents if they are not produced voluntarily and in a timely manner.

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<sup>7</sup> *Id.* at ii.

<sup>8</sup> Briefings by Drug Enforcement Admin. to staff, H. Comm. on Oversight & Gov’t Reform, (Feb. 12, May 19, and Nov. 21, 2016).

<sup>9</sup> *Oversight of DEA’s Confidential Source Program*, H. Comm. Oversight and Gov’t Reform, 114th Cong. (Nov. 30, 2016) [hereinafter Nov. 2016 DEA Hearing] (statement of Robert W. Patterson, Chief Inspector, Inspection Div., Drug Enforcement Admin.).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Nov. 2016 DEA Hearing (Questions posed by Chairman Chaffetz and Rep. Carter).

<sup>13</sup> *Id.*

The Honorable Chuck Rosenberg

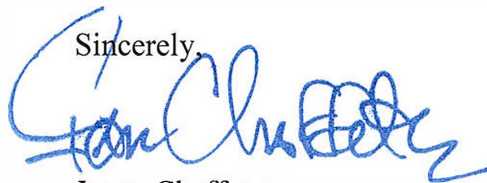
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When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request. Please note that Committee Rule 16(b) requires counsel representing an individual or entity before the Committee or any of its subcommittees, whether in connection with a request, subpoena or testimony, promptly submit the attached notice of appearance to the Committee.

Please contact Tristan Leavitt of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Chaffetz", with a stylized flourish at the end.

Jason Chaffetz  
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

## Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document:  
  
BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,  
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,  
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,  
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,  
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,  
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
U.S. HOUSE OF REPRESENTATIVES  
115<sup>TH</sup> CONGRESS**

**NOTICE OF APPEARANCE OF COUNSEL**

**Counsel submitting:** \_\_\_\_\_

**Bar number:** \_\_\_\_\_ **State/District of admission:** \_\_\_\_\_

**Attorney for:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone:** ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

**Pursuant to Rule 16 of the Committee Rules, notice is hereby given of the entry of the undersigned as counsel for \_\_\_\_\_ in (select one):**

**All matters before the Committee**

**The following matters (describe the scope of representation):**

\_\_\_\_\_  
\_\_\_\_\_

**All further notice and copies of papers and other material relevant to this action should be directed to and served upon:**

**Attorney's name:** \_\_\_\_\_

**Attorney's email address:** \_\_\_\_\_

**Firm name (where applicable):** \_\_\_\_\_

**Complete Mailing Address:** \_\_\_\_\_  
\_\_\_\_\_

**I agree to notify the Committee within 1 business day of any change in representation.**

\_\_\_\_\_  
**Signature of Attorney**

\_\_\_\_\_  
**Date**