



INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY
WASHINGTON, DC 20511

July 22, 2019

The Honorable Mark Warner
Vice Chair
Select Committee on Intelligence
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Robert Menendez
Ranking Member
Committee on Foreign Relations
United States Senate
Washington, DC 20510

The Honorable Jack Reed
Ranking Member
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Vice Chairman Warner and Ranking Members Feinstein, Menendez, and Reed:

On behalf of the Office of the Inspector General of the Intelligence Community (ICIG), this letter responds to your March 8, 2019 letter to Director of National Intelligence (DNI) Daniel Coats and me. In your letter, you requested that the DNI and the ICIG review compliance by the Executive Office of the President (EOP) with policies and procedures governing security clearances and access to sensitive compartmented information (SCI). The ICIG is committed to ensuring that the United States Intelligence Community operates with integrity, including by assisting with the laudable efforts to ensure that only those who have demonstrated their trustworthiness can access classified information and hold sensitive positions.

However, as the General Counsel for the Office of the Director of National Intelligence (ODNI), Jason Klitenic, stated in his letter dated July 10, 2019, on behalf of the DNI, the authority over access to classified information ultimately rests with the President of the United States. Mr. Klitenic explained that, as a legal matter, the DNI does not have the authority to conduct the review requested in your letter, absent Presidential direction to do so. The ICIG agrees with the ODNI's interpretation of the law in this area. It is well-established that the President of the United States has broad latitude concerning the process through which security clearances are granted, transferred, or revoked,¹ as well as broad flexibility in determining whom to choose as his advisors and to what extent those advisors may gain access to information, including national security

¹ See U.S. Const. art. II, § 2; see also *Dept. of the Navy v. Egan*, 484 U.S. 518 (1988).

information.² The Executive branch also has significant discretion when determining whether to grant security clearances and whether a particular person may have access to information.³

As enumerated in its authorizing statute, the ICIG's jurisdiction mirrors that of the DNI.⁴ Therefore, as a legal matter, the ICIG also lacks authority to unilaterally review compliance by the EOP with policies and procedures governing security clearances and access to SCI. While the ICIG does not have the authority to commence on its own initiative, or at anyone's request other than the President or one of his designees, a review of EOP's compliance with policies and procedures concerning matters under the exclusive purview of the President, given the concerns raised by your letter, the ICIG is available and willing to conduct a review, similar to that suggested in your letter, at the request of the President or his designees. As Mr. Klitenic noted in his letter, the ODNI has received and acted upon a similar request from a previous administration as part of the DNI's Security Executive Agent (SecEA) National Assessment Program (SNAP).

Your letter also requested that the DNI and the ICIG review the adequacy of policies and procedures to ensure that mitigation measures are implemented when eligibility to access classified information is granted despite potential security risks. I would like to take this opportunity to bring to your attention some of the ICIG's efforts in this area. Last year, at my direction, the ICIG established a working group to assess the many challenges associated with the security clearance process, including reciprocity and interim security clearances. The working group has engaged with ODNI's National Counterintelligence and Security Center, which is responsible for managing the DNI's SecEA authorities and responsibilities. The ICIG issued a memorandum in November 2018 announcing a preliminary research project and is currently collecting and reviewing data to inform this assessment. I have directed the working group to review the adequacy of the SecEA's policies concerning mitigation measures for covered agencies when eligibility to access to classified information is granted despite security risks.

Thank you for bringing your concerns on these important national security issues to the ICIG's attention. Please contact me, or the ICIG's Legislative Counsel, Melissa H. Wright, if you have any questions or need additional information. Ms. Wright can be reached at (571) 204-8005.

Sincerely yours,



Michael K. Atkinson
Inspector General of the
Intelligence Community

² See *Ass'n of Am. Physicians & Surgeons, Inc. v. Clinton*, 997 F.2d. 898, 910 (D.C. Cir. 1993).

³ See *Cole v. Young*, 351 U.S. 536, 546 (1956); *Bennett v. Chertoff*, 425 F.3d 999, 1001 (D.C. Cir. 2005).

⁴ See 50 U.S.C. § 3033(g)(3) (authorizing the ICIG to review and investigate "complaints or information from any person concerning the existence of an activity within the authorities and responsibilities of the Director of National Intelligence constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety").

cc: The Honorable Daniel Coats
The Honorable Richard Burr
The Honorable Lindsey Graham
The Honorable James Risch
The Honorable James Inhofe