

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE AND TECHNOLOGY

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June 16, 2008

Chairman David Obey
House Committee on Appropriations
2314 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Chairman Obey:

Last year, the Subcommittee on Investigations & Oversight of the House Science & Technology Committee wrote to the Government Accountability Office (GAO) asking the GAO to examine the Federal Bureau of Investigation's (FBI) planned National Security Analysis Center (NSAC). According to FY2008 budget justification documents from the Department of Justice (DOJ), the newly formed center would be an expansion of the FBI's existing Foreign Terrorist Tracking Task Force (FTTTF). The FTTTF was established by President Bush in the wake of the September 11, 2001 terrorist attacks to deny entry into the U.S. by aliens suspected of having ties to terrorist organizations and to locate, detain, prosecute, or deport such aliens already present in the United States. For FY2008, the Justice Department successfully obtained 36 new positions and an additional \$12 million for NSAC. In FY2009, the Justice Department has requested 18 more positions and an additional \$10.8 million for the center. The total proposed funding in FY2009 is more than \$78 million for 99 positions within the National Security Analysis Center.

The request letter sent to GAO was a bi-partisan letter signed by two committees of jurisdiction. The original letter to GAO in May 2007 from the Subcommittee on Investigations & Oversight included Ranking Minority Member, James Sensenbrenner. The Chairman of the Subcommittee on National Security and Foreign Affairs of the House Committee on Oversight & Government Reform, John Tierney, later signed on to this request as well. But one year later, GAO has received virtually no substantive answers to three basic questions:

- 1) What is the specific role and purpose of the National Security Analysis Center;
- 2) What types of records or databases will be incorporated, obtained or utilized by NSAC; and

- 3) How will NSAC ensure that any records collected or accessed will comply with existing privacy or other laws, regulations or policies?

It took repeated attempts by GAO even to obtain an initial meeting with Justice Department officials on the issue. At their initial meeting, Justice Department officials bluntly told GAO that they would provide no information and GAO had no right to see any records regarding questions one and two, the purpose and scope of NSAC and what data they planned to obtain. The Justice Department said that the requested information dealt with intelligence data and a "national security system," which DOJ claimed was "exempt" from GAO's jurisdiction. The Office of the Director of National Intelligence apparently advised DOJ "not to give GAO intelligence information" regarding NSAC, according to GAO. The Justice Department said they might provide GAO some limited information concerning how they intended to comply with various privacy regulations concerning the operation of the center. The Justice Department eventually provided GAO with brief written summaries that provided less information than the data provided in DOJ's public budget justification documents.

In a second GAO meeting with FBI officials on April 3, 2008, FBI officials offered a different rationale for denying GAO's access to the requested information. The FBI told GAO that there were no records to provide GAO because NSAC was not yet "operational" and would not be operational until a Privacy Impact Assessment is finalized. The Justice Department's budget justification documents for NSAC suggest that the transformation from FTTTF to NSAC is already well underway, however, and that the Justice Department intends to apply NSAC technology to other national security and FBI operations. The Justice Department's FY2009 budget justification document requests additional financial resources "to *continue* the development of initial operating capabilities of the NSAC." In addition, the budget justification document claims that DOJ will not be able to fulfill its number one goal to "Prevent Terrorism and Promote the Nation's Security" unless DOJ receives the requested funding to enhance the FBI's "data exploitation" and "proactive searching" capabilities. "NSAC seeks to spread this capability to other functional areas within the NSB [National Security Branch] and the FBI as a whole," the budget justification document said. The FBI told GAO that they were shopping the potential services of NSAC to "new customers" in other FBI units and divisions but had not yet identified any interested parties.

Still, according to GAO, the FBI said they had no written program plans, transition plan, concept of operations, or other documents that would provide any meaningful details regarding the planned operation of NSAC because the center was not yet "operational." It is inconceivable that the FBI is engaged in a massive expansion of what they describe as a major new tool that the FBI seeks to employ throughout the "FBI as a whole," that will include enhancements of existing information systems and development of new technologies, all without any written plan, requirements or concept of operations.

Despite the lack of anything in writing to describe the purpose or work of NSAC, the FBI has continued to expand the program. Since FY2007, the number of

personnel has increased from 33 FTTTF positions to a requested 99 NSAC positions in FY2009 and funding has increased from \$47.5 million in FY2007 to a requested \$78.7 million today. For a program that is not "operational," NSAC is employing a large number of personnel and spending a significant amount of government funding. Private industry would never tolerate such a lack of documentation for a requested expenditure of \$78.7 million.

The FBI's history of information technology programs offers little assurance that the FBI will competently develop NSAC particularly given the troubling lack of such basic documentation. The FBI's Virtual Case File system, for instance, was cancelled after the government invested \$170 million in the program. That system was one of three legs of the problem-plagued Trilogy program, the FBI's largest IT initiative. The other two legs of the program, an upgrade of computer software and hardware and the installation of a modern IT infrastructure, both experienced major cost overruns and schedule delays. Overall the cost of the Trilogy program increased from \$380 million to \$537 million and was filled with technical, accounting and management problems. Without even rudimentary documentation to describe how NSAC intends to operate, how information will be protected and collected, how information will be properly vetted and analyzed, Congress can have little confidence that this program will function effectively, efficiently or competently.

Even more disturbing, however, is the real possibility that the FBI has such documents and is denying that the documents exist rather than provide the documents to Congress through the GAO, which would be consistent with the Justice Department's initial response to the GAO request for information. While the requested documents pertain to "national security," the GAO routinely receives and analyzes the most highly classified information to assist Congress in the discharge of our duties under the Constitution. For the Justice Department or the FBI to refuse to provide such documents to Congress, or to deny that such documents exist rather than provide them, would be incompatible with the separation of powers, the checks and balances created by our Constitution. It would be especially alarming because the program about which Congress is inquiring involves government powers that our nation's founders expressly limited to protect our citizens. Limitations on such government powers are a hallmark of a free society. In the circumstances, Congress should be especially vigilant in our oversight of the NSAC program.

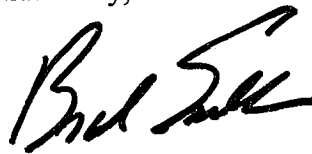
Mr. Chairman, I strongly encourage you temporarily to withhold funding for the creation, development, expansion or operation of the FBI's National Security Analysis Center until the FBI and the Justice Department provides sufficient documentation to GAO to answer the three basic questions that GAO asked. It would be a foolish investment to continue to fund NSAC without a clear idea of the center's purpose and scope; a clear idea of what types of records or databases the NSAC plans to incorporate, obtain or utilize; and a clear idea of how NSAC intends to ensure that the program will comply with privacy or other laws, regulations or policies for any records collected or accessed. At a minimum, I urge that you temporarily deny any increased funding for NSAC until Congress has confidence that the FBI will be forthright with congressional

auditors and provide enough documentation and explanation to satisfy proper concerns about the expanded mission, scope and purpose of the National Security Analysis Center.

Please let my staff or me know how you decide to proceed on this matter. If you have any questions or need additional information, please have your staff contact Douglas Pasternak, Subcommittee professional staff member, at (202) 226-8892 or Dr. Dan Pearson, Subcommittee staff director at (202) 225-4494.

Your assistance and attention to this matter is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Miller". The signature is stylized and cursive.

BRAD MILLER
Chairman
Subcommittee on
Investigations & Oversight

cc: Rep. F. James Sensenbrenner, Jr.
Ranking Member
Subcommittee on Investigations and Oversight