

United States Senate

WASHINGTON, DC 20510

January 22, 2010

The Honorable Eric H. Holder, Jr.
Attorney General
United States Department of Justice
Washington, DC 20530

Dear Mr. Attorney General:

We are greatly concerned by the Department of Justice Office of Inspector General (OIG) report entitled "A Review of the Federal Bureau of Investigation's Use of Exigent Letters and Other Informal Requests for Telephone Records," which was issued yesterday. The report documents what appears to be several years of rampant illegality in the FBI's methods of obtaining telephone records. As you know, we have been urging changes to the Patriot Act that would protect national security as well as the rights of Americans, and we believe this report further highlights the need for legislative changes.

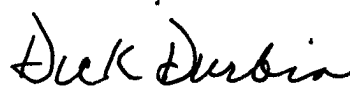
We write specifically because we believe the Department should immediately provide to Congress a copy of the January 8, 2010, Office of Legal Counsel (OLC) opinion that is referenced in the OIG report and that apparently interprets the FBI's authority to obtain phone records. Although much of the information about the OLC opinion is redacted in the public version of the OIG report, the opinion appears to have important implications for the rights of Americans. The report states that "the OLC agreed with the FBI that under certain circumstances [REDACTED] allows the FBI to ask for and obtain these [phone] records on a voluntary basis from the providers, without legal process or a qualifying emergency." (p. 264) It further states that "we believe the FBI's potential use of [REDACTED] to obtain records has significant policy implications that need to be considered by the FBI, the Department, and the Congress." (p. 265) And finally, it states that the OIG recommends "that the Department notify Congress of this issue and of the OLC opinion interpreting the scope of the FBI's authority under it, so that Congress can consider [REDACTED] and the implications of its potential use." (p. 268)

In light of the OIG's recommendation, please provide Congress with the January 8 OLC opinion immediately. We appreciate your attention to this important issue.

Sincerely,



Russell D. Feingold
United States Senator



Richard J. Durbin
United States Senator



Ron Wyden
United States Senator