The Honorable Henry J. Kerner  
Special Counsel  
Office of the Special Counsel  
1730 M. Street, N.W., Suite 300  
Washington, D.C. 20036-4505

Re: OSC File No. DI-20-000371; Investigation Regarding Whistleblower Disclosure Relating to the Federal Bureau of Investigation, Washington Field Offices

Dear Mr. Kerner:

I am responding to your February 28, 2020, letter to the Attorney General in which you referred for investigation allegations by a whistleblower that you believe constituted a violation of law, rule, or regulation; gross mismanagement; and abuse of authority. Specifically, a federal employee of the Federal Bureau of Investigation (FBI) alleged that supervisory agents at the Washington Field Office provided incomplete and misleading information in connection with a Foreign Intelligence Surveillance Act (FISA) application. Authority has been delegated to me to review and sign the Department’s response, in accordance with 5 U.S.C. 1213(d).

As reflected in the attached unclassified report from the Department of Justice (Department) Office of Inspector General (OIG), the OIG conducted a careful review of the allegations, including conducting an interview of the whistleblower and other individuals responsible for processing the application at the Department. Based upon that review, the OIG did not sustain the allegations. A Department attorney who worked closely with the FBI on the FISA application told the OIG that the attorney was satisfied with the FBI’s assessment and presentation of the evidence, which was reasonable and not misleading. Moreover, contrary to the whistleblower’s assertions, the FISA application was submitted to the proper Department officials at the National Security Division, utilizing standard procedures. To the extent there were errors in the FISA application, the Department and FBI determined that none were material.
I trust that the investigation conducted by the OIG resolves the concerns outlined in your letter. Please do not hesitate to contact me if I can provide further assistance.

Sincerely,

Bradley Weinsheimer
Bradley Weinsheimer
Associate Deputy Attorney General
September 6, 2022

Memorandum For:  Bradley Weinsheimer  
Associate Deputy Attorney General  
Office of the Deputy Attorney General

From:  M. Sean O'Neill  
Assistant Inspector General  
Oversight and Review Division

Subject:  Findings Regarding DOJ's and FBI's Handling of a FISA Application

I am writing to update you on the Office of the Inspector General's (OIG) findings concerning its review of allegations that Federal Bureau of Investigation (FBI) Washington Field Office (WFO) supervisory personnel improperly circumvented established procedures to obtain emergency authorization to conduct electronic surveillance of an individual they believed was an agent of a foreign power and subsequently obtained an order from the Foreign Intelligence Surveillance Court (FISC) based on misleading information, specifically, omitted exculpatory information. The complainant submitted the allegations through the OIG's Hotline at the time the OIG was conducting its audit of the FBI's execution of its Woods Procedures for FISC applications relating to U.S. persons. See https://oig.justice.gov/reports/audit-federal-bureau-investigations-execution-its-woods-procedures-applications-filed. The complainant separately filed a whistleblower disclosure alleging the same wrongdoing to the Office of Special Counsel (OSC), and OSC referred the complaint to the Attorney General. The OIG did not, however, initiate an investigation in response to OSC's referral. Rather, the OIG determined that based on the information provided by the complainant, the OIG would conduct a preliminary review to determine whether a full investigation was warranted. To assess these allegations, the OIG collected and reviewed pertinent documents, including the emergency authorization and related documents filed with the FISC, and interviewed the complainant. We subsequently interviewed the salient witnesses from the FBI and the National Security Division's (NSD) Office of Intelligence (OI).

The complainant told the OIG that, in response to WFO's request for an emergency authorization, the responsible OI Unit Chief informed WFO that OI did not believe that sufficient evidence existed to meet the probable cause standard and OI would not support providing the emergency authorization to the NSD Assistant Attorney General (AAG). Thereafter, according to the complainant, then WFO Special Agent in Charge Larissa Knapp raised the matter to then Deputy Director David Bowdich, who called then NSD AAG John Demers and requested approval of the emergency authorization, which resulted in AAG Demers directing OI supervisors to present the emergency authorization for his approval. Our preliminary review did not identify evidence to support this allegation. Specifically, the OI Unit Chief and Section Chief told the OIG that OI supported the emergency authorization, OI never communicated to the FBI that OI would not support presenting the application to the NSD AAG, and they were not aware of any communication from the NSD AAG or his staff to OI supervisors about the emergency authorization. Additionally, the FBI witnesses we interviewed told the OIG that they did not ask, and were not aware of anyone asking, then Deputy Director Bowdich to speak to then NSD AAG Demers about the emergency authorization.
Following the emergency authorization, the FBI submitted to OI an application seeking an order from the FISC to continue the electronic surveillance obtained through the emergency authorization. The complainant told the OIG that WFO personnel omitted material exculpatory information from the application and included misleading information, and the complainant provided the OIG with examples of the information that he believed should have been included or was misrepresented. The OI Unit Chief who worked closely with the FBI on the application told the OIG that she was aware of the arguably exculpatory information and was satisfied that the FBI's assessment and presentation of the evidence was reasonable and was not misleading. Based upon our review of the application and pertinent documents, as well as the OI Unit Chief's testimony and other witness statements, we did not identify sufficient information to support this allegation.

Based upon the foregoing, the OIG determined that it is not prepared to open a full investigation of the allegations. The OIG maintains classified materials documenting its inquiry and supporting its determination regarding these allegations.

We would like to also bring to your attention that this WFO FISC application was among the applications reviewed by the OIG during the above-referenced Woods Procedures audit. The OIG audit team found some errors in the application. As you are aware, the Department and FBI determined that none of the errors were material.