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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

November 27, 2002

The Honorable John Ashcroft
Attorney General
United States Department of Justice
Main Justice Building, Room 5137
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Ashcroft:

We write to follow up on your letter of October 15, 2002 relating to Transactional Records Access Clearinghouse ("TRAC") data that reveal the Department of Justice's ("Department") unchanged priorities in the types of cases investigated and prosecuted since the September 11, 2001 attacks, despite the need for federal investigatory and prosecutorial resources to be focused on preventing terrorism. Our letter is also spurred by a recent front page article in the New York Times indicating that senior FBI officials have written memoranda and messages expressing concern over the lack of progress in FBI field offices in changing their focus to preventing terrorist attacks.

The juxtaposition of these two events raises serious concerns. On one hand, the Department has responded to a bipartisan congressional inquiry questioning its expenditure of resources on non-terrorism related activities by attacking the validity of the TRAC data supporting that concern. At the same time, the FBI is apparently sending internal communications that appear to echo the critiques raised by the TRAC data. This inconsistency raises the specter that the Department is seeking to attack publicly data that bring into question its performance on terrorism matters at the same time as it privately acknowledges the validity of the very problems raised by that data.

During the last 15 months of FBI oversight, we have learned that such a knee jerk reaction to criticism is rooted in the FBI's history. Given the current stakes in protecting our country against terrorist attack, however, that culture cannot continue. Only by forthrightly acknowledging and addressing shortcomings can any organization avoid repeating the mistakes of the past.

In addition to its attack on the validity of the TRAC data, we are further troubled by the Department's recent attempt to cut off an important aspect of the TRAC data that is so valuable to the public's and Congress's oversight of the FBI. TRAC is a non partisan organization affiliated with Syracuse University. Using the Freedom of Information Act, TRAC obtains information from the Department's own records that allows it to analyze law enforcement trends and Department priorities. This information assists the public and the Congress in assessing the

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Department's priorities and effectiveness.

It is troubling, then, that the Department has moved aggressively to cut down information flowing to this valuable independent source. In a letter dated October 29, 2002, just two weeks after responding to our oversight letter by attacking the validity of the TRAC data, the Department indicated that it would oppose continued release of an important component of that data. Specifically, the Department stated that it would discontinue release of "Program Category" data which has been released to TRAC under the Freedom of Information Act for a decade. This data allows TRAC to keep current tabs on whether the Department's public rhetoric is matched by its allocation of law enforcement resources.

Specifically, according to TRAC, program category data allows it to organize the information released by the Department by subject matter, so that it can analyze whether appropriate resources are being spent in specific program categories such as terrorism, civil rights, violent crime, and white collar crime. Without program category information, the public and the Congress are deprived of the ability to conduct a timely analysis of the Department and FBI's priorities and how they are using their limited time and resources. Such an analysis can be delayed by months or years without program category data.

The Department has justified its new position by stating that despite its decision to release this data for the last decade, releasing program category data in the future could interfere with the Department's anti-terrorism efforts. It has provided no support for that position.

Thus, the Department's response to the TRAC data has been twofold. First, the Department has attacked the validity of the data. Second, it is simultaneously trying to cut the flow of information that can be used by TRAC and the public to evaluate the Department and FBI's performance. Again, this attack is all the more troubling when juxtaposed with the FBI's own internal communications that allegedly question certain field office's focus on terrorism.

The answer for the Department and the FBI is to address the legitimate concerns about their enforcement priorities, not to blind Congress and the public.

With that background, please provide the following information as soon as possible:


1. Please provide copies of all written memoranda or messages sent within the Department or FBI in the last 6 months that refer to a lack of focus in any FBI field office or headquarters unit on anti terrorism efforts. This should include the two memos that were mentioned in the November 21, 2002 New York Times article and that were authored by Director Robert Mueller and by Deputy Director Bruce J. Gebhart.


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2. Please explain what precisely has caused the Department to adopt the new position that "Program Category" data cannot be provided to TRAC. Please explain both the legal basis for this decision and cite any concrete example(s) of how this information has compromised any law enforcement effort in the decade that it was provided to TRAC or since the September 11, 2001 attacks.
3. Has the Department provided "Program Category" data to TRAC since September 11, 2001? If so, please list all dates when such information was provided and explain why the Department's decision to provide the information at that time did not compromise its anti terrorism efforts.
4. If "Program Category" data has been provided to TRAC since September 11, 2001, what, if anything, has now changed that caused the Department to reevaluate the legality of withholding that data?

We also have concerns about the completeness of the Department's response to our June 14, 2002 letter, and we will raise those concerns in a separate letter. Thank you for your prompt attention to these matters. We look forward to a complete response to the questions in this letter by Thursday, December 19, 2002.

Sincerely,


PATRICK J. LEAHY
Chairman


CHARLES E. GRASSLEY
Ranking Member
Crime and Drugs Subcommittee

cc:
Honorable Robert Mueller
Director
Federal Bureau of Investigation