

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

Background: Status of the Senate Torture Report

Here's what we know about the status of the full, 6700 page Senate torture report as of May 25, 2016:

- Eighteen months after receiving the Senate torture report, most executive branch agencies have not even opened it—despite repeated requests from Senator Dianne Feinstein to use the full report to ensure the United States never repeats its post-September 11 experiment with torture.
- At least one copy—the version sent to the CIA's Inspector General—has been destroyed, and not replaced.
- President Obama could change this at any time. Instead, his administration has not ruled out returning the remaining copies of the report to the Senate Intelligence Committee unread.

Eighteen months after receiving the Senate torture report, most executive branch agencies have not even opened it.

On December 10, 2014, then-Chairman of the Senate Select Committee on Intelligence (SSCI), Dianne Feinstein, sent the full, final, 6700-page version of SSCI's Study of the CIA Detention and Interrogation Program ("torture report") to the President. Consistent with President's previous remarks that the torture report would help the government and public "[understand what happened in the past, and that can help guide us as we move forward](#)," Feinstein [wrote](#):

the full report should be made available within the CIA and other components of the Executive Branch for use as broadly appropriate to help make sure this experience is never repeated...I hope you will encourage use of the full report in the future development of CIA training programs, as well as future guidelines and procedures for all Executive Branch employees, as you see fit.

In addition to the President, Chairman Feinstein sent copies of the report [to the Director of National Intelligence, the Directors of the CIA and FBI, the Attorney General, the Secretaries of State and Defense, and the CIA Inspector General](#). But most agencies have never opened their copies, and we recently learned that the [CIA Inspector General's copy has been destroyed and not replaced](#).

In January 2015, the Department of Justice filed a series of declarations on agencies' handling of the torture report in a Freedom of Information Act lawsuit filed by the ACLU. According to the declarations, the [Justice Department](#), [FBI](#) and [State Department](#) had never opened or reviewed their copies. The [CIA](#) had kept the final report "tightly controlled" and its use had been limited to "reference purposes. The [Department of Defense](#) kept one copy of the report in a safe, and the second on a TOP SECRET laptop accessible only to one official for litigation purposes.

At the same time, [SSCI Chairman Richard Burr wrote to the Executive Branch to request that it return all copies of the torture report](#). Burr claimed that Feinstein had acted improperly by sending the report, since it was a "highly classified" and "committee sensitive" document. [SSCI rules](#), however, clearly authorize the transmission of classified, committee-sensitive documents to Executive Branch officials with security clearances in connection with the committee's oversight duties. [The Senate Parliamentarian rejected a complaint by Burr](#) about the 2014 transmission of the report.

In response [to an emergency motion by the plaintiffs in the FOIA case to prevent the report from being returned at Burr's request](#), the [Department of Justice assured the court that it would "preserve the status quo"](#) while the litigation was pending.

According to Senators Dianne Feinstein and Patrick Leahy, the Justice Department then used this promise, made in the context of a motion to preserve the report, "[as an excuse to refuse to allow Executive Branch officials to review the full and final study](#)." The Justice Department also told the National Archives and Records Administration (NARA), which has the responsibility to ensure preservation of government documents, [not to respond to questions](#)

[about the report's status under the Federal Records Act](#) while the FOIA case was pending. NARA [has complied](#), despite repeated [requests from Senators](#) and [civil society](#) to ensure the report's preservation. Finally, the prosecution in the Guantanamo military commissions has [refused to provide any portion of the full, classified report to the defense](#), despite repeated requests.

At the same time the Justice Department was using the FOIA case to prevent executive branch engagement with the report, it was [arguing to federal judges](#) that whether agencies had read or relied on the report was *irrelevant* to the question of the report's public release under FOIA. As discussed below, both the District Court and D.C. Circuit Court of Appeals ultimately agreed.

The Obama administration has not answered questions about whether it will return the report to SSCI when the litigation ends.

The CIA's internal watchdog destroyed its copy of the torture report, and the CIA has declined to replace it.

Meanwhile, despite the Justice Department's assurances to the court and FOIA plaintiffs that it would preserve the full report, the CIA Inspector General's office (OIG) destroyed both its disc copy of the report and an uploaded electronic version in the summer of 2015. [According to Yahoo News](#), which reported the destruction, an OIG employee misinterpreted the Justice Department's instructions not to open the report as an instruction to delete it. The Justice Department did not inform the court of the destruction, and to date the CIA has disregarded requests from the Acting CIA Inspector General for another copy of the report.

CIA's OIG has been weakened by the fact that the agency's last Senate-confirmed Inspector General, [David Buckley, resigned in late January 2015](#). Buckley's departure occurred shortly after the CIA [rejected](#) his [findings](#) that CIA officers had acted improperly when [they searched Senate staffers' computer server and made a criminal referral to the Justice Department based on false information](#). (CIA officials have said that his departure was unconnected to any investigation). President Obama has not nominated a replacement for Buckley for over a year.

Nothing in the law requires the President to return the report to Congress, or prohibits executive branch agencies from reading it—those decisions are entirely up to President Obama.

On May 13 of this year, the [D.C. Circuit Court of Appeals rejected the FOIA request](#) for the full torture report on grounds that the document was a "Congressional record." SSCI Chairman Burr then [promptly renewed his call for the report's return](#). But both the Court of Appeals and the District Court decisions in the FOIA case make perfectly clear that the question of whether Congress authorized the *public release* of the report is separate from the question of whether the Executive Branch may *retain or review* the document.

The Court of Appeals stated on page 10 of [its decision](#) that "there is no dispute that Appellees lawfully obtained copies of the Full Report." It continued on page 15, "we must make it clear that we can give no weight to the letter sent by now-Senate Committee Chairman Richard Burr to the President in January 2015." Finally, the court stated on page 20 that "[t]he December 2014 Letter undoubtedly gives the Executive Branch some discretion to use the Full Report for internal purposes."

The [District Court's ruling in the FOIA case](#) similarly stated that Feinstein's December 2014 transmission of the report "bestow[ed] a certain amount of discretion upon the agencies to determine how broadly to circulate the Report," but that "the dissemination authorized by the letter is limited to the Executive Branch alone" rather than the public. Like the Court of Appeals, the district judge did not give any weight to Chairman Burr's demand for the report's return.

Senator Feinstein's repeated requests that the full report be read by the Executive Branch, and used to ensure that the United States would never again resort to torture, have been made more pressing by Presidential candidates' calls to return to a policy of torture. **At any time, President Obama could order agencies to review the report for lessons learned, and make clear that he will not assist in covering up the most complete history of the CIA torture program.**

Contact: Katherine Hawkins, Senior Counsel, (202) 580-6928, khawkins@constitutionproject.org