

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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September 19, 2023

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20535

Dear Director Wray:

The Committee on the Judiciary is continuing to examine the Federal Bureau of Investigation's (FBI) management of its Confidential Human Source (CHS) program and how the FBI handles informants. We recently learned from a former senior FBI official that there was internal ambiguity about how many FBI CHSs were present at the Capitol on January 6, 2021, so much so that the FBI had to put out a "poll" to determine the exact number of FBI sources present that day. We also learned that at least one FBI CHS was in communication with his handler that day as events unfolded. This new information reinforces our existing concerns about the FBI's selection, vetting, and use of CHSs.¹

The Committee recently conducted a transcribed interview with the former Assistant Director-in-Charge of the Washington Field Office (WFO), Steven D'Antuono.² During this interview, D'Antuono testified that the WFO learned after the events of January 6 that there had been confidential sources from other field offices in attendance, as well as informants who participated on their own accord.³ According to D'Antuono, the FBI was aware in advance of January 6 that some CHSs would be in attendance that day. He testified:

Q. So you now know that there were CHSs that the FBI knew ahead of time were going to be here on January 6th and that there were also some unknown CHSs who, on their own accord, decided to come here on January 6th?

¹ See, Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Hon. Christopher A. Wray, Dir., Fed. Bureau of Investigation (November 30, 2022).

² Transcribed Interview of Mr. Steven D'Antuono (June 7, 2023) [hereinafter "D'Antuono Interview"].

³ *Id.* at 159.

A. That is my belief, yeah.⁴

D’Antuono explained that due to the large number of CHSs present at the Capitol, the WFO asked FBI Headquarters “to do a poll or put out something to people saying w[ere] any CHSs involved” so the FBI could try to ascertain how many CHSs had been in attendance.⁵ D’Antuono stated after the outreach from Headquarters was “when we started getting responses back.”⁶ As one example, he recalled that a CHS from the Kansas City Field Office was on site at the Capitol and had allegedly been in contact with his handler while at the event.⁷ The CHS reported to his handler “while they were in the crowd, I think, saying that they were going in. They were trying to stop some of the action happening and they left or whatnot.”⁸

This new information is extremely concerning. It suggests that the FBI cannot adequately track the activities and operations of its informants, and that it lost control of its CHSs present at the Capitol on January 6. These revelations reinforce existing concerns, identified by Special Counsel Durham, about the FBI’s use of, and payment to, CHSs who have fabricated evidence and misrepresented information.⁹ The Justice Department Inspector General also identified critical problems in the FBI’s CHS program, including the FBI’s failure to fully vet CHSs and the FBI’s willingness to ignore red flags that would call into question an informant’s reliability.¹⁰

To inform our oversight of the FBI’s management of its CHS program and the FBI’s use of CHSs at the Capitol on January 6, 2021, the Committee reiterates its requests from the November 30, 2022 letter—attached and incorporated herein—and additionally requests that you provide the following documents and information:

1. Provide a substantive briefing on how the FBI utilized CHSs at the U.S. Capitol on January 6, 2021, and any specific guidelines or admonishments that were provided to FBI CHSs prior to deploying;
2. Provide all FD-1023 source reporting documentation with respect to any CHS present at the U.S. Capitol on January 6, 2021;
3. Provide all FD-1023 source reporting documentation with respect to Christopher Steele (prior to the FBI closing him for cause), and then all subsequent reporting provided by Christopher Steele to Justice Department official Bruce Ohr; and
4. Provide all FD-1023 source reporting documents with respect to Igor Danchenko and CHS-1.

⁴ *Id.*

⁵ *Id.* at 159.

⁶ *Id.*

⁷ *Id.* This incident was later the subject of a *New York Times* article. See Alan Feuer and Adam Goldman, *Among Those Who Marched Into the Capitol on Jan. 6: An F.B.I. Informant*, N.Y. TIMES (Sept. 25, 2021).

⁸ D’Antuono Interview at 160.

⁹ John H. Durham, Off. of Special Couns., Report on Matters Related to Intelligence Activities and Investigations Arising Out of the 2016 Presidential Campaigns (2023) [hereinafter: “Special Counsel’s Report”].

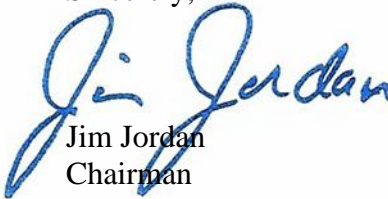
¹⁰ See, Special Counsel’s Report, *supra* note 1.

The Honorable Christopher A. Wray
September 19, 2023
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Please provide this information and schedule the requested briefing as soon as possible, but no later than 5:00 p.m. on October 3, 2023. The Committee is authorized to conduct oversight of the FBI pursuant to Rule X of the Rules of the House of Representatives.¹¹ To the extent a complete response to this inquiry requires the provision of classified information, please do so under separate cover. If you have any questions about this request, please contact Judiciary Committee staff at (202) 225-6906.

Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

Enclosure

¹¹ Rules of the House of Representatives, R. X, 118th Cong. (2023).

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November 30, 2022

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20535

Dear Director Wray:

We are conducting oversight of the FBI's management of its Confidential Human Source (CHS) program and how the FBI handles secret informants. The FBI has had a poor track record in recent years of relying on CHSs in high-profile, sensitive investigative matters whose information later proves to be misleading, made-up, or otherwise unreliable. In addition, the Department of Justice Office of Inspector General (OIG) has identified several problems with the FBI's CHS processes and procedures.¹

Attorney General Guidelines define a CHS as any individual who provides "useful and credible information," currently or in the future, "whose identity, information or relationship with the FBI warrants confidential handling."² These guidelines require the FBI to complete an initial suitability or validation review before operating a CHS and to maintain proper payment documentation of payments made to a CHS.³ The FBI also maintains specific CHS-related policies, requiring that agents "to the extent practicable, ensure that the information collected from every CHS is accurate and current, and not given to the FBI in an effort to distract, mislead, or misdirect FBI organizational or governmental efforts."⁴

The scope of the FBI's CHS program, and exact number of CHSs run by the FBI, is not public. However, according to the OIG, between Fiscal Year 2012 and Fiscal Year 2018, the FBI spent an average of \$42 million each year in payments to its CHSs.⁵ In addition, since May 2019,

¹ See, e.g., Dep't of Justice, Office of Inspector Gen., Audit of the Federal Bureau of Investigation's Management of its Confidential Human Source Validation Processes (Nov. 2019).

² Dep't of Justice, The Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources at 4 (Dec. 13, 2006).

³ *Id.* at 29; Dep't of Justice Off. of Inspector Gen., Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation at 23 (Dec. 2019).

⁴ Dep't of Justice Off. of Inspector Gen., Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation at 23-4 (Dec. 2019).

⁵ Dep't of Justice, Office of Inspector Gen., Audit of the Federal Bureau of Investigation's Management of its Confidential Human Source Validation Processes at i, 1 (Nov. 2019).

nearly 20 percent of the FBI's CHSs met the definition of a "long-term CHS," meaning a source used for a period of more than five years, which the OIG noted was "of particular concern" due to "a heightened need for validation."⁶

In recent years, there have been several prominent examples of FBI informants who have taken significant amounts of taxpayer dollars and provided bogus information. Perhaps the most notorious is Christopher Steele, who first reportedly became an FBI CHS in 2013, and is responsible for the dossier of false allegations about the Trump-Russia hoax.⁷ The OIG documented how the FBI misrepresented Steele's reliability as a source to the Foreign Intelligence Surveillance Court (FISC) and even failed to disclose Steele's biases to the FISC.⁸ According to the OIG, the FBI knew that Steele had been working on behalf of political opponents of President Trump and it had doubts about the validity of his reporting.⁹ Recent testimony revealed the FBI even offered to pay Steele "up to \$1 million" to prove his bogus claims about Russian collusion.¹⁰ Steele could not "prove the allegations," however, so never received the taxpayer money from the FBI.¹¹ Steele's allegations have now been widely debunked.¹²

Steele's "primary sub-source" for the dossier, Russian national Igor Danchenko, also received taxpayer money from the FBI as a CHS between March 2017 and October 2020.¹³ In court testimony, Danchenko's FBI handler, Special Agent Kevin Helson, disclosed that the FBI paid Danchenko more than \$200,000 for providing information to the FBI.¹⁴ Helson testified that

⁶ *Id.*; see also Press Release, Dep't of Justice, Office of Inspector Gen., Audit of the Federal Bureau of Investigation's Management of its Confidential Human Source Validation Processes (Nov. 2019) (statement of Michael. E. Horowitz).

⁷ S. Sel. Comm. on Intel., Russian Active Measures Campaigns and Interference in the 2016 U.S. Election: Vol. 5 at 856.

⁸ The OIG explained in its report that the FBI "overstated" Steele's previous contributions to the FBI before the Carter Page investigation. In the middle of investigating Page, the FBI noted Steele demonstrated "poor judgment"; "pursued people with political risk but no intelligence value"; "didn't always exercise great judgment"; and "not clear what he [Steele] would have done to validate [his reporting]." Dep't of Justice Off. of Inspector Gen., Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation at viii, 182, 364, 368-69 (Dec. 2019). The FBI's misconduct was so bad that the Justice Department was later forced to admit that "there was insufficient predication to establish probable cause to believe that [Carter] Page was acting as an agent of a foreign power." *In re Carter W. Page*, Nos. 16-1182, 17-52, 17-375, 17-679 (FISC Jan. 7, 2020). Additionally, in a highly unusual public order the then-Presiding Judge of the FISC, Rosemary Collyer, said the FBI's handling of the Page FISA applications "was antithetical to the heightened duty of candor," and questioned the integrity of the FBI's other FISA surveillance applications on U.S. Persons. Order, *In re Accuracy Concerns Regarding FBI Matters Submitted to the FISC*, No. Misc. 19-02 (FISA Ct. Dec. 17, 2019).

⁹ See generally, Dep't of Justice Off. of Inspector Gen., Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation at 23 (Dec. 2019).

¹⁰ The Editorial Board, *The FBI's Million-Dollar Dossier*, WALL ST. J. (Oct. 12, 2022).

¹¹ *Id.*

¹² See, e.g., Paul Farhi, *The Washington Post corrects, removes parts of two stories regarding the Steele dossier*, WASH. POST (Nov. 12, 2022).

¹³ ("In March 2017, the FBI signed the defendant [Danchenko] up as a paid confidential human source of the FBI. The FBI terminated its source relationship with the defendant in October 2020."). Gov't's Motion In Limine at 3, *United States v. Danchenko*, No. 21-CR-245 (AJT) (E.D. Va. 2022).

¹⁴ Jake Gibson and Brooke Singman, *FBI paid Igor Danchenko more than \$200,000 to serve as confidential human source*, FOX NEWS (Oct. 13, 2022).

Danchenko was unable to corroborate any of Steele's allegations.¹⁵ When opening Danchenko as a CHS, Helson asserted that he had found no derogatory information about Danchenko, even though the FBI had previously conducted a counterintelligence investigation into him.¹⁶ Helson also rejected a recommendation to administer a polygraph examination to verify if Danchenko had "ever been tasked by a foreign individual, entity or government to collect information or to perform actions adverse to the U.S. interest."¹⁷ Even after the FBI closed Danchenko as an informant, Helson requested that Danchenko receive another payment of \$346,000.¹⁸ The FBI did not approve this request.¹⁹

The OIG has found pervasive deficiencies in the FBI's vetting process for CHSs.²⁰ Among the most significant problems the OIG discovered in 2019 was that the "FBI did not comply with the AG Guidelines' requirements and its own policies and procedures for managing long-term CHSs, and consequently, a backlog of CHSs awaited validation."²¹ The OIG explained it had "identified issues with the FBI's long-term CHS validation reports, which serve an important function when determinations are made on the continued use of a long-term CHS."²² The OIG's findings indicate that the FBI is relying on informants for some investigations who are not fully vetted, raising concerns about the confidential source's integrity and reliability.

In both the Steele and Danchenko matters, publicly available information suggests that the FBI either ignored red flags about the informant's reliability or affirmatively misrepresented his suitability.²³ The facts of these particular examples match the systemic deficiencies

¹⁵ Transcript, *United States v. Danchenko*, No. 21-CR-245 (AJT) (E.D. Va. 2022).

¹⁶ *Id.*; see also Jerry Dunleavy, *FBI agent suspected Steele dossier source was Russian intelligence*, WASH. EXAM. (Oct. 13, 2022).

¹⁷ Transcript, *United States v. Danchenko*, No. 21-CR-245 (AJT) (E.D. Va. 2022).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See generally, Dep't of Justice, Office of Inspector Gen., *Audit of the Federal Bureau of Investigation's Management of its Confidential Human Source Validation Processes* (Nov. 2019); Dep't of Justice, Office of Inspector Gen., *A Review of the FBI's Progress in Responding to the Recommendations in the OIG Report on the FBI's Handling and Oversight of Katrina Leung* (Oct. 2013); Dep't of Justice, Office of Inspector Gen., *A Review of the FBI's Handling and Oversight of FBI Asset Katrina Leung, Oversight and Review Division Report* (May 2006); Dep't of Justice, Office of Inspector Gen., *The FBI's Compliance with the Attorney General's Investigative Guidelines* (Sept. 2005).

²¹ Dep't of Justice, Office of Inspector Gen., *Audit of the Federal Bureau of Investigation's Management of its Confidential Human Source Validation Processes* at i (Nov. 2019).

²² *Id.* at 5. In its report, the OIG also discussed an older case where it had reviewed the FBI's handling of Katrina Leung, a long-time and highly compensated CHS. The FBI later learned in 2000 that Leung was "actively spying" for the People's Republic of China against the United States. In the OIG's review of the case, it found that Leung had obtained access to sensitive FBI investigation information through an 18-year, intimate relationship with her handling agent. The OIG noted several "major" problems with the FBI's oversight of Leung as a CHS, including a lack of documentation about "red flags" in Leung's file, an overreliance on the handling agent, and weak leadership from supervising agents. Dep't of Justice, Office of Inspector Gen., *Audit of the Federal Bureau of Investigation's Management of its Confidential Human Source Validation Processes* at 38 (Nov. 2019); Dep't of Justice, Office of Inspector Gen., *A Review of the FBI's Handling and Oversight of FBI Asset Katrina Leung, Oversight and Review Division Report* (May 2006).

²³ For instance, former FBI lawyer, Kevin Clinesmith, was convicted of intentionally altering email evidence as part of a FISA submission to the FISC relating to Carter Page's surveillance. Clinesmith was later sentenced to one year

documented by the OIG, suggesting that the FBI is failing to adhere to the relevant policies designed to ensure information from CHSs are accurate. To inform our oversight of the FBI's management of its CHS program, please provide the following documents and information:

1. An explanation of the FBI's current policies and procedures to utilize CHSs, to include but not limited to, in Sensitive Investigative Matters that involve the activities of a domestic public official or domestic political candidate, religious or domestic political organization, or news media;
2. An explanation of the FBI's processes for the closure and re-opening of CHSs, as well as the FBI's use of CHSs reporting in FISA applications;
3. Provide a detailed accounting of the \$42 million, on average, paid by the FBI to CHSs annually between Fiscal Year 2012 through Fiscal Year 2018, to include for the period of Fiscal Year 2018 to the present;
4. Provide a detailed accounting of the number of personnel dedicated to efforts to validate CHSs, to include the total number of the FBI's active CHSs, the number of CHSs who have been sources for over five years, the number of CHSs who have been sources for over ten years, and the number of CHSs who have been sources for over 15 years;
5. All documents and communications referring or relating to the FBI's counter-intelligence investigation of Igor Danchenko, to include its signed payment receipts, admonishments, and consent forms, for the period of March 2017 to December 2020; and
6. Provide an update on the FBI's implementation of the 16 recommendations from the OIG's November 2019 audit of the FBI's management of its CHS validation processes.

Please provide this information as soon as possible, but no later than 5:00 p.m. on December 14, 2022. To the extent a complete response to this inquiry requires the provision of classified information, please do so under separate cover. If you have any questions about this request, please contact Judiciary Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Ranking Member

cc: The Honorable Jerrold L. Nadler, Chairman