

WASHINGTON -- Sen. Chuck Grassley and Rep. Darrell Issa today asked the independent U.S. Office of Special Counsel to investigate the Food and Drug Administration's monitoring of personal email accounts used by nine employees to communicate safety concerns about medical devices to Congress.

"The law is intended to prevent exactly what this agency is accused of doing," Grassley said. "A federal agency can't interfere with an employee's communications with Congress. An agency can't retaliate against employees for communicating with Congress. And an agency's right to access an employee's personal email without a subpoena is limited to messages transmitted through or accessed from a government computer. An independent review is necessary to determine how much of the agency's conduct was legal and how much was illegal."

"FDA owes its employees and the public a full explanation of how and why it accessed personal email accounts of employees who were whistleblowers about potential concerns they had regarding FDA operations and public safety," Issa said. "FDA must explain why its managers potentially broke the law by conducting illicit surveillance of protected communications between whistleblowers, Congress, and the Office of Special Counsel."

Three years ago, the Food and Drug Administration scientists and researchers raised concerns with Congress and the White House about the safety and effectiveness of certain medical devices used to detect diseases including breast and colon cancers. The agency is under fire for monitoring the employees' email accounts for communications with Congress and to the extent it retaliated against the employees for the communications. Such communications between agency whistleblowers and Congress are expressly protected by law.

Six of the nine employees have filed a federal lawsuit, alleging that the FDA relied on information it collected through secret surveillance to "fire, harass or pass over for promotion at least six doctors and scientists who communicated with Congress."

The FDA also is reported to have monitored emails between the employees and the Office of Special Counsel. Employee communications with the Office of Special Counsel are legally protected as confidential.

Grassley, Issa Seek Independent Review of FDA's Monitoring of "FDA Nine"

Written by Grassley Press
Monday, 20 February 2012 14:59

The duration, extent, and technical details of the agency's monitoring of the emails are unclear. Whether the agency's interception and collection of personal emails was lawful depends on when, why, and precisely how the agency obtained the emails.

The agency was quoted as saying it did not begin the targeted monitoring of the employees' email until April 2010. However, an internal memo from the FDA about the lack of trustworthiness of one of the employees contains an email from the employee's personal account to Congress from January 2009.

Grassley and Issa asked the Office of Special Counsel "to examine (1) whether the monitoring occurred in retaliation for protected whistleblowing activities and thus may constitute a prohibited personnel practice, and (2) whether the monitoring may have violated any other law, including the Stored Communications Act (18 U.S.C. §§ 2701 - 2712) as an unauthorized access of stored electronic communications or as a failure to provide notice to the subscriber of court-approved access."

Grassley sent a [letter](#) to the FDA commissioner last month, asking for an accounting of the email monitoring and the intentions behind it. Issa sent a separate letter earlier this month.

Today's Grassley-Issa letter to Special Counsel Carolyn Lerner is available [here](#).

The U.S. Office of Special Counsel is an independent federal investigative and prosecutorial agency. Its "primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing," according to its website.

Grassley is Ranking Member of the Senate Judiciary Committee, with jurisdiction over computer privacy statutes, and a longtime advocate for whistleblowers who has conducted extensive oversight of FDA processes. Issa is chairman of the House Committee on Oversight and Government Reform.

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