

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
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WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

November 13, 2012

The Honorable Janet Napolitano
Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Napolitano:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is investigating the BioWatch program, the nation's first early detection and warning capability for biological attacks, and its impact on the nation's public health system.

On July 19, 2012, we wrote to you requesting information and documents to determine how the BioWatch program is performing and whether it is meeting public protection goals without unduly disrupting the public health system and local emergency responders. Our initial inquiry came, in part, in response to news accounts of false alarms and other system failures. To date, the Department of Homeland Security (DHS or "Department") has provided insufficient responses to our July 19, 2012, inquiry. Moreover, in the intervening time additional details have come to light regarding program failures.

The Los Angeles Times reported on October 23, 2012, that the BioWatch system operated with defective components that left it unable to detect deadly pathogens for a two-year period, according to scientists with direct knowledge on the matter.

To assist the Committee in its examination of these additional issues, please provide the following by November 26, 2012:

1. Please confirm whether the BioWatch system operated with defective components. If so, please provide the date(s) DHS learned that the components were defective. If not, please provide the basis for DHS concluding that the components were not defective, and supporting documentation.

2. A written explanation for why the Federal official who oversaw installation of the components was removed from his position of responsibility in the Biowatch program, and the date he was removed.
3. An explanation of the basis for the DHS decision to deploy the multiplex assays, and the supporting documentation and data for this basis, particularly test results validating their effectiveness prior to deployment.
4. An explanation for the DHS withdrawal of the multiplex assays, and the documentation and data supporting the basis for the withdrawal.
5. A list of the State and local partners of the BioWatch program, and the dates each of these partners were notified by DHS about the results of tests conducted at the Pacific Northwest National Laboratory and the Centers for Disease Control and Prevention that found that the multiplex assays were unsuitable for BioWatch.
6. A statement detailing the sensitivity of the multiplex assays for detecting actual pathogens, and supporting documentation and data for the statement.

In addition to the above requested information, we seek your cooperation in obtaining a response to the July 19, 2012, request letter. The response from DHS to date has been inadequate, raising serious questions about the Department's willingness to cooperate with efforts to ensure the success of the BioWatch program and transparency about its potential failures. Although DHS raised concerns with our inquiry and the Committee has attempted to accommodate, the Department continues to withhold key documents more than three months after our initial request.

When DHS expressed concern about the potential scope of the document request, Committee staff proposed initial production of a small batch of documents from five DHS officials named in the request letter. DHS agreed, but has so far produced documents from only three of the five DHS officials, along with a single document from a fourth.

DHS justified the non-production of documents from the remaining two officials, Undersecretary Tara O'Toole and Dr. Segran Pillai, because the Science and Technology Directorate was involved with the future of the Biowatch program and not the past performance of Biowatch, which DHS considered to be the focus of the Committee's investigation. DHS instead permitted officials from the directorates of Health Affairs and Science and Technology (but not Dr. O'Toole or Dr. Pillai) to brief Committee staff last month.

After that briefing, DHS agreed to provide the documents from the remaining two officials as previously agreed to with Committee staff. More than a week later, and only in response to an inquiry from Committee staff, DHS staff notified the Committee that the Department would not provide the documents because of ongoing litigation between legislative and executive branches regarding congressional requests for internal, deliberative documents. This latest rationale for refusing to turn over the requested documents is inconsistent

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with DHS's previous document productions in this matter and is an insufficient reason for non-compliance with our requests.

We urge DHS to complete its agreement with Committee staff and provide the batch of documents from the remaining DHS officials, Dr. Tara O'Toole and Dr. Segran Pillai, by no later than November 26, 2012.

An attachment to this letter provides additional information about how to respond to the Committee's request.

If you have any questions regarding this request, please contact Alan Slobodin with the Committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

Attachment