

Watchdog: FBI could have tried harder to hack iPhone

March 27 2018, by Sadie Gurman



Apple CEO Tim Cook watches a demonstration of an app on the new educational Apple iPad during an Apple event at Lane Technical College Prep High School, Tuesday, March 27, 2018, in Chicago. (AP Photo/Charles Rex Arbogast)

FBI officials could have tried harder to unlock an iPhone as part of a terrorism investigation before launching an extraordinary court fight with Apple Inc. in an effort to force it to break open the device, the Justice Department's watchdog said Tuesday.

The department's inspector general said it found no evidence the FBI was able to access data on the [phone](#) belonging to one of the gunmen in a 2015 mass shooting in San Bernardino, California, as then-FBI Director James Comey told Congress more than once. But communications failures among FBI officials delayed the search for a solution. The FBI unit tasked with breaking into mobile devices only sought outside help to unlock the phone the day before the Justice Department filed a court brief demanding Apple's help, the inspector general found.

The finding could hurt future Justice Department efforts to force technology companies to help the government break into encrypted phones and computers.

The intense public debate surrounding the FBI's legal fight with Apple largely faded after federal authorities announced they were able to access the phone in the San Bernardino attack without the help of the technology giant. But Trump administration officials have indicated a renewed interest in legislation that would address the problem, with Deputy Attorney General Rod Rosenstein and FBI Director Christopher Wray publicly discussing their frequent frustration with encrypted devices. Congress could be less inclined to act on the problem—known as "going dark"—if there is an indication it may not be necessary.

Even after an outside vendor demonstrated it could successfully hack the phone, FBI officials disagreed over whether it should be used, in part because it would make the legal battle with Apple unnecessary. Some FBI officials thought they had found the precedent-setting case to convince Americans there should be no encryption that can't be defeated or accessed with a warrant.

Amy Hess, who then oversaw the FBI's science and technology division, told the inspector general's office she was concerned that other officials did not seem to want to find a technical solution, or perhaps even knew

of one, but remained silent in order to beat Apple in court.

The inspector general found no one withheld knowledge of an existing FBI capability, but failed to pursue all avenues in search for a solution. An FBI unit chief knew that an outside vendor had almost 90 percent completed a technique that would have allowed it to break into the phone, the report said, even as the Justice Department insisted that forcing Apple's help was the only option.

Apple fought back, triggering a courtroom showdown that revived the debate over the balance of digital privacy rights and national security. Apple had argued that helping the FBI hack the iPhone would set a dangerous precedent, making all iPhone users vulnerable, and argued that Congress should take up the issue.

Apple declined to comment Tuesday. The FBI did not immediately return calls, but said in a letter to the [inspector general](#) that it agreed it with the findings and recommendations for improved communication.

Law enforcement officials have long warned that encryption and other data-protection measures are making it more difficult for investigators to track criminals and dangerous extremists. Wray said late last year that agents have been unable to retrieve data from half the mobile devices—nearly 7,000 phones, computers and tablets—that they tried to access in less than a year.

Yet Congress has shown little appetite for legislation that would force tech companies to give law enforcement easier access.

The issue also troubled Wray's predecessor, Comey, who frequently spoke about the bureau's inability to access digital devices. But the Obama White House never publicly supported legislation that would have forced technology companies to give the FBI a back door to

encrypted information, leaving Comey's hands tied to propose a specific legislative fix.

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Citation: Watchdog: FBI could have tried harder to hack iPhone (2018, March 27) retrieved 7 August 2024 from <https://phys.org/news/2018-03-watchdog-fbi-harder-hack-iphone.html>

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