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Description of document: Office of Special Counsel (OSC) letter correspondence to/from Congress during CY2017; (maintained by the current Immediate Office of the Special Counsel (IOSC) (Front Office)

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Release date: 26-December-2019

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Source of document: FOIA Officer
U.S. Office of Special Counsel
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Washington, DC 20036-4505
Email: FOIArequest@osc.gov
[OSC FOIA Online Submission Website](#)
FOIA.gov

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U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 804-7000

December 26, 2019

Via Email:

Re: Freedom of Information Act Request (#FO-18-0036)

Please be advised that this is a final response to your request dated January 5, 2018, in which you asked the U.S. Office of Special Counsel (OSC) to provide you with "a copy of each letter from a Congressional Office or Committee or Subcommittee to OSC, and each reply from OSC to a Congressional Office or Committee or Subcommittee, during calendar year 2017 and calendar year 2016." On November 1, 2019, you narrowed the scope of your request to "[a]ll to/from letter correspondence with Congress during CY2017; specifically, [] 2017 letter correspondence maintained by the current IOSC (Front Office)." Your request has been processed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a.

OSC identified twenty (22) responsive pages. We are releasing twenty-one (21) pages to you in full and one (1) page in part pursuant to FOIA Exemptions (b)(6) and (b)(7)(C).

- FOIA Exemption 6 protects information if disclosure would constitute a clearly unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(6).
- FOIA Exemption 7(C) protects law enforcement information if disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(7)(C).

Please note that OSC released similar records to this request to you on October 31, 2017 under FOIA request FO-18-0022, in which you asked OSC for correspondence from OSC to Congress or Congressional Offices or Committees. We released 256 pages in full and 59 pages in part.

You have the right to appeal this determination under the FOIA. An appeal must be made in writing and sent to OSC's General Counsel at the address shown at the top of this letter or by email to FOIAappeal@osc.gov. The appeal must be received by the Office of General Counsel within ninety (90) days of the date of this letter.

If you have any questions or you require dispute resolution services, please feel free to contact Mahala Dar, OSC's Chief FOIA Officer and acting FOIA Public Liaison, at mdar@osc.gov or (202) 804-7060. Please reference the above tracking number when you call or write. Additionally, you

U.S. Office of Special Counsel
FO-18-0036
December 26, 2019
Page 2 of 2

may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer.¹

Thank you,

/s/

Mahala Dar, Esq.
Clerk

¹ Office of Governmental Information Services (OGIS), National Archives and Records Administration 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov (Email) 202-741-5770 (Office) 1-877-684-6448 (Toll Free) 202-741-5769 (Fax)

ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate
2017 DEC 21 PM 2:55

UNITED STATES SENATE
WASHINGTON, DC 20510-2105
P: 202-224-4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617-565-3170

1550 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413-788-2590

www.warren.senate.gov

December 18, 2017

Mick Mulvaney
Director
Office of Management and Budget
725 17th St. NW
Washington, DC 20503

Dear Mr. Mulvaney:

I am writing to urge you to reconsider your decision to hire political appointees at the Consumer Financial Protection Bureau (CFPB). If you chose to move forward, I ask you to carefully review federal civil service laws before hiring any political appointees or making any decisions related to the work of civil service employees at the CFPB. Former CFPB Director Richard Cordray resigned on November 24, and federal law dictated that Leandra English, the agency's Deputy Director, immediately become Acting Director. Ignoring this law, President Trump appointed you as Acting Director of the CFPB. You now have control over day-to-day operations of the agency and in your first few weeks on the job, you appear to have taken steps to politicize the agency. You also appear to be disregarding the laws that assure that federal personnel decisions are merit-based, and protect civil service staff - including the staff at the CFPB - from unfair treatment based on their political views.

Career Federal employees serve during Republican and Democratic administrations. Civil service laws, which date from the 1800's and had their last major revision in the Civil Service Reform Act of 1978 in the wake of the Watergate scandal, are designed to protect these employees from undue political pressure and discrimination, allowing them to do their jobs as required by law. The law mandates "fair and equitable treatment in all aspects of personnel management without regard to political affiliation,"¹ specifically prohibiting a change in an employees' "duties, responsibilities, or working conditions...on the basis of...political affiliation."² It also states that "[e]mployees should be protected against arbitrary action [and] personal favoritism," and that "selection and advancement [of civil service personnel] should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity."³

¹ 5 USC § 2301

² 5 USC § 2302

³ 5 USC § 2301

With the exception of the Director, all CFPB employees are career, non-political staff, hired through an open and often competitive process. But on November 30, you announced that for “every major branch of CFPB – enforcement, rulemaking, education, legal,” the regional offices and maybe more, you would appoint a “political” staffer to “marry [the] senior staffer.”⁴ When questioned about why you are taking these actions, which are unprecedented, you replied that many of the existing civil service leadership that were hired through merit-based processes under Director Cordray “were political anyway.”⁵ You produced no evidence to back up that insulting claim.

CFPB is an independent agency, making your hiring plan – and your comments – inappropriate. Other independent financial regulators have very modest political staffs with limited roles. According to the 2016 Plum Book released in the weeks before Donald Trump took office, Schedule C employees at other financial regulators mostly serve on the personal staffs of the Senate-confirmed leaders as writers and assistants, or they handle relations with the press and Congress.⁶ Some regulators, such as the Office of the Comptroller of the Currency, have no Schedule C appointees of any kind.⁷ No other financial regulator has Schedule C appointees in charge of regional offices or regulatory functions, and only one -- the Commodity Futures Trading Commission – has a political head of enforcement.⁸ None has a political General Counsel.⁹

There’s a reason for this. Executive branch agencies like OMB often appropriately have dozens of political appointees who shape policy and carry out the President’s priorities. Financial regulators are different. Congress granted them independence “under an assumption that their work is more technical”¹⁰ and that politicizing their work would be harmful and make it more difficult for these agencies to fulfill their regulatory obligations. Your naked effort to politicize the consumer agency runs counter to the agency’s mission to be an independent voice for consumers with the power to stand up to Wall Street banks.

In addition, your actions to “marry” these career staff with political appointees appears to be a clear effort to reduce the authority of the career civil-servants and reassign their duties because of their politics. This would represent a potential violation of federal civil service laws, which state that it is unlawful to “significant[ly] change [] duties, responsibilities, or working conditions” of any civil service employee “on the basis of . . . political affiliation,”¹¹ that

⁴ The American Banker, *Mulvaney's Plan to Embed Political Staffer in CFPB Sparks Backlash* (Dec. 5, 2017) (<https://www.americanbanker.com/news/mulvaney-plan-to-embed-political-staffers-in-cfpb-sparks-backlash>).

⁵ *Id.*

⁶ The Government Printing Office, *Policy and Supporting Positions* (Dec. 1, 2016) (<https://www.gpo.gov/fdsys/pkg/GPO-PLUMBOOK-2016/pdf/GPO-PLUMBOOK-2016.pdf>).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ The American Banker, *Mulvaney's Plan to Embed Political Staffer in CFPB Sparks Backlash* (Dec. 5, 2017) (<https://www.americanbanker.com/news/mulvaney-plan-to-embed-political-staffers-in-cfpb-sparks-backlash>).

¹¹ 5 USC §2302


employees should be protected against arbitrary action [and] personal favoritism," and that "selection and advancement [of civil service personnel] should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity."¹²

Federal civil servants are the backbone of the American government. Recent attacks on this non-political group of employees that provide the government with technical expertise and unbiased service threaten to undermine the integrity of independent agencies.¹³ Your plans to undercut the authority of the CFPB's professional staff with political appointees challenges the agency's independence and the ability of these employees to carry out the CFPB's mission.

You have indicated that your actions to bring in political appointees are occurring "Now."¹⁴ In order to ensure that you maintain the independence of the agency, I ask that you reconsider your plans to politicize the CFPB. If you decide to move forward, I recommend that you carefully review federal civil service laws to ensure your compliance before hiring any political appointees or making any staffing decisions that might reduce the authority and responsibility of key CFPB professional staff. Furthermore, I ask that you comply with your statutory obligation to educate the CFPB's employees of the "rights and remedies available to them" under civil service and whistleblower protection laws.¹⁵ I also ask that you provide my staff with a briefing on this matter no later than December 22, 2017.

Thank you for your prompt attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator

cc: Leandra English, Acting Director, Consumer Financial Protection Bureau
Henry Kerner, Director, Office of Special Counsel

¹² 5 USC § 2301

¹³ The New York Times, *Rumblings of a 'Deep State' Undermining Trump? It Was Once a Foreign Concept*, (March 6, 2017) (<https://www.nytimes.com/2017/03/06/us/politics/deep-state-trump.html>); Foreign Policy, *How the Trump Administration Broke the State Department*, (July 31, 2017) (<http://foreignpolicy.com/2017/07/31/how-the-trump-administration-broke-the-state-department/>).

¹⁴ The American Banker, *Mulvaney's Plan to Embed Political Staffer in CFPB Sparks Backlash* (Dec. 5, 2017) (<https://www.americanbanker.com/news/mulvaney-s-plan-to-embed-political-staffers-in-cfpb-sparks-backlash>).

¹⁵ 5 USC § 2302(c)

United States Senate

WASHINGTON, DC 20510

October 16, 2017

Mr. Tristan Leavitt
Acting Special Counsel
U.S. Office of Special Counsel
1730 M Street N.W., Suite 218
Washington, D.C. 20036-4505

Dear Acting Special Counsel Leavitt:

The Senate Committee on Homeland Security and Governmental Affairs and the Senate Committee on the Judiciary have been conducting an inquiry concerning the Federal Housing Finance Agency (FHFA) Office of Inspector General (OIG). We understand that the Office of Special Counsel (OSC) has conducted its own investigation concerning FHFA OIG. In September 2017, OSC provided a report of its investigation to the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE). We write to request that you please produce OSC's report to the Committees as soon as possible, but no later than 5:00 PM on October 30, 2017.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government."¹ Additionally, S. Res. 62 (115th Congress) authorizes the Committee to examine "the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption or unethical practices"²

If you have any questions, please contact Douglas C. Geho of Chairman Johnson's staff at (202) 224-4751 or Samantha Brennan of Chairman Grassley's staff at (202) 224-5225.

Thank you for your prompt attention to this matter.



Charles E. Grassley
Chairman
Committee on the Judiciary

Sincerely,



Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs

¹ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

² S. Res. 62 § 12, 115th Cong. (2017).

Mr. Tristan Leavitt
October 16, 2017
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cc: The Honorable Claire C. McCaskill
Ranking Member
Committee on Homeland Security
and Governmental Affairs

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary

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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

October 11, 2017

CHRISTOPHER R. HIXON, STAFF DIRECTOR
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

Tristan Leavitt
Acting Special Counsel
U.S. Office of Special Counsel
730 M St NW # 218
Washington, DC 20036

Dear Mr. Leavitt:

We write today to request information regarding ongoing efforts by the Office of Special Counsel (OSC) to promote compliance with the federal laws designed to ensure that federal government operations are not subject to undue partisan political influence.

In 1939, Congress passed the Hatch Act to limit certain political activities by federal employees.¹ The law also applies to some state, DC, and local government employees who work in connection with federally funded programs. The Hatch Act ensures “that federal programs are administered in a nonpartisan fashion, to protect federal employees from political coercion in the workplace, and to ensure that federal employees are advanced based on merit and not based on political affiliation.”² Pursuant to federal law, OSC has the authority to conduct investigations of executive branch officials accused of violating the Hatch Act.³ All federal employees “must cooperate and provide testimony, information, and documents during OSC’s investigations.”⁴ These rules also require that federal agencies make employees available to OSC to provide testimony on official time, and to provide pertinent records.

Public reports indicate that a number of senior executive branch officials have been cited by OSC for violating the Hatch Act this year. For example, in June, OSC found that the White House Director of Social Media, Dan Scavino, violated the Hatch Act by “invoking his official position at the White House” in a tweet calling for the defeat of a Member of Congress in a primary election. In response to this violation, OSC “issued Mr. Scavino a warning letter” and

¹ 5 U.S.C. §§ 7321-7326.

² U.S. Office of Special Counsel, Hatch Act (osc.gov/Pages/HatchAct.aspx) (Oct. 4, 2017).

³ 5 U.S. Code § 1212.

⁴ U.S. Office of Special Counsel, Hatch Act Policies and Procedures (osc.gov/Pages/HatchAct-PoliciesProcedures.aspx) (Oct. 4, 2017).

he was subsequently counseled about the Hatch Act by the White House Counsel.⁵ More recently, on September 28, 2017 OSC found that U.S. Ambassador to the United Nations, Nikki Haley, “violated to Hatch Act” when she retweeted a political message via her personal Twitter account.⁶ OSC issued her a warning letter. In each of these cases, information regarding the Hatch Act violations was made public by the complainant, but it is critical for Congress to understand how OSC is enforcing the Hatch Act across the federal government.

In order to better understand OSC’s ongoing work to ensure compliance with the Hatch Act, we request that not later than October 25, 2017, OSC provide our offices with a written response to this letter addressing the following requests:

1. Please provide a list of any and all senior executive branch officials found to be in violation of the Hatch Act since January 20, 2017, as well as a description of the underlying conduct; and
2. Please describe any and all instances since January 20, 2017, when a federal agency or senior executive branch official failed to fully comply with a request from OSC to provide documents, information, or testimony in furtherance of an OSC Hatch Act investigation.

The jurisdiction of the Senate Homeland Security and Governmental Affairs Committee, as set forth in Section 101 of Senate Resolution 445 (108th Congress), provides the Committee oversight of the federal civil service and government information. The Committee also carries the responsibility of overseeing the “the efficiency, economy, and effectiveness of all agencies and departments of the Government.”⁷

If you or members of your staff have any questions about this request, please feel free to ask your staff to contact Donald Sherman with Ranking Member McCaskill’s office at Donald_Sherman@hsgac.senate.gov or 202-224-2627 or Roberto Berrios with Senator Carper’s office at Roberto_Berrios@hsgac.senate.gov or 202-224-2441. Please send any official correspondence to Amanda Trosen at Amanda_Trosen@hsgac.senate.gov. Thank you for your attention to this matter.

⁵ Letter from Ana Galinda-Marrone, Chief, Hatch Act Unit, U.S. Office of Special Counsel, to Adam Rappaport, Chief Counsel, Citizens for Responsibility and Ethics in Washington (June 5, 2017).

⁶ Letter from Erica Hamrick, Deputy Chief, Hatch Act Unit, U.S. Office of Special Counsel, to Noah Bookbinder, Executive Director, Citizens for Responsibility and Ethics in Washington (Sept. 28, 2017).

⁷ S. Res. 445 (108th Cong.); S. Res. 34 (115th Cong.).

Tristan Leavitt
October 11, 2017
Page 3

Sincerely,

A handwritten signature in dark ink, appearing to read "Claire McCaskill". The signature is fluid and cursive, with the first name "Claire" being more prominent.

Claire McCaskill
Ranking Member

A handwritten signature in dark ink, appearing to read "Tom Carper". The signature is fluid and cursive, with the first name "Tom" being more prominent.

Tom Carper
United States Senator

cc: Ron Johnson
Chairman

WILLIAM R. KEATING
9TH DISTRICT, MASSACHUSETTS

COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEES
RANKING MEMBER
TERRORISM, NONPROLIFERATION, AND TRADE
EUROPE, EURASIA, AND EMERGING THREATS

COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEES
COUNTERTERRORISM AND INTELLIGENCE
TRANSPORTATION SECURITY



Congress of the United States
House of Representatives
Washington, DC 20515

WASHINGTON DC OFFICE
315 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3111

CAPE AND ISLANDS OFFICE
297 NORTH STREET, SUITE 312
HYANNIS, MA 02601
(508) 771-0666

NEW BEDFORD OFFICE
558 PLEASANT STREET, SUITE 309
NEW BEDFORD, MA 02740
(508) 999-6462

PLYMOUTH OFFICE
2 COURT STREET
PLYMOUTH, MA 02360
(508) 746-9000

September 22, 2017

Tristan Leavitt, Acting Special Counsel
Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

Dear Mr. Leavitt:

I am writing on behalf of my constituent (b)(6); (b)(7)(C) of (b)(6); (b)(7)(C) MA (b)(6); (b)(7)(C) is a Veteran and is employed as a (b)(6); (b)(7)(C) VA Medical Center. Beginning in (b)(6); (b)(7)(C) made several complaints to (b)(6); (b)(7)(C) supervisors about lax oversight at the facility, which led to several disruptive incidents, including (b)(6); (b)(7)(C) involving VA employees and patients (b)(6); (b)(7)(C) believed that (b)(6); (b)(7)(C) subsequent treatment at the hands of the (b)(6); (b)(7)(C) VAMC management was retaliation for (b)(6); (b)(7)(C) complaints, and for (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) into the problems at (b)(6); (b)(7)(C). Therefore, (b)(6); (b)(7)(C) filed a whistleblower protection complaint with your office in (b)(6); (b)(7)(C).

Since then, (b)(6); (b)(7)(C) reports that (b)(6); (b)(7)(C) employment conditions have worsened (b)(6); (b)(7)(C) this year, (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) reports that the (b)(6); (b)(7)(C) VA management has not responded to (b)(6); (b)(7)(C) requests to secure an alternate placement while these matters were investigated. In fact, (b)(6); (b)(7)(C) supervisor informed (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C) for not reporting to (b)(6); (b)(7)(C) assigned work station, despite (b)(6); (b)(7)(C) efforts to work with management to identify a safer work environment. (b)(6); (b)(7)(C)

I understand that this information has been forwarded to OSC, and that your office will rule on this matter based on the findings of your investigation. I write only to urge you to expedite this investigation so that (b)(6); (b)(7)(C) may move towards resolution of (b)(6); (b)(7)(C) current situation.

I appreciate your attention to this request. Please feel free to call (b)(6); (b)(7)(C) in my district office at 508-746-9000 should you require any additional information.

Sincerely,

William R. Keating
Member of Congress

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Staff Director*

June 30, 2017

VIA ELECTRONIC TRANSMISSION

Adam Miles
Acting Special Counsel
Office of Special Counsel
1730 M Street, N.W.
Washington, D.C. 20036

Dear Mr. Miles:

Thank you for briefing the Committee staff on the status of the Office of Special Counsel (OSC) inquiry into whether former FBI Director James Comey violated the Hatch Act. According to your briefing, OSC opened its review in response to complaints regarding his statement on July 5, 2016, and letters to Congress on October 28, 2016, and November 6, 2016, about the FBI's investigation of Secretary Clinton's use of a personal e-mail server during her time as Secretary of State. OSC suspended its review upon Comey's removal as FBI Director, in accordance with agency policy regarding former officials.

However, OSC indicated that prior to suspending the investigation, it had interviewed two FBI employees, Comey's Chief of Staff, Jim Rybicki, and the Principal Deputy General Counsel of National Security and Cyberlaw, Trisha Anderson.

The Committee is investigating whether there was any improper political influence by the Obama Justice Department in the FBI's Clinton email investigation, as well as the circumstances surrounding Comey's removal. Accordingly, please provide copies of the transcripts and/or recordings from both of these interviews no later than July 14, 2017.

If you have any questions, please contact Samantha Brennan of my staff at (202) 224-5225. Thank you for your attention to this matter.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

cc: The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

September 8, 2017

Mr. Adam Miles
Acting Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW
Washington, DC 20036

Dear Mr. Miles:

I write to seek information about the Office of Special Counsel's (OSC) investigation concerning former FBI Director James Comey.¹ I respectfully request your cooperation with this inquiry.

In November 2016, OSC opened an investigation to determine whether Mr. Comey violated the Hatch Act in the course of the FBI's investigation into former Secretary of State Hillary Clinton's private email system.² As part of its investigation, the OSC requested information from Mr. Comey in November 2016, but it is unclear whether Mr. Comey provided any information to OSC.³ During the investigation, OSC apparently reviewed documents from the FBI and interviewed two FBI officials, Trisha Anderson and former FBI chief of staff Jim Rybicki, in May 2017.⁴ OSC's investigation ran about seven months, until OSC closed its investigation following Mr. Comey's departure from the FBI.⁵

During its investigation of Mr. Comey, OSC executed at least three non-disclosure agreements (NDA) relating to FBI information obtained during the course of OSC's investigation.⁶ The NDAs—signed only by an employee of OSC—covered information about the identities of FBI employees interviewed, information deemed to be “deliberative,” and information deemed to be “protected by attorney client privilege.”⁷ By the terms of the NDAs, OSC restricted itself from releasing information without “prior written authorization from the Department of Justice.”⁸

¹ U.S. Office of Special Counsel Complaint No. HA-17-0515.

² Comm. staff email with the Office of Special Counsel (Sep. 1, 2017).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Comm. staff email with the Office of Special Counsel (Sep. 6, 2017).

⁷ Non-Disclosure Agreement Re: U.S. Office of Special Counsel (“OSC”) Complaint No. HA-17-0515, Jan. 17, 2017 [herein after FBI Identity NDA]; Non-Disclosure Agreement Regarding Deliberative Process Privileged Material Re: U.S. Office of Special Counsel (“OSC”) Complaint No. HA-17-0515, Feb. 15, 2017 [herein after Deliberative Process NDA]; Non-Disclosure Agreement Regarding Attorney Client Privileged Material Re: U.S. Office of Special Counsel (“OSC”) Complaint No. HA-17-0515, Feb. 23, 2017 [herein after Attorney-Client NDA].

⁸ See Attorney-Client NDA paragraph 5, *supra* note 8; see also, Deliberative Process NDA paragraph 5, *supra* note 10; see also FBI Identity paragraph 5 NDA, *supra* note 13.

If OSC sought to produce information to Congress, the NDAs require the agency to redact the protected information and provide the FBI an opportunity “to review a read-through version of the redacted report and any other records [OSC] intends to release to propose additional redactions that may be necessary to protect [the specified] information and any other law enforcement sensitive information before making such disclosure.”⁹

Any reliance upon these non-disclosure agreements to withhold information from the Committee would be inappropriate. The Supreme Court has long recognized Congress’s right—rooted in the Constitution—to oversee and investigate the operations of the federal government. The congressional power of inquiry and the processes to enforce it are “an essential and appropriate auxiliary of the legislative function.”¹⁰ “The scope of [Congress’s] power of inquiry,” in the words of the Supreme Court, “is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.”¹¹ Courts consistently hold that an agency may not deny Congress information on the basis of an NDA or confidentiality clause.¹² In addition, the Consolidated Appropriations Act of 2017 states that no funds may be used to enforce an NDA if the agreement does not expressly exempt the disclosure of information to Congress.¹³ OSC’s NDAs in this matter do not contain the required language.

The Committee has conducted oversight of the FBI’s investigation into Secretary Clinton’s use of a private email system.¹⁴ The information in OSC’s possession could further explain the scope, course, and nature of the FBI’s investigation. In particular, the information may shed light on the FBI’s decision-making process during the FBI’s investigation, the FBI’s interactions with other federal entities, the FBI’s distinction between “extreme carelessness” and “gross negligence,” and the potential harm done by Secretary Clinton’s use of a private email server. Information obtained by the Committee in this matter could also inform the Committee’s oversight of Hatch Act compliance by federal agencies and personnel. In addition, the revelation about the NDAs raise questions about OSC’s practices and procedures, as well as OSC’s use of NDAs in other matters.

⁹ *Id.* at paragraph 7. Contrarily, the NDAs included language that nothing in the NDAs “prevents OSC from disclosing [protected] information to the President of the United States, FBI Director Comey, or other officials within the Department of Justice as part of any report of OSC’s findings or recommendations.” *Id.* at paragraph 8.

¹⁰ *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).

¹¹ *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 504, n. 15 (1975) (quoting *Barenblatt v. United States*, 360 U.S. 109, 111 (1959)).

¹² See Morton Rosenberg, *When Congress Comes Calling* 83 (2017).

¹³ Pub. L. 115-31 § 744 (2017).

¹⁴ See letter from Sen. Ron Johnson, Chairman, S. Comm. on Homeland Security and Governmental Affairs, to James Comey, Director, Federal Bureau of Investigation, Nov. 7, 2016; letter from Sen. Ron Johnson, Chairman, S. Comm. on Homeland Security and Governmental Affairs, to James Comey, Director, Federal Bureau of Investigation, July 15, 2016.

For these reasons, I respectfully request the following information and material in unredacted form:

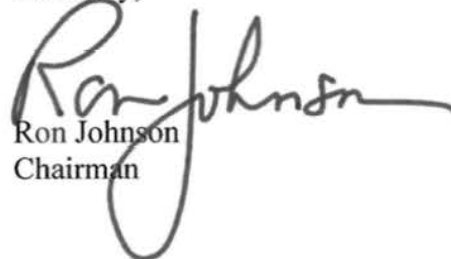
1. Has OSC ever executed an NDA limiting the release of information obtained in a Hatch Act investigation? If so, when?
2. Please explain why OSC executed NDAs for purposes of its Hatch Act investigation of former FBI Director Comey.
3. Please explain which federal entities participated in any manner in OSC's Hatch Act investigation of former FBI Director Comey.
4. Please produce all documents and communications referring or relating to the OSC's Hatch Act investigation of former FBI Director Comey (case number HA-17-0515), including but not limited to the full, unredacted transcripts of OSC's interviews of Trisha Anderson and Jim Rybicki.
5. Please produce all communications between OSC and other federal entities referring or relating to the OSC's Hatch Act investigation of former FBI Director Comey (case number HA-17-0515).

Please provide this information as soon as possible but no later than 5:00 p.m. on September 21, 2017.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government,"¹⁵ Additionally, S. Res. 62 (115th Congress) authorizes the Committee to examine "the efficiency and economy of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices"¹⁶

Thank you for your attention to this matter. If you have any questions about this request, please contact Brian Downey or Kyle Brosnan of the Committee staff at (202) 224-4751.

Sincerely,


Ron Johnson
Chairman

¹⁵ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

¹⁶ S. Res. 62 § 12, 115th Cong. (2017).

Mr. Adam Miles
September 8, 2017
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cc: The Honorable Claire McCaskill
Ranking Member

Enclosure

Instructions for Responding to a Committee Request
Committee on Homeland Security and Governmental Affairs
United States Senate
115th Congress

A. Responding to a Request for Documents

1. In complying with the Committee's request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e. CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic form should be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image Files (".tif"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and .tif file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

Instructions for Responding to a Committee Request

- e. Alternatively, if the production cannot be made in .tif format, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (“pdf”) format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached. In such circumstances, consult with Committee staff prior to production of the requested documents.
 - f. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), consult with the Committee staff to determine the appropriate format in which to produce the information.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to the request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When producing documents, identify the paragraph in the Committee’s schedule to which the documents respond.
9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
10. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data or information not produced because it has not been located or discovered by the return date, should be produced immediately upon subsequent location or discovery.
11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
13. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as

Instructions for Responding to a Committee Request

soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.

14. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
15. In the event that a portion of a document is redacted on the basis of privilege, provide a privilege log containing the following information concerning any such redaction: (a) the privilege asserted; (b) the location of the redaction in the document; (c) the general subject matter of the redacted material; (d) the date, author, and addressee of the document, if not readily apparent; and (e) the relationship of the author and addressee to each other.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date, name, title, or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date, name, title, or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents which would be responsive as if the date, name, title, or other descriptive detail was correct.
18. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
19. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.
20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

B. Responding to Interrogatories or a Request for Information

1. In complying with the Committee's request, answer truthfully and completely. Persons that knowingly provide false testimony could be subject to criminal prosecution for perjury (when under oath) or for making false statements. Persons that knowingly withhold subpoenaed information could be subject to proceedings for contempt of Congress. If you are unable to answer an interrogatory or information request fully, provide as much information as possible and explain why your answer is incomplete.

Instructions for Responding to a Committee Request

2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should also be read to include the alternative identification.
3. Your response to the Committee's interrogatories or information requests should be made in writing and should be signed by you, your counsel, or a duly authorized designee.
4. When responding to interrogatories or information requests, respond to each paragraph in the Committee's schedule separately. Clearly identify the paragraph in the Committee's schedule to which the information responds.
5. Where knowledge, information, or facts are requested, the request encompasses knowledge, information or facts in your possession, custody, or control, or in the possession, custody, or control of your staff, agents, employees, representatives, and any other person who has possession, custody, or control of your proprietary knowledge, information, or facts.
6. Do not refuse to provide knowledge, information, or facts on the basis that any other person or entity also possesses the same knowledge, information, or facts.
7. The request is continuing in nature and applies to any newly discovered knowledge, information, or facts. Any knowledge, information, or facts not provided because it was not known by the return date, should be provided immediately upon subsequent discovery.
8. Two sets of responses should be delivered, one set to the Majority Staff and one set to the Minority Staff. When responses are provided to the Committee, copies should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
9. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.
10. In the event that knowledge, information, or facts are withheld on the basis of privilege, provide a privilege log containing the following information: (a) the privilege asserted; (b) the general subject matter of the knowledge, information, or facts withheld; (c) the source of the knowledge, information, or facts withheld; (d) the paragraph in the Committee's request to which the knowledge, information, or facts are responsive; and (e) each individual to whom the knowledge, information, or facts have been disclosed.
11. If a date, name, title, or other descriptive detail set forth in this request is inaccurate, but the actual date, name, title, or other descriptive detail is known to you or is otherwise apparent from the context of the request, provide the information that would be responsive as if the date, name, title, or other descriptive detail was correct.

Instructions for Responding to a Committee Request

12. In the event a complete response requires the transmission of classified information, provide as much information in unclassified form as possible in your response directly to the Committee offices and send only the classified information under separate cover via the Office of Senate Security.
13. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.

C. Definitions

1. The term “document” in the request or the instructions means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” in the request or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, discussions, releases, delivery, or otherwise.
3. The terms “and” and “or” in the request or the instructions should be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

Instructions for Responding to a Committee Request

4. The terms “person” or “persons” in the request or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” in the request or the instructions, when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; and (b) the individual’s business address, email address, and phone number.
6. The terms “referring” or “relating” in the request or the instructions, when used separately or collectively, with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” in the request or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint venturer, loaned employee, part-time employee, permanent employee, provisional employee, or subcontractor.
8. The terms “you” and “your” in the request or the instructions refer to yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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JENNIFER DUICK, *Democratic Staff Director*

September 25, 2017

VIA ELECTRONIC TRANSMISSION

Tristan Leavitt
Acting Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036

Dear Mr. Leavitt:

On June 30, 2017, I requested that the Office of Special Counsel (OSC) provide a briefing for Committee staff on the status of OSC's investigation of alleged Hatch Act violations by former FBI Director James Comey. I also asked OSC to provide copies of transcripts of its interviews with two FBI employees. OSC provided heavily redacted copies of these transcripts on August 8, 2017.

OSC has indicated that FBI proposed these redactions pursuant to Non-Disclosure Agreements (NDAs) between OSC and FBI. According to OSC, the agency entered into these agreements as a condition required by the FBI in exchange for its voluntary cooperation with OSC's investigation. Simply put, it is wrong for the FBI to withhold information that OSC needs to conduct its statutorily mandated responsibilities under the Hatch Act or to hold that information hostage in exchange for a nondisclosure agreement designed to shield the FBI from Congressional oversight.

On their face, the agreements require OSC to redact certain information from materials or testimony FBI provides in the course of OSC's investigation prior to "any disclosure to Congress, any Senator or Member of Congress, and/or any Congressional Committee, Subcommittee, or other Congressional establishment." The agreements also require OSC to provide FBI an opportunity to propose further redactions to the materials before any disclosure to Congress. Categories of information FBI sought to restrict include those that are not protected by any constitutional privilege. Moreover, the OSC and FBI do not have the authority to contract out of the statutory rights of access to information by Congressional establishments, such as the Government Accountability Office.

The heavily redacted copies of the transcripts also appear to go further than the NDAs to shield even questions posed by the OSC investigator to the FBI employees.

Neither OSC nor the FBI has offered any explanation of how such questions could be privileged or law enforcement sensitive.

Please provide the Committee with any other NDAs FBI has required from OSC in order to secure its voluntary cooperation with OSC investigations, as well as an estimate of how many investigations OSC has conducted involving FBI employees without first agreeing to such terms.

Finally, in the future, please notify the Committee of any attempt by any agency under its jurisdiction, in any matter, to obtain an NDA that purports to limit the rights of the Committee to obtain information from OSC. Moreover, if any agency under the Committee's jurisdiction withholds voluntary cooperation with OSC for any other reason, please inform the Committee of the circumstances in a timely manner. OSC cannot fulfill its statutory missions without timely access to information from agencies, and the Committee needs to be aware of any specific examples of access issues with agencies under its jurisdiction.

Sincerely,

A handwritten signature in dark ink, reading "Chuck Grassley". The signature is written in a cursive, slightly slanted style.

Charles E. Grassley
Chairman

cc: The Honorable Dianne Feinstein
Ranking Member