



U.S. Department of Justice
Federal Bureau of Investigation

Office of Congressional Affairs

Office of the Assistant Director

935 Pennsylvania Avenue, NW
Washington, DC 20535-0001

May 30, 2023

The Honorable James Comer
Chairman
Committee on Oversight and Accountability
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Comer:

This provides a response to your letter, dated May 24, 2023, to the Federal Bureau of Investigation (FBI), regarding your May 3, 2023, subpoena requesting an “unclassified FD-1023 form.”

As we stated in our May 10, 2023, correspondence, the FBI is committed to working to provide the Committee information necessary for your legitimate oversight interests, while also protecting Executive Branch confidentiality interests and law enforcement responsibilities. In that same letter, we explained the significant limits on whether, when, and how confidential human source information can be provided outside of the FBI, and how those limits are critical to the physical safety of our sources and others identified in source reporting, as well as to the integrity of our confidential human source program and longstanding Department of Justice confidentiality interests.

We appreciated the opportunity to meet with Committee staff on May 15, 2023, as a first step to learn more about the Committee’s legislative interests and specific informational needs. To help satisfy those informational needs, and to better inform the Committee about our security concerns and related law enforcement sensitivities, the FBI offered to provide a comprehensive briefing related to the FBI’s confidential human source program as an accommodation.

Subsequently, on May 22, 2023, a Deputy Assistant Director of the FBI’s Directorate of Intelligence provided that briefing to Committee staff. The briefing included a detailed discussion of the Attorney General’s Guidelines regarding the Use of FBI Confidential Human Sources (AGG-CHS) policy which strictly limits when and how confidential human source information can be provided outside of the FBI, as well as the reasons behind the policy.

The Deputy Assistant Director expressed the FBI’s concern over the chilling effect that could flow from the wide dissemination of investigative files, to include reduced willingness of confidential human sources to provide valuable reporting. As you know, confidential sources are critical to the FBI’s ability to build cases, including those against violent gangs, drug cartels, and terrorists.

The briefing emphasized the importance of the FBI protecting not only the identity of a specific confidential human source, but also of protecting information that would have a tendency to identify the source, such as contextual material found in many of the kinds of investigative materials requested by the Committee, such FD-1023s. The briefing explained the importance of closely protecting source information to preserve sources and methods and maintain investigative integrity, to prevent chilling of FBI's recruitment of sources and their candor in reporting, and also to protect sources and individuals associated with them from being physically harmed or even killed. The briefing highlighted that the FBI's obligation to protect confidential human source information extends at least for the life of the source.

To address the Committee's questions regarding how information in FD-1023s may be handled, the Deputy Assistant Director presented an overview of the various levels of approval that go into reviewing FD-1023s, as well as the policies that govern how FD-1023s are routed internally. The Deputy Assistant Director outlined how the FBI analyzes the veracity of source reporting and the internal oversight mechanisms designed to weigh reporting against other information known or developed by the FBI, and also cautioned that raw, unverified source reporting may lack that important context.

Throughout the briefing, the Deputy Assistant Director endeavored to respond to questions from both Majority and Minority staff related to the FBI's confidential human source program and policies. We appreciated the opportunity to provide additional information regarding the critical importance of protecting confidential human source reporting as a good faith effort at accommodating the Committee's request and emphasizing the extreme sensitivities and executive interests the request raised.

As we also have said previously, information provided by confidential human sources also implicates other longstanding Department confidentiality interests. The Department's law enforcement and intelligence authorities enable us to collect significant amounts of information, but only subject to strict constitutional, statutory, and policy limits essential to the rule of law. Investigative reports, such as an FD-1023, include leads and suspicions, not the conclusions of investigators based on fuller context, including information that may not be available to the confidential source. As we have explained, an FD-1023 form documents information as told to a line FBI agent. Recording the information does not validate the information, establish its credibility, or weigh it against other information known or developed by the FBI. Further, the public's perception of the impartiality of the law enforcement process could be damaged if sensitive material is distributed beyond those necessary in the investigative process. Law enforcement sensitive information created for investigative purposes must be protected from the appearance of the FBI engaging in political, publicity, or other considerations. This approach of protecting from disclosure highly sensitive and confidential law enforcement information is consistent with longstanding policy across Administrations.¹

¹ See e.g., Letter from Robert Raben, Assistant Attorney General, Office of Legislative Affairs, Department of Justice, to Rep. John Linder, Chairman, Subcommittee on Rules and Organization, House Committee on Rules, at 3 (Jan. 27, 2000) ("[T]he reputations of individuals mentioned in internal law enforcement and litigation documents could be severely damaged by the public release of information about them, even though the case might ultimately not warrant prosecution or other legal action. The Department takes very seriously its responsibility to respect the privacy interests of individuals about whom information is developed during the law enforcement process or

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Throughout our engagement with the Committee, the FBI expressed our ongoing commitment to continue working with your staff to identify additional accommodations that could be made—by all parties—as FBI continues negotiations in good faith. Following our engagements with Committee staff, the FBI was made aware of your request for a call with Director Wray to discuss the Committee’s investigation. As you know, that discussion is scheduled for tomorrow. Recognizing your latest letter’s request for a response by May 30, the FBI can confirm that we have identified additional information that we are prepared to offer the Committee as an extraordinary accommodation. The Director looks forward to discussing how we plan to make that information available to the Committee during your call tomorrow. We are committed to providing you access to the information in a format and setting that maintains confidentiality and protects the important sensitivities and interests described in the May 22 briefing and outlined in this letter.

Director Wray looks forward to speaking with you tomorrow to further discuss the path forward.

Sincerely,

A handwritten signature in black ink, appearing to read 'CD', with a long horizontal flourish extending to the right.

Christopher Dunham
Acting Assistant Director

cc: The Honorable Jamie B. Raskin
Ranking Member

litigation.”). Letter from Deputy Attorney General Rod Rosenstein to Hon. Charles Grassley, at 6 (June 27, 2018) (“We cannot fulfill requests that would compromise the independence and integrity of investigations, jeopardize intelligence sources and methods, or create the appearance of political interference. We need to follow the rules.... It is important for the Department of Justice to follow established policies and procedures, especially when the stakes are high.”).