



U.S. Department of Justice

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June 7, 2023

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Jordan:

Your May 25th letter to Attorney General Garland was forwarded to me, with a request that I respond on behalf of the Department.

While your letter does not specify by name the ongoing investigation that is the subject of the Committee's oversight, its content suggests your inquiry is related to an investigation in my District. If my assumption is correct, I want to make clear that, as the Attorney General has stated, I have been granted ultimate authority over this matter, including responsibility for deciding where, when, and whether to file charges and for making decisions necessary to preserve the integrity of the prosecution, consistent with federal law, the Principles of Federal Prosecution, and Departmental regulations.

Your letter references recently-announced staffing determinations in the matter and the Committee's concern that those decisions intersect with whistleblower protections. I agree wholeheartedly that whistleblowers play an integral role in promoting both civil servant accountability and good government practices. Federal law protects whistleblowers from retaliation, as well it should.

The information sought by the Committee concerns an open matter about which the Department is not at liberty to respond. As then-Deputy Attorney General Rod Rosenstein wrote in 2018 in response to a request for information from the Honorable Charles Grassley, Chairman of the Senate Committee on the Judiciary:

Congressional inquiries during the pendency of a matter pose an inherent threat to the integrity of the Department's law enforcement and litigation functions. Such inquiries inescapably create the risk that the public and the courts will perceive undue political and Congressional influence over law enforcement and litigation decisions. Such inquiries also often seek

records and other information that our responsibilities for these matters preclude us from disclosing.¹

Accordingly, and consistent with longstanding Department of Justice policy and practice,² I must respectfully decline the Committee's request for documents and information at this time to protect confidential law enforcement information from disclosure.

This response fully recognizes that the Committee's oversight efforts are an important part of its legislative process. As then-Assistant Attorney General Robert Raben noted in 2000:

Congressional committees need to gather information about how statutes are applied and funds are spent so that they can assess whether additional legislation is necessary either to rectify practical problems in current law or to address problems not covered by current law. By helping Congress be better informed when it makes legislative decisions, oversight promotes the accountability of government.³

Across administrations, therefore, the Department's policy has been to:

... comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch[.] [T]he Department's goal in all cases is to satisfy legitimate legislative interests while protecting Executive Branch confidentiality interests.⁴

The confidentiality interests implicated by the Committee's instant request include legally protected materials (including grand jury information, protected by Rule 6(e) of the Federal Rules of Criminal Procedure, and taxpayer information, protected by 26 U.S.C. Section 6103); information the disclosure of which might compromise open criminal investigations or prosecutions or constitute an unnecessary invasion of privacy;

¹ Letter from Deputy Attorney General Rod Rosenstein to Hon. Charles Grassley, Chairman, Committee on the Judiciary, U.S. Senate, at 10 (June 27, 2018) *quoting* Robert Raben, Assistant Attorney General, "DOJ View Letters on Subcommittee on Rules and Organization of the House testimony on 'Cooperation, Comity, and Confrontation: Congressional Oversight of the Executive Branch,'" July 15, 1999, *available at* <https://www.justice.gov/media/962176/dl?inline> (last accessed June 2, 2023).

² *See* Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations, Memorandum Opinion for the Chairman Investigations/Law Enforcement Committee President's Council on Integrity and Efficiency, March 24, 1989, *available at* <https://www.justice.gov/file/24181/download> (last accessed June 2, 2023).

³ Letter from Assistant Attorney General Robert Raben to The Honorable John Linder, Chairman, Subcommittee on Rules and Organization of the House, Committee on Rules, House of Representatives, at 2 (January 27, 2000), *available at* <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/linder.pdf> (last accessed June 2, 2023).

⁴ *Id.* at 2.

and, just as importantly here, pre-decisional deliberative communications. By way of illustration, the Department has a broad confidentiality interest in protecting materials that reflect its internal deliberative process, at least to ensure that Departmental litigation decisions are products of independent legal and factual assessments, free from external political influences. Here, any documents or information responsive to the Committee's request would fall within deliberative communications regarding an ongoing criminal investigation.


As then-Deputy Attorney General Rosenstein recognized:

We cannot fulfill requests that would compromise the independence and integrity of investigations ... 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.⁵

I share then-Deputy Attorney General Rosenstein's "commitment to the Department's longstanding traditions, [which] carries with it an obligation to ensure that we keep pending law enforcement matters separate from the sphere of politics and that there be no perception that our law enforcement decisions are influenced by partisan politics or pressure from legislators."⁶ Here, that requires that I respectfully protect from disclosure the confidential law enforcement information the Committee seeks. My ongoing work would be "seriously prejudiced by the revelation of the direction of [the matter], information about evidence obtained, and assessments of the strengths and weaknesses of various aspects of [the matter]."⁷

In February 2021, I was asked to remain as United States Attorney for the District of Delaware to continue my oversight of the matter. Since that time, I have fulfilled my responsibilities, consistent with Department practices and procedures, and will continue to do so. Throughout my tenure as U.S. Attorney my decisions have been made-- and with respect to the matter must be made-- without reference to political considerations.

Sincerely,



David C. Weiss
United States Attorney

cc: The Honorable Jerrold L. Nadler, Ranking Member

⁵ Letter from Deputy Attorney General Rod Rosenstein to Hon. Charles Grassley, Chairman, Committee on the Judiciary, U.S. Senate, at 6, *available at* <https://www.justice.gov/media/962176/dl?inline> (last accessed June 2, 2023).

⁶ *Id.* at 7.

⁷ *Id.* at 4.