



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

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

Dear Chairman Jordan:

We are in receipt of your January 17, 2023, letters to the Department of Justice (Department), as well as three of our law enforcement components, the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), regarding information requests that you sent during the 117th Congress.¹ In light of your appointment as Chairman of the House Committee on the Judiciary (Committee), the Department would like to take this opportunity to review our practices with respect to congressional engagement for the benefit of both new and returning Members of the Committee. We look forward to a productive relationship in the 118th Congress.

We welcome your interest in the Department's work. The Office of Legislative Affairs (OLA) is responsible for communications between Congress and the Department. Please begin any inquiry to the Department with OLA personnel. You are welcome to contact OLA staff directly or to phone the OLA front office at 202-514-4600 for assistance. We request that all official correspondence to the Department be transmitted by email to DOJ.Correspondence@usdoj.gov. The Department will ensure that each congressional letter and inquiry receives its own consideration by OLA and Department personnel based on subject matter and complexity. While the Department strives to answer congressional inquiries promptly, ensuring the accuracy and completeness of information that the Department provides to Congress is a matter of utmost importance.

The Department stands ready to provide expertise as the Committee considers potential legislation. We often provide technical assistance on draft or introduced legislation to ensure the drafters are aware of how it may impact civil litigation, criminal investigations and prosecutions, grant making, and other matters within the Department's purview, and to ensure its constitutionality. We encourage you to share legislative drafts as early as possible because our review can be time-consuming. Early consultation with the Department will help

¹ We are also in receipt of your letter to the Department dated January 13, 2023, and will respond under separate cover.

prevent instances in which drafters are inconvenienced by late feedback from the Department, or are left altogether unaware of significant Department concerns.

We anticipate your Committee will invite Department representatives to appear at hearings, which serve as important tools for informing the public about the Department's work. Preparation for hearings often takes significant time, so the Department has long insisted that congressional committees send a written invitation for public testimony at least two weeks in advance of the hearing date.² Sufficient advance notice enables the identification of a mutually agreeable date that meets the Committee's needs while taking into account the operational responsibilities of Department representatives, including overseeing criminal and national security investigations. The Committee should include information about the focus of the hearing and any specific matters the Department should be prepared to address. Two weeks is the minimum advance notice required for the Department to identify an appropriate witness and prepare testimony, which must be cleared through the Office of Management and Budget.

The Department will be better able to meet your needs at hearings if your request is specific concerning the information the Committee seeks. While we will work diligently to accommodate requests for public testimony, it may not always be possible to participate or to address all the topics the Committee wishes to raise. When information is not appropriate for a public hearing, we will make appropriate efforts to determine if such information can be shared in a different setting, such as a briefing, a closed hearing, or through the provision of other information.

Once the format of the hearing or briefing is established, and the relevant topics and number of panels have been determined, the Department will identify one or more officials to appear after consideration of all factors, including their schedules, their position, and other suitability concerns. The Department generally requires that briefers or hearing witnesses be in senior supervisory positions. Again, we encourage your staff to reach out to OLA as early in the process as possible so we can work with you to identify the most appropriate participants.

With respect to oversight requests for information and documents, we share your belief that congressional oversight is vital to our functioning democracy and we are committed to cooperating with the Committee's legitimate efforts to seek information, consistent with our obligation to protect Executive Branch confidentiality interests. As President Reagan explained in his 1982 directive on responding to congressional requests for information, the "tradition of accommodation" should be "the primary means of resolving conflicts between the Branches."³ The Constitution "contemplates such accommodation" and

² See, e.g., Letter from Assistant Attorney General Peter Kadzik to Chairman Grassley (Mar. 5, 2015) ("Traditionally, the Department has required at least two weeks' written notice prior to the appearance of a Department witness at a congressional hearing."); Letter from Assistant Attorney General Ronald Weich to Chairman Conyers (Oct. 25, 2010) (same).

³ *Memorandum for Heads of Executive Agencies: Procedures Governing Responses to Congressional Requests for Information* (Nov. 4, 1982), <https://www.justice.gov/ola/page/file/1090526/download>.

requires each Branch to engage in a “realistic evaluation of [one another’s] needs.”⁴ The overwhelming majority of congressional requests for information are resolved in a manner that satisfies both Branches in the spirit of our “ongoing relationship that the Framers intended to feature both rivalry and reciprocity.”⁵ Successful compromises are most often possible when both Branches hew to the accommodation process.

The Committee can assist the Department in making this process as efficient as possible by helping the Department understand the scope of its interests, by discussing the potential use or protection of the information, and, especially importantly, by prioritizing requests. Prioritization is critical to an efficient accommodation process. It enables the Department to focus its limited resources on the information most pertinent to the Committee’s inquiries. Without prioritization, requests will take longer to resolve and will be more likely to yield irrelevant information.

Regarding requests to interview Department officials as part of your oversight efforts, the Department will work collaboratively with the Committee to identify the proper official to respond to your legitimate informational needs. As a matter of longstanding policy and practice, the Department refrains from making line agents and line attorneys available for congressional testimony or interviews. We send policy-level supervisory officials accompanied by agency counsel.⁶ After an appropriate witness has been identified, our engagement with the Committee staff in the accommodation process will typically address the length and scope of the interview; whether the interview will be informal or result in a transcript; our access to review any transcript; and other details that are necessary to protect Department interests and ensure consistency with historical practices.

Consistent with longstanding policy and practice, any oversight requests must be weighed against the Department’s interests in protecting the integrity of its work. Longstanding Department policy prevents us from confirming or denying the existence of pending investigations in response to congressional requests or providing non-public information about our investigations.⁷ The Department’s obligation to “protect the government’s ability to prosecute fully and fairly” is vital to the Executive Branch’s core constitutional function to investigate and prosecute criminal matters.⁸ The Department’s mission

⁴ *United States v. AT&T*, 567 F.2d 121, 127, 130 (D.C. Cir. 1997).

⁵ *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2026 (2020).

⁶ See Letter from Robert Raben, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice to Rep. John Linder, Chairman, Subcommittee on Rules and Organization, House Committee on Rules, at 6 (Jan. 27, 2000) (“Linder Letter”), <https://www.justice.gov/file/1080046/download>; *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. OLC (2019).

⁷ See, e.g., Linder Letter; Fed. R. Crim. P. 6(e); *Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act*, 10 Op. O.L.C. 68, 76 (1986) (“[T]he policy of the Executive Branch throughout our Nation’s history has generally been to decline to provide committees of Congress with access to, or copies of, open law enforcement files except in extraordinary circumstances.”); *Position of the Executive Department Regarding Investigative Reports*, 40 Op. Att’y Gen. 45, 46 (1941) (“It is the position of this Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to ‘take care that the laws be faithfully executed,’ and that congressional or public access to them would not be in the public interest.”).

⁸ *Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act*, 10 Op. OLC 68, 76 (1986).

to independently and impartially uphold the rule of law requires us to maintain the integrity of our investigations, prosecutions, and civil actions, and to avoid even a perception that our efforts are influenced by anything but the law and the facts. So does the Department's obligation to protect witnesses and law enforcement, avoid flight by those implicated in our investigations, and prevent additional crimes and attacks.

Your January 17 letters reference information requests that you sent during the 117th Congress. The Department and its components worked in good faith to respond to these requests, consistent with the Department's policy, based on interbranch comity and respect for the legislative functions of individual Members, to give due weight and sympathetic consideration to all requests from Members.⁹ Your January 17 requests—made now in your position as Chairman—initiate the constitutionally mandated accommodation process. Under this process, the Legislative and Executive Branches have a constitutional obligation to negotiate in good faith to meet the informational needs of Congress while protecting the institutional interests of the Executive Branch. We look forward to beginning this process in response to your January 17 letters. We believe that good-faith negotiations will enable us to meet the Committee's needs while protecting the Department's institutional interests. We are available to engage in staff-level meetings to determine which information requests incorporated into your recent letters reflect the Committee's current priorities in light of prior Department responses and disclosures.

Finally, the Department is committed to protecting the rights of whistleblowers (i.e., employees or applicants for employment who have made a protected disclosure), and to complying with both the letter and spirit of the Whistleblower Protection Act, 5 U.S.C. § 2302(b)(8). Nothing in the foregoing is intended to impact the requirements, obligations, rights, sanctions, and liabilities created by controlling executive orders and statutory provisions.

We hope this information is helpful, and we look forward to a productive relationship. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Carlos Felipe Uriarte
Assistant Attorney General

⁹ See, e.g., Letter from Megan A. Bennett, ATF, to Rep. Jordan (Jan. 2, 2023); Letter from Assistant Attorney General Carlos Felipe Uriarte to Reps. Jordan and Johnson (Dec. 6, 2022); Letter from Joshua R. Lipman, DEA, to Reps. Jordan and Fitzgerald (Nov. 29, 2022); Letter from Assistant Attorney General Carlos Felipe Uriarte to Rep. Jordan (Sept. 1, 2022); Letter from Jill C. Tyson, FBI, to Rep. Jordan (Oct. 21, 2022); Letter from Acting Assistant Attorney General Peter S. Hyun to Rep. Jordan (July 27, 2022); Letter from Jill C. Tyson, FBI, to Reps. Jordan and Turner (July 26, 2022); Letter from Jill C. Tyson, FBI, to Rep. Jordan (Jan. 28, 2022); Letter from Acting Assistant Attorney General Peter S. Hyun to Rep. Jordan (Dec. 22, 2021).

The Honorable Jim Jordan
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cc:

The Honorable Jerrold L. Nadler
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515