



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

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

Dear Chairman Jordan and Chairman Comer:

This responds to the letter from the House Committee on the Judiciary (Judiciary Committee) and the Committee on Oversight and Accountability (Oversight Committee) to the Department of Justice (Department), dated March 25, 2024, regarding Special Counsel Robert K. Hur's investigation of matters related to classified documents or other records discovered at the Penn Biden Center for Diplomacy and Global Engagement and the Wilmington, Delaware, private residence of President Joseph R. Biden, Jr. This letter supplements the Department's March 12, March 7, and February 16, 2024, responses to your related letters sent on March 9, February 27, and February 12, 2024. As a further accommodation, enclosed is the transcript of Mr. Hur's interview with Mark Zwonitzer that the Committees requested.

With the production accompanying this letter, the Department has now responded to each of the four items in the Committees' February 27 subpoenas. The Department understands that our productions on each of the four subpoena items have met or exceeded the Committees' stated informational needs, including as explained in the letter accompanying your subpoena. Our efforts at cooperation prove that we are, and continue to be, willing to do our part to show the American people that the officials who serve them can work together productively in the public interest while avoiding unnecessary conflict.

Yet the Committees have responded with escalation and threats of criminal contempt. The Committees' reaction is difficult to explain in terms of any lack of information or frustration of any informational or investigative imperative, given the Department's actual conduct. We are therefore concerned that the Committees are disappointed not because you didn't receive information, but because you did. We urge the Committees to avoid conflict rather than seek it. It

is not too late for the Committees to choose a different path, to take an offramp towards the “spirit of dynamic compromise” that the Constitution requires of us both.¹

At every step of the way, the Department has worked diligently to meet the Committees’ needs and to fulfill the Attorney General’s commitment to transparency. Notably, the Department produced Special Counsel Hur’s report to Congress so quickly that the Committees did not even have to ask for it. There were no additional redactions for the Committees to demand that the Department lift. And there was no dispute between the Department or the Committees over whether Mr. Hur would testify—he readily agreed, as did the Department. Moreover, our review and release of documents has been rapid—including producing the transcript of the Special Counsel’s interview of the President, a truly extraordinary accommodation.²

The Committees have received an extraordinary amount of information—and quickly. Just two days after Mr. Hur submitted a confidential report explaining his prosecution and declination decisions to the Attorney General, the Attorney General transmitted that report to Congress and released it to the public. Mr. Hur’s report provided the Committee and the public with a large volume of information about his investigation, including about the evidence he obtained and his decision-making. Special Counsel Hur himself appeared on March 12, 2024, for a hearing before the Judiciary Committee, which was attended by the Chair and Ranking Member of the Oversight Committee, and he answered questions for more than five hours.

Indeed, by the Committees’ own measure, the Department has met your stated informational needs. The Department has produced the two classified documents you requested, the transcripts of the Special Counsel Office interviews of the President and of Mark Zwonitzer that you requested, and the correspondence regarding the Special Counsel’s report that you requested.³ The Committees most thoroughly expressed those needs in the Committees’ February 27 letter accompanying the subpoenas.⁴ There, the Committees asserted that “the documents

¹ *United States v. AT&T Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977).

² Your March 25, 2024, letter suggests the Department may have “misled the Committees about the timing of its completion of [the interagency review process of the President’s transcripts].” The Department did no such thing. The Department sent the transcript to the Committees at 7:43 AM on March 12, 2024, less than an hour after that process concluded.

³ The classified documents were identified as “A9” and “A10” in Appendix A of Mr. Hur’s report. As stated in Mr. Hur’s report, Document A9 is a December 2015 “call sheet setting forth the purpose of a call between the Ukrainian Prime Minister and Mr. Biden and talking points,” and document A10 “documents the substance of that call in the format of a non-verbatim transcript.” Mr. Hur’s report stated that “no jury could reasonably find that the substance of the call between Mr. Biden and the Ukrainian Prime Minister was national defense information. The two exchanged pleasantries and the Prime Minister heaped praise upon Mr. Biden for his December 9, 2015 speech to Ukraine’s parliament. They did not engage in a substantive policy discussion.” Special Counsel Robert K. Hur, U.S. Dep’t of Just., *Report on the Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph R. Biden, Jr.*, 310, 311 (Feb. 2024). The U.S. Embassy in Kiev provided a contemporaneous public summary of this call. U.S. Embassy in Ukraine, Readout of the Vice President’s Call with Prime Minister Arseniy Yatsenyuk (Dec. 11, 2015), ua.usembassy.gov/readout-vice-presidents-call-prime-minister-arseniy-yatsenyuk/.

⁴ The Committees’ February 12, March 9, and March 25, 2024, letters are largely silent regarding the reasons the Committees believe they need the information they requested.

requested are directly relevant to both the impeachment inquiry and the Judiciary Committee’s legislative oversight of the Department.” According to the Committees, that means:

- The Committees indicated you are “concerned that President Biden may have retained sensitive documents related to specific countries involving his family’s foreign business dealings.”⁵
- The Committees also sought to “understand whether the White House or President Biden’s personal attorneys placed any limitations or scoping restrictions during the interviews with Special Counsel Hur or Mr. Mark Zwonitzer precluding or addressing any potential statements directly linking President Biden to troublesome foreign payments.”⁶
- The Committees also cite the House of Representatives’ impeachment resolution, H. Res. 918, and a September 2023 memorandum incorporated into the resolution by reference. Similar to the rationales asserted in the Committees’ February 27 letter, the stated scope for the impeachment inquiry was to address questions related to whether President Biden took official actions or provided access to himself or his office “in exchange for payments to his family or him,” or “obstructed the investigations into his son, Hunter Biden.”⁷

The Committees have received the information you requested. That information may not have substantiated the concerns the Committees articulated, but it does appear to help resolve them and your inquiry.

Although the Committees have pointed out, correctly, that the Constitution implicitly grants Congress “broad” and “indispensable” authority to seek information when motivated by a legitimate investigative purpose,⁸ neither branch has any constitutionally-based authority to seek conflict for conflict’s sake.⁹ To the contrary, the Constitution “contemplates that practice will integrate the dispersed powers” between the branches “into a *workable government*,”¹⁰ and mandates that we both seek “optimal accommodation” of each other’s needs.¹¹ The Department is concerned that the Committees’ particular focus on continuing to demand information that is cumulative of information we already gave you—what the President and Mr. Hur’s team said in the interview—indicates that the Committees’ interests may not be in receiving information in service of legitimate oversight or investigatory functions, but to serve political purposes that should have no role in the treatment of law enforcement files. The Department notes the contrast

⁵ Letter from Hon. Jim Jordan & Hon. James Comer to Attorney General Garland, Feb. 27, 2024.

⁶ *Id.*

⁷ Memorandum from Hon. James Comer, Hon. Jim Jordan, Chairman & Hon. Jason Smith, *Impeachment Inquiry* (Sept. 27, 2023).

⁸ *Watkins v. United States*, 354 U.S.178, at 187, 215 (1957).

⁹ *Cf. United States v. Nixon*, 418 U.S. 683, 691-92 (1974) (emphasizing the importance of avoiding “unnecessary occasion for constitutional confrontation between two branches of the Government”).

¹⁰ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring) (emphasis added).

¹¹ *AT&T Co.*, 567 F.2d at 121, 127.

between the Committees' escalatory threats of contempt over audio files and the Committees' seemingly low need for them, at least for the purposes that would traditionally support a congressional subpoena to the Executive Branch. This contrast is particularly striking in light of information that we have already produced to you.¹²

Even assuming the Committees did have a remaining investigative purpose behind their request for the audio files that has not been rebutted by the information produced so far—and they has not identified one—it is critical for the Department to understand why the Committees believe they have a remaining need for the information in these files. It appears to the Department that any information in these files that is relevant to the Committees' stated purposes is cumulative of the information already produced, including in the transcript. Indeed, the Department's disclosures in this matter, and the President's decision not to assert executive privilege over the report or his interview transcript, have already met or exceeded the cooperation provided following previous Special Counsel investigations across administrations of both parties. It is therefore particularly important for the Committees to articulate any remaining needs given the strong law enforcement sensitivities implicated in the Committee's request. The Department historically has taken great care to safeguard sensitive internal law enforcement files from disclosure—protecting the public's strong interest in the integrity of law enforcement work. As the Department has previously explained, producing sensitive law enforcement information to Congress risks seriously chilling our ability to conduct investigations and prosecutions, including securing cooperation from witnesses and targets. These concerns are longstanding across administrations.¹³

For example, after the conclusion of Special Counsel Robert S. Mueller's investigation into Russian election interference, the Department produced only summaries of only certain witness interviews, many in redacted form, and many only for review *in camera*.¹⁴ Moreover, at the conclusion of the 2008 investigation by Special Counsel Patrick Fitzgerald into the disclosure of the identity of Central Intelligence Agency officer Valerie Plame Wilson, the Department declined to produce to Congress summaries of the President's and the Vice President's interviews with the Special Counsel's Office, citing concerns for potential chilling effects such disclosure would create for future administration officials to submit to voluntary interviews in future law enforcement investigations.¹⁵

¹² Similarly, although Congress's authority to investigate to further its constitutional functions is "broad" and "indispensable," *Watkins*, 354 U.S. at 187, 215, those functions do not include "power to expose for the sake of exposure." *Id.* at 200.

¹³ See generally Letter from Robert Raben to Hon. John Linder (Jan. 27, 2000).

¹⁴ See *In re Application of the Committee on the Judiciary, U.S. House of Representatives, for an Order Authorizing the Release of Grand Jury Materials*, 1:19-GJ-00048, Supplemental Submission Regarding Accommodation Process, 2 (Oct. 8, 2019).

¹⁵ Letter from Principal Deputy Assistant Attorney General Keith B. Nelson to Hon. Henry A. Waxman (July 16, 2008) ("Moreover, the Committee's demand to obtain copies of these reports raise a serious additional separation of powers concern relating to the integrity and effectiveness of future law enforcement investigation by the Department. Were future Presidents, Vice Presidents, and senior White House staff to perceive that providing voluntary interviews in the course of Justice Department investigations would create records that would likely be made available to Congress (and then possibly disclosed publicly outside of judicial proceedings such as a trial),

Similar interests are present here, where Special Counsel Hur expressly highlighted the value of obtaining extensive cooperation from both the President and Mr. Zwonitzer. That cooperation included audio recording of their interviews. The Committees have already received the extraordinary accommodation of the transcripts, which gives you the information you say you need. To go further by producing the audio files would compound the likelihood that future prosecutors will be unable to secure this level of cooperation. They might have a harder time obtaining consent to an interview at all. It is clearly not in the public interest to render such cooperation with prosecutors and investigators less likely in the future.

The Department is willing to hear more from the Committees, but at this time your further requests appear attenuated from the Committees' stated purposes—with today's production, you now have the information you requested. Given the extraordinary executive branch confidentiality interests implicated here, a specific and adequate showing of need for any additional information, tethered to the authority under which the Committees purport to act, is critical.¹⁶ The Department will evaluate any further articulated need by the Committees in good faith and will continue to engage with the Committees to explore possible opportunities to meet your remaining informational needs while protecting sensitive law enforcement information.

As noted, today's production includes the transcripts of Mr. Zwonitzer's voluntary interviews with Special Counsel Hur, which took place on July 31, 2023, and January 4, 2024. It is not clear to the Department that the Committee has established an additional need for these transcripts that has an appropriate nexus to the concerns stated in your inquiry, particularly in light of other information we have produced to the Committees. Nonetheless, as a further accommodation and the Committees' specific request in the subpoena, and in recognition of Special Counsel Hur's specific and significant focus on Mr. Zwonitzer's interview in his report, the Department is producing the transcripts.

The information in this production provides context to Special Counsel Hur's discussions about President Biden's interactions with Mr. Zwonitzer. The decision to provide this information was made pursuant to the interagency review process, which also took into consideration protections for privacy, security, law enforcement, and Executive Branch confidentiality interests. The Department remains available to discuss any need the Committees may be able to identify for specific information that may be redacted in this or other productions regarding this matter.¹⁷ Producing this information to the Committees does not waive any protections or privileges that might otherwise apply to these documents and the information therein, or any other information or materials. The Department is producing these documents to the Committees in response to the Committees' specific requests and taking into consideration

there would be an unacceptable risk that such knowledge could adversely impact their willingness to cooperate fully and candidly in voluntary interviews.”). *See also* Assertion of Executive Privilege Concerning the Special Counsel's Interviews of the Vice President and Senior White House Staff, 32 Op. O.L.C. 7, at 13 (2008) (noting the “chilling effect that compliance with the Committee's subpoena [for the FBI record of the Vice President' interview with the Special Counsel] would have on future White House deliberations and White House cooperation with future Justice Department investigations”).

¹⁶ *See generally* House Committees' Authority to Investigate for Impeachment, 44 Op. O.L.C. ___ (Jan. 19, 2020).

¹⁷ The Department will also provide to the Committee any version of the transcripts of Mr. Zwonitzer's interviews with the Special Counsel's Office that may be released pursuant to the Freedom of Information Act.

The Honorable Jim Jordan
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Page 6

the particular facts and circumstances. It is not a public disclosure, but instead a good-faith effort to respond to the Committees' requests. To ensure an adequate opportunity to review these materials for suitability for public release, we respectfully request that the Committees not disseminate or otherwise disclose the documents or information therein without prior consultation with the Department.

We hope you find this information helpful. 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

Enclosure

cc:

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

The Honorable Jamie Raskin
Ranking Member
Committee on Oversight and Accountability
U.S. House of Representatives
Washington, DC 20515