

Congress of the United States
Washington, DC 20515

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June 27, 2018

The Honorable Rod J. Rosenstein
Deputy Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Christopher Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Deputy Attorney General Rosenstein and Director Wray:

Earlier this month, you provided important verbal assurances in response to our June 5, 2018 letter to you. In that letter, we expressed deep and ongoing concern about President Donald Trump and his legal team's persistent efforts to interfere with the Special Counsel's ongoing investigation and undermine your agencies' lawful and appropriate activities. In particular, we underscored that, if fulfilled, demands by the President's personal attorney, Rudy Giuliani, that the White House and the President's lawyers be given access to classified information and investigatory material of the utmost sensitivity – including information related to the Special Counsel's ongoing investigation that implicates the President's own campaign and his associates – would grossly violate our system of checks and balances, long-standing, well-founded, and established procedure, and fundamental norms.

You confirmed that the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) will not provide the White House or any of the President's attorneys with access to such sensitive information. You also assured that briefings and materials related to this matter would not be shared with others in Congress beyond the "Gang of 8."

Unfortunately, it appears that part of this assurance has already been breached. As of June 20, 2018, the Department has made available to a wider group of Members and staff materials directly related, and similar in kind, to the information that was supposed to be restricted to the "Gang of 8." This followed recent pressure from House and Senate Republicans on DOJ and FBI not to adhere to "Gang of 8" restrictions on access to and dissemination of information that can implicate sources and methods and/or ongoing investigations.

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The Department and Bureau's departure in this matter from longstanding policy and precedent governing your agencies' relationship with Congress risks a repeat of similar mistakes that the DOJ Office of the Inspector General recently identified in his review of the Clinton "Midyear" investigation.

In 2016, DOJ broke with past practice by making investigative files in the Clinton investigation available to Congress, while the Bureau, in the name of "maximal transparency," publicly disclosed information related to the investigation at key junctures. In his June 2018 report, the DOJ Inspector General correctly criticized this sharp deviation from DOJ and FBI guidelines:

"The Department and the FBI do not practice "maximal transparency" in criminal investigations. It is not a value reflected in the regulations, policies, or customs guiding FBI actions in pending criminal investigations. To the contrary, the guidance to agents and prosecutors is precisely the opposite—no transparency except in rare and exceptional circumstances due to the potential harm to both the investigation and to the reputation of anyone under investigation."¹

This harmful cycle is now repeating itself with respect to the criminal and counterintelligence investigation into Russia's 2016 election interference and any links and/or coordination between the Russian government and individuals associated with the campaign of President Trump. The President's congressional allies are applying growing pressure on your agencies, in line with the President's improper demand for "total transparency,"² to disclose sensitive information and material that is not usually shared with Congress and that relate directly to the ongoing investigation into President Trump, his own campaign, and his associates.

Unfortunately, DOJ and FBI are increasingly bowing to this pressure, despite the corrosive implications. Unlike the Clinton investigation, your agencies are disclosing sensitive material to Congress even though the Russia investigation is ongoing under the leadership of the Special Counsel and your oversight. And given the pending nature of the Special Counsel's investigation, these persistent and unrelenting document requests are not for legitimate oversight purposes. Rather, time and again, sensitive information shared with Congress has been selectively and misleadingly seeded into the public domain to advance the President and his legal team's strategy of undermining public trust in DOJ and the FBI and attacking the legitimacy of the Special Counsel and his ongoing investigation. Every such disclosure to Congress, moreover, has and will continue to result in demands for more information about the ongoing investigation, which the Department and the Bureau will be unable to satisfy without further contravening its own policies and norms.

¹ U.S. Department of Justice, Office of the Inspector General, "A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election," June 2018, p. 373.

² Jordan Fabian, "Trump Demands 'Total Transparency' from Rosenstein, FBI on Russia Documents," *The Hill*, May 23, 2018.

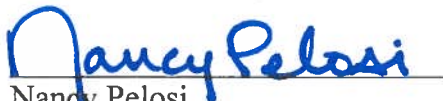
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With every disclosure, DOJ and FBI are reinforcing a precedent it will have to uphold, whether the Congress is in Republican or Democratic hands, of providing materials in pending or closed cases to the legislative branch upon request.

As the attacks on the Special Counsel intensify, it is imperative that you withstand pressure on DOJ and FBI to violate established procedures and norms. Your role in preserving the integrity of the Special Counsel's investigation and, most importantly, our justice system has become even more vital.


We would appreciate your written reply and your confirmation of this understanding.

Sincerely,


Nancy Pelosi
Democratic Leader
U.S. House of Representatives


Charles E. Schumer
Democratic Leader
U.S. Senate


Adam B. Schiff
Ranking Member
U.S. House of Representatives
Permanent Select Committee on Intelligence


Mark R. Warner
Vice Chairman
U.S. Senate
Select Committee on Intelligence