



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:

This responds to your letter to the Federal Bureau of Investigation (FBI) dated July 13, 2023, as well as your letters to the Department of Justice (Department), dated October 31, 2023, and November 28, 2023, regarding the Department's policies and procedures governing matters involving Members of Congress and congressional staff.

The Department of Justice is guided by principles of federal prosecution to ensure that federal prosecutors are even-handed in the fair and faithful execution of the law, while scrupulously protective of the rights of individuals involved in criminal investigations.¹ The Department has a duty to ensure that federal laws are faithfully enforced, including against those vested with the public trust. At the same time, the Department has an obligation to honor the protections under Article I of the Constitution that apply to investigations and prosecutions involving Members of Congress or congressional staff. Such cases must be handled with uniformity and consistency. The Department's commitment to these principles is reflected in the significant steps it has taken since 2021 to enhance its policies and procedures governing such matters and to ensure compliance with them.

Steps to Review and Enhance Policies & Procedures

In 2021, following reports that the Department had sought information related to Members of Congress and congressional staff back in 2017, the Department took several significant steps to review and enhance its relevant policies and procedures:

- First, in June 2021, the Attorney General directed the matter be referred to the Inspector General for a thorough and independent investigation. That investigation remains

¹ See Justice Manual§ 9.27.001 (The principles of federal prosecution “ensur[e] the fair and effective exercise of prosecutorial discretion and responsibility by attorneys for the government, and promot[e] confidence on the part of the public and individual defendants that important prosecutorial decisions will be made rationally and objectively on the merits of each case”), *available at*: <https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution>.

ongoing.²

- Second, and concurrently, the Attorney General directed the Deputy Attorney General to evaluate and strengthen the Department's existing policies and procedures for obtaining records of the Legislative Branch.³
- Third, in 2022, the Deputy Attorney General clarified and supplemented the policies and procedures governing the use of protective orders pursuant to 18 U.S.C. § 2705(b) of the Stored Communications Act.⁴ The Justice Manual has been updated to reflect these changes.⁵
- Finally, last month the Deputy Attorney General issued a memorandum announcing new policies governing investigative steps involving Members of Congress and congressional staff, as described below.⁶ The Department has updated the Justice Manual to reflect these changes.⁷

The new policies and procedures issued last month enhance and expand the levels of consultation and approvals required for investigative steps involving Members of Congress and congressional staff. Previously, the Justice Manual generally required consultation with the Public Integrity Section (PIN) of the Criminal Division on such matters. The new policies and procedures require additional consultations and approvals, as set forth in the updated provisions of the Justice Manual. This letter follows the Department's outreach to the Committee on November 8, 2023, to alert you of these changes.

Importantly, in order to avoid delay, the new policies do not require advance consultation or approval in circumstances where Members of Congress or congressional staff are crime victims, such as cases involving threats against Members or staff. In these types of matters, prosecutors should treat Members or staff member as victims and follow the component's or office's regular practices and procedures pursuant to the Attorney General Guidelines for Victim and Witness Assistance.⁸

² Office of the Inspector General, Ongoing Work (listing Review of the Department of Justice's Use of Subpoenas and Other Legal Authorities to Obtain Communication Records of Members of Congress and Affiliated Persons, and the News Media), last accessed Nov. 12, 2023, *available at*: <https://oig.justice.gov/ongoing-work>.

³ Statement of the Attorney General (June 14, 2021), *available at*: <https://www.justice.gov/opa/pr/statement-attorney-general-merrick-b-garland>.

⁴ Supplemental Policy Regarding Applications for Protective Orders Pursuant to 18 U.S.C. § 2705(b) (May 27, 2022), *available at*: https://www.justice.gov/d9/pages/attachments/2022/05/31/section_2705b_supplemental_policy_-_dag_memo_-_05.27.22_005.pdf.

⁵ Justice Manual § 9-13.700 - Applications for Protective Orders Pursuant to 18 U.S.C. § 2705(b), *available at* <https://www.justice.gov/jm/jm-9-13000-obtaining-evidence#9-13.700>.

⁶ Memorandum from the Deputy Attorney General: Policies and Procedures in Criminal Investigations Involving Members of Congress and Staff (Nov. 7, 2023), *available at* <https://www.justice.gov/media/1323861/dl?inline>.

⁷ Justice Manual § 9-85.110 Investigations Involving Members of Congress, *available at* <https://www.justice.gov/jm/jm-9-85000-protection-government-integrity#9-85.110>.

⁸ The Attorney General Guidelines for Victim and Witness Assistance (effective March 31, 2023), *available at*: <https://www.justice.gov/ag/page/file/1546086/download>.

In addition to the changes to policies for investigations and prosecutions involving Members of Congress and congressional staff, the Department has updated its policies regarding investigations involving the news media. In 2021, the Attorney General issued a memorandum adopting new policies for the issuance of compulsory process to or regarding members of the news media acting within the scope of news-gathering activities. A comprehensive set of policies was formally codified into federal regulations in 2022, recognizing the crucial role that a free and independent press plays in our democracy.⁹

Criminal Conviction Regarding Classified Information Leaks

The Committee's letters reference public reports describing Department actions from 2017—well before the Department's updated policies, referenced above, were in place.

The 2017 actions referenced in your October 31 letter relate to an investigation into the unauthorized disclosure of classified information in a national media publication. As described in public filings and in previous communications to Congress, the investigation was initiated after a referral for criminal investigation was made to the National Security Division by a member of the U.S. Intelligence Community. At the outset of the investigation, it was determined that a limited number of individuals had access to the classified information. As those individuals included people in both the Executive and Legislative Branches, investigative steps were taken that implicated both Executive Branch and congressional personnel. During the investigation, the Department became aware of security concerns regarding a Senate Select Committee on Intelligence (SSCI) staff member who was a subject of the investigation. The Department alerted the SSCI Chair and Vice Chair and Senate Counsel of the investigation in December 2017. The investigation also sought specific Speech or Debate protected material for use in the Department's prosecution of the SSCI staff member, and the Senate publicly and unanimously voted to provide that information for this investigation on or about June 6, 2018. *See* 164 Congressional Record 93, S. Res. 536 (June 6, 2018) (authorizing SSCI to provide the DOJ "records sought in connection with a pending investigation arising out of allegations of the unauthorized disclosure of information").

The investigation resulted in the 2018 indictment and guilty plea of James Wolfe, who served as the Director of Security for SSCI until December 2017.¹⁰ For your reference, the enclosed Indictment and Statement of Offense, which were publicly filed in the U.S. District Court for the District of Columbia, provide additional details. The specific 2017 legal process described in recent media reports and the Committee's October 31, 2023, letter relate to the Department seeking non-content subscriber information from an electronic service provider pursuant to a lawful court authorization. The recipient of the legal process was notified in 2021 that the recipient was free to notify affected subscribers.

⁹ Final Rule: Policy Regarding Obtaining Information From or Records of Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media (Oct. 26, 2022), *available at*: https://www.justice.gov/d9/pages/attachments/2022/10/26/ag_order_5524-2022_media_policy_20221026.pdf.

¹⁰ *See* Former U.S. Senate Employee Sentenced to Prison Term on False Statements Charge (Dec. 20, 2018), *available at*: <https://www.justice.gov/usao-dc/pr/former-us-senate-employee-sentenced-prison-term-false-statements-charge#:~:text=Wolfe%20pled%20guilty%20on%20Oct,false%20statements%20counts%20at%20sentencing.>

As noted above, in connection with the June 2021 referral from the Attorney General, the Office of the Inspector General (OIG) is conducting a review of “DOJ’s use of subpoenas and other legal authorities to obtain communication records of Members of Congress and affiliated persons, and the news media in connection with recent investigations of alleged unauthorized disclosures of information to the media by government officials.”¹¹ According to OIG, the review “will examine the Department’s compliance with applicable DOJ policies and procedures, and whether any such uses, or the investigations, were based upon improper considerations.”

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We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

CARLOS
URIARTE

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CARLOS URIARTE
Date: 2023.12.04
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Carlos Felipe Uriarte
Assistant Attorney General

Enclosures

cc:

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

¹¹ Office of the Inspector General, Ongoing Work (listing Review of the Department of Justice’s Use of Subpoenas and Other Legal Authorities to Obtain Communication Records of Members of Congress and Affiliated Persons, and the News Media), last accessed Nov. 12, 2023, *available at*: <https://oig.justice.gov/ongoing-work>.