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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL
JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR

August 17, 2020

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535

Dear Director Wray:

I am writing because I am deeply concerned that by violating its own policies the FBI is again succumbing to political pressure from Republicans to damage the Democratic presidential candidate. On Friday, August 7, the Federal Bureau of Investigation transmitted a letter addressed to Senate Finance Committee Chairman Charles Grassley and Senate Homeland Security and Governmental Affairs Chairman Ron Johnson. The letter, from the FBI's Assistant Director for the Office of Congressional Affairs, Jill C. Tyson, provides an "update," regarding "priority requests to the Federal Bureau of Investigations (FBI) for information related to the Crossfire Hurricane investigation." In the update, Tyson notes that despite "extraordinary and unique circumstances" the FBI has provided Committee majority with requested information including various additional documents and with opportunities for *in camera* review of other additional documents. Based on this letter, it is evident that not only has most of the requested Crossfire Hurricane information that has been provided to the Committees not been provided to the Ranking Members and their staffs, but Democrats were not informed of its existence. Furthermore, while the August 7th letter was transmitted via e-mail to the majority staffs of the Senate Homeland Security and Governmental Affairs Committee and the Senate Finance Committee, copying the HSGAC Democratic Chief Counsel, it was not transmitted to my Finance minority staff.

I am particularly concerned about the following:

- On July 16, 2020, according to the letter, the FBI provided classified documents in response to the Committees' letter of May 19, 2020 and related requests. The minority was not informed of or provided access to these documents until after staff raised concerns this week – nearly a month after the documents were provided to majority staff.
- On July 31, 2020, according to the letter, the FBI made documents available to the majority Committee staffs, for *in camera* review, relating to then-FBI Director Comey's

briefing of then-President elect Trump. The minority was not informed of or provided an opportunity to participate in this review.

- On June 29 and July 31, 2020, according to the letter, the FBI made documents available to the majority Committee staffs, for *in camera* review, relating to defensive and transition briefings provided to the Trump campaign and transition teams; and on July 23, 2020, the FBI and the Office of the Director of National Intelligence provided the Committees with relevant documents. The minority was not informed of or provided an opportunity to participate in the *in camera* reviews and were not informed of or provided access to the documents provided on July 23.
- On July 7, 2020, according to the letter, the FBI made documents available to the majority Committee staffs, for *in camera* review, relating to Crossfire Hurricane case file indices. The minority was not informed of or provided an opportunity to participate in this review.

In addition, in her August 7 letter Assistant Director Tyson notes that the FBI is responding to “priority requests” from the Committee. It further notes that the FBI “surged resources in order to expedite the processing” of the Committees’ request for access to Trump transition records and devices. Finally, it notes that the FBI’s response to the requests by Chairmen Grassley and Johnson for this Crossfire Hurricane information reflect “extraordinary and unique circumstances, and should not be construed as precedent setting in any regard.” In an August 10, 2020 call with HSGAC and Senate Finance minority staffs, FBI Congressional Affairs staff offered that the extraordinary and unique circumstances might refer to the fact that highly sensitive documents, which generally have not been provided to Congress before, are being provided not only to Congress but to Committees with such tangential jurisdiction over the matters.

These circumstances are deeply troubling. Providing documents to Committee majorities without disclosure to the minority is unacceptable. Providing access to documents for review by Republican staffers without notice to, or inclusion of, Democratic staff is also unacceptable. FBI Congressional Affairs staff described these circumstances as an oversight that will be remedied going forward. While I appreciate the proposed resolution to the immediate problem, that does not excuse the fact that for weeks the FBI repeatedly has provided documents, produced under “extraordinary and unique circumstances,” to Republicans at the exclusion of their Democratic counterparts.

Furthermore, I find characterization of the “extraordinary and unique circumstances” of this investigation that require a “surge” of effort to be similarly troubling. In an August 10, 2020 open letter, Chairman Johnson described the investigation into Operation Crossfire Hurricane in nakedly partisan terms. He failed to outline a valid legislative purpose for the investigation, focusing on what he believes is a nefarious plot by civil servants to undermine President Trump. In the August 10 call with minority staffs, FBI Congressional Affairs staff declined to discuss whether or not the FBI or the Department of Justice had formally determined that the Chairmen had a valid legislative purpose that

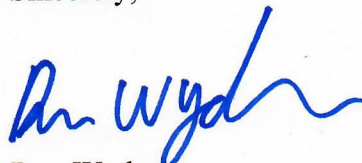
justified the FBI's unprecedented compliance with the requests. Nonetheless, the representatives of the FBI stated that providing this sort of highly sensitive information to Committees without clear jurisdiction over such matters was indeed extraordinary and would not be repeated in the future.

In light of these concerns, I appreciate your prompt response to the following questions:

1. Please describe why I and the minority staffs of the Homeland Security and Government Affairs Committee and Senate Finance Committee were not included in document productions and *in camera* reviews provided to Committee Republicans?
2. Did you or anyone on your staff direct FBI officials to exclude the minority staffs from access to the documents or *in camera* reviews?
3. In addition to the items outlined in Assistant Director Tyson's August 7th letter, have any other documents provided by the FBI to HSGAC or Senate Finance majority staffs in this matter been withheld from Committee minority staffs?
4. Have Democratic committee staff, whether Senate minority staff or House majority staff, been excluded from access to documents or *in camera* reviews related to productions on this matter?
5. What steps is the FBI taking to ensure complete and equitable access of all documents provided to Congress to both sides of the Committees going forward?
6. What is your understanding of Assistant Director Tyson's reference to "extraordinary and unique circumstances" that require a "surge" of effort by the FBI?
7. Please itemize the types of documents being provided to the Committees at the request of the Republican Chairmen that "should not be construed as precedent setting in any regard."
8. Trump Administration officials have regularly evaluated the legislative purpose of Congressional requests and, frequently in the case of requests by Democrats, concluded that there is no valid legislative purpose and refused to provide requested documents. Please identify the valid legislative purpose, as you understand it, of (1) the Homeland Security and Governmental Affairs Committee and (2) the Senate Finance Committee in pursuing the Crossfire Hurricane investigation. Do you believe the FBI's conclusion that HSGAC and Senate Finance have a valid legislative purpose justifying these investigations should be "precedent setting in any regard"?

I expect these questions to be responded to with the same urgency as the Republican Chairmen's requests for information, but no later than August 25, 2020.

Sincerely,



Ron Wyden
Ranking Member