



United States Department of State

Washington, D.C. 20520

AUG 07 2020

The Honorable  
Eliot E. Engel, Chairman  
Committee on Foreign Affairs  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

By letters of May 14 and May 21, 2020, you requested the Department provide you with copies of all documents produced to the Senate Finance Committee (SFC) and the Senate Homeland Security and Government Affairs Committee (HSGAC) in response to a request from Chairmen Grassley and Johnson of SFC and HSGAC, respectively, in the course of an investigation those committees are conducting jointly. The Department, by letter of June 3, 2020, explained the reasons it was not in a position to provide the House Foreign Affairs Committee (HFAC) with the productions you requested. As set out below, your letter and subpoena of July 31, 2020, provide no basis for the Department to change its position.

The Department's view is that the HSGAC-SFC investigation is a duly instituted investigation of two standing committees of the U.S. Senate, and, as such, those committees are authorized by the Senate to exercise such oversight authority as exists in the Senate by virtue of the Constitution. The Department has worked to accommodate the legitimate information needs of those committees by providing Department records and witnesses in response to specific requests by their Chairmen.

In making your request to the Department, you have not indicated that HFAC has opened an investigation into the same matters being investigated by the two Senate committees, or indeed any investigation into any other matters for which these documents would be pertinent. You have relied instead on the assertion that "[h]onoring [your] request would be in keeping with [a] longstanding State Department practice" of providing HFAC with "courtesy copies" of documents provided to other congressional committees. That is not correct. There is no such State Department or Executive Branch practice. What is the practice of the Executive Branch and this Department is to engage in the constitutionally-mandated accommodation process, which requires that each branch work to accommodate each other's articulated legitimate needs and interests.

Just last month, the Supreme Court reiterated that a "congressional subpoena is valid only if it is related to, and in furtherance of, a legitimate task of the Congress. The subpoena must serve a valid legislative purpose; it must concern a subject on which legislation could be had." *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031-32 (2020) (internal quotation marks and citations omitted). The Court added that "[t]he more detailed and substantial the evidence of Congress's

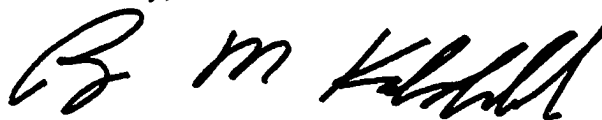
legislative purpose, the better.” *Id.* at 2036. The Committee’s July 31 press release states that it is investigating the Secretary’s “apparent use of Department of State resources to advance a political smear of former Vice President Joe Biden.” That suggests that the Committee’s purpose is a political one, not a legislative one. Nor do any of the Committee’s letters set forth any “valid legislative purpose,” much less any “detailed and substantial evidence of Congress’s legislative purpose.” The Department is unable to consider whether any accommodation will be possible in response to the Committee’s document requests, unless the Committee explains in detail its legislative purpose. Simply desiring to learn what the Department has provided to other committees of Congress with respect to their own valid legislative purpose does not by itself constitute a valid legislative purpose for HFAC.

The Department notes that your subpoena also purports to compel production of records never previously requested by the Committee in any manner: “Since January 3, 2019, any and all documents referring, relating to or regarding the actual, requested, or potential production of documents to Congress.” Such an attempt at compulsion is defectively premature because it bypasses the constitutionally required accommodation process. In addition, it appears on its face to violate the Separation of Powers doctrine because it seeks to review the Executive’s constitutional function of responding to Congressional oversight requests, and it demands to receive internal deliberative communications about responding to Congress that are subject to heightened Executive Branch confidentiality interests.

Finally, considering that your request involves two Senate Committees’ preexisting and ongoing investigation, the Department respectfully requests that you consult those Committees as to any comity you are seeking with them to gain access to Department records provided to, and maintained by, those Committees on a mutually-confidential basis as part of their investigation. The Department is mindful of not fostering any misperception as to its involvement in anything that could be viewed as interference in an ongoing investigation of the U.S. Senate.

As you know, the Department has provided your Committee with tens of thousands of pages of documents in response to your Constitutionally-formulated request concerning alleged prohibited personnel practices – a request to which the Department continues to produce documents to the Committee. We look forward to reviewing your requests and working with the Committee to accommodate any legitimate legislative information needs that are presented.

Sincerely,

A handwritten signature in black ink, appearing to read "R M Kaldahl". The signature is written in a cursive, slightly slanted style.

Ryan M. Kaldahl  
Acting Assistant Secretary of State  
Bureau of Legislative Affairs

Cc: The Honorable  
Michael McCaul, Ranking Member  
House Foreign Affairs Committee

The Honorable  
Charles E. Grassley, Chairman  
Senate Finance Committee

The Honorable  
Ron Wyden, Ranking Member  
Senate Finance Committee

The Honorable  
Ron Johnson, Chairman  
Senate Homeland Security and Government Affairs Committee

The Honorable  
Gary Peters, Ranking Member  
Senate Homeland Security and Government Affairs Committee