

United States Senate
WASHINGTON, DC 20510

November 2, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice

Dear Inspector General Horowitz:

The Department of Justice (DOJ) in 2017 subpoenaed the personal phone and email records connected to Republican and Democratic congressional staff, including some of mine.¹ This adds to a growing list of staffers and members of Congress who have been notified by Google or Apple that the DOJ seized their data.² The congressional staff targeted by DOJ directly supported constitutional duties in overseeing and rooting out waste, fraud, abuse, and misconduct at the DOJ at the direction of Members of Congress. This raises the chilling possibility that DOJ may have attempted to monitor and interfere with congressional oversight, which if true is a serious assault on the separation of powers that cannot go unanswered. We need to know in each instance who authorized this intrusion, why it was done, and what protections are in place—or may need to be put in place—to ensure this constitutional assault doesn't happen again.

As you may know, a former senior member of my Judiciary Committee staff was recently notified, six years after the fact, that DOJ served legal process requiring Google to produce records related to a Google Voice telephone number connected to his family's telephones.³ The timing of this subpoena was highly suspect. It was issued on September 12, 2017. The Senate Judiciary Committee at that time was investigating the misguided and now-discredited Crossfire Hurricane investigation, including seeking answers from DOJ about the probe of President Trump's National Security Advisor, Michael Flynn, and the leak of information about a phone call General Flynn had with Russian Ambassador Sergey Kislyak.⁴ Leaks of such classified information cast suspicion primarily on executive branch officials, since only they initially have direct access to this information. It is therefore important that in your investigation of this

¹ The Wall Street Journal Editorial Board, *When the Justice Department Spied on Congress: How officials snooped on staffers investigating Justice's press leaks and investigations* (October 26, 2023), <https://www.wsj.com/articles/departments-of-justice-congress-spying-jason-foster-empower-oversight-f2d6235e>.

² *Id.*

³ Letter from Tristan Leavitt, President, Empower Oversight, to Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Public Affairs, the U.S. Attorney's Office for the District of Columbia, and the Executive Office of U.S. Attorneys (October 24, 2023), <https://empowr.us/wp-content/uploads/2023/10/2023-10-24-TL-to-DOJ-re-GJ-subpoenas-Senate-Staffers-Final-w-Exh-A.pdf>.

⁴ The Wall Street Journal Editorial Board, *supra* n. 1.

matter, you consider whether DOJ sought similar records from the executive branch officials who had access to this information. Otherwise, it should be clear that this was a fishing expedition, seeking information from Congress without a sufficient predicate. And even if such records were requested for executive branch personnel, a lack of sufficient predicate to additionally request records of congressional staff would raise the same concern.

It's vital that your investigation take a careful look at the elephant in the room: the intrusion into the prerogatives and autonomy of the legislative branch and what appears to be a covert blow struck against constitutional separation of powers principles. Countless times I've made oversight requests to the DOJ or other executive departments, only to be told these departments can't provide me the information I need because it would reveal the "deliberative process" of the executive branch. And yet, the Department apparently thought it appropriate for DOJ to intrude in the deliberative processes of Congress by demanding records of staff who were conducting DOJ oversight. Not only this, but DOJ may have prevented affected staff from being notified for years, well after it should have been clear that the requests were inappropriate.⁵ For Congress to be able to freely act on behalf of the American people, members and our staff must not be subject to what amounts to spying by the entities we oversee. Those who intrude into our private deliberations and communications without the most compelling factual, legal, and constitutional justification, and without following strict protective procedures, *must* be held accountable. Anything less will only serve to encourage such Orwellian behavior and further chip away at the rule of law, and so I urge you to conduct a thorough and vigorous investigation.

You are reviewing DOJ's use of subpoenas and other legal authorities to obtain congressional information in connection with investigations into unauthorized media disclosures by government officials. Accordingly, considering the constitutional concerns raised above, I request that your office incorporate the following into its review:

1. What the predicate was for each DOJ request for information related to congressional members or staff;
2. What efforts DOJ took to prevent affected parties from being notified in a timely manner;
3. Whether other information requests were made through informal processes rather than compulsory legal process;
4. The extent to which separation of powers concerns were considered, and by whom, before DOJ requested the congressional information;
5. Whether the requests distinguished between Senate and other congressional devices and personal devices;
6. A list of DOJ officials in the approval chain for each request, including the highest-level DOJ official who approved the request;
7. What methods DOJ officials used to identify the personal and work accounts it targeted; and

⁵ Luke Barr, Alexander Mallin, and Trish Turner, *DOJ inspector general will investigate 2018 seizure of House Democrats' data*, ABC News (June 11, 2021) (noting that the DOJ secured a gag orders on a technology company to prevent targets' notification of legal process), <https://abcnews.go.com/Politics/doj-inspector-general-investigate-2018-seizure-house-democrats/story?id=78222845>.

8. Whether the Justice Manual and FBI Domestic Investigations and Operations Guide (DIOG) contain sufficient safeguards and procedures for obtaining congressional information, whether these safeguards and procedures were followed, and whether these guidelines may need to be updated in light of this intrusion into the operation of the legislative branch.

“Transparency brings accountability” is a mantra I’ve repeated throughout my congressional career, and I’ve applied it to administrations of both parties. The truth of that principle has never been more important than it is now, as we continue to try and reign in the weaponization of DOJ in an effort to restore the public’s faith in our institutions. I strongly urge you to leave no stone unturned, no name unnamed, no abuse unaddressed in this matter, so that true transparency and accountability are possible.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget