

**Responses to Senator Grassley's Written Questions for Ron Weich,
to be Assistant Attorney General for the Office of Legislative Affairs
of the United States Department of Justice.**

April 8, 2009

Timeliness of Responses to Congressional Inquiries:

Unanswered and non-responsive Congressional requests for information and questions from Senate hearings have continued to plague the Department of Justice. For example, just last month FBI Director Mueller testified that questions from FBI Oversight hearings remain outstanding despite the fact that the FBI submitted answers to those questions to the Justice Department for "clearance". Director Mueller testified that the FBI submitted answers from the March 2008 hearing to the Department in June 2008, and from the September 2008 hearing in December 2008. Notwithstanding the FBI's submissions, the Department of Justice has not provided these answers to the Committee. Further, letters often take months, if not years, to come back to Congress and even then, they are often in incomplete and unanswered form.

1. Will you pledge to work with Congress to ensure that answers to Congressional correspondence, including Committee hearing questions, and investigative document requests are answered and returned in a timely fashion?

Yes. As a longtime Senate staff member I have a great appreciation for Congress's need for timely responses from executive branch agencies. If confirmed, I look forward to working with the Senate Judiciary Committee and other Committees and intend to respond to requests in a timely fashion.

2. Will you pledge to ensure that answers are responsive and complete?

Yes. If confirmed, I will work to ensure that answers are responsive and complete.

3. If confirmed, will you clear out the backlog of outstanding requests?

Since I am not serving at the Department of Justice I am unaware of the circumstances surrounding outstanding requests, but if confirmed I will work hard to address your concerns about such requests.

4. If you are confirmed, what is your plan to reduce the immediate backlog of outstanding Congressional requests?

If confirmed, I will promptly review the systems in place and explore adjustments to improve the timeliness of the Department's responses to

Congressional requests. Specifically, I will work to expedite responses to currently outstanding requests.

5. Please describe in detail your plan to speed up the clearance process at the Department to ensure that questions, from both the Department and subordinate agencies, are answered thoroughly and delivered in a timely fashion.

Since I am not serving at the Department I am not familiar with the clearance process. If confirmed, I will promptly review that process and explore adjustments to improve the timeliness of the Department's responses to Congressional requests.

6. Will you commit to informing the Committee and individual members when you experience a delay from the Office of Management and Budget related to clearing responses for release?

If confirmed, I will keep the Committee appropriately informed about the status of responses to its requests.

7. Will you commit to informing Congress when the Department receives answers to Committee requests from subordinate agencies, such as the FBI, to ensure members understand where responses are in the chain of correspondence?

If confirmed, I will keep the Committee appropriately informed about the status of responses to its requests.

Congressional Oversight:

1. Do you believe that Congress has a constitutional duty to conduct oversight of the Executive Branch? Why or why not?

Yes. As a longtime Senate staff member I have a great appreciation for Congress' responsibility to conduct oversight of the Executive Branch. Committees of Congress need information about agency activities in order to fulfill their legislative duties. In my view, congressional oversight can enhance executive branch activities.

2. Do you believe that the Executive Branch has a constitutional duty to be forthcoming with information that Congress requests? Why or why not?

I agree that the Executive Branch has a constitutional duty to be forthcoming with information that Congress requests, subject to the constitutional and statutory responsibilities of the Executive Branch. Congress itself has limited the Department's authority to disclose certain information such as grand jury testimony, and of course no member of Congress would want the Department to

disclose information that could compromise an ongoing investigation or litigation. But in general, the Justice Department should seek to accommodate the oversight needs of Congressional committees in a manner consistent with the Department's responsibilities.

3. What, if any, impediments do you envision limiting your ability to ensure timely and accurate responses to any and all congressional requests? If citing any form of privilege, please provide updated case law citations to support any claims of privilege.

Since I am not serving at the Department I do not know what impediments, if any, may limit my ability to ensure timely and accurate responses to Congressional requests, but I will work with others in the Department to overcome any such impediments to the extent possible.

OLC Opinion on Ranking Member access to Documents and Information:

On December 5, 2001, the Office of Legal Counsel (OLC) issued a Letter Opinion to the General Counsel at the Department of the Treasury. The Letter Opinion was titled "Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members." The Opinion concludes that the Privacy Act "prohibits the disclosure of Privacy Act-protected information to the ranking minority member" of a congressional committee of jurisdiction that requests information from a Federal agency. The Opinion reached this conclusion despite the fact that the Privacy Act allows disclosures, "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee." Nowhere in the statute does it define "committee" to mean only the Chairman and not the Ranking Member.

Courts have also held views contrary to that of the Opinion. For instance, the D.C. Circuit Courts of Appeal held that members of Congress have "constitutionally recognized status entitling them to share in general congressional powers and responsibilities, many of them requiring access to executive information." *Murphy v. Dep't of the Army*, 613 F.2d 1151, 1157 (D.C. Cir. 1979). Further, the 2nd Circuit held that information sent to a congressman in his official capacity as a *member* of a subcommittee fell "squarely within the ambit of § 552a(b)(9)". *See Devine v. United States*, 202 F.3d 547, 551 (2nd Cir. 2000).

Despite the plain language and the court interpretations, this opinion is used as a shield to prevent disclosure of information to Ranking Members. It erroneously relies upon the "longstanding executive branch practice on this question," and, perhaps more surprisingly, the dicta from Congressional Research Service memorandum, to reach this conclusion. I believe this opinion is a hindrance to the American people who have a right to know what goes on in the Government.

1. Do you support the position taken by DOJ in this OLC Letter Opinion?

I am not an expert in the Privacy Act and am not familiar with the OLC opinion you have referenced. If confirmed, I will work with others in the Department to respond to all Congressional requests for information -- including requests from Ranking Members -- in a timely and respectful manner.

2. Do you believe that, as a general matter, Ranking Minority members of a Committee should be prohibited from obtaining information from an agency absent the approval of the Chairman? If so, why?

I have no personal view of the issue you have raised. If confirmed, I will work with others in the Department to respond to all Congressional requests for information -- including requests from Ranking Members -- in a timely and respectful manner.

3. In your opinion, couldn't the wording of the Privacy Act that allows disclosure "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof" be construed to allow disclosure to Ranking Members if the Administration was willing to do so? Please explain why or why not.

I am not an expert on the Privacy Act and have no personal view of the issue you have raised. If confirmed, I will work with others in the Department to respond to all Congressional requests for information -- including requests from Ranking Members -- in a timely and respectful manner.

4. Will you pledge to provide documents and information to Ranking Minority Members regardless of this interpretation?

If confirmed, I will work with others in the Department to respond to all Congressional requests for information -- including requests from Ranking Members -- in a timely and respectful manner.