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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

June 27, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

The Honorable Andrew McCabe
Acting Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20535

Dear Deputy Attorney General Rosenstein and Acting Director McCabe:

We are writing to request information regarding FISA-related actions by the FBI and the Justice Department in the course of the investigation of Russian interference in the 2016 election, including the investigations into allegations of collusion between the Trump campaign and the Russians. As explained below, we are writing to request the following related materials: all proposed FISA applications that the FBI and Justice Department submitted to the Foreign Intelligence Surveillance Court (FISC); the FISC's responses to such proposed FISA applications; all final, signed FISA applications that the FBI and the Justice Department submitted to the FISC; and the FISC's responses to the final, signed applications. Media reports and the FISC's 2016 annual report provide reason to believe that, in the course of these investigations, the FBI and Justice Department may have submitted proposed FISA applications that the FISC preliminarily evaluated and stated it would reject, which the FBI and Justice Department then modified and resubmitted. Media reports also provide reason to believe that the FBI and Justice Department may have submitted some final, signed FISA applications in these matters that the FISC rejected outright. The Committee needs all of these documents to evaluate fully the FBI's and Justice Department's actions in this situation.

Under Rule 9(a) of the Foreign Intelligence Surveillance Court's Rules of Procedure, the government provides the Court its proposed FISA applications at least seven days before filing its final, signed FISA applications.¹ This preview gives the Court the chance to assess each proposed application before actually ruling on it, and to recommend changes to the government. As noted in the *Report of the Director of the Administrative Office of the U.S. Courts on Activities of the Foreign Intelligence Surveillance Courts for 2016* ("2016 FISC Report"), "[i]n some instances, the Court examinations resulted in the government making material changes to applications and certifications;

¹ Available at: <http://www.fisc.uscourts.gov/sites/default/files/FISC%20Rules%20of%20Procedure.pdf>

for example, proffering additional facts to support a required judicial finding of probable cause or to address minimization concerns.”²

The 2016 FISC Report, which provides annual statistics about the Court’s actions in general, states that in 2016 the FISC denied nine applications or certifications, and denied in part or modified 365 orders.³ While the 2016 FISC Report provides Congress and the public this information, it does not report “any modifications made by the government to [a proposed] application or certification that it had submitted pursuant to Rule 9(a).”⁴ While we understand that this may be part of a routine FISC process, it is important for the Committee to understand fully the context of and basis for requests to the FISC related to this particular matter. We have some reason to believe these processes have been used in these investigations. For example, on January 11, 2017, the *Guardian* reported that:

[T]he FBI applied for a warrant from the foreign intelligence surveillance court (FISA) over the summer in order to monitor four members of the Trump team suspected of irregular contact with Russian officials. The FISA court turned down the application asking FBI counter-intelligence investigators to narrow its focus.⁵

The next day, the *BBC* stated that Justice Department attorneys involved in the investigation of Russian election interference submitted a FISA application to the FISC focused on two Russian banks, reporting:

Their first application, in June, was rejected outright by the judge. They returned with a more narrowly drawn order in July and were rejected again.⁶

There have been subsequent media reports claiming the FBI submitted and received approval of a FISA application in the investigation that was based on the political opposition research dossier.⁷

In order for the Committee to assess this situation, please provide the following information by no later than July 11, 2017:

1. Copies of all proposed and all final signed FISA applications submitted to the FISC relating to: Russian interference in the 2016 election; allegations of collusion between people associated with the Trump campaign and Russia; and any known Trump associates regardless of context.
2. Copies of all FISC responses to the above-mentioned applications in which the Court notified the FBI or Justice Department that it would not grant the proposed applications or recommended changes. If any such FISC responses were provided orally, rather than in

² Available at: http://www.uscourts.gov/sites/default/files/ao_foreign_int_surveillance_court_annual_report_2016_final_0.pdf

³ *Id.*

⁴ *Id.*

⁵ Julian Border, *John McCain Passes Dossier Alleging Secret Trump-Russia Contacts to FBI*, THE GUARDIAN (Jan. 11, 2017)

⁶ Paul Wood, *Trump ‘Compromising’ Claims: How and Why Did We Get Here?* BBC NEWS (Jan. 12, 2017).

⁷ Evan Perez, Shimon Prokupecz, and Manu Raju, *FBI Used Dossier Allegations to Bolster Trump-Russia Investigation*, CNN (Apr. 18, 2017).

writing, please provide copies of all FBI or Justice Department records memorializing or otherwise referencing the relevant FISC responses.

3. Copies of all FISC orders relating to the above-mentioned applications, whether denying the applications and certifications, denying the orders, modifying the orders, granting the orders, or other types of orders.

We anticipate that some of these documents may be classified, some may not, and others may contain both classified and unclassified information. Please deliver any documents containing classified information to the Office of Senate Security and provide all unclassified documents directly to the Committee. If you have any specific requests with regard to the Committee's handling of unclassified material, please raise those with us in advance.

Thank you for your prompt attention to this important matter. If you have any questions, please contact Patrick Davis of my Chairman Grassley's Committee staff at (202) 224-5225 or Lee Holmes of Chairman Graham's staff at (202) 224-5972.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary



Lindsey O. Graham
Chairman
Subcommittee on Crime and Terrorism
Committee on the Judiciary

cc: The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary

The Honorable Sheldon Whitehouse
Ranking Member
Subcommittee on Crime and Terrorism
Committee on the Judiciary