

Statement of Senator Charles E. Grassley  
Before the United States Senate  
July 19, 2017

Mr. President, on June 20, 2017 I notified the Majority Leader of my intent to object to any unanimous consent request relating to the nomination of Steven A. Engel, of the District of Columbia, to be the Assistant Attorney General for the U.S. Department of Justice Office of Legal Counsel, until he adequately responded to my questions regarding his views on the OLC's May 1, 2017 opinion entitled, "Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch."

As I have previously noted, the opinion erroneously states that individual Members of Congress are not Constitutionally authorized to conduct oversight. It creates a false distinction between oversight and what it calls "non-oversight" requests. And it relegates requests from individual Members for information from the Executive Branch to Freedom of Information Act requests. I have written a letter to the President requesting that the OLC opinion be rescinded. The Executive Branch should properly recognize that individual Members of Congress have a Constitutional role in seeking information from the Executive Branch, and should work to voluntarily accommodate those requests.

My June 12, 2017, letter to Mr. Engel asked him several questions about the opinion, including whether the opinion met the OLC's own internal standards requiring impartial analysis, whether individual Members of Congress are "authorized" to seek information from the Executive Branch, and what level of deference the Executive Branch should provide to individual Member requests.

Mr. Engel promptly responded to my letter on June 23, 2017, and to a second, June 27, 2017 follow-up letter on July 12, 2017. My letters and Mr. Engel's responses are included here, and I ask unanimous consent that they be placed in the record alongside this statement. I also met with Mr. Engel in my office on July 19, 2017 to further discuss and clarify his views on the authority of individual Members to request information from the Executive Branch. Mr. Engel's responses, both in writing and in person, indicate that he agrees each Member, whether or not a Chairman of a committee, is a Constitutional officer entitled to the respect and best efforts of the Executive Branch to respond to his or requests for information to the extent permitted by law. He also agreed: (1) that the May 1, 2017 OLC opinion on this topic failed to consider adverse legal authority, specifically *Murphy v. Dep't of the Army*, 613 F.2d 1151 (D.C. Cir. 1979), (2) that, if confirmed, he would review the opinion, and (3) consider whether a more complete analysis of the issue is necessary.

I am satisfied that Mr. Engel understands the obligation of all Members of Congress to seek Executive Branch information to carry out their Constitutional responsibilities, and the obligation of the Executive Branch to respect that function and seek comity between the Branches. Therefore I agree a vote should be scheduled on his nomination, and I wish him the very best in his new role.

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

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**United States Senate**

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
JENNIFER DUCK, *Democratic Staff Director*

June 12, 2017

**VIA ELECTRONIC TRANSMISSION**

Steven A. Engel  
Care of the Office of Legislative Affairs  
United States Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Mr. Engel:

Recently, the Committee obtained a copy of a May 1, 2017, Office of Legal Counsel (OLC) opinion entitled “Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch.” That opinion asserts that individual Members of Congress in fact do not have that authority. Specifically, the opinion states, quite remarkably, that individual Members of Congress are *not Constitutionally authorized* to request information from the Executive Branch. It further states that requests from non-Chairmen essentially are subject to the same level of deference as a request submitted from a private, unelected member of the public pursuant to the Freedom of Information Act (FOIA).

As you know, the Constitution imposes significant responsibilities on each and every Member of Congress that require them to make informed decisions and cast votes in the best interests of their constituents on a vast array of matters. Those responsibilities in many instances require that the Members have access to Executive Branch information. The OLC opinion did not entertain this and other key points and did not attempt to address the significant and dangerous implications it creates for the separation of powers, bipartisan congressional oversight, transparency in government, and accountability to the American people. Your views on this opinion, its incomplete analysis, and its highly problematic conclusions are very important for “individual Members” of the United States Senate to carefully weigh as they consider your nomination.

Thus, please respond to the following questions by June 26, 2017. Please number your answers according to their corresponding questions.

1. Are you familiar with the May 1, 2017 OLC opinion?

2. In your view, does this opinion meet the standards described in OLC guidance that require impartial analysis of competing authorities or authorities that may challenge an opinion's conclusions? If so, can you please point to the portion of the opinion which you believe fully discusses contrary authority or arguments for non-Chairmen's need for information from the Executive Branch to carry out their constitutional function?
3. Do you believe that individual Members of Congress, who are not Chairmen of committees, are "authorized" to seek information from the Executive Branch to inform their participation in the legislative powers of Congress? Do you believe they are authorized by the Constitution? Why or why not? Do you believe that they are authorized by Congress? Why or why not?
4. In your experience, what percentage of congressional requests for information are answered by the Executive Branch on a voluntary basis?
5. In your view, what is an appropriate reason for withholding information requested by an individual Member of Congress?
6. In your view, does the Executive Branch have any Constitutional responsibility to respond to requests for information from individual Members of Congress as part of a process of accommodation in order to promote comity between the branches? If not, why not?
7. Is a request from an individual, elected Member of Congress entitled to any greater weight than a FOIA request, given the Member's broad Constitutionally mandated legislative responsibilities? Why or why not?

Thank you for your cooperation in this important matter. Should you have questions, please contact DeLisa Lay of my Committee staff at (202) 224-5225. Thank you.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary

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

1900 K Street NW  
Washington, DC 20005

June 23, 2017

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Grassley:

I write in response to your June 12, 2017 letter concerning the May 1, 2017 letter opinion of the Office of Legal Counsel (“OLC”). I appreciate your interest in ensuring that Members of Congress are able to obtain the information necessary to fulfill their constitutional responsibilities, as well as your attention to ensuring that OLC opinions provide candid, independent, and principled legal advice. If I am confirmed as Assistant Attorney General, I will be committed to ensuring that OLC complies with these principles.

I provide here my responses to the seven questions in your June 12 Letter.

1. Are you familiar with the May 1, 2017 OLC opinion?

**Response:** I am not currently at the Department of Justice, but I read the May 1, 2017 opinion shortly after it was published.

2. In your view, does this opinion meet the standards described in OLC guidance that require impartial analysis of competing authorities or authorities that may challenge an opinion’s conclusions? If so, can you please point to the portion of the opinion which you believe fully discusses contrary authority or arguments for non-Chairmen’s need for information from the Executive Branch to carry out their constitutional function?

**Response:** Because I am not currently at the Department of Justice, I have not had occasion to review all of the underlying precedents that may bear upon the May 1, 2017 letter opinion. I agree that an OLC opinion should candidly and fairly address all relevant legal sources, and there are judgment calls that must be made in determining what should be included, particularly with respect to letter opinions (which tend to be shorter and less formal). With respect to the May 1, 2017 opinion, I do agree that *Murphy v. Dep’t of the Army*, 613 F.2d 1151 (D.C. Cir. 1979), which was cited in your June 7, 2017 letter to the President, may bear upon the issues addressed in the May 1, 2017 opinion. I understand that in 1980, and again in 1984, the Department of Justice advised that, with respect to FOIA practices, the *Murphy* decision did not eliminate the legal distinction between requests made by Committee Chairmen and those made by

individual Members of Congress.<sup>1</sup> In my opinion, it would have been useful for OLC's letter opinion to address the Department's current understanding of the *Murphy* decision in the context of congressional oversight.

3. Do you believe that individual Members of Congress, who are not Chairmen of committees, are "authorized" to seek information from the Executive Branch to inform their participation in the legislative powers of Congress? Do you believe they are authorized by the Constitution? Why or why not? Do you believe that they are authorized by Congress? Why or why not?

**Response:** The D.C. Circuit has recognized that each member of Congress has a "constitutionally recognized status" that includes a legitimate need "to request such information from the executive agencies as will enable him to carry out the responsibilities of a legislator." *Murphy*, 613 F.2d at 1157. I believe that individual Members are "authorized" to seek such information in their roles as constitutional officers. The question whether Congress has separately authorized such requests would turn upon the rules of each House of Congress. In my view, the Executive Branch should seek to satisfy the legislative interests reflected in the information requests of individual Members, to the extent practicable and consistent with the confidentiality obligations of the Executive Branch.

4. In your experience, what percentage of congressional requests for information are answered by the Executive Branch on a voluntary basis?

**Response:** In my experience at the Department of Justice, the Executive Branch seeks to answer the majority of congressional requests for information on a voluntary basis. Congress rarely seeks the compulsory disclosure of information from a Department or agency.

5. In your view, what is an appropriate reason for withholding information requested by an individual Member of Congress?

**Response:** Traditionally, the Executive Branch has sought to provide Members of Congress with requested information except where there is a need to protect important confidentiality interests, such as those involving national security information; materials that are protected by law (such as grand jury information, taxpayer information, or materials restricted from disclosure by the Privacy Act); information the disclosure of which might compromise open law enforcement or civil enforcement investigations; presidential communications; or information involving agencies' predecisional deliberative communications.

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<sup>1</sup> The Office of Information Policy issued the policy guidance on both occasions. See U.S. Department of Justice, *Policy Guidance: Release of Exempt Information to Members of Congress: The Impact of the Murphy Decision*, FOIA Update, Vol. I, No. 4 (1980), available at <https://www.justice.gov/oip/blog/foia-update-policy-guidance-release-exempt-information-members-congress-impact-murphy>; U.S. Department of Justice, *OIP Guidance: Congressional Access Under FOIA*, FOIA Update, Vol. V, No. 1 (1984), available at <https://www.justice.gov/oip/blog/foia-update-oip-guidance-congressional-access-under-foia>.

6. In your view, does the Executive Branch have any Constitutional responsibility to respond to requests for information from individual Members of Congress as part of a process of accommodation in order to promote comity between the branches? If not, why not?

**Response:** The Department of Justice has recognized that the accommodation process “is an obligation of each branch to make a principled effort to acknowledge and if possible to meet, the legitimate needs of the other branch.” Opinion of the Attorney General for the President, *Assertion of Executive Privilege in Response to a Congressional Subpoena*, 5 Op. O.L.C. 27, 31 (1981). At the same time, the courts and others have distinguished between official requests from Committees and those from individual Members. *See, e.g., Exxon v. FTC*, 589 F.2d 582, 592-93 (D.C. Cir. 1978) (recognizing that the “principle is important that disclosure of information can only be compelled by authority of Congress, its committees or subcommittees, not solely by individual members . . .”); Alissa M. Dolan et al., Cong. Research Serv., RL 30240, *Congressional Oversight Manual* 65 (Dec. 19, 2014) (“[N]o judicial precedent has directly recognized an individual Member’s right, other than a committee chair, to exercise the committee’s oversight authority without the permission of a majority of the committee or its chair.”). In my view, the Executive Branch should seek to satisfy the legislative needs of Members to the extent practicable and consistent with the confidentiality obligations of the Executive Branch.

7. Is a request from an individual, elected Member of Congress entitled to any greater weight than a FOIA request, given the Member’s broad Constitutionally mandated legislative responsibilities? Why or why not?

**Response:** In view of the constitutional responsibilities of individual Members of Congress, the Executive Branch may well provide information to Members that goes beyond the requirements of the FOIA statute, and the Executive Branch has the discretion to provide information or documents even if it would be exempt from mandatory public disclosure under FOIA. I understand that the Executive Branch does not treat individual Member requests as requests under FOIA, and thus, the Executive Branch may provide more information about Executive Branch programs than it provides to FOIA requestors, who are entitled to receive only documents.

I appreciate your attention to these important questions. Please let me know if I may be of any more assistance on these issues, or on any other matters in the future.

Sincerely,



Steven A. Engel

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

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

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**United States Senate**

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
JENNIFER DUCK, *Democratic Staff Director*

June 27, 2017

**VIA ELECTRONIC TRANSMISSION**

Steven A. Engel  
Care of the Office of Legislative Affairs  
United States Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Mr. Engel:

Thank you for your timely reply to my June 12, 2017, letter seeking your views regarding the May 1, 2017, Office of Legal Counsel (OLC) opinion entitled “Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch.” I appreciate your clear acknowledgement “that individual Members [of Congress] are ‘authorized’ to seek . . . information [from the Executive Branch] in their roles as constitutional officers.”<sup>1</sup> That recognition is a far cry from the language of the OLC opinion, which claims that, “Individual members of Congress . . . do not have the authority to conduct oversight in the absence of a specific delegation by a full house, committee, or subcommittee.” In light of this, I have some follow-up questions, and I look forward to your additional responses.

1. You acknowledged that the OLC opinion did not examine key additional authorities which recognize the constitutional role of individual Members to seek information from the Executive Branch. If confirmed, will you commit to a more careful study of this issue and other questions I have raised?
2. Will you commit to modifying this OLC opinion to be consistent with your own recognition individual Members “are ‘authorized’ to seek . . . information [from the Executive Branch] in their roles as constitutional officers?” If not, why not?
3. You note in your response to Question 3 that “the Executive Branch should seek to satisfy the legislative interests reflected in the information requests of individual Members.” As I wrote in my June 7, 2017, letter to the President, the May 1 OLC opinion draws a distinction between “oversight” and “non-oversight” requests. I have never sent or seen a letter requesting information for “non-oversight” purposes, and I still do not understand what it means. As

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<sup>1</sup> Letter from Steven A. Engel to Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary (June 23, 2017).

you know, courts have recognized that “oversight” is inherent in the legislative power and just as broad.<sup>2</sup> As the Court recognized in *McGrain v. Daugherty*:

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it.<sup>3</sup>

This power of inquiry “encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.”<sup>4</sup>

Congressional oversight encompasses a myriad of legislative tools, processes, and purposes, and is not simply limited to investigations of waste, fraud, and abuse conducted by a Committee Chairman.

How exactly can a congressional inquiry be distinguished on the basis of whether it is an “oversight” or a “non-oversight” inquiry, to borrow the language from the May 1 opinion? More importantly, by what authority can the Executive Branch purport to make such a determination absent explicit direction from the Legislative Branch?

4. The Inspector General Empowerment Act of 2016, explicitly authorizes any Member of Congress upon request to obtain information related to Inspector General reports that is not otherwise prohibited from public disclosure.<sup>5</sup>

Do you agree that such requests from individual Members are “oversight” requests? Why or why not?

5. I asked in my June 12, 2017, letter whether the Executive Branch has any Constitutional responsibility to respond to individual Members of Congress. You noted, as the OLC opinion notes, that requests from individual Members cannot be compelled. But I did not ask whether individual Members have the power to compel responses. They clearly do not. As you noted in your response to question 4, “Congress rarely seeks the compulsory disclosure of information from a Department or agency.” Your experience matches my own. As I noted in my June 7, 2017, letter to the President, most responses to requests for information – from Chairmen or not – are received voluntarily. I also believe it is important to remember that many of the relevant case precedents examining questions related to congressional oversight arise in a compulsory context. By virtue of the fact that most responses are voluntary, a court has never had occasion to consider them.

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<sup>2</sup> *Watkins v. United States*, 354 U.S. 178, 187 (1957); *Eastland v. U.S. Serviceman’s Fund*, 421 U.S. 491, 504, n.15 (1975) (quoting *Barenblatt v. United States*, 360 U.S. 109, 111 (1959))

<sup>3</sup> 273 U.S. 135, 175 (1927).

<sup>4</sup> *Watkins*, 354. U.S. at 187.

<sup>5</sup> Pub. L. No. 114-317.

What I want to understand is not whether the Executive Branch will pay a legal penalty for refusing to answer individual Member requests, but whether such requests, made as part of their wide-ranging Constitutional responsibilities, are due the best efforts of the Executive Branch given the nature of those responsibilities and the need and desire for comity between the branches. Do you agree? Is this what you mean by your response: "In my view the Executive Branch should seek to satisfy the legislative needs of Members of the extent practicable"?

6. I asked you whether an individual Member request was entitled to any greater weight than a Freedom of Information Act (FOIA) request. You responded that "the Executive Branch may well provide information to Members that goes beyond the requirements of the FOIA" and that you believe "the Executive Branch does not treat individual member requests as request under FOIA, and thus, the Executive Branch may provide more information about Executive Branch programs than it provides to FOIA requests, who are entitled to receive only documents." However, in my experience, FOIA requestors with ready access to judicial review and experienced FOIA litigators often get more information even than Congressional Committees, let alone individual Members. Unlike FOIA litigants, a Member must first convince an entire House of Congress to hold an executive branch official in contempt before obtaining judicial review of an information request. Should the Executive Branch strive to meet a higher standard for voluntary cooperation with Congress, given its constitutional duties, than merely disclosure of that which could be judicially mandated? If so, what would you do to ensure that Executive Branch officials understand the Constitutional basis for the importance of voluntary cooperation with Congressional information requests?

Thank you for your cooperation in this important matter. Should you have questions, please contact DeLisa Lay of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary

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

1900 K Street NW  
Washington, DC 20005

July 12, 2017

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Grassley:

I write in response to your June 27, 2017 letter, which continues our correspondence concerning the May 1, 2017 letter opinion of the Office of Legal Counsel (“OLC”). I understand your concerns with the legal opinion, as well as with recent reports concerning Executive Branch policies governing congressional oversight. Because I am currently in private practice, I had no role in drafting the May 1 opinion, and I likewise have no familiarity with the Administration’s internal policies concerning congressional oversight requests. If I am confirmed as Assistant Attorney General for the Office of Legal Counsel, I will review the May 1 opinion and ensure that OLC’s legal advice reflects my best judgment of the law and established practice in this area.

I provide here my responses to the six additional questions raised in your letter.

1. You acknowledged that the OLC opinion did not examine key additional authorities which recognize the constitutional role of individual Members to seek information from the Executive Branch. If confirmed, will you commit to a more careful study of this issue and other questions I have raised?

**Response:** Yes.

2. Will you commit to modifying this OLC opinion to be consistent with your own recognition that individual Members “are ‘authorized’ to seek . . . information [from the Executive Branch] in their roles as constitutional officers?” If not, why not?

**Response:** If I am confirmed, I will review the May 1 opinion and come to my best judgment of the law and established practice in this area, including with respect to any further guidance or clarifications to the May 1 opinion that may be appropriate.

3. You note in your response to Question 3 that “the Executive Branch should seek to satisfy the legislative interests reflected in the information requests of individual Members.” As I wrote in my June 7, 2017, letter to the President, the May 1 OLC opinion draws a distinction between “oversight” and “non-oversight” requests. I have never sent or seen a letter requesting information for “non-oversight” purposes, and I still do not understand what it means. As you

know, courts have recognized that “oversight” is inherent in the legislative power and just as broad.<sup>1</sup> As the Court recognized in *McGrain v. Daugherty*, 273 U.S. 135 (1927):

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it.

*Id.* at 175. This power of inquiry “encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.” *Watkins v. United States*, 354 U.S. 178, 187 (1957). Congressional oversight encompasses a myriad of legislative tools, processes, and purposes, and is not simply limited to investigations of waste, fraud, and abuse conducted by a Committee Chairman.

How exactly can a congressional inquiry be distinguished on the basis of whether it is an “oversight” or a “non-oversight” inquiry, to borrow the language from the May 1 opinion? More importantly, by what authority can the Executive Branch purport to make such a determination absent explicit direction from the Legislative Branch?

**Response:** If confirmed, I will review the distinction between “oversight” and “non-oversight” inquiries, as those terms are used in the May 1 opinion. The May 1 opinion appears to draw a procedural distinction between information requests made by “a committee, subcommittee, or chairman exercising delegated oversight authority” and those made by individual Members who are not acting pursuant to explicit authorization of the Standing Rules of the Senate or the Rules of the House of Representatives. See Office of Legal Counsel, Letter Opinion for the Counsel to the President, *Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch* at 3 (May 1, 2017). In support, the May 1 opinion quotes the Congressional Research Service’s *Congressional Oversight Manual*, which advises that when individual Members request agency records “they are not acting pursuant to Congress’s constitutional authority to conduct oversight and investigations.” Alissa M. Dolan et al., Cong. Research Serv., RL30240, *Congressional Oversight Manual* 56 (Dec. 19, 2014)).

As we have previously discussed, the D.C. Circuit has recognized that individual Members have a “constitutionally recognized status” that includes a legitimate need “to request such information from the executive agencies as will enable him to carry out the responsibilities of a legislator.” *Murphy v. Dep’t of the Army*, 613 F.2d 1151 (D.C. Cir. 1979). This would be true, no matter whether those requests are called “oversight” inquiries or something else. If confirmed, I will consider these issues in connection with my review of the May 1 opinion.

4. The Inspector General Empowerment Act of 2016 explicitly authorizes any member of Congress upon request to obtain information related to Inspector General reports that is not

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<sup>1</sup> *Watkins v. United States*, 354 U.S. 178, 187 (1957); *Eastland v. U.S. Serviceman’s Fund*, 421 U.S. 491, 504, n.15 (1975) (quoting *Barenblatt v. United States*, 360 U.S. 109, 111 (1959)).

otherwise prohibited from public disclosure. Do you agree that such requests from individual Members are “oversight” requests? Why or why not?

**Response:** I have not previously studied the referenced provision of the Inspector General Empowerment Act. As a general matter, if a statute calls for the Executive Branch to provide information in response to a request from a Member of Congress, then the Executive Branch should respond—no matter whether the Member’s request would be characterized as “oversight” or something else—in a manner consistent with the Department’s other statutory and constitutional obligations, including its law enforcement, litigation, and national security responsibilities.

5. I asked in my June 12, 2017, letter whether the Executive Branch has any Constitutional responsibility to respond to individual Members of Congress. You noted, as the OLC opinion notes, that requests from individual Members cannot be compelled. But I did not ask whether individual Members have the power to compel responses. They clearly do not. As you noted in your response to question 4, “Congress rarely seeks the compulsory disclosure of information from a Department or agency.” Your experience matches my own. As I noted in my June 7, 2017 letter to the President, most responses to requests for information – from Chairmen or not – are received voluntarily. I also believe it is important to remember that many of the relevant case precedents examining questions related to congressional oversight arise in a compulsory context. By virtue of the fact that most responses are voluntary, a court has never had occasion to consider them.

What I want to understand is not whether the Executive Branch will pay a legal penalty for refusing to answer individual Member requests, but whether such requests, made as part of their wide-ranging Constitutional responsibilities, are due the best efforts of the Executive Branch given the nature of those responsibilities and the need and desire for comity between the branches. Do you agree? Is this what you mean by your response: “In my view the Executive Branch should seek to satisfy the legislative needs of Members to the extent practicable”?

**Response:** I agree that in the interest of comity, the Executive Branch should give due weight and sympathetic consideration to requests from individual Members of Congress, even where the executive official is not faced with a legal penalty for refusing to answer, and that is what I meant in my prior response.

6. I asked you whether an individual Member request was entitled to any greater weight than a Freedom of Information Act (FOIA) request. You responded that “the Executive Branch may well provide information to Members that goes beyond the requirements of the FOIA” and that you believe “the Executive Branch does not treat individual member requests as requests under FOIA, and thus, the Executive Branch may provide more information about Executive Branch programs than it provides to FOIA requestors, who are entitled to receive only documents.” However, in my experience, FOIA requestors with ready access to judicial review and experienced FOIA litigators often get more information even than Congressional Committees, let alone individual Members. Unlike FOIA litigants, a Member must first convince an entire House of Congress to hold an executive branch official in contempt before obtaining judicial review of an information request. Should the Executive Branch strive to meet a higher standard for voluntary cooperation with Congress, given its constitutional duties, than merely disclosure

of that which could be judicially mandated? If so, what would you do to ensure that Executive Branch officials understand the Constitutional basis for the importance of voluntary cooperation with Congressional information requests?

**Response:** Yes, I agree that the measure of the Executive Branch's cooperation should not be simply what could be judicially mandated. I believe that, in the interest and spirit of comity, the Executive Branch should seek to satisfy the legislative needs of Members, as indicated by my prior response. That may well include providing additional information about Executive Branch programs beyond what would be available to FOIA requestors. If confirmed, I will ensure that the Office of Legal Counsel's legal advice in this area would be consistent with such principles.

I appreciate your interest in these important questions. Please let me know if I may be of any more assistance on these issues or on any other matters in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Engel". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steven A. Engel

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