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United States Senate

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WASHINGTON, DC 20510-6275

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September 25, 2017

**VIA ELECTRONIC TRANSMISSION**

Tristan Leavitt  
Acting Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036

Dear Mr. Leavitt:

On June 30, 2017, I requested that the Office of Special Counsel (OSC) provide a briefing for Committee staff on the status of OSC's investigation of alleged Hatch Act violations by former FBI Director James Comey. I also asked OSC to provide copies of transcripts of its interviews with two FBI employees. OSC provided heavily redacted copies of these transcripts on August 8, 2017.

OSC has indicated that FBI proposed these redactions pursuant to Non-Disclosure Agreements (NDAs) between OSC and FBI. According to OSC, the agency entered into these agreements as a condition required by the FBI in exchange for its voluntary cooperation with OSC's investigation. Simply put, it is wrong for the FBI to withhold information that OSC needs to conduct its statutorily mandated responsibilities under the Hatch Act or to hold that information hostage in exchange for a nondisclosure agreement designed to shield the FBI from Congressional oversight.

On their face, the agreements require OSC to redact certain information from materials or testimony FBI provides in the course of OSC's investigation prior to "any disclosure to Congress, any Senator or Member of Congress, and/or any Congressional Committee, Subcommittee, or other Congressional establishment." The agreements also require OSC to provide FBI an opportunity to propose further redactions to the materials before any disclosure to Congress. Categories of information FBI sought to restrict include those that are not protected by any constitutional privilege. Moreover, the OSC and FBI do not have the authority to contract out of the statutory rights of access to information by Congressional establishments, such as the Government Accountability Office.

The heavily redacted copies of the transcripts also appear to go further than the NDAs to shield even questions posed by the OSC investigator to the FBI employees.

Neither OSC nor the FBI has offered any explanation of how such questions could be privileged or law enforcement sensitive.

Please provide the Committee with any other NDAs FBI has required from OSC in order to secure its voluntary cooperation with OSC investigations, as well as an estimate of how many investigations OSC has conducted involving FBI employees without first agreeing to such terms.

Finally, in the future, please notify the Committee of any attempt by any agency under its jurisdiction, in any matter, to obtain an NDA that purports to limit the rights of the Committee to obtain information from OSC. Moreover, if any agency under the Committee's jurisdiction withholds voluntary cooperation with OSC for any other reason, please inform the Committee of the circumstances in a timely manner. OSC cannot fulfill its statutory missions without timely access to information from agencies, and the Committee needs to be aware of any specific examples of access issues with agencies under its jurisdiction.

Sincerely,



Charles E. Grassley  
Chairman

cc: The Honorable Dianne Feinstein  
Ranking Member