

December 11, 2013

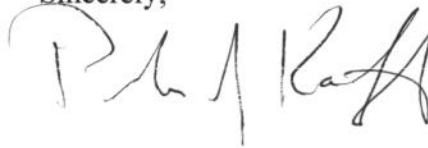
The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

Thank you again for giving me the opportunity to appear before the Committee on October 30, 2013. I enclose my responses to additional Questions for the Record that I received from Ranking Member Grassley.

Sincerely,

A handwritten signature in black ink, appearing to read "P. J. Kadzik", written in a cursive style.

Peter J. Kadzik

Enclosure

Senator Chuck Grassley
Questions for the Record for
Peter Joseph Kadzik
Nominee for Assistant Attorney General
Office of Legislative Affairs, Department of Justice

Response to IRS Targeting Letter from House Committee on Oversight and Government Reform

On December 2, 2013, Chairman Darrell Issa on the House Committee on Oversight and Government Reform and Chairman Jim Jordan of the Subcommittee on Economic Growth, Job Creation and Regulatory Affairs copied me on a letter to Federal Bureau of Investigation (FBI) Director James Comey. The letter involves questions Chairman Issa and Chairman Jordan had posed to the FBI regarding its investigation into findings of the Treasury Inspector General for Tax Administration (TIGTA) report regarding the Internal Revenue Service (IRS) targeting applicants for tax-exempt status based on political belief.

According to the letter, Monique Kelso, Unit Chief of the FBI Office of Congressional Affairs, stated on November 18, 2013 that the FBI “will not produce a single document” in response to the Committee’s request. Instead, Ms. Kelso represented that Valerie Parlave, Director of the FBI’s Washington Field Office and the agent responsible for the FBI’s investigation, would be willing to meet with Chairman Jordan to discuss the Committee’s requests and the Committee’s questions about the FBI’s investigation. That day, Chairman Jordan’s staff e-mailed FBI Congressional Affairs with several dates and times for the meeting.

On November 19, 2013, Ms. Kelso’s colleague, Kirk Melquist, responded: “Sorry for the delay. I am waiting for guidance from DOJ and will give you a status as soon as I hear something.” On November 20, 2013, both Ms. Kelso and Mr. Melquist called Committee staff. According to the letter, “Ms. Kelso stated that she contacted several individuals within the Department of Justice via e-mail about the FBI’s proposed meeting with Chairman Jordan, including Peter Kadzik, the Principal Deputy Assistant Attorney General for Legislative Affairs . . .” Ms. Kelso also said that she was withdrawing the offer for Chairman Jordan to meet with Ms. Parlave.

Please answer each question individually.

1. Did you receive an e-mail from anyone at the FBI requesting guidance on this issue?

No, no one at the FBI emailed me regarding this issue before the Federal Bureau of Investigation received Chairman Issa’s and Representative Jordan’s letter on December 2, 2013.

2. Did you respond, via e-mail or any other form of communication? If so, in what form and what was your guidance?

I did not provide any guidance to FBI on this issue.

3. Did you discuss this matter with any of your colleagues in the Office of Legislative Affairs? If, what was your position?

Through communications with my staff in the Office of Legislative Affairs, I was aware that FBI was in communication with staff of the House Oversight and Government Reform Committee regarding the Committee's request for documents from an open investigation. I took no position on the matter because it was my understanding that FBI had made the determination that, consistent with longstanding Department policy, it was unable to provide non-public documents or a briefing regarding the pending law enforcement matter.

Privacy Act

4. You stated in response to question 36: "The Privacy Act's exemption (b)(9) applies to requests from Committees of Congress." I am aware of no language in the Act stating that (b)(9) refers to "requests" or a "request" from Congress. It simply authorizes disclosures to committees. What specific language in the Act do you believe refers to a request from Congress?

It is my understanding that it is the Department's longstanding policy to provide Privacy Act protected information to Committees of Congress, under exemption (b)(9), only when that information is requested by the Chairman of a Committee of Congress. The December 5, 2001, OLC opinion sets forth the Executive Branch's position on disclosures of Privacy Act protected information to Congress and the reasons for that position.

5. The Privacy Act's exemption (b)(7) explicitly states that it only applies "if the head of the agency or instrumentality [conducting a civil or criminal law enforcement activity] has made a written request to the agency which maintains the record" Do you believe the same standard of requiring a request applies to (b)(9) even though that language was omitted from (b)(9)? If so, why?

Because I am not an expert on the Privacy Act, I am not in a position to answer this question.

6. Does the Privacy Act's exemption (b)(6) require a written request from the National Archives and Records Administration in order to disclose information for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has sufficient historical or other value to warrant its continued preservation by the United States government? If not, why not?

Because I am not an expert on the Privacy Act, I am not in a position to answer this question.

7. Does the Privacy Act's exemption (b)(12) require a written request from a consumer reporting agency in order to disclose information? If not, why not?

Because I am not an expert on the Privacy Act, I am not in a position to answer this question.

8. You stated in response to question 26: "It is my understanding that the Department's long-standing practice is not to disclose information covered by the Privacy Act except in response to requests from Committee Chairmen." Is it your belief that this practice is legally required by the statute? Why or why not?

As I have explained above, I am not an expert on the Privacy Act. The December 5, 2001 OLC opinion sets forth the Executive Branch's position on disclosures of Privacy Act protected information to Congress and the reasons for that position.

9. Do you believe that it is legally permissible and within the discretion of the Department to make disclosures of such information to a Committee (i.e. to the Chairman and the Ranking Member) in the absence of a chairman's request if it chose to depart from its previous practice? Why or why not?

As I have explained above, I am not an expert on the Privacy Act. The December 5, 2001, OLC opinion sets forth the Executive Branch's position on disclosures of Privacy Act protected information to Congress and the reasons for that position.

ATF Briefing Documents

10. After I made the request a third time, you responded to question 39: "The Department does not disclose documents related to the scheduling and planning of briefings except in the most extraordinary of circumstances." Why not?

It is my understanding that the Executive Branch has a long-standing practice of protecting these types of documents because they implicate substantial Executive Branch confidentiality interests and separation of powers principles. In addition, disclosing them could have a chilling effect on the Department's ability to respond to congressional inquiries.

11. Your response to question 39 also stated: "I understand . . . that ATF has been providing the House Committee on Oversight and Government Reform with the documents it requested concerning Mr. Dodson's application for outside employment."

The request to which you refer was an October 10, 2013 letter from Chairman Darrell Issa and myself. There was not a separate request that was exclusive to the House Committee on Oversight and Government Reform. It was a joint request. Does the Department intend to withhold documents from me and provide them only to the House Committee? If so, why?

It is my understanding that ATF has been providing its responses both the House Committee on Oversight and Government Reform and to the Senate Judiciary Committee, including your Committee staff.

12. Contrary to your response to question 39, ATF has not been providing the documents we requested concerning Mr. Dodson's application for outside employment. Other than the November 22, 2013 ethics opinion rendered by the Department's Ethics Office, which was written well after mine and Chairman Issa's October 10, 2013 request, all documents produced by ATF have related to requests by other ATF employees. Despite several repeated reminders from congressional staff, ATF has thus far failed to respond to the second request in our letter: "All documents, including e-mails, relating to ATF's decision to deny Special Agent Dodson's Request to Engage in Outside Employment."

On December 3, 2013, staff for the House Committee on Oversight and Government Reform e-mailed ATF:

[W]hen is ATF going to provide *any* documents pursuant to [the] second request in the October 10 letter? It has now been nearly two months since Chairman Issa and Senator Grassley sent their letter, and we are five weeks removed from John Hageman's comment that the documents would take two weeks to compile. When is ATF planning on producing documents? The unnecessary and unexplainable delay coming from ATF gives the impression that ATF is yet again unwilling to cooperate with the Chairman's request and that the documents may need to be obtained through other means.

Why did you state in your response that ATF had been providing these documents when that is not true?

It is true that ATF has been providing requested documents to the House Committee on Oversight and Government Reform and the Senate Committee on the Judiciary, including your Committee staff. It is my understanding that ATF has provided your Committee staff with responses to questions 1, 3, and 4 of the Committees' joint October 10, 2013, inquiry, and has explained that its search for and review of documents responsive to question 2 is well underway. In its email response to the email quoted above, ATF explained that the two-week timeframe referred to the initial electronic search for documents; ATF is now reviewing the results of that search to determine which documents are responsive to the Committees' request. In addition, I understand that ATF has been in frequent communication with the Committees' staffs regarding the status of the search and review of these documents, as well as to respond to other questions from the Committees' staffs.

13. What is the reason for the delay in producing these documents?

As ATF has explained to the Committees' staffs, ATF is reviewing the documents it has collected and will provide responsive material to the Committees as soon as its review is complete.

14. Have you given ATF any guidance on the production of these documents, and if so, what was your guidance?

No.