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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
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August 19, 2016

VIA ELECTRONIC TRANSMISSION

Michael DiSilvestro
Director
Office of Senate Security
United States Senate
Washington, D.C. 20510

Dear Mr. DiSilvestro:

Thank you for your August 18, 2016, response to my request to provide the Committee with a copy of the unclassified documents from the FBI's recent production of material from its Clinton email investigation.

Your letter cited the FBI's "handling restrictions" as prohibiting the removal of even unclassified material from the Office of Senate Security and suggested that the Committee negotiate alternate handling restrictions with the FBI. However, as my staff has advised you, the Committee did not agree to any handling restrictions involving unclassified material. Absent such prior agreement, there are serious Constitutional separation of powers issues raised by the Executive Branch purporting to instruct a Senate office how to handle unclassified, non-national security information. It's unclear how the Executive Branch would have any authority to do so.

Furthermore, your letter noted that it is your office's practice to honor handling restrictions provided unilaterally by the Executive Branch even in the absence of an agreement by the Legislative Branch recipient. While that may be appropriate for your office with regard to classified information, which you are charged with handling, it is not the practice of Senate Committees with regard to unclassified information.

As you know, the Office of Senate Security is responsible for "the receipt, control, transmission, storage, destruction, or other handling of *classified* information," by the Legislative Branch. S. Res. 243, 100-1, July 1, 1987 (emphasis added). It would, therefore, be inappropriate to allow the Executive Branch to use your office to impose document controls on *unclassified* material that it provides in the course of Congressional oversight.

According to your August 18 letter, the FBI's handling instructions (which have not yet been provided to the Judiciary Committee) require that the material be retained within the Office of Senate Security. Thus as an initial matter, and until the larger issues can be resolved, I request that you at least segregate copies of the unclassified material, retain it separately within the Office of Senate Security, and facilitate review by the Committee staff designated by the Chairman or the Ranking member who have been working on the unclassified aspects of this inquiry, but who may not necessarily have a security clearance.

Thank you for your cooperation.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary