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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 Chief Counsel and Staff Director*

June 4, 2018

**VIA ELECTRONIC TRANSMISSION**

Mr. Andrew G. McCabe  
c/o Mr. Michael R. Bromwich  
Senior Counsel  
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP  
1801 K Street, NW  
Washington, DC 20006

Dear Mr. McCabe:

The Committee received your attorney's letter declining the invitation for you to testify at its upcoming hearing, seeking a grant of immunity, and asserting your Fifth Amendment right against self-incrimination. Your attorney also declined to provide a copy of your March 16, 2018 reply to the Justice Department in your termination proceeding, citing a non-disclosure agreement that purportedly prevents you from sharing that document with Congress.

First, with respect to your testimony, the Committee's understanding of various controversies at the FBI related to and following the 2016 election would be greatly aided by your testimony, not only at the upcoming hearing but in a more comprehensive private setting as well. While I have not yet done so, I am willing to discuss with the Ranking Member your request that the Committee consider seeking a court order compelling you to testify under a grant of immunity. However, under 18 U.S. Code § 6005, seeking such an order requires a two-thirds vote of the Committee, and even if that were to occur, the Justice Department would then have a formal opportunity to delay any testimony and attempt to persuade the Committee not to proceed. Before even beginning to consider whether to initiate that process, the Committee would need to know a lot more about the anticipated scope, nature, and extent of your testimony. The Committee could then informally consult with the Department to solicit its views before deciding whether to proceed formally.

Second, with respect to the document you are withholding from the Committee, no federal funding may be used to draft or enforce any non-disclosure agreement that does not

contain exceptions for protected disclosures to Congress.<sup>1</sup> If you believe in good faith that the allegations in your attorney's letter are true, then providing evidence in support of those allegations, such as your reply in the termination proceedings, would constitute a protected disclosure and thus should be excluded from the scope of the non-disclosure agreement. Accordingly, no later than June 6, 2018, please provide the Committee with a copy of the non-disclosure agreement your attorney referenced in his letter so that the Committee can evaluate whether it is compliant with appropriations restrictions.

Thank you for the more specific details about the emails your attorney referenced. The Committee has requested copies of those directly from the Department. Should you have any questions about this request, please contact DeLisa Lay of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary

cc: The Honorable Dianne Feinstein  
Ranking Member

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<sup>1</sup> Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 744, 131 Stat. 135, 389 (2017); *see also* 5 U.S.C. 2303(a)(1)(F).