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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*

August 3, 2018

The Honorable David S. Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Avenue NW
Washington, D.C. 20408

Dear Mr. Ferriero:

We ask that you provide documents to the United States Senate Committee on the Judiciary in connection with President Trump's nomination of Brett M. Kavanaugh to be an Associate Justice of the Supreme Court of the United States.

Judge Kavanaugh served as an Associate Counsel in the Office of Independent Counsel Kenneth W. Starr from September 6, 1994 until November 20, 1997, and again from April 27, 1998 until December 1, 1998. We request that the documents you identify and provide to the Committee from his service in the Office of Independent Counsel include the following, consistent with the attached guidelines:

- (1) Documents from Brett M. Kavanaugh's service as Associate Counsel in the Office of Independent Counsel, including all documents preserved in his staff files and all documents he authored in whole or in part, edited, revised, or approved;
- (2) All memos, letters, or electronic mail sent by or received by Brett M. Kavanaugh during his tenure in the Office of Independent Counsel, including any such memos, letters, or electronic mail on which he was a carbon copy or blind carbon copy recipient, and including any documents attached to such memos, letters, or electronic mail;

We understand that reviewing these documents as the Freedom of Information Act (FOIA) requires will be a significant undertaking. Nevertheless, in order to expedite your response and to facilitate the Committee's prompt review, please produce documents on a rolling basis as you identify categories responsive to this request.

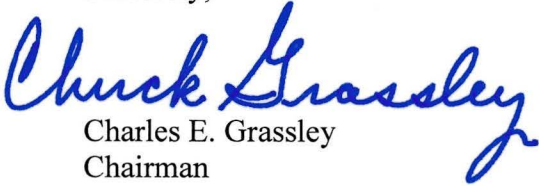
We recognize the possibility that some documents responsive to our request may be exempt from public disclosure under FOIA. *See* 5 U.S.C. § 552(b); 28 U.S.C. § 594(k)(3)(A). We nevertheless have an important constitutional obligation to examine thoroughly Judge Kavanaugh's record, and the FOIA exemptions are "not authority to withhold information from Congress." 5 U.S.C. § 552(d). We therefore ask that you provide to the Committee on a "Committee Confidential" basis those documents that would otherwise be exempt from public disclosure under 5 U.S.C. § 552(b). In addition, and because there is a significant public interest in understanding the record of any Supreme Court nominee, we hope that you will endeavor to ensure public access to as much of the record as possible. To the extent that these records contain classified national security information

or personal privacy information, please contact the Committee so that we can discuss further how those materials might be handled.

We further recognize that some documents responsive to this request may be subject to constitutional or common-law privileges against disclosure. We intend to respect claims of privilege. We hope, however, that the number of responsive documents subject to claims of privilege will be as few as possible.

We recognize that reviewing the archives and producing these documents is a significant task, and we thank you in advance for your efforts.

Sincerely,


Charles E. Grassley
Chairman


Dianne Feinstein
Ranking Member

cc:

Mr. Donald F. McGahn
Counsel to the President
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Guidelines

- a) This request is continuing in character. If additional responsive documents come to your attention following your initial production, please provide such documents to the Committee promptly.
- b) As used herein, “documents” or “records” includes electronic mail messages (“Email”).
- c) As used herein, “document” means the original (or an additional copy when an original is not available), all attached documents, and each distribution copy whether inscribed by hand or by electronic or other means. This request seeks production of all documents described, including all drafts and distribution copies, and contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
- d) In the event that any requested document has been destroyed, discarded, or otherwise disposed of, please identify the document as completely as possible, including the date, author(s), addressee(s), recipient(s), title, and subject matter, and the reason for disposal of the document and the identity of all persons who authorized disposal of the document.
- e) If a claim is made that any requested document will not be produced by reason of a privilege of any kind, describe each such document by date, author(s), addressee(s), recipient(s), title, and subject matter, and set forth the nature of the claimed privilege with respect to each.