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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 Staff Director*

February 5, 2018

VIA ELECTRONIC TRANSMISSION

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice

Dear Attorney General Sessions:

Recently the Committee obtained a copy of a memorandum, attached here, from you to the heads of all Department of Justice components and all U.S. Attorneys entitled “Communication with Congress.”¹ I write to alert you that the memorandum does not appear to comply with existing law and to request that you revise it accordingly.

The memorandum purports to direct Department employees that

communications between the Department and Congress, including those pertaining to policy, legislation, political appointments, nominations, intergovernmental and public liaison relations, cases and investigations, and administrative matters, will be managed or coordinated by the Office of Legislative Affairs (OLA) to ensure that relevant Department and Executive Branch interests are fully protected.

The memorandum further attempts to prevent direct communications between federal employees and Congress. It admonishes that “attorneys, officers, boards, divisions, and components should not communicate with Senators, Representatives, congressional committees, or congressional staff without advance coordination and consultation with OLA,” and that all inquiries, whether from “Members, committees, [or] staff should be immediately directed to OLA upon receipt.”

I appreciate that the Department, and indeed the Executive Branch, must speak with one voice on official matters, and that it has a right to ensure that its official positions are communicated in an orderly and coherent way. I also appreciate that the Department is concerned that it provide timely responses to congressional inquiries and has instructed components to “make it a priority to assist OLA in this regard.” Timely and accurate responses to congressional inquiries are crucial in promoting comity between the branches and the constitutional imperative of congressional oversight.

¹ See Attachment 1.

Unfortunately, the memorandum fails to address the right of employees to make protected disclosures directly to Congress. The law is clear that any non-disclosure agreement or policy, including any policy that purports to restrict the communications of federal employees, must contain a clear exception for lawful whistleblowing.² Additionally, denying or interfering with the right of employees to furnish information to Congress is also against the law.³ Federal officials who deny or interfere with those rights are not entitled to have their salaries paid by taxpayers' dollars.⁴ Without directly addressing the rights of federal employees to communicate with Congress, the memorandum could leave the impression that the Department is attempting to prevent lawful disclosures and discourage employees from exercising their statutory and constitutional rights to directly communicate with Congress. Thus, please review this memorandum and address the deficiencies I have raised as soon as possible with a corrective communication to all employees who received it.

I appreciate your cooperation in this important matter. If you have questions, please contact DeLisa Lay of my Committee staff at (202) 224-5225.

² 5 U.S.C. § 2302(b)(13) (It is a prohibited personnel practice to “implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: ‘These provisions are consistent with and do not supersede, conflict with, or otherwise alter the [employee](#) obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.’”); Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 744, 131 Stat. 135, 389 (2017).

³ 5 U.S.C. § 7211 (2012) (“The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.”).

⁴ GAO B-325124.2 (Apr. 5, 2016) (finding that two employees from the Department of Housing and Urban Development prevented another employee from speaking with a congressional committee when he was willing to do so, and finding the payment of those employees' salaries during that period to be a violation of the Anti-Deficiency Act); Letter from Aaron Santa Anna, Acting General Deputy Assistant Secretary for Congressional and Intergovernmental Relations, U.S. Dep't of Housing and Urban Development to Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary (June 19, 2017) (notifying Chairman Grassley that HUD had initiated collection of salary inappropriately paid to a former HUD employee who prevented an employee from having direct communications with Congress); Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 713, 131 Stat. 135, 379-80 (2017). (“No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who - (1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or (2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, stats, pay, or performance of efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1)).

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive style with a large, prominent "C" and "G".

Charles E. Grassley
Chairman
Committee on the Judiciary

cc: The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary



Office of the Attorney General

Washington, D.C. 20530

January 29, 2018

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS
ALL UNITED STATES ATTORNEYS

From: THE ATTORNEY GENERAL

Subject: Communication with Congress

As we begin the New Year and a new session of Congress, I want to affirm and supplement existing guidance pertaining to communications between the Department of Justice (Department) and Congress.

Consistent with past policy and practice, communications between the Department and Congress, including those pertaining to policy, legislation, political appointments, nominations, intergovernmental and public liaison relations, cases and investigations, and administrative matters, will be managed or coordinated by the Office of Legislative Affairs (OLA) to ensure that relevant Department and Executive Branch interests are fully protected.

Accordingly, attorneys, officers, boards, divisions, and components should not communicate with Senators, Representatives, congressional committees, or congressional staff without advance coordination and consultation with OLA. All congressional inquiries and correspondence from Members, committees, and staff should be immediately directed to OLA upon receipt. Assistant Attorney General Stephen Boyd, in consultation with the Attorney General, Deputy Attorney General, and Associate Attorney General, will determine how best to proceed on particular legislative and oversight matters, including timing, presentation, and selection of Department witnesses to appear before congressional committees. This policy includes requests from Congress for technical and advisory assistance on legislative language or bill text. OLA will also accompany Departmental and component representatives when they represent the Department at hearings, briefings, and meetings with Members of Congress, committees, and staff.

OLA will continue to manage congressional correspondence, coordinating with the Department's Executive Secretariat, leadership offices, and components as appropriate. OLA will review prior to transmittal all Departmental written communications to Congress, including letters, responses to Questions for the Record, briefing papers, talking points, slide presentations, and any other materials intended for submission or presentation on Capitol Hill. Likewise, OLA will manage the clearance process through which legislative proposals and views are considered by Department components and the Office of Management and Budget prior to the Department's views on those matters being communicated to Congress.

In order to ensure that Congress may carry out its legitimate investigatory and oversight functions, the Department will use its best efforts to respond as appropriate to inquiries from Congress consistent with policies, laws, regulations, and professional ethical obligations that

Subject: Communication with Congress

may require confidentiality. Because it is important that the Department provide timely responses to congressional inquiries when possible, components should make it a priority to assist OLA in this regard. In general, letters to Congress and committees should be prepared by the relevant component and sent by Assistant Attorney General Boyd.

Please contact OLA if you have any questions about these policies.