

THE WHITE HOUSE

WASHINGTON

March 4, 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Reform
United States House of Representatives
Washington, DC 20515

Dear Chairman Cummings:

I write in response to the Committee's letter of March 1, 2019 concerning the security clearance process for White House personnel.

At the outset, I think it is important to address mischaracterizations in your letter. Contrary to the claims in your letter, my office has offered compromises to address the Committee's requests while protecting the legitimate and well-established interests of the Executive. The White House's history of ongoing cooperation is well documented. Since receiving the Committee's first letter during this Congress (on January 23, 2019), we have responded in good faith to every letter received from your Committee. Our staffs have been in continuous communication. I promptly responded to your January 23 letter on January 31, 2019, and your February 11 letter on February 25, 2019. I also visited your office and met with you on January 16, 2019 for the purpose of discussing this issue and to discuss a path forward that accommodates the Committee's interest, as well as the prerogatives of the President. Several days before you sent the March 1 letter, my staff offered to make available an official from the Personnel Security Office to provide a briefing and to provide documents describing the security clearance process. Your staff requested a phone call for March 1 to continue this discussion. Shortly after receiving the Committee's March 1 letter and during the prescheduled phone call that same day, my staff reiterated our offer to make available documents and a briefer who would explain the process for granting clearances for White House personnel. This is precisely how the established and constitutionally-mandated accommodation process is supposed to work.

By contrast, the Committee has shown no willingness to accommodate legitimate Executive Branch prerogatives, as required under the Constitution. *See United States v. AT&T Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977). Because Congress derives its oversight authority from its legislative powers, my office must ensure that any request from the Committee serves a legitimate legislative purpose. *See Watkins v. U.S.*, 354 U.S. 178, 187 (1957) ("Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress."); *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). For this reason, from the very beginning, in my January 31 response letter, I requested information from the Committee about "how your regulatory needs depend upon receiving the particular information you seek."

In response, the Committee has failed to point to any authority establishing a legitimate legislative purpose for the Committee's unprecedented and extraordinarily intrusive demands—

including the demand to examine the entire investigative files of numerous individuals whom the President has chosen as his senior advisors. As I have explained in multiple previous letters, it is clearly established as a matter of law that the decision to grant or deny a security clearance is a discretionary function that belongs exclusively to the Executive Branch. *Dep't of Navy v. Egan*, 484 U.S. 518, 527-28 (1988); *Bennett v. Chertoff*, 425 F.3d 999, 1001 (D.C. Cir. 2005). The Committee has not cited any legal authority to the contrary, nor explained what legitimate legislative initiative could require the information the Committee seeks. Neither has the Committee provided any constitutional or statutory basis for “develop[ing] reforms . . . in current White House systems and practices.” The Committee has not explained any potential legislation that Congress could legitimately enact to alter the standards or the process that the Executive Branch follows for granting clearances to the President’s closest advisors in the Executive Office of the President.

Instead, the Committee’s letters have focused on irrelevant statutory citations that have no application here. The Committee’s March 1 letter asserts that the Committee “provided numerous examples of congressional precedent for obtaining [individual security clearance] information from the White House.” Letter from Elijah E. Cummings, Chairman, to Pat Cipollone, Counsel to the President (Mar. 1, 2019) at 2. That is simply not the case. As I explained on February 25, none of the statutes cited in the Committee’s letter regulates either the standards for White House security clearances or the processes by which those clearances are decided. *See* Letter from Pat A. Cipollone, Counsel to the President, to Elijah E. Cummings, Chairman (Feb. 25, 2019) at 4. Furthermore, the Committee cited no prior instances in which it was granted access “to security clearance information about particular White House personnel.” *Id.* at 5. My letter cited over a dozen federal judicial decisions, including cases decided by the U.S. Supreme Court, and rebutted every statute and congressional hearing cited by the Committee to show that, in fact, Congress has consistently recognized the President’s exclusive power to make decisions concerning access to national security information. The Committee’s letter also ignores the straightforward point that merely citing the House of Representative’s own internal rules (specifically, House Rule X) provides no response whatsoever to constitutional objections we raised to the Committee’s overly intrusive document requests. Finally, the Committee’s letters have been particularly silent in articulating any rationale to explain how information from *individual background files* is necessary for Congress to assess potential legislation. Despite all of this, the Committee has refused to alter any of its radically intrusive demands for the individual background files on its list of selected individuals.

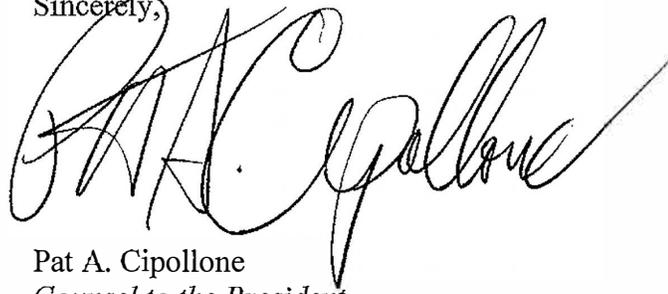
Although we are prepared to continue negotiations in good faith, the Committee seeks unilateral concessions without any offer of accommodation on its part, and then complains that the White House has refused to simply turn over everything the Committee inappropriately seeks. These actions suggest that the Committee is not interested in proper oversight, but rather seeks information that it knows cannot be provided consistent with applicable law. We will not concede the Executive’s constitutional prerogatives or allow the Committee to jeopardize the individual privacy rights of current and former Executive Branch employees.

This White House has a well-documented history of cooperating with the Committee in this matter. As you know, we agreed to make the EOP’s Chief Security Officer available to brief the Committee. Additionally, we agreed to allow the Committee to review White House

documents relating to the process for adjudicating clearances. These offers still stand. Yet the Committee has failed to take advantage of the information that we have offered, and instead has issued an ultimatum—"writing a final time" to request that the White House "immediately" produce "all responsive documents" and schedule transcribed interviews for all witnesses. Such a measure is without legal support, clearly premature, and suggests a breach of the constitutionally required accommodation process. In any event, I now understand that your staff sent an email late this afternoon both accepting this accommodation and rejecting its sufficiency. We believe the best course is to move forward with this agreed-upon accommodation and then speak again once your review of the documents and the briefing are complete.

As I have written to you numerous times, I am always available to discuss your concerns. I hope we can agree that such negotiations, pursued in good faith, are far better than legally unsupportable ultimatums demanding unilateral surrender of the prerogatives of a co-equal branch of the government. Failing to engage in meaningful accommodation may generate headlines, but it is contrary to the obligations imposed on our two branches by the Constitution. We believe that we can accommodate the legitimate interests of your branch while protecting the interests of the branch we represent. We respectfully ask that you do the same. Please let me know if this approach is acceptable.

Sincerely,

A handwritten signature in black ink, appearing to read "Pat A. Cipollone". The signature is fluid and cursive, with a large initial "P" and "C".

Pat A. Cipollone
Counsel to the President

cc: The Honorable Jim Jordan, Ranking Member