



Office of Congressional and Intergovernmental Affairs

July 17, 2017

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives
Washington, DC 20515

Dear Representative Cummings:

The Acting Administrator requested that I respond to the letter dated July 6, 2017, signed by you and other members of the House Committee on Oversight and Government Reform (the "Committee"), requesting certain records from the U.S. General Services Administration ("GSA") related to the Old Post Office lease agreement, pursuant to 5 U.S.C. § 2954.

With regard to your inquiry about GSA's responsiveness to congressional inquiries and requests, GSA intends to respond to all congressional inquiries. However, for oversight requests, please see the enclosed Letter Opinion for the Counsel to the President. In this Letter, the U.S. Department of Justice's Office of Legal Counsel determined that:

...the constitutional authority to conduct oversight—that is, the authority to make official inquiries into and to conduct investigations of Executive Branch programs and activities—may be exercised only by each chamber of Congress or, under existing delegations, by committees and subcommittees (or their chairmen). Individual members of Congress, including ranking minority members, do not have the authority to conduct oversight in the absence of a specific delegation by a full house, committee, or subcommittee.

The Letter also states:

Accordingly, the Executive Branch's longstanding policy has been to engage in the established process for accommodating congressional requests for information only when those requests come from a committee, subcommittee, or chairman authorized to conduct oversight.

An identical letter has been sent to your colleagues. If you have any additional questions or concerns, please contact me at (202) 501-0563.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Brennan Hart III".

P. Brennan Hart III
Associate Administrator

Enclosure

1800 F Street, NW
Washington, DC 20405-0002

www.gsa.gov

Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch

The constitutional authority to conduct oversight—that is, the authority to make official inquiries into and to conduct investigations of executive branch programs and activities—may be exercised only by each house of Congress or, under existing delegations, by committees and subcommittees (or their chairmen).

Individual members of Congress, including ranking minority members, do not have the authority to conduct oversight in the absence of a specific delegation by a full house, committee, or subcommittee. They may request information from the Executive Branch, which may respond at its discretion, but such requests do not trigger any obligation to accommodate congressional needs and are not legally enforceable through a subpoena or contempt proceedings.

May 1, 2017

LETTER OPINION FOR THE COUNSEL TO THE PRESIDENT

We understand that questions have been raised about the authority of individual members of Congress to conduct oversight of the Executive Branch. As briefly explained below, the constitutional authority to conduct oversight—that is, the authority to make official inquiries into and to conduct investigations of executive branch programs and activities—may be exercised only by each house of Congress or, under existing delegations, by committees and subcommittees (or their chairmen). Individual members of Congress, including ranking minority members, do not have the authority to conduct oversight in the absence of a specific delegation by a full house, committee, or subcommittee. Accordingly, the Executive Branch's longstanding policy has been to engage in the established process for accommodating congressional requests for information only when those requests come from a committee, subcommittee, or chairman authorized to conduct oversight.

The Constitution vests “[a]ll legislative Powers” in “a Congress of the United States, which shall consist of a Senate and House of Representatives.” U.S. Const. art. I, § 1. The Supreme Court has recognized that one of those legislative powers is the implicit authority of each house of Congress to gather information in aid of its legislative function. See *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). Each house may exercise its authority directly—for example, by passing a resolution of inquiry seeking information from the Executive Branch. See 4 *Deschler's Precedents of the United States House of Representatives*, ch. 15, § 2, at 30–50

Authority of Individual Members of Congress to Conduct Oversight

mation. When a committee, subcommittee, or chairman exercising delegated oversight authority asks for information from the Executive Branch, that request triggers the “implicit constitutional mandate to seek optimal accommodation . . . of the needs of the conflicting branches.” *United States v. AT&T Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977); *see also id.* at 130–131 (describing the “[n]egotiation between the two branches” as “a dynamic process affirmatively furthering the constitutional scheme”). Such oversight requests are enforceable by the issuance of a subpoena and the potential for contempt-of-Congress proceedings. *See McGrain*, 273 U.S. at 174; 2 U.S.C. §§ 192, 194; *see also* Standing Rules of the Senate, Rule XXVI(1), S. Doc. No. 113-18, at 31 (2013) (empowering all standing committees to issue subpoenas); Rules of the House of Representatives, 115th Cong., Rule XI, cl. 2(m)(1) (2017) (same). Upon receipt of a properly authorized oversight request, the Executive Branch’s longstanding policy has been to engage in the accommodation process by supplying the requested information “to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch.” Memorandum for the Heads of Executive Departments and Agencies from President Ronald Reagan, *Re: Procedures Governing Responses to Congressional Requests for Information* (Nov. 4, 1982). But a letter or inquiry from a member or members of Congress not authorized to conduct oversight is not properly considered an “oversight” request. *See Congressional Oversight Manual* at 56 (“Individual Members, Members not on a committee of jurisdiction, or minority Members of a jurisdictional committee, may, like any person, request agency records. When they do, however, they are not acting pursuant to Congress’s constitutional authority to conduct oversight and investigations.”). It does not trigger any obligation to accommodate congressional needs and is not legally enforceable through a subpoena or contempt proceedings.

Members who are not committee or subcommittee chairmen sometimes seek information about executive branch programs or activities, whether for legislation, constituent service, or other legitimate purposes (such as Senators’ role in providing advice and consent for presidential appointments) in the absence of delegated oversight authority. In those non-oversight contexts, the Executive Branch has historically exercised its discretion in determining whether and how to respond, following a general policy of providing only documents and information that are already public or would be available to the public through the Freedom of Information Act, 5 U.S.C. § 552. Whether it is appropriate to respond to re-

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