

**THE WHITE HOUSE**

WASHINGTON

January 31, 2019

The Honorable Elijah Cummings  
Chairman  
Committee on Oversight and Reform  
United States House of Representatives  
Washington, DC 201515

Dear Chairman Cummings:

I write in response to your letter of January 23, 2019 regarding the Committee's interest in the process for granting security clearances for personnel in the White House.

As you know, the White House has been working with your Committee on requests related to the security clearance process since the last Congress. As part of our prior accommodation, our office provided the Committee with a February 16, 2018 White House document authored by the Chief of Staff and met with you on April 11, 2018 to conduct a briefing on the security clearance process. Although this office's prior discussions with you on the security clearance process preceded my time in the White House, my understanding is that both you and the former Chairman were satisfied with the briefing.

We are working to accommodate your interests while at the same time respecting the separation of powers and the constitutional prerogatives of the President. However, I was disappointed to learn Committee staff recently contacted White House staff about this matter without going through my office. Respectfully, all contacts regarding congressional inquiries with current or former White House staff must be made through the Office of the Counsel to the President. This is necessary, in part, to protect the constitutional prerogatives of the President by ensuring that disclosures of privileged information to Congress are properly authorized. I am sure the Committee does not seek to bypass the accommodation process.

As I indicated, we are working to accommodate the Committee's legitimate needs for information. I should also add, however, that we are constrained to do so in a manner that is consistent with the limitations on Congress's legislative authority regarding access to and dissemination of national security information, does not intrude upon the President's independent constitutional authority in this area, *see Dep't of the Navy v. Egan*, 484 U.S. 518, 527 (1988), and adequately protects the confidentiality of the decision-making process within the White House Office.

Protection of the information involved in the security clearance process involves a fundamental interest of the President. The Constitution vests in the President as Commander in Chief and Chief Executive the "authority to classify and control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position in the Executive Branch that will give that person access to such information." *Egan*, 484 U.S. at 527; *see* U.S. Const., Art. II, § 2. The President's authority over the clearance

process “flows primarily from this constitutional investment of power in the President and exists quite apart from any explicit congressional grant.” *Egan*, 484 U.S. at 527.

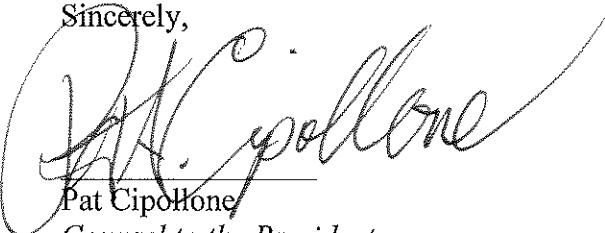
The Committee’s inquiry not only implicates the President’s plenary authority over national security information, but it also concerns the President’s prerogative to share such information with the White House senior staff who directly advise the President. As the D.C. Circuit has recognized, “Article II not only gives the President the ability to consult his advisers confidentially, but also, as a corollary, it gives him the flexibility to organize his advisers and seek advice as he wishes.” *Ass’n of Am. Physicians and Surgeons, Inc. v. Clinton*, 997 F.2d 898, 910 (D.C. Cir. 1993). Congress, as well as the federal courts, have long recognized that the President enjoys broad discretion in selecting, and communicating with, his immediate advisers. In view of the President’s paramount constitutional authorities in these areas, congressional action must necessarily be circumscribed.

The President must remain committed to the time-honored, foundational, and central interests of his office. We do wish to reach a reasonable accommodation so that we can provide your Committee with information, but we can only do so in a manner that will allow this President, and future Presidents, to remain faithful to their constitutional role.

Because the role of Congress is limited in matters affecting the security clearance process, particularly as it bears upon the Executive Office of the President, the legislative purpose supporting any information requests from the Committee should be narrowly focused and limited, and, as discussed above, the institutional interests of the Executive are strong in this area. It would assist this office in providing information to the Committee if you could help us understand how your regulatory needs depend upon receiving the particular information you seek. Finally, in response to the Committee’s requests for transcribed interviews, I would like to discuss these requests with you following our response to your request for documents.

I enjoyed meeting with you on January 16, 2019. I request that we schedule a time for us to meet again in order to discuss a way forward in this matter. Please let me know when you may be available. I look forward to hearing from you.

Sincerely,



Pat Cipollone  
*Counsel to the President*

cc: The Honorable Jim Jordan, Ranking Member