

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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May 19, 2023

**VIA ELECTRONIC TRANSMISSION**

The Honorable Christopher Wray  
Director  
Federal Bureau of Investigation

Director Wray:

On May 3, 2023, the Committee sent a letter to the Federal Bureau of Investigation (FBI) regarding legally protected and highly credible unclassified whistleblower disclosures.<sup>1</sup> As Senator Grassley and I described to you, the whistleblower disclosures involve the possession by the FBI and Department of Justice (DOJ) of an FD-1023 form describing an alleged criminal scheme involving then-Vice President Biden and a foreign national relating to the exchange of money for policy decisions.<sup>2</sup> On the same day, the Committee issued a subpoena to the FBI that required the production of:

[a]ll FD-1023 forms, including within any open, closed, or restricted access case files, created or modified in June 2020, containing the term “Biden,” including all accompanying attachments and documents to those FD-1023 forms.<sup>3</sup>

The return date to provide responsive documents was May 10, 2023.<sup>4</sup> On that date, the FBI sent the Committee a letter describing background information and programmatic issues related to confidential human source reporting.<sup>5</sup> However, the FBI’s response did not include the FD-1023 form, failed to address whether the FBI possessed documents responsive to the Committee’s subpoena, and proposed no accommodations that would allow Committee staff to view the FD-1023 form.<sup>6</sup> Instead, the FBI offered “to coordinate with [Committee] staff to

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<sup>1</sup> Letter and Subpoena to FBI Director Christopher Wray (May 3, 2023); <https://oversight.house.gov/wp-content/uploads/2023/05/Comer-Subpoena-cover-letter-and-Wray-Subpoena-050322.pdf>.

<sup>2</sup> Letter to AG Garland and FBI Director Christopher Wray (May 3, 2023); <https://oversight.house.gov/wp-content/uploads/2023/05/Grassley-Comer-letter.pdf>.

<sup>3</sup> *Supra fn.* 1 at Schedule to Subpoena.

<sup>4</sup> *Id.* at Subpoena.

<sup>5</sup> FBI Letter to Chairman James Comer, Committee on Oversight and Accountability (May 10, 2023).

<sup>6</sup> *Id.* The FBI letter dated May 10, 2023, implies that the FBI should not be required to produce the FD-1023 form because “contemporaneous public materials cite prior letters and public releases that suggest a significant amount of information is already available” related to the subpoena. *See fn.* 2. To the Committee’s knowledge, the substance

discuss whether and how we can accommodate your request without violating our law enforcement and national security obligations.”<sup>7</sup>

On May 10, 2023, Committee counsel asked for an in-person meeting as part of the accommodations process, requesting to meet on Thursday, May 11 or Friday, May 12. FBI staff agreed to meet on Monday, May 15. During the in-person meeting, the FBI did not produce the FD-1023 form. Most troubling, the FBI staff stated they were *not authorized* to disclose whether the FD-1023 form exists.<sup>8</sup> Notwithstanding the FBI’s lack of cooperation, Committee counsel reiterated the legislative purpose of the subpoena, set forth the Committee’s national security concerns, and discussed certain safeguards and accommodations that are routinely used in federal disclosures to protect the identity of confidential human sources.<sup>9</sup> In lieu of producing the subpoenaed document, FBI staff proposed a second meeting with different FBI employees to provide a briefing regarding confidential human source reporting. Committee counsel agreed to the second meeting but called into question whether the FBI was acting in good faith given its refusal to even acknowledge the existence of the FD-1023 form at issue.

Soon after the first meeting, Committee counsel requested that the FBI schedule the second meeting for the same week. However, the FBI could not accommodate the briefing until the following week. The second FBI meeting is now scheduled for May 22, 2023. By the date of that meeting, the FBI will be 12 days past the return date set forth in the subpoena.

The FBI’s delay in producing a single FD-1023 form is unacceptable. The Committee has already offered a reasonable accommodation to address the FBI’s stated confidentiality concerns<sup>10</sup> but the FBI to date has refused to meaningfully engage in discussions about how the Committee can obtain the information that it needs. Instead, it has sought to change the subject by offering to provide the Committee with information it has not requested. Notwithstanding these difficulties, the Committee will continue participating in the accommodations process in

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of the information contained in the FD-1023 form has not been provided in *any* of the materials cited by the FBI or publicly reported. And even if it had been, that would not excuse the FBI’s legal duty to comply with the subpoena. Furthermore, the FBI takes the awkward position of refusing to admit whether the FD-1023 form exists while simultaneously claiming such information is cumulative to other materials.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> At this time, it is unclear who in FBI leadership prevented its staff from disclosing whether the FD-1023 form exists.

<sup>9</sup> The FBI’s letter cites to *Roviaro v. United States*, 353 U.S. 52, 60 (1957), for the proposition that courts “recognize[] the importance of maintaining the protection of the identities of confidential human sources [(CHS)].” See FBI Letter (May 10, 2023), at fn 8. The FBI’s reliance upon *Roviaro* is misplaced. *First*, the Committee’s subpoena does not request the identity of the CHS who provided the information in the FD-1023 form. *Second*, *Roviaro* addresses a *private citizen’s* request for a CHS’s identity, not a subpoena from a Congressional Committee. *Third*, the FBI omits that the *Roviaro* Court held the lower court *erred* in not disclosing the identity of the CHS. *Finally*, district courts routinely order federal prosecutors to disclose information regarding a CHS with safeguards when the evidence is used for impeachment or is materially exculpatory (*e.g.*, *Giglio v. United States*, 405 U.S. 150 (1972); *Brady v. United States*, 397 U.S. 742 (1970)). Nevertheless, Committee counsel recommended FBI redact portions of the FD-1023 form that would reveal the CHS’s identity as a reasonable accommodation to ameliorate this concern.

<sup>10</sup> See *supra* note 9.

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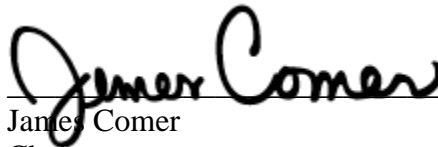
the hopes that the FBI will change course and begin discussing accommodations that will meet the Committee's needs.

As previously stated in our first letter, the Committee's independent and objective review of this matter will inform potential legislative solutions that the Committee is exploring. Specifically, the Committee is considering legislation aimed at deficiencies in the current legal framework regarding disclosure of financial interests related to Vice Presidents and Presidents (and the family members thereof)—deficiencies that may place American national security at risk. The Committee is seeking meaningful reforms to government ethics and disclosure laws that will provide necessary transparency into a Vice President's or a President's (and their immediate family members') income, assets, and financial relationship with foreign and domestic companies. Public corruption, influence peddling, federal ethics/financial disclosures regulations, and national security matters are directly within the purview of the Committee's oversight authorities.

The Committee on Oversight and Accountability is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. The subpoena was issued pursuant to my authority as the Chairman of the Committee pursuant to both Rule XI.2(m)(1)(B) of the Rules of the House of Representatives and Rule 12(g) of the Committee's rules.

Thank you for your prompt attention to this important investigation.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive style with a large, prominent "J" and "C".

James Comer  
Chairman

Committee on Oversight and Accountability

cc: The Honorable Jamie B. Raskin, Ranking Member  
Committee on Oversight and Accountability