



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

The Honorable Ron Johnson
Chairman
Permanent Subcommittee on Investigations
U.S. Senate
Washington, DC 20510

Dear Chairman Johnson,

We write in response to your letter with Chairman Grassley dated May 8, 2026. Thank you for bringing this issue to our attention. In response to your letter, we have looked into the issue and are sending the attached document production in addition to this letter.

Within the context of search warrants, the Department has established guidelines on the use of filter teams to ensure the protection of privileged attorney-client communications and materials protected by the attorney work-product doctrine.¹ Filter teams might be appropriate in other non-search warrant contexts when potential privileges might be implicated. *See, e.g., In re Grand Jury Subpoenas*, 454 F.3d 511, 524 (6th Cir. 2006) (discussing importance of protecting privileged communications where grand jury subpoenas were issued to third-party corporation). These teams protect the integrity of a prosecution and preserve the constitutional rights of the parties involved. Failure to adhere to sound filter team protocols can lead to the suppression of evidence or the disqualification of the prosecution team. After all, as the Supreme Court has discussed, attorney-client and work-product privileges play an essential “role in assuring the proper functioning of the criminal justice system.” *United States v. Nobles*, 422 U.S. 225, 238 (1975).

As noted in the attached records, the Department established a Filter Team to evaluate materials obtained in the course of both Jack Smith’s investigation relating to January 6 (referred to as “Project Coconut”) and his Mar-a-Lago documents investigation (referred to as “Project Cranberry”). The Filter Team’s purpose was to prevent investigators from the Special Counsel’s Office and the FBI (“Investigative Team”) from accessing privileged materials among the records obtained during the course of these investigations. To this end, the Filter Team’s role

¹ E.g., U.S. Department of Justice Filter Team Working Group, *Guidance on Attorney-Client Privilege and Attorney Work Product Filter Protocols for Search Warrants* (July 2020) (available at: [https://dojnet.doj.gov/criminal/pseu/docs/Filter-Team-Guidance---Final-\(July-2020\).pdf](https://dojnet.doj.gov/criminal/pseu/docs/Filter-Team-Guidance---Final-(July-2020).pdf)); see Justice Manual Sec. 9-13.420.

was to review the incoming information and make privilege determinations, and after having segmented out privileged information, relay the unprivileged information to the Investigative Team. The Filter Team explained:

Our goal is to provide as much responsive, non-privileged information to the investigative team as possible, so the Special Counsel can make well-informed decisions about whether anyone should be charged, and if so, what charges are appropriate.^[2]

Additionally, the Filter Team documents state:

Filter Team members will not be part of (or communicate with) the investigative team, with the exception of the Filter Team Coordinator. All communication to/from the Filter Team must go through the Coordinator. No materials shall be disclosed to the investigative team without approval of a filter team attorney.³

The Filter Team's review and coding process is described in the attached documents. Under this framework, the Filter Team reviewed several million documents. The attached records demonstrate that process, along with the Filter Team's regular meeting agendas documenting their work. As shown in those documents, that work included processing certain records obtained from NARA.

On June 2, 2023, Thomas Windom, Senior Assistant Special Counsel on the Investigative Team, emailed NARA's General Counsel, Gary Stern, seeking all text messages from October 2020 through January 20, 2021, from phones associated with a long list of White House personnel.

On Sunday, June 11, 2023, a different employee at the Justice Department sent an email to the contractor managing the Filter Team's document review software to alert them to an issue. Apparently, the software's permission settings had been set inappropriately, allowing Investigative Team members the ability to access documents the Filter Team had not yet sorted or designated for review. The email asked the contractor to adjust the settings to prevent any such access, stating that "[t]his is the top priority item right now from our end."⁴

At 12:19 p.m. on August 21, 2023, Gary Stern, the General Counsel of NARA, emailed Mr. Windom stating that NARA was producing 54 spreadsheets containing the requested White House custodians' text messages. NARA sent separate emails with a download link and password shortly thereafter. At 12:45 p.m. that day, Mr. Windom emailed several members of the Investigative Team, stating he had already downloaded the spreadsheets containing the texts and asked the team to download the spreadsheets as well. By 1:02 p.m., Mr. Windom was already emailing members of the team particular texts he had copied from the production.

² See attached documents.

³ *Id.*

⁴ *Id.*

Subsequent emails document the files being saved directly to the Special Counsel team's shared drive. Thus, the Special Counsel's Investigative Team apparently bypassed the Filter Team and directly accessed these text messages. The FBI then identified the people whose phone numbers sent or received the texts.

Among the materials, the Department has determined that Jack Smith's Investigative Team obtained text messages between White House personnel and several Senators and Representatives, including ones to and from:

- | | |
|------------------------------------|-----------------------------------|
| 1. Senator Chuck Grassley (R-IA) | 23. Rep. Jim Jordan (R-OH) |
| 2. Senator Ron Johnson (R-WI) | 24. Rep. Devin Nunes (R-CA) |
| 3. Senator John Cornyn (R-TX) | 25. Rep. Adam Smith (D-WA) |
| 4. Senator Lindsey Graham (R-SC) | 26. Rep. Andy Biggs (R-AZ) |
| 5. Senator Josh Hawley (R-MO) | 27. Rep. Mark Walker (R-NC) |
| 6. Senator Mike Lee (R-UT) | 28. Rep. Bryan Steil (R-WI) |
| 7. Senator Cory Booker (D-NJ) | 29. Rep. Dan Newhouse (R-WA) |
| 8. Senator Cindy Hyde-Smith (R-MS) | 30. Rep. Doug Collins (R-GA) |
| 9. Senator Dan Sullivan (R-AK) | 31. Rep. Dusty Johnson (R-SD) |
| 10. Senator David Perdue (R-GA) | 32. Rep. Elise Stefanik (R-NY) |
| 11. Senator Lamar Alexander (R-TN) | 33. Rep. John Katko (R-NY) |
| 12. Senator Martha McSally (R-AZ) | 34. Rep. Joshua Gottheimer (D-NJ) |
| 13. Senator Rand Paul (R-KY) | 35. Rep. Karen Bass (D-CA) |
| 14. Senator Rick Scott (R-FL) | 36. Rep. Ken Buck (R-CO) |
| 15. Senator Rob Portman (R-OH) | 37. Rep. Lee Zeldin (R-NY) |
| 16. Senator Roy Blunt (R-MO) | 38. Rep. Mario Diaz-Balart (R-FL) |
| 17. Senator Susan Collins (R-ME) | 39. Rep. Mo Brooks (R-AL) |
| 18. Senator Tim Scott (R-SC) | 40. Rep. Morgan Griffith (R-VA) |
| 19. Senator Tom Cotton (R-AR) | 41. Rep. Rodney Davis (R-IL) |
| 20. Senator Cory Gardner (R-CO) | 42. Rep. Russ Fulcher (R-ID) |
| 21. Rep. Kevin McCarthy (R-CA) | 43. Rep. Scott Perry (R-PA) |
| 22. Rep. Steve Scalise (R-LA) | 44. Rep. Thomas Massie (R-KY) |

Although the Filter Team's procedures focused on identifying materials protected by attorney-client and attorney work-product privileges, and not ones protected by other potential privileges, the Special Counsel's Office had previously been made aware of the risk that records relating to Member communications could raise constitutional concerns and might be privileged under the Speech and Debate Clause.

As detailed in a prior disclosure, on May 17, 2023, a little over two weeks before Mr. Windom contacted NARA for text messages to and from White House personnel, the Investigative Team sought and received approval to target the toll records of several Senators and Congressmen based on the belief that they had communicated with President Trump or Rudy Giuliani regarding potentially delaying the Senate's vote to certify the election. An attorney in the Department's Public Integrity Section raised the privilege issued that day in an email sent to Mr. Windom:

As you are aware, there is some litigation risk regarding whether compelled disclosure of toll records of a Member's legislative calls violates the Speech or Debate Clause in the D.C. Circuit. *See United States v. Rayburn House Office Building*, 497 F.3d 654, 662 (D.C. Cir. 2007) ("The bar on compelled disclosure is absolute."); *in re Grand Jury Investigation*, 587 F.2d 589, 595 (3d Cir. 1978) ("Thus, telephone calls, placed or received by [the Member] or his staff in gathering from outsiders information which is weighed in the process of deciding how to vote, in drafting legislation, and in preparing for argument, may still be privileged as to use against him, even if not as to use against third parties."); *id.* at 594 ("The caselaw is clear that a legislator asserting the invasion of the Speech or Debate Clause privilege by use of a grand jury subpoena to a third party may intervene and oppose such use.")⁵

We hope this information is useful. The Department remains committed to transparency and accountability, especially regarding the Biden administration's weaponization efforts.

Sincerely,

Patrick D. Davis
Assistant Attorney General

⁵ Email from John Keller to Thomas Windom and Molly Gaston (May 17, 2023, at 10:43am) (produced to the Committee on Nov. 25, 2025).