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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Chief Counsel and Staff Director*

July 27, 2018

The Honorable Patrick X. Mordente, Brigadier General
Director
George W. Bush Presidential Library and Museum
2943 SMU Boulevard
Dallas, Texas 75205

Dear General Mordente:

Pursuant to 44 U.S.C. § 2205(2)(C), I ask that you provide Presidential records to the United States Senate Committee on the Judiciary in connection with the President's nomination of Judge Brett M. Kavanaugh to serve as an Associate Justice on the Supreme Court of the United States. Consistent with the Presidential Records Act (PRA), 44 U.S.C. § 2201(2), (3), this request is for access to Presidential records only, not personal records.

Kavanaugh served in the White House under President George W. Bush, first as Associate Counsel from 2001 to 2003 and later as Senior Associate Counsel in 2003. He served as Assistant to the President and Staff Secretary from 2003 to 2006. I request that you provide the following documents to the Committee on an expedited basis, consistent with the guidelines described in this letter:

- (1) Emails sent to or received from Kavanaugh, including emails on which he was a carbon copy or blind carbon copy recipient, during the period Kavanaugh served as Associate Counsel and Senior Associate Counsel to the President, including any documents attached to such emails;
- (2) The textual records contained in Kavanaugh's office files from the period during which he served as Associate Counsel and Senior Associate Counsel to the President; and
- (3) Documents relating to Kavanaugh's nomination to the U.S. Court of Appeals for the District of Columbia Circuit

The Committee has previously made official requests of Presidential Libraries in connection with nominees who served in the White House. I believe it appropriate to follow past Committee precedent concerning requests for records from Presidential Libraries in several respects.

Section 2205 of the Presidential Records Act (PRA), 44 U.S.C. § 2205, provides this Committee access to Presidential records in response to an official Congressional Committee request, notwithstanding the limitations on public disclosure set forth in section 2204 of the PRA, 44 U.S.C. § 2204(a)(1)–(6). Such access is, by statute, subject to “any rights, defenses, or privileges which the United States or any agency or person may invoke.” 44 U.S.C. § 2205(2). While I hope that documents responsive to our request will not raise these concerns, I also recognize that responsive documents may be subject to statutory or other rights, defenses, or privileges.

Section 2205(2)(C) entitles the Committee to access any non-privileged Presidential record that is responsive to the Committee’s special-access request, notwithstanding the limitations on public access set forth in section 2204. I recognize, however, that in the context of prior Supreme Court nominations, the Committee and the Archivist have agreed that some documents containing PRA-restricted material would be produced to the Committee on a “Committee Confidential” basis. The Committee further agreed that such documents could be discussed only during a Closed Session of the Committee. I also acknowledge that the Committee previously has agreed that the Archivist could withhold certain PRA-restricted material in its entirety. In these respects, I intend to adhere to established custom and accept certain PRA-restricted material on a Committee Confidential basis and to permit the Archivist to withhold some PRA-restricted material in its entirety.

I ask that with each production, you similarly abide by established custom and (1) identify the total number of documents produced, (2) identify the number of documents containing PRA-restricted material that the Committee agreed to treat as “Committee Confidential,” and (3) identify the number of documents being withheld entirely pursuant to assertions of constitutional privilege or pursuant to the Committee’s agreement not to receive certain PRA-restricted material. I further ask that you produce documents on a rolling basis as you identify documents responsive to our request.

I note that in connection with Justice Gorsuch’s nomination, the Bush Library attempted to withhold as little as possible and provided portions of documents, rather than withholding entire documents, where possible. I hope you will adopt the same approach. As the Committee has done in the past while considering Supreme Court nominations, I intend to respect the invocation of privilege by a co-equal branch of our government. For the documents requested by this letter, I further intend to abide by the Committee practice of declining to receive materials reflecting classified national security information or personal privacy information.

Please begin the rolling production to the Committee of records responsive to this request no later than August 1, 2018, at 6:00 PM EDT. Please complete the rolling production to the Committee of all remaining records responsive to this request no later than August 15, 2018 at 6:00 PM EDT.

I recognize that reviewing the archives and producing these documents is a significant task. I thank you in advance for your cooperation and efforts.

Sincerely,



Chuck Grassley
Chairman

cc:

Mr. Donald F. McGahn
Counsel to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

The Honorable David S. Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, DC 20408

The Honorable Dianne Feinstein
Ranking Member, Committee on the Judiciary
United States Senate
Washington, DC 20510

Guidelines

- a) This request is continuing in character. If additional documents responsive to this request come to your attention following your initial production, please provide such documents to the Committee promptly.
- b) As used herein, “document” means the original (or an additional copy when an original is not available), all attached documents, and each distribution copy whether inscribed by hand or by electronic or other means. This request seeks production of all documents described, including all drafts and distribution copies, and contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
- c) In the event that any requested document has been destroyed, discarded, or otherwise disposed of, please identify the document as completely as possible, including the date, author(s), addressee(s), recipient(s), title, and subject matter, and the reason for disposal of the document and the identity of all persons who authorized disposal of the document.