

United States Senate
WASHINGTON, DC 20510

July 21, 2021

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Ave, NW
Washington, DC 20535

Dear Director Wray:

Thank you for the FBI's June 30, 2021 response to our August 1, 2019 letter regarding the supplemental background investigation of then-Judge Brett M. Kavanaugh. Your letter confirms that the FBI's tip line was a departure from past practice and that the FBI was politically constrained by the Trump White House. It also belies the former president's insistence that his administration did not limit the Bureau's investigation of Justice Kavanaugh, and his claim that he "want[ed] the FBI to interview whoever [sic] they deem appropriate, at their discretion."¹

According to your letter, Justice Kavanaugh's nomination "was the first time that the FBI set-up a tip line for a nominee undergoing Senate confirmation," and that tip line received "over 4,500 tips, including phone calls and electronic submissions." Your letter fails to explain how the FBI reviewed and assessed these tips or whether the Bureau conducted any interviews related to information received through the tip line or otherwise pursued the tips. Indeed, your letter does not describe any FBI investigation of the tips, and only states that the FBI "provided all relevant tips to the Office of White House Counsel," the very office that appears to have constrained the FBI from conducting a thorough investigation. The admissions in your letter corroborate and explain numerous credible accounts by individuals and firms that they had contacted the FBI with information "highly relevant to . . . allegations" of sexual misconduct by Justice Kavanaugh, only to be ignored.² If the FBI was not authorized to or did not follow up on any of the tips that it received from the tip line, it is difficult to understand the point of having a tip line at all.

There remain questions unanswered from our August 2019 letter, and your June 2021 response raises significant additional questions:

1. Your letter notes that "the FBI follows the standard process established pursuant to a March 10 memorandum of understanding (MOU) between the Department of Justice and the White House." Please provide a copy of that MOU.
2. Your letter notes that "Justice Kavanaugh's nomination was the first time that the FBI

¹ See Ken Dilanian, Geoff Bennett & Kristen Walker, *Limits to FBI's Kavanaugh investigation have not changed, despite Trump's comment*, NBC NEWS (Sept. 29, 2018).

² Oct. 4, 2018 letter from Katz, Marshall, and Banks, LLP to Director Wray; see also Seung Min Kim, *Senator told FBI last fall of new information about Kavanaugh*, WASH. POST (Sept. 16, 2019).

set-up a tip line for a nominee undergoing Senate Confirmation,” and states that “it was established at the direction of the FBI’s Security Division.” However, your letter does not identify or describe the policies or procedures that applied to the tip line. Therefore, please identify: (a) when the decision was made to use a tip line for Judge Kavanaugh’s investigation; (b) who the senior-most official authorizing the tip line was; (c) whether the tip line was set up through an already existing standard FBI open line or established as a dedicated independent tip line; (d) how the tip line was staffed (how many individuals and what level of training and experience was required); (e) how the “over 4,500 tips, including phone calls and electronic submissions” were recorded or preserved; (f) what policies or procedures governed or applied to the creation, operation, and documentation of the tip line; and (g) whether the White House Counsel’s instruction for any additional limited inquiry required or requested the use of a tip line.

3. Your letter notes that “[t]he FBI received over 4,500 tips, including phone calls and electronic submissions” and that the FBI “provided all relevant tips to the Office of White House Counsel,”³ but fails to explain how any individual tip was evaluated or categorized as “relevant” and how those tips were delivered to the White House. Therefore, please explain: (a) what criteria or standard applied to tips to determine relevancy; (b) how many tips the FBI deemed “relevant,” and how many tips the FBI “provided . . . to the Office of White House Counsel”; (c) whether FBI Security Division personnel or any other FBI personnel sorted, vetted, verified, or investigated the tips to determine whether they were relevant; (d) what policies or procedures governed the FBI process of investigating or vetting the tips; (e) the nature and extent of review or investigation per tip before they were made available to the White House Counsel; (f) how tips were formatted and delivered to the White House Counsel; and (g) whether the FBI maintained a copy or record of each tip after provision to the Office of White House Counsel.
4. Your letter indicated that the FBI interviewed ten individuals as part of several limited inquiries, but failed to explain whether these ten interviews were conducted as a result of tips received on the tip line. Therefore, please explain: (a) whether any potential witnesses were identified as having “relevant” information on the basis of tips received but not interviewed by the FBI; (b) if relevant witnesses were identified by the FBI through the tip line but not interviewed, explain the policy, procedure, or instruction, from the FBI, White House Counsel, or otherwise, that directed that witnesses with “relevant” information not be interviewed; (c) if the failure to interview was a matter of discretion, identify the individual responsible for making that determination.
5. Was the FBI directed by the White House not to interview either Dr. Blasey Ford or then-Judge Kavanaugh as part of its limited inquiries? If yes, please describe the directive and produce any relevant communications. If no, why did the FBI fail to interview Dr. Ford and then-Judge Kavanaugh?⁴

³ See FBI Letter to Sens. Whitehouse and Coons (June 30, 2021) (“The Security Division section handling the BI and supplemental background investigations provided all relevant tips to the Office of White House Counsel[.]”).

⁴ See Supplemental FBI Investigation Executive Summary (Oct. 4, 2018), <https://www.judiciary.senate.gov/press/rep/releases/supplemental-fbi-investigation-executive-summary>.

We ask that you answer these questions no later than August 31, 2021, and to the extent not already requested above, promptly produce all records and communications related to the tip line investigation, including but not limited to: the White House-DOJ MOU referenced in your letter; all communications regarding the establishment and parameters of the tip line; all documents related to the selection and parameters of the ten interviews conducted as part of the supplemental background investigations; and “all relevant tips” described in your letter that the FBI “provided . . . to the Office of White House Counsel.” In order to minimize the discovery burden of this request and advance our comprehension of the process, we ask that someone familiar with the Kavanaugh investigations provide a briefing to explain what took place and the existence and nature of documents responsive to our requests. We ask further that the Department of Justice identify someone tasked with overseeing and facilitating the responses to these requests, given the long delay we have already experienced.

Thank you for your prompt attention to this matter. If you have any questions, please do not hesitate to reach out to Alex Aronson (Alex_Aronson@judiciary-dem.senate.gov) and Amalea Smirniotopoulos (Amalea_Smirniotopoulos@judiciary-dem.senate.gov) of Senator Whitehouse’s staff, and Cassie Fields (Cassie_Fields@judiciary-dem.senate.gov) and Aaron Stanislawski (Aaron_Stanislawski@judiciary-dem.senate.gov) of Senator Coons’s staff.

Sincerely,



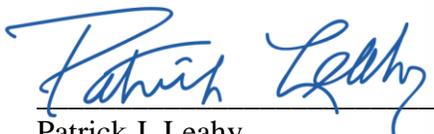
Sheldon Whitehouse
United States Senator



Christopher A. Coons
United States Senator



Richard J. Durbin
Chair, Senate Committee on
the Judiciary



Patrick J. Leahy
United States Senator



Richard Blumenthal
United States Senator



Mazie K. Hirono
United States Senator



Cory A. Booker
United States Senator

CC: Hon. Merrick Garland, Attorney General of the United States