



**Judicial
Watch®**
*Because no one
is above the law!*

June 14, 2017

VIA U.S. CERTIFIED MAIL

The Honorable Andrew G. McCabe
Acting Director
Federal Bureau of Investigation
935 Pennsylvania Ave., N.W.
Washington, DC 20535

Re: Violation of the Federal Records Act

Dear Acting Director McCabe:

As you are well aware, former FBI Director James Comey gave sworn testimony last week before the Senate Select Committee on Intelligence. Among other things, Mr. Comey confirmed that, while in office, he created various memoranda regarding his meetings with President Trump. Mr. Comey also confirmed that, after his departure from the FBI, he provided at least some of these memoranda to a third party, Columbia Law School Professor Daniel Richman, for the purpose of leaking them to the press. Various media outlets now have reported that Professor Richman has provided these memoranda to the FBI. It is unclear whether he still retains copies of the memoranda.

I am writing to you on behalf of Judicial Watch, Inc., a not-for-profit educational organization that seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. In furtherance of its public interest mission, Judicial Watch regularly requests access to the records of the FBI through the Freedom of Information Act and disseminates its findings to the public. In fact, on May 16, 2017, Judicial Watch submitted a FOIA request seeking these specific memoranda removed from the FBI by Mr. Comey. Judicial Watch also has pending FOIA lawsuits in which the memoranda may be at issue.

These memoranda were created by Mr. Comey while serving as FBI director, were written on his FBI laptop, and concerned official government business. As such, they indisputably are records subject to the Federal Records Act. 44 U.S.C. §§ 2101-18, 2901-09, 3101-07, and 3301-14. The fact that Mr. Comey removed these memoranda from the FBI upon his departure, apparently for the purpose of subsequently leaking them to the press, confirms the FBI's failure to retain and properly manage its records in accordance with the Federal Records Act. Even if Mr. Comey no longer has possession of these particular memoranda, as he now claims, some or all of these memoranda may still be in possession of a third party, such as

Ltr. to The Honorable Andrew G. McCabe
June 14, 2017
pg. 2

Professor Richman, and must be recovered. Mr. Comey's removal of these memoranda also suggests that other records may have been removed by Mr. Comey and may remain in his possession or in the possession of others. If so, these records must be recovered by the FBI as well.

As you may be aware, the Federal Records Act imposes a direct responsibility on you to take steps to recover any records unlawfully removed from the FBI. Specifically, upon learning of "any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency," you must notify the Archivist of the United States. 44 U.S.C. § 3106. Upon learning that records have been unlawfully removed from the FBI, you then are required to initiate action through the Attorney General for the recovery of records. *Id.*

In the event you fail to take these steps, you should be aware that Judicial Watch is authorized under the law to file a lawsuit in federal district court seeking that you be compelled to comply with the law. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955 (D.C. Cir. 2016); *Armstrong v. Bush*, 924 F.2d 282, 296 (D.C. Cir. 1991). Please advise us no later than June 26, 2017 if you intend to take the action required under the law. If we do not hear from you by that date, we will assume that you do not intend to take any action. Thank you for your attention to this matter.

Sincerely,



Thomas J. Fitton
President