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Subject: Dem concerned House panel's probe may jeopardize Justice Dept. case

Dem concerned House panel's probe may jeopardize Justice Dept. case
By Jordy Yager -
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The ranking Democrat on the House Oversight and Government Reform Committee is worried that Republican tactics in investigating a controversial gun-tracking program may jeopardize federal prosecutions.

Ahead of the most powerful issue that the panel has taken up this Congress, Rep. Elijah Cummings (D-Md.) wrote to Chairman Darrell Issa (R-Calif.) on Monday to ask for assurances that he would consult with the Justice Department before he considered releasing any of the highly sensitive information on the "Fast and Furious" operation, including potentially damning documents, transcribed interviews with government witnesses, and a secret audio recording.

Cummings's concerns stem from a publicly released letter that Issa wrote to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) acting Director Kenneth Melson in April, in which he attached nearly a dozen documents, including internal emails and reports pertaining to the "Fast and Furious" operation. One of those documents was under federal seal according to the DOJ, said Cummings in his letter. Issa's office told Cummings that they did not know it was under seal.

Cummings's letter coincided with a committee hearing on whether the DOJ is constitutionally required to reply in full to Issa's request for documents relating to the gun-tracking operation. The expert witnesses at the hearing were split, however, saying the DOJ needed to comply with subpoenas, but also that the committee should consult with the DOJ before publicly releasing potentially sensitive information. Issa issued his first subpoena to the DOJ on the case more than 10 weeks ago and so far has only received a "handful" of publicly available documents. The documents that were made available to committee staff for an in-camera review were basically useless because they were so "heavily redacted," according to Issa.

Both Republican and Democratic aides say that the DOJ has increased its channels of communication with the committee about where the process for the request stands. But the prolonged delay has irritated Issa, who has accused the DOJ of attempting to "stonewall" his investigation.

The DOJ has objected to the timing of Issa's requests, saying that the committee's involvement might jeopardize two pending prosecutions. One of the cases revolves around three men accused of participating in the shooting last December in Arizona that killed Border Patrol Agent Brian Terry. Two of the weapons found at the scene of the shooting were traced to the "Fast and Furious" operation.

Operation "Fast and Furious" began in 2009 as an attempt by ATF to expose gun trafficking routes from gun stores in the U.S. to drug cartels in Mexico. But by late 2010 some of those guns began showing up at crime scenes, like the one in which Terry was shot dead.

Issa's investigation began after whistleblowers told Sen. Chuck Grassley (R-Iowa) about the operation, which approved the sale of guns to known and suspected straw purchasers for drug cartels. Grassley has tried unsuccessfully to get documents from the DOJ.

"If they do say, 'We're going to withhold some documents because they're highly prejudicial in a concrete way to an open case,' then they have to provide a privileged log so that the committee itself can decide what should be withheld," said Charles Tiefer, a commissioner with the Commission on Wartime Contracting.

Tiefer, a former general counsel for the House, was appointed to the bipartisan legislative commission by Senate Majority Leader Harry Reid (D-Nev.).

But Tiefer also argued that Issa should confer with the DOJ before he considers releasing any sensitive information to the public.

"It is prudent, in an open criminal case situation for the committee to hear from the Justice Department before making anything public," he said. "Before releasing documents publicly, if there is a stated Justice Department concern, there has been this consultation, about how the committee, which has the authority to decide, should exercise that authority."

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