



U.S. Department of Justice
Federal Bureau of Investigation
Office of Congressional Affairs

Office of the Assistant Director

*935 Pennsylvania Avenue, NW
Washington, DC 20535-0001*

June 30, 2021

The Honorable Sheldon Whitehouse
United States Senate
Washington, D.C. 20510

The Honorable Christopher A. Coons
United States Senate
Washington, D.C. 20510

Dear Senator Whitehouse and Senator Coons:

This responds to your letter, dated August 1, 2019, to the Federal Bureau of Investigation (FBI), regarding the supplemental background investigation of Justice Brett M. Kavanaugh. We apologize for the extended delay in responding.

The FBI serves as an investigative service provider (ISP) for federal background investigations (BI). This means that the FBI responds to requests from the Office of White House Counsel and other government entities to conduct BIs of candidates for certain positions. A BI consists of a thorough inquiry, comprising personal interviews and a wide variety of records checks, designed to verify background data provided by the individual candidate and gather relevant information.

The FBI, as an ISP, provides the collected information to the requesting entity to assist the entity in its decision-making process concerning the candidate's suitability for federal employment and access to classified or sensitive information. The FBI does not grant, deny, or otherwise adjudicate security clearances on behalf of the requesting entity. The FBI's function as an ISP is purely fact finding. The authorities, policies, and procedures relied on by the FBI to conduct BIs are not the same as the authorities, policies, and procedures used to investigate criminal matters. Accordingly, the FBI division responsible for conducting BIs is the Security Division, which is separate from the divisions responsible for investigating criminal matters.

With regard to positions requiring Senate confirmation, the FBI follows the standard process established pursuant to a March 2010 memorandum of understanding (MOU) between the Department of Justice and the White House. That process requires the FBI to promptly notify the requesting entity if it becomes aware of new information (received prior to a candidate assuming a nominated position) that raises questions of the candidate's suitability or trustworthiness.

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The FBI does not discontinue, hold in abeyance, or reopen BIs unless specifically instructed to do so by the requesting entity. If, after the requested BI is complete, the FBI becomes aware of new information that raises questions about the candidate's suitability or trustworthiness, the FBI notifies the requesting entity. However, the FBI does not initiate a supplemental background investigation unless instructed to do so by the requesting entity.

Serving in its ISP role, the FBI conducted then-Judge Kavanaugh's background investigation at the request of the Office of White House Counsel in connection with his nomination to serve as an Associate Justice of the Supreme Court of the United States. The BI was completed and results disseminated to the Office of White House Counsel on July 18, 2018. During the BI, the FBI interviewed forty-nine individuals over the course of five days.

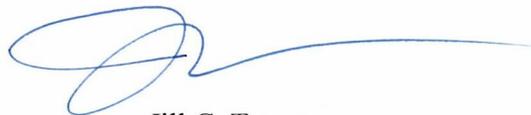
On September 12, 2018, the FBI received information from a Senate office, which the FBI forwarded to the Office of White House Counsel on September 13, 2018, pursuant to the MOU. As noted above, the FBI does not initiate a supplemental background investigation in the absence of instructions from the requesting entity. In addition, the FBI does not have authority under the MOU to unilaterally conduct further investigative activity absent instructions from the requesting entity, nor does the FBI have authority to amend the MOU.

On September 13, 2018, the FBI was asked by the Office of White House Counsel to conduct supplemental background investigations, specifically, limited inquiries. A limited inquiry is conducted to resolve a specific issue arising during or after completion of a BI. The requesting entity sets the parameters of a limited inquiry, which may include interviewees and topics to address. Over the course of six days, as part of several limited inquiries, the FBI interviewed ten individuals (not part of the 49 persons interviewed during the BI). Because the FBI was again acting in its role as an ISP and not as a criminal investigative entity, the authorities, policies, and procedures used to investigate criminal matters did not apply. The FBI completed the limited inquiries on October 4, 2018, and provided the results to the requesting entity.

Justice Kavanaugh's nomination was the first time that the FBI set-up a tip line for a nominee undergoing Senate confirmation. It was established at the direction of the FBI's Security Division to centralize and manage incoming information related to the nomination. The FBI received over 4,500 tips, including phone calls and electronic submissions. The Security Division section handling the BI and supplemental background investigations provided all relevant tips to the Office of White House Counsel (as the requesting entity).

Thank you for your continued support of the FBI, our mission, and our people.

Sincerely,



Jill C. Tyson
Assistant Director