

# Accommodation and Contempt of Congress: Two Oversight Case Studies

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During the first months of the 118<sup>th</sup> Congress, two House committees have conducted widely followed investigations that provide instructive case studies of how committees can negotiate and use congressional authority to conduct oversight of the executive branch and obtain documents in the face of agency objections. In both cases, while agencies raised specific concerns about sharing specific materials, the committees were ultimately able to review key documents after negotiating a compromise on access conditions and threatening agency leaders with [contempt of Congress](#) resolutions.

Past practice plays a central role in the conduct of congressional oversight of the executive branch. Therefore, the strategies and accommodations discussed in this Insight may be valuable precedents for Congress in future disputes with the executive branch.

## The House Committee on Foreign Affairs and the Department of State

On March 28, 2023, Chairman Michael McCaul of the House Foreign Affairs Committee [issued a subpoena](#) demanding that the Department of State turn over a 2021 “[dissent cable](#)” regarding Afghanistan signed by 23 Department of State officials. The cable has become an important element of the [committee’s review](#) of the withdrawal of U.S. forces from Afghanistan, which the committee began investigating during the 117<sup>th</sup> Congress. After becoming chair at the beginning of the 118<sup>th</sup> Congress, Chairman McCaul [renewed](#) requests for documents, including the dissent cable, first made in 2021 and 2022 when he was the committee’s ranking member.

Before and after the subpoena was issued, the committee and Department negotiated the response to a broader committee request for materials related to the Afghanistan withdrawal. Secretary of State Antony Blinken resisted sharing the dissent document, [telling the committee](#) in a March 23, 2023 hearing, just before the subpoena was issued, that Department regulations limited sharing of dissent cables “to protect the integrity of the [dissent channel] process” and avoid any “chilling effect” on future use of the dissent channel. Despite refusing to immediately share the cable, [negotiations continued](#), with the Department offering compromises including briefings and summaries and Chairman McCaul pressing for full disclosure.

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When a compromise was not reached by mid-May, McCaul [announced](#) the committee would markup a contempt resolution against Secretary Blinken on May 24, 2023. Before the scheduled markup, the Department [agreed](#) to allow McCaul and Ranking Member Gregory Meeks to review the dissent cable *in camera* (i.e., in private) and with limited redactions that addressed Department concerns regarding disclosure of the cable's signatories. In response, McCaul announced that the contempt resolution was on indefinite hold. Subsequently, the Department allowed all committee members to review the cable. [According to McCaul](#), this was the first time the State Department allowed Congress to review a dissent cable.

## The House Committee on Oversight and Accountability and the Federal Bureau of Investigation

During the 118<sup>th</sup> Congress, the House Oversight and Accountability Committee has been [investigating the "domestic and international business dealings"](#) of President Joe Biden and members of his family. Republicans on the committee had [been investigating](#) these matters while in the minority during the 117<sup>th</sup> Congress. As part of this investigation, on May 3, 2023, Chairman James Comer (working with Senator Chuck Grassley) [reported](#) that they had received new information from a whistleblower on relevant Federal Bureau of Investigation (FBI) records and [subpoenaed](#) the FBI, seeking documents including any relevant FD-1023 forms. The FBI uses the [FD-1023](#), also known as a Confidential Human Source Reporting form, to collect and catalog information from human sources, including reports not verified by the FBI. On May 10, 2023, the deadline for the subpoena, the FBI [responded](#) and refused to confirm whether a responsive FD-1023 existed. In its letter, the FBI cited its interest in protecting the integrity of sources and investigations to support the refusal.

Through the remainder of May 2023 the committee and FBI [met and negotiated](#) but [did not come to an agreement](#). On May 30, 2023, Comer announced that his committee would act to hold FBI Director Christopher Wray in contempt of Congress, [scheduling a markup](#) for June 8, 2023.

According to a [draft report](#) released by the committee, Wray, Grassley, and Comer [spoke directly](#) on May 31, 2023, and the FBI agreed to allow the chairman and ranking member to review the FD-1023 but declined to provide access to the entire committee. At the [insistence of Comer](#), who stated that he was still prepared to proceed with the contempt resolution, the FBI agreed on June 7, 2023, to allow all committee members to review the FD-1023. That evening, Comer [indefinitely postponed](#) the scheduled markup of the contempt resolution and committee members were able to review the FD-1023 at the Capitol complex.

## Potential Lessons for Future Oversight

Across recent Congresses there has been [concern](#) regarding Congress's ability to obtain information from the executive branch and the effectiveness of Congress's subpoena enforcement tools, including use of the courts to enforce congressional authority. The two case studies discussed in this Insight demonstrate that Congress's tools can resolve significant information conflicts between Congress and the executive branch and that the accommodation process can be used to manage specific legal and policy objections to disclosure of information.

In each case, negotiations and requests for voluntary compliance were not immediately successful, and the threat of a contempt of Congress resolution closely coincided with necessary concessions from the executive branch that allowed the committees to conduct their desired oversight. While several factors likely caused those results, it does appear that the willingness of McCaul and Comer to consider contempt of Congress resolutions for Secretary Blinken and Director Wray, respectively, while also continuing to negotiate, contributed to the eventual agreements.

Of particular interest, especially considering [recent history](#), is that the committees were able to successfully enforce these subpoenas relatively quickly. This may allow the committees to use what they learn to further their investigations or support other legislative activity before the end of the Congress. Both committees are [continuing](#) the [investigations](#) discussed in this Insight.

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