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Hill watchdog Grassley blocked by administration privacy claims

Critics: Justice abusing '74 law to avoid oversight

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By Kelly Riddell - The Washington Times

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President Obama entered the Oval Office in 2009 promising his White House was committed to "an unprecedented level of openness" that would "strengthen our democracy and promote efficiency and effectiveness in government."

Fast-forward five years, and Mr. Obama's administration stands accused of using a broad interpretation of federal privacy statutes to frustrate one of the most aggressive critics of government fraud and greatest champion of whistleblowers — Iowa Republican Sen. Chuck Grassley.

The Department of Justice has repeatedly invoked privacy laws to stonewall Mr. Grassley, ranking member on the Senate Judiciary Committee, from pursuing investigations ranging from the "Fast and Furious" gun-running scandal to the questioning of judicial nominees, internal e-mails and documents obtained by The Washington Times show.

Although some in Washington view these tactics as politics as usual, private watchdog groups say the Obama administration's expansive use of the privacy act to limit congressional oversight is unprecedented and especially egregious given Mr. Obama's promises of openness and transparency.

"Sen. Grassley has forged a reputation since the 1980s as being completely bipartisan on oversight — he's held every single president accountable from Reagan to Obama," said Stephen Kohn, an attorney and executive director of the National Whistleblowers Association. "Going after Grassley [by way of the Privacy Act] is just demeaning to a guy who is known in the whistleblower community as their No. 1 advocate. It's a real step back for oversight."

A Justice Department spokesman said Mr. Obama was following the practice of previous administrations to allow disclosures of such information to congressional committees only if those disclosures are requested by the committee chairman.

Mr. Grassley is the senior Republican on the Senate Judiciary Committee, but Sen. Patrick Leahy, Vermont Democrat, is the chairman. All requests, the department said, must come through him.

The Privacy Act of 1974 was passed by Congress to safeguard individuals from the government snooping around in their personal information. The act has been used politically by previous administrations to bar ranking members of Congress, who are in the minority, from launching oversight investigations. However, if an investigation is supported and issued by a committee chairman, then that ranking member can proceed.

When a whistleblower came to Mr. Grassley's office to report the Fast and Furious scandal — a failed gun-running sting by the Justice Department that lost track of more than 1,000 government-issued guns, one of which later was used to kill a U.S. border agent — Mr. Grassley went to House

Oversight and Government Reform Committee Chairman Darrell Issa, California Republican, who agreed to start an investigation through his committee and invited Mr. Grassley's staff to participate in the investigation.

It was only when the Obama administration tried to bar Mr. Grassley and his aides from attending some of those meetings — citing the Privacy Act — that the senator cried foul.

The Department of Justice has similarly invoked the Privacy Act to refuse Mr. Grassley answers to so-called "questions on the record," asked to Justice Department appointees in nomination hearings. Last summer, B. Todd Jones, who was later confirmed as director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives agency, refused to answer several of Mr. Grassley's written questions during the appointment process, citing the law.

In the five years of the Obama administration, about a third of Mr. Grassley's inquiries have not — or have only partially — been answered, and when the department has responded, it's made Mr. Grassley wait, on average, more than six months for a reply.

"Responding to congressional oversight seems to be a problem for every administration, Democrat or Republican, but, the recent extremes to which the Obama administration has gone shows a disturbing disregard for the constitutional role of every member of Congress," Mr. Grassley said. "We need information to perform our constitutional function, but the administration tries every trick in the book to avoid transparency, even if it means twisting the law and ignoring relevant court decisions."

Mort Rosenberg, a fellow at the Constitution Project and former staffer for the Congressional Research Service, said the Justice Department had no legal standing to block Mr. Issa from inviting Mr. Grassley to participate in the House panel's investigations, and said the Privacy Act should not be invoked to block a lawmaker's questions during a nomination hearing. He called the Department of Justice's frequent use of the Privacy Act "crazy" when briefed on both instances.

"What you're seeing here is a part of a whole process of antagonism that's causing dysfunction and it's really hurting congressional oversight tremendously," Mr. Rosenberg said. "[Mr. Grassley] does a good job of annoying people and getting information, and the administration doesn't want to give over information, so they're trying to shovel him off."

The Obama administration's practice could have serious ramifications if the power dynamic is shifted and Republicans win back the Senate this fall, strategists warn. Mr. Grassley can be cantankerous, and he has a long memory — as a potential chair of the Judiciary Committee he could be formidable foe to the administration.

Politics aside, Mr. Obama's White House is using its interpretation of the law to prevent the government from working in the most effective manner possible, said Angela Canterbury, director of public policy for the Project on Government Oversight.

"Every member of Congress has the responsibility to conduct oversight and right to receive information from every agency to do this job," said Canterbury. "Using political tactics to prevent the disclose of information requested by members of Congress is really is unacceptable. The administration needs to provide Congress with information that can hold these agencies accountable."
