

## Advice For Responding To Minority Preservation Letters

By **Perrin Cooke, Bill Sokolove and Josh Schenk** (May 21, 2026, 12:41 PM EDT)

With the midterm elections rapidly approaching, Democratic lawmakers in both the U.S. House of Representatives and U.S. Senate have begun to return to an increasingly familiar tactic of the minority: firing off a flurry of document preservation letters that are a harbinger for the subpoenas to come.

These early letters signal that key Democrats intend to hold potential investigative targets accountable if they regain power, and that they will not look fondly on parties that dismiss their requests. By urging federal agencies and private entities to secure records in advance, Democratic ranking members are making clear that they won't wait idly to ensure relevant evidence is preserved.

This article outlines what these letters signal and highlights practical steps organizations can take to respond to preservation letters.

### The Backdrop

In recent months, Democratic leaders have dispatched multiple preservation letters across government and industry, and as Democratic leaders have already previewed, a further "oversight onslaught" is coming.[1]

On April 20, for example, Senate Majority Leader Chuck Schumer, D-N.Y., and Senate Judiciary Committee ranking member and Sen. Dick Durbin, D-Ill., sent a letter to the U.S. Department of Justice directing the DOJ and the FBI to "immediately preserve all existing and future records" relating to allegations concerning FBI Director Kash Patel.[2]

On March 9, Sen. Sheldon Whitehouse, D-R.I., requested that then-U.S. Attorney General Pam Bondi and Patel "preserve any existing and future records" related to compliance with the Epstein Files Transparency Act, and cautioned that noncompliance with preservation obligations could be "subject to criminal prosecution." [3]

Likewise, on Feb. 4, Rep. Ro Khanna, D-Calif., ranking member of the House Select Committee on the Chinese Communist Party, sent a preservation letter to World Liberty Financial, directing the company to retain all documents and communications relevant to its dealings with the administration and foreign investors.[4]



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And even where private parties do not themselves receive congressional outreach, those industries with significant business before government agencies that are the target of preservation requests now should expect to be drawn into investigations in the future.[5]

### **The Oversight Strategy and the Duty To Preserve**

This proactive use of preservation letters by the minority underscores an evolving oversight strategy. Put simply, minority members are asserting themselves early so that even without issuing subpoenas, potential targets of future investigations know to preserve evidence now.

Under established legal principles, the duty to preserve records most commonly kicks in when an investigation or other legal proceeding is reasonably foreseeable or pending, and Congress' position is certainly that a minority-initiated inquiry triggers immediate preservation obligations. Some letters have gone so far as to demand that recipients certify their preservation of documents, setting up the possibility of a "process foul" should they fail to do so.

Indeed, retention and preservation practices can become the entire focus of an investigation.

The minority's engagement is not unprecedented. Ahead of the 2022 midterms, House Republicans (then in the minority) reportedly sent over 500 information and document requests to lay the groundwork for their anticipated majority investigations.[6]

Meanwhile, oversight attention has extended beyond "official" correspondence and documents to scrutinize the use of ephemeral or encrypted messaging apps that might circumvent ordinary record retention. As the use of applications like Signal has proliferated, so too have investigations focused on this very topic.

In fact, a February letter from Durbin to Bondi and U.S. Attorney Jeanine Pirro explicitly admonished recipients that demands for preservation extend to "electronic messages sent using both official and personal accounts or devices and records created using text messages, phone-based message applications, or encryption software."

### **Practical Steps To Take Now**

For companies on the receiving end of minority-issued preservation letters, preparation is key. Organizations should consider the following steps to manage these demands and stay ahead of potential risks.

#### ***Immediate Response***

*Develop a comprehensive response strategy.*

Upon receipt of a preservation letter, organizations should promptly assess the scope of the request, identify relevant custodians, systems and time periods, and determine how preservation efforts will be coordinated internally.

*Establish clear internal processes for oversight engagement.*

Early steps should include identifying points of responsibility for managing preservation efforts and

responding to follow-up communications if congressional interest intensifies.

### ***Preservation Capabilities***

*Map the preservation demand against existing legal holds and retention obligations.*

Organizations should assess how the congressional request overlaps with — or expands beyond — current litigation holds, regulatory requirements or internal retention policies, and identify any gaps in custodians, data sources or date ranges.

*Evaluate whether retention and hold procedures can be implemented quickly and at scale.*

Broad or open-ended preservation demands can test an organization's ability to apply holds consistently across departments, systems and repositories, particularly as obligations evolve over time.

*Assess policies governing encrypted or ephemeral messaging and actual practice.*

Preservation reviews should consider whether formal policies reflect real-world usage and whether communications can be reasonably preserved once a duty attaches, especially as congressional demands increasingly reach messages sent on personal devices or third-party platforms.

### ***Evolving Obligations***

*Anticipate continuing preservation obligations.*

Congressional preservation letters are often framed as creating an ongoing duty to retain not only existing materials, but also newly generated documents and communications related to the subject matter of the inquiry.

*Document preservation decisions contemporaneously.*

Early judgments about scope, custodians, systems and implementation should be recorded at the time they are made, recognizing that these decisions may later be scrutinized if an investigation formally develops.

### **Conclusion**

As the 2026 election cycle progresses, minority-led oversight efforts are likely to continue and intensify — and will foreshadow the formal investigations to come if control of Congress changes. The minority's message is clear: Ignore us at your peril.

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[1] <https://www.semafor.com/article/11/04/2025/democrats-gear-up-for-oversight-onslaught-against-trump-if-they-win-midterms>.

[2] [https://www.democrats.senate.gov/imo/media/doc/letter\\_to\\_doj\\_re\\_preservation\\_of\\_patel\\_records.pdf](https://www.democrats.senate.gov/imo/media/doc/letter_to_doj_re_preservation_of_patel_records.pdf).

[3] <https://www.whitehouse.senate.gov/wp-content/uploads/2026/03/2026-03-09-Letter-to-DOJ-Epstein-302s-FINAL.pdf>.

[4] <https://democrats-selectcommitteeontheccp.house.gov/sites/evo-subsites/democrats-selectcommitteeontheccp.house.gov/files/evo-media-document/2-4-26-scc-letter-to-wlf.pdf>.

[5] <https://www.insidepoliticallaw.com/2026/02/09/democratic-investigations-agenda-is-coming-into-focus/>.

[6] <https://thehill.com/homenews/house/3697773-five-investigations-house-republicans-are-plotting-if-they-win-majority/>.