

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

January 24, 2018

The Honorable Trey Gowdy
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Over the past year, I have asked you repeatedly to join me in investigating critical failings in our nation's security clearance processes and troubling irregularities with the security clearances of senior aides to President Donald Trump. You have consistently refused to join any of these oversight requests.

I believe that serious deficiencies in our nation's security clearance processes represent an urgent and grave risk to our national security. This assessment is based not only on my own investigative work over the past several years, but also on the work of the nonpartisan Government Accountability Office.¹

One of the requests you declined to join was a letter I sent to the White House and the Department of Defense on October 5, 2017, regarding the process for granting "interim" security clearances while background investigations are underway—only to discover later that employees failed to disclose key information that should have barred them from accessing any classified information at all. In order to investigate these issues, I requested information about individuals who were granted interim security clearances that were later suspended or revoked based on undisclosed criminal acts or national security risks.²

¹ See, e.g., Government Accountability Office, *Personnel Security Clearances: Plans Needed to Fully Implement and Oversee Continuous Evaluation of Clearance Holders* (GAO-18-117) (Nov. 2017) (online at www.gao.gov/products/GAO-18-117) (warning that key aspects of the "continuous evaluation program" have not yet been determined, "which has limited the ability of executive branch agencies to plan for implementation"); Government Accountability Office, *Personnel Security Clearances: Additional Actions Are Needed to Ensure Quality, Address Timeliness, and Reduce Investigation Backlog* (GAO-18-29) (Dec. 2017) (online at www.gao.gov/products/GAO-18-29) (concluding that Congress should consider reestablishing a "requirement for clearance timeliness reporting").

² Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to General John F. Kelly, Chief of Staff, The White House, et al. (Oct. 5, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/EEC%20to%20WH%20DSS%20NBIB%2010-05-17.pdf>).

Unfortunately, the White House refused to respond or to provide any information in response to my request. The White House has also refused to respond to my separate requests for information about the security clearances of former National Security Adviser Michael Flynn,³ his son Michael Flynn, Jr.,⁴ President Trump's senior adviser and son-in-law Jared Kushner,⁵ and other officials.⁶

Although the White House refused to provide any information, the Department of Defense did respond to my October letter and provided extremely troubling data, which is set forth below.

For these reasons, I request that you reconsider your approach and now issue a subpoena to compel the White House to produce the information I requested. If you decide not to issue this subpoena yourself, then I ask you to place this matter on the agenda for our next regularly scheduled business meeting so all Committee members will have the opportunity to vote on a motion to subpoena the White House for these documents.

Defense Department Information on Interim Security Clearances

In response to my letter on October 5, 2017, the Director of the Defense Security Service (DSS) sent a letter providing data that raises extremely grave concerns about the processes currently being used to grant interim security clearances.⁷

DSS reported that it "made approximately 200,000 interim clearance decisions over the last 3 years." DSS also reported that in 2017, the Defense Department denied final security clearances in 486 cases involving contractor personnel, regardless of whether they received interim security clearances. These denials were based on the adjudicative guidelines below, and

³ See, e.g., Letter from Democratic Committee Members to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (Oct. 18, 2017) (online at <https://edit-democrats-oversight.house.gov/news/press-releases/oversight-democrats-to-gowdy-issue-subpoenas-or-let-us-vote-white-house-defies>).

⁴ See, e.g., Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Chairman Trey Gowdy (Jan. 16, 2018) (online at <https://democrats-oversight.house.gov/news/press-releases/cummings-calls-on-gowdy-to-issue-subpoenas-to-obtain-flynn-jr-s-security>).

⁵ See, e.g., Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Chief of Staff Reince Priebus, The White House (June 21, 2017) (online at <https://democrats-oversight.house.gov/news/press-releases/oversight-dems-press-the-white-house-to-explain-why-kushner-s-clearance-has-not>).

⁶ See, e.g., Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Vice President-Elect Mike Pence (Nov. 16, 2016) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2016-11-16.EEC%20to%20Pence_0.pdf).

⁷ Letter from Director Daniel E. Payne, Defense Security Service, Department of Defense, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 13, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/DSS.101317.Response%20to%20EEC%20re%20Interim%20Security%20Clearances%20for%20Individual....pdf>).

in some cases, multiple guidelines applied to a single case:

- Financial considerations: 378
- Personal conduct: 102
- Drug use: 66
- Criminal conduct (felony charges, to include pedophilia): 63
- Foreign influence: 33
- Foreign preference: 23
- Alcohol abuse/misuse: 21
- Sexual behavior: 3
- Psychological conditions: 2

With respect to interim security clearances—in which individuals gain immediate access to highly classified information as soon as they receive their interim security clearances—DSS identified 165 cases over this three-year period in which Secret or Top Secret interim security clearances were granted to individuals who were later denied final security clearances in 2017.

According to DSS, “Of those 165 cases, 151 people had pre-existing issues that they did not disclose and were not discovered during initial checks; the issues were not identified until the investigation was completed.” DSS explained further, “In the majority of these cases, interim clearance withdrawals were based on falsification of the clearance application and/or discovery of subsequent derogatory information.”

DSS provided several specific examples of extremely grave problems with this process. For example, DSS wrote:

One case that illustrates the risk incurred with lengthy background investigations involves an individual who received an interim Secret clearance in 2015 based on the information he provided on his clearance application. He did not disclose the fact that he had been charged with felony rape of a child, which was later reduced to a misdemeanor, of which he was found guilty. The arrest was discovered during the investigation by a local law enforcement check but did not appear on any initial checks with the Federal Bureau of Investigation, which are currently part of the DoD interim clearance process.

Defense Department Information on the Suspension of Final Security Clearances

DSS also raised serious concerns about individuals who had already obtained final clearances, but were later suspended based on subsequent activity or information. DSS wrote:

[T]here are also cases where DSS receives derogatory information on a cleared contractor employee who already holds a Confidential, Secret, or Top Secret clearance. In such cases, DSS temporarily suspends an individual’s clearance until that derogatory information can be adjudicated, usually through due process.

DSS provided specific information on 114 individuals who had final clearances that were suspended, writing:

During fiscal year 2017, DSS temporarily suspended the clearances of 114 individuals, pending due process, based on the adjudicative guidelines below. In some suspension decisions, multiple guidelines applied to a single case.

- Criminal conduct (felony charges, to include pedophilia): 39
- Drug use: 14
- Personal conduct: 14
- Psychological conditions: 11
- Sexual behavior (other than felony charges): 8
- Financial considerations: 6
- Foreign influence: 6
- Handling non-public information: 6
- Use of information technology: 6
- Foreign preference: 2
- Alcohol abuse/misuse: 1
- Allegiance to the United States: 1

Request for Subpoena to White House

The Oversight Committee has direct jurisdiction over security clearances, as well as the processes through which they are granted, suspended, and revoked. Our Committee has investigated security clearances under both Republican and Democratic chairmen.⁸

When you assumed the chairmanship of the Oversight Committee last year, you held a meeting with reporters during which you explained that you were walling off numerous topics from our Committee's oversight. However, as the *Washington Post* reported after the meeting, "Gowdy said there were Trump-related matters that he did see falling within the Oversight panel's purview," including "procedures for issuance of security clearances."⁹

Yet, to date you have refused to join even one of my requests for documents relating to security clearances. You have also blocked all efforts to allow Committee Members to vote for

⁸ See, e.g., *GOP Slams White House in FBI Files Report*, Washington Post (Sept. 25, 1996) (online at www.washingtonpost.com/wp-srv/politics/special/whitewater/stories/wwtr960825.htm) (Chairman Clinger's 1996 investigation of the White House Office of Personnel Security); Letter from Chairman Henry A. Waxman, House Committee on Oversight and Government Reform, to White House Counsel Fred Fielding (June 26, 2007) (online at <https://wayback.archive-it.org/4949/20141031200711/http://oversight-archive.waxman.house.gov/documents/20070626110513.pdf>) (Chairman Waxman's 2008 investigation into the White House Security Office and the renewal of Karl Rove's security clearance); Democratic Staff, House Committee on Oversight and Government Reform, *Contracting Out Security Clearance Investigations: The Role of USIS and Allegations of Systemic Fraud* (Feb. 11, 2014) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/USIS%20Security%20Clearance%20Report%202011-2014.pdf>) (Chairman Issa's 2014 investigation into the security clearances issued by the Office of Personnel Management);

⁹ *On Trump and Russia, Oversight Chair Trey Gowdy Says He Will Stay in His Lane*, Washington Post (June 23, 2017) (online at www.washingtonpost.com/powerpost/on-trump-and-russia-oversight-chair-trey-gowdy-says-he-will-stay-in-his-lane/2017/06/23/4d1dfca6-583d-11e7-a204-ad706461fa4f_story.html).

themselves on motions to issue subpoenas to obtain any information whatsoever relating to White House officials—relating not only to security clearances, but also to their use of private email and nongovernmental servers, their potential conflicts of interest, and even their response to last year’s hurricanes.¹⁰

For the reasons set forth above, I respectfully request that you reconsider your approach and issue a subpoena to compel the White House to produce documents relating to officials who have applied for clearances, received interim clearances, received final clearances, or had their clearances suspended or revoked based on derogatory information.

Specifically, I request that you issue a subpoena to require the White House to produce, by February 7, 2018, the following documents in the custody, possession, or control of the Executive Office of the President for the time period from November 9, 2017, to the present:

1. documents sufficient to show all individuals who have been granted interim or final security clearances who have committed or been convicted of criminal acts or are serious national security risks, including: (a) the individual’s employing office, department, agency and/or company (b) the individual’s title; (c) the date that the individual’s interim security clearance was granted; (d) the current status of that individual’s security clearance; and (e) the date that the individual’s security clearance was revoked; and
2. for those individuals whose interim or final security clearances have been suspended or revoked, all documents referring or relating to the security clearance application, approval, suspension, and revocation.

If you decide not to issue this subpoena yourself, then I ask you to place this matter on the agenda for our next regularly scheduled business meeting so all Committee members will have the opportunity to vote on a motion to subpoena the White House for these documents.

Thank you for your consideration of this request.

Sincerely,



Elijah E. Cummings
Ranking Member

¹⁰ House Committee on Oversight and Government Reform Democrats, *Oversight Committee Republicans Block All Debate and Votes on Subpoenas* (Nov. 2, 2017) (online at <https://democrats-oversight.house.gov/news/press-releases/oversight-committee-republicans-block-all-debate-and-votes-on-subpoenas>).