

Congress of the United States

Washington, DC 20515

July 27, 2023

The Honorable Joseph V. Cuffari
Inspector General
Office of Inspector General
Department of Homeland Security
245 Murray Lane S.W., Building 410
Washington, D.C. 20528

Dear Inspector General Cuffari:

The Committees are expanding their investigation into your failed leadership and egregious mismanagement of the Department of Homeland Security Office of Inspector General (DHS OIG) after reports revealed that your office approved a stunning \$1.17 million settlement to a former employee to resolve claims of whistleblower retaliation raised against you. A Merit Systems Protection Board (MSPB) deposition transcript raises serious concerns about your possibly retaliatory actions and lack of candor, improper use of taxpayer dollars, and lack of truthfulness in your communications with Congress. The Committees are requesting documents and information relating to this payment and any other settlements paid on behalf of DHS OIG in regard to your conduct or the conduct of other senior DHS OIG employees.

Our Committees are engaged in a longstanding investigation into your tenure as DHS Inspector General and have repeatedly raised concerns about your flawed work product, troubling professional actions, and repeated failure to respect congressional authority. In March 2020, after you refused to provide Oversight Committee staff with updates on forthcoming reports, the Oversight Committee wrote to you regarding the alarmingly slow pace at which your office was issuing reports.¹ The Homeland Security Committee wrote to you identifying numerous shortcomings in reports issued by your office regarding the deaths of two children in the custody of Customs and Border Protection.² Since May 2022, we have written to you on four separate occasions to request documents and information about your conduct as Inspector General:

¹ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Inspector General Joseph V. Cuffari, Department of Homeland Security, Office of Inspector General (Mar. 26, 2020) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-03-26.CBM%20to%20Cuffari-DHS%20IG%20re%20Reports.pdf>).

² Letter from Chairman Bennie G. Thompson, Committee on Homeland Security, to Inspector General Joseph V. Cuffari, Department of Homeland Security, Office of Inspector General (Mar. 26, 2020) (online at <https://democrats-homeland.house.gov/imo/media/doc/2020-03-26%20DHS%20OIG.pdf>).

- first, following serious allegations that your office censored findings of domestic abuse and sexual harassment by Department of Homeland Security (DHS) employees;³
- second, after you failed to promptly notify Congress of crucial information on the Secret Service's erasure of text messages related to the January 6, 2021, attack on the U.S. Capitol;⁴
- third, after new information emerged on your repeated failures to gather text messages from officials in the Secret Service and other senior officials related to the January 6, 2021, attack on the U.S. Capitol;⁵ and
- fourth, regarding your repeated failure to comply with outstanding Congressional requests.⁶

Deposition Testimony Raises Serious New Concerns About Your Possibly Retaliatory Actions and Lack of Candor

On July 27, 2023, the Project On Government Oversight (POGO) released a copy of the \$1.17 million settlement agreement between DHS OIG and former DHS OIG Deputy Inspector General, Jennifer Costello.⁷ POGO also released the transcript of a deposition for which you sat on June 29, 2023, as part of an MSPB proceeding. The transcript indicates you were called as a witness regarding allegations of whistleblower reprisal raised by Ms. Costello.⁸ According to the

³ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security, to Inspector General Joseph V. Cuffari, Department of Homeland Security, Office of Inspector General (May 10, 2022) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-05-10.CBM%20Thompson%20to%20Cuffari-DHS%20IG%20re%20Reports.pdf>).

⁴ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security, to Inspector General Joseph V. Cuffari, Department of Homeland Security, Office of Inspector General, and Chair Allison C. Lerner, Council of the Inspectors General on Integrity and Efficiency (July 26, 2022) (<https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-07.26.CBM%20BGT%20to%20Cuffari-DHS%20and%20Lerner-CIGIE%20re%20Secret%20Service.pdf>).

⁵ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security, to Inspector General Joseph V. Cuffari, Department of Homeland Security, Office of Inspector General (Aug. 1, 2022) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-08-01.CBM%20BGT%20to%20Cuffari-DHS%20re%20Document%20Request.pdf>).

⁶ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security, to Inspector General Joseph V. Cuffari, Department of Homeland Security, Office on Inspector General (Aug. 16, 2022) (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2022-08-16.CBM%20BGT%20to%20Cuffari-DHS%20IG%20re%20IG%20Reports.pdf>).

⁷ *DHS Watchdog Settles Whistleblower Reprisal Case for \$1.17 Million*, Project On Government Oversight (July 27, 2023) (online at www.pogo.org/investigation/2023/07/dhs-watchdog-settles-whistleblower-reprisal-case-for-1-17-million).

⁸ Merit Systems Protection Board, Washington Regional Office, Deposition of Inspector General Joseph Cuffari (June 29, 2023) (online at www.documentcloud.org/documents/23880005-june-29-2023-deposition-of-dhs-inspector-general-joseph-cuffari).

Washington Post, Ms. Costello was “placed on administrative leave” in February 2020.⁹ POGO’s reporting indicates you “terminated [Ms. Costello’s] employment in June 2020.”¹⁰ Ms. Costello’s attorney “said her client was not given a reason for her removal,” but that she “believes she has been retaliated against for trying to denounce” your alleged “mismanagement and wrongdoing.”¹¹

Your testimony regarding the actions taken by your office in your attempt to remove Ms. Costello is deeply troubling. For example, your testimony revealed a plan to reassign Ms. Costello involuntarily from DHS OIG to DHS’s Office for Countering Weapons of Mass Destruction even though she had no relevant subject matter expertise.¹² However, by your own admission, Ms. Costello’s reassignment was proposed before DHS OIG investigated her conduct:

Q. And there was no investigation concerning Ms. Costello or any conduct that you indicate was the basis for reassigning her going on at this time; is that correct?

A. **I believe I mentioned four different topical areas. There was no investigation though.**¹³

Although Ms. Costello’s proposed reassignment ultimately did not occur, she was subsequently proposed for removal. Again, your testimony revealed that there was no investigation prior to her proposed removal.

Q. Was there ever any investigation of Ms. Costello’s conduct prior to your decision to remove her that May of 2020?

A. **No.**¹⁴

In response to questions from Ms. Costello’s attorney, your testimony appears to show that at least one of the allegations brought against Ms. Costello as a basis for her proposed removal was frivolous. Specifically, the deposition transcript reveals that after you requested that Ms. Costello print thousands of pages of DHS OIG policies, she expressed concern to you

⁹ *DHS Inspector General’s Office Nearly Dormant Under Trump as Reports and Audits Plummet*, *Washington Post* (Mar. 17, 2020) (online at www.washingtonpost.com/national/homeland-security-inspector-general-weakened/2020/03/17/c3269ea6-6309-11ea-912d-d98032ec8e25_story.html).

¹⁰ *DHS Watchdog Settles Whistleblower Reprisal Case for \$1.17 Million*, *Project On Government Oversight* (July 27, 2023) (online at www.pogo.org/investigation/2023/07/dhs-watchdog-settles-whistleblower-reprisal-case-for-1-17-million).

¹¹ *DHS Inspector General’s Office Nearly Dormant Under Trump as Reports and Audits Plummet*, *Washington Post* (Mar. 17, 2020) (online at www.washingtonpost.com/national/homeland-security-inspector-general-weakened/2020/03/17/c3269ea6-6309-11ea-912d-d98032ec8e25_story.html).

¹² Merit Systems Protection Board, Washington Regional Office, Deposition of Inspector General Joseph Cuffari (June 29, 2023) (online at www.documentcloud.org/documents/23880005-june-29-2023-deposition-of-dhs-inspector-general-joseph-cuffari).

¹³ *Id.*

¹⁴ *Id.*

that it was not a “valuable use of the staff resources or appropriated funds.”¹⁵ You then decided that this suggestion was grounds for removal because she “was making a determination on whether or not [the printing] was appropriate.”¹⁶

Q. So in this e-mail, Ms. Costello is responding to your request to printout, at least in part, all of the policies that you all had been discussing for your review; would you agree?

A. **There’s another e-mail that exactly lists what I was asking.**

Q. I understand, but here she’s responding to that request?

A. **To a request that I made, that’s correct.**

Q. Yes. And she says with regard to question one, which, I believe, is the request where you enumerate the policies you want her to printout, that it could amount to thousands and thousands of printed pages, and she didn’t think that that was a valuable use of the staff resources or appropriated funds, and that the policies could be accessed and located on OIG Central, which is what I would refer to as intranet. Do you recall her saying that to you?

A. **Yes.**

Q. And that statement is one of the specifications for which you’re proposing her removal; correct?

A. **Correct.**

Q. Okay. What was removable about her suggesting to you to not printout thousands of pages and simply access what you were looking for in electronic format?

A. **Because I was asking information and she was making a determination on whether or not it was appropriate.**¹⁷

Your testimony also suggests that certain charges you raised against Ms. Costello may have been unsupported, specifically a charge that she refused to accept the proposed reassignment to DHS’s Office for Countering Weapons of Mass Destruction. The deposition transcript reveals that despite evidence presented by Ms. Costello’s attorney, you refused to agree that the proposed charges would be inappropriate if the evidence did not support them.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

Q. Sitting here today, you can't point to anything which would indicate that she had, in fact, refused to take the reassignment; correct?

A. **Correct.**

Q. And you would agree, that there was nothing included in the documents supporting the charge of removal on this basis that indicated she refused to accept the reassignment; correct?

A. **I don't have the charging sheet.**

Q. You can think of nothing; correct?

A. **Without the charging sheet.**

Q. And if there's no written communication where Ms. Costello is indicating that she's refusing to go, would you agree that removing her for refusing to take a directed assignment is unsustainable?

A. **I think that's a matter for the judge to decide.**

* * *

Q. And in being the deciding the official, you have to decide whether a charge in a specification can be sustained; correct?

A. **Correct.**

Q. So then, I think it's an appropriate question for you, too. That if there's nothing to support her refusal to take a directed reassignment, then the charge citing her refusal to take a directed reassignment can't be sustained; correct?

A. **Again, that's a matter for the judge to interpret.**

Q. So are you refusing to answer that question?

A. **No.**

Q. Are you indicating that you did not sustain the charge of refusing to take a directed reassignment?

A. **No, I did sustain it.**

Q. Okay. And so since you must know something about sustaining charges, I'm asking if there's no evidence that reflects the charge, it would be improper to sustain it; is that correct?

A. That's a possibility.¹⁸

In addition, your testimony appears to show your troubling view of employees who express concerns about your qualifications.

Q. Do you think individuals at OIG who express concerns about your qualifications for your position as inspector general should be removed for expressing those concerns?

A. I believe it's sewing [sic] seeds of dissension.¹⁹

Your response is alarming because it indicates that you are a willful contributor to a toxic culture within DHS OIG where employees may be subject to retaliation if they express concerns with your leadership.

Decision To Use Millions in Taxpayer Funds to Settle Claims for Whistleblower Reprisal and Investigate Staff Raises Serious Concerns About Mismanagement

Shortly after your deposition, DHS OIG elected to settle Ms. Costello's claims of whistleblower reprisal for the staggering sum of \$1.17 million. According to POGO, "the \$1.17 million settlement is among the largest publicly known settlements in a federal employee whistleblower retaliation case" and "the largest known settlement involving an employee from a federal office of inspector general."²⁰

DHS OIG Chief of Staff, Kristen Fredricks, approved the settlement to resolve claims arising from your misconduct.²¹ Federal ethics laws and regulations make clear that impartiality must be maintained by employees and officers, including the head of a federal agency.²² If an employee is concerned that their actions would raise any ethics questions, regulations state that they should seek guidance from an agency ethics official.²³ Further, federal regulations *require*

¹⁸ Merit Systems Protection Board, Washington Regional Office, Deposition of Inspector General Joseph Cuffari (June 29, 2023) (online at www.documentcloud.org/documents/23880005-june-29-2023-deposition-of-dhs-inspector-general-joseph-cuffari).

¹⁹ *Id.*

²⁰ *DHS Watchdog Settles Whistleblower Reprisal Case for \$1.17 Million*, Project On Government Oversight (July 27, 2023) (online at www.pogo.org/investigation/2023/07/dhs-watchdog-settles-whistleblower-reprisal-case-for-1-17-million).

²¹ Office of Inspector General, Department of Homeland Security, *Organization Chart* (online at www.oig.dhs.gov/about/organization_chart) (accessed on July 27, 2023); In addition to being identified as the DHS OIG Chief of Staff, Ms. Fredricks is also identified on the DHS OIG organization chart as the Deputy Inspector General Immediate Office, and Deputy Inspector General Office of External Affairs (Acting); Merit Systems Protection Board, Washington Regional Office, Settlement Agreement: Jennifer Costello v. DHS (July 17, 2023) (online at <https://s3.documentcloud.org/documents/23883241/costello-v-dhs-settlement-agreement-final-7-17-23.pdf>).

²² See Ethics in Government Act, Pub. L. No. 95-521; 5 C.F.R. § 2635.502.

²³ 5 C.F.R. § 2635.502.

that an agency ethics official be consulted when the conduct in issue involves the head of the agency.²⁴ As an Inspector General, you are expected to hold yourself to the highest standards of ethics and integrity, not the lowest. It is unclear whether you raised concerns regarding your subordinate's approval of the \$1.17 million settlement to resolve allegations pertaining to your misconduct. It is also unclear whether or not you sought an opinion from a DHS ethics officer.²⁵ However, it is deeply troubling that the individual who approved the settlement is someone whom you directly oversee and promoted to the position of Chief of Staff.²⁶ This decision raises a potentially serious and flagrant abuse of your position.

The settlement between DHS OIG and Ms. Costello follows your decision in 2020 to hire an outside law firm, WilmerHale, to "undertake an independent investigation regarding three senior DHS OIG employees" who "allegedly engaged in an assortment of unprofessional behavior that was designed to undermine and contravene the authority of the two Inspectors General to whom they reported at DHS OIG from late 2017 to 2020."²⁷ This independent investigation did not substantiate any illegal conduct and cost taxpayers \$1.4 million.²⁸ Further, POGO's reporting indicates that you spent "at least \$500,000 in additional taxpayer dollars" on attorneys relating to Ms. Costello's allegations.²⁹

Deposition Testimony Suggests a Lack of Candor in Congressional Communications

Your deposition testimony suggests that your communications with Congress about the process that led you to hire WilmerHale to conduct an independent investigation into Ms. Costello and two other senior DHS OIG employees may have been disingenuous. On December 31, 2020, you transmitted to Congress the results of WilmerHale's investigation, stating: "After conferring with members of the Inspector General community, I authorized issuance of a solicitation for independent investigative services to examine allegations concerning the three senior executives."³⁰

²⁴ 5 C.F.R. § 2635.102(b).

²⁵ Agency Ethics Official refers to the definition in 5 C.F.R. § 2635.102.

²⁶ Merit Systems Protection Board, Washington Regional Office, Deposition of Inspector General Joseph Cuffari (June 29, 2023) (online at www.documentcloud.org/documents/23880005-june-29-2023-deposition-of-dhs-inspector-general-joseph-cuffari).

²⁷ Department of Homeland Security, Office of Inspector General, *Report of Investigation* (Dec. 14, 2020) (online at www.oig.dhs.gov/sites/default/files/assets/FOIA/final-redacted-wilmerhale-roi_01-13-21_0516pm.pdf).

²⁸ USASpending.gov, *Contract Summary: Wilmer Cutler Pickering Hale and Dorr LLP* (online at www.usaspending.gov/award/CONT_AWD_70VT1520C00003_7004_-NONE_-NONE-) (accessed on July 25, 2023).

²⁹ *DHS Watchdog Settles Whistleblower Reprisal Case for \$1.17 Million*, Project On Government Oversight (July 27, 2023) (online at www.pogo.org/investigation/2023/07/dhs-watchdog-settles-whistleblower-reprisal-case-for-1-17-million).

³⁰ Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, Office of Inspector General, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security (Dec. 31, 2020).

In a separate civil complaint that you filed against the Council of the Inspectors General on Integrity and Efficiency (CIGIE) you state that before contracting with WilmerHale, you attempted and failed to get CIGIE's Integrity Committee to investigate purported allegations of misconduct by the three senior DHS OIG employees.³¹

However, in your deposition, you clearly acknowledge that before you considered hiring WilmerHale both of the Inspectors General you approached about undertaking this investigation declined.³²

Q. Do you recall contacting the law firm of WilmerHale -- and I forget the other names -- Cutler Pickering, something like that -- about an investigation that, in part, concerned allegations against Ms. Costello?

A. **Yes.**

Q. Did you consider going to other inspector generals for this investigation before considering going to WilmerHale?

A. **Yes.**

Q. Who did you consider going to?

A. **I ultimately spoke to Gail Ennis, the Social Security Inspector General.**

Q. Was she the only one?

A. **I don't recall. There may have been another one.**

Q. Did she decline to take on the investigation?

A. **She did.**

Q. Okay. Do you know why?

A. **The workload would be overwhelming for her and her staff.**

Q. And you think you may have approached one other inspector general?

A. **Yes.**

³¹ Plaintiffs Complaint for Declaratory Injunctive, and Other Relief, *Kristen Fredricks et al. vs. Council of the Inspectors General on Integrity and Efficiency et al.* (Apr. 4, 2023) (No. 1:23-CV-00442).

³² Merit Systems Protection Board, Washington Regional Office, Deposition of Inspector General Joseph Cuffari (June 29, 2023) (online at www.documentcloud.org/documents/23880005-june-29-2023-deposition-of-dhs-inspector-general-joseph-cuffari).

Q. And you don't remember who that was?

A. No.

Q. And I assuming that inspector general declined to take on that investigation as well?

A. **Correct.**³³

In your correspondence with Congress, you failed to disclose that two Inspectors General declined your request to investigate allegations of misconduct concerning the three DHS OIG senior executives.³⁴ Your omission of this important information raises questions about your intentions when you informed Congress that you conferred with other Inspectors General and whether or not you accurately reflected the events preceding your decision to hire WilmerHale.

The Committees request that DHS OIG produce the following documents and information no later than August 10, 2023:

1. All documents referring or relating to the proposed removal of former Deputy Inspector General Jennifer Costello;
2. All documents referring or relating to the settlement between DHS OIG and former Deputy Inspector General Jennifer Costello, including but not limited to all documents referring or relating to the formulation, review, and approval of the settlement;
3. All policies governing the approval of settlements within DHS OIG and, to the extent that they are applicable to DHS OIG, all policies governing the approval of settlements within DHS;
4. All documents referring or relating to the source of funding for the settlement;
5. All documents referring or relating to any allegations raised by any DHS OIG employee at any time during your tenure as Inspector General that you executed yourself or sanctioned or instructed others to retaliate against them in any manner, as well as all documents referring or relating to any investigative action contemplated or taken by DHS OIG to investigate or respond to any allegation of retaliation raised by any DHS OIG employee against you;

³³ Merit Systems Protection Board, Washington Regional Office, Deposition of Inspector General Joseph Cuffari (June 29, 2023) (online at www.documentcloud.org/documents/23880005-june-29-2023-deposition-of-dhs-inspector-general-joseph-cuffari).

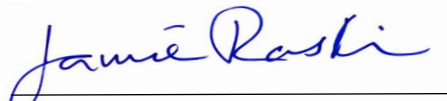
³⁴ *Id.*

6. All documents referring or relating to any other settlement paid by DHS OIG during your tenure to settle any claims from any source regarding your conduct or the conduct of senior DHS OIG employees; and
7. All documents referring or relating to the independent investigation conducted by WilmerHale.

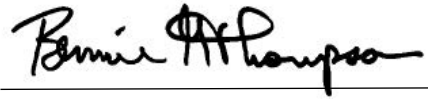
The Committees also request a separate briefing with Deputy Inspector General and Chief of Staff Kristen Fredricks and Chief Counsel James Read to be conducted no later than September 7, 2023.

The Committee on Oversight and Accountability is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. The Committee on Homeland Security is the principal committee of jurisdiction for the “organization, administration, and general management of the Department of Homeland Security” under House Rule X. An attachment to this letter provides additional instructions for responding to this request. If you have any questions, please contact Committee staff at (202) 225-5051.

Sincerely,



Jamie Raskin
Ranking Member
Committee on Oversight and Accountability



Bennie G. Thompson
Ranking Member
Committee on Homeland Security

cc: The Honorable James Comer, Chairman
Committee on Oversight and Accountability

The Honorable Mark E. Green, Chairman
Committee on Homeland Security

Responding to Committees' Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, including alternate spellings or transliterations of any names, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committees.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The terms “relating to” and “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “involving”, with respect to any given subject, means sending, receiving, or being copied (CC or BCC), or being the subject matter on any documents or communications described in the request.
9. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
10. The term “individual” means all natural persons and all persons or entities acting on their behalf.