

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051

MINORITY (202) 225-5074

<http://oversight.house.gov>

July 1, 2020

The Honorable Steven A. Engel  
Assistant Attorney General  
Office of Legal Counsel  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Assistant Attorney General Engel:

We write to request documents and information regarding any Department of Justice, Office of Legal Counsel opinions concerning the Administration's legal authority to eliminate the Office of Personnel Management (OPM) or merge the agency with another Executive Branch agency or entity as outlined in the plan released by the Executive Office of the President, "Delivering Government Solutions in the 21<sup>st</sup> Century."<sup>1</sup>

According to a good government watchdog group, the Project on Government Oversight, they have obtained a copy of notes from a conference call in April 2019 during which you informed attorneys from OPM, the General Services Administration (GSA), and the Office of Management and Budget (OMB) that the Administration lacked legal authority for its plan to eliminate OPM. According to these notes, this legal advice was provided as an oral "opinion" from OLC.<sup>2</sup>

This OLC legal opinion apparently was rendered months before two hearings before the Subcommittee in which OPM and OMB officials were asked explicitly for any legal advice they received regarding the proposed elimination of OPM. This new information raises questions about whether former Deputy Director of Management of OMB and former Acting Director of OPM Margaret Weichert, as well as then-OPM Deputy Chief of Staff Stephen Billy, misled Congress when they concealed this meeting, your legal advice, and these notes.

During one hearing, Mr. Billy was asked repeatedly by the Chairman, Mr. Hice, Mr. Raskin, and current White House Chief of Staff Mark Meadows about the legal authority for the

---

<sup>1</sup> *Delivering Government Solutions in the 21<sup>st</sup> Century*, Office of Management and Budget (June 2018) (online at [www.performance.gov/GovReform/Reform-and-Reorg-Plan-Final.pdf](http://www.performance.gov/GovReform/Reform-and-Reorg-Plan-Final.pdf)).

<sup>2</sup> *White House Concealed Finding That OPM Merger Was Illegal, Report Says*, Government Executive (June 24, 2020) (online at [www.govexec.com/oversight/2020/06/white-house-concealed-finding-opm-merger-was-illegal-report-says/166411/](http://www.govexec.com/oversight/2020/06/white-house-concealed-finding-opm-merger-was-illegal-report-says/166411/)).

Administration's proposed elimination of OPM and the existence of any related legal analysis. Mr. Billy's answers and the preceding efforts by the agency to withhold information from Congress elicited bipartisan frustration.

### **Bipartisan Concerns About the Legality of the Administration's Plan**

On March 22, 2019, more than a year ago, Subcommittee Chairman Gerald E. Connolly sent a letter to OPM requesting 13 categories of documents relating to the Administration's plan to eliminate OPM. The letter requested basic documents, such as a cost/benefit analysis of the planned merger, as well as any legal analyses that were conducted.<sup>3</sup>

On May 8, 2019, Chairman Connolly sent a follow-up letter to OPM reiterating the request for all responsive documents and asking for a privilege log listing any specific documents that were withheld and the specific legal rationale for withholding them.<sup>4</sup> OPM provided few relevant documents and no privilege log.

At the Subcommittee's hearing on May 21, 2019, both majority and minority Subcommittee Members demanded that OPM provide the Subcommittee with, among other documents, any legal analyses of the proposal. At that hearing, Representative Eleanor Holmes Norton asked OPM Director Weichert:

- Q: Those are the 13 categories. He was very specific. Have you provided that information?
- A: So we provided all of the relevant documents that were not already still deliberative and pre-decisional. So I think the—
- Q: So you have provided the 13 categories of documents that Chairman Connolly asked for?
- A: So not all of the categories are at the decision point. So I understand—I mean, you made a great point about doing this being very hard. We would love to be further along than we actually are. So we don't have some of the documents fully done and out of the deliberative process into decision. So we've shared what we were legally able to do around documents that were no longer in the deliberative pre-decisional phase.<sup>5</sup>

Director Weichert failed to mention the April 2019 conference call with the you, failed

---

<sup>3</sup> Letter from Chairman Gerald E. Connolly, Subcommittee on Government Operations, et al., to Acting Director Margaret Weichert, Office of Personnel Management (Mar. 22, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-22.GEC%20to%20Weichert-OPM%20re%20Witness%20Invite%20for%205-1%20Gov%20Ops%20Hearing.pdf>).

<sup>4</sup> Letter from Chairman Gerald E. Connolly, Subcommittee on Government Operations, et al., to Acting Director Margaret Weichert, Office of Personnel Management (Mar. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-08.GEC%20to%20Weichert-OPM%20re%20OPM%20Reorganization.pdf>).

<sup>5</sup> Committee on Oversight and Reform, Subcommittee on Government Operations, *Hearing on The Administration's War on a Merit Based Civil Service* (May 21, 2019) (online at <https://oversight.house.gov/legislation/hearings/trump-s-war-on-a-merit-based-civil-service>).

to mention the legal opinion you provided during this phone call, and failed to mention that notes taken at the meeting were being withheld from the Subcommittee, all of which would be responsive to Congresswoman Norton's questions and the Subcommittee's document requests.

At a June 26, 2019, hearing, both majority and minority Subcommittee Members again pressed for any legal analyses of the White House's proposed abolition of OPM. Days before this hearing, OPM produced to the Subcommittee a handful of documents, but it did not produce the notes from the April 2019 call, it did not produce a privilege log listing the notes as withheld, and it did not indicate in any other way that it was withholding the notes based on any claim of privilege. With respect to the documents that were produced, the sections that addressed the legal analysis were redacted, which several Members highlighted on television screens in the hearing room during questioning.

For example, now-Ranking Member of the Subcommittee Jody B. Hice questioned Mr. Billy, then-Deputy Chief of Staff at OPM:

- Q: What is the legal basis for redacting basic answers to questions?
- A: I'm not an attorney. I'm not able to talk to the specifics about that. I know that we are—our attorneys are working to provide as much information as we can. There are some things that, where the legal analysis hasn't been completed, we don't have a legal analysis to provide at this time.
- Q: Mr. Billy, that's totally unacceptable, your answer, and we expect to get the information that we request. Is that understood?
- A: Yes, Congressman.
- Q: A couple of weeks ago, Acting Director Weichert was here, and there was a bipartisan call for documents relating to the OPM-GSA merger, **specifically the legal analysis for the merger**. Do you have any idea when that analysis will be provided to this committee?
- A: So attorneys are working across the agencies that are involved in this to finalize the legal authorities that currently exist, and as soon as that is done, we will provide that.
- Q: Do you have any idea when that will be done?
- A: I don't have an exact timeline, no sir.
- Q: Do you have an estimate?
- A: We are hoping to have it as soon as they're completed. The attorneys are working daily on this.<sup>6</sup>

Again, Mr. Billy made no mention of the April 2019 conference call, your legal analysis provided to OMB, GSA, and OPM, or the notes of that meeting.

With respect to the Administration's claim that some documents could be withheld based on a claim of "deliberative process" privilege, Rep. Mark Meadows—who was then the

---

<sup>6</sup> Subcommittee on Government Operations, *Hearing on Document Production Status Update: OPM, FBI, and GSA* (June 27, 2019) (online at <https://oversight.house.gov/legislation/hearings/document-production-status-update-opm-fbi-and-gsa>) (emphasis added).

Ranking Member of the Subcommittee and is now President Trump's Chief of Staff, strongly rejected such claims at the hearing on June 26, 2019, stating:

If any of you are here today to say that it's part of a deliberative process that somehow Congress can't see the documents, I would urge you strongly not to go there. You will find the full force of both Republicans and Democrats coming together to acknowledge that that is not a legitimate reason for you to withhold documents. Second, if you think that somehow the lack of giving documents to this committee is serving a greater purpose, I would assure you that it is not.<sup>7</sup>

To this day, neither OMB, OPM, or GSA have acknowledged your legal opinion or the telephone call on which it was offered.

In response to news about the existence of notes documenting the April 2019 call with OLC, an OPM spokesperson reportedly stated: "This story is false. The Office of Legal Counsel never issued an opinion prohibiting the proposed reorganization of GSA and OPM."<sup>8</sup>

### **Document and Information Request**

As part of the Subcommittee's investigation into whether Ms. Weichert or Mr. Billy may have provided misleading or false testimony, we request the following information be provided to the Subcommittee:

1. All documents and information regarding OLC opinions concerning the Administration's proposed elimination of OPM;
2. Any notes or documents generated for or at the April 2019 meeting at which you provided your legal opinion on the abolition of OPM to OMB, OPM, and GSA officials; and
3. All documents and information related to OLC communications with OPM and other Executive Branch agencies and entities regarding the Administration's proposed elimination of OPM.

We ask that these materials be provided to the Committee by July 14, 2020.

The Committee on Oversight and Reform 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. If you have any questions, please contact Subcommittee staff at (202) 225-5051.

---

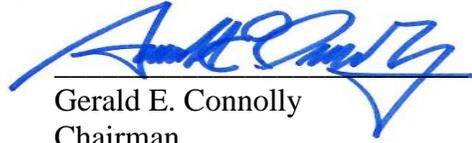
<sup>7</sup> Subcommittee on Government Operations, *Hearing on Document Production Status Update: OPM, FBI, and GSA* (June 27, 2019) (online at [oversight.house.gov/legislation/hearings/document-production-status-update-opm-fbi-and-gsa](https://oversight.house.gov/legislation/hearings/document-production-status-update-opm-fbi-and-gsa)).

<sup>8</sup> *White House Concealed Finding That OPM Merger Was Illegal, Report Says*, Government Executive (June 24, 2020) (online at [www.govexec.com/oversight/2020/06/white-house-concealed-finding-opm-merger-was-illegal-report-says/166411/](https://www.govexec.com/oversight/2020/06/white-house-concealed-finding-opm-merger-was-illegal-report-says/166411/)).

Sincerely,



Carolyn B. Maloney  
Chairwoman  
Committee on Oversight and Reform



Gerald E. Connolly  
Chairman  
Subcommittee on Government  
Operations

Enclosure

cc: The Honorable James R. Comer, Ranking Member

The Honorable Jody B. Hice, Ranking Member  
Subcommittee on Government Operations

## Responding to Oversight Committee 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 Committee.
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, the request shall be read also to include that alternative identification.
4. The Committee's 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 Committee 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 Committee 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 Committee's 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.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
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 Committee.

### **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 term “related to” or “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 “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.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.