

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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October 20, 2017

The Honorable Trey Gowdy
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to a briefing our staff received this week from the White House relating to our Committee's bipartisan investigation of the use of personal email by the President's top White House aides in possible violation of the Presidential Records Act (PRA).

White House Refusal to Comply with Bipartisan Request

On September 25, 2017, you and I sent a joint, bipartisan letter to White House Counsel Don McGahn requesting documents relating to multiple reports that the President's top advisors used personal email accounts, non-governmental servers, and private domains to communicate about official business.¹

In our letter, we requested the identities of all non-career White House employees who used non-government email accounts for official business, the identities of all non-governmental email accounts they used, and the identities, accounts, and cellular information for all non-career White House employees who used personal text messaging, phone-based message applications, or encrypted software for official business. We sent similar letters to dozens of other federal agencies, and we asked for this information by October 9, 2017.

On October 10, 2017, the White House essentially disregarded these requests. Marc Short, the Assistant to the President and Director of Legislative Affairs at the White House, sent a letter to the Committee proclaiming broadly that "the White House has endeavored to educate all White House employees regarding their responsibilities under the PRA."²

¹ Letter from Chairman Trey Gowdy and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Donald F. McGahn, II, Counsel to the President (Sept. 25, 2017) (online at <https://oversight.house.gov/wp-content/uploads/2017/09/2017-09-25-TG-EEC-to-McGahn-WH-Presidential-Records-Act-due-10-9.pdf>).

² Letter from Marc Short, Assistant to the President and Director of Legislative Affairs, to Chairman Trey Gowdy and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 10, 2017) (online at <https://democrats->

However, the letter from the White House failed to identify a single White House official who used a non-governmental email account, failed to identify a single non-governmental email account that was used, and failed to provide any information whatsoever about White House officials who used personal text messaging, phone-based message applications, or encrypted software for official communications.

Briefing from White House Counsel's Office

On October 18, 2017, Committee staff received a briefing from White House officials Stefan Passantino, Deputy Counsel to the President, Uttam Dhillon, Deputy Counsel to the President, and Daniel Epstein, Associate Counsel to the President. Throughout the course of this briefing, they continued to refuse to identify any White House officials who used personal email accounts, any personal email accounts they used, or any individuals who used personal text messaging, phone-based message applications, or encrypted software for official communications.

The White House officials who provided this week's briefing stated that several White House employees came forward and "confessed" that they failed to forward official records from their personal email accounts to their governmental email accounts within 20 days, as the Presidential Records Act requires. However, the White House officials refused to identify these employees. When asked whether Senior Advisor to the President Jared Kushner complied with the Presidential Records Act, these White House officials replied, "You should talk to Mr. Kushner's counsel about that."

Throughout the briefing, these White House officials argued that they could not provide this information while their internal review was underway, but they refused to provide a date certain by which they would comply, and they refused to commit to providing this information even after they complete their review. Instead of providing the information they have now and supplementing their production as more information becomes available, as other agencies are doing, they expected the Committee to abandon our request for some unspecified period of time without a commitment to ultimately provide all of the information we requested.

Inexplicable Determination that White House Is In "Full Compliance"

Yesterday, my staff informed me that you have declined my request to send a follow-up letter to the White House seeking the information we requested by a date certain because the White House is in "full compliance" with the bipartisan document request we sent on September 25, 2017. In contrast, they reported that you do plan to send precisely these types of follow-up letters to other agencies demanding this information with a due date of October 26, 2017.

Based on the record before us, I do not believe anyone can reasonably argue that the White House is in "full compliance" with our document request.

If you decide to follow-through on your proposed course of action, the Committee

essentially will be abdicating its oversight responsibilities under the Constitution by walling off the White House from serious congressional scrutiny. Unfortunately, this is now becoming a troubling pattern of the Oversight Committee capitulating to the Trump White House rather than exercising its independent authority to conduct oversight of the Executive Branch.

For example, earlier this week, all 18 Democratic Members of the Committee sent you a detailed, ten-page letter laying out the case for a subpoena after the White House refused to provide even a single document in response to our Committee's bipartisan request on March 22, 2017, for documents relating to former National Security Advisor Michael Flynn.³

You rejected our request, asserting that you do not want to interfere with the ongoing criminal investigation. However, during the ongoing criminal investigation relating to Benghazi, you subpoenaed thousands of documents and demanded hours of sworn testimony from witnesses—including the primary Republican target, Secretary of State Hillary Clinton, as well as individuals who were at the time potential witnesses in the upcoming criminal trial of Abu Khattala.

I am writing to respectfully urge you to reverse your current course of action and join me in sending a new letter to the White House demanding full compliance with our bipartisan request—just as we are doing with other federal agencies—no later than October 26, 2017.

If you decide not to do so, 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 the documents and information it is withholding from the Committee.

Thank you for your consideration of these requests.

Sincerely,



Elijah E. Cummings
Ranking Member

³ Ranking Member Elijah E. Cummings et al., to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (Oct. 18, 2017) (online at <https://democrats-oversight.house.gov/news/press-releases/oversight-democrats-to-gowdy-issue-subpoenas-or-let-us-vote-white-house-defies>).