

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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<http://oversight.house.gov>

May 14, 2019

The Honorable Mick Mulvaney
Acting Chief of Staff
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Mulvaney:

For the past year, the White House has disregarded my request for information and documents regarding nondisclosure agreements imposed on White House staff and whether these gag orders include legally-required language safeguarding the rights of federally-protected whistleblowers to report waste, fraud, and abuse to Congress. As Chairman, I am now renewing this investigation—which is at the core of the Oversight Committee’s legislative and oversight jurisdiction—and I hope you will comply fully and voluntarily.

On March 20, 2018, I sent a letter to Chief of Staff John Kelly requesting documents and communications relating to non-disclosure and confidentiality agreements signed by White House officials. I was joined in this request by Rep. Jerrold Nadler, who served at the time as the Ranking Member of the Committee on the Judiciary.¹

Our request was prompted, in part, by a report in the *Washington Post* that White House staff members were being asked to sign agreements pledging not to disclose confidential information and potentially subjecting them to significant monetary damages. This press report stated that some employees “balked at first but, pressed by then-Chief of Staff Reince Priebus and the White House Counsel’s Office, ultimately complied.” According to the report, “this confidentiality pledge would extend not only after an aide’s White House service but also beyond the Trump presidency.”²

¹ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, and Ranking Member Jerrold Nadler, Committee on the Judiciary, to General John F. Kelly, White House Chief of Staff (Mar. 20, 2018) (online at <https://bit.ly/2Sxm31R>).

² *Trump Had Senior Staff Sign Nondisclosure Agreements. They’re Supposed to Last Beyond His Presidency*, *Washington Post* (Mar. 18, 2018) (online at www.washingtonpost.com/opinions/trumps-nondisclosure-agreements-came-with-him-to-the-white-house/2018/03/18/226f4522-29ee-11e8-b79d-f3d931db7f68_story.html?utm_term=.c9d784ac51a4).

I made my request in 2018 because these actions raise serious questions about whether the White House is complying with the Whistleblower Protection Act, which requires nondisclosure agreements to include specific language highlighting the rights of federal whistleblowers to make protected disclosures to Congress.³ Gag orders without this required language could chill employees from reporting violations of law, waste, fraud, and abuse. As a result, the salaries of officials who enforce such illegal nondisclosure agreements may be withheld, according to federal law.⁴

Unfortunately, the White House never responded to this request. The White House did not provide any of the documents we requested and did not provide any explanation of its actions. Instead, additional concerns have been raised over the past year. For example, President Donald Trump cited a nondisclosure agreement to criticize one of his former advisors, Cliff Sims, who served as Special Assistant to the President. President Trump tweeted:

A low level staffer that I hardly knew named Cliff Sims wrote yet another boring book based on made up stories and fiction. He pretended to be an insider when in fact he was nothing more than a gofer. He signed a non-disclosure agreement. He is a mess!⁵

In order to evaluate whether the Whistleblower Protection Act and other laws need to be amended, revised, or strengthened, I am now renewing this investigation as Chairman of the Committee. Please produce by May 28, 2019, the following documents for the time period from January 20, 2017, to the present:

1. All nondisclosure or confidentiality agreements signed by any employee of the Executive Office of the President or by any paid or unpaid intern, fellow, detailee, or other advisor;
2. All documents and communications referring or relating to any employee of the Executive Office of the President or any paid or unpaid intern, fellow, detailee, or other advisor who declined, refused, objected, or raised concerns about the terms, effects, or legality of nondisclosure or confidentiality agreements;
3. All documents and communications referring or relating to any nondisclosure or confidentiality agreements referenced in 1 or 2 above;
4. All documents and communications, including forms, policies, instructions, or agreements, that:
 - a. purport to limit, or would have the effect of limiting, communications with Congress;

³ 5 U.S.C. § 2302.

⁴ Pub. L. No. 115-141 (2018).

⁵ Donald J. Trump, Twitter (Jan. 29, 2019; 5:45am) (online at <https://twitter.com/realDonaldTrump/status/1090244651578204160>).

- b. purport to limit, or would have the effect of limiting, the disclosure of confidential or nonpublic information; and
 - c. could subject any employee of the Executive Office of the President or any paid or unpaid intern, fellow, detailee, or other advisor to personnel actions, legal liability, or any other penalties; and
5. All documents and communications, including forms, policies, instructions, or agreements that reference communications with Congress in any way, including those with non-disclosure or non-disparagement provisions, and including all modifications, rescissions, or other changes.

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. In addition, House Rule X states that the Committee on Oversight and Reform has jurisdiction to “study on a continuing basis the operation of Government activities at all levels, including the Executive Office of the President.”

An attachment to this letter provides additional instructions for responding to the Committee’s request. If you have any questions about this request, please contact Committee staff at (202) 225-5051.

Sincerely,



Elijah E. Cummings
Chairman

Enclosure

cc: The Honorable Jim Jordan, Ranking Member

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.