

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM
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WASHINGTON, DC 20515-6143

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July 15, 2019

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Madam Secretary:

In light of disturbing new revelations that you violated federal law and withheld information from the Committee in response to our bipartisan investigation of the Department's compliance with the Federal Records Act, the Committee is now expanding its investigation and seeking all records from your personal email accounts that relate to official government business.

Refusal to Provide Information on Use of Personal Email for Official Business

On March 8, 2017, I joined Rep. Jason Chaffetz, who was then serving as Chairman of the Committee, in launching a bipartisan investigation of the use of personal email accounts for official business across 55 federal agencies. As we explained in our letter:

Where a federal employee conducts any business related to the work of the government from a non-governmental email account, such as a personal email account, the Federal Records Act requires that the employee copy their official account or forward the record to their government email account within 20 days. Official business must be conducted in such a way as to preserve the official record of actions taken by the federal government and its employees.¹

The Department responded on April 10, 2017, but failed to provide any information about specific Department employees, including you, using personal email accounts for official business.² The letter from the Department's Chief Privacy Officer included a Department policy that stated:

¹ Letter from Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Secretary Betsy DeVos, Department of Education (Mar. 8, 2017) (online at oversight.house.gov/sites/democrats.oversight.house.gov/files/2017-03-08.Chaffetz%20EEC%20to%20Devos-DoEd%20re%20Federal%20Records%20Act%20due%203-22.pdf). *See also* 44 U.S.C. §2911.

² Letter from Kathleen M. Styles, Chief Privacy Officer, Department of Education, to Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform (Apr. 10, 2017) (online at

Personal email accounts shall not be used for the conduct of government business. However, if a Federal record is created or received in a personal email account, it shall be forwarded to the ED email system or printed to paper for recordkeeping within 20 days (with the exception of Saturdays, Sundays, and legal public holidays).³

On September 25, 2017, I joined Rep. Trey Gowdy, who succeeded Rep. Chaffetz as Chairman, in sending a second letter to you requesting information on whether you or any non-career officials at your agency ever used personal email accounts, text messages, phone-based message applications, or encryption software to conduct official business, as well as the identities of these email accounts and other information.⁴

After hearing nothing further, Chairman Gowdy was compelled to send a third letter to you on October 20, 2017, complaining that the due date for providing the information had passed and warning that “your department has not yet fully complied with our request.”⁵

On October 24, 2017, Acting Assistant Secretary Denise Carter responded on behalf of the Department. Ms. Carter did not provide any of the requested information about employees who used personal email or text accounts for official business. Instead, Ms. Carter described a Department directive prohibiting the use of personal accounts for official business:

All employees, both career and non-career, have been instructed not to use personal email accounts for official business, and all Department staff members are expected to abide by this directive. As the Acting Assistant Secretary for Management, I supervise the extensive training and educational efforts that are provided to all Department staff, including non-career officials. As part of that training, all Department staff are instructed to use only their official email account to conduct governmental business.⁶

oversight.house.gov/sites/democrats.oversight.house.gov/files/DoEd.041017.Response%20to%20Chaffetz%20EEC%20re%20Federal%20Records%20Act-compressed.pdf).

³ Department of Education, *Departmental Directive: Records and Information Management Program* (May 4, 2016) (online at

oversight.house.gov/sites/democrats.oversight.house.gov/files/DoEd.041017.Response%20to%20Chaffetz%20EEC%20re%20Federal%20Records%20Act-compressed.pdf).

⁴ Letter from Chairman Trey Gowdy and Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Secretary Betsy DeVos, Department of Education (Sept. 25, 2017) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2017-09-25.Gowdy%20EEC%20to%20Devos-DoEd%20re%20Federal%20Records%20Act%20due%2010-9_0.pdf).

⁵ Letter from Chairman Trey Gowdy, Committee on Oversight and Government Reform, to Secretary Betsy DeVos, Department of Education (Oct. 20, 2017) (online at oversight.house.gov/sites/democrats.oversight.house.gov/files/2017-10-20.Gowdy%20to%20DeVos-DoEd%20re%20Federal%20Records%20Act%20Followup%20due%2011-3_0.pdf).

⁶ Letter from Denise Carter, Acting Assistant Secretary, Department of Education, to Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform (Oct. 24, 2017) (online at oversight.house.gov/sites/democrats.oversight.house.gov/files/DoEd.102417.Response%20to%20Gowdy%20re%20Federal%20Records%20Act%20%28letter%20only%29.pdf).

On December 19, 2018, after I was selected Chairman of the Committee, I sent a fourth letter to you requesting that the Department respond by January 11, 2019, to the Committee's previous bipartisan requests.⁷

On March 22, 2019, Jason Gray, the Chief Information Officer for the Department of Education, responded on behalf of the Department. Mr. Gray again failed to identify any employees who used personal email or text accounts to conduct official business. Instead, he reiterated the Department's prohibition on such activity:

Department records management policies prohibit the use of non-official email accounts to conduct government business. All employees, both career and non-career, are required to abide by statutes and Department policy, and have been repeatedly instructed not to use personal email accounts for the conduct of government business.⁸

Inspector General Report on Use of Personal Email Accounts

New information has now come to light indicating that you and other Department officials violated the Department's prohibition on using personal email accounts to conduct official business, violated the requirement in the Federal Records Act to forward these emails to your official account within 20 days, and violated the requirement in the Freedom of Information Act (FOIA) to produce relevant records in response to public requests. This new information also indicates that you withheld from the Committee information it has been seeking on a bipartisan basis over the past two years.

On May 16, 2019, the Inspector General of the Department of Education issued a report to Congress revealing that you used a personal email account to conduct official business and that you did not forward these emails to your official account as required by federal law. The Inspector General's report states:

We did not identify any instances where the Secretary forwarded emails from her personal accounts to her Department email accounts. We determined that, based on the Secretary's response to our survey and our review of her Department email accounts, the Secretary's emails related to government business were not always being properly preserved.⁹

⁷ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Secretary Betsy DeVos, Department of Education (Dec. 19, 2018) (online at oversight.house.gov/sites/democrats.oversight.house.gov/files/Federal%20Records%20Act%20Compliance%20Letters.pdf).

⁸ Letter from Jason Gray, Chief Information Officer, Department of Education, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 22, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DoED.032219.Response%20to%20EEC%20re%20Federal%20Records%20Act.pdf>).

⁹ Department of Education, Office of Inspector General, *Response to Request for Information on Political Appointees' Use of Personal Email Accounts, Preservation of Emails, and Responses to Freedom of Information Act Requests* (May 16, 2019) (online at

The Inspector General also found that in response to a FOIA request, responsive emails from your personal account were not provided to the requester:

We identified three emails that were sent between the Secretary's personal email account and Office of the Secretary staff from March-April 2017. The Deputy Director of the Executive Secretariat, within the Office of the Secretary, stated that after receiving the FOIA request, the Director of the Executive Secretariat spoke with the Secretary's former Chief of Staff, who said there were no records responsive to the request. The Deputy Director stated that no other search of records was performed.¹⁰

The Inspector General's report also found that 78% of the political appointees surveyed admitted to using personal email and/or messages to conduct official business, which violates the Department's prohibition.¹¹

Request for Information and Documents

In light of the serious concerns raised by the Inspector General's report, the Committee requests that you produce by July 29, 2019, the information requested in previous bipartisan letters, including information in response to the following inquiries:

1. Have you or any non-career official at your agency ever used a personal email account to conduct official business? If so, please identify the individual and the account used, and provide evidence of measures to ensure compliance with federal law.
2. Have you or any non-career official at your agency ever used text messages, phone-based message applications, or encryption software to conduct official business? If so, please identify the individual, cellular number and account used, and provide evidence of measures to ensure compliance with federal law.

In addition, in light of the revelations in the Inspector General's report and your failure to provide information in response to previous requests, the Committee now requests that you produce by July 29, 2019, copies of all message you, and any other non-career Department employee, sent or received from all non-governmental email or other electronic messaging account regarding official business during your tenure as Secretary.

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.

www2.ed.gov/about/offices/list/oig/audit/rpts/responserepdelaurouseofemail05162019.pdf.

¹⁰ *Id.*

¹¹ *Id.*

The Honorable Betsy DeVos

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Please contact Committee staff at (202) 225-5051 to confirm whether you intend to comply voluntarily or if the Committee should consider alternative means to obtain compliance.

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.