

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

December 16, 2016

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Chaffetz:

For the past year, Michigan Governor Rick Snyder and his administration have obstructed our Committee's investigation into the Flint water crisis.

The Governor has refused to provide—or even search for—key documents. As a result, the Committee is still unable to answer critical questions about what the Governor knew about the crisis as it unfolded, why he did not act on concerns about water quality, even while his inner circle sounded repeated alarms, and why families in Flint continue to subsist on bottled water almost a year after he declared an emergency.

In multiple conversations with our staffs, the Governor's attorneys have defied the Committee's requests for documents and refused to conduct searches that the Committee has requested. They have repeatedly delayed responding to the Committee, and they have treated the Committee's requests as an afterthought that they respond to only after addressing other inquiries that they view as higher priorities.

On October 7, 2016, both Republican and Democratic Committee staff strongly objected to the approach being employed by Governor Snyder during a conference call with his attorneys. Your staff members and mine made clear that the Governor's refusal to comply is unacceptable.

On November 16, 2016, our staffs met to discuss a detailed proposal to require Governor Snyder's attorneys to complete searches for our most pertinent outstanding requests. I am attaching an updated draft of that proposal with additional details discussed by our staffs.

I now urge you to convey this request directly to Governor Snyder with a subpoena compelling him to comply within 30 days.

The Honorable Jason Chaffetz

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During our first hearing on the Flint water crisis on February 3, 2016, you raised the hopes of citizens of Flint greatly when you stated: "It's absolutely, fundamentally, and totally wrong. The public has a right to be outraged. Outraged doesn't even begin to cover it. So I don't know how we fix this, but it has to be fixed."

I completely agree. Requiring Governor Snyder to finally comply with the Committee's request will allow us to complete our investigation and offer concrete findings and recommendations to help prevent a catastrophe like this from happening again. In contrast, allowing Governor Snyder to flout the Committee's authority will deny the people of Flint the answers they deserve.

Thank you for your consideration of this request.

Sincerely,



Elijah E. Cummings
Ranking Member

Attachment

**REQUEST TO GOVERNOR SNYDER
FOR DOCUMENT SEARCHES AND PRODUCTIONS**

We request that you conduct the following searches to comply with the Committee's previous requests for documents and information.

Produce Documents Between January 6, 2016, and February 26, 2016. The Governor's lawyers informed the Committee that he would not comply with the Committee's request for documents in this time frame: "In order to produce documents to the Committee through the date of your most recent request would require all new searches and costly review and processing procedures, all of which would be overly burdensome." (Letter from Brian Lennon, Attorney for Governor Snyder, Sept. 7, 2016).

- (1) Please search the 67 custodians identified by the Michigan Attorney General for documents from the period of January 6, 2016, through February 26, 2016, using the same search terms previously used in the Governor's searches for the period of January 5, 2011, through January 5, 2016.

Produce Documents Relating to the Response to the Health Crisis. No documents have been produced related to the State's response to the health crisis caused by the switch to the Flint River.

- (2) Please search the 67 custodians identified by the Michigan Attorney General for documents from the period of April 1, 2014, through February 26, 2016, using the following search terms:

(flint OR governor OR snyder OR muchmore OR agen OR baird OR earley OR ambrose) w/50 (filter OR Brita OR "Home Depot" OR "home water test" OR "National Guard" OR Guard OR "water resource site" OR distribution OR "bottled water" OR pipe OR solder OR PVC OR galvanized OR "service line" OR main OR excavate OR survey OR "water credit" OR "water bill" OR budget OR supplemental OR appropriation OR legislation OR "Michigan State Police" OR MSP OR FEMA OR disaster OR declaration OR appeal OR "Red Cross" OR "Mott Foundation" OR "United Way").

- (3) Please search the 67 custodians identified by the Michigan Attorney General for documents from the period of April 1, 2014, through February 26, 2016, using the following search terms:

("Kevin Cotter" OR Kevin OR Cotter OR Speaker) w/50 (flint OR water credit OR "water bill" OR budget OR supplemental OR appropriation OR legislation).

("Brock Swartzle" OR Brock OR Swartzle OR chief) w/50 (flint OR "water credit" OR "water bill" OR budget OR supplemental OR appropriation OR legislation).

("Arlan Meekhos" OR Arlan OR Meekhos OR leader) w/50 (flint OR "water credit" OR "water bill" OR budget OR supplemental OR appropriation OR legislation).

("Bob DeVries" OR Bob OR DeVries OR chief) w/50 (flint OR "water credit" OR "water bill" OR budget OR supplemental OR appropriation OR legislation).

("Dave Hildenbrand" OR Dave OR Hildenbrand OR chairman) w/50 (flint OR "water credit" OR "water bill" OR budget OR supplemental OR appropriation OR legislation).

(Al Pscholka OR Al OR Pscholka OR chairman) w/50 (flint OR "water credit" OR "water bill" OR budget OR supplemental OR appropriation OR legislation).

("Jamie Gaskin" OR Jamie OR Gaskin OR "United Way") w/50 (flint OR Brita OR "Home Depot" OR "home water test" OR "National Guard" OR Guard OR "water resource site" OR distribution OR "bottled water").

Produce Documents Without Redactions. In comparing versions of the Governor's Daily Briefings in which multiple versions of those briefings were included in the production, a number of cases were identified in which redactions covered relevant Flint documents that were visible in other, less heavily redacted versions of the same Daily Briefing. Improper redactions could be concealing relevant material in other copies of the Governor's Daily Briefings produced to the Committee.

- (4) Please provide unredacted versions of tables of contents for all of the Governor's Daily Briefings previously produced to the Committee.

Produce Daily Briefings in the 18 Months After Switch to Flint River. Governor Snyder produced only five briefings mentioning Flint from April 2014 through September 2015. During that time, there were many signs of problems with Flint's water, including poor water quality, a Legionnaire's outbreak, General Motors partially switching away from Flint water, a state government office in Flint switching to bottled water, letters to the Governor from local elected officials alerting him to problems with the water, concerns expressed by the Governor's Chief of Staff that the water problem may "get out of hand," and meetings in the Governor's office with Flint ministers and City of Flint representatives. Documents obtained by the Committee indicate that the Governor had a number of specific meetings about Flint, but the Governor has not produced daily briefings in advance of those meetings.

- (5) Please search for additional Governor's Daily Briefings that are referenced in the Governor's previous productions, including but not limited to:
- Agenda entitled "Governor and Hollins Monthly Meeting, Monday, 9.21.15 @ 2:00PM" identifying "Flint Water" as a topic. The two Daily Briefings from the following week produced to the Committee did not reflect any meetings between the Governor and Hollins.
 - Email on October 9, 2015, from Dan Wyant to Nick Lyon, Mike Zimmer, "Subject: Daily updates," stating, "If you guys have anything new, please forward it to me. The Governor has ask [sic] me to compile a daily progress on action items."
 - Email on December 24, 2015, from Richard Baird to Governor Snyder, stating: "Subject: Today's briefing" which included items for an agenda, including, "Imminent Danger Declaration request," "Concerns with Leadership appointments about to be made and DHHS recent responses/findings," and "Discuss communications strategy." An attachment sets forth a calendar of meetings, phone calls, and a statement the Governor would make, with talking points for each event.
 - Email on December 30, 2015, from Mary Beth Thelen to various DEQ officials, including Dan Wyant, "Re: DEQ MiStat Report for January 2016 – Briefings Due on January 5, 2016," stating, "If you haven't already prepared your information, please make sure you do so by the deadline. This is very important that that we stay on time and on track with these briefings."
- (6) Please search for additional Governor's Daily Briefings that discuss significant Flint water related-events or direct appeals to the Governor or the Governor's office to address the Flint water situation, including:
- October 13, 2014, General Motors announced it would stop using Flint River water.
 - January 18, 2015, Flint Mayor Dayne Walling wrote to Governor Snyder the first time conveying "serious concerns about water quality" in Flint.
 - January 29, 2015, State Assemblyman Sheldon Neeley wrote to Governor Snyder, "It is imperative that this issue be addressed in some way on the state level."
 - February 2015, the community group Concerned Pastors for Social Action made a public request that Flint be reconnected to Detroit Water.

- February 5, 2015, the Governor's Chief of Staff wrote in an email, "Since we're in charge, we can hardly ignore the people of Flint. After all, if GM refuses to use the water in their plant and our own agencies are warning people not to drink it, another expressing continuing concern over quality, and the differential between what we now collect and what we would pay DWSD is not significant, we look pretty stupid hiding behind some financial statement."
- March 2, 2015, Governor Snyder's Chief of Staff expressed concern in an email that the issues with Flint River water may "get out of hand" and "It's tough for everyday people to listen to financial issues and water mumbo jumbo when all they see is problems. You can't expect the ministers to hold the tide on this problem." In the same email, he proposed that the State purchase bottled water for Flint residents.
- March 10, 2015, James Henry, a Genesee County Health Department official, sent an email to Mike Prysby (MDEQ) among others: "The increase in [Legionnaire's] illness closely corresponds with the timeframe of the switch to Flint River water. The majority of the cases reside or have an association with the city. ... I want to make sure, in writing that there are no misunderstandings regarding this significant and urgent public health issue."
- March 11, 2015, Richard Benzie (MDEQ) sent an email to Liane Shekter Smith, "Arrange for a meeting with Genesee County and other parties as deemed appropriate by DEQ management—DCH, Flint, Governor's Office, etc. ... Determine how long has Genesee County, DCH, and Flint been aware of the increased cases of Legionella."
- March 13, 2015, Brad Wurfel sent an email to Harvey Hollins, "Essentially, Jim Henry with Genesee County Health is putting up the flare. He's made the leap formally in his email that the uptick in cases is directly attributable to the river as a drinking water source – this is beyond irresponsible."
- March 23, 2015, the Flint City Council voted to reconnect to Detroit Water.
- July 9, 2015, MDEQ informed that EPA draft internal memo was on ACLU website.
- Meetings held between July 13-17 between Governor Snyder's office with Flint ministers, General Motors, and a college professor who informed the Governor's staff that "80 water tests in Flint have shown high lead levels."

- July 21, 2015, MDEQ held conference call with EPA on interpretation of LCR.
- July 22, 2015, email sent from Governor Snyder's Chief of Staff to the Director of MDEQ, asking him to "personally take a look" at Flint water concerns. He wrote, "I'm frustrated by the water issue in Flint. I really don't think people are getting the benefit of the doubt. Now they are concerned and rightfully so about the lead level studies they are receiving from the DEQ samples."
- August 4, 2015, meeting held with Flint City representative in the Governor's office.
- August 17, 2015, MDEQ notified Flint of lead monitoring results and required City to install corrosion control.
- September 14, 2015, letter from Flint Mayor Dayne Walling, renewed his request for additional funds for Flint.
- September 21, 2015, MDEQ met with Congressional representatives, state legislators, and EPA to discuss issues with water quality in Flint.
- September 22, 2015, MDEQ met with or conference called DHHS and Genesee County Health Department to discuss lead education and outreach.
- September 24, 2015, Hurley Children's Hospital data revealed elevated blood lead levels in Flint children.
- September 25, 2015, Flint issued lead advisory.
- October 2, 2015, Governor announced Flint Action Plan.
- October 8, 2015, Governor announced decision to reconnect Flint to Detroit water.
- October 15, 2015, announcement that Michigan State Legislature authorized \$9 million to pay for reconnection to Detroit water.
- January 12, 2016, Governor Snyder activated the National Guard to assist with the Flint water crisis.
- January 13, 2016, Governor Snyder made first public announcement of Legionnaires' disease cases in Genesee County.

- January 19, 2016, Governor Snyder’s State of the State Address.
 - January 20, 2016, Governor Snyder appealed federal denial of major disaster declaration.
 - January 29, 2016, Governor Snyder signed legislation appropriating \$28 million.
 - February 26, 2016, Governor Snyder signed legislation authorizing \$30 million for Flint.
- (7) Please produce pages 70-72 of the Governor’s Daily Briefing of November 24, 2015.

Produce Information Relating to Governor’s Destruction of Email Records. The Governor’s lawyers have stated that he routinely purged his emails until 2013, when his emails were retained pursuant to a litigation hold notice. But there is a serious question about whether those litigation hold notices would have caused the retention of emails relevant to the Committee’s investigation. When our staffs asked for information that would allow them to answer that question, the Governor’s lawyer wrote: “we will not provide you with any of the litigation hold notices as they are privileged attorney-client communications and work product.” (Letter from Brian Lennon, Attorney for Governor Snyder, Sept. 7, 2016). In addition, the Governor has refused to make available any personnel from the Michigan Department of Technology, Management, and Budget—the only department that can conclusively tell the Committee when and what emails the Governor deleted.

- (8) Please provide all Flint-related litigation hold notices issued since 2014. The Committee is willing to view those documents *in camera*.
- (9) Please provide a full and detailed explanation of the Governor’s email retention policies and practices, with dates denoting when those changed and a description of those specific changes.

Provide Detailed Descriptions of 130 Documents Withheld for Attorney-Client Privilege. These documents were identified in First Privilege Log, *Mays v City of Flint*. However, the descriptions of documents are so vague that they provide the Committee with no indication of why they are being withheld. The Governor’s lawyer wrote: “You will not be receiving the unredacted copies of privileged documents.” (Letter from Brian Lennon, Attorney for Governor Snyder, Sept. 7, 2016).

- (10) Please provide detailed descriptions of all documents withheld for attorney-client privilege.