

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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December 22, 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 to request that you take two key steps in our Committee's joint investigation into whether White House officials—and Senior Advisor to the President Jared Kushner in particular—are complying with the Presidential Records Act.

First, I ask that the Committee obtain copies of all emails that Mr. Kushner sent or received in violation of federal law. Second, I request that you join me in asking Mr. Kushner to submit emails he sent or received on his personal account to an independent Inspector General to determine whether they include any classified or sensitive information.

You took similar steps with respect to Secretary Clinton's emails while you were Chairman of the Benghazi Select Committee, and the Committee should not apply a different standard here just because Donald Trump is now President and Mr. Kushner is his son-in-law.

Request for Copies of Emails Mr. Kushner Sent in Violation of Federal Law

As you know, the Oversight Committee has direct jurisdiction over the Presidential Records Act, which prohibits each covered White House employee from creating or sending a record "using a non-official electronic message account" unless the employee copies his or her official email account or "forwards a complete copy" to the official email account "not later than 20 days" after sending or receiving the original email.¹

Mr. Kushner's attorney has stated publicly that Mr. Kushner used a private email account for official business, but it is unclear whether he complied with this 20-day requirement set forth in the law.²

¹ 44 U.S.C. § 2209.

² *Kushner Used Private Email to Conduct White House Business*, Politico (Sept. 24, 2017) (online at www.politico.com/story/2017/09/24/jared-kushner-private-email-white-house-243071).

If Mr. Kushner sent or received emails relating to official business using a non-official email account, but did not forward those emails to his official White House email account within 20 calendar days, he would have violated the Presidential Records Act.

On October 18, 2017, Republican and Democratic Committee staff received a briefing on this issue from Deputy Counsel to the President Stefan Passantino, Deputy Counsel to the President, Uttam Dhillon, and Associate Counsel to the President Dan Epstein. When asked whether Mr. Kushner complied with the Presidential Records Act, the White House officials replied, "You should talk to Mr. Kushner's counsel about that."

For these reasons, I ask that you join me in requesting that Mr. Kushner produce to the Committee, by January 5, 2017, copies of all emails he sent or received using a non-official email account that related to official business and were not forwarded to his official account within 20 days.

There is clear precedent for this request. During the investigation by the Benghazi Select Committee, you requested copies of all emails relating to Benghazi that were sent or received by former Secretary of State Hillary Clinton using her non-official email account.³ In addition, I called for all of those emails to be made public.⁴

In this case, we would not be going that far. Instead of requesting copies of all emails Mr. Kushner sent or received from his personal account, we would be requesting only those that violated federal law.

Request for Independent Classification and Sensitivity Review of Kushner Emails

Second, press reports have raised serious concerns about whether Mr. Kushner sent or received emails on his non-official account that contained classified or sensitive information, including "nonpublic travel documents, internal schedules and some official White House materials."⁵

³ Letter from Chairman Trey Gowdy, House Select Committee on Benghazi, to David E. Kendall (Dec. 2, 2014) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2014-12-02%20TG%20to%20David%20Kendall%20Clinton%20Document%20Request.pdf>).

⁴ Letter from Ranking Member Elijah E. Cummings, House Select Committee on Benghazi, et al., to the Honorable John Kerry, Secretary of State (Mar. 10, 2015) (online at https://webharvest.gov/congress114th/20160907021402/http://democrats-benghazi.house.gov/sites/democrats.benghazi.house.gov/files/documents/2015_03_10_Letter_from_Dem_Members_to_State_re_Clinton_Emails.pdf).

⁵ See *Hundreds of White House Emails Sent to Third Kushner Family Account*, Politico (Oct. 2, 2017) (online at www.politico.com/story/2017/10/02/jared-kushner-email-account-white-house-243389); *NSA Warned White House Against Using Personal Email*, Politico (Sept. 29, 2017) (online at www.politico.com/story/2017/09/29/white-house-private-email-nsa-warning-243324).

In order to make an informed determination on this matter, I ask that you join me in requesting that Mr. Kushner provide his emails to the Office of the Inspector General of the Intelligence Community for a classification and sensitivity review.

The Inspector General is independent, has expertise in identifying classified information, and has experience doing such a review. For example, during the Benghazi investigation, the Inspector General reviewed emails from Secretary Clinton “to determine whether classified information was transmitted or received by State employees over personal systems.”⁶

You championed the idea of an independent third party to review Secretary Clinton’s emails. In a March 19, 2015, letter to Secretary Clinton’s attorney, you requested that she provide the server that contained her emails to the Inspector General for the State Department to act as “a neutral, detached and independent third-party” to conduct an “immediate inspection and review.”⁷ You also issued a statement in July 2015 that said:

The number of questions surrounding Secretary Clinton’s unusual email arrangement continues to grow. The best—the only way—to resolve these important factual questions is for her to turn over her server to the proper authorities for independent forensic evaluation. Regardless of whether the server is voluntarily relinquished or acquired by other lawful means, there is clearly sufficient cause to examine the contents of said server for the presence of other classified information. Moreover, whether it was classified initially or later classified, it is appropriate for the Executive Branch and intelligence community to determine whether these now classified documents are housed and by whom they are possessed.⁸

I ask that you apply the same standard now. I request that you join me in asking Mr. Kushner to provide his emails to the Inspector General of the Intelligence Community to conduct a similar review to determine whether any emails he sent or received—and that may still reside in his email account—include classified or other sensitive information. As we saw in the Benghazi investigation, emails in Mr. Kushner’s possession could include classified information even if they are not marked as such.

⁶ Inspector General of the Intelligence Community, *Summary of IC IG Support to State Department IG* (July 23, 2015) (online at https://oig.state.gov/system/files/23_july_2015_cn_summary_of_ic_ig_support_to_state_department_ig.pdf) (identifying some emails with classified information but finding that “none of the emails” reviewed “had classification or dissemination markings”).

⁷ Letter from Chairman Trey Gowdy, House Select Committee on Benghazi, to David E. Kendall (Mar. 19, 2015) (online at <https://benghazi.house.gov/sites/republicans.benghazi.house.gov/files/TG%20letter%20to%20Kendall%203.19.15.pdf>).

⁸ House Select Committee on Benghazi, *Statement by Chairman Gowdy on Reports of Classified Information in Secretary Clinton’s Emails* (July 24, 2015) (online at <https://benghazi.house.gov/news/press-releases/statement-by-chairman-gowdy-on-reports-of-classified-information-in-secretary>).

The Honorable Trey Gowdy
Page 4

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elijah E. Cummings". The signature is stylized and cursive.

Elijah E. Cummings
Ranking Member