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Congress of the United States

House of Representatives

Select Committee on Benghazi

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STAFF DIRECTOR

May 11, 2016

The Honorable John F. Kerry
Secretary
U.S. Department of State
2201 C Street, NW
Washington, D.C. 20520

Dear Secretary Kerry:

I write in regard to documents the State Department is withholding from the Select Committee on Benghazi, which are relevant to the Committee's investigation. Despite repeated requests, the Committee has yet to receive from the State Department a detailed description of the withheld documents, the total number of pages being withheld, or a detailed explanation of the legal basis upon which the State Department is withholding these documents from the Committee.

Over the course of the Committee's investigation, the State Department has produced documents responsive to the Committee's November 18, 2014 request for information and its January 28, 2015, March 4, 2015, and August 6, 2015 subpoenas. Nevertheless, on four separate occasions, the State Department withheld documents from these productions citing "important Executive Branch institutional interests" or "important Executive Branch confidentiality interests" – dubious legal "theories" not recognized by the Constitution.¹

For the last year the Committee has sought additional information on these documents. Yet, no additional information has been produced. For example, on June 12, 2015, the Committee requested you provide a detailed description of the documents as well as the number of pages withheld from the April 24, 2015 production. In addition, the Committee sought specific information relating to the "Executive Branch confidentiality interests," the basis on which the State Department relied to withhold the documents from the Committee. On July 8, 2015, the Committee wrote to you again requesting detailed information on the documents being withheld from the June 30, 2015 production, including the number of pages being held, a detailed description of the documents, and the basis for withholding the document from the Committee. No response was received. In our July 31, 2015 letter to you, the Committee

¹ Letters from Julia Frifield, Ass't Sec'y for Leg Affairs, State Department to Trey Gowdy, Chairman, Select Committee on Benghazi (February 13, 2015, April 24, 2015, May 22, 2015, and June 30, 2015).

underscored again the importance of obtaining this information in order to move this investigation forward. No response was ever received.

Earlier this year, the Committee met with State Department representatives to discuss the status of the June 12, 2015 and July 8, 2015 requests.² Representatives for the State Department agreed to revisit whether any documents were improperly withheld.³ No response was received. On April 15, 2016, the Committee reached out yet again to understand both the volume and nature of the documents being withheld. On April 22, 2016, a conference call was held between State Department representatives and Committee staff to discuss these documents. During the call, State Department agreed to memorialize not only the categories of documents being withheld, but also the volume of documents withheld and a brief description. The State Department has yet to provide this information.

The Committee's investigation is only as timely as the cooperation of the executive branch. Time continues to pass without clear answers from the State Department. To that end, I expect no later than 5:00 p.m. next Wednesday a log describing each document that has been withheld, the number of pages, and the legal basis for withholding the document. Members of the Committee have already met with your chief of staff twice on the State Department's failure to comply with the Committee's requests.

It is imperative the Committee have access to all relevant information so it can complete the work assigned to it by the House. Untimely productions coupled with the withholding of documents without explanation creates the appearance of a willful failure to cooperate with a congressional investigation. Should these documents, or a sufficient legal explanation rooted in existing case law, not be produced to the Committee I will have no recourse but to bring this matter to the attention of the Speaker and the final report issued by the Committee will make clear what is legally axiomatic and that is the failure to produce documents or witnesses creates the presumption that said documents would be negative for the non-producing party.

Sincerely,

A handwritten signature in black ink, appearing to read 'Trey Gowdy', with a long, sweeping horizontal stroke above it.

Trey Gowdy
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

² February 26, 2016 Meeting between Committee staff and State Department Representatives.

³ Email from Phil Kiko, Staff Director, Select Committee on Benghazi to Austin Evers, State Department (March 24, 2016).