ELIJAH E. CUMMINGS, MARYLAND
CHAIRMAN

ONE HUNDRED SIXTEENTH CONGRESS

JIM JORDAN, OHIO
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5051
MINORITY (202) 225–5074

http://oversight.house.gov

April 22, 2019

Mr. Pat Cipollone
Counsel to the President
The White House
1600 Pennsylvania Ave, N.W.
Washington, D.C. 20500

Dear Mr. Cipollone:

I am in receipt of the April 18, 2019, letter from your office that threatened to direct your former employee, White House Personnel Security Director Carl Kline, not to comply with a duly authorized subpoena issued by the Committee to appear for a deposition tomorrow. This deposition has been ordered under the authority of the House and pursuant to rules adopted unanimously by the Committee in January, the substance of which has been in place under multiple Republican and Democratic Chairmen for many years.

The arguments in your office's letter are without merit, as addressed below.

First, your claim that the Committee "ignored" the principle of issuing a subpoena only after an impasse is directly contradicted by the terms of your office's own letter. As described below, the Committee has sent multiple letters to the White House setting forth in great detail our investigative and legislative purposes, as well as information about the specific White House officials we are investigating. The Committee also has provided detailed information about problems within the Personnel Security Office reported by a current White House employee and whistleblower. The Committee requested your voluntary compliance repeatedly.

In response, you refused to produce a single piece of paper or make a single witness available to answer questions about individual White House officials. As your latest letter confirmed yet again, "under no circumstance will we provide information about the specific background investigation files and adjudications of individual public servants." This is the definition of an impasse.

You have cited no valid Constitutional privilege to withhold this information from Congress. Your position—that the White House will not provide any information to Congress about any White House employee—is without basis in law or precedent. For example, you have taken the position that the White House may withhold from Congress all information contained in the Standard Form 86 (SF-86) for every White House official, despite the fact that these security clearance forms are filled out every day by employees across the federal government.

The information that employees provide in their SF-86 forms, including foreign travel and foreign contacts, must be reported in order to receive and maintain security clearances and to ensure that U.S. officials are not compromised by foreign entities. The form warns filers:

> This form may become a permanent document that may be used as the basis for future investigations, eligibility determinations for access to classified information, or to hold a sensitive position, suitability or fitness for Federal employment, fitness for contract employment, or eligibility for physical and logical access to federally controlled facilities or information systems.

The Committee has obtained SF-86 forms in the past, as my previous letters have detailed. For example, the Committee obtained the foreign travel and contacts portions of former National Security Advisor Michael Flynn's SF-86—which had numerous anomalies and omissions. The Committee also requested and received, on a bipartisan basis, the full security clearance file on Navy Yard shooter Aaron Alexis.[1]

There is no colorable claim that the information contained in these forms may be withheld from Congress under Executive Privilege. Instead, you claim these materials are "private" and that any questions about them are "inappropriate." None of these claims is a valid basis to withhold this information from Congress under the Constitution.

The Committee has given the White House more than enough time to engage on a good faith basis, yet you have declined to do so. Accordingly, on April 2, 2019, the Committee voted to authorize a subpoena to require Mr. Kline to testify at a deposition, I issued the subpoena on the same day, and Mr. Kline's personal attorney accepted service on Mr. Kline's behalf.

Your letter also requests that the Committee "allow a representative of this office to appear with Mr. Kline in order to preserve and protect Executive Branch confidentiality interests." Your letter continues: "Otherwise, Mr. Kline will not appear on April 23."

The Committee will not permit a representative from your office to attend the deposition. As your letter correctly notes, Committee Rule 15(e) prohibits officials from your office from attending. That rule states:

> Witnesses may be accompanied at a deposition by counsel to advise them of their rights. No one may be present at depositions except members, Committee staff designated by the Chair of the Committee or the Ranking Minority Member of the Committee, an official reporter, the witness, and the witness's counsel. ***Observers or counsel for other persons, or for agencies under investigation, may not attend.***[2]

---

[1] Republican Staff Report, Committee on Oversight and Government Reform, *Slipping Through the Cracks: How the D.C. Navy Yard Shooting Exposes Flaws in the Federal Security Clearance Process*, 113th Cong. (Feb. 11, 2014) (online at https://republicans-oversight.house.gov/wp-content/uploads/2014/02/Aaron-Alexis-Report-FINAL.pdf).

[2] Rules of the Committee on Oversight and Reform for the 116th Congress (emphasis added) (online at

The Committee's rules were adopted pursuant to Article I, section 5, clause 2 of the Constitution, which establishes Congress' authority to "determine the Rules of its Proceedings."[3] The substance of Committee Rule 15(e) has been in place under multiple Republican and Democratic Chairmen, and it was adopted unanimously by the Committee at the beginning of this Congress, with support from all Committee Members. The rule ensures that the Committee is able to depose witnesses in furtherance of its investigations without having in the room representatives of the agency under investigation. The rule protects the rights of witnesses by allowing them to be accompanied by personal counsel. Its purpose is not, as you state, to pressure witnesses into an "inadvertent or coerced disclosure of confidential material."

None of the authorities you cite, including Office of Legal Counsel (OLC) opinions and case law, require anything to the contrary. For example, the reference in your letter to the deposition of former Federal Bureau of Investigation Director James Comey has no relevance here. The district court consent motion that you cite did not relate to the scope of Director Comey's testimony or who would represent him, but rather whether his testimony would be in private or public. Ultimately, the Judiciary Committee reached an agreement with Director Comey in which he participated in a voluntary interview rather than a deposition pursuant to House Rules.[4]

The Committee's deposition rule has been enforced repeatedly, including for numerous depositions of White House officials. For example, in 2007 and 2008, under Chairman Henry Waxman, the Committee deposed three White House employees under the Committee deposition rule—Sara Taylor, former White House Director of the Office of Political Affairs; Matt Schlapp, former White House Director of the Office of Political Affairs; and Mindy McLaughlin, former White House Associate Director of Scheduling.[5] These witnesses were permitted to have personal counsel in their depositions, but officials from the White House Counsel's Office were not permitted to attend.

As an accommodation, the Committee allowed witnesses and their private attorneys to take breaks from the depositions to consult with White House Counsel attorneys outside the deposition if necessary. This accommodation worked well during the Bush Administration, and the Committee offers the same accommodation to you.

These examples directly refute your arguments that the White House cannot "protect the constitutional equities of the Executive Branch" and that the Committee rule "unconstitutionally encroaches on fundamental Executive Branch interests."

---

https://oversight.house.gov/sites/democrats.oversight.house.gov/files/COR%20Rules%20-%20passed.pdf).

[3] U.S. Const., Art I, sec. 5, cl. 2.

[4] *See* Consent Mtn. to Withdraw Pending Mtns., *In re Subpoena of James Comey*, No. 1:18-mc-174, ECF No. 12 (D.D.C. filed Dec. 2, 2018); Committee on the Judiciary and Committee on Oversight and Government Reform, Transcribed Interview of James Comey (Dec. 7, 2018).

[5] Committee on Oversight and Government Reform, Deposition of Sara M. Taylor (July 27, 2007); Committee on Oversight and Government Reform, Deposition of Matthew A. Schlapp (Aug. 27, 2007); Committee on Oversight and Government Reform, Deposition of Mindy A. McLaughlin (Apr. 3, 2008).

The White House is well aware of the scope of the investigation, and the Committee has made clear the subject areas and lines of questioning at issue through numerous letters to the White House and Department of Defense on January 23, February 11, March 1, March 18, and April 1.

To the extent the White House believes that an issue at the deposition may implicate a valid Constitutional privilege, the White House may raise that issue with the Committee.[6] To date, however, the White House has not done so.

Accordingly, the Committee expects Mr. Kline to testify in accordance with the Committee's lawful subpoena and the Committee's rules. If Mr. Kline fails to comply with the subpoena, the Committee will consider him to be in contempt of Congress.

Sincerely,

Elijah E. Cummings
Chairman

cc: The Honorable Jim Jordan, Ranking Member

[6] Under Committee Rule 16(c)(3): "The only assertions of executive privilege that the Chair of the Committee will consider are those made in writing by an executive branch official authorized to assert the privilege."