

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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July 1, 2019

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

Dear Mr. Cipollone:

I am writing to inform you that, due to your complete refusal to produce a single document in response to the Committee's investigation of the use of personal email and messaging accounts by White House officials, the Committee is now expanding its request to seek copies of all communications sent or received in violation of federal law and the White House's own records policy.

On December 19, 2018, after House Democrats were voted into the majority and I was selected as Committee Chairman, I sent a letter to you requesting that the White House produce information in response to seven specific requests.¹

As I explained, the Presidential Records Act prohibits every 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 his or her official email account "not later than 20 days" after sending or receiving the original email.² As I also noted, the White House Counsel's Office issued a policy on February 22, 2017, requiring all White House personnel to "conduct all work-related communications on your official EOP [Executive Office of the President] email account."³

¹ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Pat A. Cipollone, Counsel to the President (Dec. 19, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-12-19.EEC%20to%20Cipollone-WH%20re%20Private%20Emails.pdf>).

² 44 U.S.C. § 2209.

³ Memorandum from Stefan Passantino, Deputy Counsel to the President for Compliance and Ethics, to White House Personnel, *Presidential Records Act Obligations* (Feb. 22, 2017) (online at [www.archives.gov/files/foia/Memo%20to%20WH%20Staff%20Re%20Presidential%20Records%20Act%20\(Trump,%2002-22-17\)_redacted%20\(1\).pdf](http://www.archives.gov/files/foia/Memo%20to%20WH%20Staff%20Re%20Presidential%20Records%20Act%20(Trump,%2002-22-17)_redacted%20(1).pdf)).

In my letter, I did not request copies of any specific emails or messages. Instead, based on assurances that the White House was conducting its own internal review of previous violations, I sought responses to seven inquiries previously made by our former Republican Chairmen, Rep. Jason Chaffetz and Rep. Trey Gowdy, in letters on March 8, 2017, September 25, 2017, and November 20, 2018.⁴ Those seven requests were:

1. Identify any non-career official at the White House who has used a personal email account to conduct official business. Please identify the individual and the account used and provide evidence of measures to ensure compliance with federal law.
2. Identify any non-career official at the White House who has used text messages, phone-based message applications, or encryption software to conduct official business. Please identify the individual, the cellular number, and the account used, and provide evidence of measures to ensure compliance with federal law.
3. Identify with specificity the number of emails to and from Ivanka Trump's personal email account referring or relating to official business.
4. Certify whether and how each of those emails to and from Ms. Trump's personal email account was preserved and archived in accordance with relevant recordkeeping statutes, including the Presidential Records Act.
5. Describe whether the emails in question contained sensitive or classified information.
6. Provide documents sufficient to describe any regular updates and reminders to White House staff about prohibited use of private email.
7. Provide a detailed description of the electronic system being used by the White House to archive email and other electronic records.

I also requested a briefing for Committee staff on the status of the White House's internal review of its recordkeeping practices.

⁴ Letter from Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Donald F. McGahn, II, Counsel to the President (Mar. 8, 2017) (online at <https://republicans-oversight.house.gov/wp-content/uploads/2017/03/2017-03-08-JEC-EEC-to-McGahn-WH-Presidential-Records-Act-due-3-22.pdf>); Letter from Chairman Trey Gowdy and Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Donald F. McGahn, II, Counsel to the President (Sept. 25, 2017) (online at <https://republicans-oversight.house.gov/wp-content/uploads/2017/09/2017-09-25-TG-EEC-to-McGahn-WH-Presidential-Records-Act-due-10-9.pdf>); Letter from Chairman Trey Gowdy, Committee on Oversight and Government Reform, to General John F. Kelly, White House Chief of Staff (Nov. 20, 2018) (online at <https://republicans-oversight.house.gov/wp-content/uploads/2018/11/2018-11-20-TG-to-Kelly-WH-Ivanka-Trump-emails.pdf>).

I stated clearly in my letter on December 19, 2018, that the White House's previous responses to the Committee's requests in the last Congress were "deficient," and I informed you that I would "continue this investigation in the next Congress."⁵

On January 11, 2019, you sent a short response acknowledging my letter and requesting "additional time" to respond, but you also pledged to provide information "as soon as practicable."⁶

Hearing nothing for months, I wrote to you again on March 21, 2019, to convey even more troubling information about apparent violations by Jared Kushner, Ivanka Trump, Steve Bannon, and K.T. McFarland. I reiterated my December 19, 2018, request for responses to the seven inquiries, as well as my request for a briefing on the White House's internal review. In light of troubling new information about Mr. Kushner's use of encrypted applications to communicate with foreign individuals, I also asked for a second briefing on the process used by the White House and National Security Council to safeguard sensitive or classified records sent or received by White House officials. I warned that if you continued to refuse to produce information, the Committee would "be forced to consider alternative means to obtain compliance."⁷

Unfortunately, over the past six months since I sent my letter, you have not produced a single document, you have not provided any of the requested briefings, and you have not offered any timeline by which these requests will be fulfilled.

In the meantime, the Committee has received even more evidence that White House officials violated federal law and the White House's own records policy. For example, the report issued by Special Counsel Robert Mueller stated that Mr. Bannon admitted that "he regularly used his personal Blackberry and personal email for work-related communications (including those with [Erik] Prince), and he took no steps to preserve these work communications."⁸

⁵ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Pat A. Cipollone, Counsel to the President (Dec. 19, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-12-19.EEC%20to%20Cipollone-WH%20re%20Private%20Emails.pdf>).

⁶ Letter from Pat A. Cipollone, Counsel to the President, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Jan. 11, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/WH.011119.Response%20to%20EEC%20re%20Private%20Emails.pdf>).

⁷ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Pat A. Cipollone, Counsel to the President (Mar. 21, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-21.EEC%20to%20Cipollone-WH.pdf>).

⁸ Special Counsel Robert S. Mueller, III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* (Mar. 2019) (online at www.justice.gov/storage/report.pdf).

Conclusion

The White House's complete obstruction of the Committee's investigation for the past six months is an affront to our constitutional system of government.

My letter on December 19, 2018, was limited to the information previously requested by our former Republican Chairmen, and it did not request specific emails or communications to or from White House officials. That approach was based on assurances that the White House was conducting its own review of these matters and would provide information to the Committee "as soon as practicable." Unfortunately, the record before the Committee makes clear that the White House has not cooperated with those requests.

As a result, the Committee now will conduct its own review of the emails and other communications by White House officials that violated federal law. The purpose of this investigation is to determine why White House officials used non-official email accounts, texting services, and encrypted applications for official business; why they failed to forward records sent or received on non-official accounts to their official accounts within 20 days as required by federal law; whether there were specific topics that White House officials sought to conceal; and whether legislative changes should be made to prevent similar violations in the future.

As you may know, when questions arose regarding the use of a private email account by former Secretary of State Hillary Clinton, Rep. Trey Gowdy, then serving as Chairman of the Benghazi Select Committee, requested copies of all emails relating to Benghazi that were sent or received by Secretary Clinton using her non-official email account.⁹ In addition, I called for all of those emails to be made public.¹⁰

For these reasons, in addition to producing the information and briefings requested in my letters on December 19, 2018, and March 21, 2019, the Committee now also requests that you produce the following documents by July 10, 2019, covering the time period from January 21, 2017, to the present:

1. All Presidential records sent or received by non-career officials at the White House using non-official electronic messaging accounts, including records created using text messages, phone-based message applications, or encryption software, that were not forwarded to the official accounts of the employees within 20 days;

⁹ Letter from Chairman Trey Gowdy, 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>).

¹⁰ Letter from Ranking Member Elijah E. Cummings, Select Committee on Benghazi, et al., to John Kerry, Secretary, Department 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).

2. All communications sent or received by White House employees, including employees in the National Security Council, about whether messages sent or received by non-career officials through non-official electronic messaging accounts, including text messages, phone-based message applications, or encryption software, were classified or may contain classified information; and
3. All documents referring or relating to reports, allegations, or evidence of misuse of information technology systems by non-career officials at the White House, including reports of failure to protect sensitive information or reports of a failure to comply with White House policies for work-related communications.

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. In addition, House Rule X, clause 3(i) specifically charges the Committee with conducting oversight of “the operation of Government activities at all levels, including the Executive Office of the President.” And, as you know, the Committee has oversight and legislative jurisdiction over the Presidential Records Act.

Sincerely,



Elijah E. Cummings
Chairman

Enclosure

cc: The Honorable Jim Jordan, Ranking Member

Responding to 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 Committees.
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 Committees' 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 Committees 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 Committees 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 Committees' 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 on Oversight and Reform, 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. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
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.