

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

June 24, 2019

The Honorable Mark Esper  
Acting Secretary  
U.S. Department of Defense  
1400 Defense Pentagon  
Washington, D.C. 20301

Dear Mr. Esper:

The Committee is requesting documents regarding the upcoming transfer of primary responsibility for conducting background investigations from the Office of Personnel Management (OPM) to the Department of Defense (DOD).

On April 24, 2019, President Trump issued an executive order directing that background investigation functions be “transferred or delegated, as applicable,” from OPM to a new entity within DOD called the Defense Counterintelligence and Security Agency (DCSA). The executive order mandates that this transition be completed in approximately three months, by September 30, 2019.<sup>1</sup>

Reports indicate that the transition requires the transfer of approximately 10,000 employees and contractors associated with OPM’s National Background Investigation Bureau (NBIB), the facilitation of DCSA’s use of OPM’s legacy background investigations system, and the transfer of NBIB’s existing contracts to DOD, all before the September deadline. NBIB Director Charles Phalen recently stated: “Probably the hardest part is going to be taking 3,500 OPM employees and making them DOD employees virtually overnight at the end of September.”<sup>2</sup>

Troubling reports have emerged that the transfer may not be on track. On June 19, 2019, *Reuters* reported that “the process has proceeded erratically, with confusion on issues such as funding and data management.” Moreover, there is concern that the transfer will not occur within the necessary timeframe. As the *Reuters* report stated:

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<sup>1</sup> Exec. Order No. 13869, 84 Fed. Reg. 18125 (Apr. 24, 2019).

<sup>2</sup> *NBIB Prepping People, Contracts and IT Ahead of Security Clearance Transfer to DoD*, Federal News Network (May 10, 2019) (online at <https://federalnewsnetwork.com/workforce/2019/05/nbib-prepping-people-contracts-and-it-ahead-of-security-clearance-transfer-to-dod/>).

With a June 24 deadline for the U.S. Office of Personnel Management (OPM) to begin transferring thousands of employees and contractors to the Department of Defense under Trump's plan, it is unclear when the overhaul will be completed, said four government sources who requested anonymity.<sup>3</sup>

DOD officials have also reportedly expressed concerns about whether a new artificial intelligence system that is being adopted for periodic vetting would be as effective as in-person investigations.<sup>4</sup>

The Committee seeks to learn more about the processes OPM and DOD have put in place to ensure continuity and quality in government-wide background investigations during this substantial transition. Please provide the following information and documents by July 8, 2019, for the period from January 1, 2018, to the present:

1. All documents and communications referring or relating to the transition of primary responsibility for government-wide background investigations from OPM to DOD, including those that address the following topics:
  - a. agreements, memoranda of understanding, or other written memorialization of discussions between OPM and DOD;
  - b. preparation or plans regarding the transfer or acquisition of personnel, technology, facilities and property, contracts, and access to records;
  - c. DOD employees' or contractors' readiness or preparedness to assume primary responsibility for government-wide background investigations;
  - d. concerns or complaints regarding DOD employees' or contractors' readiness or preparedness to assume primary responsibility for government-wide background investigations; and
  - e. reports regarding the transfer and any impediments;
2. A list of all entities and individuals involved in the transition and their roles;
3. All documents referring or related to the rationales or justifications for the transfer of government-wide background investigations from OPM to DOD; and
4. All documents referring or related to the estimated costs associated with the transfer of government-wide background investigations from OPM to DOD.

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<sup>3</sup> *Top Secret: Trump's Revamp of U.S. Security Clearances Stumbling—Officials, Report*, Reuters (June 19, 2019) (online at [www.reuters.com/article/us-usa-security-clearances/top-secret-trumps-revamp-of-us-security-clearances-stumbling-officials-report-idUSKCNITK12](http://www.reuters.com/article/us-usa-security-clearances/top-secret-trumps-revamp-of-us-security-clearances-stumbling-officials-report-idUSKCNITK12)).

<sup>4</sup> *Id.*

In addition to these documents, the Committee requests a briefing about the transfer of primary responsibility for Government-wide background investigations from OPM to DOD, and DOD's preparedness to assume responsibility for background investigations. Please contact the Committee by June 28, 2019, to schedule the briefing.

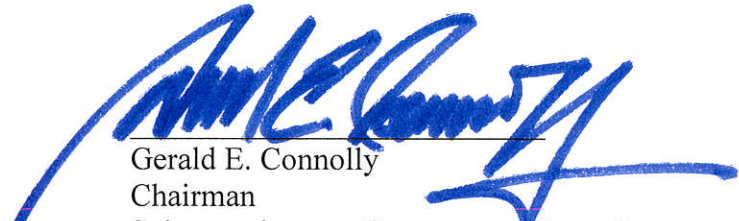
The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to this request. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Thank you for your attention to this matter.

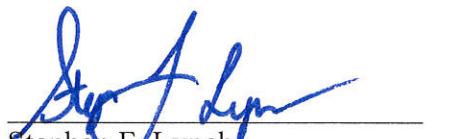
Sincerely,



Elijah E. Cummings  
Chairman



Gerald E. Connolly  
Chairman  
Subcommittee on Government Operations



Stephen F. Lynch  
Chairman  
Subcommittee on National Security

Enclosure

cc: The Honorable Jim Jordan, Ranking Member

The Honorable Mark Meadows, Ranking Member  
Subcommittee on Government Operations

The Honorable Jody Hice, Ranking Member  
Subcommittee on National Security

## Responding to Oversight 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 Committee.
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 Committee's 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 Committee 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 Committee 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 Committee's 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, 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.
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.