

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<http://oversight.house.gov>

March 14, 2018

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 issue subpoenas to compel 16 federal agencies to produce documents that we requested on a bipartisan basis more than five months ago regarding their compliance with the Federal Records Act.

On September 25, 2017, we sent letters to 25 agencies and departments requesting information about political appointees' use of personal email accounts, alias email accounts, text messages, or encrypted messaging systems to conduct official business.¹ On October 20, 2017, you sent follow-up letters to agencies you considered in "partial" compliance—which you defined generously as making outreach to our Committee—and to agencies that had not responded at all to our initial letter.²

Despite the fact that more than six months have now passed, 16 agencies have failed to produce all of the information we requested. For example, the Department of Transportation has not provided anything we requested. In addition, although other agencies have provided written responses with rhetoric about their efforts to comply with the law, many have provided little, if any, of the information we sought. For example:

¹ See, e.g., Letter from Chairman Trey Gowdy and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Secretary Rex W. Tillerson, Department of State (Sept. 25, 2017) (online at <https://oversight.house.gov/wp-content/uploads/2017/09/2017-09-25-TG-EEC-to-Tillerson-DOS-Federal-Records-Act-due-10-9.pdf>).

² Letter from Chairman Trey Gowdy, House Committee on Oversight and Government Reform, to Secretary Rick Perry, Department of Energy, et al. (Oct. 20, 2017) (online at <https://oversight.house.gov/wp-content/uploads/2017/10/2017-10-20-TG-to-4-Agencies-Federal-Records-Act-Followup-Non-Compliant....pdf>); Letter from Chairman Trey Gowdy, House Committee on Oversight and Government Reform, to U.S. Agency for International Development et al. (Oct. 20, 2017) (online at <https://oversight.house.gov/wp-content/uploads/2017/10/2017-10-20-TG-to-12-Agencies-Federal-Records-Act-Followup-Partial-Comp....pdf>).

- The Department of Agriculture (USDA) responded on November 7, 2017, that “USDA lacks the capability to feasibly retrieve and review the volume of emails needed to determine if any non-career official at USDA has ever used a personal email account to conduct official business.” It stated that three senior officials use alias accounts, but did not identify two of these officials or provide the alias email addresses, as requested. It also did not provide information about whether any employees used personal messaging systems to conduct official business.³
- The Department of Commerce responded on January 2, 2018, but it provided no information about employees who used personal email accounts or personal messaging systems to conduct official business. In addition, Secretary Ross admitted to using an alias email account, but the Department did not provide information about his alias account.⁴
- The Department of Defense responded on October 11, 2017, that it “does not support the creation of alias accounts that auto-forward email to external domains (other than .mil or .gov domains),” but it failed to provide information about whether any employees used personal email accounts, alias email accounts that auto-forward emails, or personal messaging systems to conduct official business. It stated: “The Department has issued policies and guidance concerning use of non-official electronic messaging accounts.”⁵
- The Department of Education responded on October 24, 2017, that the Secretary used an alias email account, but it failed to provide information about that account or whether any other employees used personal email accounts or personal messaging systems to conduct official business. It stated: “All employees, both career and non-career, have been instructed not to use personal email accounts for official business, and all Department staff members are expected to abide by this directive.”⁶

³ Letter from Secretary Sonny Perdue, Department of Agriculture, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Nov. 2, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/17.11.07%20USDA%20FRA%20response.pdf>).

⁴ Letter from Secretary Wilbur Ross, Department of Commerce, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Jan. 2, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/18.01.02.DOC%20FRA%20response.pdf>).

⁵ Letter from John A. Zangardi, Acting Chief Information Officer, Department of Defense, to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (Oct. 11, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/17.10.11.DoD%20FRA%20response.pdf>).

⁶ Letter from Denise L. Carter, Acting Assistant Secretary for Management, Department of Education, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 24, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/17.10.24.DoEd%20FRA%20response.pdf>).

- The Department of Energy (DOE) responded on October 25, 2017, that “there are no alias email accounts being used by non-career DOE officials to conduct official business,” but it did not provide information about whether any employees used personal email accounts or personal messaging systems to conduct official business. Instead, it restated the requirements of the Federal Records Act: “the Department has an established policy in place regarding the use of non-official email accounts to conduct official government business.”⁷
- The Department of Health and Human Services (HHS) responded on October 2, 2017, that “an HHS official may have an external account that reflects name or position” as well as “an internal alias account,” but it did not provide any information on the employees who use alias email accounts. It quoted Department policy against using personal email accounts or personal messaging accounts to conduct official business, but it did not provide information about whether any employees had used personal email accounts or personal messaging accounts for official business in violation of Department policy.⁸
- The Department of Homeland Security (DHS) responded on November 30, 2017, quoting its policy prohibiting personal email accounts or messaging systems from being used for government business, but it did not provide any information on whether any employees used personal email accounts or personal messaging systems for official business, in violation of DHS policy. With regard to alias email addresses, DHS stated, “In some cases, leadership will use his or her initials or position as an identifier within the official email address in lieu of using his or her name,” but it did not provide information about the officials who use alias email accounts.⁹
- The Department of the Interior (DOI) responded on October 27, 2017, but it did not provide information about whether any employees used personal email accounts or personal messaging systems to conduct official business. Instead, DOI stated that “the Department does not sanction the use of email accounts not issued by the Department to conduct official Departmental business” and that “no

⁷ Letter from Eric J. Fygi, Deputy General Counsel, Department of Energy, to Chairman Trey Gowdy and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 25, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/17.10.25%20DOE%20FRA%20response.pdf>).

⁸ Letter from Barbara Pisaro Clark, Acting Assistant Secretary for Legislation, Department of Health and Human Services, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 20, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/17.10.20%20HHS%20FRA%20response.pdf>).

⁹ Letter from Chip Fulghum, Deputy Under Secretary for Management, Department of Homeland Security, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Nov. 30, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/17.11.30%20DHS%20FRA%20response.pdf>).

individual agency employee has been issued nor maintains alias email accounts with the intent to mask an individual's identity." It provided information about Secretary Zinke's multiple email accounts, but it did not specify whether other employees maintain multiple email accounts.¹⁰

- The Department of Justice (DOJ) responded on December 11, 2017, that both Attorney General Jeff Sessions and FBI Director Christopher Wray use alias email accounts, but it did not provide additional information about those alias accounts. It cited DOJ policy prohibiting the use of personal email accounts or personal messaging systems to conduct official business, but it did not provide information about whether employees used personal email accounts or personal messaging systems to conduct official business in violation of DOJ policy.¹¹
- The Department of Labor (DOL) responded on October 20, 2017, that it maintains alias email accounts for employees who "routinely communicate official messages to or receive messages from large audiences," but it did not provide information about the employees who maintain alias email accounts. It reiterated DOL's existing policies on recordkeeping and prohibiting the use of personal messaging systems to conduct official business, but it did not provide information about whether any employees used personal email accounts or personal messaging systems to conduct official business in violation of DOL policy.¹²
- The Department of State responded on October 20, 2017, that it does not use alias email accounts for any agency officials, but it did not provide information about whether any employees used personal email accounts or personal messaging systems to conduct official business.¹³
- The Department of the Treasury responded on October 19, 2017, but it did not provide information about whether any employees used personal email accounts or personal messaging systems to conduct official business. It stated that "Treasury has a longstanding practice, over multiple administrations, of giving

¹⁰ Letter from Sylvia Burns, Chief Information Officer, Department of the Interior, to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (Oct. 27, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/17.10.27%20DOI%20FRA%20response.pdf>).

¹¹ Letter from Stephen E. Boyd, Assistant Attorney General, Department of Justice, to Chairman Trey Gowdy and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Dec. 11, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/17.12.11.DOJ%20FRA%20response.pdf>).

¹² Letter from Byron Anderson, Senior Advisor for Congressional and Intergovernmental Affairs, Department of Labor, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 20, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/17.10.20%20DOL%20FRA%20response.pdf>).

¹³ Letter from Charles S. Faulkner, Bureau of Legislative Affairs, Department of State, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 20, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/17.10.20%20DoS%20FRA%20response.pdf>).

one or more alias business email accounts to the Secretary for privacy and security reasons,” but it did not provide additional information about those alias accounts.¹⁴

- The Department of Veterans Affairs (VA) responded on October 25, 2017, and provided information about its use of alias email accounts. It stated that VA employees occasionally used personal email accounts to “transmit larger attachments when VA email or devices are not available and timely communication is necessary.” VA did not provide information about whether any employees used personal email accounts to conduct VA business—whether to transmit attachments or for other reasons—or about whether any employees used personal messaging systems to conduct official business.¹⁵
- The Environmental Protection Agency responded on October 31, 2017, identifying an alias email account used for Catherine McCabe while she served as Acting Administrator, but it did not provide information about whether any other employees used alias email accounts or personal email accounts or messaging systems to conduct official business.¹⁶
- The National Aeronautics and Space Administration (NASA) responded on October 24, 2017. It provided information about the use of alias accounts and cited to NASA guidance prohibiting the use of non-official email accounts for government business. It did not provide information about whether employees used personal email accounts for official business in violation of NASA guidance, or whether employees used personal messaging systems to conduct official business.¹⁷

¹⁴ Letter from Drew Maloney, Assistant Secretary for Legislative Affairs, Department of the Treasury, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 19, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/17.10%20Treasury%20FRA%20response.pdf>).

¹⁵ Letter from Secretary David J. Shulkin, Department of Veterans Affairs, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 25, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/17.10.25%20VA%20FRA%20response.pdf>).

¹⁶ Letter from Administrator E. Scott Pruitt, Environmental Protection Agency, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 31, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/17.10.31%20EPA%20FRA%20response.pdf>).

¹⁷ Letter from Rebecca L. Lee, Associate Administrator for Legislative and Intergovernmental Affairs, National Aeronautics and Space Administration, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 24, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/17.10.24%20NASA%20FRA%20response.pdf>).

The Honorable Trey Gowdy, Chairman

Page 6

The Federal Records Act requires the preservation of records created in the conduct of our nation's business because those records belong to the American people. As the Committee of jurisdiction, we have the authority and responsibility to investigate whether federal agencies are complying with the statutory requirements.

For these reasons, I ask that you issue subpoenas to compel all of the agencies listed above to produce, by March 28, 2018, all of the documents and information we requested on a bipartisan basis on September 25, 2017. If you decide not to issue these subpoenas, then I ask you to place this matter on the agenda for our next regularly scheduled business meeting so all Committee Members will have the opportunity to debate and vote on this motion.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "Elijah E. Cummings". The signature is stylized and cursive.

Elijah E. Cummings
Ranking Member