

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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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:

Last fall, you and I launched a bipartisan investigation into reports that top White House officials, including the President's son-in-law and Senior Advisor, Jared Kushner, were using private email accounts on nongovernmental servers to conduct official business. Serious questions were raised about whether these emails were secure, whether they contained classified information, and whether they violated the Presidential Records Act. Although we sent a joint request to the White House last September seeking a wide range of documents, you abruptly abandoned our investigation after the White House informed us that they had their own internal review underway.

When you served as Chairman of the Benghazi Select Committee, you took a completely different approach to investigating Secretary of State Hillary Clinton's use of private email. You demanded—and I supported—the production of all of her emails relating to Benghazi, and you did not wait for the Inspector General or the State Department to complete their own internal reviews. You repeatedly called for an independent security review of her emails, and you showcased her use of private email as a potentially serious breach of national security. As a result, many Republicans—including President Trump and his National Security Advisor Michael Flynn—used this as a rallying cry to call for criminal penalties.

In contrast, since President Trump assumed office, you have refused to insist on the production of documents we both requested five months ago, you have refused to request a security review of private emails, and you have refused to request even a single email from Mr. Kushner or anyone else at the White House, despite the fact that they apparently violated federal law. I believe these actions are inconsistent with both our charge on the Oversight Committee and your previous approach during the Obama Administration. Now—more than five months after our bipartisan request—I ask that the Committee re-start our investigation and obtain all of the documents we requested last September.

Committee Abandoned Bipartisan Investigation After White House Refused to Comply

On September 25, 2017, you and I sent a bipartisan letter to the White House Counsel requesting information about multiple reports that the President's top advisors were using personal email accounts and private servers to conduct official business.¹

On October 10, 2017, the White House sent a six-paragraph response refusing to produce the requested documents.²

On October 18, 2017, officials from the White House Counsel's office briefed the Committee. They reported that several White House employees had come forward and "confessed" that they failed to forward official records from their personal email accounts to their government accounts within 20 days, as the Presidential Records Act requires. They claimed that they were conducting an internal review, but they refused to provide a date by which the review was to be completed or a commitment to providing this information after they completed this review.

On October 20, 2017, I wrote to express my concern that the White House was withholding the information we had requested and "expected the Committee to abandon our request for some unspecific period of time without a commitment to ultimately provide all of the information we requested." I urged you to join me in sending a new letter to the White House insisting on compliance with our request.³

You declined to send a bipartisan follow-up letter. Instead, you wrote to the White House to accept their refusal to provide any documents. You justified your decision by expressing your hope that the White House would come back to the Committee after it completed its internal review. You wrote:

Finally, these officials acknowledged there was an ongoing review related to information requested by the Committee on September 25. It was also brought to our attention that certain allegations of recordkeeping noncompliance are under review, and when the review is completed your office will be following up with the Committee in response to

¹ Letter from Chairman Trey Gowdy and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Donald F. McGahn II, White House Counsel (Sept. 25, 2017) (online at <https://oversight.house.gov/wp-content/uploads/2017/09/2017-09-25-TG-EEC-to-McGahn-WH-Presidential-Records-Act-due-10-9.pdf>).

² Letter from Marc Short, White House Director of Legislative Affairs, to Chairman Trey Gowdy and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 10, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/WH%20to%20OGR%2010-10-17.pdf>).

³ Letter from Ranking Member Elijah E. Cummings to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (Oct. 20, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-10-20.EEC%20to%20Gowdy%20re%20Presidential%20Records%20Act.pdf>).

the Committee's September 25 request. Those questions are at the core of the Committee's interest and we appreciate your commitment to share the findings of the internal review as soon as practicable.⁴

On December 22, 2017, I sent another letter requesting that you take two key steps. First, I asked that we obtain copies of all emails that Mr. Kushner sent or received in violation of federal law. As I wrote:

You took similar steps with respect to Secretary Clinton's emails while you were Chairman of the Benghazi Select Committee, and the Committee should not apply a different standard here just because Donald Trump is now President and Mr. Kushner is his son-in-law.⁵

Second, I requested that you join me in asking Mr. Kushner to submit emails he sent or received on his personal account to the Inspector General of the Intelligence Community for a classification and sensitivity review. Press reports raised repeated concerns that White House employees, including Mr. Kushner and Senior Advisor to the President Ivanka Trump, sent or received emails on private accounts that included sensitive or classified information, including "nonpublic travel documents, internal schedules, and some official White House materials."⁶

During the Benghazi investigation, you championed the idea of an independent third party to review Secretary Clinton's emails. In a March 19, 2015, letter to Secretary Clinton's attorney, you requested that she provide the server with her emails to the Inspector General for the State Department to act as "a neutral, detached and independent third-party" to conduct an "immediate inspection and review."⁷ You also issued a statement in July 2015 that said:

The number of questions surrounding Secretary Clinton's unusual email arrangement continues to grow. The best—the only way—to resolve these important factual questions is for her to turn over her server to the proper authorities for independent forensic evaluation. Regardless of whether the server is voluntarily relinquished or acquired by other lawful means, there is clearly sufficient cause to examine the contents of said server for the presence of other classified information. Moreover, whether it was classified

⁴ Letter from Chairman Trey Gowdy, House Committee on Oversight and Government Reform, to Donald F. McGahn II, White House Counsel (Oct. 20, 2017) (online at <https://oversight.house.gov/wp-content/uploads/2017/10/2017-10-20-Follow-Up-Letter-to-WH-Counsel-re-PRA.pdf>).

⁵ Letter from Ranking Member Elijah E. Cummings to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (Dec. 22, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-12-22.BEC%20to%20Gowdy%20re%20Presidential%20Records%20Act.pdf>).

⁶ See, e.g., *Hundreds of White House Emails Sent to Third Kushner Family Account*, Politico (Oct. 2, 2017) (online at www.politico.com/story/2017/10/02/jared-kushner-email-account-white-house-243389).

⁷ Letter from Chairman Trey Gowdy, House Select Committee on Benghazi, to David E. Kendall, Attorney, Williams & Connolly LLP (Mar. 19, 2015) (online at <https://web.archive.org/web/20170928180302/https://benghazi.house.gov/sites/republicans.benghazi.house.gov/files/TG%20letter%20to%20Kendall%203.19.15.pdf>).

initially or later classified, it is appropriate for the Executive Branch and intelligence community to determine whether these now classified documents are housed and by whom they are possessed.⁸

You never responded to my letter.

It has now been more than five months since we requested documents and information relating to this matter. As far as I am aware, the White House has provided no updates on the status of the review or its findings, and it has not explained why it would take more than five months to complete such a review.

Renewal of Request for Subpoena

For all of these reasons, I request that you issue a subpoena, by March 27, 2018, to compel the White House to fully comply with our bipartisan request on September 25, 2017, which sought the following documents and information:

1. identification of all non-career officials at the White House who have ever used a personal email to conduct official business, the accounts used, and evidence of measures to ensure compliance with federal law;
2. identification of all non-career officials at the White House who have ever used an alias email account to conduct official business, the accounts used, and evidence of measures to ensure compliance with federal law;
3. identification of all non-career officials at the White House who have ever used text messages, phone-based message applications, or encryption software to conduct official business, the cellular numbers and accounts used, and evidence of measures to ensure compliance with federal law;
4. identification of any changes to the White House's policies or directives for any of the following areas since January 1, 2017:
 - a. policies referring or relating to the use of non-official electronic messaging accounts, including email, text message, messaging applications, and social media platforms to conduct official business, including but not limited to archiving and recordkeeping procedures;
 - b. policies referring or relating to the use of official text message or other messaging or communications applications, and social media platforms to

⁸ House Select Committee on Benghazi, *Statement by Chairman Gowdy on Reports of Classified Information in Secretary Clinton's Emails* (July 24, 2015) (online at <https://web.archive.org/web/20170514011339/https://benghazi.house.gov/news/press-releases/statement-by-chairman-gowdy-on-reports-of-classified-information-in-secretary>).

conduct official business, including but not limited to archiving and recordkeeping procedures; and

- c. policies and procedures to ensure all communications related to the creation or transmission of federal records on official electronic messaging accounts other than email, including social networking platforms, internal agency instant messaging systems and other communications applications, are properly captured and preserved as federal records.

If you decide not to issue this subpoena, then I ask you to place this matter on the agenda for our next regularly scheduled business meeting so all Committee members may have the chance to vote to compel this information.

Thank you for your consideration of this request.

Sincerely,



Elijah E. Cummings
Ranking Member