

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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January 18, 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 a subpoena to compel the White House to produce documents it has been withholding from Congress for more than six months relating to its failure to suspend the security clearances of former National Security Advisor Michael Flynn and Senior Adviser to the President Jared Kushner while authorities investigated—and continue to investigate—credible allegations against them involving national security issues.

On June 21, 2017, the Democratic Members of the Committee wrote to the White House requesting documents relating to the White House's failure to suspend the security clearances of General Flynn and Mr. Kushner pending investigations. We noted in our letter that this failure appeared to violate Executive Order 12968 and ran counter to the Department of Defense manual governing the suspension of security clearances during pending investigations.¹

The rules governing the suspension of security clearances were established to protect our national security by temporarily halting the flow of classified information until allegations are fully investigated and resolved. We do not understand why the White House disregarded these rules in these cases, but it is our responsibility on the Oversight Committee to find out.

The Oversight Committee has direct jurisdiction over security clearances, as well as the processes through which they are granted, suspended, and revoked, and our Committee has investigated security clearances in the past under both Republican and Democratic chairmen.²

¹ Letter from Democratic Members, House Committee on Oversight and Government Reform, to White House Chief of Staff Reince Priebus (June 21, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-06-21.%20Dem%20Members%20to%20White%20House%20COS%20re.%20Flynn%20Kushner%20Clearances.pdf>).

² See, e.g., *GOP Slams White House in FBI Files Report*, Washington Post (Sept. 25, 1996) (online at www.washingtonpost.com/wp-srv/politics/special/whitewater/stories/wwtr960825.htm) (Chairman Clinger's 1996 investigation of the White House Office of Personnel Security); Letter from Chairman Henry A. Waxman, House Committee on Oversight and Government Reform, to White House Counsel Fred Fielding (June 26, 2007) (online at

Indeed, last year, then-Chairman Chaffetz joined me in obtaining General Flynn's security clearance application.³

When you assumed the chairmanship of the Committee last year, you held a meeting with reporters during which you explained that you were walling off numerous topics from our Committee's oversight. However, as the *Washington Post* reported after the meeting, "Gowdy said there were Trump-related matters that he did see falling within the Oversight panel's purview," including "procedures for issuance of security clearances."⁴

The White House has been blocking our efforts to obtain documents relating to this matter for more than six months. It is now up to the Committee to exercise its oversight jurisdiction and compel the White House to turn over the documents it has been withholding from Congress for the better part of a year.

If you refuse 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 will have the opportunity to vote on a motion to subpoena the White House for these documents.

Concerns Regarding General Flynn

Former Acting Attorney General Sally Yates testified that on January 26, 2017, she warned White House Counsel Don McGahn that General Flynn may have lied to the Vice President and other officials about the content of his communications with the Russian Ambassador to the United States—lies that the Vice President and others were repeating to the American public.⁵ Acting Attorney General Yates testified that she informed Mr. McGahn that "the underlying conduct that General Flynn had engaged in was problematic in and of itself," but also that General Flynn's lies had "created a compromise situation, a situation where the national security adviser essentially could be blackmailed by the Russians."⁶

archive.waxman.house.gov/documents/20070626110513.pdf) (Chairman Waxman's 2008 investigation into the White House Security Office and the renewal of Karl Rove's security clearance); Democratic Staff, House Committee on Oversight and Government Reform, *Contracting Out Security Clearance Investigations: The Role of USIS and Allegations of Systemic Fraud* (Feb. 11, 2014) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/USIS%20Security%20Clearance%20Report%2002-11-2014.pdf>) (Chairman Issa's 2014 investigation into the security clearances issued by the Office of Personnel Management).

³ Letter from Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to White House Chief of Staff Reince Priebus et al. (Mar. 22, 2017) (online at <https://democrats-oversight.house.gov/news/press-releases/oversight-committee-requests-all-documents-on-flynn-s-foreign-contacts-and>).

⁴ *On Trump and Russia, Oversight Chair Trey Gowdy Says He Will Stay In His Lane*, *Washington Post* (June 23, 2017) (online at www.washingtonpost.com/powerpost/on-trump-and-russia-oversight-chair-trey-gowdy-says-he-will-stay-in-his-lane/2017/06/23/4d1dfca6-583d-11e7-a204-ad706461fa4f_story.html).

⁵ *Full Transcript: Sally Yates and James Clapper Testify on Russian Election Interference*, *Washington Post* (May 8, 2017) (online at www.washingtonpost.com/news/post-politics/wp/2017/05/08/full-transcript-sally-yates-and-james-clapper-testify-on-russian-election-interference/).

⁶ *Id.*

According to press reports, following the meeting with Acting Attorney General Yates, Mr. McGahn “informed the president of those facts and told him that if Yates was accurately describing the content of Flynn’s contact with Kislyak, then Flynn should be fired.”⁷ Approximately one week after his conversation with Acting Attorney General Yates, Mr. McGahn reportedly “was provided a transcript of what Flynn and Kislyak discussed and the conclusion was that it was inconsistent with what Pence said publicly he had been told by the national security adviser.”⁸ In late January, Mr. McGahn and other lawyers in his office reportedly “researched federal law dealing both with lying to federal investigators and with violations of the Logan Act.”⁹

Yet, during this entire 18-day period before General Flynn was finally fired, the White House failed to suspend General Flynn’s access to our nation’s most sensitive national security information.¹⁰ No White House official has explained why the White House failed to follow Executive Order 12968 and suspend General Flynn’s clearance after credible warnings from the Justice Department or during the White House Counsel’s own investigation.

Additional national security concerns about General Flynn have arisen since we wrote our letter in June. We have pursued a vigorous investigation of General Flynn’s involvement in promoting a Saudi-funded Middle East nuclear project, and we have received confirmation that General Flynn failed to report at least two trips to the Middle East to background check investigators during his January 2016 security clearance renewal process.¹¹ It has also been reported that from his first days in the White House, General Flynn instructed staffers on the National Security Council to implement the project.¹²

⁷ *Trump Lawyer Says President Knew Flynn Had Given FBI the Same Account He Gave to Vice President*, Washington Post (Dec. 3, 2017) (online at www.washingtonpost.com/politics/trump-lawyer-says-president-knew-flynn-had-given-fbi-the-same-account-he-gave-to-vice-president/2017/12/03/5c59a620-d849-11e7-a841-2066faf731ef_story.html).

⁸ *WH Lawyer Told Trump that Flynn Misled FBI and Pence*, CNN (Dec. 4, 2017) (online at www.cnn.com/2017/12/04/politics/wh-lawyer-told-trump-flynn-misled-fbi-pence/index.html).

⁹ *Exclusive: White House Counsel Knew in January Flynn Probably Violated the Law*, Foreign Policy (Dec. 20, 2017) (online at <http://foreignpolicy.com/2017/12/20/white-house-counsel-knew-in-january-flynn-probably-violated-the-law/>).

¹⁰ *Spicer: Flynn Not Restricted After Yates’ Warning*, U.S. News & World Report (May 9, 2017) (online at www.usnews.com/news/politics/articles/2017-05-09/sean-spicer-michael-flynn-not-restricted-after-sally-yates-warning).

¹¹ Letter from Democratic Members to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (Oct. 18, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-10-18.Dems%20to%20Gowdy%20re%20WH%20Subpoena.pdf>).

¹² Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, and Ranking Member Eliot L. Engel, House Committee on Foreign Affairs, to Bud McFarlane, IP3/IronBridge Group (Nov. 28, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2017-11-28..Cummings%20Engel%20to%20McFarlane%20re%20Flynn.pdf>).

Concerns Regarding Mr. Kushner

With respect to Mr. Kushner, reports suggest that he continues to access our most sensitive national security information even as his foreign contacts continue to be a focus of the Special Counsel's investigation.¹³ According to these reports, after initially failing to disclose *any* foreign contacts in his security clearance application, Mr. Kushner "supplemented the list of foreign contacts three times, adding more than 100 names."¹⁴

In October, the Director of the National Background Investigations Bureau testified before our Committee that Mr. Kushner's "level of mistakes" was unprecedented:

REP. KRISHNAMOORTHY: Can you recall if there's ever been an applicant—having to submit four addenda detailing over 100 errors and omissions—being able to maintain their security clearance once those errors and omissions had been identified?

PHALEN: I will caveat that by saying I have not seen the breadth of all the applications. But I have never seen that level of mistakes.¹⁵

In addition, as our letter in June explained in detail, Mr. Kushner had multiple contacts with Russian officials and direct knowledge of General Flynn's contacts, yet he failed to correct the public record after President Trump and other White House officials repeatedly made public statements denying contacts between the Trump team and Russian officials.¹⁶

Request for Subpoena

For these reasons set forth above, I respectfully request that you issue a subpoena requiring the White House to produce, by February 1, 2018, the following documents that have been withheld over the past year:

¹³ *Kushner Still Waiting on Permanent Security Clearance*, Politico (Nov. 16, 2017) (online at www.politico.com/story/2017/11/16/jared-kushner-security-clearance-246531); *Special Counsel Mueller Probes Jared Kushner's Contacts with Foreign Leaders*, Wall Street Journal (Nov. 21, 2017) (online at www.wsj.com/articles/special-counsel-mueller-probes-jared-kushners-contact-with-foreign-leaders-1511306515).

¹⁴ *With Glare on Trump Children, Political Gets Personal for President*, New York Times (July 12, 2017) (online at www.nytimes.com/2017/07/12/us/politics/trump-says-son-is-innocent-amid-reports-of-russia-meeting.html).

¹⁵ House Committee on Oversight and Government Reform, Subcommittee on Government Operations, *Hearing on Security Clearance Investigation Challenges and Reforms* (Oct. 11, 2017) (online at www.youtube.com/watch?v=-t9dbfe1xLw).

¹⁶ *See, e.g., Kushner Is Said to Have Ordered Flynn to Contact Russia*, Bloomberg (Dec. 1, 2017) (online at www.bloomberg.com/view/articles/2017-12-01/kushner-is-said-to-have-ordered-flynn-to-contact-russia); *Kushner and Flynn Met with Russian Envoy in December, White House Says*, New York Times (Mar. 2, 2017) (online at www.nytimes.com/2017/03/02/us/politics/kushner-flynn-sessions-russia.html); *Trump Team: Top Adviser Talked with Russian Ambassador Before U.S. Hacking Response*, NPR (Jan. 13, 2017) (online at www.npr.org/2017/01/13/509670980/trump-team-top-adviser-talked-with-russian-ambassador-before-u-s-hacking-respons).

1. all documents and communications referring or relating to General Flynn's clearance and suspension;
2. all documents and communications referring or relating to Mr. Kushner's clearance and potential suspension, including his SF-86 application for a security clearance and all amendments or updates to it, as well as any documents related to his interview authored by security clearance investigators;
3. all documents and communications referring or relating to any White House official who resigned or was terminated due to a criminal investigation, failure or inability to obtain a security clearance application, or any other reason;
4. all policies or guidance referring or relating to how the White House implements, enforces, or handles suspension of security clearances;
5. all documents and communications referring or relating to meetings or telephone calls between the White House Counsel and Acting Attorney General Sally Yates regarding General Flynn, including his access to classified information and his communications or relationships with foreign governments;
6. all documents and communications referring or relating to whether White House Counsel Don McGahn and/or other White House officials reviewed the underlying information regarding General Flynn that Acting Attorney General Yates told Mr. McGahn was available to review at the Department of Justice on the day she was fired;
7. all documents and communications referring or relating to Mr. Kushner's contacts or communications with Russian government officials or business representatives;
8. all documents and communications referring or relating to classified information that General Flynn and Mr. Kushner have had access to since December 2016;
9. all documents and communications referring or relating to whether the President or anyone else at the White House has granted access to sensitive or classified information to any individual who is or was under investigation by the FBI or other law enforcement authorities;
10. all documents and communications referring or relating to whether the President or anyone else at the White House has granted access to sensitive or classified information to any individual who has previously been convicted of a crime; and
11. all documents and communications referring or relating to the White House's policy for whether to grant access to sensitive and classified information to individuals who have been previously convicted of a crime or who are currently under investigation by the FBI or other law enforcement authorities.

The Honorable Trey Gowdy, Chairman
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If you decide not to issue this subpoena yourself, 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 vote on a motion to subpoena the White House for these documents.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "Elijah E. Cummings". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Elijah E. Cummings
Ranking Member