

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>

December 19, 2018

Mr. Pat A. Cipollone
Counsel to the President
The White House
Washington, D.C. 20006

Dear Mr. Cipollone:

As you know, Democrats will be in the majority in the House of Representatives beginning in January, and I have been chosen as the incoming Chairman of the Committee on Oversight and Government Reform. I am writing to request that the White House fully comply with the Committee's previous bipartisan requests for documents relating to the use of personal email and messaging accounts by non-career officials at the White House in violation of White House policy and the Presidential Records Act. I intend to continue this investigation in the next Congress.

White House Staff's Refusal to Cooperate with Bipartisan Investigation

The Presidential Records Act prohibits every White House employee, including the President and the Vice President, 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 the official email account "not later than 20 days" after sending or receiving the original email.¹

In addition, on February 22, 2017, the White House Counsel's Office issued a policy entitled, "Presidential Records Act Obligations," which requires all White House personnel to "conduct all work-related communications on your official EOP email account."²

On March 8, 2017, then-Chairman Jason Chaffetz and I sent a bipartisan letter to White House Counsel Don McGahn asking for the names and email accounts of any senior White House officials who have used an alias email account, any policies on electronic messaging

¹ 44 U.S.C. § 2209.

² 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 <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/Memo%20to%20WH%20Staff%20Re%20Presidential%20Records%20Act%202.22.17.pdf>).

accounts including text messages and messaging applications, and “a detailed description of the electronic system being used by the White House to archive emails and electronic records.”³

On April 11, 2017, White House Director of Legislative Affairs Marc Short sent a response stating: “There are no senior officials covered by the PRA with multiple accounts.”⁴ The White House provided a few pages of documents on general policies, but none of the other documents requested in our bipartisan letter.

On September 24, 2017, *Politico* reported that Jared Kushner, Senior Advisor to the President, used a personal email account to communicate with senior White House officials and others about government business.⁵ Mr. Kushner’s attorney admitted that Mr. Kushner sent and received official emails on his personal email account “from January through August” of 2017.⁶ This appeared to be a direct violation of the White House policy on using personal email. In addition, statements made by Mr. Kushner’s attorney indicated that he failed to comply with the Presidential Records Act’s requirement to forward official emails from his personal account to his official email account within 20 days.⁷

On September 25, 2017, Chairman Trey Gowdy and I sent a bipartisan letter to White House Counsel Don McGahn requesting documents relating to the use of private email accounts, non-governmental servers, and private domains by the President’s top advisors. We requested the identities of all non-career White House employees who used non-government email accounts for official business, the identities of all non-governmental email accounts they used, and the identities, accounts, and cellular information for all non-career White House employees who used personal text messaging, phone-based message applications, or encrypted software for official business.⁸

That same day, I sent an additional letter to Mr. Kushner requesting several categories of documents, including email addresses and accounts from which he conducted official business.

³ Letter from Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Donald F. McGahn, II, Counsel to the President (Mar. 8, 2017) (online at <https://oversight.house.gov/wp-content/uploads/2017/03/2017-03-08-JEC-EEC-to-McGahn-WH-Presidential-Records-Act-due-3-22.pdf>).

⁴ Letter from Marc T. Short, Assistant to the President and Director for Legislative Affairs, to Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Apr. 11, 2017) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-04-11%20Short-WH%20to%20JEC%20EEC%20-%20Presidential%20Records%20Act%20re%203-8_0.pdf).

⁵ *Kushner Used Private Email to Conduct White House Business*, *Politico* (Sept. 24, 2017) (online at www.politico.com/story/2017/09/24/jared-kushner-private-email-white-house-243071).

⁶ *Kushner Used Personal Email Account for Government Business*, *New York Times* (Sept. 24, 2017) (online at www.nytimes.com/2017/09/24/us/politics/kushner-personal-email.html?mcubz=3).

⁷ *See, e.g., Attorney: Kushner Used Private Email Account to Talk to WH Officials*, *CNN* (Sept. 25, 2017) (online at www.cnn.com/2017/09/24/politics/jared-kushner-private-email/index.html).

⁸ Letter from Chairman Trey Gowdy and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Donald F. McGahn, II, Counsel to the President (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>).

My letter directed Mr. Kushner to preserve his email records and take reasonable steps to prevent the “relocation” of those email records.⁹

Subsequent press reports revealed that within 24 to 48 hours of receiving my letter, “President Trump’s son-in-law Jared Kushner and daughter Ivanka Trump re-routed their personal email accounts to computers run by the Trump Organization.”¹⁰ In response to these reports, on October 5, 2017, I requested an immediate briefing by Mr. Kushner and Ms. Trump on their actions relating to their private email accounts.¹¹

On October 18, 2017, Republican and Democratic Committee staff received a briefing from Stefan Passantino, Deputy Counsel to the President, Uttam Dhillon, Deputy Counsel to the President, and Dan Epstein, Associate Counsel to the President. They stated that several White House employees “confessed” that they used non-governmental email accounts for official business, but failed to forward official records from their personal email accounts to their governmental email accounts within 20 days. Despite the fact that this conduct appears to violate both the White House’s own policy and the Presidential Records Act, they refused to identify the employees. Instead, they said an internal review was underway and would be shared with the Committee as soon as practicable.¹²

On December 22, 2017, I wrote to Chairman Gowdy requesting that he join me in a bipartisan request for copies of all emails sent or received by Mr. Kushner using a non-official account that related to official business and were not forwarded to his official account within 20 days in compliance with federal law. I also asked Chairman Gowdy to “join me in requesting that Mr. Kushner provide his emails to the Office of the Inspector General of the Intelligence Community for a classification and sensitivity review.”¹³ Chairman Gowdy declined this request, as well as a related request to allow Committee Members to vote on a motion to issue a subpoena to compel Mr. Kushner to produce the requested documents.¹⁴

⁹ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Jared Kushner, Senior Advisor to the President (Sept. 25, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-09-25.EEC%20to%20Kushner%20WH%20re.emails.pdf>).

¹⁰ *Exclusive: Jared Kushner’s Personal Email Moved to Trump Organization Computers Amid Public Scrutiny*, USA Today (Oct. 3, 2017) (online at www.usatoday.com/story/news/politics/2017/10/03/exclusive-jared-kushners-personal-email-moved-trump-organization-computers-amid-public-scrutiny/728467001/).

¹¹ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Jared Kushner, Senior Advisor to the President, and Ivanka Trump, Advisor to the President (Oct. 5, 2017) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-10-05.%20EEC%20to%20Jared%20and%20Ivanka_0.pdf).

¹² Letter from Chairman Trey Gowdy, House Committee on Oversight and Government Reform, to General John F. Kelly, White House Chief of Staff (Nov. 20, 2018) (online at <https://oversight.house.gov/wp-content/uploads/2018/11/2018-11-20-TG-to-Kelly-WH-Ivanka-Trump-emails.pdf>).

¹³ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, 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.EEC%20to%20Gowdy%20re%20Presidential%20Records%20Act.pdf>).

¹⁴ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (Oct. 23, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-10->

On November 20, 2018, the *Washington Post* reported that Ivanka Trump, Advisor to the President, used a personal email account to communicate about official White House business.¹⁵ In response, on November 20, 2018, Chairman Gowdy wrote to White House Chief of Staff John Kelly requesting that the White House provide information regarding Ms. Trump's use of her personal email account for official business no later than December 5, 2018.¹⁶

On December 5, 2018, Ms. Trump's private attorney, Abbe Lowell responded in a letter to the Committee asserting that any communications to or from Ms. Trump's personal account regarding official business "have been preserved and that there was never any issue about any containing classified information." Mr. Lowell offered to schedule an additional briefing for the Committee to answer our questions.¹⁷

On December 10, 2018, Emmet Flood, Counsel to the President, responded on behalf of the White House to Chairman Gowdy's letter. Mr. Flood wrote:

The White House ensures compliance with all appropriate laws and regulations, including the Presidential Records Act.

I further understand that the relevant Advisor to the President's personal counsel has provided the Committee with information aimed to address your current legislative interests. I hope this resolves the matter.¹⁸

These responses are deficient. The White House continues to withhold documents and information requested by the Committee in letters on March 8, 2017, September 25, 2017, and November 20, 2018. The White House has not provided the findings of its internal review to the Committee, and it has refused to identify the full list of employees who failed to comply with White House policy and the Presidential Records Act.

23.EEC%20to%20Gowdy%20re%20Kushner%20PRA.pdf).

¹⁵ *Ivanka Trump Used A Personal Email Account to Send Hundreds of Emails About Government business last year*, Washington Post (Nov. 19, 2018) (online at www.washingtonpost.com/politics/ivanka-trump-used-a-personal-email-account-to-send-hundreds-of-emails-about-government-business-last-year/2018/11/19/6515d1e0-e7a1-11e8-a939-9469f1166f9d_story.html?utm_term=.6850b91bf719).

¹⁶ Letter from Chairman Trey Gowdy, House Committee on Oversight and Government Reform, to General John F. Kelly, White House Chief of Staff (Nov. 20, 2018) (online at <https://oversight.house.gov/wp-content/uploads/2018/11/2018-11-20-TG-to-Kelly-WH-Ivanka-Trump-emails.pdf>).

¹⁷ Letter from Abbe Lowell, Attorney to Ivanka Trump, to Chairman Trey Gowdy and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Dec. 5, 2018).

¹⁸ Letter from Emmet Flood, Counsel to the President, to Chairman Trey Gowdy and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Dec. 10, 2018) (online at <https://bit.ly/2rFFg51>).

Request for Briefing and Documents

For these reasons, I request that you fully comply with all previous requests by Chairman Chaffetz and Chairman Gowdy in their bipartisan letters on March 8, 2017, and September 25, 2017, as well as in Chairman Gowdy's letter on November 20, 2018. Specifically, I request that you provide the following documents and information by January 11, 2019:

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 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.

Finally, I request that the White House provide a briefing to Committee staff on or before January 11, 2019, on the status of its internal review of the White House's recordkeeping practices.

Please refer to the attached instructions on how to respond to this document request. As specified therein, upon completion of the document production, please submit a written certification that a diligent search has been completed and all responsive documents have been produced to the Committee.

Mr. Pat A. Cipollone
Page 6

If you have any questions about this request, please contact my staff at (202) 225-5051.
Thank you for your immediate attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Elijah E. Cummings". The signature is stylized with a large, looping "E" and a flourish at the end.

Elijah E. Cummings
Ranking Member

cc. The Honorable Trey Gowdy, Chairman