

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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June 5, 2017

Timothy O. Horne  
Acting Administrator  
General Services Administration  
1800 F Street, NW  
Washington, D.C. 20405

Dear Acting Administrator Horne:

We are writing to renew a request we sent to the General Services Administration (GSA) on February 8, 2017, pursuant to the statutory “Seven Member Rule,” to obtain complete, unredacted copies of documents related to the administration of the Old Post Office lease agreement with President Donald Trump’s company.

**Background on Statutory Seven Member Rule**

Last week, the Trump Administration released an opinion issued by the Office of Legal Counsel on May 1, 2017, arguing that agencies and departments could ignore requests for documents and other information from Members of Congress other than Republican Committee Chairmen. The opinion asserted:

[T]he constitutional authority to conduct oversight—that is, the authority to make official inquiries into and to conduct investigations of executive branch programs and activities—may be exercised only by each house of Congress or, under existing delegations, by committee and subcommittees (or their chairmen). Individual members of Congress, including ranking minority members, do not have the authority to conduct oversight in the absence of a specific delegation by a full house, committee, or subcommittee.<sup>1</sup>

This opinion is flawed in many ways, but even taking it at face value, GSA must comply with requests submitted under the statutory Seven Member Rule. The Seven Member Rule is unique authority that was passed by both the House and Senate and signed by the President in 1928, explicitly delegating authority for any seven members of the Committee on Oversight and Government Reform to require any executive agency to “submit any information requested of it

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<sup>1</sup> Office of Legal Counsel, Department of Justice, *Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch* (May 1, 2017) (online at [www.justice.gov/olc/file/966326/download](http://www.justice.gov/olc/file/966326/download)).

relating to any matter within the jurisdiction of the committee.”<sup>2</sup>

Under House Rule X, the Committee has jurisdiction over “Government management and accounting measures generally,” as well as the “Overall economy, efficiency, and management of government operations and activities, including Federal procurement.”<sup>3</sup> In addition, as the primary investigative body in the House, the Committee also has the broad authority “at any time” to “conduct investigations” of “any matter.”<sup>4</sup>

For example, in *Henry A. Waxman v. Donald L. Evans*, United States District Court Judge Lourdes G. Baird granted 16 members of the Committee summary judgment in a case brought against the Department of Commerce to enforce the Seven Member Rule. The court ruled that the Department was required to provide adjusted data from the 2000 census.<sup>5</sup>

### **Compliance with Seven Member Rule Under Obama Administration**

During the Obama Administration, GSA explicitly recognized and complied with a request for documents under the statutory Seven Member Rule regarding the Old Post Office lease agreement. On December 22, 2016, 11 members of the Committee sent GSA a request for documents pursuant to the Seven Member Rule.<sup>6</sup> In response, GSA produced documents on January 3, 2017, writing:

Thank you for your letter dated December 22, 2016, from 11 members of the House Committee on Oversight and Government Reform requesting certain records related to the Old Post Office pursuant to 5 U.S.C. § 2954 (the “Seven Member Rule”). ... Consistent with the Seven Member Rule and judicial and Department of Justice, Office of Legal Counsel opinions (see e.g., 6 Op. O.L.C. 632 (1982) and 28 Op. O.L.C. 79 (2004)), enclosed please find attachments responsive to your request.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. § 2954 (incorporating and amending 45 Stat. 996 (1928)). The statutory language refers to the “Committee on Government Operations.” The Committee was renamed several times since then, and in the 110th Congress, it was renamed the Committee on Oversight and Government Reform. References in statute to the “Committee on Government Operations” are treated as referring to the Committee on Oversight and Government Reform.

<sup>3</sup> House rule X, clause 1(n).

<sup>4</sup> House rule X, clause 4(c)(2).

<sup>5</sup> *Henry A. Waxman v. Donald L. Evans*, CV 01-4530 LGB (AJWx), 2002 U.S. Dist. LEXIS 25975, at \*33 (C.D. Cal. Jan. 18, 2002).

<sup>6</sup> Letter from Ranking Member Elijah E. Cummings, et al., House Committee on Oversight and Government Reform, to Denise Turner Roth, Administrator, General Services Administration (Dec. 22, 2016) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2016-12-22.EEC%20et%20al%20to%20Roth%20re%20Trump%20International%20Hotel.pdf>).

<sup>7</sup> Letter from Lisa A. Austin, Associate Administrator, General Services Administration, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Jan. 3, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/GSA%20Response%20to%20Seven%20Member%20Rule%2001-03-17.pdf>).

GSA produced a wide range of documents—in unredacted form—including an amendment to the lease, a 2017 budget estimate, exhibits to the lease, and monthly income statements for the Trump International Hotel.

Similarly, during the Obama Administration, the State Department also complied with a request submitted by Members of our Committee under the Seven Member Rule. On September 2, 2016, 11 Members of the Committee sent a letter pursuant to the Seven Member Rule, requesting an unredacted copy of an email exchange between former Secretary of State Colin Powell and former Secretary of State Hillary Clinton.<sup>8</sup> On September 7, 2017, the State Department produced the full, unredacted email exchange in response to the request.<sup>9</sup>

### **Failure to Comply with Seven Member Rule Under Trump Administration**

During the Trump Administration, GSA has recognized the existence of the Seven Member Rule, but has failed to comply with it to date.

On January 23, 2017, Ranking Members Cummings, DeFazio, Connolly, and Carson sent a letter requesting documents relating to the Old Post Office lease.<sup>10</sup> In declining to provide these documents to the Ranking Members alone, GSA sent a response on February 6, 2017, acknowledging the authority of Committee Members to obtain information under the Seven Member Rule. Acting Associate Administrator Saul Japson wrote:

GSA is unable to provide the unredacted versions of the monthly reports describing revenue and expenses. Should the U.S. House of Representatives Committee on Oversight and Government Reform or any seven members thereof submit a request pursuant to 5 U.S.C. § 2954, GSA will review any such request.<sup>11</sup>

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<sup>8</sup> Letter from Ranking Member Elijah E. Cummings, et al., House Committee on Oversight and Government Reform, to Secretary of State John F. Kerry, Department of State (Sept. 2, 2016) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2016-09-02.%20OGR%20dem%20members%20to%20Kerry.pdf>).

<sup>9</sup> Letter from Julia Frifield, Assistant Secretary for Legislative Affairs, Department of State, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Sept. 7, 2016) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/State%20to%20EEC%2009-07-16.pdf>).

<sup>10</sup> Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, Ranking Member Peter A. DeFazio, House Committee on Transportation and Infrastructure, Rep. Gerald Connolly, and Rep. André Carson, to Timothy Horne, Acting Administrator, General Services Administration (Jan. 23, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-01-23.EEC%2C%20DeFazio%2C%20Connolly%2C%20%26%20Carson%20to%20GSA%20OPO%20Letter%20re.%20Trump.pdf>).

<sup>11</sup> Letter from Acting Associate Administrator Saul Japson, General Services Administration, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Feb. 6, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/GSA%20letter.pdf>).

Following this suggestion, two days later, on February 8, 2017, eight members of the Committee sent a letter to GSA requesting these documents pursuant to the statutory Seven Member Rule.<sup>12</sup> Over the past four months, our staffs have inquired repeatedly about the status of this request, but we have received no further response from GSA.

Instead, you testified on May 24, 2017, before the House Committee on Appropriations that the Trump Administration's new policy—to reject all oversight requests from Democrats unless they are also joined by Republican Committee Chairmen—could preclude the production of documents under the Seven Member Rule. In response to questions from Rep. Matt Cartwright, who is also a Member of the Oversight Committee, you testified: “the Administration has instituted a new policy that matters of oversight need to be requested by the Committee chair.” You also testified that you would respond to Democratic requests by providing only public information with other information redacted:

However, if it's an oversight matter, not requested by the Committee chair, we'll respond with a letter saying that—you know, if it's information that we need to be redacted, then we will redact the information—we will provide public information. But for matters of oversight, the request needs to come from the Committee chair.<sup>13</sup>

### **Request for Documents Under Statutory Seven Member Rule**

The Seven Member Rule is not a regulation or guideline, but a statute that was passed by both houses of Congress and signed by the President. Although you may wish to limit oversight from Democratic Members of Congress through a misguided policy that responds only to Republican Chairmen, compliance with federal law is not an optional exercise that may be overridden by a new Trump Administration policy.

Your actions to date are not only a reversal of previous Executive Branch policy and a direct impediment to authorized congressional oversight, but a violation of the statute passed by Congress creating the Seven Member Rule and explicitly delegating this authority to Members of the Oversight Committee. For these reasons, we request, pursuant to the Seven Member Rule, that you produce the following documents—in unredacted form—by June 23, 2017:

1. all monthly reports submitted to GSA since November 2016 by Trump Old Post Office LLC describing revenues and expenses;
2. all correspondence and documents from Trump Old Post Office LLC relating to liens or any action to resolve liens;

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<sup>12</sup> Letter from Ranking Member Elijah E. Cummings, et al., House Committee on Oversight and Government Reform, to Saul Japson, Acting Associate Administrator, General Services Administration (Feb. 8, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-02-08.EEC%20et%20al%20to%20Japson-GSA%20re%20Trump%20International%20Hotel.pdf>).

<sup>13</sup> House Committee on Appropriations, Subcommittee on Financial Services and General Government, *Hearing on the General Services Administration*, 115th Cong. (May 24, 2017).



3. all correspondence with representatives of Trump Old Post Office LLC, the Trump transition team, or the Trump Administration regarding compliance with the lease before or after the presidential election, Section 37.19 of the lease, the monthly financial reports, the structure of the trust created to address Section 37.19 of the lease, or any other matters above;
4. all correspondence and documents relating to funds received from any foreign country, foreign entity, or foreign source;
5. correspondence from Adam L. Rosen on December 16, 2016, and December 29, 2016, to GSA, referenced in the attachment to GSA's February 6, 2017, letter to Members of this Committee;
6. all correspondence and documents relating to representatives of the tenant in its interactions with GSA;
7. all documents containing legal interpretations of Section 37.19 of the lease created within GSA or received from the tenant;
8. any legal opinion relied upon by GSA in making a determination regarding the President's compliance with Section 37.19; and
9. all drafts and edits of Kevin Terry's letter on March 23, 2017, including who authored the drafts or edits.

Thank you for your prompt cooperation with this matter.

Sincerely,

Elijah E. Cummings

Wesley B. Denning

MARK DEKRAK

Brenda Lawrence

Jamie Raskin

Stacey E. Plaskett

Matthew A. Cartwright

Rubin Kelly

Bonnie Watson-Coleman

Eleanor H. Norton

Ann E. Quinn

Cordye B. Malore

Wm. Lucy Gray

John

Raja K. Kulkarni

Steph J. Lynch

Peter Welch

John P. Larkin

cc: The Honorable Jason Chaffetz, Chairman