

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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June 21, 2017

Reince Priebus
Chief of Staff
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20006

Dear Mr. Priebus:

We have serious concerns about whether the White House is properly safeguarding classified information, and we are writing to request information about the security clearances of former National Security Advisor Michael Flynn, Senior Advisor to the President Jared Kushner, and other White House officials.

For the past several decades—under both Democratic and Republican Chairmen—the Committee on Oversight and Government Reform has exercised oversight and legislative jurisdiction over the security clearance process, including within the White House. Based on a number of recent incidents, we are now seeking documents relating to the White House’s compliance with procedures governing the suspension of security clearances while allegations against White House employees are under investigation.

Security Clearance Suspensions

The rules governing continued access to classified information are set forth in Executive Order 12968. In general, when there are credible allegations that employees may be unfit to continue accessing classified information, security clearances are supposed to be suspended while the allegations are investigated. If allegations are not substantiated, security clearances may be restored, but if allegations are confirmed, security clearances may be revoked. Security clearances are suspended at the beginning of this process rather than at the end because the presumption under the Executive Order is always to protect against threats to national security.

Executive Order 12968 provides that, in order to maintain access to classified information, security clearance holders must always demonstrate “trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion.”¹

¹ Exec. Order No. 12968, 60 Fed. Reg. 151 (Aug. 7, 1995).

The Executive Order warns that security clearance holders may be re-investigated “if, at any time, there is reason to believe that they may no longer meet the standards for access established in this order.” It states that eligibility is granted “only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.”²

In addition to the Executive Order, the Department of Defense manual governing “Suspension of SCI Access” states:

[W]hen information of obvious security concern develops ... [t]he appropriate commander or official shall immediately determine if it is in the interest of national security to retain a person in-status, or to take an interim action to locally suspend access to SCI pending final resolution of the issue.³

The manual also states: “Local SCI access suspension is a temporary measure designed to safeguard sensitive classified information or facilities while the issue of concern is investigated.”⁴

The Department of Defense has also issued “adjudicative guidelines” that apply to “all United States Government civilian and military personnel.” These guidelines state:

Each case must be judged on its own merits, and final determination remains the responsibility of the specific department or agency. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁵

The guidelines also state:

When information of security concern becomes known about an individual who is currently eligible for access to classified information, the adjudicator should consider whether the person: (1) Voluntarily reported the information; (2) Was truthful and complete in responding to questions; (3) Sought assistance and followed professional guidance, where appropriate; (4) Resolved or appears likely to favorably resolve the security concern; (5) Has demonstrated positive changes in behavior and employment; (6) Should have his or her access temporarily suspended pending final adjudication of the information.⁶

² *Id.*

³ Department of Defense, *Sensitive Compartmented Information (SCI) Administrative Security Manual: Administration of Personnel Security, Industrial Security, and Special Activities* (Oct. 19, 2012) (online at www.dtic.mil/whs/directives/corres/pdf/510521m_vol3.pdf).

⁴ *Id.*

⁵ *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, 32 C.F.R. § 147.2(b) (1998).

⁶ *Id.* at § 147.2(e).

Failure to Suspend General Flynn's Security Clearance

Although the White House received credible allegations of obvious security concern relating to General Flynn from the Acting Attorney General, it appears that the White House did not suspend his security clearance while those allegations were reviewed. Instead, it appears that the White House allowed General Flynn to continue accessing some of our nation's most highly classified secrets for weeks, until the *Washington Post* reported publicly on the content of General Flynn's contacts with the Russians and the President fired him.⁷

Former Acting Attorney General Sally Yates testified on May 8, 2017, that she had "two in-person meetings and one phone call" with White House Counsel Donald McGahn, and that the first of these meetings occurred on January 26, 2017. She testified that she warned the White House Counsel 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 and that these White House officials may have repeated those lies to the American people.⁸

Vice President Mike Pence, Chief of Staff Reince Priebus, and Press Secretary Sean Spicer all stated publicly that General Flynn never discussed the issue of sanctions with the Russian Ambassador, and they apparently based their statements directly on General Flynn's own accounts of his communications.⁹

Acting Attorney General Yates testified that the Department of Justice had obtained evidence demonstrating that these were statements that the Department "knew to be untrue." She explained that she was "concerned that the American people had been misled about the underlying conduct and what General Flynn had done, and additionally, that we weren't the only ones that knew all of this, that the Russians also knew what General Flynn had done."¹⁰

Acting Attorney General Yates explained that while "the underlying conduct that General Flynn had engaged in was problematic in and of itself," his lies to other White House officials

⁷ *National Security Adviser Flynn Discussed Sanctions With Russian Ambassador, Despite Denials, Official Say*, *Washington Post* (Feb. 9, 2017) (online at www.washingtonpost.com/world/national-security/national-security-adviser-flynn-discussed-sanctions-with-russian-ambassador-despite-denials-officials-say/2017/02/09/f85b29d6-ee11-11e6-b4ff-ac2cf509efe5_story.html).

⁸ *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).

⁹ *Face the Nation*, CBS News (Jan. 15, 2017) (online at www.cbsnews.com/news/face-the-nation-transcript-january-15-2017-pence-manchin-gingrich/); *Meet The Press*, NBC News (Jan. 15, 2017) (online at www.nbcnews.com/meet-the-press/meet-press-01-15-17-n707086); *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).

¹⁰ *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).

“created a compromise situation, a situation where the National Security Advisor essentially could be blackmailed by the Russians.”¹¹

Acting Attorney General Yates testified that she disclosed this information so the White House could take action:

Finally, we told them that we were giving them all of this information so that they could take action, the action that they deemed appropriate ... I mean we were there to tell the White House about something we were very concerned about and emphasized to them repeatedly. It was so they could take action.¹²

Instead of immediately suspending General Flynn’s security clearance while reviewing these serious allegations, the White House Counsel reportedly questioned Acting Attorney General Yates about why the Department of Justice would care if one White House official lied to another White House official. Acting Attorney General Yates testified: “Mr. McGahn asked me when I went back over the second day was essentially, why does it matter to DOJ if one White House official lies to another White House official?”¹³

Obviously, trustworthiness is key to an employee’s continued access to classified information under Executive Order 12968. Concerns about General Flynn’s false statements—as well as his concealment of communications with the Russian Ambassador—raised obvious security concerns that should have resulted in an immediate suspension of his clearance while an investigation of the allegations proceeded.

Instead, the President stated during a nationally televised interview on May 11, 2017, that the White House Counsel, after receiving these warnings from the Acting Attorney General, “came back to me and did not sound like an emergency.” He also questioned the motives of Acting Attorney General Yates, stating, “I believe that it would be very unfair to hear from somebody who we don’t even know and immediately run out and fire a general.”¹⁴

General Flynn was allowed to stay in his position for 18 days after the Acting Attorney General warned the White House about General Flynn’s actions, but neither the President nor any other White House official has explained why he was allowed to continue holding a security clearance during that period.¹⁵

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Trump Defends Delay Firing Flynn*, NBC News (May 11, 2017) (online at www.nbcnews.com/politics/white-house/trump-defends-delay-firing-flynn-n757991).

¹⁵ *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); *Mike Flynn Sat In On Trump-Putin Phone Call After Sally Yates’ Warnings; WH Defends Leaving ‘Good Man’ on Job*, Latest.com (May 9, 2017) (online at <https://latest.com/2017/05/mike-flynn-sat-in-on-trump-putin-phone-call-after-sally-yates-warnings-wh-defends-leaving-good-man-on-job/>).

Failure to Suspend Mr. Kushner's Clearance

Parallel concerns have been raised about the status of Mr. Kushner's security clearance in light of his similar failure to disclose at least four conversations and meetings with Russian officials. In addition, as with General Flynn, it appears that Mr. Kushner allowed his colleagues at the White House—and the American people—to be misled about his multiple communications with Russian officials.

Mr. Kushner reportedly failed to disclose contacts with dozens of foreign officials on his security clearance application:

Jamie Gorelick, Mr. Kushner's lawyer, said that the questionnaire was submitted prematurely on Jan. 18, and that the next day, Mr. Kushner's office told the F.B.I. that he would provide supplemental information. Mr. Kushner's aides said he was compiling that material and would share it when the F.B.I. interviewed him. For now, they said, he has an interim security clearance.¹⁶

Phone Calls with Russian Ambassador

According to the information provided by seven current and former U.S. officials, Mr. Kushner failed to disclose two phone calls with Russian Ambassador Sergei Kislyak between April and November 2016.¹⁷ Mr. Kushner's attorney claimed that Mr. Kushner did not recall these conversations:

Mr. Kushner participated in thousands of calls in this time period. He has no recollection of the calls as described. We have asked (Reuters) for the dates of such alleged calls so we may look into it and respond, but we have not received such information.¹⁸

Meeting at Trump Tower with General Flynn and Russian Ambassador

Mr. Kushner also reportedly failed to disclose an in-person meeting with Ambassador Kislyak and General Flynn at Trump Tower December 2016. The meeting remained unknown to the public for nearly three months, until the *New Yorker* reported in March that Mr. Kushner met with the Russian Ambassador during the transition. In that report, the White House claimed Mr. Kushner was developing "a more open line of communication in the future."¹⁹

¹⁶ *Kushner Omitted Meetings with Russians on Security Clearance Forms*, New York Times (Apr. 6, 2017) (online at www.nytimes.com/2017/04/06/us/politics/jared-kushner-russians-security-clearance.html).

¹⁷ *Exclusive: Trump Son-in-Law Had Undisclosed Contacts with Russian Envoy—Sources*, Reuters (May 27, 2017) (online at www.reuters.com/article/us-usa-trump-fbi-kushner-exclusive-idUSKBN18N018).

¹⁸ *Id.*

¹⁹ *Trump, Putin, and the New Cold War*, New Yorker (Mar. 6, 2017) (online at www.newyorker.com/magazine/2017/03/06/trump-putin-and-the-new-cold-war).

It was not until later that the White House confirmed that the meeting included General Flynn.²⁰ According to news reports, Mr. Kushner allegedly inquired during that meeting about creating a secret back channel for communications with the Russian government using Russian telecommunication facilities in an apparent attempt to circumvent detection by the U.S. government.²¹

These reports also indicated that Mr. Kushner, General Flynn, and Ambassador Kislyak discussed arranging a meeting “between a representative of Trump and a ‘Russian contact’ in a third country.”²² A month after their meeting, in January 2017, Erik Prince, the former head of Blackwater USA and the brother of Secretary of Education Betsy DeVos, reportedly met with an individual close to Russian President Vladimir Putin in the Seychelles islands, during which Mr. Prince reportedly “presented himself as an unofficial envoy for Trump to high-ranking Emiratis involved in setting up his meeting with the Putin confidant.”²³

Meeting with Russian Bank Under Sanctions

Mr. Kushner also failed to report a potential fourth Russian contact—an in-person meeting in December with Sergey N. Gorkov, the CEO of the Russian state-owned bank Vnesheconombank. The bank is currently subject to U.S. and European sanctions and has been described as “a state financial firm entrusted with carrying out Russian president Vladimir Putin’s ‘special projects’.”²⁴ Mr. Putin appointed Mr. Gorkov as the head of the bank in February 2016.²⁵ Mr. Kushner reportedly met with Mr. Gorkov at Ambassador Kislyak’s suggestion.²⁶ At the time, Mr. Kushner was CEO of his family’s business, which was seeking foreign investors to help his struggling property at 666 Fifth Street in New York City.²⁷

²⁰ *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).

²¹ *Russian Ambassador Told Moscow that Kushner Wanted Secret Communications Channel with Kremlin*, Washington Post (May 26, 2017) (online at www.washingtonpost.com/world/national-security/russian-ambassador-told-moscow-that-kushner-wanted-secret-communications-channel-with-kremlin/2017/05/26/520a14b4-422d-11e7-9869-bac8b446820a_story.html).

²² *Id.*

²³ *Blackwater Founder Held Secret Seychelles Meeting to Establish Trump-Putin Back Channel*, Washington Post (Apr. 3, 2017) (online at www.washingtonpost.com/world/national-security/blackwater-founder-held-secret-seychelles-meeting-to-establish-trump-putin-back-channel/2017/04/03/95908a08-1648-11e7-ada0-1489b735b3a3_story.html).

²⁴ *Sanctions, Spies, and Oligarchs: Putin’s Pet Bank and its Meeting with Jared Kushner*, Quartz (Mar. 27, 2017) (online at <https://qz.com/942624/sanctioned-veb-bank-handles-putins-pet-projects-has-close-ties-to-russias-security-services-and-met-with-trumps-son-in-law/>).

²⁵ *Putin’s Once-Mighty Bank for Pet Projects Now on Chopping Block*, Bloomberg (June 14, 2017) (online at www.bloomberg.com/news/articles/2016-06-15/putin-s-once-mighty-bank-for-pet-projects-now-on-chopping-block).

²⁶ *Senate Committee to Question Jared Kushner Over Meetings With Russians*, New York Times (Mar. 27, 2017) (online at www.nytimes.com/2017/03/27/us/politics/senate-jared-kushner-russia.html).

²⁷ *At Kushners’ Flagship Building, Mounting Debt and a Foundered Deal*, New York Times (Apr. 3, 2017)

The Kremlin, the Russian bank, and the White House have all offered conflicting explanations for this meeting. The Kremlin's spokesman stated that Mr. Gorkov met with Mr. Kushner as part of the bank's "ordinary business."²⁸ Bank officials claimed the meeting was part of its strategy to meet with "a number of representatives of the largest banks and business establishments of the United States, including Jared Kushner, the head of Kushner Companies."²⁹ The White House stated that "Jared attended the meeting in his capacity as a transition official," explaining that Mr. Kushner was "the official primary point of contact with foreign governments and officials." The White House also stated: "Nothing of substance was discussed. There was no follow-up."³⁰

Failure to Disclose Russian Contacts or Correct Public Record

Despite his multiple contacts with Russian officials and direct knowledge of General Flynn's contacts, Mr. Kushner reportedly failed to disclose his contacts as part of his security clearance application process, and 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, even after the scandal surrounding General Flynn. For example:

- On November 11, 2016, a spokeswoman for the Trump transition team, Hope Hicks, stated: "It never happened. There was no communication between the campaign and any foreign entity during the campaign."³¹
- On January 13, 2017, White House Press Secretary Sean Spicer described a timeline of communications between General Flynn and the Russian Ambassador that did not include the in-person meeting between Ambassador Kislyak, General Flynn, and Mr. Kushner at Trump Tower in December.³²
- On January 23, 2017, when asked about interactions between General Flynn and Ambassador Kislyak, Mr. Spicer disclosed two phone calls, but again omitted the

(online at www.nytimes.com/2017/04/03/nyregion/kushner-companies-666-fifth-avenue.html).

²⁸ *The Kremlin and the White House Have Conflicting Accounts of Jared Kushner's Meeting with the CEO of a Russian-Owned Bank*, Business Insider (Mar. 28, 2017) (online at www.businessinsider.com/jared-kushner-meeting-ceo-russia-bank-2017-3).

²⁹ *Id.*

³⁰ *Report Suggests Potentially Alarming Development in Jared Kushner's Meeting with the Head of a Sanction Russian Bank*, Business Insider (May 27, 2017) (online at www.businessinsider.com/kushner-meeting-russian-bank-gorkov-vnesheconombank-2017-5).

³¹ *Russia Eyes Better Ties with Trump: Says Contacts Underway*, Associated Press (Nov. 11, 2016) (online at <https://apnews.com/323f28f7f5e242498f43e4a7188336bc/trumps-election-boosts-kremlin-hopes-better-relations>).

³² *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-responses).

in-person meeting in December between Ambassador Kislyak, General Flynn, and Mr. Kushner at Trump Tower.³³

- On February 14, 2017, when asked whether he stood by the claim that no Trump team officials had any contacts with Russian officials during the campaign, Mr. Spicer responded: “I don’t have any—there’s nothing that would conclude me—that anything different has changed with respect to that time period.”³⁴
- On February 16, 2017, after firing General Flynn for failing to disclose his communications with the Russian Ambassador, President Trump held a press conference during which he offered this blanket denial when asked if any other member of his team had contacts with the Russian officials: “I have nothing to do with Russia. To the best of my knowledge no person that I deal with does.”³⁵
- On February 20, 2017, White House Deputy Press Secretary Sarah Huckabee Sanders stated: “This is a non-story because to the best of our knowledge, no contacts took place, so it’s hard to make a comment on something that never happened.”³⁶

Mr. Kushner failed to correct any of these omissions or the misleading impression they left on the American public.

We do not know who at the White House—other than General Flynn—knew about Mr. Kushner’s multiple contacts with Russian officials before they became public. It would be gravely concerning if Mr. Spicer, Ms. Hicks, Ms. Sanders, or President Trump were aware of Mr. Kushner’s Russian contacts when they made their misleading statements. It would also be concerning if Mr. Kushner concealed his Russian contacts from them and allowed them to continue making misleading and inaccurate public statements while also omitting these contacts from his security clearance application.

In any case, it is unclear why Mr. Kushner continues to have access to classified information while these allegations are being investigated.³⁷

³³ *Transcript: First White House Briefing for Trump Administration*, CNN (Jan. 23, 2017) (online at <http://transcripts.cnn.com/TRANSCRIPTS/1701/23/cnr.06.html>).

³⁴ *Press Briefing by Press Secretary Sean Spicer, 2/14/2017, #12*, The White House (Feb. 14, 2017) (online at www.whitehouse.gov/the-press-office/2017/02/14/press-briefing-press-secretary-sean-spicer-2142017-12).

³⁵ *Full Transcript and Video, Trump News Conference*, New York Times (Feb. 16, 2017) (online at www.nytimes.com/2017/02/16/us/politics/donald-trump-press-conference-transcript.html).

³⁶ *Donald Trump Claims His Team Did Not Contact Russia During Campaign, Contradicted by Kremlin Officials*, The Independent (Feb. 22, 2017) (online at www.independent.co.uk/news/world/americas/us-politics/donald-trump-russia-michael-flynn-2016-election-campaign-us-security-services-a7592526.html).

³⁷ *Special Counsel Is Investigating Jared Kushner’s Business Dealings*, Washington Post (June 15, 2017) (online at www.washingtonpost.com/world/national-security/special-counsel-is-investigating-jared-kushners-business-dealings/2017/06/15/5d9a32c6-51f2-11e7-91eb-9611861a988f_story.html?utm_term=.f5a5c43bebb7).

Request for Documents and Information

In order to ensure that our nation's most highly classified information is adequately protected and that the White House is adhering to policies for protecting our national security, we request that you provide the following documents by July 5, 2017:

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 any amendments or updates to it, as well as any documents related to his interview 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, and 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 Mr. McGahn or other White House officials reviewed the underlying information regarding General Flynn that Acting Attorney General Yates told you 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 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.

Thank you for your prompt cooperation with this matter.

Sincerely,

Eliza E. Turz

Wm. Lacy Clay

Cawlyn B. Maloney

Elizabeth Thomas

Blom

Mark DeSaulnier

Jamie Raskin

Ann E. Curry

Raja Krishnamoorthi

Peter Welch

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