

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 6, 2017

The Honorable Trey Gowdy
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your reply to my letter this afternoon. It is astonishing to me that you, as the sitting Chairman of the Oversight Committee, are declining to meet with a whistleblower who has agreed to come forward—despite fear of retaliation—to speak directly with you about evidence relating to former National Security Advisor Michael Flynn and his plan to lift sanctions in order to work with Russia to build nuclear reactors in the Middle East.

Your letter seems to resort to desperate and baseless jurisdictional excuses to avoid conducting oversight in an apparent attempt to protect President Trump and his Administration. I ask that you please reconsider your position. In addition, I would like to note several inaccuracies in your letter:

- (1) Your letter argues that I should provide this information to the Special Counsel's office. Of course, as my letter this morning made clear, I have already provided this information to the Special Counsel's office. The Special Counsel's office has now completed its investigative steps, and there is currently no bar to our Committee moving forward.
- (2) Your letter argues that the House Permanent Select Committee on Intelligence (HPSCI) and the House Committee on the Judiciary have primary jurisdiction over this matter, but neither has been investigating this issue for the past year as we have. Your letter disregards that our Committee is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. The Oversight Committee has primary jurisdiction over whistleblower protections and the most extensive experience with whistleblowers themselves.
- (3) Your letter states that you are referring this whistleblower to the Intelligence Committee, but it disregards the courage it took for this whistleblower to come

forward to me and—after significant deliberation—to you. Rebuffing the whistleblower and referring this person to another Committee disregards this courage, subjects the whistleblower to enhanced risk of exposure and retaliation, and deters other whistleblowers from coming forward to our Committee.

- (4) Your letter argues that our Committee should not investigate because the activity alleged by the whistleblower “is a crime, squarely within the jurisdiction of the Special Counsel.” Yet, your letter refers the matter to the Intelligence Committee “so that they may determine whether to add witnesses to the HPSCI witness list.” If the Intelligence Committee can investigate this matter without interfering with the criminal probe, then of course the Oversight Committee can as well.
- (5) In response to my assertion that you conducted the Benghazi investigation during an ongoing criminal investigation, your letter argues that the investigation involving Secretary Clinton’s emails only “began as a direct result of the Committee’s work which led to the discovery of the email server.” Your letter completely disregards the criminal investigation that was already underway into the attack that killed four Americans in Benghazi—which began before the Benghazi Select Committee was established and continued after its work ended. In that case, you even rejected the Justice Department’s request to allow its attorneys to sit in on the Select Committee interviews in order to prevent harm to the future prosecution of Abu Khattala.¹

Recently, you and Intelligence Committee Chairman Devin Nunes announced a new, joint investigation of Secretary Clinton and the Uranium One deal, citing supposedly new revelations by a “confidential informant” who was unidentified at the time. You told *Fox News* that you wanted to hear “whatever he has” because “[t]alking to witnesses is usually a good thing.”² In contrast, you seem to apply a completely different standard when it comes to investigating President Trump and his top aides.

I continue to believe our Committee can and should pursue these allegations against General Flynn in a responsible way and in consultation with the Special Counsel’s office. For these reasons, I sincerely hope you will reconsider your decision.

¹ See Letter from Assistant Attorney General for Legislative Affairs Peter J. Kadzik, Department of Justice, to Staff Director, Select Committee on Benghazi (Feb. 12, 2015) (“As previously discussed, we requested the presence of a Department attorney from the Abu Khattala prosecution team and an agent from the Federal Bureau of Investigation (FBI) during the interviews of four of the State Department witnesses because their interviews could impact the ongoing prosecution and investigation relating to the September 11, 2012 attacks on U.S. Special Mission personnel and facilities in Benghazi, Libya. Although we appreciate that these are matters of first impression, we reiterate our prior requests to have a prosecutor and a FBI agent present during the Committee’s interviews of those four witnesses because of the risks these interviews may pose to our law enforcement efforts.”).

² *Fox & Friends*, Fox News (Oct. 26, 2017) (online at <http://video.foxnews.com/v/5625690931001>).

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "Elijah E. Cummings". The signature is fluid and cursive, with a large loop at the end of the word "Cummings".

Elijah E. Cummings
Ranking Member