

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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May 9, 2018

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

Dear Mr. Chairman:

We are writing to request that you issue a subpoena to compel the Department of Justice to produce documents it is withholding relating to the improper classification of handwritten notes taken by top Department official Dana Boente on March 30, 2017, memorializing his conversation with then-FBI Director James Comey.

These notes are contemporaneous evidence corroborating a conversation in which Director Comey conveyed to Mr. Boente that President Donald Trump asked Director Comey to lift the “cloud” of the Russia investigation and “to get out” that the President was not under criminal investigation. It is unclear who at the Department of Justice tried to improperly classify these notes, but it is an abuse of the classification system to try to classify information merely to conceal information from the American people for political reasons, and the Department of Justice is obstructing our investigation into this abuse by withholding these documents from Congress.

On April 10, 2018, Rachel Maddow obtained a copy of Mr. Boente’s handwritten notes documenting his conversation with Director Comey. She also obtained a letter from the FBI showing that the Department of Justice improperly classified Mr. Boente’s notes—without his consultation and without adequate justification.¹ The letter from the FBI to Mr. Boente stated:

(U) Understanding that your notes were marked as TOP SECRET by an employee of the Department of Justice without your consultation, this letter memorializes a duly authorized OCA finding that the contents of your notes are not TOP SECRET (or classified at all).²

¹ *Exclusive: Handwritten Notes Appear to Back Comey Claims on Trump*, The Rachel Maddow Show, MSNBC (Apr. 10, 2018) (online at www.msnbc.com/rachel-maddow/watch/exclusive-handwritten-notes-appear-to-back-comey-claims-on-trump-1207929923864).

² *Exclusive: Letter Informing Dana Boente That His Notes Are Not Classified*, Maddow Blog (Apr. 10,

On April 11, 2018, we wrote to the Justice Department and requested that it produce by April 26, 2018, documents relating to these efforts to improperly classify Mr. Boente's handwritten notes.³ The Department has not respond to our letter and has not produced any of the requested documents.

Our Committee has jurisdiction over federal records and has previously investigated abuses of the classification system to improperly conceal information from the American people. As you once stated on national television during the Benghazi investigation:

[T]here is an over classification to protect people's reputations and careers. And that is not a legitimate reason to classify a document, just because you are worried that it may hurt feelings or impact your career.⁴

The President has a long history of accusing his political opponents of misusing classified information. Most recently, he falsely accused former FBI Director Jim Comey of illegally leaking classified information—in an apparent attempt to attack the credibility of Director Comey's statements and the legitimacy of Special Counsel Robert Mueller's investigation.⁵

We ask that you issue a subpoena to compel the Justice Department to produce, by May 20, 2018, the following documents relating to who was involved in the effort to classify Mr. Boente's March 30, 2017, handwritten notes:

- (1) all documents and communications in the custody, control, or possession of the Department of Justice relating to any efforts to designate as CLASSIFIED any information contained within the handwritten notes of Mr. Boente;
- (2) all communications within the Department of Justice, as well as with officials and entities outside the Department of Justice, relating to any efforts to designate as CLASSIFIED any information contained within the handwritten notes of Mr. Boente; and

2018) (online at <https://twitter.com/MaddowBlog/status/983877879581888512/>).

³ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, and Ranking Member Stephen F. Lynch, Subcommittee on National Security, House Committee on Oversight and Government Reform, to Deputy Attorney General Rod Rosenstein, Department of Justice (Apr. 11, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-04-11.EEC%20Lynch%20to%20Rosenstein-DOJ%20re%20Document%20Request.pdf>).

⁴ *On the Record with Greta Van Susteren*, Fox News (May 5, 2014) (online at www.foxnews.com/transcript/2014/05/06/gowdy-murder-4-americans-should-transcend-politics-benghazi-investigation.html).

⁵ See, e.g., Donald J. Trump (@realDonaldTrump), Twitter (Apr. 27, 2018) (online at <https://twitter.com/realDonaldTrump/status/989813047773614080>) ("He illegally leaked CLASSIFIED INFORMATION but doesn't understand what he did or how serious it is. He lied all over the place to cover it up. He's either very sick or very dumb."); Donald J. Trump (@realDonaldTrump), Twitter (Apr. 20, 2018) (online at <https://twitter.com/realDonaldTrump/status/987529636656697345>) ("James Comey illegally leaked classified documents to the press in order to generate a Special Council[sic]? Therefore, the Special Council [sic] was established based on an illegal act?").

The Honorable Trey Gowdy, Chairman

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- (3) documents and communications sufficient to show which officials at the Department of Justice were involved in, informed of, consulted about, or aware of any efforts to designate as CLASSIFIED any information contained within the handwritten notes of Mr. Boente.

If you decide not to issue this subpoena, then we ask you to place this matter on the agenda for our next regularly scheduled business meeting so all Committee Members may have the opportunity to debate and vote on this motion.

Thank you for your consideration of this request.

Sincerely,


Elijah E. Cummings
Ranking Member


Stephen F. Lynch
Ranking Member
Subcommittee on National Security

cc: Ron DeSantis, Chairman
Subcommittee on National Security