

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074

<http://oversight.house.gov>

May 31, 2019

The Honorable David Bernhardt
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. Secretary:

Now that the Department has indicated that it is no longer blocking its employees from participating in transcribed interviews requested by the Committee in March regarding the Department's recordkeeping procedures and practices, I am writing to establish an interview schedule with the following four Department officials:

1. Gareth Rees, Executive Assistant to the Office of the Secretary:
Wednesday, June 5, 2019, at 10:00 a.m.
2. Catherine Gulac, Administrative Assistant to the Deputy Secretary:
Friday, June 7, 2019, at 10:00 a.m.
3. Samantha Hebert, Director, Office of Scheduling and Advance:
Thursday, June 13, 2019, at 10:00 a.m.
4. Todd Willens, Chief of Staff:
Friday, June 14, 2019, at 10:00 a.m.

As you know, the Committee on Oversight and Reform and the Committee on Natural Resources are investigating transparency and recordkeeping at the Department, including whether you and your staff are adequately preserving records of your schedule and daily appointments and making them available to the public in compliance with the law.

On March 13, 2019, I sent a letter to you with Rep. Raúl Grijalva, the Chairman of the Committee on Natural Resources, requesting 12 categories of documents relating to the Department's implementation of the Freedom of Information Act (FOIA). Specifically, we sought documents relating to a proposed rulemaking that would make numerous changes to the FOIA process that could impair response times, limit the numbers of responses, and deny some requests altogether.¹

¹ Letter from Chairman Raúl Grijalva, Committee on Natural Resources, and Chairman Elijah E.

On March 28, 2019, the Committees sent an additional letter requesting transcribed interviews with the four Department officials listed above regarding their knowledge of the preservation and maintenance of your schedule. We requested that the Department contact us by April 8, 2019, to schedule these interviews.²

Instead of producing these documents and making these officials available, the Department's Director of Congressional and Legislative Affairs, Cole Rojewski, sent a letter on April 10, 2019, offering a briefing and producing nearly 27,000 pages of documents that the Committees did not request in their March 13 or March 28 letters.³

On May 7, 2019, we sent a response to Mr. Rojewski noting that the Department failed to produce responsive documents and refused to make these four officials available for interviews.⁴ We advised Mr. Rojewski that any official at the Department who "prohibits or prevents" or "attempts or threatens to prohibit or prevent" any officer or employee of the Federal Government from speaking with the Committee could have his or her salary withheld pursuant to section 713 of the Financial Services and General Government Appropriations Act.⁵

We asked Mr. Rojewski to inform us by May 10, 2019, whether the Department would voluntarily produce the requested documents and make the four Department officials available for transcribed interviews, or whether the Committees should consider alternative means to obtain compliance.

Cummings, Committee on Oversight and Reform, to Secretary David Bernhardt, Department of the Interior (Mar. 13, 2019) (online at naturalresources.house.gov/imo/media/doc/Grijalva%20Cummings%20Cox%20Letter%20to%20Bernhardt%20on%20FOIA%20Implementation%20Procedures%20March%202013%202019.pdf).

² Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Raúl Grijalva, Committee on Natural Resources, to Secretary David Bernhardt, Department of the Interior (Mar. 28, 2019) (online at oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-28.EEC%20Grijalva%20to%20Bernhardt-DOI%20re%20Calendars.pdf).

³ Letter from Cole Rojewski, Director of Congressional and Legislative Affairs, Department of the Interior, to Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Raúl Grijalva, Committee on Natural Resources (Apr. 10, 2019) (online at oversight.house.gov/sites/democrats.oversight.house.gov/files/DOI.041019.Response%20to%20EEC%20re%20Calendars.pdf).

⁴ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Cole Rojewski, Director of Congressional and Legislative Affairs, Department of the Interior (May 7, 2019) (online at oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-07.EEC%20to%20Rojewski-DOI%20re%20Bernhardt%20Calendars%20%281%29.pdf).

⁵ P.L. 116-6, § 713 ("No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who ... prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee.").

On May 10, 2019, Mr. Rojewski sent a letter changing his position and confirming that “these employees have been instructed by counsel that they are free to submit to such interviews if they so choose.”⁶

Given Mr. Rojewski’s statement, and the instructions by agency counsel that he referenced, the Committee is now moving forward with scheduling these interviews at the dates and times listed above. Since these are being conducted as transcribed interviews, Department counsel will be permitted to attend. However, if a subpoena becomes necessary to compel a witness to attend a compulsory deposition, Committee rules prohibit agency counsel from attending such a deposition.⁷

On May 10, 2019, the Department sent a separate letter enclosing seven documents.⁸ Although the Department described this production as “containing 12,575 pages” responsive to the Committee’s requests, 12,320 of these pages consisted of a spreadsheet of the Department’s annual FOIA report for Fiscal year 2018, which was already available online. In fact, many of those pages are completely blank spreadsheet cells. All six of the other documents produced also consist of public information to which the Committees previously had access.

With respect to Mr. Rojewski’s arguments that the Committee should not proceed with these interviews, the Committee does not find them persuasive. For example, Mr. Rojewski wrote that “these employees are not the appropriate persons to address the questions you have raised.”⁹ However, he did not explain why these individuals are not the correct witnesses, and he offered no other employees who would be more knowledgeable about these matters.

Moreover, the briefing provided by the Department on May 17, 2019, contradicts Mr. Rojewski’s claim. During that briefing, a senior records officer confirmed that at least two of these employees—Samantha Hebert and Gareth Rees—have knowledge of the process by which your calendar is created, maintained, and produced for public disclosure. In addition, recent versions of your calendar indicate that Catherine Gulac and Todd Willens attended a meeting described as a “Daily Check In,” in which they presumably discussed your daily affairs.¹⁰

⁶ Letter from Cole Rojewski, Director of Congressional and Legislative Affairs, Department of the Interior, to Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Raúl Grijalva, Committee on Natural Resources (May 10, 2019) (online at oversight.house.gov/sites/democrats.oversight.house.gov/files/DOI.05102019.Response%20to%20EEC%20Grijalva%20re%20EEC%2005272019%20letter.pdf).

⁷ Committee on Oversight and Reform, Rule 15 (116th Cong.) (online at www.govinfo.gov/content/pkg/CPRT-116HPRT35461/pdf/CPRT-116HPRT35461.pdf).

⁸ Letter from Rachel Spector, Deputy Chief FOIA Officer, Department of the Interior, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (May 10, 2019) (online at oversight.house.gov/sites/democrats.oversight.house.gov/files/HOR%20FOIA%20transmittal.pdf).

⁹ Letter from Cole Rojewski, Director of Congressional and Legislative Affairs, Department of the Interior, to Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Raúl Grijalva, Committee on Natural Resources (May 10, 2019) (online at oversight.house.gov/sites/democrats.oversight.house.gov/files/DOI.05102019.Response%20to%20EEC%20Grijalva%20re%20EEC%2005272019%20letter.pdf).

¹⁰ Secretary David Bernhardt’s Calendar for March 16, 2019, through May 28, 2019, Department of the

In his letter on May 10, Mr. Rojewski also claimed that the Committee “bullied and threatened in an attempt to force these employees to submit to your interview process without regard to whether doing so would advance a legitimate legislative or investigative purpose.”¹¹ This claim is false.

The Committee has made clear its legitimate legislative and investigative purposes, and the Committee has a longstanding practice of conducting robust oversight of agency actions and legislating on federal records issues and public disclosure laws. These investigations regularly include interviewing both senior officials and career employees responsible for records retention and disclosure practices.¹²

The only aspects of this investigation that are unusual are the Department’s refusal to schedule these interviews and its baseless excuses for delaying them so long. Subpoenas should not be necessary to conduct standard interviews of agency officials about matters that are squarely within the Committee’s legislative and oversight jurisdiction.

Please inform the Committee by June 3, 2019, if any of the witnesses will not be attending the interviews scheduled above.

Sincerely,



Elijah E. Cummings
Chairman

cc: The Honorable Jim Jordan, Ranking Member

Interior (undated) (available online at www.doi.gov/sites/doi.gov/files/uploads/march16-may28_redacted.pdf).

¹¹ Letter from Cole Rojewski, Director of Congressional and Legislative Affairs, Department of the Interior, to Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Raúl Grijalva, Committee on Natural Resources (May 10, 2019) (online at oversight.house.gov/sites/democrats.oversight.house.gov/files/DOI.05102019.Response%20to%20EEC%20Grijalva%20re%20EEC%2005272019%20letter.pdf).

¹² See, e.g., Committee on Oversight and Government Reform, Interview of Vania Lockett, Associate Director of Disclosure and FOIA Operations, Office of Privacy, Department of Homeland Security (Mar. 2, 2011); Committee on Oversight and Government Reform, Interview of Catherine Papoi, Deputy Chief FOIA Officer and Director of Disclosure, Office of Privacy, Department of Homeland Security (Mar. 3, 2011); Committee on Oversight and Government Reform, Interview of William Holzerland, Associate Director for Disclosure Policy and FOIA Program Development, Office of Privacy, Department of Homeland Security (Mar. 4, 2011); Committee on Oversight and Reform, Interview of Amy Shlossman, Deputy Chief of Staff, Department of Homeland Security (Mar. 9, 2011); Committee on Oversight and Government Reform, Interview of Mary Ellen Callahan, Chief Privacy Officer and Chief FOIA Officer, Department of Homeland Security (Mar. 14, 2011); Committee on Oversight and Reform, Interview of Brandon Hurlbut, Chief of Staff for the Secretary of the Department of Energy (Mar. 5, 2012); Committee on Oversight and Government Reform, Interview of Leonard T. Oursler, National Director of Legislative Affairs, Internal Revenue Service (July 22, 2014).