

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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<http://oversight.house.gov>

July 1, 2020

The Honorable Emily W. Murphy
Administrator
General Services Administration
1800 F Street, N.W.
Washington, D.C. 20405

Dear Administrator Murphy:

We are writing to request transcribed interviews with you and your general counsel concerning apparently misleading testimony from Administration officials who appeared at hearings before the Subcommittee on Government Operations on May 21 and June 27, 2019, regarding the White House's plan to eliminate the Office of Personnel Management (OPM).

According to a good government watchdog group, the Project on Government Oversight, they have obtained a copy of notes from a conference call in April 2019 during which Stephen Engel, the head of the Office of Legal Counsel (OLC) within the Department of Justice (DOJ) informed attorneys from OPM, the General Services Administration (GSA), and the Office of Management and Budget (OMB) that the Administration lacked legal authority for its plan to eliminate OPM. According to these notes, this legal advice was provided as an oral "opinion" from OLC.¹

This OLC legal opinion apparently was rendered months before two hearings before the Subcommittee in which OPM and OMB officials were asked explicitly for any legal advice they received regarding the proposed elimination of OPM. This new information raises questions about whether former Deputy Director of Management of OMB and former Acting Director of OPM Margaret Weichert, as well as then-OPM Deputy Chief of Staff Stephen Billy, misled Congress when they concealed this meeting, this legal advice, and these notes.

Based on this apparently misleading testimony, which was made under oath, as well as the Administration's continued efforts to dismantle OPM, we request transcribed interviews with you and your general counsel at times that are mutually agreed to by July 14, 2020.

¹ *White House Concealed Finding That OPM Merger Was Illegal, Report Says*, Government Executive (June 24, 2020) (online at www.govexec.com/oversight/2020/06/white-house-concealed-finding-opm-merger-was-illegal-report-says/166411/).

Bipartisan Concerns About the Legality of the Administration's Plan

On March 22, 2019, more than a year ago, Subcommittee Chairman Gerald E. Connolly sent a letter to OPM requesting 13 categories of documents relating to the Administration's plan to eliminate OPM. The letter requested basic documents, such as a cost/benefit analysis of the planned merger, as well as any legal analyses that were conducted.²

On May 8, 2019, Chairman Connolly sent a follow-up letter to OPM reiterating the request for all responsive documents and asking for a privilege log listing any specific documents that were withheld and the specific legal rationale for withholding them.³ OPM provided few relevant documents and no privilege log.

At the Subcommittee's hearing on May 21, 2019, both majority and minority Subcommittee Members demanded that OPM provide the Subcommittee with, among other documents, any legal analyses of the proposal. At that hearing, Representative Eleanor Holmes Norton asked OPM Director Weichert:

- Q: Those are the 13 categories. He was very specific. Have you provided that information?
- A: So we provided all of the relevant documents that were not already still deliberative and pre-decisional. So I think the—
- Q: So you have provided the 13 categories of documents that Chairman Connolly asked for?
- A: So not all of the categories are at the decision point. So I understand—I mean, you made a great point about doing this being very hard. We would love to be further along than we actually are. So we don't have some of the documents fully done and out of the deliberative process into decision. So we've shared what we were legally able to do around documents that were no longer in the deliberative pre-decisional phase.⁴

Director Weichert failed to mention the April 2019 conference call with the OLC, failed to mention the legal opinion provided during this phone call, and failed to mention that notes taken at the meeting were being withheld from the Subcommittee, all of which would be responsive to Congresswoman Norton's questions and the Subcommittee's document requests.

² Letter from Chairman Gerald E. Connolly, Subcommittee on Government Operations, et al., to Acting Director Margaret Weichert, Office of Personnel Management (Mar. 22, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-22.GEC%20to%20Weichert-OPM%20re%20Witness%20Invite%20for%205-1%20Gov%20Ops%20Hearing.pdf>).

³ Letter from Chairman Gerald E. Connolly, Subcommittee on Government Operations, et al., to Acting Director Margaret Weichert, Office of Personnel Management (Mar. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-08.GEC%20to%20Weichert-OPM%20re%20OPM%20Reorganization.pdf>).

⁴ Committee on Oversight and Reform, Subcommittee on Government Operations, *Hearing on The Administration's War on a Merit Based Civil Service* (May 21, 2019) (online at <https://oversight.house.gov/legislation/hearings/trump-s-war-on-a-merit-based-civil-service>).

At a June 26, 2019, hearing, both majority and minority Subcommittee Members again pressed for any legal analyses of the White House's proposed abolition of OPM. Days before this hearing, OPM produced to the Subcommittee a handful of documents, but it did not produce the notes from the April 2019 call, it did not produce a privilege log listing the notes as withheld, and it did not indicate in any other way that it was withholding the notes based on any claim of privilege. With respect to the documents that were produced, the sections that addressed the legal analysis were redacted, which several Members highlighted on television screens in the hearing room during questioning.

For example, now-Ranking Member of the Subcommittee Jody B. Hice questioned Mr. Billy, then-Deputy Chief of Staff at OPM:

- Q: What is the legal basis for redacting basic answers to questions?
- A: I'm not an attorney. I'm not able to talk to the specifics about that. I know that we are—our attorneys are working to provide as much information as we can. There are some things that, where the legal analysis hasn't been completed, we don't have a legal analysis to provide at this time.
- Q: Mr. Billy, that's totally unacceptable, your answer, and we expect to get the information that we request. Is that understood?
- A: Yes, Congressman.
- Q: A couple of weeks ago, Acting Director Weichert was here, and there was a bipartisan call for documents relating to the OPM-GSA merger, **specifically the legal analysis for the merger**. Do you have any idea when that analysis will be provided to this committee?
- A: So attorneys are working across the agencies that are involved in this to finalize the legal authorities that currently exist, and as soon as that is done, we will provide that.
- Q: Do you have any idea when that will be done?
- A: I don't have an exact timeline, no sir.
- Q: Do you have an estimate?
- A: We are hoping to have it as soon as they're completed. The attorneys are working daily on this.⁵

Again, Mr. Billy made no mention of the April 2019 conference call, the legal analysis that OLC provided to OMB, GSA, and OPM, or the notes of that meeting.

With respect to the Administration's claim that some documents could be withheld based on a claim of "deliberative process" privilege, Rep. Mark Meadows—who was then the Ranking Member of the Subcommittee and is now President Trump's Chief of Staff, strongly rejected such claims at the hearing on June 26, 2019, stating:

⁵ Subcommittee on Government Operations, *Hearing on Document Production Status Update: OPM, FBI, and GSA* (June 27, 2019) (online at <https://oversight.house.gov/legislation/hearings/document-production-status-update-opm-fbi-and-gsa>) (emphasis added).

If any of you are here today to say that it's part of a deliberative process that somehow Congress can't see the documents, I would urge you strongly not to go there. You will find the full force of both Republicans and Democrats coming together to acknowledge that that is not a legitimate reason for you to withhold documents. Second, if you think that somehow the lack of giving documents to this committee is serving a greater purpose, I would assure you that it is not.⁶

To this day, OPM still has not produced to the Subcommittee a privilege log indicating that they withheld specific documents in response to our request, and they have not formally asserted any valid legal privilege to do so.

In response to news about the existence of notes documenting the April 2019 call with OLC, an OPM spokesperson reportedly stated: "This story is false. The Office of Legal Counsel never issued an opinion prohibiting the proposed reorganization of GSA and OPM."⁷

This carefully worded statement is just as misleading as the previous testimony of Administration officials before the Subcommittee. If OLC in fact held a conference call with agency attorneys in which it delivered a legal "opinion" that the White House plan to eliminate OPM was illegal—and if there are contemporaneous notes of this call—it does not matter if OLC never reduced this opinion to a final written report. Concealing these facts from the Subcommittee is both disingenuous and an abuse of the trust that public officials owe to Congress and the American people.

Requests for Transcribed Interviews

Based on this new information, and in light of your continued failure to provide the Subcommittee with requested documents and information about your involvement in critical conversations related to the elimination of OPM, we request transcribed interviews with:

- You, Emily W. Murphy, Administrator of the General Services Administration; and
- Jack St. John, General Counsel, General Services Administration.

We ask that you and Mr. St. John be made available for transcribed interviews on a staggered schedule agreed to by both you and the Committee no later than July 14, 2020.

⁶ Subcommittee on Government Operations, *Hearing on Document Production Status Update: OPM, FBI, and GSA* (June 27, 2019) (online at oversight.house.gov/legislation/hearings/document-production-status-update-opm-fbi-and-gsa).

⁷ *White House Concealed Finding That OPM Merger Was Illegal, Report Says*, Government Executive (June 24, 2020) (online at www.govexec.com/oversight/2020/06/white-house-concealed-finding-opm-merger-was-illegal-report-says/166411/).

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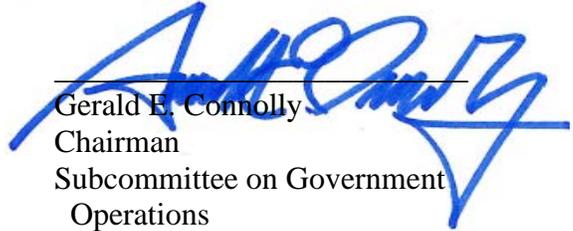
The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. If you have any questions, please contact Subcommittee staff at (202) 225-5051.

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Sincerely,



Carolyn B. Maloney
Chairwoman



Gerald E. Connolly
Chairman
Subcommittee on Government
Operations

cc: The Honorable James R. Comer, Ranking Member

The Honorable Jody B. Hice, Ranking Member
Subcommittee on Government Operations