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ONE HUNDRED THIRTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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December 13, 2013

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

Dear Mr. Chairman:

We are writing, pursuant to House rule XI clause 2(c)(2), to request that you convene a special meeting of the Committee to consider and adopt procedures for the proper handling and treatment of documents produced to the Committee pursuant to subpoenas.

Earlier today, the MITRE Corporation produced sensitive security documents relating to the Healthcare.gov website in compliance with a subpoena that you issued unilaterally on December 9, 2013, without consultation with the minority. MITRE officials have warned repeatedly in letters on November 5, November 22, and December 4 that the documents demanded by your subpoena include software code and other technical information that is highly sensitive and that they believe could give hackers a roadmap to compromise the security of the website and the personal information of American citizens.

MITRE already produced redacted copies of the documents to the Committee, and last Friday both Republican and Democratic Committee staff were given full access to review the complete unredacted documents. In addition, the Department of Health and Human Services (HHS) wrote to you yesterday offering additional accommodations, including full access to the unredacted documents for all Members of the Committee at their convenience, among other

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<sup>1</sup> Letter from Kathleen Golden, Government Relations Manager, MITRE Corporation, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Nov. 5, 2013); Letter from Sol Glasner, Vice President, General Counsel, MITRE Corporation, to Counsel for Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Nov. 22, 2013); Letter from Alfred Grasso, President and Chief Executive Officer, MITRE Corporation, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Dec. 4, 2013).

measures.<sup>2</sup> Despite these steps, you insisted that MITRE comply with your subpoena by producing copies of all unredacted documents, and the company complied today at noon.

Due to the security concerns raised repeatedly by MITRE, the Ranking Member requested that you meet with him to establish protocols for the proper safeguarding of sensitive information related to the Committee's investigation. On November 6, 2013, he sent you a letter requesting that you work together to establish Committee protocols for handling these documents. He wrote:

In light of the potential for ill-meaning individuals to use this information to damage the website or compromise the security of confidential consumer information, I propose that we meet to develop common guidance for our Committee Members on the proper safeguarding of these documents.<sup>3</sup>

You did not respond to the Ranking Member's request, and you did not establish protocols for handling sensitive documents the Committee obtains. Since you became Chairman in 2011, the Committee has never voted to adopt any procedures governing the release of subpoenaed documents.

Earlier today, Ranking Member Cummings wrote to you again highlighting the security concerns raised by MITRE about these documents and requesting that you "work together on an alternative that respects the sensitivity of these documents while still allowing the Committee to conduct its legitimate oversight functions."<sup>4</sup> You did not respond.

For these reasons, we hereby request that you call a special meeting of the Committee under House rule XI clause 2(c)(2), at which we intend to ask the Committee to vote on procedures for safeguarding the documents you have subpoenaed in this investigation, including your subpoenas to MITRE, QSSI, CSSi, and HHS. We also intend to seek Committee consideration of a protocol for maintaining and releasing subpoenaed documents in the Committee's other investigations, including inquiries into the attacks on the U.S. compound in Benghazi, the Internal Revenue Service's treatment of 501(c)(4) organizations, and others.

Under House Rule XI, clause 2(m)(3)(A), the authority to issue subpoenas resides in the Committee and must be expressly delegated by the Committee to the chair, which our Committee has done. The House Parliamentarians have interpreted this rule to mean that all

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<sup>2</sup> Letter from Jim R. Esquea, Assistant Secretary for Legislation, Department of Health and Human Services, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Dec. 12, 2013).

<sup>3</sup> Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Nov. 6, 2013).

<sup>4</sup> Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Dec. 13, 2013).

documents received under a subpoena belong to the Committee. The chairman's delegated authority to issue subpoenas is limited to the issuance of the subpoenas; the delegation does not give the chair the authority to release the subpoenaed documents without Committee approval.<sup>5</sup>

Furthermore, House rule XI clause 2(e) provides additional authority for the fact that Committee records, which include documents obtained under Committee subpoenas, must be handled under procedures adopted by the Committee, not under procedures announced unilaterally by the chair. This rule provides that committee records "shall be kept separate and distinct from the congressional office records of the member serving as its chair." Thus, the documents are owned by the Committee, not the chair.

This issue was raised previously in this Committee in 1997 when then-Chairman Dan Burton sought to impose a unilateral protocol for releasing documents without action by the Committee or input from Committee Members. In that case, the House Parliamentarians advised that Committee action was required:

The Parliamentarian's advice makes it clear that it is the Committee—not the chair acting on its own—that must decide how the documents received during the investigation will be handled. It is necessary, therefore, that a Committee meeting be called at which this issue can be resolved by Committee vote.<sup>6</sup>

Since the Committee has not yet taken any action in this regard, and since you have refused requests by the Ranking Member to discuss this matter, we are left with no choice but to request an official Committee meeting during which we intend to propose for the Committee's consideration a protocol for handling documents produced pursuant to Committee subpoenas. Until that time, all documents produced by MITRE in response to your subpoena on December 9, 2013, must be protected from disclosure to any individuals who are not Members or Committee staff.

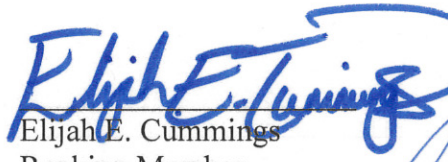
We strongly support the authority of our Committee to conduct robust investigations and oversight. We believe, however, that we must do so in a responsible manner with clear and fair procedures for safeguarding and releasing documents.

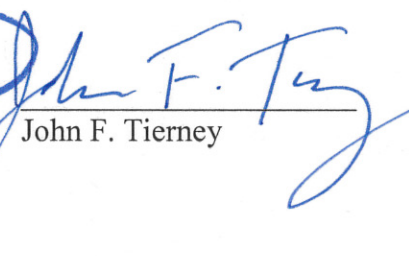
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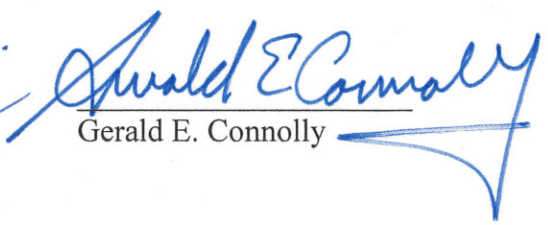
<sup>5</sup> See Letter to Rep. Dan Burton, Chairman of the House Committee on Government Reform, from Minority Members (Mar. 10, 1997).

<sup>6</sup> *Id.*

Sincerely,

  
Elijah E. Cummings  
Ranking Member

  
John F. Tierney

  
Gerald E. Connolly