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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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April 16, 2013

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Mr. Robert S. Taylor
Acting General Counsel
Office of General Counsel
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301

Dear Mr. Taylor:

The Committee on Oversight and Government Reform continues to investigate the facts and circumstances surrounding the death of U.S. Ambassador to Libya J. Christopher Stevens and his colleagues in Benghazi on September 11-12, 2012. During the course of the investigation, numerous individuals have approached the Committee with information related to the attack. Some witnesses may be required to retain personal counsel to represent them before the Committee and in the event the Department subsequently retaliates against them for cooperating with the Committee's investigation. Additional witnesses may be compelled by subpoena to give testimony to the Committee and can be reasonably expected to retain personal counsel at that time.

In each case, witnesses may need to share sensitive or classified information with their lawyers. Attorneys representing Department personnel in this matter will require clearance to possess and discuss Top Secret and Sensitive Compartmented Information (SCI). So that attorneys representing witnesses in this matter can properly represent their clients, and so witnesses can lawfully disclose sensitive or classified information to their attorneys, it is important that the Department's procedure for clearing attorneys is well understood.

Attorneys are cleared in accordance with the Department's security regulations. The Department's relevant security regulations are not widely available, which may cause unnecessary delays in clearing attorneys to handle sensitive and classified material related to this matter. Any ambiguity as to the clearance process may also unnecessarily expose witnesses to liability for releasing sensitive or classified information without proper authorization. To protect Department employees cooperating with the Committee's investigation, please provide the following documents and information:

1. The portion of the Department's security regulations that describes the process for clearing an attorney to receive sensitive or classified information from his or her client;

2. The portion of the Department's security regulations that describes the process for clearing an attorney who has previously been granted or currently has access to sensitive or classified information from another client;
3. Any list of "cleared" attorneys, from which employees can select an attorney who currently has access to sensitive or classified information and does not have to undergo an extended background check prior to speaking with an employee about sensitive or classified information; and,
4. Any guidance or notices that the Department has distributed to employees related to retaining or communicating with an attorney in the congressional investigation of the September 11-12, 2012 attacks on U.S. personnel and facilities in Benghazi.

It is an unavoidable fact that Department employees who apply for a security clearance to allow their personal attorneys to handle sensitive or classified material may be identifying themselves as witnesses in the Committee's investigation. With that in mind, it is important that the Department makes clear to its employees that they are free to furnish information to Congress in accordance with their statutory rights.¹ Additionally, retaliation against a witness who communicates with the Committee can be considered obstruction of a congressional investigation and is punishable by fine and imprisonment.²

To address the fact that witnesses may be reluctant to apply for attorney clearance for fear of retaliation, please enclose in your response to this request a pledge that the Department will not take any adverse personnel action or otherwise retaliate against any employee who requests clearance. This request is urgent in light of testimony from key witnesses who described mismanagement by senior administration officials related to the September 11-12, 2012 attacks and subsequent attempts by the administration's political staff to obstruct the congressional investigation.

Please produce the documents requested as soon as possible, but by no later than 5:00 p.m. on April 17, 2013. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

¹ 5 U.S.C. § 7211 states: "The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied."

² 18 U.S.C. § 1505 states, in pertinent part: "Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress--Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both."

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The Committee on Oversight and Government Reform 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.

If you have any questions about this request, please contact Jonathan Skladany of the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member