

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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<http://oversight.house.gov>

December 23, 2015

The Honorable Walter M. Shaub, Jr.
Director
U.S. Office of Government Ethics
1201 New York Avenue, NW
Washington, D.C. 20005

Dear Director Shaub:

The Office of Government Ethics was created by statute in 1978 to set standards for, and provide oversight of, federal agency ethics programs. The office assists agencies by interpreting and advising them on ethics laws and regulations to prevent conflicts of interest.¹ One such law is the Ethics in Government Act, which requires public disclosure of financial and employment history of public officials.²

Strong ethics programs are critical to build trust between the public and the government. As such, any implication that OGE is not meeting its mission must be examined by Congress. The Committee not only has government-wide oversight responsibilities, but also has substantive jurisdiction over OGE and enforcement of the Ethics in Government Act.

Earlier this year, press reports indicated that former Secretary of State Hillary Clinton and her husband failed to disclose millions of dollars in paid speeches over the past thirteen years under the belief they did not have a duty to report that because the speeches were delivered on behalf of the Clinton Foundation, and not in the Secretary's or the President's personal capacity.³ Those reports indicated that Mrs. Clinton directed compensation for at least five speeches to the Clinton Foundation between 2014 and 2015 which were not disclosed on her May 2015 OGE Form 278.⁴

In the wake of this revelation, OGE spokesman Vincent Salamone issued the following statement regarding the disclosure requirements:

Disclosure of speaking fees is not required when a public filer or the filer's spouse is acting as an agent of an organization and payment is made directly to that organization. The rule is different when the speaking is done in a personal capacity and the fees are directed or donated to charity, in which case disclosure would be required.⁵

¹ Office of Gov't Ethics website, "OGE Advances a Strong, Uniform Executive Branch Ethics Program" *available at* <http://www.oge.gov/About/Mission-and-Responsibilities/OGE-Advances-a-Strong,-Uniform-Executive-Branch-Ethics-Program> (last accessed December 17, 2015).

² 5 U.S.C. app. 4 §§ 101-111.

³ Josh Gerstein, *Hillary's speech disclosures come under fire*, POLITICO, May 20, 2015.

⁴ Rebecca Ballhaus and Peter Nicholas, *More Clinton Fees to Be Disclosed*, WALL ST. J., May 18, 2015.

⁵ *Id.*

Ethics experts, however, disagree that the Clintons' speeches fall within the exception, stating that there is little evidence the speeches had anything to do with the Clinton Foundation.⁶ Experts are further concerned that, under this exception, an official or spouse who is an agent of a nonprofit does not need to report payments directed to that nonprofit, creating conflict of interest questions.⁷

Some of the speeches in question were given by President Clinton while Secretary Clinton served as Secretary of State. It is not clear whether Secretary Clinton, the Department of State, or the Clinton Foundation consulted with OGE on the unreported speaking fees, or if OGE provided advice on whether the speeches were given in the Clintons' personal capacities or as agents of the Clinton Foundation. The agency also declined to comment when asked by the press whether this exception has previously appeared in the agency's public guidance or regulations.⁸

In your appearance before the Committee on December 16, 2015, at a hearing on the reauthorization of OGE, you were asked where the rule referenced by Mr. Salamone was found. You stated: "The statute is a very long, very detailed statute."⁹ Later in the hearing you testified that the rule was found in 5 U.S.C. appendix §102(a).¹⁰ The relevant portion of that statute states:

Each report . . . shall include a full and complete statement with respect to . . . the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating \$200 or more in value and, effective January 1, 1991, the source, date, and amount of payments made to charitable organizations in lieu of honoraria, and the reporting individual shall simultaneously file with the applicable supervising ethics office.¹¹

To help the Committee understand the relevant rule, and how OGE determines whether certain activities comply, please provide responses to the following questions:

1. What provision of 5 U.S.C. appendix § 102(a) contains the rule referenced by Mr. Salamone? If the rule is not contained within the statute, what is the source of the rule?
2. What factors does OGE consider in determining whether an individual acts as an agent of an organization versus when speaking is done in a personal capacity?
3. If an individual serves as an agent for an outside entity in an outside activity, does that have to be disclosed in Schedule D of OGE Form 278, or anywhere else?
4. Under what circumstances does OGE offer opinions on ethics issues to journalists or parties other than the government employee under investigation or ethics officials within their department or agency?

⁶ Josh Gerstein, *Hillary's speech disclosures come under fire*, POLITICO, May 20, 2015.

⁷ *Id.*

⁸ *Id.*

⁹ *Merit Sys. Prot. Bd., Office of Gov't Ethics and Office of Special Counsel Reauthorization: Hearing Before the H. Subcomm. on Gov't Operations*, 114th Cong. 33 (December 16, 2015).

¹⁰ *Id.* at 35.

¹¹ 5 U.S.C. app. § 102(a)(1)(A).

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In addition, please provide the following documents and information as soon as possible, but no later than January 6, 2016:

5. All rules or guidance applicable to Mr. Salamone's statement that disclosure of speaking fees is not required when an individual is acting as an agent of an organization and payment is made to that organization.
6. All documents and communications between OGE and the Clinton Foundation referring or relating to compliance with the Ethics in Government Act of 1978 including, but not limited to, disclosure of honoraria, since December 1, 2008.
7. All documents and communications between OGE and any other representatives of Secretary Clinton and President Clinton referring or relating to compliance with the Ethics in Government Act of 1978, including, but not limited to, disclosure of honoraria, since December 1, 2008.
8. All documents and communications between and among OGE employees referring or relating to the payment of speaking fees to Secretary Clinton, President Clinton, or the Clinton Foundation since December 1, 2008.
9. All documents and communications between and among OGE employees referring or relating to the disclosure of speaking fees by Secretary Clinton, President Clinton, or the Clinton Foundation since December 1, 2008.

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.

An attachment to this letter provides additional information about responding to the Committee's request. 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.

Please contact Jack Thorlin or Tristan Leavitt of the Committee staff at (202) 226-4240 with any questions regarding this letter. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered 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.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.