

1 ALDERSON COURT REPORTING

2 STEPHEN MOSKEY

3 HGO007000

4 DOCUMENT PRODUCTION STATUS UPDATE

5 Thursday, January 7, 2016

6 House of Representatives,

7 Committee on Oversight and Government Reform,

8 Washington, D.C.

9 The committee met, pursuant to call, at 10:01 a.m., in
10 Room 2154, Rayburn House Office Building, Hon. Jason
11 Chaffetz [chairman of the committee] presiding.

12 Present: Representatives Chaffetz, Mica, Turner,
13 Jordan, Walberg, Amash, Gosar, DesJarlais, Gowdy, Lummis,
14 Massie, Meadows, DeSantis, Mulvaney, Buck, Walker, Blum,
15 Hice, Russell, Carter, Grothman, Hurd, Palmer, Cummings,
16 Maloney, Norton, Clay, Lynch, Connolly, Cartwright, Kelly,
17 Lawrence, Lieu, Watson Coleman, DeSaulnier, Welch, and Lujan
18 Grisham.

20 Chairman Chaffetz. The Committee on Oversight and
21 Government Reform will come to order. Without objection,
22 the chair is authorized to declare a recess at any time.

23 Thank you all for being here. The congressional
24 oversight and investigative work does not need to be an
25 adversarial activity. We expect, require, and need
26 cooperation. For this to happen, it takes effort,
27 communication, and good faith.

28 Mr. Cummings and I have worked together quite well. We
29 have taken each other's views and ideas into consideration.
30 We don't always agree, but we try as best we can to not be
31 disagreeable. Our cooperative approach to oversight has
32 yielded results. The committee has come a long way in a
33 year.

34 Last month, we adopted a 195-plus page joint
35 investigative report on the Secret Service, and together we
36 have written roughly 200 joint letters asking for
37 documents, information, and testimony. Generally, when we
38 send a letter, it is not a thank-you note or a Christmas
39 card. Generally, a letter from the Oversight Committee is
40 a little bit more -- a little tougher than that. The fact
41 that we have more than 200 of these joint letters I think
42 speaks a lot to the approach that we are trying to take.

43 But we also need cooperation from the agencies
44 themselves. It might be helpful at this point to clarify
45 our expectations so witnesses understand what we mean by
46 cooperation. You know, we are different in the United
47 States of America. We are open and transparent. We are
48 self-critical. That is why back in 1816 or so, the
49 Congress actually formed this committee. It was under a
50 different name and it has grown and expanded and contracted
51 and gone through a variety of different names along the
52 way. But the function of oversight has been here since the
53 foundation of our nation. And a long, long time ago,
54 people felt it wise to look at every expenditure made by
55 the Federal Government.

56 So when the committee sends a request, we expect an
57 honest effort to identify and collect the records that are
58 responsive. We expect communication. We expect to be kept
59 informed and to be straight with us. And we will expect
60 that you will work with us in a good faith, which basically
61 means when you make a commitment, do what you say you are
62 going to do.

63 Republicans and Democrats share the goal of more
64 efficient and effective government that serves the people.
65 We have to ensure that every tax dollar is spent

66 responsibly. And we do that by conducting oversight of the
67 executive branch and examining government programs and
68 policies that affect every American.

69 Mr. Cummings and I and our predecessors here at the
70 committee didn't invent the concept of this oversight of
71 the executive branch. It comes from the Constitution. It
72 comes from the right of accessing and it comes from the
73 need to be responsive as we represent the people of the
74 United States of America.

75 Today, we are going to hear from a group of senior
76 legislative liaisons from five different agencies, all of
77 which have particularly troublesome track records when it
78 comes to cooperating with the committee's requests for
79 information. I am somewhat sympathetic to the idea that
80 they get bombarded not just by us but from so many
81 different committees not only in the House but in the
82 Senate as well. It is a large task, particularly with
83 agencies that you represent that are so massive and so big,
84 spending literally billions upon billions of dollars of
85 taxpayer dollars.

86 The Department of Homeland Security has been invited to
87 discuss our requests related to the Secret Service and the
88 TSA. TSA has consistently failed to meet our production

89 requests and has ignored basic fundamental request such as
90 appearing at hearings. On April 17 of last year, we
91 invited the administrator to testify at a hearing scheduled
92 for a month later. The day before the hearing, the
93 administrator backed out and cited a scheduling problem.
94 Yet, we had a month's notice.

95 We invited the Justice Department to address position
96 on withholding the memos that guided its investigative
97 personnel when dealing with GPS tracking devices. We also
98 hope to get an update on our request about the complete
99 Lois Lerner files.

100 An official with the State Department is here to
101 address persistent troubles we have had in securing
102 documents for our embassy construction investigation that
103 will be entering its third year. When State does produce
104 materials, it is almost always in a halfhearted way with a
105 smattering of documents for one or two discrete requests
106 and usually none for most. And that is very problematic.

107 There is a story out today about providing inaccurate
108 information as it relates to Hillary Clinton and her
109 emails. We are going to ask you some questions about that.

110 The Office of Management and Budget is here to address
111 its response to a subpoena I sent for materials from its

112 OIRA component, the Office of Information and Regulatory
113 Affairs, related to the Waters of the United States
114 rulemaking. OIRA is an office created by Congress, and its
115 job is to review draft of proposed regulations. To create
116 the appearance that it is cooperating with the committee,
117 OMB reflectively offered a number of pages of documents it
118 has produced.

119 To my fellow Members, here is a flashing signal that
120 maybe there is a problem. When they want to talk about the
121 number of documents they have produced, I am not interested
122 in that. I am interested in the percentage of documents
123 that you produced. It is a little trick to say, oh, we
124 have provided 100,000 of this or 50,000 of that. Tell me
125 what percentage of the documents we get, because if we want
126 100 percent of the truth, we are going to need 100 percent
127 of the documents. And until we get them, it makes us think
128 that you are hiding something.

129 The Office of Personnel Management has been invited to
130 discuss its effort to produce materials responsive to the
131 data breach investigations. OPM has unduly burdened the
132 committee investigators by applying unnecessary and
133 unexplainable redactions. Basic publicly available
134 information has been repeatedly redacted by OPM. In some

135 cases, our investigators have found answers more readily by
136 reviewing the FedBizOpps Web site. The extraordinary
137 lengths OPM has gone to keep basic information from the
138 committee leaves us with the conclusion that perhaps they
139 are having a lot to hide. If something is embarrassing,
140 that is not a reason to keep it from the Congress.

141 A successful working relationship between the
142 congressional committee and the executive branch agencies
143 require effort, communication, and good faith on both
144 sides. We need transparency. We need to work together.
145 You have a lot of good staff and a lot of good people. We
146 are not here to disparage any one person's reputation, but
147 we are here to get answers. And we need to make sure that
148 we get those documents so that we can do our job serving
149 the American people, and we need your help in doing so.

150 [The information follows:]

151

152 Chairman Chaffetz. With that, I would now like to
153 recognize the ranking member Mr. Cummings.

154 Mr. Cummings. Thank you very much, Mr. Chairman.

155 I strongly support the authority of this committee to
156 obtain necessary documents as part of our investigations.
157 Documents are a critical tool to investigate waste, fraud,
158 or abuse; eliminate unnecessary duplication; improve the
159 effectiveness and efficiency of government; and determine
160 whether Congress needs to change our laws to improve the
161 lives of the American people.

162 Of course, we rely on other sources of information such
163 as hearing testimony, witness interviews, and informal
164 briefings and meetings. But documents are unique. They
165 give us the ability to understand what happened on the
166 ground over a certain period of time without having to rely
167 on hazy memories or the self-serving recollections of those
168 being investigated.

169 I support the committee's authority because I have been
170 in the chairman's seat. I know firsthand how oversight can
171 be stifled by slow-walking documents or withholding
172 information to which Congress is entitled. I remember very
173 well the fights we had with the Bush administration over
174 their refusal to provide documents we needed, and I

175 remember how those actions impaired our ability to do our
176 work. So I support the chairman in his efforts.

177 Unfortunately, I have also seen how investigations can
178 be used as a form of political attack rather than a search
179 for the facts and a search for the truth. I have seen how
180 massive, repeated, and overbroad document requests have
181 been used as a partisan weapon. I have seen how they can
182 grind down agencies, force them to divert personnel, and
183 waste millions of taxpayer dollars in the process.

184 For today's hearing, I believe it is important to
185 recognize the difference between these two purposes. We
186 need to recognize not only the significant demands that
187 have been placed on these agencies but also what they have
188 provided to date, which is substantial.

189 For example, the State Department has just experienced
190 one of if not the most demanding years in its history in
191 terms of congressional inquiries. The State Department is
192 currently reporting to nine different committees, including
193 the Benghazi Select Committee. And it has been inundated
194 with requests unlike any previous year on record. In 2015
195 the Oversight Committee alone launched nine investigations
196 relating to the State Department. In response, the
197 Department provided more than 21 gigabytes of information.

198 Just as part of our investigation of embassy
199 construction, the State Department produced more than
200 160,000 pages of documents. Of course, the committee wants
201 additional documents. In fact, I have signed on to some of
202 those document requests myself. But it is inaccurate to
203 suggest that the State Department has intentionally
204 withheld the documents we need.

205 With that said, the State Department is notorious for
206 its extremely poor records management systems, and this
207 problem dates back several administrations. As I said
208 earlier, I have been incredibly frustrated in the past with
209 the State Department's inability to run the most basic
210 document searches and produce documents in a timely manner.
211 In my opinion, a solution to this problem is not to shame
212 the heads of the Legislative Affairs offices. Many of
213 these officials worked in Congress previously. They fully
214 understand our needs and our rights to the information, and
215 they are among some of our most effective advocates within
216 agencies.

217 Instead, if we really want to address this problem, we
218 can take two key steps. First, Congress can conduct
219 sustained and detailed reviews of agency information
220 management processes, including document preservation,

221 collection, and production. We can support long-term
222 efforts to upgrade and improve their systems so they take
223 less agency time to implement and provide Congress what it
224 needs more quickly. I am talking about efficiency and
225 effectiveness. This work would pay dividends to Congress,
226 the press, and the American public.

227 The second thing Congress can do is to take a closer
228 look at itself, put a mirror up to our faces. We can end
229 the politically motivated requests that are designed to
230 generate headlines rather than improve effectiveness and
231 efficiency. We can eliminate duplicate requests from
232 multiple committees and streamline our oversight efforts.
233 We can ask for only what we really need rather than
234 everything under the sun. And we can work with agencies to
235 understand the legitimate interests in protecting certain
236 classes of information while pursuing accommodations to
237 give us what we need to do our jobs. That is the balance
238 that we should seek. That is the balance that we should
239 work towards.

240 And so in closing, Mr. Chairman, I hope we can explore
241 some of these issues here today, and I look forward to the
242 testimony of our witnesses. And with that, I yield back.

243 [The information follows:]

244

245 Chairman Chaffetz. I thank the gentleman.

246 I will hold the record open for 5 legislative days for
247 any members who would like to submit a written statement.

248 I will now recognize our panel of witnesses.

249 I am pleased to welcome Hon. Julia Frifield, Assistant
250 Secretary of the Bureau of Legislative Affairs at the
251 United States Department of State; Hon. Peter Kadzik,
252 Assistant Attorney General for Legislative Affairs at the
253 Department of Justice; Hon. Tia Johnson, Assistant
254 Secretary of the Office of Legislative Affairs at the
255 United States Department of Homeland Security; Ms. Tamara
256 Fucile -- did I pronounce that right?

257 Ms. Fucile. Close enough.

258 Chairman Chaffetz. Close enough -- Associate Director
259 for Legislative Affairs at the Office of Management and
260 Budget; and Mr. Jason Levine, Director of Office of
261 Congressional, Legislative, and Intergovernmental Affairs
262 at the United States Office of Personnel Management.

263 Welcome, you all, and thank you for being here.

264 Pursuant to committee rules, all witnesses are to be
265 sworn before they testify. If you will please rise and
266 raise your right hand. Thank you.

267 [Witnesses sworn.]

268 Chairman Chaffetz. Thank you. You may be seated. And
269 let the record reflect that all of the witnesses answered
270 in the affirmative.

271 You know the drill here. We are trying to keep you to
272 5 minutes. We will give you a little bit of latitude, but
273 please try to keep your comments to 5 minutes if you can,
274 and then we will obviously insert your entire written
275 statement into the record.

276 We will now recognize Ms. Frifield for 5 minutes.
277

278 STATEMENTS OF JULIA FRIFIELD, ASSISTANT SECRETARY, BUREAU
279 OF LEGISLATIVE AFFAIRS, U.S. DEPARTMENT OF STATE; PETER
280 KADZIK, ASSISTANT ATTORNEY GENERAL FOR LEGISLATIVE AFFAIRS,
281 U.S. DEPARTMENT OF JUSTICE; TIA JOHNSON, ASSISTANT
282 SECRETARY, OFFICE OF LEGISLATIVE AFFAIRS, U.S. DEPARTMENT
283 OF HOMELAND SECURITY; TAMARA FUCILE, ASSOCIATE DIRECTOR FOR
284 LEGISLATIVE AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET; AND
285 JASON LEVINE, DIRECTOR, OFFICE OF CONGRESSIONAL,
286 LEGISLATIVE, AND INTERGOVERNMENTAL AFFAIRS, U.S. OFFICE OF
287 PERSONNEL MANAGEMENT

288 STATEMENT OF JULIA FRIFIELD

289 Ms. Frifield. Thank you. Mr. Chairman, Ranking Member
290 Cummings, and members of the committee, I appreciate this
291 opportunity to testify on the State Department's response
292 to congressional requests for documents. The State
293 Department is committed to working with Congress on
294 congressional investigations.

295 Secretary Kerry spent nearly 30 years in Congress. He
296 believes strongly in the importance of congressional
297 oversight and led investigations when he was in the Senate.
298 Since he arrived at the State Department, his clear

299 instruction has been for the entire department to be
300 responsive to congressional investigations and requests. I
301 share his commitment. Before joining the Department, I
302 spent my entire career as a Capitol Hill staffer. I have
303 great respect for the congressional role in conducting
304 oversight.

305 Today's hearing focuses on requests for documents,
306 which I will address at length. However, it's also
307 important that -- to underscore our commitment to working
308 with Congress is not limited to requests for documents. In
309 2015, the State Department's Legislative Affairs office
310 provided over 2,500 briefings for the Hill on foreign
311 policy issues. We worked with Consular Affairs to respond
312 to over 5,000 constituent cases for Members of Congress,
313 everything from lost passports to missing constituents
314 overseas to helping with visas for constituents' family
315 members. We arranged over 500 congressional Member and
316 staff delegation trips abroad, and we've appeared at 168
317 congressional hearings. We've also responded to 1,700
318 congressional letters.

319 With crises occurring around the world and Congress
320 intently focused on foreign policy, we're working hard to
321 meet all of our responsibilities, and we recognize that

322 cooperating with congressional investigations is one of
323 them. Yet frankly, we at the State Department have
324 struggled to keep pace with the increasing demands of
325 congressional document requests, which have expanded in
326 number, scope, and complexity. We're now responding to
327 dozens of investigations by nine different committees,
328 involving hundreds of specific requests for hundreds of
329 thousands of pages of documents. This is approximately
330 twice as many as we had last year.

331 While some of these investigations are relatively
332 focused, others are broad and complex, involving many
333 different bureaus within the Department, as well as other
334 agencies. But let me be clear. We know it is our
335 responsibility to answer these requests, and we are working
336 to improve both the way we respond to make it more useful
337 for Congress and the pace of our response.

338 Historically, when responding to congressional
339 requests, we've followed a process similar to responding to
340 FOIA requests, relying primarily on the same department
341 infrastructure and technology. As both FOIA and
342 congressional requests increased, we found that both types
343 of requests were competing for the same resources. To
344 compensate, at times we've pulled together ad hoc teams

345 from functional and regional bureaus to respond to
346 congressional requests, i.e., pulling people from the work
347 of diplomacy to respond to Congress. Clearly, this system
348 was not sustainable. We realized we needed to
349 institutionalize the way we process documents to speed up
350 the pace of delivery. We knew we had to upgrade our
351 technology.

352 This past year, we've been transforming the way we
353 respond to congressional requests. I worked with my
354 colleagues at State to create a Congressional Document
355 Production branch, which involved adding additional
356 personnel and acquiring new software to facilitate document
357 reviews and productions. We are grateful that Congress
358 enabled us to shift funding to establish this new entity to
359 provide additional personnel and new technology. As a
360 result, we've been able to process more quickly requests
361 from this committee, from the Select Committee on Benghazi,
362 and from multiple other committees. While not every
363 committee may be completely satisfied, I can state with
364 confidence that our new unit is enabling us to respond to
365 more committees simultaneously than ever before.

366 Because the Congressional Document Production branch is
367 only a few months old, its impact may not be fully apparent

368 yet. Going forward, this Committee should see the results
369 of these enhanced resources as we work on your requests.

370 Additionally, we've made tangible improvements to the
371 way we produce documents to Congress. We heard from
372 congressional staff, including yours, who had concerns that
373 we'd been providing documents in a way that was not as
374 user-friendly as they'd like. We used to provide documents
375 to Congress on paper, without coding, that enabled you to
376 find and organize them. We would literally hand over boxes
377 of documents.

378 After meeting with your staff and the staff of other
379 committees who told us how hard it was to use documents in
380 this format, we completely changed the way we give you
381 documents. We now provide these documents electronically
382 with easily searchable Bates numbers. We can also now
383 provide documents organized by date or custodian, and the
384 ability to review email documents is vastly expanded. The
385 Department's move to electronic document processing has
386 dramatically improved our ability to review and provide
387 documents quickly and in volume, and it makes it easier for
388 you to review them.

389 With respect to this committee, I'd like to summarize
390 where we are and where we hope to go in the future.

391 Currently, we're working on nine investigations for your
392 committee. To date, we've provided over 160,000 pages to
393 the committee for its investigation for embassy
394 construction and have participated in four hearings in 2015
395 and many meetings and briefings, though I do note I did
396 hear what the chairman said about using numbers, and I
397 understand what he is coming from on there.

398 We've been collecting documents for the five requests
399 that you outlined in your December 18 letter, and we're
400 committed to producing thousands of pages of documents to
401 your committee, along with providing requested briefings on
402 the matters described in the letter.

403 In closing, while we've implemented significant
404 improvements to respond to congressional investigations, we
405 are striving to do better. The obstacle to responding is
406 not one of our -- of commitment. Fundamentally, it's a
407 question of balancing resources in response to multiple
408 large-scale congressional requests from a number of
409 different committees. We're trying to find innovative ways
410 to respond better and faster.

411 I look forward to working with you and your staff to
412 ensure that the State Department and the Congress work
413 together to provide the transparency that should be the

414 hallmark of our government.

415 [Prepared statement of Ms. Frifield follows:]

416

417 Chairman Chaffetz. Thank you.

418 Mr. Kadzik, you are now recognized for 5 minutes.

419

420 STATEMENT OF PETER J. KADZIK

421 Mr. Kadzik. Good morning, Chairman Chaffetz, Ranking
422 Member Cummings, and distinguished members of the
423 committee.

424 Chairman Chaffetz. Peter, if you could --

425 Mr. Kadzik. Is that better?

426 Chairman Chaffetz. Thank you.

427 Mr. Kadzik. Okay. I appreciate the opportunity to
428 appear before you today to discuss our continuing efforts
429 to respond to the committee's information requests,
430 including those requests specifically relating to the
431 Department's policies on geolocation and other surveillance
432 technology in the wake of the Supreme Court's 2012 decision
433 in United States v. Jones.

434 I want to begin by assuring the committee that we value
435 the important role of congressional oversight, and, as the
436 attorney general and deputy attorney general have stated
437 repeatedly, the Department is committed to accommodating
438 the committee's information needs, consistent with our law
439 enforcement, national security, and prosecutorial
440 responsibilities. The Department appreciates that
441 oversight is a critical underpinning of the legislative

442 process.

443 Consistent with the value we place on congressional
444 oversight, since the beginning of the 114th Congress, the
445 Department has testified in close to 60 congressional
446 hearings and provided extensive information in more than
447 1,800 letters responding to inquiries from committees and
448 Members. In every instance, we strived to provide Congress
449 with as much information as possible without compromising
450 our law enforcement and national security efforts or our
451 prosecutorial responsibilities.

452 In addition to these law enforcement and national
453 security sensitivities, the Department also has an
454 obligation to protect certain executive branch
455 institutional interests, including the confidentiality of
456 attorney-client communications, attorney work product, and
457 internal deliberations. We are, nonetheless, committed to
458 working in good faith to accommodate the committee's
459 legitimate oversight interests, and we hope that the
460 committee will likewise continue to engage in good faith
461 with the Department in a manner that recognizes the
462 important law enforcement and confidentiality interests
463 presented in some cases.

464 In particular, we trust the committee recognizes the

465 paramount importance of ensuring the Department's
466 investigative and prosecutorial decisions are made without
467 regard to political considerations or even the perception
468 of political influence or pressure. Such political
469 influence -- and, indeed, the mere public perception of
470 such influence -- could undermine significantly our law
471 enforcement efforts and, in criminal matters, shake public
472 and judicial confidence in the integrity and independence
473 of the criminal justice process.

474 We recognize that it is difficult when the interests
475 and prerogatives of the legislative and executive branches
476 come into potential conflict. That is why the Constitution
477 envisions that the branches will engage in a process of
478 accommodation to avoid such conflicts. This longstanding
479 and well-accepted approach has been employed by
480 administrations of both parties for decades, and it has
481 been supported by top department officials, both Democrats
482 and Republicans alike.

483 Consistent with this approach, the Department has made
484 efforts and will continue to make efforts to respond to the
485 committee's information requests regarding our policies on
486 geolocation and other surveillance technology. As the
487 committee is aware, these specific information requests

488 implicate significant confidentiality interests as the
489 particular memoranda you have requested include sensitive,
490 law enforcement-related, confidential work product prepared
491 in anticipation of litigation.

492 Specifically, these memoranda include internal
493 deliberations of department prosecutors about the legal,
494 investigative, and strategic issues we face in our law
495 enforcement efforts in light of the Jones decision. Our
496 disclosure of this internal work product would chill the
497 candid assessments and analyses that are essential to sound
498 decision-making in law enforcement matters and
499 prosecutions.

500 In addition, disclosure could jeopardize ongoing and
501 future investigations and prosecutions by prematurely
502 revealing the government's investigative and litigation
503 strategies. Such disclosure would afford criminal targets
504 an opportunity to preempt those tools, evade law
505 enforcement detection, and obtain knowledge of how our
506 agents operate, undermining our Federal law enforcement
507 efforts in a wide variety of cases. We know that the
508 committee understands and appreciates these very real
509 risks.

510 The Department has already undertaken efforts to work

511 in good faith to accommodate the committee's interests in
512 this matter. We were pleased to brief committee staff last
513 September on the forms of legal process the Department uses
514 for obtaining geolocation information. We hope that our
515 briefing on these matters was helpful to the committee.
516 And we have offered previously, we would be happy to
517 provide additional briefings and answer any remaining
518 questions in our ongoing effort to accommodate the
519 committee's information requests.

520 In conclusion, I emphasize again that the Department
521 recognizes the importance of congressional oversight. At
522 the same time, congressional oversight that implicates
523 ongoing law enforcement efforts and investigative
524 techniques, sensitive attorney work product, and internal
525 deliberations presents unique confidentiality challenges
526 and concerns.

527 Despite these challenges, we remain optimistic that, by
528 working together cooperatively, we will be able to satisfy
529 the committee's oversight interests in this matter, while
530 also safeguarding the independence, integrity, and
531 effectiveness of the Department's vital law enforcement
532 efforts and prosecutorial responsibilities. The Department
533 stands ready to continue this effort and to accommodate

534 your information needs, and we hope that you will work with
535 us towards that goal.

536 Thank you again for the opportunity to testify, and I'd
537 be happy to answer questions.

538 [Prepared statement of Mr. Kadzik follows:]

539

540 Chairman Chaffetz. Thank you.

541 Ms. Johnson, we look forward to hearing your testimony.

542 As you know, committee rules require that you submit your

543 testimony 24 hours prior. That was highlighted in the

544 invitation. And perhaps as you give your opening

545 statement, you can explain to this committee why you failed

546 to provide this committee with your testimony prior to you

547 giving it right now.

548 Ms. Johnson. Thank you.

549 Chairman Chaffetz. You are now recognized for 5

550 minutes.

551

552 STATEMENT OF TIA JOHNSON

553 Ms. Johnson. Thank you, Mr. Chairman.

554 Ranking Member Cummings, distinguished members of the
555 committee, I appreciate the opportunity to discuss the
556 considerable efforts, time, resources, and money that DHS
557 devotes to complying with oversight requests by Congress.

558 During his confirmation hearing, Secretary Johnson
559 pledged transparency and candor with Congress and committed
560 to respond to congressional inquiries in a timely fashion.
561 Since his arrival in December 2013, the Department's
562 responsiveness to oversight requests has greatly improved.
563 Indeed, last year, the Department examined its responses to
564 congressional inquiries and found that it had cut its
565 response time in half.

566 We therefore appreciated Chairman Chaffetz's statement
567 when you recognized that the production and response to
568 Congress have become much better and thank the Secretary
569 for that. We are determined to continue to improve on that
570 record.

571 Prior to coming to DHS, I served as an officer in the
572 U.S. Army for almost 30 years. As a senior colonel, I was
573 assigned to the Office of the Assistant Secretary of

574 Defense for Legislative Affairs. At that time, we were
575 still involved in combat operations in Iraq and
576 Afghanistan. These two operations, as well as the detainee
577 mission, generated a significant amount of congressional
578 oversight. I was involved in that oversight process, which
579 at the time I thought was considerable. However, upon my
580 arrival at DHS, I was surprised to learn of the depth,
581 breadth, and quantity of congressional oversight that this
582 department faces.

583 In 2004, the 9/11 Commission strongly recommended that
584 Congress reform the congressional oversight structure of
585 DHS. As one expert witness told the Commission, the number
586 of congressional bodies that exercise oversight over DHS is
587 perhaps the single largest obstacle impeding the
588 Department's successful development. With jurisdiction
589 over both oversight and government reform, your committee
590 is uniquely positioned to help foster efforts to implement
591 this crucial 9/11 Commission recommendation.

592 In the 12 years since the Commission issued that
593 recommendation, the oversight structure of the Department
594 has grown only more complex and extensive. At last count,
595 the Department answered to 92 congressional committees and
596 subcommittees, 27 other caucuses, commissions, and groups.

597 As the 9/11 Commission chairman, former Governor Tom Kean,
598 has said, "Think of having 100 bosses. Think of reporting
599 to 100 people. It makes no sense. You could not do your
600 job under those circumstances."

601 But despite these challenges, we are doing our job.
602 During calendar year 2015, DHS received approximately 700
603 oversight letters and countless more oversight requests.
604 Of those, 70 letters came from members of this committee.
605 We have responded to oversight inquiries on a broad array
606 of topics ranging from the Secret Service's protective
607 mission to DHS's assistance to victims of the cyber
608 breaches. By our estimate, in 2015 DHS devoted more than
609 100,000 hours to responding to congressional oversight.

610 Today's hearing is to address the Department's response
611 to oversight requests and demands regarding the United
612 States Secret Service. During calendar year 2015, DHS and
613 the Secret Service received 12 letters, over 100 requests
614 for information, testimony, or documents, and one subpoena
615 from this committee. By our count, we have completed
616 addressing over 90 of those requests.

617 Secret Service has provided 13 briefings to committee
618 staff. Eight employees of the Secret Service participated
619 in day-long transcribed interviews conducted by the

620 committee staff, and Secret Service leadership has
621 testified at two committee hearings. And at the chairman's
622 request, we facilitated a visit to the Secret Service
623 headquarters for members of the committee. In total, the
624 Department has produced over 10,000 pages of documents in
625 response to the committee's requests, in addition to
626 thousands of pages of classified documents.

627 These efforts have supplemented our hard work to
628 respond to inquiries about the operation of Secret Service
629 from the independent Protective Mission Panel, various
630 investigations by the Office of Inspector General, and the
631 oversight inquiries of 10 other congressional committees
632 and subcommittees.

633 Secretary Johnson has made responsiveness to Congress a
634 priority. As his assistant secretary for legislative
635 affairs, I am determined to continue to improve on our past
636 record of oversight response.

637 And, Mr. Chairman, Ranking Member Cummings, I apologize
638 that our statement was not forwarded. That was an
639 oversight. But I would be pleased to answer any questions
640 from you and the members of the committee. Thank you.

641 [The information follows:]

642

643 Chairman Chaffetz. Thank you.

644 Ms. Fucile, you are now recognized for 5 minutes.

645

646 STATEMENT OF TAMARA FUCILE

647 Ms. Fucile. Thank you.

648 Chairman Chaffetz, Ranking Member Cummings, and members
649 of the Committee, I appreciate the opportunity to testify
650 before you today.

651 The Office of Management and Budget, or OMB, is
652 committed to working with Congress and with this committee.
653 OMB believes strongly in the importance of congressional
654 oversight and the value that Congress provides in ensuring
655 that OMB and the administration are working in the most
656 effective and efficient way possible on behalf of the
657 American people. OMB regularly receives requests for
658 information, briefings, documents, and we strive to provide
659 transparent responses to these congressional inquiries in a
660 timely manner.

661 In addition to producing documents to Congress and to
662 the committee, OMB works with congressional offices every
663 day to provide information and analysis and to help respond
664 to contingencies and unforeseen circumstances. Given OMB's
665 broad jurisdiction, we coordinate and respond to requests
666 from over a dozen House and Senate full committees, despite
667 being a small agency of only 100 -- of only approximately

668 550 employees.

669 In addition, given OMB's extensive role in working with
670 Congress to reach agreement on the Bipartisan Budget Act of
671 2015 enacted in November, and on the Consolidated
672 Appropriations Act for fiscal year 2016 enacted just a few
673 weeks ago, we received and responded to nearly 1,650 budget
674 requests from Members of Congress over this last year, with
675 more than 600 of those requests coming in the last few
676 months.

677 OMB's mission is to execute the President's budget,
678 management, regulatory, and legislative agenda and ensure
679 that the Federal Government works at its best on behalf of
680 those it serves. OMB works with and across Federal
681 agencies to improve management and create a government that
682 is more effective, efficient, and supports continued
683 economic growth.

684 OMB's Office of Information and Regulatory Affairs, or
685 OIRA, is responsible for coordination and review of all
686 significant Federal regulations by executive agencies.
687 OIRA ensures that regulations are based on sound analysis
688 and serve the purpose of the statutes that authorize them
689 and the interests of the public. OIRA also seeks to
690 ensure, to the extent permitted by law, that the benefits

691 of the rule justify its costs. OIRA works under long-
692 established principles that have been implemented across
693 several administrations of both parties.

694 The committee has asked me to testify today about
695 document requests relating to the review of the proposed
696 Clean Water Rule, which was conducted by OIRA between
697 September 17, 2013, and March 24, 2014. Since this
698 committee's initial request and subsequent subpoena, OMB
699 has acted in good faith to address the committee's interest
700 in the rule and to accommodate the committee's requests.

701 In response to this committee, we have provided five
702 sets of responsive documents for the period in which the
703 proposed Clean Water Rule was under review at OIRA. We
704 have made these productions to the committee without any
705 redactions, with the exception of email addresses and
706 personal phone numbers.

707 OMB continues to review records that are potentially
708 responsive to the committee's requests, and OMB remains
709 committed to working with your staff to discuss how we can
710 best produce materials of greatest interest to the
711 committee.

712 Thank you again for the opportunity to testify, and I
713 look forward to answering any questions you might have.

714 [Prepared statement of Ms. Fucile follows:]

715

716 Chairman Chaffetz. Thank you.

717 Mr. Levine, you are now recognized for 5 minutes.

718

719 STATEMENT OF JASON LEVINE

720 Mr. Levine. Levine, Mr. Chairman. Levine.

721 Chairman Chaffetz. Levine, sorry.

722 Mr. Levine. That's okay.

723 Chairman Chaffetz, Ranking Member Cummings, and members
724 of the committee, I'm pleased to be here this morning to
725 testify on behalf of the Office of Personnel Management and
726 Acting Director Cobert regarding the committee's requests
727 for information and documents related to the cybersecurity
728 incidents at OPM.

729 Over the course of the past year, in the face of
730 extraordinary circumstances, OPM has worked to address the
731 cybersecurity incidents; to provide information and
732 services to those impacted; and to respond to numerous
733 congressional inquiries regarding the incidents through
734 hearings, classified and unclassified briefings, document
735 productions, letters, and town halls. During this time,
736 OPM employees have worked hard to improve upon the services
737 that OPM provides every day to the entire Federal workforce
738 from resume to retirement. Since I arrived in August, I
739 can tell you that it has been my distinct privilege every
740 day to serve with these individuals.

741 OPM is a small agency with an important mission: to
742 recruit, retain, and honor a world-class workforce to serve
743 the American people. To preserve and build upon that
744 mission, OPM's leadership has made its highest priority
745 responding to the recent cybersecurity incidents and
746 bolstering OPM's IT infrastructure and security
747 capabilities. OPM is committed to working with Congress,
748 as well as our interagency partners, including DHS, DOD,
749 and the FBI, among others, to continue to strengthen our
750 cybersecurity posture in order to protect the Federal
751 Government and the people we serve.

752 It is critical to OPM that all of our stakeholders,
753 particularly those directly impacted by these incidents,
754 receive information in a timely, transparent, and accurate
755 manner. OPM undertook two separate notification processes
756 regarding the comprehensive identity theft protection and
757 monitoring services that are being provided. OPM is
758 conducting outreach about these services on our Web site
759 and by communicating directly with stakeholders.

760 Further, to provide Congress with necessary
761 information, my office has provided multiple sets of fact
762 sheets and FAQs regarding the cybersecurity incidents and
763 related services. OPM established a phone hotline

764 exclusively for congressional offices to contact us with
765 questions on behalf of your constituents. OPM has also
766 attended town halls and conducted phone briefings with
767 Members and congressional staffers on the issue.

768 Simultaneously, OPM has made every effort to work in
769 good faith to respond to multiple congressional oversight
770 requests, including document productions. Since June 2015,
771 OPM has received and provided responses to every question
772 in six separate document production requests resulting in
773 19 separate document productions, including tens of
774 thousands of documents and internal reports; testified at
775 four public congressional hearings; made hundreds of calls
776 to Members and congressional staffers relating to the
777 cybersecurity incidents; received over 170 letters from
778 Members of Congress relating to the cybersecurity
779 incidents; made senior officials available for interviews;
780 conducted 13 classified and unclassified briefings; and
781 expended thousands of staff hours in an effort to be
782 responsive.

783 OPM has worked as quickly as its infrastructure and
784 resources allow. To be responsive to congressional
785 requests, OPM has taken numerous steps to increase its
786 previously limited capacity to respond to congressional

787 inquiries of a large volume and sensitive nature. This
788 includes hiring additional staff, bringing on detailees
789 from other agencies, and obtaining document management
790 tools that allowed the agency to respond more promptly and
791 efficiently to Congress. As capacity was increased, OPM
792 worked with committee staff to prioritize the requests and
793 provide responses on a rolling basis in order to
794 accommodate the committee's schedule and oversight
795 interests.

796 As a result of the extreme and ongoing sensitivities of
797 information related to OPM's IT networks, servers, and
798 systems, redactions of sensitive system information were
799 made so as not to provide a roadmap of vulnerabilities for
800 potential adversaries and malicious actors. These
801 redactions are consistent with those employed by other
802 Federal agencies, and were based on security
803 recommendations from OPM IT security professionals and in
804 consultation with interagency cyber experts. Additional
805 redactions were also made for reasons of longstanding
806 executive branch confidentiality interests.

807 In the interest of accommodating the committee's
808 oversight interests, a significant number of sensitive
809 documents were also made available for in camera review in

810 un-redacted form in OPM's liaison office here in the
811 Rayburn House Office building in order to provide ease of
812 access for committee members and staff. OPM looks forward
813 to continuing to work with the committee and to respond to
814 its requests for information in as a complete and timely
815 manner as possible

816 Thank you for the opportunity to testify today, and I
817 look forward to your questions.

818 [Prepared statement of Mr. Levine follows:]

819

820 Chairman Chaffetz. Thank you.

821 I want to follow up directly on that point that you
822 just talked about. When we had our hearing about the data
823 breach, Donna Seymour, the chief information officer, when
824 we asked about the stolen materials, this is what she said:
825 "Some were outdated security documents about our systems
826 and some manuals about our system." She went on to testify
827 that the adversaries "did not get specific configuration
828 diagrams of our entire environment" adding that "are
829 commercially available documents about platforms."
830 Homeland Security went on to testify "did not include
831 proprietary information or specific information around the
832 architecture of the OPM environment."

833 So we are mystified as to what is true. Is it as
834 Ms. Seymour testified, or is it what you are telling us
835 now, that they did get very sensitive documents? We are
836 not able to have these documents. They were stolen. We
837 know the adversaries have them, but you won't allow
838 Congress to look at them and have them in our possession.
839 You are offering an in camera review, still with
840 redactions. Why do we have to negotiate this with you?
841 Why aren't you sharing this information with us?

842 Mr. Levine. Thank you for the question, Mr. Chairman.

843 So there were, as I recall, five separate requests from the
844 committee on the specific topic to which you're referring.
845 The -- all of the documents that Ms. Seymour was testifying
846 about were produced as part of our production. I don't
847 have the exact date, but the response -- I believe that was
848 to the August 18 but might have been the July 24 letter.
849 All of the information, all of the documents that were
850 exfiltrated during that incident have been produced. You
851 are right; they were produced originally in camera because
852 of the categories of information that I described
853 previously, system-sensitive information such as --
854 Chairman Chaffetz. But she testified that they were
855 outdated documents, they did not give specific
856 configuration diagrams, they were commercially available.

857 Mr. Levine. So to be --

858 Chairman Chaffetz. Is that true or not true?

859 Mr. Levine. To be clear, Mr. Chairman, when we looked
860 at the -- all of the separate requests that have been made,
861 which include information both about that incident and
862 other incidents, our IT professionals recommended that we
863 treat all of the following categories of information the
864 same way, things such as IP addresses, system-sensitive
865 architecture, system capabilities and tools as things to be

866 treated carefully. We treated them carefully inside OPM --
867 Chairman Chaffetz. But she testified that this was all
868 commercially available and outdated information, so she is
869 leading Congress to believe no problem here. I know they
870 came in, I know they breached the system, I know they stole
871 this, but it is all commercially available, outdated
872 information. Is she accurate or not accurate?

873 Mr. Levine. Well, again, Mr. Chairman, what we've
874 tried to do is make available to you and your staff all of
875 that information --

876 Chairman Chaffetz. You have not given -- why aren't
877 you giving us this information, same stuff that was already
878 hacked? We know that the adversary has it but you won't
879 let us see it.

880 Mr. Levine. With all due respect, Mr. Chairman, you do
881 have it. You have all of the --

882 Chairman Chaffetz. Do we have it all unredacted? We
883 do not.

884 Mr. Levine. You have all of the IT information
885 unredacted. The only thing that remains redacted with
886 respect to that production is a list of what we would
887 consider unresponsive names. It is just a list of every
888 username on the system with the last four of their Socials.

889 But we are happy to -- that said, we are happy to make that
890 information -- continue to make that information available
891 if your staff lets us know. We're happy to come back and
892 work with you on that set of responses.

893 Chairman Chaffetz. So let me pull this out. We go in
894 camera to look at it, this is what it looks like.

895 Mr. Levine. That's the list I'm referring to. That is
896 a -- simply a list --

897 Chairman Chaffetz. Why are you redacting -- I mean, we
898 can go page after page after page here --

899 Mr. Levine. Sure.

900 Chairman Chaffetz. -- why all these redactions?

901 Mr. Levine. Sure.

902 Chairman Chaffetz. I don't know what is under this.

903 Mr. Levine. And that's fair. What we've explained to
904 your staff is what that is is simply a list of every
905 username on the system.

906 Chairman Chaffetz. We are just supposed to say okay,
907 you are fine? We just --

908 Mr. Levine. And we're happy -- what we -- we have a
909 shared goal.

910 Chairman Chaffetz. Don't tell us you are happy to do
911 it because, as a Member of Congress with very high security

912 clearances, you won't let us look at these materials.

913 Mr. Levine. To be fair, Mr. Chairman, we thought that
914 was nonresponsive. It wasn't a matter of not being secure.
915 It was nonresponsive.

916 Chairman Chaffetz. What do you mean nonresponsive?
917 What does that mean?

918 Mr. Levine. So the -- internally --

919 Chairman Chaffetz. We are asking to see this
920 information, and this is what you give us --

921 Mr. Levine. We're --

922 Chairman Chaffetz. -- in camera. You won't even give
923 this -- you know, you -- then we finally have to negotiate
924 with you over months to get to this point where I can even
925 hold it up.

926 Mr. Levine. Mr. Chairman, I'll go back and we'll work
927 with you. I think what we have tried to do --

928 Chairman Chaffetz. Here is the concern. Ms. Seymour
929 came and testified to us and told us essentially there
930 wasn't a problem because it is outdated, publicly available
931 information. And you aren't even -- in camera you still
932 redact it. So don't tell me that you are responsive and
933 that you are happy. We are not happy.

934 Mr. Levine. I appreciate that, Mr. Chairman. That

935 information is certainly not publicly available. Those are
936 the usernames on the systems. That is the last four Social
937 Security numbers.

938 Chairman Chaffetz. And that is what the adversaries
939 got. That is what we are concerned about.

940 Mr. Levine. Sure.

941 Chairman Chaffetz. Right?

942 Mr. Levine. I'm not going to comment on what your --

943 Chairman Chaffetz. Yes, because the answer is yes --

944 Mr. Levine. -- what your --

945 Chairman Chaffetz. -- and that is what we need is
946 candor. The answer is yes. I mean, that is totally,
947 dramatically, and completely different than what
948 Ms. Seymour testified. She tried to get us to go away by
949 telling us it is all publicly available and it is outdated
950 anyway. That was a lie. She misled Congress. She is
951 going to pay that price.

952 I now recognize Ms. Norton for 5 minutes.

953 Ms. Norton. Just to clarify, are the names of these
954 employees publicly available?

955 Mr. Levine. Well, as -- to the extent that they are
956 Federal employees, I suppose that all Federal employees in
957 one form or another, names are available, but it would not

958 necessarily be --

959 Ms. Norton. The ones whose matters were breached are
960 the ones I am talking about. You know, I can go on and
961 find out if I am -- I don't know, if I am a creditor or --

962 Mr. Levine. Sure.

963 Ms. Norton. Can I find your name?

964 Mr. Levine. Sure. So to be clear, we are actually
965 talking about two separate -- unfortunately, two separate
966 incidents. The incidence the chairman is referring to was
967 of the systems internally. The system I believe you're
968 referring to would be the later personnel records and
969 background investigation breaches. That information is not
970 publicly available. What I think we're referring to is,
971 yes, every current Federal employee at any -- at a given
972 moment, there are --

973 Ms. Norton. Of course. I just want --

974 Mr. Levine. -- forms --

975 Ms. Norton. -- to make sure that privacy rights -- it
976 is enough -- the names are not publicly available.

977 Mr. Levine. Sure. And to be clear, I think the list
978 we were just talking about was from 2014. But you're
979 right; I mean, those are separate things.

980 Ms. Norton. Look, Congress of course is self-centered

981 about what legislative business is. For you or perhaps
982 Ms. Fucile -- and I don't know which of you should get this
983 question, but the most important legislative business you
984 have done in recent months is the production of a
985 bipartisan budget. As I understand it, your office played
986 perhaps the central role of all the agencies in there.

987 I know that every Member of Congress -- I was one of
988 four leaders of the transportation bill. We were
989 constantly talking to your legislative people about
990 legislation. I know that you facilitated -- and I
991 appreciate what you did for the District of Columbia. I
992 can't imagine that there isn't a Member of Congress that
993 wasn't on the phone telling you what their constituents
994 did. I understand you responded to 1,650 budget requests
995 and that 600 of them came in those last few months. Would
996 you describe your substantive role in that legislative
997 important bill, perhaps the most important bill, the only
998 bill that the Congress of the United States has put out
999 every single year?

1000 Ms. Fucile. Yes, Congresswoman. Thank you so much for
1001 that question. We -- OMB serves a wide mission, but
1002 certainly one of our central functions is making sure that
1003 the government is funded, and so our primary focus over the

1004 last couple months, which has really been an agency-wide
1005 effort, has been ensuring the bipartisan budget agreement,
1006 as well as the Consolidated Appropriations Act, got
1007 through. That was a massive effort that involved
1008 coordination with Republicans, Democrats, House, Senate
1009 committees, individual offices, and we're really proud of
1010 the work that we did there.

1011 Ms. Norton. Well, first of all, I want to congratulate
1012 you for that work. Thank you for the work you did on
1013 really rescuing the Congress from the last several
1014 Congresses' reputation as a do-nothing Congress. Maybe it
1015 was busy answering legislative inquiries, but the most
1016 important inquiry from our constituents was, of course, the
1017 annual budget, and I appreciate that.

1018 Director Levine, this breach of course was, if you were
1019 to name them, perhaps the primary business of this
1020 committee this year, and of course you were called to the
1021 carpet, your agency was called to the carpet for it. Now,
1022 the legislative business that you would have been, I
1023 suppose, most taken to task for would have been how you
1024 responded to our constituents. It comes under the hubris,
1025 I guess, of constituent services falling out of legislative
1026 business.

1027 I wish you would describe, pursuant to what this
1028 committee wanted you to do, how you responded, what
1029 services were affected, the notion of, I understand, a
1030 hotline for our congressional offices to contact on behalf
1031 of their constituents and other services that in fact
1032 responded to Congress's concern about the OPM breach.

1033 Mr. Levine. Sure. And I see my time is about to
1034 expire but --

1035 Chairman Chaffetz. Please --

1036 Mr. Levine. Okay. Sure.

1037 Chairman Chaffetz. -- complete the answer and --

1038 Mr. Levine. Thank you very much for the question. The
1039 -- what we've tried to do is twofold. While working to
1040 provide services to all those who were impacted by the two
1041 separate incidents, the -- what we call the personnel
1042 records and the background investigations incidents, we
1043 went out and provided credit monitoring and identity theft
1044 protection services for all those who had Social Security
1045 numbers and other similar information exfiltrated in those
1046 breaches.

1047 And so what our effort has been is to provide to all
1048 Members of Congress a mechanism for having information when
1049 your constituents call, whether they be current Federal

1050 employees, whether they be retired Federal employees, or
1051 just anyone whose information might have been swept up in
1052 that set who received letters, who wanted to know whether
1053 they received a letter. So what we did is we put together
1054 a hotline for offices to give out to their caseworkers, and
1055 we sent out information to all the district offices to make
1056 sure they had that information. We produced one-page fact
1057 sheets that we updated periodically, frequently asked
1058 questions. We've updated our Web site.

1059 It's been our effort -- although please get in touch
1060 with our office to the extent we can better provide
1061 information on those efforts. Where issues have come up,
1062 we've gone back to the vendors, whether it be about wait
1063 times, whether it be about how the service was provided,
1064 the language that they use, we want to make sure that
1065 people get the services that they need. That is the
1066 highest priority of Acting Director Cobert and our office.

1067 Chairman Chaffetz. I thank the gentlewoman.

1068 I will now recognize the gentleman from Florida,
1069 Mr. Mica, for 5 minutes.

1070 Mr. Mica. Thank you, Mr. Chairman.

1071 Good morning, Ms. Johnson. I guess you are assistant
1072 secretary of legislative affairs for Homeland Security

1073 Department, is that correct?

1074 Ms. Johnson. Yes, sir, I am.

1075 Mr. Mica. A simple yes or no question, is DHS still
1076 considering airport and aviation security a top priority?

1077 Ms. Johnson. Yes, we do.

1078 Mr. Mica. Okay. And in regard to TSA, do you have
1079 adequate personnel? I think we just approved 50,795 people
1080 for TSA. Is that about right?

1081 Ms. Johnson. Congressman, I'd have to look at those
1082 numbers. I don't --

1083 Mr. Mica. Okay. Well, that would be one you should be
1084 aware of as legislative affairs director. We just passed
1085 the budget. So we will just say 51,000 people, which I
1086 think we have a cap of about 46,000 screeners. I think
1087 that is about right.

1088 Last time we checked, we had over 4,000 TSA employees
1089 in Washington, D.C. area within, say, 10 miles of this
1090 hearing earning on average \$103,000. I point this out
1091 because, somehow, when we send requests for information
1092 about airport security, that there is an unresponsiveness,
1093 and it appears that you have adequate personnel, 4,000
1094 making over \$103,000 on average within just almost earshot
1095 of where we are.

1096 Let me just give you some examples. Almost a year ago,
1097 March 16, the committee sent a letter to DHS on airport
1098 credentialing. We got almost no response. This went on.
1099 In April we followed up; in May we followed up. April 17
1100 the committee invited the then-acting Administrator Caraway
1101 to testify on the 15th of May. We can't get documents, and
1102 then to get someone to testify -- on the evening of the
1103 14th, DHS informed the committee that Caraway was traveling
1104 and wouldn't be available the night before the hearing. So
1105 it seems like we have got a little bit of a problem here
1106 with getting responses.

1107 In May the committee asked for additional documents
1108 trying to be produced, same subject, no later than June 5.
1109 They failed on that. Then, in June, June 4, we sent a
1110 bipartisan letter to DHS on airport vulnerabilities. Our
1111 report showed that TSA screeners failed to detect a high
1112 percentage of prohibited items. You missed production of
1113 any information on that.

1114 On July 2, another bipartisan letter from the committee
1115 about failures, information on internal covert testing.
1116 You failed on that. It goes on and on.

1117 As late as -- and I have requests here from -- here is
1118 November 23. We know there are vulnerabilities. We have

1119 had people coming up with false credentials and
1120 information. We have been trying since last March to get
1121 responses and information, and you failed to produce this.
1122 This is the latest. When can I expect a response from this
1123 letter? We are sending it to Jeh Johnson. He is still
1124 working there, isn't he?

1125 Ms. Johnson. Yes, Secretary Johnson is the --

1126 Mr. Mica. I saw him in the hall yesterday here. Maybe
1127 that is why he couldn't respond. Is there a problem --
1128 again, we have some 4,000 people. We can't get responses
1129 to this. We have seen the system has dangers and pitfalls,
1130 and all we are trying to do is a simple oversight
1131 responsibility.

1132 Maybe our latest request -- staff, could you bring this
1133 down to her and could you let us know, the Secretary, when
1134 we can get a response on this latest request? We still
1135 have things pending from last March. Again, you see our
1136 frustration. We are trying to do our job. We expect you
1137 to do your job. When do you think we could get a response
1138 on that?

1139 Ms. Johnson. Thank you, Congressman. With regards to
1140 the November 23 request, production on that one is
1141 imminent. I believe that that should be out in -- you

1142 know, within a fairly short period of time. And the last
1143 one, I think you're referring to the January 4 request. We
1144 just got that and we've -- using our usual tasking
1145 mechanism, it's been tasked out to TSA, and they are
1146 beginning searches for that.

1147 Mr. Mica. Thank you, Mr. Chairman.

1148 Chairman Chaffetz. Thank you.

1149 I now recognize the gentleman from Massachusetts,
1150 Mr. Lynch, for 5 minutes.

1151 Mr. Lynch. Thank you, Mr. Chairman.

1152 At the outset, I want to say that I share much of the
1153 frustration that is bipartisan up here in terms of trying
1154 to get information from your agencies. You need to do
1155 better. You really do.

1156 We had a hearing couple weeks ago before the break
1157 regarding visa overstays, the visa waiver program, and we
1158 have been waiting a long time from DHS to get a list of how
1159 many people -- 20 million people a year come into this
1160 country under the visa waiver program. We need to know how
1161 many people overstay their visas. We need that
1162 information. I am sure you could give it to us for the
1163 Obama administration and the Bush administration so we are
1164 not getting political, but we need that information. That

1165 is plain and simple.

1166 There seems to be an unneeded adversarial relationship
1167 between us and the agencies, and it has been the same way
1168 in previous administrations as well. But it is our
1169 constitutional mandate to conduct oversight, and we need to
1170 have this information.

1171 I do want to say, though, that sometimes we on the side
1172 of the dais are responsible for promoting that adversarial
1173 relationship, and I want to point out one example that I
1174 think highlights that. And that is, as the chairman has
1175 mentioned, we are going to talk a little bit about Hillary
1176 Clinton emails today, and I just want to point out that
1177 this committee, we conducted nine separate investigations.

1178 We got direct evidence that Secretary Colin Powell got
1179 frustrated with his government email and discarded it and
1180 went out and acquired his own private email, his own
1181 private server, and went to work and used a private server
1182 during the bulk of his service, which was -- and he is a
1183 great American, no question about it.

1184 But we have this situation where Secretary Clinton has
1185 been pummeled with subpoenas and hearings and 11-hour
1186 hearings, and yet we have Secretary Powell who testified
1187 before the United Nations Security Council that Iraq had

1188 weapons of mass destruction, but we don't want it. We
1189 don't want to ask anything about him and his emails. We
1190 give him a complete pass. And that is problematic. That
1191 makes us look tremendously biased when, okay, I understand,
1192 we have to look at Secretary Clinton's information and
1193 investigate that because four brave Americans died.

1194 And yet Secretary Powell did the same thing, bought his
1195 own private server, says so in his book. We have direct
1196 stipulated evidence that he did this. He gives testimony
1197 that Iraq had weapons of mass destruction and 4,000
1198 Americans die, and we don't want to know anything about
1199 that. That is, you know, move along, nothing to see here.
1200 And that sets up this adversarial relationship here. That
1201 is why some people think that this is political, some of
1202 this stuff is political. And the evidence would certainly
1203 lead us to believe that.

1204 You know, our Select Committee, we call this Select
1205 Committee because the way the members are chosen, not based
1206 on how the evidence is chosen and looked at. And I think,
1207 you know, up on this side of the aisle, you know, we do
1208 have -- you know, 80 percent of what we are doing here is,
1209 you know, is just straight up. We are trying to do the
1210 right thing for the people we represent. But every once in

1211 a while on an issue we go sideways, and it becomes a
1212 political hunt and we depart from, I think, our
1213 constitutional mandate to get at the truth and instead, you
1214 know, go after what is politically expedient.

1215 So I just want to say, you know, Ms. Johnson, we need
1216 to have that information on the visa overstays. We really
1217 do. I mean, we are not looking to embarrass anybody. I
1218 bet that information is embarrassing, but it is only
1219 embarrassing because we have received repeated assurances
1220 that everything is okay. And that is a continual pattern
1221 with the agencies. Everything is fine. Secret Service,
1222 everything is fine. We found out it wasn't fine.

1223 You know, this visa waiver program, we are told that we
1224 have a robust system. Then, we find out that there are
1225 dozens and dozens of people on the terrorist watch list
1226 that are actually working in secure areas of our airports
1227 and have been vetted and cleared by DHS, TSA.

1228 So we are after the truth here most of the time, but I
1229 do want to highlight that aspect of this, that we have to
1230 be fairer in conducting oversight as well. I yield back.

1231 Chairman Chaffetz. I now recognize the gentleman from
1232 Ohio, Mr. Turner, for 5 minutes.

1233 Mr. Turner. Thank you, Mr. Chairman.

1234 Mr. Levine, I serve on the Intelligence Committee, as
1235 well as the Oversight Committee, and as a result of that, I
1236 have been following the role of CyTech in both discovering
1237 or confirming the OPM breach. The chairman has undertaken
1238 leadership for this committee to review this issue and
1239 oversight, and enjoining the chairman's lead on that, on
1240 September 9, the two of us wrote requesting documents and
1241 information pertaining to the OPM breach and the device
1242 that was supplied or furnished to OPM by CyTech.

1243 In your response on October 28, 2015, you stated that
1244 the CyTech device was "sanitized" in accordance with best
1245 practices, National Institute of Standards and Technology
1246 guidance and OPM policy. This binder is a list of what
1247 would have been sanitized by file numbers. It is not the
1248 list of files but file names or titles. There are 15 to 16
1249 file titles per page to show you the extent, the enormous
1250 aspect of what must have been sanitized.

1251 Additionally, in response to the committee's
1252 preservation order, you wrote on September 1, 2015, that
1253 "OPM has been and continues to work to preserve agency
1254 records in a manner consistent with applicable law,
1255 regulations, policies, and national archives and records
1256 administration guidance." So I want to contrast those two

1257 in my questions.

1258 So, first off, how far back are you saving records, and
1259 do these efforts cover the breaches that occurred in 2014,
1260 as well as those that occurred in 2015?

1261 Mr. Levine. Thank you for the question. So, as I
1262 understand it, we are preserving records not just
1263 associated of course with the breach but with all
1264 government records in accordance with NARA and other
1265 appropriate government recordkeeping authorities. As you
1266 can imagine, we also have litigation that is ongoing, and
1267 so we also have litigation present at this time --

1268 Mr. Turner. But with respect to this breach, the
1269 standard is higher, correct? I mean, you are preserving a
1270 wider breadth of records and putting a greater effort on
1271 their preservation?

1272 Mr. Levine. Yes, I think that's fair to say.

1273 Mr. Turner. So what specific steps are you taking to
1274 preserve those records, and argue, for example, preserving
1275 backup tapes?

1276 Mr. Levine. I would need to get back with you on that.

1277 Mr. Turner. Well, the CyTech device was returned to
1278 the company on August 20, and did OPM preserve records by
1279 making a copy of the information that was on the device

1280 before returning it to CyTech?

1281 Mr. Levine. I would also need to get back to you on
1282 that. I did want to -- though to your question about the
1283 way the device was returned, it is my understanding -- and
1284 I'm not an IT cyber expert, but it is my understanding that
1285 it is standard practice when returning this sort of device
1286 in these sort of circumstances to treat it the way it was
1287 treated, which is to essentially wipe it before it's
1288 returned in case there would be information that is
1289 sensitive in a system way. But I will --

1290 Mr. Turner. Okay.

1291 Mr. Levine. I'll have to get back to you on the
1292 backup --

1293 Mr. Turner. Excellent. And I think that you probably
1294 clearly understand that my question is not necessarily the
1295 status of the device but the status of information that was
1296 on the device that is supposed to be turned over to the
1297 committee. And we clearly requested that information.
1298 This, again, is a list of the file names of what would have
1299 been deleted, 15 to 16 file titles per page, so it is an
1300 enormous amount of information that would have been on
1301 that.

1302 And obviously, since we are all very concerned about

1303 the cyber attack, certainly any information that is
1304 contained on the CyTech device would just -- even for
1305 forensics to be able to understand what had occurred would
1306 be important to be preserved. And this committee has
1307 requested a copy of this information. So the two aspects
1308 of this, one, my expectation would be that OPM has it, and
1309 my second expectation would be that you are going to turn
1310 it over to this committee.

1311 Mr. Levine. And certainly to the extent that we have
1312 it, then we need to have a conversation. If I could ask
1313 the 15 to 16 types of file names that you're referring to
1314 is --

1315 Mr. Turner. Names per page on all of these pages.

1316 Mr. Levine. But as that -- I'm -- and I'm sorry. Is
1317 that information that we provided or is that information
1318 that the company --

1319 Mr. Turner. This is information that the committee
1320 has. I believe it was provided by CyTech.

1321 Mr. Levine. Okay. All right. Well, I -- we'll have
1322 to circle back with you. My understanding was that there
1323 was -- well, you know what, I don't want to misspeak. We
1324 will have to get back to you exactly with respect to how it
1325 was -- with respect to the device. I --

1326 Mr. Turner. And just to --

1327 Mr. Levine. -- we've answered the question as to --

1328 Mr. Turner. Great. And just to make certain that we
1329 are absolutely clear, the expectation would be that the
1330 preservation order and your processes as a result of the
1331 cyber attack would have required that you preserve this
1332 information. And so we are looking forward to an
1333 affirmative response from you.

1334 Thank you. I yield back.

1335 Chairman Chaffetz. Well, before the gentleman yields
1336 back, if you will yield to me for a moment?

1337 Mr. Turner. Absolutely. I yield to the chairman.

1338 Chairman Chaffetz. Well, Mr. Turner and I sent you a
1339 letter. What percentage of the requests have you given
1340 back to us? That is, we made a request. I thought I heard
1341 you say you have given us a full response. What percentage
1342 of the --

1343 Mr. Levine. So I don't know that we could -- I could
1344 put it in terms of a percentage. I know that we have made
1345 every effort to provide it -- responses to every question
1346 that has been asked, and we have worked with your staff,
1347 who has been extraordinarily accommodating in helping us
1348 prioritize. Where they've had follow-up questions, we

1349 certainly work to do that.

1350 Chairman Chaffetz. Okay. So my follow-up question
1351 with Mr. Turner here is you say full. To me, full is 100
1352 percent. Is full 70 percent in your mind?

1353 Mr. Levine. To be fair, Mr. Chairman, I did not use
1354 the word full. What we've tried to do is provide a
1355 response to every question that's been asked. And to the
1356 extent that there are --

1357 Chairman Chaffetz. All the documents that we have
1358 requested, emails, we have been asking for months. When
1359 will we get 100 percent of those requests?

1360 Mr. Levine. We believe we've answered every question
1361 that's been asked. If there are questions that we've
1362 provided answers to that the staff or of course the Members
1363 feel that we need to provide more information about that is
1364 not fully --

1365 Chairman Chaffetz. Well, I don't know when you are
1366 done. This is the problem with all of you. You wrote in
1367 your testimony "received and provided responses to every
1368 question in six separate document production requests."

1369 Mr. Levine. That's correct. We believe we have
1370 provided --

1371 Chairman Chaffetz. I know you have given us an answer,

1372 but I need to know if it is complete.

1373 Mr. Levine. Okay. So -- I'm sorry. With respect to
1374 the -- and keep in mind that those six also incorporate
1375 other committees.

1376 With respect to the five requests from this committee,
1377 we've provided -- we look at four of those as closed. One
1378 of them, the request with respect to the differences
1379 between the contracts for the credit monitoring and ID
1380 theft between the first contract and the second contract,
1381 while we have provided answers to each of those questions,
1382 we do expect another set of documents coming I would say
1383 this month if not, you know, not in the next couple of
1384 weeks that remain in the interagency process.

1385 But with respect to this question, the -- I hear your
1386 question, Mr. Congressman. We'll get back to you on
1387 whether there's something that remains outstanding in terms
1388 of the backup files.

1389 Chairman Chaffetz. You better start explaining to us
1390 why CyTech is providing us documents that you aren't
1391 providing to us, that you wrote, that you engaged in. And
1392 there is no excuse for withholding that information from
1393 Congress. You have it. It is in your systems, and we know
1394 it because we are looking at hardcopies and we are checking

1395 to see if you give it to us as well. And you are not.
1396 That is why you are going to be back before this committee.
1397 OPM, we are going to bring them up here and we are going to
1398 get to the truth of this. It is one of the biggest data
1399 breaches in the history of this country, and we need 100
1400 percent response.

1401 Mr. Cummings. Will the gentleman yield for just a
1402 second?

1403 Chairman Chaffetz. Sure.

1404 Mr. Cummings. Let's see if we can get past, down to
1405 the nitty-gritty here. The chairman just mentioned
1406 documents that we don't have, the CyTech. Why don't we
1407 have them and can you tell us when we will get them?

1408 Mr. Levine. Sure.

1409 Mr. Cummings. I mean, it seems like we are going in a
1410 circle and, you know, I don't know, maybe you all are going
1411 to be here a long time but, you know, I can't be here
1412 forever going in circles. And I think it is unfair to the
1413 committee. And so can you give us some definitive answers?

1414 Mr. Levine. So to -- thank you very much for the
1415 question. To the best of my understanding, we have
1416 provided the information we have associated with that tool.
1417 To the extent we have not, we need -- you know, we need to

1418 go back and make sure that we are being responsive. But --

1419 Mr. Cummings. And how soon will you do that?

1420 Mr. Turner. And to follow on with the ranking member,
1421 and if you don't have it, you need to explain why because
1422 you are absolutely under responsibility to have preserved
1423 it. And if you haven't preserved it, that is another issue
1424 that this committee is going to have to pursue.

1425 Mr. Cummings. Thank you, Mr. Chairman.

1426 Chairman Chaffetz. Thank you.

1427 I now recognize Mr. Connolly of Virginia for 5 minutes.

1428 Mr. Connolly. Thank you, Mr. Chairman.

1429 I find myself in an interesting position in this
1430 hearing because, having worked for the legislative branch
1431 for 10 years in the Senate and now being a member of the
1432 legislative branch as an elected Member of the House, I
1433 certainly have always felt that it is a key responsibility
1434 of the executive branch to be responsive to legislative
1435 information requests.

1436 On the other hand, our Constitution I think builds in
1437 dialectic in which, you know, we want information and the
1438 executive branch doesn't want us to have it. It is kind of
1439 a natural order of things. And so there is a built-in
1440 tension and there are mechanisms for us to address that

1441 dialectic. But it does rely at the end of the day on
1442 common sense, on good faith, on determination, as well as
1443 statutory enablers.

1444 Legitimate requirements for information must be
1445 enforced on a bipartisan basis. Fishing expeditions,
1446 blatantly partisan efforts to seek information to
1447 embarrass, to humiliate, to undermine will not get
1448 bipartisan support and don't deserve it and can
1449 understandably cause even more friction in the executive
1450 branch in trying to be responsive.

1451 Ms. Fucile, in May of last year the chairman, along
1452 with Mr. Meadows, sent a request to OMB for documents
1453 relating to a review of the Clean Water rule. You are
1454 familiar with that?

1455 Ms. Fucile. Yes, I am.

1456 Mr. Connolly. That request was then followed by a
1457 subpoena in July for similar documents. Is that correct?

1458 Ms. Fucile. Yes. Yes, it is.

1459 Mr. Connolly. And the time period the subpoena
1460 requested documents ranged from June of 2006 to July of
1461 2015, a 9-year time period, is that correct?

1462 Ms. Fucile. Correct.

1463 Mr. Connolly. Okay. So you are being asked to search

1464 and produce documents over a 9-year period. Can you
1465 briefly explain to us what is involved in being asked to
1466 search and produce documents covering a 9-year period?
1467 Because sometimes in this conversation we act as if they
1468 are all just sitting on piles waiting to be delivered up
1469 here and you are just withholding them. But that is not
1470 really how it works, is it?

1471 Ms. Fucile. No. Thank you for the question.

1472 Mr. Connolly. And if you can just pull that a little
1473 closer to you, thank you so much.

1474 Ms. Fucile. Is that better?

1475 Mr. Connolly. Yes, great.

1476 Ms. Fucile. Yes, the request for information that we
1477 received was quite broad covering a 9-year span. And as
1478 such, we began our search process. That involved
1479 identifying the subject -- the various custodians of all
1480 the information, and then once the documents are gathered,
1481 then having a review performed by various subject matter
1482 experts, followed by review of other agencies to ensure
1483 that equities received proper review. It's quite an
1484 intense sort of process, particularly for such a broad
1485 range of documents. We -- you know, we continue to work on
1486 processing that request.

1487 Mr. Connolly. And have you been responsive to that
1488 subpoena?

1489 Ms. Fucile. Our production response rate I think could
1490 certainly be improved. We have not produced as quickly as
1491 I think that we should have. As such, we have taken steps
1492 recently to improve our production response rate, and I
1493 expect that that will continue moving forward.

1494 Mr. Connolly. Yes, I also -- you know, I can
1495 sympathize with the chairman saying, well, it ought not to
1496 be an issue of the volume, that is to say how many pages
1497 you have delivered. It is the percentage of the request.
1498 And that sounds reasonable. And in many cases I would
1499 probably agree with the chairman that that is a better
1500 standard in terms of determining responsiveness.

1501 But on the other hand, it can also be a self-serving
1502 standard -- not that it would be here, of course -- when we
1503 don't like the response and when in fact we are on a
1504 fishing expedition that could be tens and tens of millions
1505 of documents. And then that standard can be used against
1506 you, I think, unfairly where you are trying to be
1507 responsive but you are not anytime soon going to give me
1508 100 million pages of something and you are doing the very
1509 best you can to be responsive to the nature of the request.

1510 So I think we need to tread a little bit carefully when
1511 we decide to throw a flag down and say you are
1512 unresponsive, while at the same time trying to seek
1513 bipartisan consensus to ensure accountability in the
1514 executive branch, and that we fulfill our role, our
1515 constitutional role of oversight of that branch.

1516 With that, I yield back.

1517 Chairman Chaffetz. I thank the gentleman.

1518 I will now recognize the gentleman from Ohio,
1519 Mr. Jordan, for 5 minutes.

1520 Mr. Jordan. Thank you, Mr. Chairman.

1521 Mr. Kadzik, last fall, October 23, you sent a letter to
1522 the chairman and the ranking member saying that there were
1523 no prosecutions in -- there were going to be no
1524 prosecutions in the IRS targeting case. When was the
1525 decision may not to prosecute?

1526 Mr. Kadzik. Well, I think that it was shortly before
1527 we sent the letter.

1528 Mr. Jordan. Shortly before the 23rd?

1529 Mr. Kadzik. That's correct.

1530 Mr. Jordan. A week before, 2 weeks before, do you
1531 know?

1532 Mr. Kadzik. I can't --

1533 Mr. Jordan. A month before?

1534 Mr. Kadzik. I can't put a precise date on it.

1535 Mr. Jordan. In your letter to the chairman you said

1536 over 100 witnesses were interviewed. Was John Koskinen

1537 interviewed?

1538 Mr. Kadzik. I don't know.

1539 Mr. Jordan. You don't know?

1540 Mr. Kadzik. I don't know.

1541 Mr. Jordan. Were those interviews transcribed?

1542 Mr. Kadzik. I don't know.

1543 Mr. Jordan. In your letter you said "substantial

1544 evidence of mismanagement took place." Your investigation

1545 uncovered substantial evidence of mismanagement by who?

1546 Mr. Kadzik. By employees of the IRS.

1547 Mr. Jordan. Specifically?

1548 Mr. Kadzik. I can't give you specific names.

1549 Mr. Jordan. Mr. Kadzik, you wrote this letter, right,

1550 8-page letter? You --

1551 Mr. Kadzik. That's correct.

1552 Mr. Jordan. Okay.

1553 Mr. Kadzik. And we scheduled a briefing for next week

1554 in order to provide you and other Members with additional

1555 information, and we will have people involved in the

1556 investigation --

1557 Mr. Jordan. Well, we appreciate that, but we also sent
1558 you a letter on December 1, the chairman and I, and we
1559 requested in that letter all documents that pertain to the
1560 investigation, and we have yet to receive a single
1561 document. Why is that?

1562 Mr. Kadzik. Well, we also received your letter
1563 yesterday requesting the file.

1564 Mr. Jordan. That is a follow-up letter. We sent the
1565 first letter over a month ago.

1566 Mr. Kadzik. I understand, but producing an entire
1567 investigation or prosecution file presents particular
1568 issues with respect to our law enforcement sensitivities,
1569 prosecutorial --

1570 Mr. Jordan. Now, we have heard that for 3-1/2 years.

1571 Mr. Kadzik. -- responsibilities --

1572 Mr. Jordan. We have heard that for 3-1/2 years. I
1573 have had two different FBI directors. I have had
1574 Mr. Holder, Assistant Attorney General Mr. Cole give me
1575 that exact same answer for 3-1/2 years. And their answer
1576 added one other word: ongoing investigation. And now the
1577 investigation is over and it has been at least by October
1578 23, according to what you just testified and according to

1579 the 8-page letter you sent us on October 23. And now you
1580 are telling us you can't get us any documents and you are
1581 just giving us the same -- is there some national security
1582 interest that prevents you from giving us those documents?

1583 Mr. Kadzik. No, but there are --

1584 Mr. Jordan. Is there some presidential privilege that
1585 prevents you from giving us those documents?

1586 Mr. Kadzik. No, but there are law enforcement
1587 sensitivities and prosecutorial responsibilities concerning
1588 the confidentiality of witnesses, people cooperating with
1589 the investigation, the candid assessments of the attorneys
1590 and agents --

1591 Mr. Jordan. But you can give us something and you
1592 haven't given us anything. That is the point.

1593 Mr. Kadzik. Well, we've engaged in the accommodation
1594 process, which includes the briefing which we scheduled for
1595 next week.

1596 Mr. Jordan. In that briefing are you going to be able
1597 to give me a little more information to give me -- in your
1598 letter, you say there is a substantial evidence of poor
1599 judgment. Can you tell me who exercised poor judgment at
1600 the IRS when they were systematically targeting Americans'
1601 most cherished and fundamental right, their free speech

1602 rights under the First Amendment being violated for 5 years
1603 in some cases of certain groups and certain individuals?
1604 Can you tell me who at the IRS was exercising that poor
1605 judgment?

1606 Mr. Kadzik. As I said, we've scheduled briefing for
1607 next week, and we'll be able to provide you with --

1608 Mr. Jordan. Well, this is going to be a heck of a
1609 briefing, isn't it?

1610 Did you tell the White House before the October 23
1611 letter came to the chairman saying no one was going to be
1612 prosecuted?

1613 Mr. Kadzik. No.

1614 Mr. Jordan. Did you tell Ms. Lerner, her or her
1615 counsel, that there wasn't going to be prosecutions before
1616 the letter came to Chairman Chaffetz?

1617 Mr. Kadzik. No.

1618 Mr. Jordan. Did you tell Mr. Shulman that there was
1619 not going to be a prosecution before the letter came to
1620 Mr. Chaffetz?

1621 Mr. Kadzik. I've never talked to Mr. Shulman.

1622 Mr. Jordan. No, I am not saying you personally. I am
1623 saying did the Justice Department notify these individuals
1624 before you told this committee that no one was going to be

1625 prosecuted when Americans' most cherished First Amendment
1626 free-speech rights were targeted for a 5-year time frame in
1627 some cases?

1628 Mr. Kadzik. Not that I'm aware of.

1629 Mr. Jordan. Not that you are aware of, okay. And you
1630 don't know if the interviews were transcribed?

1631 Mr. Kadzik. I do not.

1632 Mr. Jordan. And you don't know if John Koskinen was
1633 interviewed?

1634 Mr. Kadzik. I do not.

1635 Mr. Jordan. Do you think he should have been
1636 interviewed as the guy who was presiding over the Internal
1637 Revenue Service with a preservation order from the Justice
1638 Department, your agency, in place and he is the IRS
1639 Commissioner when 422 backup tapes are destroyed containing
1640 potentially 24,000 emails? Do you think it would be maybe
1641 a good thing to do in an investigation to interview

1642 Mr. Koskinen?

1643 Mr. Kadzik. I can tell you that the career attorneys
1644 and the investigators and prosecutors that were involved in
1645 the investigation did a complete and thorough
1646 investigation.

1647 Mr. Jordan. Were any of the victims, the people who

1648 were targeted, were they notified before the letter came to
1649 Congress? Did you talk to any of them and say that no one
1650 was going to be prosecuted?

1651 Mr. Kadzik. Not that I'm aware of.

1652 Mr. Jordan. Do you know Catherine Engelbrecht? Are
1653 you familiar with that name?

1654 Mr. Kadzik. I'm familiar with that name.

1655 Mr. Jordan. The lady who started the organization True
1656 the Vote, the lady who was audited both personally and her
1657 business by the IRS, was visited by the EPA, the ATF, the
1658 FBI, and OSHA, all while she was simply trying to clean up
1659 voter registration rolls, systematically targeted. The
1660 full weight of the Federal Government came down on her. Do
1661 you know if she was contacted before you decided not to
1662 prosecute anyone?

1663 Mr. Kadzik. I don't know.

1664 Mr. Jordan. Mr. Chairman --

1665 Mr. Kadzik. I know that individuals were interviewed
1666 in the context of the investigation, but I understand your
1667 question --

1668 Mr. Jordan. One last question --

1669 Mr. Kadzik. -- was anyone prosecuted but --

1670 Mr. Jordan. But one last question.

1671 Mr. Kadzik. Sure.

1672 Mr. Jordan. So you are going to talk to us in a few
1673 weeks with a briefing?

1674 Mr. Kadzik. Next week.

1675 Mr. Jordan. When do you think we are going to get the
1676 documents?

1677 Mr. Kadzik. I think that as part of the accommodation
1678 process, we'll talk about that next week. And as I said,
1679 those documents present particular --

1680 Mr. Jordan. Do you plan on giving us the documents or
1681 are you going to come talk to us and say you are still not
1682 going to get them to us and we need to talk more? Are you
1683 actively now trying to get those documents and get them to
1684 us?

1685 Mr. Kadzik. We're actively preparing for the briefing
1686 next week and determining what information --

1687 Mr. Jordan. That wasn't my question. Are you actively
1688 getting the documents to us?

1689 Mr. Kadzik. Are we actively getting the documents --
1690 we're reviewing the documents to see what the law
1691 enforcement sensitivities and other issues that are
1692 presented by those documents in any investigative or
1693 prosecutorial file.

1694 Mr. Jordan. Thank you, Mr. Chairman.

1695 Chairman Chaffetz. Please be prepared to answer all of
1696 those questions at the briefing next week. You have had
1697 years you have looked at it, months to prepare given our
1698 letter. We expect a full and complete briefing.

1699 I will now recognize the gentleman from California,
1700 Mr. Lieu, for 5 minutes.

1701 Mr. Lieu. Thank you, Mr. Chair.

1702 Let me, first of all, thank the panel for their public
1703 service.

1704 I do share the chair's and ranking member's
1705 frustrations with the withholding of information by the
1706 executive branch to Congress. One panel member, I believe,
1707 mentioned the difficulty of having 100 bosses. I just want
1708 to note that you only have one boss. That is the American
1709 people. And one of the ways the Framers designed our
1710 government is for the American people to express their will
1711 through 435 elected Members of Congress and 100 elected
1712 Senators. And it is the duty of the executive branch to
1713 respond in a timely manner to Members of Congress, whether
1714 it is 100 members or 535.

1715 And let me explain the importance of this. I will go
1716 through one area, which is privacy. The U.S. Supreme Court

1717 has said it is illegal for law enforcement without a
1718 warrant to put a GPS device on a person's car and track
1719 them through geolocation. This committee has sent two
1720 letters to the Department of Justice asking for your
1721 policies on geolocation. You have failed to provide them,
1722 and I want to know why that is. Why don't you just provide
1723 your policy on geolocation because we want to know if you
1724 are violating the law?

1725 Mr. Kadzik. Well, Congressman, first of all, the
1726 request is not for policies. The request was for two
1727 particular memoranda which consist of attorney work
1728 product, which was advice provided to our prosecutors that
1729 included investigative and litigation strategies. With
1730 respect to policies, to the extent that policies exist, for
1731 example, in the cell-site simulator context, we have
1732 provided that policy to the Congress.

1733 Mr. Lieu. Well, let me just read the first sentence of
1734 your letter dated October 30, 2015. "This is in response
1735 to your letter to the attorney general dated October 26,
1736 2015, regarding your interest in Department of Justice
1737 policies on geolocation and other surveillance technology."

1738 So since you have brought up cell-site simulators, we
1739 had a hearing in October, and your Department of Justice

1740 witness testified about StingRays, which can monitor cell
1741 phones, track their locations, and we want to know and I
1742 want to know, well, could these stingrays also get
1743 substantive conversations?

1744 Department of Justice witness, I believe, sort of
1745 danced around that and sort of said I don't know, which I
1746 find troubling. So either that witness was withholding
1747 information from this committee or had a shocking level of
1748 ignorance about a device that the Department of Justice was
1749 using. But she did commit to providing the answer to that
1750 question to which we have not gotten yet, even though we
1751 asked both publicly, as well as in writing. But I did find
1752 out about a week after the hearing through the press that,
1753 yes, in fact these StingRays can be configured to monitor
1754 conversations.

1755 So that is why it is so important we get documents
1756 because I partly don't trust the witnesses that I have
1757 heard sometimes before this hearing, and I just want to
1758 look at these documents to know is the Department violating
1759 the law. It is not a hard request. If you don't want this
1760 memorandum put out publicly, you don't have to. You can
1761 give it to us in a confidential, private setting.

1762 But I think it is important that we get these

1763 documents, and I think the American people have a right to
1764 know is the Department of Justice violating the law when it
1765 comes to privacy. And we need to have these documents and
1766 know what your policies are. How are you using StingRays?
1767 How are you using geolocation? How are you using these GPS
1768 devices?

1769 And so I am going to ask you once again to provide
1770 these documents. And I know in your letter to this
1771 committee you don't cite a case, so unless you can provide
1772 some sort of case that says you can't provide these
1773 documents, I would like you to provide those documents.
1774 And with that, I yield back.

1775 Chairman Chaffetz. Before the gentleman yields back,
1776 if he would yield to me for a moment on this.

1777 Ranking Member Cummings and I sent the Department of
1778 Justice a request. I just don't understand when the
1779 Department of Justice sends out, as was revealed by the
1780 general counsel for the FBI, guidance to the field
1781 specifically on the use of GPS and guidance on what the
1782 Jones -- that being the Supreme Court case -- what Jones
1783 means for other types of geolocation techniques, why is it
1784 that Members of Congress with security clearances -- I
1785 happen to sit on the Judiciary Committee, I am on the

1786 Crimes Subcommittee -- why is it that I cannot actually see
1787 what you are sending out far and wide? I mean, you are
1788 sending this out to all of you are prosecutors, you are
1789 sending it out to -- when you send this out far and wide,
1790 why can't Elijah Cummings and I go look at it?

1791 Mr. Kadzik. Well, first of all, Mr. Chairman, I would
1792 say that we are not sending it out far and wide. It is
1793 attorney work product. It goes to those prosecutors that
1794 need that information when they litigate cases and they
1795 approve or disapprove particular investigative techniques.
1796 And we have provided briefings with respect to this --

1797 Chairman Chaffetz. No, no, no, no, no, no.

1798 Mr. Kadzik. -- and we've also provided --

1799 Chairman Chaffetz. A briefing is not good enough. A
1800 briefing is not good enough. This is the FOIA request that
1801 is put out, 100 percent redacted. This is what the pages
1802 look like, okay? We have got concerns post-Jones that the
1803 Federal Government is potentially spying on Americans, what
1804 sort of techniques they are using. We represent the
1805 people. We have a security clearance. You send us blank
1806 pages like this to the public, and so we are asking in an
1807 in camera review situation to be able to read this
1808 ourselves. You are willing to give it to all the Federal

1809 prosecutors, okay? You are willing to share this widely
1810 within the Department, but you won't allow Members of
1811 Congress to look at it? Why?

1812 Mr. Kadzik. Mr. Chairman, as I indicated, we've
1813 provide briefings, we've provide pleadings where we've
1814 publicly disclosed our legal analysis. We'd be happy to
1815 provide additional pleadings and additional briefings, but
1816 there are law enforcement sensitivities. And again, it is
1817 attorney work product information. And we're happy to
1818 continue with the accommodation process.

1819 Chairman Chaffetz. This is guidance. You are giving
1820 guidance. You have sent this out on the techniques that
1821 are currently being deployed.

1822 Mr. Kadzik. I --

1823 Chairman Chaffetz. We don't know if you are violating
1824 the law, not violating the law, if other laws need to be
1825 written. Justice Alito even refer to that in his opinion
1826 saying the legislative body need to be involved and engaged
1827 here. The American people trust us but you don't trust us.

1828 Mr. Kadzik. It is not that we don't trust you,
1829 Mr. Chairman, but again, it's attorney work product,
1830 privileged information that's designed to provide --

1831 Chairman Chaffetz. Privileged from the American

1832 people, and that is what I have got a problem with.

1833 Mr. Cummings. Will the gentleman yield?

1834 Chairman Chaffetz. Yes.

1835 Mr. Cummings. Again, let's try to get down to the
1836 bottom here. Is it one of your concerns that there are
1837 ongoing investigations, sir?

1838 Mr. Kadzik. Yes, Mr. Cummings, there are ongoing
1839 investigations. These do discuss investigative techniques
1840 and the legal arguments that we would make in support of
1841 those techniques. And they discuss also the potential
1842 legal arguments that would be made by defendants. And
1843 we're concerned that if these techniques are disclosed
1844 that, you know, criminal elements can use that information
1845 in order to avoid detection in law enforcement efforts.

1846 Mr. Cummings. So the bottom line is that you don't
1847 trust us?

1848 Mr. Kadzik. No, it's not that we don't trust you.

1849 Mr. Cummings. I mean, in other words, you know, if we
1850 are saying that we would like to see this information in
1851 confidence and make commitments that we are not going to
1852 disclose, then what would be the reason -- I mean, going to
1853 what you just said? In other words, that seems to take
1854 away your reason for not providing it.

1855 Mr. Kadzik. We've --

1856 Mr. Cummings. Am I missing something?

1857 Mr. Kadzik. We've engaged in discussions along that
1858 route, and we'd be happy to continue those discussions as
1859 an accommodation to the committee.

1860 Chairman Chaffetz. That is not an accommodation. I
1861 want to actually read it. You gave it to all the Federal
1862 prosecutors; you gave it to the criminal chiefs and the
1863 appellate chiefs. Why do you assume that if Elijah
1864 Cummings or any Member of Congress with a security
1865 clearance, having signed an oath, taken an oath, we signed
1866 documents saying we won't reveal this, why do you assume
1867 that because we read it in camera that it is going to
1868 suddenly get out in the public?

1869 Mr. Kadzik. Well, Mr. Chairman, it is not also -- not
1870 only a question of disclosure; it is a question of waiver
1871 of privilege. And so, you know, the fact that we provide
1872 it to a third-party could potentially be an argument that
1873 we have waived the privilege and it would be discoverable
1874 by other individuals, defendants in criminal cases. And
1875 what we're trying to do is to protect our law enforcement
1876 responsibilities.

1877 Mr. Cummings. Just one other question if the gentleman

1878 will yield. There is a piece missing here. There is
1879 nobody up here on either side that wants to do anything to
1880 interfere with a criminal investigation. In other words,
1881 we want to make sure that you are able to do your job, but
1882 you have got to understand, we are trying to do our job,
1883 too. And it seems like we ought to be able to reach some
1884 type of balance here. And if there is case law supporting
1885 what you just said, do we have that? Have you provided
1886 that?

1887 Mr. Kadzik. I don't know if we have provided it,
1888 Mr. Cummings, but again, we'd be glad to continue these
1889 discussions, and I agree that there's a way in which we can
1890 reach an accommodation to provide --

1891 Mr. Cummings. Well, let's try to do that --

1892 Mr. Kadzik. I -- we will certainly --

1893 Mr. Cummings. -- as soon as possible.

1894 Mr. Kadzik. Yes, sir.

1895 Chairman Chaffetz. We haven't gotten there yet and it
1896 has been years. I would cite the FTC v. Owens-Corning
1897 Fiberglass. When a congressional committee compels
1898 production of a privileged communication through proper
1899 subpoena, it does not prevent assertion in privilege. It
1900 is well documented. You are hiding this from the American

1901 people. Who is the client? Who is the client that you are
1902 trying to protect?

1903 Mr. Kadzik. We're trying to protect the American
1904 people but --

1905 Chairman Chaffetz. And we represent the American
1906 people.

1907 Mr. Kadzik. And so do we, but providing this
1908 memorandum for broad public disclosure doesn't protect --

1909 Chairman Chaffetz. I am not talking about public
1910 disclosure. As Members of Congress, we should be able to
1911 see what you are doing and how you are doing it.

1912 Mr. Kadzik. And as I said, we are trying to
1913 accommodate the information requests. We are happy to
1914 continue the discussion.

1915 Chairman Chaffetz. No, you are not because we just
1916 want to read the documents that you are giving to the
1917 prosecutors and the criminal chiefs. And you are saying
1918 no, and it should scare every American.

1919 I appreciate the committee's indulgence. We have gone
1920 on a long time with this. I believe I now recognize
1921 Mr. Walberg for 5 minutes.

1922 Mr. Walberg. Well, Mr. Chairman, this is a perfect
1923 example of how we have gone away -- and, Mr. Kadzik, with

1924 all due respect, you do not represent the American people.
1925 You do not represent the American people. We are the only
1926 ones elected to represent the American people. Now,
1927 remember that.

1928 Now, I am sitting here today thinking I am hearing an
1929 old Hogan's Heroes rerun with Sergeant Schultz saying "I
1930 know nothing." I also understand that you people have been
1931 put in very difficult situations representing people who do
1932 have the answers but put you on the place to try to give
1933 just enough to satisfy us. And you have staff behind you
1934 to make sure that you don't go too far in giving that
1935 answer. And that is frustrating.

1936 Now, I also understand that you don't have the benefit
1937 that we do. There is only one person in our district that
1938 people come to and expect to have an answer from, and we
1939 are held accountable, Members of Congress. We are elected
1940 by those people. And the further you get outside of this
1941 Beltway -- and that is a challenge that you have; I
1942 understand that -- but having relatives that live at
1943 different levels outside of this Beltway, the further you
1944 get away, the more frustration there is that the people
1945 have lost control from both sides of the perspective.

1946 And so when we who directly represent the people, who

1947 have been elected to represent the people in given
1948 districts, especially here in the House, are put upon by
1949 our people to ask questions and to get understanding for
1950 them, you have got to understand why it is frustrating to
1951 have documents that we have been told we would receive
1952 piecemealed out.

1953 And so, Ms. Fucile, I go to you. Representing the
1954 State that has Waters of the U.S. surrounding us on three
1955 sides, very important to Michigan, I have a very great
1956 interest in the rules-making process. Back on March 3,
1957 2015, in a hearing before this committee, members asked
1958 Administrator Shelanski for documents relating to OIRA's
1959 review of the Waters of the U.S. rulemaking. After the
1960 hearing, committee staff followed up with your staff on
1961 numerous occasions about this request but received no
1962 response.

1963 How did you instruct your legislative affairs staff to
1964 respond to the committee after the March 3 hearing? Did
1965 you instruct them not to initiate a search until a formal
1966 letter was received from the committee? Did anyone tell
1967 you not to initiate a search? What are your answers?

1968 Ms. Fucile. No. Absolutely, after receiving the
1969 request, we began the search. It's a large search and it's

1970 taking time. And I appreciate that we should have, could
1971 have increased the speed of that production, and we are
1972 working on that. But when we got that request, we started
1973 to produce documents. We produced documents over the last
1974 several months. We will continue to.

1975 Mr. Walberg. In your first production to this
1976 committee on June 4, OMB provided 893 pages of documents,
1977 893 pages, 846 of which were publicly available online.
1978 Were you aware of that?

1979 Ms. Fucile. The document request that we received was
1980 quite broad, and the documents that we produced were
1981 responsive to that. The -- several of those documents --
1982 or much of that documents were publicly available online.

1983 Mr. Walberg. Well, in light of that --

1984 Ms. Fucile. Since then -- since then, we have produced
1985 email communications between senior OIRA officials --

1986 Mr. Walberg. Is it normal practice to have staff that
1987 are under a heavy load, I understand that, to produce for a
1988 committee documents that are readily available already?

1989 Ms. Fucile. That was -- we -- as we read the request,
1990 the request was quite broad. We believed that the
1991 documents that we provided were part of that request.

1992 Mr. Walberg. That is not helpful. I mean, we could do

1993 that. We have plenty of other pages just going over to
1994 what EPA has provided for us already. They provided 21,000
1995 pages of responsive documents, 21,000 pages. In the last
1996 10 months OMB has provided this committee with 3,260 pages,
1997 21,000 versus 3,260. That is concerning.

1998 Ms. Fucile. The role of EPA with respect to
1999 promulgating this rule is considerably different than the
2000 role that OIRA and OMB play. The number of documents that
2001 we would produce for any rule would be expected to be
2002 considerably smaller than that of the agency --

2003 Mr. Walberg. Eighty percent were online already, and
2004 we are capable of seeing those. We weren't asking for
2005 those.

2006 Ms. Fucile. I disagree with the characterization that
2007 80 percent of what we have produced for this committee were
2008 available online. The first production included materials
2009 that were available online. The subsequent productions and
2010 the vast majority --

2011 Mr. Walberg. Less than 100 pages --

2012 Ms. Fucile. The vast majority --

2013 Mr. Walberg. -- were not online.

2014 Ms. Fucile. The vast majority of the documents we have
2015 produced for this committee have not been documents that

2016 were available online.

2017 Mr. Walberg. I yield back.

2018 Chairman Chaffetz. I will now recognize the
2019 gentlewoman from New Jersey, Mrs. Watson Coleman, for 5
2020 minutes.

2021 Mrs. Watson Coleman. Thank you, Mr. Chairman, and
2022 thank you to each of you who are here today to answer our
2023 questions.

2024 This has been a very difficult discourse, and I as a
2025 new Member am somewhere between are we putting too much on
2026 our departments trying to get information from so many
2027 different committees and subcommittees? Is that an onerous
2028 burden that you are not staffed or configured to respond to
2029 in a timely manner and in a way that meets our needs and
2030 our requests? Are you trying to not give us the
2031 information that we want in a manner that is usable for
2032 Congress as Congress goes about doing its work?

2033 And so if it is the former, then we need to address
2034 that and you need to be communicating clearly with us about
2035 the impact of the requests and how we can better work
2036 together. If it is the latter, then you are just going to
2037 be dragged into this committee and subcommittees until the
2038 end of time because it is disrespectful not to address

2039 Congress's right to have information. And so we need to
2040 figure out exactly which one of these things it is.

2041 In the Department of Human Services there was a request
2042 regarding some findings with regard to Secret Service,
2043 Ms. Johnson, and there were a number of issues which were
2044 already addressed, but my understanding is that there is
2045 one more issue that is outstanding. I am not quite sure
2046 what it is. Are you aware of it? It is one of 16 issues
2047 that have been identified and have been responded to in
2048 some way, shape, or form.

2049 Ms. Johnson. Yes, thank you, Congresswoman. Yes, we
2050 -- with regards to the Secret Service request, we are
2051 dealing with two different documents. One was the February
2052 18, 2015, letter, and that contains 16 requests. And we
2053 were complying with that request. As a matter of fact, the
2054 good news story was the process worked as it should. It
2055 was -- their -- the requests were very broad, and so we
2056 went back to the committee and asked the committee to
2057 prioritize so that we could prioritize, which in fact the
2058 committee did. You prioritized four lines or four
2059 categories of information, which we were producing. And in
2060 the course of that production, then, ultimately, the July 9
2061 subpoena came forward. It also had 18 requests, most of

2062 which were overlapping with the February 18 letter but it
2063 broadened the aperture.

2064 And so as a result of that, we have been producing on
2065 both of those documents, and we continue to produce. Even
2066 last night, we produced documents responsive to the
2067 February 18 request on a -- for requests numbers 4 and
2068 number 11. And so, yes, it's a rolling production and we
2069 have been producing since February.

2070 Mrs. Watson Coleman. So if there is an outstanding
2071 request, do you have any idea, any estimate of the time
2072 that it would take to have that request answered, responded
2073 to --

2074 Ms. Johnson. Congresswoman, we are routinely --

2075 Mrs. Watson Coleman. -- or is it just a series of
2076 things that --

2077 Ms. Johnson. Right, we're continuing to comply. On
2078 the February 18 letter there were 16 requests, 12 of them
2079 are closed, four remain open, and as I said --

2080 Mrs. Watson Coleman. Okay.

2081 Ms. Johnson. -- we produced last night for two more.
2082 So that means there's two that remain open on that one.

2083 Mrs. Watson Coleman. On that request.

2084 Ms. Johnson. On the July 9 subpoena there were 18

2085 requests, 13 requests are closed, 5 remain open, and we
2086 continue to produce on those. So I can't give you a
2087 definite timeline --

2088 Mrs. Watson Coleman. Okay.

2089 Ms. Johnson. -- but we have been producing, we
2090 continue to produce, and we will continue until such time
2091 as we can close these two out.

2092 Mrs. Watson Coleman. So the Department of Justice
2093 issue is a little bit different because there is a question
2094 as to -- from the Department's perspective versus our
2095 committee's perspective what information we are entitled to
2096 and in what form, to what degree. But for the rest of the
2097 departments, are we in agreement that there are outstanding
2098 requests that have not been responded to in a way that this
2099 committee deems appropriate?

2100 I will start with you, Ms. Frifield. That is a yes or
2101 no.

2102 Ms. Frifield. We do have outstanding requests with the
2103 committee, but we are working to meet those requests.

2104 Mrs. Watson Coleman. Ms. Fucile is it?

2105 Ms. Fucile. Yes. My answer would be the same.

2106 Mrs. Watson Coleman. And, Mr. Levine, yours is a
2107 little different also. Sometimes I think you are talking

2108 about apples and we are talking about oranges.

2109 Mr. Levine. There --

2110 Mrs. Watson Coleman. But we need reconciliation in
2111 what we are looking for.

2112 Mr. Levine. There remains one request for which we are
2113 intending to produce some documents, and then we're going
2114 to circle back on what the --

2115 Mrs. Watson Coleman. Thank you. So I simply want to,
2116 you know, echo our desire to be able to work together to
2117 have the information we need to represent the people that
2118 sent us here to represent their interests, and we are just
2119 as equally engaged and yoked in making sure that our
2120 Americans are safe and secure and have the benefit of all
2121 the services, and that seems to me what we are trying to
2122 accomplish as the Oversight Committee.

2123 Thank you, Mr. Chairman.

2124 Chairman Chaffetz. Thank you. I would hope it would
2125 be reasonable that you could tell us which ones you think
2126 are closed and which ones you think are still open because
2127 what I hear from staff is if we make a dozen requests and
2128 you say eight are closed, four are open, we don't know
2129 which ones are still open. And I hope that is reasonable
2130 to ask. If you think you have accomplished number seven,

2131 tell us. We are done. You don't have anything else coming
2132 for number seven. Is that fair?

2133 Does anybody want to actually say that and be recorded
2134 as saying yes? Let's go down the line and ask if that is a
2135 reasonable request.

2136 Ms. Frifield. Yes, we can go over and give you the
2137 status of each of your requests. We're very happy to do
2138 that.

2139 Chairman Chaffetz. Thank you.

2140 Ms. Johnson. Yes, generally, when we --

2141 Chairman Chaffetz. Wait. Mr. Kadzik --

2142 Ms. Johnson. Oh.

2143 Chairman Chaffetz. -- you have been around. You are
2144 smart. That is good lawyering, I get it, but we are asking
2145 a direct question here. Is that reasonable?

2146 Mr. Kadzik. Well, I think that we've told the
2147 committee --

2148 Chairman Chaffetz. No, I am asking you will you tell
2149 us on the outstanding requests and moving forward, when you
2150 have completed a request, will you tell us that?

2151 Mr. Kadzik. I think we have and we will continue to do
2152 so.

2153 Chairman Chaffetz. Ms. Johnson?

2154 Ms. Johnson. Thank you, Chairman. Yes, when we
2155 produce, we tell you what we're producing against. So the
2156 production last night --

2157 Chairman Chaffetz. We just want to know if it is
2158 completed. When it is completed, tell us it is complete.

2159 Ms. Johnson. Yes, and we will say we're producing --
2160 these are the documents responsive to February 18 request
2161 number 4. These were all the documents we found so --

2162 Chairman Chaffetz. Okay.

2163 Ms. Fucile. Our one -- our one outstanding request
2164 remains open, yes.

2165 Chairman Chaffetz. But will you tell us in the future
2166 when you have completed the request, and will you tell us
2167 if it is still outstanding?

2168 Ms. Fucile. Yes. As I just said, it is still
2169 outstanding.

2170 Chairman Chaffetz. Okay.

2171 Mr. Levine. Yes, we will. I mean, I think, as we've
2172 discussed with your staff, it's -- we can indicate when
2173 it's closed. You can always -- might be able to find
2174 something else, as you and Mr. Turner raised earlier, but
2175 yes, we believe we will let you know when things are
2176 closed.

2177 Chairman Chaffetz. Because often, these letters come
2178 with two or three or five requests, and we just need to
2179 know which ones are closed within the body letter. Thank
2180 you. Appreciate that.

2181 Mr. Gosar of Arizona is now recognized for 5 minutes.

2182 Mr. Gosar. Thank you, Mr. Chairman.

2183 Assistant AG Kadzik and Assistant Secretary Johnson, in
2184 August of 2014 I wrote to the attorney general and the
2185 Secretary of Homeland Security, the head of your respective
2186 agencies, expressing serious concerns about reported
2187 alterations made to prosecutorial guidelines for operations
2188 streamlined and requesting information about this decision
2189 from your respective agencies.

2190 Nine days earlier, I received a letter from one of my
2191 local county sheriffs expressly significantly finding
2192 concerns that Operation Streamline was being terminated and
2193 that the U.S. Attorney's Office will no longer be
2194 prosecuting first-time undocumented illegal immigrants
2195 under the program. In the letter, Sheriff Wilmot stated,
2196 "This new guidance is of great concern because it
2197 undermines the mission of local law enforcement agencies
2198 throughout Yuma County for 100 percent prosecution of those
2199 entering the United States illegally in order to curb

2200 reentries." Sheriff Wilmot also stated in his letter,
2201 "During an interview of a defendant from a recent smuggling
2202 case, the subject told investigators that since he had been
2203 in jail, they and their other partners are moving to other
2204 areas due to our hard stance on smuggling and the fact that
2205 if you are caught in Yuma, you will go to jail."

2206 The Federal Government's failure to address our
2207 immigration crisis is forcing cities in my district such as
2208 Yuma to step up to prevent the massive flow of illegal
2209 aliens entering the country. In 2005, a combination of
2210 fencing, new infrastructure, no tolerance zones, and
2211 increased manpower drove down the number of apprehensions
2212 in the Yuma region by nearly 95 percent from 119,000 in
2213 2006 to just over 6,000 in 2013.

2214 Despite this remarkable success, you all defied our
2215 logic and common sense by unilaterally crippling law
2216 enforcement and terminating Operation Streamline, as well
2217 as other worthwhile border enforcement programs. On
2218 October 10, the OJ replied to my letter from August 28
2219 about Operation Streamline being terminated. While I
2220 appreciate the relatively prompt response within the 2-
2221 month time frame, frankly, I am shocked it even took that
2222 long considering it essentially resembled a simple copy,

2223 cut, and paste with such generic and blatantly evasive
2224 language that in no real terms could be considered an
2225 actual response.

2226 Rather than answering my question or providing any
2227 reasoning as to why Operation Streamline had been
2228 terminated, the Department of Justice responded with a weak
2229 letter -- I will hold up this letter here -- that stated,
2230 "It is the Department's longstanding practice not to
2231 provide specific information regarding criminal law
2232 enforcement policies of the United States Attorney's
2233 Office." That is just simply outrageous.

2234 Now, I will humbly tell you I don't think I am really
2235 anybody special. I am just a dentist impersonating a
2236 politician. I don't expect any special treatment from
2237 anybody, but I was elected in accordance to the
2238 Constitution of the United States to serve as
2239 representative of the people of the Fourth Congressional
2240 District of Arizona, which carries important duties and
2241 obligations, including government oversight. Mr. Chairman,
2242 before I ask some questions, I would like to have these
2243 three letters entered into the record.

2244 Chairman Chaffetz. Without objection, so ordered.

2245 [The information follows:]

2246

2247 Mr. Gosar. So with that, Mr. Kadzik and Ms. Johnson,
2248 since you are both here, I will ask you all one more time.
2249 Which one of your agencies made the call to terminate
2250 Operation Streamline and why the secrecy? Mr. Kadzik
2251 first.

2252 Mr. Kadzik. Congressman, within the last 2 months, we
2253 conducted a briefing with respect to the status of
2254 immigration enforcement in the Yuma district. I apologize
2255 if your staff was not invited to that briefing, but I would
2256 be happy to have that briefing provided to members of your
2257 staff to give you the current status of immigration
2258 enforcement, but --

2259 Mr. Gosar. I am not specifically asking you that, sir.
2260 I asked you a specific question. Who -- is it your agency?
2261 Who in your agency or Ms. Johnson's agency decided to
2262 terminate Operation Streamline, point, simple, one way or
2263 another?

2264 Mr. Kadzik. I can't tell you that it's been terminated
2265 and so --

2266 Mr. Gosar. Well, it absolutely has.

2267 Mr. Kadzik. Well, I would say that, as the letter
2268 indicates, the local United States attorneys implement
2269 prosecution policies.

2270 Mr. Gosar. You know, those come from the DOJ directly.
2271 I am sorry, sir. Those are directives came from -- so I am
2272 asking you this question. If you don't know the answer,
2273 simply state the answer, that you don't know. But --

2274 Mr. Kadzik. I can't say I don't know because I don't
2275 believe that it was terminated. And --

2276 Mr. Gosar. It has been terminated. Whether -- you
2277 don't know the answer. Mr. Johnson, how about you?

2278 Ms. Johnson. Congressman, I have to defer to
2279 Department of Justice. Operation Streamline is not a
2280 Department of Homeland Security operation, and so it -- I'm
2281 not -- I don't have competence --

2282 Mr. Gosar. Okay.

2283 Ms. Johnson. -- to speak to that.

2284 Mr. Gosar. So let's go back to you, Mr. Kadzik. Is
2285 the standard practice of the Department of Justice to
2286 disregard requests for information from individual Members
2287 of the United States Congress?

2288 Mr. Kadzik. No, it is not.

2289 Mr. Gosar. Ms. Johnson, does the Department of
2290 Homeland Security similarly shrug off information requests
2291 of individual Members of Congress who are performing their
2292 oversight duties?

2293 Ms. Johnson. No. No, Congressman. We do not shrug
2294 off requests that we receive. As a matter of fact, we try
2295 to produce the documents that are being requested.

2296 Mr. Gosar. Does it make a difference if it is more
2297 than one, maybe 30 or 40 Members writing a letter? Does it
2298 get quicker attention if it has got 30 or 40?

2299 Ms. Johnson. No, Congressman. That's not the way we
2300 prioritize. But we do have to prioritize. When you're
2301 subject to the jurisdiction of 92 committees and
2302 subcommittees, you have to prioritize where you're going to
2303 put your efforts at any given time. So -- and -- so we
2304 prioritize the requests, we task them out to the
2305 appropriate components to search for the documents.

2306 Mr. Gosar. Well, as a doctor, it seems to me your
2307 problem has been misdiagnosed. If you can keep up with
2308 Congress -- and I understand that Congress isn't your
2309 ordinary third-party -- if you can't keep up with the
2310 document requests, maybe you should reevaluate your
2311 conduct. Quit reinterpreting, abusing, and remaking the
2312 laws. Follow the law. I yield back.

2313 Chairman Chaffetz. I thank the gentleman. I will now
2314 recognize the gentleman from California, Mr. DeSaulnier,
2315 for 5 minutes.

2316 Mr. DeSaulnier. Thank you, Mr. Chairman, and thank the
2317 ranking member. And forgive me for being naive, but given
2318 that I haven't been a Member for that long, it does seem
2319 that both the committee and the Departments -- there should
2320 be less pull and tug in gray areas. It strikes me that
2321 public documents are public documents. We all work for the
2322 public. The sooner you have the infrastructure to respond
2323 to them, we can get those documents or be told why we can't
2324 I think does us all well, knowing that there is some
2325 political latitude in there that you have to deal with.

2326 My question is specifically to the AG just because,
2327 like the last Member, I had a specific letter that I sent
2328 to the Department of Justice and the attorney general that
2329 I don't expect you to be aware of, but I would like to just
2330 have it on the record. So it was vis-a-vis the ability to
2331 enforce the Clean Air Act versus potentially or at least go
2332 through the due diligence when it comes to Volkswagen.

2333 So I have read interpretations that said there is a gap
2334 in the law in the Clean Air Act where there is only civil
2335 enforcement. The letter that we sent, miraculously, we got
2336 a response this morning, so I will give that to karma, not
2337 the coincidence of the hearing.

2338 If you could go back and let our office know because

2339 what I was asking is is there a possibility because it
2340 seems to me that is the only motivating factor having spent
2341 a long time in California on enforcement of the California
2342 Clean Air Act when it comes to regulated entities, in this
2343 instance, a car company. Are there only civil procedures
2344 that you can pursue and you are pursuing? My question in
2345 the letter would be can you pursue criminal acts or does
2346 that require a statutory fix in the Clean Air Act?

2347 And given that is a specific request but it also
2348 illustrates just to me the difficulty of responding. So if
2349 there is a technical reason why you don't want to respond,
2350 it would be helpful for me to understand how you can
2351 communicate that to me.

2352 So with that, Mr. Chairman -- I give you the
2353 opportunity to respond, Mr. Kadzik.

2354 Mr. Kadzik. Congressman, I would be happy to get back
2355 to you on that. As you know, we did file a civil suit just
2356 this past Monday against Volkswagen. I'm not familiar with
2357 what criminal authorities we may have, but I'd be happy to
2358 respond to your letter on that.

2359 Mr. DeSaulnier. I appreciate that. I yield back.

2360 Mr. Cummings. Would the gentleman yield?

2361 Mr. DeSaulnier. Yes, to the ranking member, I'm happy

2362 to yield.

2363 Mr. Cummings. Thank you very much. Mr. Kadzik, how
2364 long have you been in your position?

2365 Mr. Kadzik. Almost 3 years, Mr. Cummings.

2366 Mr. Cummings. Okay. And what did you do before that?

2367 Mr. Kadzik. I was in private practice of law.

2368 Mr. Cummings. I see. Now, I was trying to figure -- I
2369 keep going back to what Mr. Lynch said about why we have
2370 what appears to be an adversarial situation. And it is not
2371 a new thing, as he said. I mean, this goes back for years.
2372 And it does appear to be that. I don't care how you look
2373 at this. You have got to -- and maybe some of the other --
2374 the only reason I ask you how long you had been there, I
2375 thought you had been there longer than that. But I am
2376 wondering, when you all view this, do you all see it as
2377 adversarial?

2378 Mr. Kadzik. Mr. Cummings, we don't, and in fact, I
2379 think that we've had a good working relationship with this
2380 committee during the past year or more, and we look forward
2381 to continuing to cooperate with you and the chairman to try
2382 and get you as much information as we can, consistent with
2383 our law enforcement responsibilities and our
2384 confidentiality interests of the executive branch.

2385 So I don't view it as adversarial, I don't want it to
2386 be adversarial, and, you know, we -- you know, as the
2387 chairman indicated in his opening remarks, I know that you
2388 expect and require cooperation, and we hope to provide it.

2389 Mr. Cummings. Ms. Frifield?

2390 Ms. Frifield. I don't think it should be adversarial.
2391 I worked on Capitol Hill for over 20 years, and so I've
2392 seen it from both sides. And I generally believe it could
2393 work best if we have a collegial relationship where we can
2394 sit down and go over priorities and sequencing. I mean, we
2395 have all talked about the difficulty with resources, and
2396 that is our problem. We have to grapple with that, and we
2397 have to come to a solution. But I think it would be less
2398 frustration on your part if we could just sit down and say
2399 these are the priorities, so rather than talking about all
2400 documents or everything saying we need these -- we need all
2401 contracts or we need things from this date. And we start
2402 there and then we keep -- we can build on that later if we
2403 continually, you know, talk to the staffs.

2404 And I feel like I've had good relationships with your
2405 staffs. They have my direct line and I have theirs. They
2406 can call me at any time. I can call them. I think that's
2407 the way it works best, not having a sort of confrontational

2408 kind of relationship.

2409 Mr. Cummings. And so trying to narrow the information
2410 that is needed as opposed to having just a blanket kind of
2411 request would help, I think?

2412 Ms. Frifield. Yes, sir. Because, for example, one
2413 that -- the chairman asked for the notifications on various
2414 embassy construction projects. That was a very clear
2415 direction from the chairman. We were able to respond to
2416 that in a few weeks, and it was done. And then if you --
2417 you know, if anyone wants more or different or discuss it
2418 or a briefing, we can go on from there. But it's just -- I
2419 feel like that is the constructive way to work with this
2420 committee given, you know, the fact that we are balancing
2421 many, many requests, many more than we frankly can deal
2422 with in a very constructive way.

2423 And we will get better. We are getting better, but I
2424 think it would be less frustration on your part if we could
2425 sit down and go over what's the plan, these are the steps
2426 now, and we'll take the steps in the future.

2427 Mr. Cummings. Thank you.

2428 Chairman Chaffetz. I now recognize the gentlewoman
2429 from New York, Ms. Maloney.

2430 Mrs. Maloney. Thank you, Mr. Chairman.

2431 Chairman Chaffetz. I am sorry. My apologies. We were
2432 actually toggling and -- my bad.

2433 I will now recognize the gentlewoman from Wyoming,
2434 Mrs. Lummis, for 5 minutes.

2435 Mrs. Lummis. Thank you, Mr. Chairman.

2436 My questions are for Ms. Fucile. I want to visit with
2437 you about the Waters of the U.S. rule and when you gave
2438 your 5-minute testimony, you called it something new, Clean
2439 Water rule. That was a new moniker that was given to that
2440 rule over the Christmas holiday by the administration in
2441 full knowledge of the fact that that was always called the
2442 Waters of the U.S. rule and the fact that it has always
2443 been so thoroughly rejected by the people of this country
2444 caused this rebranding of the rule under a new name.

2445 Now, one of the reasons that you are here today is
2446 because even though your agency is probably truly exhausted
2447 from the work you had to do on the omnibus -- and I get it;
2448 you are a small agency and that was an enormous piece of
2449 legislation -- but the administration wouldn't even speak
2450 to Congress about the omnibus until we first agreed to
2451 strip from that bill all of the riders that had to do with
2452 policy, including our decision to not fund the Waters of
2453 the U.S. rule. And so the reason that this is such an

2454 important issue today is the position the administration
2455 took on that rule.

2456 Now, this rule is easily one of the top-10 worst rules
2457 that has been adopted during the course of this
2458 administration's term, in fact, so bad that a Federal
2459 district court blocked the rule in 13 States, calling it an
2460 "exceptionally expansive interpretation of Federal
2461 jurisdiction" that would irreparably diminish the States'
2462 power over their waters. It is so serious that the Sixth
2463 Circuit Court of Appeals expanded the stay to cover the
2464 whole nation.

2465 This rule has the whole nation up in arms, which is why
2466 we want more information about it. Now, on March 3 and May
2467 12 we asked for information from you about this rule. And
2468 as of June 4, no documents were produced. The May 12
2469 letter signed by the chairman and the gentleman to my
2470 right, Mr. Meadows, no documents were produced. So the
2471 committee subpoenaed these documents. It requested all
2472 documents and communications referring or relating to the
2473 rule by July 28, 2015.

2474 Now, a few documents were produced, many of which were
2475 just a printed copy of the rule. October 28, a letter was
2476 signed by the chairman, Mr. Chaffetz, Mr. Meadows to my

2477 right, Mr. Jordan, who was here earlier, and myself, and
2478 there has been no response. That is the reason you are
2479 here today.

2480 We are frustrated that when a rule that is this
2481 expansive and this provocative of States' rights is
2482 promulgated and the administration won't even talk to us,
2483 to Congress, and the bipartisan opposition and bicameral
2484 opposition to this rule, and having all those States sue to
2485 have it stayed, but we can't get the information we are
2486 requesting about how this rule came about from the get-go.

2487 So now my question, Ms. Fucile, has OMB searched the
2488 inboxes of all OIRA staff who worked on this rulemaking?

2489 Ms. Fucile. As part of our search process, we are in
2490 the process of going through all of the documents related
2491 to the review of the Clean Waters of the U.S. rule, the
2492 Waters of the U.S. rule, and we are in the process of that.
2493 As the request came in, it was for a 9-year period from
2494 June of 2006 to July of 2014, I believe, and so we are
2495 going through that. You mentioned --

2496 Mrs. Lummis. How many custodians have you identified?

2497 Ms. Fucile. I don't have that information. I'd have
2498 to take that back.

2499 Mrs. Lummis. And I would like to request how many have

2500 you identified to date? That is a request for information
2501 again.

2502 Have you asked OIRA staff to produce copies of
2503 documents related to the Waters of the U.S. rulemaking?

2504 Ms. Fucile. The search process has gone through
2505 identified custodians. I do not know exactly who those
2506 are. That's just -- I -- that's just not part of what I
2507 do. I can find that out.

2508 Mrs. Lummis. And so I am requesting that, too, because
2509 we want to know whether the OIRA staff has documents
2510 related to the WOTUS rulemaking. We want to know if they
2511 have produced all potentially responsive documents for
2512 review.

2513 Ms. Fucile. As I said before, we are -- this is an
2514 outstanding requests. We are continuing. We certainly
2515 have not produced all documents, and we are committed to
2516 continuing --

2517 Mrs. Lummis. Well, pursuant to those four early
2518 requests, I renew those requests, Mr. Chairman, and yield
2519 back.

2520 Chairman Chaffetz. Are you committed to providing all
2521 of those documents?

2522 Ms. Fucile. We are committed to providing the

2523 committee the information that it needs. We are --

2524 Chairman Chaffetz. Well, we determine what we need, so
2525 the question is, are you going to provide all the
2526 documents?

2527 Ms. Fucile. We're -- we certainly --

2528 Chairman Chaffetz. That isn't a simple yes. You can't
2529 say yes to that?

2530 Ms. Fucile. We're committed to getting the committee
2531 the information it requested. We certainly are committed
2532 to going through all of those documents. There is a
2533 process that is a longstanding practice between this
2534 administration, other administrations to make sure that the
2535 documents are relevant, to make sure that the documents
2536 adhere to privacy concerns. All the information we've
2537 given you so far has been complete without redactions.
2538 We're committed to continuing this process.

2539 Chairman Chaffetz. I want to know if you're committed
2540 to giving us all the documents, yes or no?

2541 Ms. Fucile. We are committed to getting you the
2542 information that you need and producing documents and
2543 continuing to produce documents and to working with you on
2544 that.

2545 Chairman Chaffetz. Why can't you just say yes or no?

2546 Are you going to give us all the documents we asked for,
2547 yes or no?

2548 Ms. Fucile. Part of the problem is I personally don't
2549 know what the universe of all the documents is. I -- we
2550 are committed to getting you the documents.

2551 Chairman Chaffetz. When?

2552 Ms. Fucile. We are -- have increased our production
2553 and response rate. I expect that will continue --

2554 Chairman Chaffetz. Well, you had enough information
2555 that you actually produced a rule, so why can't you provide
2556 those underlying documents to Congress?

2557 Ms. Fucile. The -- as the Congresswoman pointed out,
2558 this rule is under litigation. That increases the amount
2559 of work that needs to go done -- be done in terms of
2560 producing documents. We are committed. We -- I expect
2561 that we will be able to continue to produce documents, that
2562 we will be able to produce documents this month -- or next
2563 month by -- in short order, you know, and we're committed
2564 to work with your staff on that.

2565 Chairman Chaffetz. When is it reasonable to give us
2566 the -- what date? I am looking for a date.

2567 Ms. Fucile. I can't give you a date certain because
2568 the breadth of the subpoena is so broad, but I can commit

2569 that within the next month we will produce more documents.

2570 Chairman Chaffetz. Wow. This is what we are up
2571 against.

2572 All right. I will now recognize the gentlewoman from
2573 New York, Ms. Maloney, for 5 minutes.

2574 Mrs. Maloney. I would like to thank the chairman and
2575 the ranking member and all of the panelists today. And I
2576 believe we can all agree in a bipartisan way that Congress
2577 has the right and it is essential that Congress have access
2578 to all of the information that it needs to conduct its
2579 business and to provide proper oversight. I think we can
2580 all agree to that.

2581 But today's hearing seems to be focused on production
2582 delays by a few agencies for a handful of documents,
2583 although several agencies have produced large numbers of
2584 information to this committee. So I would like to suggest
2585 that rather than suggesting that executive agencies
2586 generally do not comply with congressional oversight
2587 request, the facts, the facts show the exact opposite.

2588 And Assistant Secretary Frifield, in your testimony,
2589 you said that in 2015 the State Department provided more
2590 than 2,500 briefings and responded to more than 1,700
2591 letters and appeared at 168 hearings. That is a staggering

2592 amount of response. It is almost amazing. Are these
2593 numbers correct?

2594 Ms. Frifield. Yes, Congresswoman, they are correct.

2595 Mrs. Maloney. Okay. And you also said that the State
2596 Department is responding to dozens of investigations,
2597 again, by a staggering nine different committees. Now, is
2598 that correct?

2599 Ms. Frifield. Yes, it is.

2600 Mrs. Maloney. And then you said that this is twice as
2601 many as it was in 2014, and is that correct?

2602 Ms. Frifield. Yes.

2603 Mrs. Maloney. So according to our records, our
2604 committee held about 90 hearings last year, and of those,
2605 witnesses from the executive agencies were testifying and
2606 playing a crucial role in 65 of them.

2607 So my question to you is do you have time to do
2608 anything else after responding to all of these
2609 congressional responses and requests and investigations and
2610 hearings and letters? It is a staggering amount of work.

2611 Ms. Frifield. It is, and I thank you for acknowledging
2612 that. We -- I mean, we take a lot of pride in what we do,
2613 and we feel it's very important. And as Congressman
2614 Cummings says, we are in many ways the advocate for you on

2615 the Hill. We work with our agencies to make sure that
2616 people on the Hill get what they need. Most of us come
2617 from a Hill background. We know what you need. We
2618 understand the pressures and the demands that are under for
2619 Members of Congress, and our job is to make sure they get
2620 what they need.

2621 And certainly, with the State Department with the
2622 crises around the world, we know that Congress is
2623 intimately involved in many, many aspects of those, and our
2624 job is to make sure that you have the information you need
2625 to make decisions, very important decisions on everything
2626 going on in the --

2627 Mrs. Maloney. So in your job do you do anything else
2628 but respond to congressional requests?

2629 Ms. Frifield. That is most of my job.

2630 Mrs. Maloney. That is most of -- you would say, is
2631 that 90 percent of your job or 80 or 20 or 30?

2632 Ms. Frifield. It is my -- it is my entire job pretty
2633 much.

2634 Mrs. Maloney. It is your entire job?

2635 Ms. Frifield. Yes.

2636 Mrs. Maloney. It is 100 percent of your job --

2637 Ms. Frifield. Yes.

2638 Mrs. Maloney. -- is to respond to congressional
2639 requests? Okay. All right.

2640 And in fact more than 45 witnesses who testified before
2641 the committee last year came from the five departments that
2642 are represented here today. And, Ms. Frifield, were you
2643 aware of that, that that is happening, that you are here
2644 all the time? I guess you do.

2645 Now, Assistant Attorney General Kadzik, this committee
2646 received more than 200 letter responses from executive
2647 agencies in 2015. For example, in 2015 the committee sent
2648 about 16 letters to the Department of Justice and received
2649 28 responses. Does that sound about right to you?

2650 Mr. Kadzik. Yes, it does, Congresswoman.

2651 Mrs. Maloney. Again, it is a staggering amount of
2652 work.

2653 And, Assistant Secretary Johnson, the Department of
2654 Homeland Security and its component agencies provided
2655 information on topics ranging from immigration and visas to
2656 border and transportation security. And during our
2657 investigation of the Secret Service, we received 17
2658 briefings, eight transcribed interviews, Director Clancy's
2659 testimony twice, and more than 15,000 pages of documents
2660 and four in camera interviews. Does that sound about

2661 right?

2662 Ms. Johnson. Yes, Congresswoman.

2663 Mrs. Maloney. Yes. And, Assistant Director Fucile, my
2664 understanding is that the Office of Management and Budget,
2665 on behalf of OIRA, has produced more than 9,000 pages of
2666 documents in response to the committee -- in response to
2667 this particular -- more than this committee but in response
2668 to committees' requests and has repeatedly asked this
2669 committee for further guidance. Does that sound about
2670 right to you?

2671 Ms. Fucile. That sounds about right.

2672 Mrs. Maloney. Okay. And OMB is continuing to produce
2673 responsive documents. Is that correct?

2674 Ms. Fucile. Correct.

2675 Mrs. Maloney. So today's hearing also highlights four
2676 requests the committee has made to the Office of Personnel
2677 Management and, Director Levine, OPM has produced
2678 responsive documents to each of these requests and is
2679 continuing to do that. Is that correct, too?

2680 Mr. Levine. To the extent there are outstanding
2681 requests, yes, that's correct. Thank you.

2682 Mrs. Maloney. Well, I want to congratulate you on
2683 responding to a staggering amount of requests. And I know

2684 it is difficult to get it done as quickly and as
2685 responsively as you have, so I want to thank you for your
2686 public service.

2687 I yield back.

2688 Chairman Chaffetz. Thank you.

2689 I will now recognize the gentleman from North Carolina,
2690 Mr. Meadows, for 5 minutes.

2691 Mr. Meadows. Thank you, Mr. Chairman. I want to
2692 follow up on what you had been talking about and actually
2693 Mrs. Lummis as well. Ms. Fucile, your characterization
2694 with my good friend Mr. Connolly troubles me because you
2695 have indicated that because of the wide breadth of the
2696 request that has caused you do not be able to fulfill what
2697 initially started out as a very simple request. And so
2698 what you are indicating today is that you have gotten no
2699 guidance from this committee on any priorities. Is that
2700 your testimony?

2701 Ms. Fucile. No, that's not what I -- I stated I didn't
2702 say we didn't have any guidance. I -- I --

2703 Mr. Meadows. Well, you said it was so wide from 2009
2704 on.

2705 Ms. Fucile. It is a very wide --

2706 Mr. Meadows. All right. So you have gotten --

2707 Ms. Fucile. -- request.

2708 Mr. Meadows. -- guidance. Would you say that you

2709 have --

2710 Ms. Fucile. And I would say that in one instance when

2711 we got guidance, we were able to respond very successfully.

2712 You asked us for some --

2713 Mr. Meadows. Well --

2714 Ms. Fucile. -- information about the administrator's

2715 personal email. We responded with that information.

2716 Mr. Meadows. Well, let me --

2717 Ms. Fucile. And that kind of --

2718 Mr. Meadows. Let me go --

2719 Ms. Fucile. -- give-and-take --

2720 Mr. Meadows. Okay. But let me --

2721 Ms. Fucile. -- is very helpful.

2722 Mr. Meadows. Let me go. I have got 5 minutes.

2723 Because I wasn't going to bring us up, but this is the

2724 entire response that we have gotten from OMB with regards

2725 to two letters and a subpoena. Now, the problem that I

2726 have with it is all of this is either the proposed rule or

2727 what could be found online. And in 10 months this is all

2728 that we have gotten from you. And I went through and most

2729 of this is it duplicates. Is this the best you can do?

2730 Ms. Fucile. To your question about duplicates, a lot
2731 of the communication between senior OIRA officials has to
2732 do with comments on iterations of the rule. As such --

2733 Mr. Meadows. But this is an email chain --

2734 Ms. Fucile. -- all of those communications --

2735 Mr. Meadows. This is an email chain --

2736 Ms. Fucile. -- we include the iterations of the rule.

2737 Mr. Meadows. No, this is an email chain -- I will let
2738 you review it. Let me just tell you what offends me is
2739 that we send you a simple request, and then what you give
2740 us is things that we can get our own staff to look up. And
2741 so here is my question to you, as a follow up on what the
2742 chairman said, what have you, through your process, decided
2743 not to give this committee?

2744 Ms. Fucile. We have decided not -- we have not decided
2745 not to give this committee anything --

2746 Mr. Meadows. So in 10 months --

2747 Ms. Fucile. -- we have looked at --

2748 Mr. Meadows. -- you have decided to give us everything
2749 that you have looked at? Is that your testimony?

2750 Ms. Fucile. The documents that we have reviewed we
2751 have turned over. The other ones remain in process. We
2752 are continuing -- I said earlier that we're going to

2753 provide more documents this coming month --

2754 Mr. Meadows. All right. So what reason would there
2755 be --

2756 Ms. Fucile. We have not redacted anything --

2757 Mr. Meadows. I am asking -- wait, that is not true.
2758 You have redacted a lot.

2759 Ms. Fucile. Phone numbers and emails is what has --

2760 Mr. Meadows. Well --

2761 Ms. Fucile. -- been redacted --

2762 Mr. Meadows. Okay. Okay.

2763 Ms. Fucile. -- only.

2764 Mr. Meadows. I have read all of the emails, and so
2765 what I am suggesting to you at this particular point is
2766 what theory would you invoke to not give this committee the
2767 documents that regarded this rulemaking?

2768 Ms. Fucile. We have not said that we're not giving you
2769 documents. I specifically said --

2770 Mr. Meadows. So you are going to give us all the
2771 documents?

2772 Ms. Fucile. -- we said that. We have given every
2773 document that --

2774 Mr. Meadows. So you are going to give us all the
2775 documents?

2776 Ms. Fucile. We are continuing to move forward on that
2777 production, and we're -- we --

2778 Mr. Meadows. It is a simple question.

2779 Ms. Fucile. -- we have provided the documents --

2780 Mr. Meadows. Are you going to give us --

2781 Ms. Fucile. -- we're going to continue to provide
2782 documents.

2783 Mr. Meadows. Are you going to give us all the
2784 documents?

2785 Ms. Fucile. And the more direction we have in terms of
2786 what is most helpful, the more responsive our responses
2787 will be.

2788 Mr. Meadows. Are going to give us all the documents?

2789 Ms. Fucile. We're going to continue to provide the
2790 committee with the information they request.

2791 Mr. Meadows. So the answer is no? There are two
2792 questions here. Either you are going to give us all the
2793 documents, or I ask -- the other side of that is what would
2794 be the rationale to not give this committee documents? Is
2795 it a national security threat on the WOTUS rule? Yes or
2796 no?

2797 Ms. Fucile. I don't want to speak to documents I
2798 haven't seen that I don't know about.

2799 Mr. Meadows. Okay. Let me suggest --

2800 Ms. Fucile. There are --

2801 Mr. Meadows. -- that there is no reason not to give
2802 this committee all the documents. There is no reason. And
2803 unless you can testify that --

2804 Ms. Fucile. Because we're under litigation for this
2805 rule, there are lots of equities to be concerned about.
2806 There's also -- we need to make sure that there's nothing
2807 that's in documents that doesn't --

2808 Mr. Meadows. Okay. Can we count on --

2809 Ms. Fucile. -- affect other agencies' --

2810 Mr. Meadows. Can we count on --

2811 Ms. Fucile. -- equities --

2812 Mr. Meadows. -- all responsive documents? Every 3
2813 weeks can we get responsive documents on a regular basis?
2814 You have got four custodians. Two haven't given us
2815 anything. And so can we count on that on a 3-week basis,
2816 every 3 weeks getting something from you? Is that
2817 reasonable?

2818 Ms. Fucile. I don't feel comfortable saying every 3
2819 weeks.

2820 Mr. Meadows. Well, you don't feel comfortable. Let me
2821 just tell you, I am tenacious. I am not going to give up

2822 on this, and so you just need to tell your staff I am not
2823 going to give up on it.

2824 Ms. Johnson, I am going to finish with you. You said
2825 simple requests are things that you can get done very
2826 quickly. We talked about visa overstays. There is an
2827 internal document that DHS has that has a number of visa
2828 overstay potentials, that that document could be produced
2829 within 24 hours. Are you willing to produce that document
2830 to this committee?

2831 Ms. Johnson. Congressman, the Senate -- the Secretary
2832 is keenly aware of this committee's and other committees'
2833 desire for the visa overstay report, and I know that he has
2834 put specific attention to getting a report completed.

2835 Mr. Meadows. I don't want a report. I want those
2836 documents. They are just, you know, a few pages. So can
2837 you produce those documents, give to this committee in
2838 short order within a week, or is there a national security
2839 concern that you would have to be concerned about?

2840 Ms. Johnson. Congressman, I don't -- I honestly don't
2841 know what documents they are. I don't think we have an
2842 outstanding request --

2843 Mr. Meadows. But we have had sworn testimony where --

2844 Ms. Johnson. -- for that --

2845 Mr. Meadows. -- both people have acknowledged that
2846 there are internal documents that has a number of visa
2847 overstays on it. It is an internal DHS document that you
2848 could produce within a week. Are you willing to produce
2849 that?

2850 Ms. Johnson. Congressman, I'm not prepared to say
2851 that. If we have a request for that document, what I know
2852 is outstanding is --

2853 Mr. Meadows. Well, you do have --

2854 Ms. Johnson. -- the visa --

2855 Mr. Meadows. -- you already have a request.

2856 Ms. Johnson. -- overstay report.

2857 Mr. Meadows. Well, you --

2858 Ms. Johnson. And the visa overstay report is -- we
2859 admit is overdue --

2860 Mr. Meadows. Okay. Okay.

2861 Ms. Johnson. -- and the Secretary is committed to
2862 getting that out.

2863 Mr. Meadows. All right. With the chairman's
2864 indulgence, I am going to make that official request that I
2865 would like within 7 days those internal documents, which
2866 should be only a few pages, submitted to this committee
2867 with the number of overstays unless -- are you saying there

2868 is a national security concern?

2869 Ms. Johnson. Congressman, I'm not sure -- I've never
2870 seen the document, so I don't know what --

2871 Mr. Meadows. I yield back.

2872 Ms. Johnson. -- concerns there may be.

2873 Chairman Chaffetz. Before the gentleman yields back,
2874 if you will be okay to yield to Mr. Cummings.

2875 Mr. Cummings. Ms. Fucile, I have been sitting here
2876 watching you try to answer these questions, and you can't
2877 -- it seems as if there is something blocking you from
2878 being able to give a definitive answer. And I am just
2879 trying to figure out, are you the appropriate person that
2880 we should be asking? It seems like there is something -- I
2881 don't know whether you feel like you have got to report to
2882 a higher authority, whether there are hoops that you have
2883 to go through, but in fairness to the committee -- and I am
2884 always about effectiveness and efficiency. I mean, is
2885 there somebody else we need to be asking those questions
2886 to? Do you follow me?

2887 Ms. Fucile. I understand your question. My --

2888 Mr. Cummings. Because you have struggled --

2889 Ms. Fucile. My hesitancy is more about making a
2890 commitment to something in the abstract while I am under

2891 oath that I just don't know about, and that makes me really
2892 nervous. And that's my hesitancy.

2893 I'm here today to work with you. We're not trying to
2894 withhold anything. We haven't withheld anything. Our
2895 production hasn't been fast enough and it can and it should
2896 be better. But I'm not saying we're not going to produce
2897 all the documents because I'm purposely trying to hide
2898 something. I just don't want to get myself in trouble by
2899 promising something about -- and then later on there's some
2900 issue that I at this moment know nothing about, and I just
2901 don't want to do that.

2902 Mr. Cummings. Well, you know what, that makes sense.
2903 That makes a lot of sense because I can tell you that if
2904 you make a commitment and then you don't keep the
2905 commitment, you will catch out. So, I mean, that makes
2906 sense. But I was just --

2907 Ms. Fucile. Thank you.

2908 Mr. Cummings. -- wondering.

2909 Chairman Chaffetz. Before the gentleman yields back,
2910 the concern here is Mr. Meadows first made his request in
2911 March of last year. And the reason you are here is we
2912 still don't have this information. That is why you have
2913 Mrs. Lummis, Mr. Meadows, this whole committee frustrated.

2914 Do you understand that?

2915 Ms. Fucile. I certainly understand that. I appreciate
2916 that. I admit completely that our production has not been
2917 fast enough, and we will continue -- we will do better.

2918 Chairman Chaffetz. Just turn on the photocopier.

2919 Ms. Fucile. It -- we can't -- it doesn't work that
2920 way. The search process doesn't work that way. It --

2921 Chairman Chaffetz. You have these materials enough so
2922 to make a rule but you don't have the -- somebody comes to
2923 the conclusion, they have looked at all the information,
2924 now they are going to make a rule. We want to see that
2925 information. I have got to ask --

2926 Ms. Fucile. And I have committed that we will work to
2927 get you that. I am here to help. I want to be helpful.

2928 Chairman Chaffetz. What about results? You are a very
2929 nice person. I am just -- we are not seeing the results of
2930 it.

2931 Now, I have got to ask you one other thing in follow-up
2932 with Mr. Meadows. You have cited a couple of times that
2933 there are different stakeholders, and that is causing some
2934 delay. You have mentioned litigation, ongoing litigation.
2935 What in the world does that have to do with Congress's
2936 right to review documents?

2937 Ms. Fucile. With any document research, different
2938 equities -- different equities are given the opportunity to
2939 review to make sure that there isn't a sensitive matter
2940 that we are not aware of that is sensitive before it's
2941 turned over. That's our standard practice.

2942 Chairman Chaffetz. So what is it that you believe
2943 Congress shouldn't look at?

2944 Ms. Fucile. We haven't said that anything shouldn't be
2945 turned over.

2946 Chairman Chaffetz. I can't think of anything --

2947 Ms. Fucile. We haven't --

2948 Chairman Chaffetz. -- that OMB is --

2949 Ms. Fucile. We haven't said no to turning anything
2950 over.

2951 Chairman Chaffetz. Then why not give us everything?

2952 Ms. Fucile. We're working on that. It's an incredibly
2953 broad subpoena, 9 years.

2954 Chairman Chaffetz. And you give us handfuls of
2955 documents, and you -- just photocopy --

2956 Ms. Fucile. But the time that --

2957 Chairman Chaffetz. -- and give it to us.

2958 Ms. Fucile. -- we were most successful in providing
2959 documents to you was when we had a conversation with your

2960 staff about what you wanted, and you asked for emails from
2961 the administrator. We've been asking for meetings with
2962 your staff, and until yesterday, they weren't available to
2963 meet with us.

2964 Chairman Chaffetz. Okay, that is not true. That is --
2965 Ms. Fucile. It is true.

2966 Chairman Chaffetz. -- absolutely not true.

2967 Ms. Fucile. It is true.

2968 Chairman Chaffetz. You are infuriating. As nice and
2969 sweet as you want to portray yourself, this is infuriating.
2970 This request came in March, and here we are, turning the
2971 new year. I am going to ask you one more time and then we
2972 will go to Mr. Cartwright -- I appreciate the committee's
2973 indulgence -- articulate for me what you believe Congress
2974 should not see.

2975 Ms. Fucile. We have not said that you can't see
2976 anything. There has been no document that we haven't given
2977 you that we've looked at.

2978 Chairman Chaffetz. There is no -- well, then why not
2979 give it to us? You haven't given -- have you given us all
2980 the documents since March's request?

2981 Ms. Fucile. I have said that the -- I have said that
2982 the document request is still outstanding. I have said

2983 that I will work with you to get them more and to get
2984 faster. I cannot do more than that.

2985 Chairman Chaffetz. Yes, you can. You actually can and
2986 you are not.

2987 We are now going to recognize Mr. Cartwright from
2988 Pennsylvania for a generous 5 minutes.

2989 Mr. Cartwright. Thank you, Mr. Chairman.

2990 Mr. Levine, I have some questions for you. You are the
2991 director of the Office of Congressional Legislative and
2992 Intergovernmental Affairs of OPM, is that correct?

2993 Mr. Levine. Yes, sir, Mr. Congressman.

2994 Mr. Cartwright. Well, thank you for being here today.
2995 And for the record, I think you are nice and sweet, too.

2996 Mr. Levine. I appreciate that. So does my family.

2997 Mr. Cartwright. I am particularly interested in OPM
2998 because we had this data breach, and we had a couple of
2999 significant breaches that impacted really millions and
3000 millions of current and former Federal employees. This
3001 committee has been investigating the cause of those
3002 breaches on a bipartisan basis with the goal of ensuring
3003 really that OPM has the necessary tools to prevent this
3004 kind of thing from happening again.

3005 As part of the investigation, this committee sent four

3006 requests for documents and information. Now, as of today,
3007 I understand that OPM has produced documents responsive to
3008 each of the committee's four letter requests. Am I correct
3009 on that?

3010 Mr. Levine. Yes, sir.

3011 Mr. Cartwright. And as part of your job, is that what
3012 you spend a majority of your time doing as well?

3013 Mr. Levine. Yes. I would say the overwhelming
3014 majority of the time that I've spent at OPM has been in the
3015 area of responding to the cyber incidents both with respect
3016 to the congressional requests that you're referring to from
3017 this committee and others, as well as providing information
3018 to Members, particularly in the caseworkers in the
3019 constituent office -- in the district offices to have
3020 information about the services that we've provided to
3021 respond to the breaches, so --

3022 Mr. Cartwright. All right. So one of --

3023 Mr. Levine. -- both areas.

3024 Mr. Cartwright. One of the things that we did was, in
3025 addition to asking OPM directly for documents, we have also
3026 asked contractors of OPM, including KeyPoint, for
3027 documents. You are aware that, are you?

3028 Mr. Levine. Yes.

3029 Mr. Cartwright. Well, we had the KeyPoint CEO in here
3030 for a hearing not too long ago, a gentleman who pretty much
3031 admitted that KeyPoint was responsible, a KeyPoint employee
3032 was responsible for one of the data breaches. And we were
3033 questioning him about why it was taking them 5 months to
3034 respond to our document request. Just to make it clear, is
3035 that part of your document request response to produce
3036 KeyPoint documents, or is that theirs separately?

3037 Mr. Levine. I don't believe it is, but to the extent
3038 it is, I'll circle back. But I don't believe it is.

3039 Mr. Cartwright. Okay.

3040 Mr. Levine. But I don't think so.

3041 Mr. Cartwright. No, I didn't think so either. So I
3042 guess that begs the question then, are you aware of why
3043 either the CEO of KeyPoint or anybody from KeyPoint has not
3044 been called to testify before this committee today, having
3045 taken in excess of 5 months to respond to the ranking
3046 member's letter asking for documents? Are you aware why we
3047 didn't get a request from this committee to the KeyPoint
3048 management to explain themselves?

3049 Mr. Levine. I am not aware of why that has not
3050 happened.

3051 Mr. Cartwright. I am not either, and I am concerned

3052 about that. We haul before this committee the people who
3053 have responded to the document requests, and my
3054 understanding that KeyPoint has still not responded 100
3055 percent to all the document requests. Are you aware of any
3056 reason why KeyPoint should not have responded 100 percent
3057 to our document requests?

3058 Mr. Levine. I am not aware of any reason.

3059 Mr. Cartwright. All right. Well, what about OPM for
3060 its part? How many documents has OPM produced to this
3061 committee?

3062 Mr. Levine. To this committee I want to say in the
3063 thousands, probably in the -- probably over 5,000. I think
3064 what we've tried to do, to the chairman's earlier request,
3065 is focus on the ones that were the most -- that were
3066 responsive as -- to provide that information as opposed to
3067 just documents.

3068 Mr. Cartwright. Well, Director Levine, has OPM ever
3069 taken the position at any point that it will no longer
3070 respond to this committee's requests?

3071 Mr. Levine. Absolutely not.

3072 Mr. Cartwright. And throughout the course of
3073 identifying, gathering, and producing documents, can you
3074 tell us what challenges OPM has faced that would account

3075 for any delays in producing documents to the committee?

3076 Mr. Levine. Yes, absolutely. I think it's fair to say
3077 that OPM is a small agency that in the past had not been
3078 challenged with this level of a document production and
3079 simply did not have the infrastructure in place, whether it
3080 be staffing level, an expertise level, on a technical
3081 document management level to quickly, efficiently,
3082 accurately produce documents in this way.

3083 And in addition, the -- you know, the overriding
3084 priority of the agency since the breaches, particularly
3085 Acting Director Cobert and my office has been on being
3086 responsive to Congress, again, both with respect to the
3087 document requests, as well as information about the other
3088 services.

3089 So, I mean, I think it's been a combination, the
3090 delays, and there have been delays, and we would like to
3091 get things out as quickly as we can, and we're working to
3092 do that and I think we've been moderately successful. But
3093 the delays, I think, go to just the breadth -- or the
3094 volume and the lack of preparedness for that volume once it
3095 hit.

3096 Mr. Cartwright. Well, I thank you for your testimony
3097 today. I thank you for your efforts in complying with

3098 these requests. And thank you for working with us to make
3099 sure these kinds of data breaches don't happen again.

3100 And I yield back, Mr. Chairman.

3101 Chairman Chaffetz. I thank the gentleman.

3102 I will now recognize the gentleman from North Carolina,
3103 Mr. Walker, for 5 minutes.

3104 Mr. Walker. Thank you, Mr. Chairman.

3105 Mr. Kadzik, on December 21 the Department of Justice
3106 sent a letter to State and local law enforcement with
3107 absolutely no warning in deferring the payment sharing of
3108 the Asset Forfeiture Program. In fact, Mr. Chairman, I
3109 would like to submit this letter into record.

3110 Chairman Chaffetz. All right. Without objection, so
3111 ordered.

3112 [The information follows:]

3113

3114 Mr. Walker. Thank you, Mr. Chairman.

3115 This program may need reform, yet our local county
3116 sheriffs and other law enforcement depend on these seized
3117 funds. To pull the rug out from under these local law
3118 enforcements with absolutely no warning or no
3119 consideration, I believe, is preposterous. In fact, let me
3120 read from the letter. It says, "Effective immediately, the
3121 Department will defer all equitable sharing payments to our
3122 State, local, and tribal partners and transfer any items
3123 for official use." Why would the Department of Justice,
3124 with no warning, on December 21 say this program is either
3125 stalled, concluded, in fact, it doesn't really say to what
3126 degree? Can you explain this?

3127 Mr. Kadzik. I'm not intimately familiar with that
3128 program, Congressman, but my understanding is that the
3129 funds that were part of that program were reallocated by
3130 Congress and the budget, so there was no money there to
3131 distribute.

3132 Mr. Walker. According to this, this says this is a
3133 decision by the Department of Justice. I want to come back
3134 to that. But I want to also, speaking of sheriffs, talk
3135 about what happened on November 17, 2015. Following
3136 Attorney General Loretta Lynch's appearance in the House

3137 Judiciary Committee, Mr. Chaffetz submitted a number of
3138 questions for the record to the Department. These
3139 questions concerned reports from multiple sheriffs of North
3140 Carolina, predominately, a sheriff in our district, from
3141 Alamance County, concerning how the Department of Justice
3142 has terminated or refused to renew grants to local police
3143 departments based on allegations of racial discrimination.
3144 These questions seek to learn how often and under what
3145 circumstances these grants denials have been made. Did you
3146 receive these questions for the record?

3147 Mr. Kadzik. I believe we did.

3148 Mr. Walker. And what has been the submitted response?

3149 Mr. Kadzik. My understanding is that those responses
3150 are being prepared now and will be submitted promptly.

3151 Mr. Walker. And when you say submitted promptly, what
3152 is the time frame that you believe that --

3153 Mr. Kadzik. I can't --

3154 Mr. Walker. -- would conclude?

3155 Mr. Kadzik. I can't give you a specific time frame,
3156 but I'd be happy to go back and check on the status and
3157 respond to you.

3158 Mr. Walker. Who receives these responses? Who vets
3159 them?

3160 Mr. Kadzik. Who vets them?

3161 Mr. Walker. Yes.

3162 Mr. Kadzik. The various components within the
3163 Department that have responsibility for the areas that are
3164 the subject of the questions.

3165 Mr. Walker. Okay. I want to sort of cut through the
3166 vagueness there or the ambiguity and ask this: Assuming we
3167 would like to follow up on the answers that you are saying
3168 promptly that you will provide for us, is there a mechanism
3169 in place for us to submit such follow-up questions? And
3170 can you share with me what and how that works?

3171 Mr. Kadzik. You can send correspondence to the
3172 attorney general or to me.

3173 Mr. Walker. Okay. Do you think Congress should submit
3174 more QFRs? Would that provide a helpful mechanism for the
3175 Department to answer our questions?

3176 Mr. Kadzik. Well, no. If we had outstanding QFRs,
3177 we'll respond to the ones that are there.

3178 Mr. Walker. Let me ask --

3179 Mr. Kadzik. Asking the same question again doesn't
3180 make it any easier to respond to it.

3181 Mr. Walker. Well, then let me ask a general question
3182 then. In your opinion do you consider it part of your

3183 mission to be helpful to Members of Congress in providing
3184 these responses?

3185 Mr. Kadzik. Absolutely.

3186 Mr. Walker. Okay. So I want to conclude with this
3187 question. When you say prompt, can you give me a timeline?
3188 Is there a time frame, 2 weeks, 4 weeks, 2 months? I would
3189 like to know -- listen, this sheriff -- this has been
3190 ongoing for 7 years. And even recently, okay, the
3191 Department of Justice -- the court came together, they made
3192 a decision, no wrongdoing here, he thought he was getting
3193 his grants. The Friday before that he was supposed to get
3194 the grants, the Department of Justice appealed this
3195 decision. So please tell me when you say promptly, what
3196 does that look like for us?

3197 Mr. Kadzik. Well, I'm not -- I don't recall the volume
3198 of QFRs that we received. I'll go back and look at those
3199 and I'll try and provide you with a timeline as to when we
3200 can respond.

3201 Mr. Walker. You would try to provide me with a
3202 timeline on when you could respond. That is what
3203 frustrates us, the ambiguity, maybe here, possibility --
3204 can we set maybe end of January, 1st of February? Is there
3205 a specific timeline that you -- according to me that is

3206 prompt? You said the word prompt. What is a prompt
3207 response that I can let this sheriff, who has gone through
3208 7 years of hell trying to get past this and get his grants
3209 where he can make not offensive weapons but defensive
3210 weapons for his deputies, for his officers that he can
3211 protect the community of Alamance County? What is a prompt
3212 response for that?

3213 Mr. Kadzik. Well, not being familiar with the
3214 particular question that was asked or the circumstances of
3215 why the grant was denied or terminated, I can't tell you
3216 precisely what prompt would be. As I said, I'll be happy
3217 to go back to inquire as to the status of it and then give
3218 you a timeline.

3219 Mr. Walker. So maybe it was best not to use the word
3220 prompt, just maybe you would get an answer back to me at
3221 some point.

3222 Mr. Kadzik. Well, I --

3223 Mr. Walker. Thank you, Mr. Chairman. I yield back.
3224 Chairman Chaffetz. I now recognize the ranking member,
3225 Mr. Cummings, for 5 minutes.

3226 Mr. Cummings. Mr. Kadzik, I would hope that you would
3227 make it a priority with regard to Mr. Walker's request.

3228 You know, one of the things that happens in Congress,

3229 sadly, is that in order for us to get answers, we have to
3230 wait until people like you all get before us, and it
3231 shouldn't be that way. We should be able to get the
3232 answers. And all we are trying to do is represent our
3233 constituents.

3234 And all of us have been in a position of Mr. Walker,
3235 and it is very frustrating. When he goes back to his
3236 district, he has got people that say, well, you know, I
3237 just saw you on C-SPAN and you had the folks before you.
3238 Well, what did they tell you? And did they say when we are
3239 going to get an answer? I guarantee you, by the time he
3240 gets back to his office, he is going to have somebody
3241 calling. That sheriff is going to call, and somebody is
3242 going to say thank you -- first, they are going to say
3243 thank you for raising it, but then they are going to say,
3244 well, did you have a conversation afterwards, and when is
3245 he going to get us the answer? So I would ask you to make
3246 that a priority, okay, to look into it.

3247 Mr. Kadzik. We will, sir.

3248 Mr. Cummings. Thank you.

3249 Assistant Secretary Frifield, the State Department
3250 faces huge challenges with its document management systems,
3251 and you have heard my complaints. And that has been

3252 decades old and affected previous administrations. Would
3253 you agree?

3254 Ms. Frifield. Yes, sir.

3255 Mr. Cummings. And we appreciate very much the State
3256 Department has produced more than 160,000 pages of
3257 documents to this committee last year. However, there is
3258 no denying that some responses have taken longer than we or
3259 you would like. You have your own significant professional
3260 experience on Capitol Hill, is that right?

3261 Ms. Frifield. Yes, sir.

3262 Mr. Cummings. So you are familiar with the information
3263 demands that the Congress has, is that right?

3264 Ms. Frifield. Yes.

3265 Mr. Cummings. I think you worked with Senator
3266 Mikulski?

3267 Ms. Frifield. Yes.

3268 Mr. Cummings. You can get no better boss, that is for
3269 sure. Her standards are extremely high, would you agree?

3270 Ms. Frifield. Absolutely.

3271 Mr. Cummings. Do you agree that the State Department's
3272 internal document management systems are not ideal?

3273 Ms. Frifield. Yes, we do.

3274 Mr. Cummings. And in your position as the head of the

3275 legislative affairs at the State Department, do you have
3276 the ability to talk to Secretary Kerry about the challenges
3277 that you face?

3278 Ms. Frifield. Yes.

3279 Mr. Cummings. And have you ever done that?

3280 Ms. Frifield. Yes, sir.

3281 Mr. Cummings. Have you ever proposed changes to the
3282 current systems, and if so, what was that response?

3283 Ms. Frifield. Yes, we've created a whole new system
3284 for responding to congressional requests that is separate
3285 from the FOIA system. We've gotten full support from the
3286 State Department, from the Secretary to do that. It's only
3287 recently up and running so we are still working out some of
3288 the kinks, but I'm hoping that this will transform the way
3289 we are able to respond to Congress and enable us to do it
3290 in a quicker way and also in a more convenient way so it's
3291 computerized and easily searchable and just more of this
3292 century than the way we used to do it.

3293 Mr. Cummings. Now, did you propose creating a
3294 Congressional Document Production branch?

3295 Ms. Frifield. Yes, sir.

3296 Mr. Cummings. And can you tell us more about why you
3297 wanted this new unit and what your vision is?

3298 Ms. Frifield. It enables us to computerize and make a
3299 more technologically savvy system of collecting documents.
3300 We used to have to compete for resources with the FOIA
3301 producers. They -- we had the same office, the same people
3302 doing it. Now, we have a separate entity which is able to
3303 help us process just documents for Congress.

3304 Mr. Cummings. So how does that help you produce
3305 documents?

3306 Ms. Frifield. It helps us because it's the -- it's a
3307 sort of first major step in the process of collecting
3308 documents is to actually physically collect them, collate
3309 them, number them, and get them ready for review. So that
3310 makes the whole early part of the process much easier.
3311 It's not the entire process.

3312 But if I could also say, sir, that the Secretary,
3313 recognizing larger issues we have with some of our
3314 information management, he asked the OIG to do reports on
3315 how we actually do our FOIA system, our records
3316 managements, and other things of that nature. He also
3317 appointed a transparency coordinator, a former ambassador,
3318 who's actually helping us implement the changes across the
3319 board. So we're hoping that we're able to implement
3320 changes that make it better in our FOIA system, better in

3321 our congressional production system.

3322 Mr. Cummings. Now, you stated in your testimony that
3323 you have made document productions to this committee and
3324 others more accessible and user-friendly. Can you briefly
3325 explain the technology and the process changes you've made?

3326 Ms. Frifield. For -- yes, sir. For many years we
3327 would provide them on paper in boxes that were unnumbered,
3328 so staff and Members had to dig through to find what
3329 they're looking for. Now, they're on disk. They have
3330 Bates stamps. It's a much more professional way of
3331 providing documents.

3332 Mr. Cummings. Would you agree there is still a lot
3333 more work to be done?

3334 Ms. Frifield. Absolutely.

3335 Mr. Cummings. You know, I just think that if -- you
3336 know, I just want to be effective and efficient, you know?
3337 I tell my staff there are two words that control everything
3338 we do: effective and efficient. We have a limited amount
3339 of time to do the jobs that we have to do. I just want to
3340 get them done. And I would say that to all of you all. I
3341 mean if there are deficiencies in your operation, please
3342 try to address them, and if there are things that we can do
3343 -- by the way, are there things that we can do? This is my

3344 last question, Mr. Chairman. Are there things that you
3345 would like to see us do other than the things I have
3346 already talked about, being kind of -- and you talked, Ms.
3347 Frifield, about limiting scope. Are there things that we
3348 can do to help you do your job so that we can do our job?
3349 Anybody? Speak now or forever hold your peace, Mr. Levine.

3350 Mr. Levine. Well, thank you for the question, Mr.
3351 Cummings. I think, as you've specifically noted, the
3352 ability to work with your staff and the chairman's staff
3353 and the committee's staff on prioritizing the information
3354 that could be most helpful for you and them and -- is the
3355 most helpful step that you can provide us as we work
3356 through the requests. And we appreciate when they have
3357 done that, and I hope we can continue that dialogue.

3358 Mr. Cummings. Anybody else? Ms. Johnson?

3359 Ms. Johnson. Yes, Congressman Cummings. It's the
3360 exact same thing. The most successful thing we did with
3361 the Secret Service request was coming back to the
3362 committee, asking you to prioritize the 18 categories. You
3363 identified four. We immediately started to search and to
3364 produce on those four. And so, yes, the constant dialogue
3365 between our offices and your staffs is extremely important.
3366 A collaborative spirit is important. And whatever we can

3367 do to try to narrow and focus the request allows us to do
3368 the searches, to do the reviews, and to produce documents
3369 much faster.

3370 Ms. Fucile. I would echo the comments of my colleagues
3371 that the narrowing and the limiting and the prioritizing
3372 really do help us in our productions.

3373 Mr. Cummings. All right.

3374 Mr. Kadzik. As I said in my opening statement,
3375 Mr. Cummings, and in response to your previous question, I
3376 believe that we've had a cooperative and not an adversarial
3377 relationship with the committee. We look forward to
3378 continuing that dialogue with both you and the chairman and
3379 staff. And that will make us more effective and more
3380 efficient.

3381 Mr. Cummings. Thank you.

3382 Chairman Chaffetz. Thank you. I now recognize the
3383 gentleman from Alabama, Mr. Palmer, for 5 minutes.

3384 Mr. Palmer. Thank you, Mr. Chairman.

3385 Mr. Levine, on June 19 of last year, Senator Mark
3386 Warner's office -- it may have been 2013; I think it was
3387 2013 -- no, 2014 -- his office sent a letter to OPM
3388 questioning the nature of the agency's credit monitoring
3389 contract with Winvale/CSID. It appears from our records

3390 that his office received a reply 4 days later on June 23.
3391 However, when this committee sent a letter requesting
3392 information on the contract, the committee didn't receive a
3393 response until a month later, which, incidentally, was 17
3394 days overdue.

3395 Now, what I want to know is what accounted for the
3396 extended time it took to respond to this committee versus
3397 the quick turnaround for Senator Warner's office? I mean
3398 do we need to ask a Senator to send a request for documents
3399 so that we can get a timely response for documents?

3400 Mr. Levine. Thank you for the question, Congressman.
3401 I would note that was prior to my arrival at OPM, but I'm
3402 aware of what you're inquiring about. So with respect to
3403 Senator Warner's letter, if I'm understanding correctly,
3404 two major differences. One, it was not a request for
3405 documents. I think it was a request for information, and
3406 we went and did brief out -- we --

3407 Mr. Palmer. So we are parsing words?

3408 Mr. Levine. No, absolutely not. The -- what -- the
3409 large distinction being Mr. -- Senator Warner asked for
3410 some information, we provided information to his staff in
3411 an oral fashion, similar to as we've done with committee
3412 staff here.

3413 Mr. Palmer. Well, let me ask you this. Do you
3414 prioritize certain requests? Do you give a higher priority
3415 to requests from certain individuals, elected officials or
3416 agencies than you do others? And let me just tell you, I
3417 have sat here now an hour and a half, two hours listening
3418 to this, Mr. Meadows from North Carolina in his discussion
3419 about the lack of response from the Office of Management
3420 and Budget, and, you know, I have to question whether or
3421 not you guys respect the constitutional authority that is
3422 invested in this committee.

3423 I mean, our responsibility is oversight. We owe that
3424 to the American people. And I have heard example after
3425 example today of how your agencies continue to impede this
3426 committee's ability to carry out our oversight
3427 responsibilities.

3428 You know, and there is a pattern here, Mr. Chairman.
3429 Before I was a Member of Congress, before I was in this
3430 committee, there was a letter signed by 47 inspectors
3431 general. I believe that is 47 out of 72, is that correct,
3432 Mr. Chairman?

3433 Chairman Chaffetz. [Nonverbal response.]

3434 Mr. Palmer. And their letter -- and I believe this is
3435 unprecedented, that the OIG's office felt like they had to

3436 send a letter to this committee because Federal agencies
3437 were impeding investigations by withholding documents. It
3438 seems to me that that is what is continuing to happen right
3439 now.

3440 You know, if this were a Department of Justice -- Mr.
3441 Kadzik, if the Department of Justice sent out a request for
3442 documents in an effort to do due diligence and
3443 investigating any issue, I doubt seriously that the
3444 Department of Justice would look very kindly upon the kind
3445 of delays that this committee has experienced. I daresay
3446 they might even issue a warrant. It would probably rise to
3447 the level of obstruction of justice.

3448 But what we have had to deal with here is delay after
3449 delay, and to delay is to obstruct in my opinion. It seems
3450 to me that you are running out the clock. There have been
3451 numerous requests. Our chairman has requested time and
3452 time again for dates certain for the production of
3453 documents. But it seems to me that you think -- and it
3454 appears to me you have been very well coached in how to
3455 respond to these requests. It just appears to me, Mr.
3456 Chairman, that they have no intention of producing the
3457 documents. That is frustrating and it is a violation of
3458 the public trust.

3459 I yield back.

3460 Chairman Chaffetz. I thank the gentleman.

3461 I now recognize the gentleman from Florida, Mr.

3462 DeSantis, for 5 minutes.

3463 Mr. DeSantis. Thank you, Mr. Chairman.

3464 Mr. Kadzik, the chairman and myself sent a letter to
3465 the Justice Department in December requesting the case file
3466 for the prosecution of Dinesh D'Souza. We asked for it by
3467 the end of the month. We have not received it, which is
3468 obviously not a surprise, given what people have said
3469 during this hearing. But I just wanted to ask you, will
3470 the Department produce the case file?

3471 Mr. Kadzik. We'll -- we're willing to come and brief
3472 on the issue. Presenting prosecution files presents
3473 particular law enforcement sensitivities. I know that the
3474 issue that you and the chairman are interested in is
3475 whether or not there was selective prosecution. That --

3476 Mr. DeSantis. Among others. I mean, there are a
3477 number of issues that we would like to review and conduct
3478 oversight about how the case was handled. And, you know,
3479 we want to get prompt responses. We don't want this to
3480 turn into the IRS or some of the other investigations that
3481 have just been stonewalled to death.

3482 So the case is over. There is no ongoing
3483 investigation. The sentence, I think, has even been
3484 served, and clearly, we have a public interest in
3485 conducting oversight over how the Department is doing its
3486 job. I mean we fund your agency, and I think that we are
3487 entitled to the file. So we don't want a briefing; we want
3488 the file. So are you going to produce the file?

3489 Mr. Kadzik. I'll be happy to take that back. And we
3490 -- again, we'd be happy to brief, but as I indicated, the
3491 -- particularly the law enforcement and prosecutorial
3492 sensitivities --

3493 Mr. DeSantis. Such as?

3494 Mr. Kadzik. -- of providing a case file. Well, we --
3495 there's the names of witnesses, there's individuals who
3496 cooperated with the investigation --

3497 Mr. DeSantis. Aren't those --

3498 Mr. Kadzik. -- might not be publicly disclosed.
3499 There's the internal deliberations of the prosecutors that
3500 are deliberative and subject to the confidential --

3501 Mr. DeSantis. So basically, if a prosecutor did have
3502 illicit motivation, we are not entitled to that. So the
3503 public is never going to be able to know whether someone
3504 had ill intent when they were providing cases. Is that

3505 what you are saying?

3506 Mr. Kadzik. No, that's not what I'm saying. And in
3507 fact, that issue --

3508 Mr. DeSantis. Then how would we --

3509 Mr. Kadzik. -- was raised --

3510 Mr. DeSantis. -- discover the truth?

3511 Mr. Kadzik. As -- if I could finish -- as -- that
3512 issue was raised before the court, and the court said that
3513 the defense did not provide any evidence of selective
3514 prosecution.

3515 Mr. DeSantis. Because the defense also did not have
3516 access to what we are trying to seek access to. I mean,
3517 you know, it was, I understand, in the middle of a case how
3518 you would say that there is attorney work product because
3519 we have an adversarial system. You start getting into
3520 strategy and then that is just not the way our system
3521 functions. But that ship has sailed. I mean, the case is
3522 over, in the books, prosecute, felony, served a sentence.
3523 So that whole argument really is gone at this point. The
3524 interest is done.

3525 Is it your view that that -- you talk about law
3526 enforcement sensitivities. Does that trump a subpoena from
3527 the Congress because if we don't get the case file,

3528 obviously, through the request, then we may issue a
3529 subpoena from the committee?

3530 Mr. Kadzik. As I said, we would like to find a way to
3531 accommodate the committee and provide it with the
3532 information that it needs. I think the first step in that
3533 process would be a briefing so that you can ask questions
3534 and receive information, and then we can see what other
3535 further accommodations may be necessary.

3536 Mr. DeSantis. When can you let us know what the
3537 Department's position on the file is? I am not even asking
3538 when you can produce it, although I assume the Department
3539 of Justice still employs interns who could easily make the
3540 copies. When are you going to let us know? You said you
3541 are going to take it back and talk to people, so when are
3542 you going to be able to respond to the committee one way or
3543 another?

3544 Mr. Kadzik. I think we can respond to that within the
3545 next 2 to 3 weeks.

3546 Mr. DeSantis. Okay. Well, I mean I don't think it
3547 should take 3 weeks. I mean, I think we would like to have
3548 an answer, you know, towards the third week of this month.
3549 And if we don't get that, then we are going to continue to
3550 press the issue because I look around, I hear the stories

3551 and, you know, at the end of the day it is not Members of
3552 Congress who are ultimately being stonewalled on a lot of
3553 this stuff. It is the American people because our
3554 constituents ask us about things. We have constituents who
3555 were targeted by the IRS. Some of us who have constituents
3556 who were in other situations, and they come and they see a
3557 government that is just totally unresponsive and a
3558 government that is very difficult to get answers from. And
3559 I don't think that is really the way the system was
3560 designed.

3561 So we will await that response, and obviously, we will
3562 be in contact one way or another after that.

3563 I yield back the balance of my time.

3564 Chairman Chaffetz. I thank the gentleman.

3565 Following up on that, Mr. Kadzik, I do appreciate your
3566 personal responsiveness and would expect the highest
3567 standard of responsiveness given your expertise and your
3568 approach to this.

3569 My question is in following up to Mr. DeSantis, if the
3570 inspector general was to come in and look at that case
3571 file, what would they not be entitled to look at in your
3572 opinion?

3573 Mr. Kadzik. I'm no expert on the Inspector General

3574 Act, but my understanding is that in the present state of
3575 the law the only possible information that would
3576 potentially be excluded would be grand jury information
3577 protected by Rule 6(3), Title III wiretap information. And
3578 there's the FCRA, which I believe is the Fair Credit
3579 Reporting Act protection that protects certain information.
3580 Chairman Chaffetz. And for members of this committee,
3581 I think that is something we need to look at more broadly
3582 where the inspector general is allowed access but we, we
3583 are the Oversight Committee. We are charged by the
3584 Constitution to provide that oversight, and we should be
3585 able to have access to at least the same amount of
3586 information.

3587 So I have a series of specific things I need to go
3588 through, and then we will work to wrap this up.

3589 Ms. Fucile, we had put in a request in October for
3590 transcribed interviews. You have still not responded to
3591 that. Why -- I mean we are in January. Tell me why I
3592 shouldn't issue a subpoena.

3593 Ms. Fucile. The request for transcribed interviews has
3594 been taken back. My understanding is that not all of those
3595 folks still work at OIRA.

3596 Chairman Chaffetz. Well, we put in a request; we want

3597 a response. If the response is well, they don't work here,
3598 go find them somewhere else, I can go find them somewhere
3599 else. But I think it is more complicated. And there are
3600 people that work there that we do want to have transcribed
3601 interviews.

3602 We are trying to avoid doing subpoenas. I have done
3603 about a dozen or so. But you leave us with no choice, and
3604 I hope you understand that. I hope you take that back

3605 Ms. Fucile. We'll take that back.

3606 Chairman Chaffetz. I am going to try to get this one
3607 more time. Within the week, within a week from now can you
3608 respond to us on that?

3609 Ms. Fucile. We'll follow up with your staff within the
3610 week.

3611 Chairman Chaffetz. Thank you.

3612 Ms. Johnson, let me ask you about this, and let me give
3613 a little background in prelude to my question. There were
3614 a series of problems and challenges at the Secret Service,
3615 enough so that Secretary Johnson put together a Protective
3616 Mission Panel. Four people from the outside came in and
3617 looked and Secret Service and Homeland Security gave them
3618 the information, and they produced a very important and
3619 significant document. I was very impressed with their

3620 conclusions and the depth of their work in such a short
3621 amount of time. In fact, to me I thought, well, that is
3622 what we aspire to do.

3623 Now, my understanding is you provided them, Homeland
3624 Security, you being Homeland Security provided that panel
3625 pretty much anything and everything that they wanted in
3626 order to get the information for the Secretary. So here we
3627 are in Congress trying to have the same type of
3628 responsiveness, and one of the things that we asked for in
3629 February of 2015 was -- and this is I think a -- I thought
3630 this was the easiest of all the requests. It said, "All
3631 documents and communications were produced to the recent
3632 Protective Mission Panel, which operated from October 22,
3633 2014, to December 15, 2014."

3634 I mean that is photocopying. There was a set of
3635 materials that was put together. It was given to the
3636 Protective Mission Panel. We wanted to see that same
3637 thing. And yet we didn't get anything, nothing -- you gave
3638 us nothing until we got to I think it was June when I had
3639 to issue a subpoena. Now, why is that? Why wouldn't you
3640 provide those to Congress? Why did I have to issue a
3641 subpoena?

3642 Ms. Johnson. Chairman, I --

3643 Chairman Chaffetz. Microphone, microphone --

3644 Ms. Johnson. -- that --

3645 Chairman Chaffetz. -- microphone, please.

3646 Ms. Johnson. Chairman, that predates me coming in as
3647 assistant secretary. I am not sure what was the result of
3648 -- why there was a delay. I know that -- I'm looking at my
3649 chart. I know that the majority of documents have been
3650 produced or have been made available in camera. I'm not
3651 sure about the timeline.

3652 Chairman Chaffetz. But why not produce all of them?
3653 You produced all of them to the panel. They are not
3654 Members of Congress. Why are you holding stuff back from
3655 us?

3656 Ms. Johnson. Chairman, I really can't answer that
3657 question because I don't know what's been produced to the
3658 panel. All of that occurred before I became the assistant
3659 secretary. I do know --

3660 Chairman Chaffetz. Will you get that answer for me? I
3661 think it is a reasonable request. You want the panel to
3662 come up with the most comprehensive, the best possible
3663 recommendation for the President of the United States, the
3664 best possible recommendation for the Secretary of Homeland
3665 Security, so you gave them a set of documents. You gave

3666 them the documents that -- we want to see those same
3667 documents because I want to make sure that we are
3668 performing at that same level, that we are provided that
3669 type of information.

3670 You want funding from the American people, there is
3671 possible legislation, there are all sorts of things. And
3672 so you only give us a percentage of it, and there is such
3673 -- you are hiding stuff. You are holding back from us and
3674 it is not reasonable.

3675 Ms. Johnson. Chairman, I will take that back because,
3676 as I said, it's my understanding that the majority of
3677 documents have been produced, and we are currently still
3678 producing them so -- but I will take that back.

3679 Chairman Chaffetz. And I think you are absolutely
3680 accurate on that, and I appreciate that, and I take you at
3681 your word and look forward to seeing it, but the
3682 frustration is this has been going on since February of
3683 last year. We are talking a year and we still don't have
3684 them. It has been a year. And we issued a subpoena. It
3685 is not like we are not serious about that. And I did this
3686 jointly with the Democrats. This is a bipartisan request
3687 and you still haven't fulfilled it.

3688 I have made my point. Let me move on.

3689 November 23 to Secretary Johnson, John Mica and I -- he
3690 is the chairman of the Subcommittee on Transportation --
3691 sent you a request on airport identification. There are
3692 five requests. I haven't gotten a single document from you
3693 on this. Why not?

3694 Ms. Johnson. Chairman, that's the one that I mentioned
3695 earlier that production is likely on that. TSA will be
3696 producing those documents fairly shortly.

3697 Chairman Chaffetz. Okay. Let's go to the State
3698 Department if I could, please. We are trying to wrap this
3699 up. We had four Members of Congress -- myself, Elijah
3700 Cummings, Steve Lynch, Ron DeSantis -- bipartisan request
3701 on October 16 for a bipartisan danger pay. It was not a
3702 long request, barely a page-and-a-half, two requests. I
3703 don't have a single document from you.

3704 Ms. Frifield. We've provided a -- oh, sorry. Sorry.
3705 We've provided a briefing and we are preparing the
3706 documents and hope to have some delivered to you in the
3707 very near future.

3708 Chairman Chaffetz. I have a series of other things but
3709 my last bit of frustration with the State Department, we
3710 noticed this hearing, and then suddenly, the whole dam sort
3711 of breaks open. It hasn't fully gotten there yet, but we

3712 got 1,700 pages on our Jakarta request, we got 2,300 pages
3713 on congressional cost certifications, you said you closed
3714 out a letter that was nearly 2 months old, last night after
3715 hours you gave us 3,958 documents related to Maputo,
3716 Harare, and Saudi facilities.

3717 Some of these requests are old. I mean, they are
3718 really old. And mysteriously, we get them the night before
3719 this hearing, which leads me to believe I guess we have got
3720 to do this on a weekly or semi, you know, bimonthly basis
3721 because it is really hard for us to understand. And I
3722 would rather not even hold this hearing. I don't want to
3723 have to hold it again. But can you understand that just
3724 from a human standpoint?

3725 Ms. Frifield. I absolutely do and we noted it
3726 ourselves and we were discussing it. But in your letter
3727 you very clearly articulated but were your priorities, and
3728 we had been focusing on Jakarta thinking get Jakarta -- as
3729 much done with Jakarta first and then turn to the others.
3730 But when we see that you have five that you want us to do
3731 at the same time, we immediately started working on all of
3732 those.

3733 Chairman Chaffetz. But it was August. The Maputo and
3734 Harare discussion was in August, and then we get it the

3735 night before the hearing. And the Art in Embassies October
3736 7, we didn't get any documents. When will you get those?

3737 Ms. Frifield. Art in Embassies, I -- we've given you a
3738 few documents, but we're -- and a briefing, but we'll
3739 continue -- we're continuing to gather and produce those.

3740 Chairman Chaffetz. I guess we got some last night. I
3741 haven't had a chance to look and review those.

3742 But, listen, I need to get to the Floor. We have some
3743 things happening there. I appreciate the Member
3744 participation. Please know there are a lot of good people
3745 that are working within your organizations. We appreciate
3746 the good work that they do. So much happens the right way,
3747 but it is these headaches that we have got to figure out.
3748 And so we appreciate your participation today.

3749 This committee stands adjourned.

3750 [Whereupon, at 1:04 p.m., the committee was adjourned.]