

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

August 29, 2016

The Honorable John F. Kerry
Secretary
U.S. State Department
2201 C Street NW
Washington, D.C. 20520

Dear Mr. Secretary:

On June 2, 2016, the Committee requested five categories of documents regarding the deletion of eight minutes of footage from a December 2, 2013, press briefing.¹ The deleted footage appeared in a video posted on the State Department's website and on its official YouTube channel.² The content that was deleted, ironically, related to the lack of transparency with respect to the State Department's communications about the details surrounding the Joint Comprehensive Plan of Action (JCPOA), also known as the Iran Nuclear Deal.³ The deletion did not go unnoticed. When asked why the footage was deleted at a May 10, 2016 daily press briefing, Elizabeth Trudeau, Director of the State Department Press Office, stated, "We're looking into it. Genuinely we think it was a glitch."⁴

On June 1, 2016, however, State Department spokesperson and Assistant Secretary for Public Affairs, John Kirby, stated that the footage was deleted in response to "a deliberate request."⁵ He added that the deletion "wasn't a technical glitch."⁶

On June 9, 2016, Assistant Secretary for Legislative Affairs Julia Frifield wrote to the Committee that "the decision to edit video of the daily press briefing was a serious error in judgment," "[t]he individual who edited the video—a technician within the Bureau of Public Affairs—also came forward," and "[t]his individual recalls receiving a telephone call from someone else in the Bureau of Public Affairs with a request to edit out a portion of the video prior to posting it publicly."⁷

¹ Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform to Hon. John F. Kerry, Sec'y, U.S. State Department (June 2, 2016).

² *Rosen: It's Stunning that State Dep't Tried to Censor my Questioning on Iran Deal*, FOX NEWS INSIDER, May 11, 2016; *State Dept: There Was 'Deliberate Request' to Delete Video of Rosen's Iran Questions*, FOX NEWS INSIDER, June 1, 2016.

³ *Id.*

⁴ U.S. Dep't of State, Daily Press Briefing (May 10, 2016), *available at* <http://www.state.gov/r/pa/prs/dpb/2016/05/257074.htm>.

⁵ U.S. Dep't of State, Daily Press Briefing (June 1, 2016), *available at* <http://www.state.gov/r/pa/prs/dpb/2016/06/257880.htm>.

⁶ *Id.*

⁷ Julia Frifield, Assistant Sec'y, Legislative Affairs, U.S. Dep't of State to Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Affairs (June 9, 2016).

On August 18, 2016, Ms. Frifield transmitted the findings from the State Department's internal review to the Committee.⁸ Although the findings did not appear to contain any sensitive or classified information, the entire document was marked "Sensitive But Unclassified" and stamped "Not For Public Release."⁹

According to the findings from the internal review, and contrary to the Department's previous statements, the Department was "unable to draw definitive conclusions" even after interviewing more than 30 employees and numerous email accounts.¹⁰ The internal review found the videos "were likely deliberately edited."¹¹ Despite this, the Department's internal review did not find "any evidence to support a conclusion that the video was edited to hide any content."¹² The review made this conclusion even though the technician "recalled having received a request to edit the video over the phone from a female caller from elsewhere in [Public Affairs]," "believed that the requester had mentioned in the course of the call a Fox network reporter and Iran," and that "the requester may also have provided the start and end times for the edit."¹³

The internal review suffered from several inherent, and obvious flaws. It relied on emails that were self-selected by witnesses, rather than obtained through an independent search.¹⁴ The reviewers did not obtain phone records, even though the key finding was based on a phone call.¹⁵ Witnesses were not placed under oath.¹⁶ These flaws give rise to a concern that the review was designed to meet a predetermined outcome – a whitewash.

In light of these facts, and others, the Department's internal review failed to satisfy the Committee's June 2, 2016 request for documents and information. Specifically, the Committee requested documents sufficient to identify the technician who made the edits, communications between and amongst State Department officials on this matter, and documents and communications referring or relating to the editing of the video. These categories of information have not been provided to the Committee.

In fact, the State Department's review raised more questions than it answered. The Committee looks forward to your appearance before the Committee to answer questions about this topic and others at a future hearing. In the meantime, in order to assist the Committee, please fully respond to the August 18, 2016 request for documents and information, and produce the following materials as soon as possible, but no later than 5:00 p.m. on September 6, 2016:

⁸ Julia Frifield, Assistant Sec'y, Legislative Affairs, U.S. Dep't of State to Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Affairs (Aug. 18, 2016).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

The Honorable John F. Kerry

August 24, 2016

Page 3

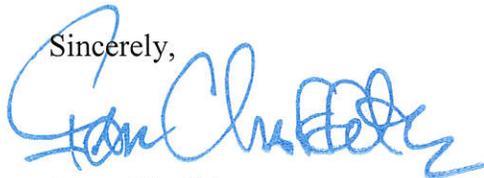
1. Documents and communications referring or relating to the review undertaken by the State Department (as described in the August 18, 2016 letter to the Committee, hereinafter, the "internal review").
2. Documents sufficient to identify all witnesses that were interviewed in the course of the internal review.
3. All records, including emails, reviewed in the course of the internal review;
4. Documents and communications referring or relating to the decision to mark the findings from the internal review "Sensitive But Unclassified" and stamp the findings "Not For Public Release;"
5. An explanation as to why the findings from the internal review are marked "Sensitive But Unclassified" and stamped "Not For Public Release;" and
6. A list of all employees in the Bureau of Public Affairs department as of December 2, 2013, including information sufficient to identify which of those employees still work for the State Department.

Please deliver your responses to the Committee on Oversight and Government Reform Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter contains additional instructions for responding to the Committee's request.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Please contact Mike Howell of the Majority staff at (202) 225-5074 with any questions regarding this request. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman

Enclosure

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

Responding to Committee Document Requests

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

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

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

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

Definitions

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

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