

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051

<http://oversight.house.gov>

April 27, 2017

The Honorable Robert M. Speer
Acting Secretary of the Army
1400 Defense Pentagon
Washington, DC 20301-1400

Dear Mr. Speer:

Lt. Gen. Michael Flynn retired from the Army in August 2014.¹ He subsequently started a consulting firm, the Flynn Intel Group. Since his retirement, he has accepted payments to work on behalf of foreign government-owned entities on at least two occasions.² By all appearances, Lt. Gen. Flynn violated 37 U.S.C. § 908 by accepting compensation from entities associated with foreign governments without obtaining consent to do so. I request that you or the appropriate entity investigate this matter and make a final determination as to whether Lt. Gen. Flynn in fact violated section 908.

The Comptroller General and the Department of Justice's Office of Legal Counsel have long held that retired military officers hold an "Office of Profit or Trust" because they are subject to recall to active duty.³ For that reason, they may only accept payments from foreign governments with the consent of Congress.

Congress delegated its consent authority for cases that involve retired military officers to the Secretary of State and the relevant service Secretary. Specifically, current U.S. law permits retired members of the uniformed services to "accept[] civil employment (and compensation for that employment)" from a foreign government only when "the Secretary concerned and the Secretary of State" approve the employment.⁴

When a retired member of the military does not obtain advance approval for a foreign payment, the Department of Defense treats the payment as "erroneous," creating a debt in favor

¹ James Kitfield, *How Mike Flynn Became America's Angriest General*, POLITICO (Oct. 16, 2016), <http://www.politico.com/magazine/story/2016/10/how-mike-flynn-became-americas-angriest-general-214362>

² Dan Lamothe, *Pentagon weighs response to Flynn working on behalf of Turkish interests without U.S. Permission*, WASH. POST (Mar. 23, 2017), <https://www.washingtonpost.com/news/checkpoint/wp/2017/03/23/pentagon-weighs-response-to-flynn-working-on-behalf-of-turkish-interests-without-u-s-permission/>.

³ DEP'T OF DEF., APPLICATION OF THE EMOLUMENTS CLAUSE TO DoD CIVILIAN EMPLOYEES AND MILITARY PERSONNEL (2013) 3-4, available at http://www.dod.mil/dodgc/defense_ethics/resource_library/emoluments_clause_applications.pdf.

⁴ 37 U.S.C. § 908.

of the federal government.⁵ The standard method of collecting such debt is withholding military pension or retired pay.⁶

On December 10, 2015, Lt. Gen. Flynn spoke at a conference hosted by the Russian news agency RT, an entity funded by the Russian government.⁷ Documents obtained by the Committee show RT paid \$45,000 to Lt. Gen. Flynn's booking agency, which forwarded \$33,000 to him. In addition, RT paid for airfare, accommodations, and entertainment for Lt. Gen. Flynn and his son.⁸

Lt. Gen. Flynn reportedly notified officials at the Defense Intelligence Agency (DIA) of his plans to travel to Russia to speak at the conference.⁹ I also understand that Lt. Gen. Flynn briefed DIA when he returned from Russia.¹⁰ The Committee has not seen any evidence, however, that Lt. Gen. Flynn informed anyone at the Department that funds he received were provided by a foreign source or that he sought permission from anyone at the Department to accept foreign payments as required under 37 U.S.C. § 908.

Lt. Gen. Flynn separately received payments from a Dutch company that may also implicate 37 U.S.C. § 908. According to public reports, the Flynn Intel Group received \$530,000 between September and November 2016 from Inovo BV, a Netherlands-based company owned by a Turkish businessman with links to the Turkish government.¹¹

Lt. Gen. Flynn subsequently registered as a foreign agent because his work may have benefited the Turkish government.¹² Again, the Committee has seen no evidence that Lt. Gen. Flynn informed anyone at the Department that funds he received were provided by a foreign source or that he sought permission from anyone at the Department to accept foreign payments as required under 37 U.S.C. § 908.

In light of these apparent violations, I request that you determine whether Lt. Gen. Flynn violated 37 U.S.C. § 908 and, if necessary, initiate a process whereby Lt. Gen. Flynn shall repay the money in question. If your assessment finds that Lt. Gen. Flynn's actions were consistent with DOD policies and guidelines, I request a written explanation of that conclusion. In addition, I request answers to the following questions:

1. Who within the Army is responsible for determining whether Lt. Gen. Flynn violated 37 U.S.C. § 908?

⁵ DEP'T OF DEF., APPLICATION OF THE EMOLUMENTS CLAUSE TO DoD CIVILIAN EMPLOYEES AND MILITARY PERSONNEL *supra* note 2, at 12.

⁶ *Id.*

⁷ Russell Goldman, *Russia's RT: The Network Implicated U.S. Election Meddling*, N.Y. TIMES (Jan. 7, 2017), <https://www.nytimes.com/2017/01/07/world/europe/russias-rt-the-network-implicated-in-us-election-meddling.html>

⁸ Email from Nadezhda Ivanova, RT TV, to [redacted], Nov. 30, 2015, 08:22 GMT (on file with Committee).

⁹ Lamothe, *supra* note 2.

¹⁰ Jeff Pegues, *Michael Flynn received nearly \$34,000 to attend event with Putin*, CBS NEWS (Mar. 16, 2017), <http://www.cbsnews.com/news/michael-flynn-received-nearly-34000-to-attend-event-with-putin/>.

¹¹ Lamothe, *supra* note 2.

¹² Jeremy Diamond, Jessica Schneider, and Joe Johns, *Trump transition knew of Flynn's pro-Turkey lobbying before White House appointment*, CNN, Mar. 10, 2017.

2. Given that the RT event was public when it occurred in December 2015 and Lt. Gen. Flynn briefed DIA on the event shortly thereafter, why has no determination been made since then regarding the legal status of RT's payments to Flynn?
3. Have any other emoluments clause violations been investigated or adjudicated upon by the responsible entity or individual within the Army since January 1, 2010? If so, please provide any written adjudications resulting from those cases.

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 Jack Thorlin of the Committee staff at (202) 225-5074 with any questions. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman

cc: Robert K. Kelner, Covington & Burling LLP
Counsel to Lt. Gen. Flynn

Enclosure

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.