

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

September 22, 2017

Mr. Michael Nedd
Acting Director
Bureau of Land Management
U.S. Department of the Interior
1849 C Street NW, Room 5665
Washington, D.C. 20240

Dear Mr. Nedd:

On February 4, 2016, the Committee wrote to Bureau of Land Management (BLM) Director Neil Kornze seeking documents and information related to allegations of misconduct against agents in BLM's Office of Law Enforcement and Security (OLES).¹ In November 2016, the Department of the Interior's Office of the Inspector General (OIG) opened an investigation into specific allegations of misconduct against Dan Love, an OLES senior official.² In the course of the investigation, the OIG found Love instructed a subordinate to withhold certain of his emails from production that were responsive to the Committee's February 4, 2016, request.³ Love's instruction to remove them came after he was on notice the Committee was seeking the emails.⁴

The OIG determined Love's "actions violated Federal security and records management policy as well as various regulations and guidance related to the conduct of Federal employees."⁵ Love's conduct also appears to implicate federal statutes related to concealing records related to a congressional investigation, including 18 U.S.C. § 1519.⁶

¹ Letter from Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, and Cynthia Lummis, Chairman, Subcmte. on the Interior of the H. Comm. on Oversight and Gov't Reform, to Neil Kornze, Director, Bureau of Land Mgmt. (Feb. 4, 2016), *available at* <https://oversight.house.gov/wp-content/uploads/2016/02/2016-02-04-JC-Lummis-to-Kornze-BLM-Law-Enforcement-due-2-18.pdf>.

² DEP'T OF THE INTERIOR, OFFICE OF THE INSPECTOR GEN., INVESTIGATIVE REPORT OF MISCONDUCT BY A SENIOR BLM LAW ENFORCEMENT MANAGER (Aug. 24, 2017), *available at* https://www.doioig.gov/sites/doioig.gov/files/MishandlingofEvidencebyBLMLEManager_Public.pdf; Scott Streater, *Special agent tried to conceal misuse of artifacts – IG*, E&E NEWS, Aug. 24, 2017, *available at* <https://www.eenews.net/eenewspm/stories/1060059177/>.

³ DEP'T OF THE INTERIOR, OFFICE OF THE INSPECTOR GEN., *supra* note 2.

⁴ *Id.*

⁵ *Id.*

⁶ 18 U.S.C. § 1519 ("Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any

In light of the OIG's findings, the Committee requests you preserve all records, or copies of records, referring or relating to Love, or in the custody or control of Love. The Committee previously sent a preservation letter to then-Director Kornze in December 2016 asking BLM to "preserve all official records" and "exercise an abundance of caution, and keep everything."⁷ This letter reiterates and restates this request.

This preservation request is an instruction to preserve all responsive documents, communications and other data ("records") that may be required for our oversight and investigative duties. The term records is broad, and includes log files and metadata. For the purposes of this request, "preserve" means taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of electronic records, including emails, as well as negligent or intentional handling which would foreseeably make such records incomplete or inaccessible. Specifically, you should:

1. Exercise reasonable efforts to identify and notify former employees and contractors, subcontractors and consultants who may have access to such records that they are to be preserved;
2. Exercise reasonable efforts to identify, recover, and preserve any records which have been deleted or marked for deletion but are still recoverable; and
3. If it is the routine practice of any agency employee or contractor to destroy or otherwise alter such records, either halt such practices or arrange for the preservation of complete and accurate duplicates or copies of such records, suitable for production, if requested.

An attachment to this letter provides additional instructions for responding to the Committee's request. If you have any questions about this request, please have your staff contact Ryan Hambleton of the Majority staff at 202-225-5074 and Britteny Jenkins of the Minority staff at 202-225-5051. Thank you for your attention to this matter.



Trey Gowdy

Sincerely,


Elijah E. Cummings

Enclosure

case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.").

⁷ Letter from Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, to Neil Kornze, Director, Bureau of Land Mgmt. (Dec. 6, 2016).

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.

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
115TH CONGRESS**

NOTICE OF APPEARANCE OF COUNSEL

Counsel submitting: _____

Bar number: _____ **State/District of admission:** _____

Attorney for: _____

Address: _____

Telephone: (_____) _____ - _____

Pursuant to Rule 16 of the Committee Rules, notice is hereby given of the entry of the undersigned as counsel for _____ in (select one):

All matters before the Committee

The following matters (describe the scope of representation):

All further notice and copies of papers and other material relevant to this action should be directed to and served upon:

Attorney's name: _____

Attorney's email address: _____

Firm name (where applicable): _____

Complete Mailing Address: _____

I agree to notify the Committee within 1 business day of any change in representation.

Signature of Attorney

Date