

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>

October 20, 2017

The Honorable Donald F. McGahn II
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. McGahn:

On September 25, 2017, the Ranking Member and I requested documents and information from the White House and 24 federal agencies related to compliance with federal recordkeeping laws, the use of private email accounts, and the use of text messaging and other phone-based applications and encryption software to conduct official business.

On October 11 and 12, 2017, the White House produced documents responsive to the Committee's requests. At that time a bipartisan briefing was offered and scheduled. On October 18, 2017, three officials from the Counsel's office provided an account to the bipartisan Committee staff on the White House compliance programs, including the methods employed to capture and comply with the recordkeeping laws, most pertinently the Presidential Records Act (PRA), as amended in 2014.¹ The briefing included information and protocols related to the Committee's September 25 request. The briefing also covered ongoing internal investigations related to allegations of recordkeeping violations.

The briefing and document production advanced our understanding of some of the challenges involved with the recordkeeping requirements. The description of the White House compliance program, including regular training, written guidance, staff onboarding protocols, and technology solutions to ensure capture of Presidential Records in accordance with the PRA seems to go substantively farther than measures taken by previous administrations. Likewise, the willingness to share information with the Committee on this issue exceeds that of your predecessors in the prior administration. On technology, these officials indicated the White House uses the same information technology infrastructure as the previous Administration and is working to accommodate the explosion of electronic data that must be captured.

The Committee notes the Deputy White House Counsel charged with overseeing the ethics and compliance program has been elevated to the rank of Deputy Assistant to the President. The chief ethics official, as we understand it, now regularly coordinates with the Office of Government Ethics (OGE), Office of Special Counsel (OSC), and the U.S. National

¹ Presidential and Federal Records Act Amendments of 2014, P.L. 113-187 (Nov. 26, 2014).

Archives and Records Administration on compliance. The Committee expects additional information relating to program audit activities mentioned during the briefing to continue.

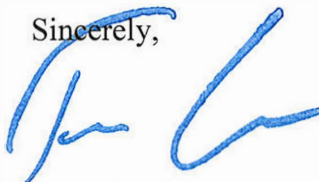
The briefing officials also described, in some detail, the procedures involved when a political or personal communication – one that is not properly made on an official account – becomes official. Also described were protocols involving communications having both political and an official component, or a political communication that becomes an official communication by virtue of the involvement of an exempt official, that is the President or Vice President, who are not covered by certain provisions of the Hatch Act. Due to the prohibitions against political communications on official government accounts and devices, non-exempt members of the White House staff have special obligations to have certain types of communications on unofficial equipment, and conversely official communications only on government provided equipment.

Your staff also provided an account of how text messaging capabilities have been removed from official devices because there are not sufficient technology solutions to capture this information in accordance with the PRA. Similar measures have been taken for social media applications. These steps represent an affirmative effort to proactively comply with the often competing considerations of archiving political and official communications.

Finally, these officials acknowledged there was an ongoing review related to information requested by the Committee on September 25. It was also brought to our attention that certain allegations of recordkeeping noncompliance are under review, and when the review is completed your office will be following up with the Committee in response to the Committee's September 25 request. Those questions are at the core of the Committee's interest and we appreciate your commitment to share the findings of the internal review as soon as practicable.

Thank you for your cooperation. If you have any questions about this letter, please contact Steve Castor of my staff at (202) 225-5074.

Sincerely,



Trey Gowdy

cc: The Honorable Elijah E. Cummings