

# 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>

January 30, 2018

The Honorable Jeff Sessions  
Attorney General of the United States  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Mr. Attorney General:

Every employer should ensure that sexual misconduct, including sexual harassment, sexual assault, and related retaliation, is not tolerated in the workplace and that allegations of sexual misconduct are handled appropriately and timely. The legislative and executive branches of the federal government are no exception. While Congress takes steps to reform its processes<sup>1</sup>, the Committee is continuing its oversight of sexual misconduct in the executive branch. The Committee has questions about the indefinite appropriation known as the Judgement Fund (Fund) located at the Department of the Treasury. The Fund allows for the payment of “final judgments, awards, compromise settlements, and interest...” involving the United States federal government.<sup>2</sup> According to the 2016 Judgement Fund Transparency Report to Congress, the U.S. government paid over \$4.3 billion in fiscal year 2016 from the Fund.<sup>3</sup>

Claims paid out of the Fund can relate to sexual misconduct at federal agencies, a topic the Committee has investigated. Last October, we released a staff report detailing a year-long investigation of inconsistent and inadequate sexual misconduct guidance throughout the federal government.<sup>4</sup> Among other things, we found no standardized definition of sexual misconduct in the federal government and no requirement that agencies have standardized recommended penalties for sexual misconduct.<sup>5</sup> These deficiencies may be hampering the government’s ability to address sexual misconduct.

Further hampering the government’s response is unclear data on payments relating to sexual misconduct. The first step in addressing a problem is uncovering the extent to which the

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<sup>1</sup> Press Release, H. Comm. on House Admin., Reforming the Congressional Accountability Act for a Better Congressional Workplace (Jan. 18, 2018), <https://cha.house.gov/press-release/reforming-congressional-accountability-act-better-congressional-workplace>.

<sup>2</sup> 31 U.S.C. § 1304.

<sup>3</sup> BUREAU OF THE FISCAL SERV., U.S. DEP’T OF THE TREASURY, 2016 JUDGEMENT FUND TRANSPARENCY REPORT TO CONGRESS (2016) [hereinafter “2016 Judgement Fund Report”].

<sup>4</sup> MAJORITY STAFF OF H. COMM. ON OVERSIGHT & GOV’T REFORM, 115<sup>TH</sup> CONG., TABLES OF PENALTIES: EXAMINING SEXUAL MISCONDUCT IN THE FEDERAL WORKPLACE AND LAX FEDERAL RESPONSES (2017).

<sup>5</sup> *Id.*, at 3-4.

problem exists. One way to understand the extent of the problem in the executive branch is by analyzing payments from the Fund. Unfortunately, it is difficult to ascertain what payments from the Fund are for sexual misconduct allegations. The transparency reports classify payments relating to allegations of discrimination as “Title VII; Discrimination In Federal Employment.”<sup>6</sup> Federal law prohibits discrimination in Federal employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation.<sup>7</sup> It is not possible to distinguish from the reports which payments were made as a result of sexual misconduct in the federal workforce.

As the legal representative of defendant agencies, the Department of Justice plays a substantial role in submitting requests for payment resulting from a settlement with a claimant before or during litigation, as well as those resulting from a judge’s order. To assist the Committee’s oversight of this issue, please provide the following information for fiscal years 2012 through 2017:

1. Identify each discrete request for payment from the Fund submitted by the Department of Justice relating to sexual misconduct at federal agencies, including allegations of sexual harassment, sexual assault, and related retaliation (note: the Committee is **not** requesting personally identifiable information about victims), and for each payment please disclose the following:
  - a. The agency on whose behalf the Department is submitting a request;
  - b. The total payment to the complainant and other interested parties requested by the Department;
  - c. The total principal paid to the complainant, without identifying the complainant by name;
  - d. The total confirmed payment amount to all parties, and a description of the difference between confirmed payment amount and total principal in item 1c;
  - e. The description provided by the Department to justify a payment from the Fund;
  - f. If any part of the payment was made to settle a complaint filed through the Equal Employment Opportunity (EEO) process alleging discriminatory conduct in violation of 5 U.S.C. § 2302(b) or 5 U.S.C. § 2302(d) or a judgment concluding litigation arising from an EEO complaint, the base(s) of the complaint;
  - g. The total reimbursement the Fund received from the defendant agency or office pursuant to P.L. 107-174 (commonly referred to as the Notification and Federal Employee Antidiscrimination and Retaliation Act, or the No FEAR Act);
2. Documents referring or relating to the procedures and processes the Department follows when a case involving sexual misconduct (including allegations of sexual harassment, sexual assault, and related retaliation) at a federal agency is referred to the Fund by the Department; and

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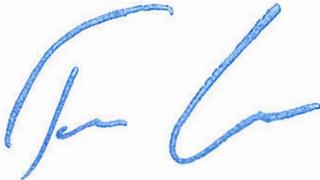
<sup>6</sup> See e.g. 2016 Judgement Fund Report *supra* note 3, at Control Number 201506086.

<sup>7</sup> 5 U.S.C. § 2302 (b).

3. Documents sufficient to show of the total number of referrals to the Fund relating to sexual misconduct at federal agencies from the Department, including allegations of sexual harassment, sexual assault, and related retaliation, the number that were final judgements, the number that were awards, and the number that were settlements, and the corresponding aggregate dollar amounts requested for each category.

Provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on February 13, 2018. An attachment to this letter provides additional instructions for responding to the Committee's request.

Please contact Kevin Ortiz of the Majority staff at (202) 225-5074 or Lucinda Lessley of the Minority staff at (202) 225-5051 with any questions about this request. Thank you for your attention to this matter.



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Trey Gowdy

Sincerely,



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Elijah E. Cummings

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.