

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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January 30, 2018

The Honorable Ryan Zinke
Secretary of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Mr. Secretary:

In November 2016, the Department of the Interior (DOI) Office of Inspector General (OIG) initiated an investigation into allegations of misconduct against Dan Love, a senior law enforcement manager at the Bureau of Land Management's (BLM) Office of Law Enforcement and Security (OLES).¹ In the course of this investigation, the OIG found that after the BLM received a document request from this Committee, Love instructed a subordinate to review his emails and exclude certain emails from production that were responsive to Committee document requests.²

On February 4, 2016, the Committee wrote to BLM Director Neil Kornze requesting documents and information concerning allegations of misconduct against BLM law enforcement agents.³ After the BLM received this request, Love instructed a subordinate to search Love's emails and, as the subordinate understood it, to "review the resulting emails and delete or show [Love] any that would be inappropriate, prior to submitting them as [Love's] response to the inquiry."⁴ Love had ordered the same subordinate to employ this process previously in response to a 2015 request concerning an employment matter.⁵ The subordinate stated that during this process, he sorted Love's emails into folders labeled "keep," "sensitive," and either "delete" or "discard," and that he "deleted multiple emails."⁶ Other OLES employees confirmed to OIG that Love "was fully aware his subordinate was deleting emails."⁷

¹ 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. *See also* Scott Streater, *Special Agent Tried to Conceal Misuse of Artifacts – IG*, E & E NEWS, Aug. 24, 2017, <https://www.eenews.net/eenewspm/stories/1060059177/>.

² DEP'T OF THE INTERIOR, OFFICE OF THE INSPECTOR GEN., *supra* note 1, at 7-8.

³ 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, Dir., Bureau of Land Mgmt, U.S. Dep't of Interior (Feb. 4, 2016).

⁴ DEP'T OF THE INTERIOR, OFFICE OF THE INSPECTOR GEN., *supra* note 1, at 7.

⁵ *Id.* at 6-7.

⁶ *Id.* at 8.

⁷ *Id.*

The Committee sent a second letter to Director Kornze on May 6, 2016, ordering the BLM to produce the documents requested in the February 4, 2016, letter.⁸ After the May 6 letter arrived, the same subordinate reported that Love again instructed him to “to ‘scrub’ [Love’s] email for any related to the matter under inquiry.”⁹ The subordinate placed Love’s emails in either a “keep” or “discard” folder.¹⁰ After discussing with Love the emails placed in the “discard” folder, the subordinate uploaded the emails in the “keep” folder for final submission in response to the Committee’s request but “did not upload the emails in the ‘discard’ folder.”¹¹

The OIG concluded that Love’s “actions violated Federal security and records management policy as well as various regulations and guidance related to the conduct of Federal employees.”¹² Love’s actions may also implicate federal statutes regarding obstruction of a congressional investigation.¹³

The OIG’s findings raise serious concerns regarding DOI’s policies and procedures regarding the handling of document productions in response to congressional inquiries. The OIG’s report indicates that Love was able to determine which of his own emails were responsive to the Committee’s inquiry, giving Love the opportunity to remove emails as well as order subordinates to remove emails that he did not want included in the final production.¹⁴ Such a process could result in an incomplete document production and presents employees with the opportunity to intentionally withhold emails in an attempt to conceal their own wrongdoing. In order for the Committee to perform its oversight responsibilities, it is essential that all document productions be complete.

The Committee requests a briefing for Committee staff from DOI on the events described above, to take place no later than February 13, 2018. Additionally, to assist the Committee in understanding how DOI allowed the events described above to occur and to ensure the integrity of the document production process at federal agencies, please provide the following documents and information:

1. All documents and information referring or relating to DOI policies, protocols, and procedures pertinent to responding to congressional document requests;

⁸ 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, Dir., Bureau of Land Mgmt, U.S. Dep’t of Interior (May 6, 2016).

⁹ DEP’T OF THE INTERIOR, OFFICE OF THE INSPECTOR GEN., *supra* note 1, at 8.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 1.

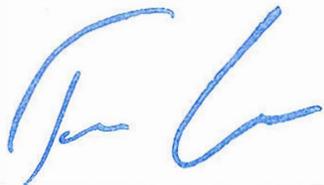
¹³ See 18 U.S.C. § 1519 (“Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any 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.”).

¹⁴ DEP’T OF THE INTERIOR, OFFICE OF THE INSPECTOR GEN., *supra* note 1.

2. All documents and communications referring or relating to BLM's document production and submission process and activities in response to the Committee's February 4, 2016, and May 6, 2016, letters to Director Kornze;
3. For each employee or official who participated in or undertook any activities related to the document production and submission process and activities in response to the Committee's February 4, 2016, and May 6, 2016, letters, all documents, information, and communications sufficient to provide:
 - a. The person's name and job title; and
 - b. The specific activities or tasks performed by each person;
4. Dan Love's complete personnel file from his first date of employment to his last day at work with the federal government, including findings and supporting documents related to any disciplinary action taken or considered against him;
5. All documents and communications responsive to the Committee's February 4, 2016, or May 6, 2016, requests, or any other Committee request, that were not previously produced and were able to be reviewed, flagged, withheld, or marked to be withheld by Dan Love or another person acting under his direction during the process of producing a response to the request; and
6. All documents and information, including guidance, policies, protocols, and procedures used by BLM to ensure employees are in compliance with the Federal Records Act and the Freedom of Information Act.

Please provide the requested 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 Christen Harsha at (202) 225-5074 of the Majority staff and Britteny Jenkins at (202) 225-5051 of the Minority staff with any questions about this request. Thank you for your cooperation in this matter.



Trey Gowdy

Sincerely,



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,
SENTHOUR, 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.