

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

March 5, 2018

Ms. Kathleen McGettigan  
Acting Director  
U.S. Office of Personnel Management  
1900 E Street, NW  
Washington, D.C. 20415

Dear Ms. McGettigan:

For the past eleven years, *Open the Books*, a self-identified government watchdog organization, has filed a Freedom of Information Act (FOIA) request with the Office of Personnel Management (OPM) for the names, titles, agencies, salaries, and bonus information for all federal employees.<sup>1</sup> OPM has provided this information and in an effort to promote government transparency, *Open the Books* posts this data online to further its organizational governmental transparency mission.<sup>2</sup>

The Committee recently learned specific salary information previously released to *Open the Books* for the past eleven years was not released by OPM for fiscal year 2017. In response to *Open the Books* fiscal year 2017 FOIA request, OPM redacted 254,839 federal salaries, resulting in \$20 billion in estimated payroll now lacking transparency.<sup>3</sup> The additional redactions, which are significant, have been attributed to a data release policy update.<sup>4</sup> OPM informed the Committee these changes were also related to an OPM determination finding previous releases of salary information may have been inconsistent with protections put in place to protect sensitive occupations and seven security agencies.<sup>5</sup> As a result, OPM has stated it will no longer release locality pay information and adjusted base pay information on the individual level for those positions and agencies in order to mitigate the concern of reverse engineering location data. However, base salary information is still available for the sensitive occupations and seven security agencies.<sup>6</sup>

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<sup>1</sup> Adam Andrzejewski, Opinion, *\$20 Billion Hidden in the Swamp: Feds Redact 255,000 Salaries*, REALCLEAR POLITICS (Feb. 8, 2018), [https://www.realclearpolitics.com/articles/2018/02/08/20\\_billion\\_hidden\\_in\\_the\\_swamp\\_feds\\_redact\\_255000\\_salaries.html](https://www.realclearpolitics.com/articles/2018/02/08/20_billion_hidden_in_the_swamp_feds_redact_255000_salaries.html).

<sup>2</sup> *Open the Books, About Us*, [https://www.openthebooks.com/about\\_us/](https://www.openthebooks.com/about_us/) (last visited Mar. 1, 2018).

<sup>3</sup> Andrzejewski, *supra* note 1.

<sup>4</sup> U.S. Office of Personnel Management, Data Release Policy, last updated March 2017.

<sup>5</sup> Briefing by Office of Pers. Mgmt. staff to majority staff, H. Comm. on Oversight & Gov't Reform (Feb. 27, 2018).

<sup>6</sup> *Id.*

Generally, federal regulations allow for the public release of certain personnel information for present and past federal employees.<sup>7</sup> Information eligible for release includes the name of the employee, present and past position titles and occupational series, present and past grades, present and past annual salary rates, present and past duty stations, and position descriptions.

There are limited exceptions to this disclosure policy. OPM has indicated under their current data release policy, personnel information for employees at seven security agencies, the Department of Defense, the Internal Revenue Service, and the Consumer Financial Protection Bureau is exempt from disclosure.<sup>8</sup> This type of information was redacted in the fiscal year 2017 FOIA response. OPM's data release policy also allows for withholding personnel information on employees in "sensitive" occupations, including correctional officers, police, criminal investigators, and customs and border protection.<sup>9</sup> As of February 2017, OPM has also stated they will not release data revealing the identity or duty station location with respect to cyber security designated positions.<sup>10</sup>

OPM's response to this FOIA request for federal employee salary information raises questions. Either OPM has been in error for the last eleven years or it is now. Ensuring government transparency is part of the Committee's legislative and oversight responsibility. The American taxpayers have a right to see how their taxpayer dollars are being spent to the maximum extent practicable. Accordingly, we would like to understand the rationale for the exemptions currently listed on OPM's data release policy. To assist the Committee's oversight of this issue, please provide the following documents and information:

1. All documents and communications referring or relating to OPM's response to the *Open the Books* FOIA request for federal employment salary in fiscal year 2017;
2. All documents and communications referring or relating to the change in FOIA policy related herein;
3. All documents and communications referring or relating to OPM's Data Release Policy updated March 2017;
4. All documents and communications referring or relating to the justification for each sensitive occupation information release exemption listed in OPM's data release policy and the date each sensitive occupation information release exemption was added to the data release policy;

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<sup>7</sup> 5 C.F.R. § 293.311.

<sup>8</sup> The seven security agencies are: the Federal Bureau of Investigation, Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Alcohol and Tobacco Tax and Trade Bureau, the U.S. Mint, the U.S. Secret Service, and U.S. Attorneys Offices. U.S. Office of Personnel Management, Data Release Policy at 1. OPM refers requests for salary information from these agencies to the individual agencies.

<sup>9</sup> *Id.*, at 2-3.

<sup>10</sup> *Id.*

Ms. Kathleen McGettigan

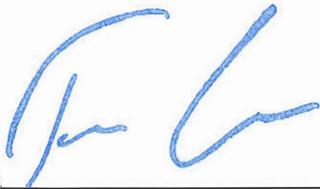
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5. All documents and communications referring or relating to the justification for each agency-specific information release exemption on the data release policy and the date each agency-specific information release exemption was added to the data release policy; and
6. All documents and communications referring or relating to any statistical analysis or other analysis conducted prior to OPM's recent policy update redacting locality pay and adjusted base pay showing the necessity of the update.

Provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on March 19, 2018. An attachment to this letter provides additional instructions for responding to the Committee's request. In addition, please arrange to brief us personally on this matter after producing the requested documents and information.

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

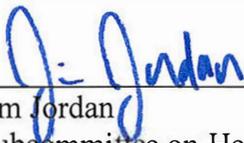


Trey Gowdy

Sincerely,



Mark Meadows  
Subcommittee on Government Operations



Jim Jordan  
Subcommittee on Healthcare, Benefits,  
and Administrative Rules



Ron DeSantis  
Subcommittee on National Security

Enclosure

cc: The Honorable Elijah E. Cummings

The Honorable Gerald E. Connolly  
Subcommittee on Government Operations

The Honorable Raja Krishnamoorthi  
Subcommittee on Healthcare, Benefits, and Administrative Rules

The Honorable Stephen F. Lynch  
Subcommittee on National Security

## 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.