AMERICAN OVERSIGHT

November 22, 2017

VIA ONLINE PORTAL

Laurie Day
Chief, Initial Request Staff
Office of Information Policy
U.S. Department of Justice
1425 New York Avenue NW, Suite 11050
Washington, DC 20530-0001
Via FOIAOnline

Re: Freedom of Information Act Request

Dear Ms. Day:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Justice (DOJ), 28 C.F.R. Part 16, American Oversight makes the following request for records.

Since taking office in January, President Trump has regularly attacked Hillary Clinton and called on DOJ to investigate various allegations against Ms. Clinton.[1] One such allegation has included inappropriate influence in the 2010 acquisition of Uranium One by Rosatom, the Russian nuclear energy agency.[2] Responding both to the president and letters from House Judiciary Committee Chairman Bob Goodlatte, DOJ is now considering the appointment of a second special counsel to investigate Ms. Clinton.[3] In the meantime, Attorney General Jeff Sessions is under regular scrutiny from the president and even the Senate Majority leader is suggesting that Mr. Sessions replace the

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[1] *See* Matthew Nussbaum & Tara Palmeri, *Trump Can't Stop Obsessing About the Clintons*, POLITICO (Mar. 28, 2017, 5:01 PM), https://www.politico.com/story/2017/03/trump-hillary-bill-clinton-236602; Abigail Abrams, *President Trump Attacked Hillary Clinton over Her Emails. Again.*, TIME, June 15, 2017, http://time.com/4820708/donald-trump-russia-investigation-hillary-clinton-obstruction/; Associated Press, *Trump Tweets Fresh Attacks on Democrats and Hillary Clinton Amid Reports of Looming Charges in Russia Probe*, L.A. TIMES, Oct. 29, 2017, http://www.latimes.com/politics/la-pol-updates-trump-tweets-russia-republican-anger-htmlstory.html.

[2] Lauren Carroll, *Fact-Checking Donald Trump's Tweets About Hillary Clinton and Russia*, POLITIFACT (Mar. 28, 2017, 4:00 PM), http://www.politifact.com/truth-o-meter/article/2017/mar/28/fact-checking-donald-trumps-tweets-about-hillary-c/.

[3] Mat Zapotosky, *Sessions Considering Second Special Counsel to Investigate Republican Concerns, Letter Shows*, WASH. POST, Nov. 13, 2017, https://www.washingtonpost.com/world/national-security/sessions-considering-second-special-counsel-to-investigate-republican-concerns-letter-shows/2017/11/13/bc92ef3c-c8d2-11e7-b0cf-7689a9f2d84e_story.html?utm_term=.fa50162b4a3d.

embattled Republican nominee in the race to fill his former seat in the Senate.[4] American Oversight submits this request to shed light on whether and to what extent political considerations are influencing or outweighing legal principles as DOJ sets its investigative priorities.

Requested Records

American Oversight requests that the Office of the Attorney General and the Office of Legislative Affairs produce the following within twenty business days:

1) All records reflecting communications (including emails, email attachments, text messages, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, or other materials) between (a) any employee in the Office of the Attorney General or the Office of Legislative Affairs and (b) and anyone in the White House Office (including anyone with an email address ending in @who.eop.gov) regarding any issues discussed in or related to either of Congressman Robert Goodlatte's letters of July 27, 2017, and September 26, 2017, attached for your convenience, or the November 13 response signed by Assistant Attorney General Stephen Boyd, also attached.

2) Records sufficient to identify all instances of packages being couriered between (a) any employee in the Office of the Attorney General or the Office of Legislative Affairs and (b) and anyone in the White House between July 27, 2017, and November 13, 2017.

Please provide all responsive records from July 27, 2017, through the date the search is conducted.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If DOJ uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

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[4] Brian Naylor et al., *McConnell Talks Up Sessions As Write-In Candidate to Replace Roy Moore*, NPR (Nov. 14, 2017, 12:08 PM), https://www.npr.org/2017/11/14/564071391/ryan-sessions-add-to-gop-voices-saying-moore-accusers-are-credible.

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.[5] **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**[6]

In addition, please note that in conducting a "reasonable search" as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered DOJ's prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**[7] **Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files.** For example, a custodian may have deleted a responsive email from his or her email program, but DOJ's archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that DOJ use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information "only if . . . disclosure would harm an interest protected by an exemption"

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[5] *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); *cf. Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

[6] *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) ("The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official's] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official's] work email account." (citations omitted)).

[7] Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, "Managing Government Records Directive," M-12-18 (Aug. 24, 2012), https://www.archives.gov/files/records-mgmt/m-12-18.pdf.

or "disclosure is prohibited by law."[8] If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA."[9] Moreover, the *Vaughn* index "must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information."[10] Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'"[11]

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.[12] Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, DOJ is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and DOJ can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

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[8] FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).
[9] *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).
[10] *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).
[11] *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).
[12] *Mead Data Central*, 566 F.2d at 261.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k), American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way.[13] Moreover, the request is primarily and fundamentally for non-commercial purposes.[14]

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."[15] The requested records are directly related to the work of the highest levels of leadership at DOJ. There is significant interest in the subject of these records, both from the American people at large as well as the U.S. Congress.[16] The requested records will help American Oversight and the general public understand whether and to what extent political considerations are influencing or outweighing legal principles as DOJ sets its investigative priorities. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available. As noted, the subject of this request is a matter of public interest, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.[17] As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government

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[13] 28 C.F.R. § 16.10(k)(2).
[14] *Id.*
[15] 28 C.F.R. § 16.10(k)(2)(i), (ii)(A)–(B).
[16] *See* Abrams, *supra* note 1; Associated Press, *supra* note 1; Carroll, *supra* note 2; *Uranium One Probe: Order to Lift 'Gag' on Russia Informant Came from Trump, Source Says*, FOX NEWS, Oct. 26, 2017, http://www.foxnews.com/politics/2017/10/26/uranium-one-probe-order-to-lift-gag-on-russia-informant-came-from-trump-source-says.html; Naylor et al., *supra* note 4; Nussbaum & Palmeri, *supra* note 1; Michael S. Schmidt & Maggie Haberman, *Justice Dept. to Weigh Inquiry Into Clinton Foundation*, N.Y. TIMES, Nov. 13, 2017, https://www.nytimes.com/2017/11/13/us/politics/justice-department-uranium-one-special-counsel.html; Eileen Sullivan, *What Is the Uranium One Deal and Why Does the Trump Administration Care So Much?*, N.Y. TIMES, Nov. 14, 2017, https://www.nytimes.com/2017/11/14/us/politics/uranium-one-hillary-clinton.html; The Washington Post, *Sessions Replacing Moore Could Solve Trump's Mueller Problem*, AL.COM (Nov. 14, 2017, 11:10 AM), http://www.al.com/opinion/index.ssf/2017/11/sessions_replacing_moore_could.html; Katie Bo Williams, *Judiciary Chairman Hints at Dissatisfaction with Sessions*, THE HILL (Nov. 14, 2017, 10:31 AM), http://thehill.com/homenews/administration/360265-judiciary-chairman-hints-at-dissatisfaction-with-sessions; Zapotosky, *supra* note 3.
[17] 28 C.F.R. § 16.10(k)(iii)(A)–(B).

activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.[18] American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney,[19] American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers.[20] As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.[21]

Accordingly, American Oversight qualifies for a fee waiver.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with DOJ on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Cerissa Cafasso at foia@americanoversight.org or 202.869.5246. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

Austin R. Evers
Executive Director
American Oversight

[18] American Oversight currently has approximately 11,700 page likes on Facebook, and 37,400 followers on Twitter. American Oversight, FACEBOOK, https://www.facebook.com/weareoversight/ (last visited Nov. 20, 2017); American Oversight (@weareoversight), TWITTER, https://twitter.com/weareoversight (last visited Nov. 20, 2017).

[19] *DOJ Civil Division Response Noel Francisco Compliance,* AMERICAN OVERSIGHT, https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance.

[20] *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents.

[21] *Audit the Wall,* AMERICAN OVERSIGHT, www.auditthewall.org.

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July 27, 2017

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
Washington, D.C.

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
Washington, D.C.

Dear Attorney General Sessions and Deputy Attorney General Rosenstein:

We are writing to you to request assistance in restoring public confidence in our nation's justice system and its investigators, specifically the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). We need to enable these agencies to perform their necessary and important law enforcement and intelligence functions fully unhindered by politics. While we presume that the FBI's investigation into Russian influence has been subsumed into Special Counsel Robert Mueller's investigation, we are not confident that other matters related to the 2016 election and aftermath are similarly under investigation by Special Counsel Mueller. The unbalanced, uncertain, and seemingly unlimited focus of the special counsel's investigation has led many of our constituents to see a dual standard of justice that benefits only the powerful and politically well-connected. For this reason, we call on you to appoint a second special counsel[1] to investigate a plethora of matters connected to the 2016 election and its aftermath, including actions taken by previously public figures like Attorney General Loretta Lynch, FBI Director James Comey, and former Secretary of State Hillary Clinton.

Many Democrats and members of the Washington media previously called for a "special prosecutor" to investigate Russian influence on the election and connections with the Trump campaign. Not surprisingly, once you actually made the decision to appoint a special counsel, the calls for further investigations by congressional committees continued, focused on allegations that have heretofore produced no evidence of criminality, despite the fact that over a year has passed since the opening of the original FBI investigation. Political gamesmanship continues to

[1] *See* 28 CFR Part 600 – General Powers of Special Counsel.

saturate anything and everything associated with reactions to President Trump's executive decisions, and reveals the hypocrisy of those who refuse to allow the Special Counsel's investigation to proceed without undue political influence. It is an unfortunate state of affairs.

Your stated rationale for recommending Director Comey's termination as FBI Director was his mishandling of former Secretary Clinton's email investigation and associated public disclosures concerning the investigation's findings. We believe this was the correct decision. It is clear that Director Comey contributed to the politicization of the FBI's investigations by issuing his public statement, nominating himself as judge and jury, rather than permitting career DOJ prosecutors to make the final decision. But many other questions remain unanswered, due to Mr. Comey's premature and inappropriate decision, as well as the Obama Justice Department's refusal to respond to legitimate Congressional oversight. Last week, the Republican Members of this Committee sent a letter to the Justice Department, asking for responses to those unanswered inquiries.[2] These questions cannot, for history's sake and for the preservation of an impartial system of justice, be allowed to die on the vine.

It is therefore incumbent on this Committee, in our oversight capacity, to ensure that the agencies we oversee are above reproach and that the Justice Department, in particular, remains immune to accusations of politicization. Many Congressional entities have been engaged in oversight of Russian influence on the election, but a comprehensive investigation into the 2016 Presidential campaign and its aftermath must, similarly, be free of even the suggestion of political interference. The very core of our justice system demands as much. A second, newly-appointed special counsel will not be encumbered by these considerations, and will provide real value to the American people in offering an independent perspective on these extremely sensitive matters.

Our call for a special counsel is not made lightly. We have no interest in engendering more bad feelings and less confidence in the process or governmental institutions by the American people. Rather, our call is made on their behalf. It is meant to determine whether the criminal prosecution of any individual is warranted based on the solemn obligation to follow the facts wherever they lead and applying the law to those facts.

As we referenced above, Democrats and the mainstream media called for a special counsel to be appointed to investigate any Russian influence on President Trump's campaign. Their pleas were answered, but there are many questions that may be outside the scope of Special Counsel Mueller's investigation. This was clear following Mr. Comey's recent testimony to the Senate Intelligence Committee on June 8, 2017, which ignited renewed scrutiny of former

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[2] *See* House Judiciary Committee letter of July 21, 2017 to Attorney General Sessions, requesting answers to multiple questions which remain unanswered or inadequately answered from the Obama Administration, *available at* https://judiciary.house.gov/wp-content/uploads/2017/07/072117_Letter-to-AG-Sessions.pdf?utm_source=House+Judiciary+Committee+Press+Releases&utm_campaign=fcab593157-EMAIL_CAMPAIGN_2017_07_21&utm_medium=email&utm_term=0_df41eba8fd-fcab593157-101865997.

Attorney General Loretta Lynch, and the actions she took to mislead the public concerning the investigation into the Clinton email investigation. Last year, this Committee inquired repeatedly about the circumstances surrounding that and other matters, but our inquiries were largely ignored.[3]

During his testimony, Mr. Comey referenced a meeting on the Phoenix airport tarmac between Ms. Lynch and former President Bill Clinton. Mr. Comey raised concerns about Ms. Lynch's conduct, and questioned her independence, stating:

> At one point, the attorney general had directed me not to call it an investigation, but instead to call it a matter, which confused me and concerned me. That was one of the bricks in the load that led me to conclude, 'I have to step away from the department if we're to close this case credibly.'[4]

In addition, in preparing to testify in front of Congress for a September 2015 hearing, Mr. Comey asked Ms. Lynch at the time whether she was prepared to refer to the Clinton investigation as just that, an "investigation." Mr. Comey testified that Ms. Lynch said, "Yes, but don't call it that, call it a matter." Mr. Comey retorted, "Why would I do that?" Ms. Lynch answered, "Just call it a matter."[5] Mr. Comey stated that he acquiesced, but it gave him "a queasy feeling," since it gave him the "impression that the attorney general was trying to align how we describe our work" with how the Clinton campaign was talking about it.[6]

Notwithstanding the fact that the FBI is the Federal Bureau of Investigation, and not the Federal Bureau of Matters, one is hard-pressed to understand why Ms. Lynch directed then-Director Comey to call the Clinton investigation a "matter" unless she intended to use such deceptive language to help wrongly persuade the American people that former Secretary Clinton was not, in fact, the subject of a full-scale FBI investigation, or to otherwise undermine the integrity of the investigation.

Following Director Comey's Senate Intelligence Committee testimony, Senator Dianne Feinstein was asked about the testimony while appearing on CNN's "State of the Union." Senator Feinstein stated, "I would have a queasy feeling too, though, to be candid with you, I think we need to know more about that, and there's only one way to know about it, and that's to have the Judiciary Committee take a look at that."[7]

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[3] *Id.*

[4] Peter Baker, *The New York Times*, June 8, 2017, *available at* https://www.nytimes.com/2017/06/08/us/politics/comey-testimony-loretta-lynch.html.

[5] *Id.*

[6] Ed O'Keefe, *The Washington Post*, June 8, 2017, *available at* https://www.washingtonpost.com/politics/2017/live-updates/trump-white-house/james-comey-testimony-what-we-learn/comey-repeats-that-lynch-asked-him-to-describe-clinton-investigations-as-a-matter/?utm_term=.ccb1c193f596.

[7] Eli Watkins, "Feinstein: Judiciary Committee must 'step up and carry its weight'," *CNN.com*, June 11, 2017, *available at* http://www.cnn.com/2017/06/11/politics/dianne-feinstein-james-comey/index.html.

We share Senator Feinstein's and Mr. Comey's concerns – specifically, that during the midst of a contentious Presidential election, which was already rife with scandal arising from Secretary Clinton's mishandling of classified information, that our nation's chief law enforcement officer would instruct the FBI Director, her subordinate, to mislead the American public about the nature of the investigation. Following Ms. Lynch's directive to downplay the Clinton investigation as a "matter," Director Comey infamously terminated the Clinton investigation, stating, "[a]lthough there is evidence of potential violations of the statutes regarding the handling of classified information, our judgment is that no reasonable prosecutor would bring such a case."[8]

Mr. Comey's testimony has provided new evidence that Ms. Lynch may have used her position of authority to undermine the Clinton investigation. At any other point in history this accusation would entail a shock to the conscience of law abiding Americans who expect a DOJ free of political influence. We only have, however, an investigation into Russian influence on the 2016 election, including any ties to the Trump campaign. To limit our nation's insight into just this this single component of the 2016 election will only cause the special counsel's work to be derided as one-sided and incomplete. The special counsel's work must begin and end unimpeded by political motivations on either side of the aisle. For these reasons, the following points must also be fully investigated – ideally, via a second special counsel. This is imperative to regain the cherished trust and confidence in our undoubtedly distressed law enforcement and political institutions.

We call on a newly appointed special counsel to investigate, consistent with appropriate regulations, the following questions, many of which were previously posed by this Committee and remain unanswered:

1) Then-Attorney General Loretta Lynch directing Mr. Comey to mislead the American people on the nature of the Clinton investigation;
2) The shadow cast over our system of justice concerning Secretary Clinton and her involvement in mishandling classified information;
3) FBI and DOJ's investigative decisions related to former Secretary Clinton's email investigation, including the propriety and consequence of immunity deals given to potential Clinton co-conspirators Cheryl Mills, Heather Samuelson, John Bentel and possibly others;
4) The apparent failure of DOJ to empanel a grand jury to investigate allegations of mishandling of classified information by Hillary Clinton and her associates;
5) The Department of State and its employees' involvement in determining which communications of Secretary Clinton's and her associates to turn over for public scrutiny;

[8] Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton's Use of a Personal E-Mail System, July 5, 2016, *available at* https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system.

6) WikiLeaks disclosures concerning the Clinton Foundation and its potentially unlawful international dealings;
7) Connections between the Clinton campaign, or the Clinton Foundation, and foreign entities, including those from Russia and Ukraine;
8) Mr. Comey's knowledge of the purchase of Uranium One by the company Rosatom, whether the approval of the sale was connected to any donations made to the Clinton Foundation, and what role Secretary Clinton played in the approval of that sale that had national security ramifications;
9) Disclosures arising from unlawful access to the Democratic National Committee's (DNC) computer systems, including inappropriate collusion between the DNC and the Clinton campaign to undermine Senator Bernie Sanders' presidential campaign;
10) Post-election accusations by the President that he was wiretapped by the previous Administration, and whether Mr. Comey and Ms. Lynch had any knowledge of efforts made by any federal agency to unlawfully monitor communications of then-candidate Trump or his associates;
11) Selected leaks of classified information related to the unmasking of U.S. person identities incidentally collected upon by the intelligence community, including an assessment of whether anyone in the Obama Administration, including Mr. Comey, Ms. Lynch, Ms. Susan Rice, Ms. Samantha Power, or others, had any knowledge about the "unmasking" of individuals on then candidate-Trump's campaign team, transition team, or both;
12) Admitted leaks by Mr. Comey to Columbia University law professor, Daniel Richman, regarding conversations between Mr. Comey and President Trump, how the leaked information was purposefully released to lead to the appointment of a special counsel, and whether any classified information was included in the now infamous "Comey memos";
13) Mr. Comey's and the FBI's apparent reliance on "Fusion GPS" in its investigation of the Trump campaign, including the company's creation of a "dossier" of information about Mr. Trump, that dossier's commission and dissemination in the months before and after the 2016 election, whether the FBI paid anyone connected to the dossier, and the intelligence sources of Fusion GPS or any person or company working for Fusion GPS and its affiliates; and
14) Any and all potential leaks originated by Mr. Comey and provide to author Michael Schmidt dating back to 1993.

You have the ability now to right the ship for the American people so these investigations may proceed independently and impartially. The American public has a right to know the facts – all of them – surrounding the election and its aftermath. We urge you to appoint a second special counsel to ensure these troubling, unanswered questions are not relegated to the dustbin of history.

Sincerely,

Bob Goodlatte

Jim Jordan

Lamar Smith

Matt Gaetz

Tom Marino

Steve Chabot

Blake Farenthold

Steve King

Louie Gohmert

Donald Trump

Raúl R. Labrador

Andy Biggs

Mike Johnson

John Rutherford

Martha Roby

John Ratcliffe

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ONE HUNDRED FIFTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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September 26, 2017

Dear Attorney General Sessions and Deputy Attorney General Rosenstein:

We write to renew this Committee's recent call for a second special counsel, to investigate matters which may be outside the scope of Special Counsel Robert Mueller's investigation.[1] Such a step is even more critical given the recent revelation that former FBI Director James Comey had prepared a statement ending the investigation into former Secretary of State Hillary Clinton, before interviewing at least 17 key witnesses, including the former Secretary herself.[2] At least one former career FBI supervisor has characterized this action as "so far out of bounds it's not even in the stadium," and "clearly communicating to [FBI executive staff] where the investigation was going to go."[3]

Among those witnesses the FBI failed to interview prior to the Director's preparation of his statement were Cheryl Mills and Heather Samuelson, both of whom were close Clinton aides with extensive knowledge of the facts surrounding the establishment of a private email server. Last year, this Committee inquired repeatedly of the Justice Department about the facts surrounding Ms. Mills' and Ms. Samuelson's involvement.[4] Our inquiries were largely ignored. Recently, we wrote to you to request responses to those and other unanswered questions

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[1] "Goodlatte & Judiciary Republicans Call for Second Special Counsel to Address Issues Outside the Scope of Special Counsel Mueller's Investigation," July 27, 2017, *available at* https://judiciary.house.gov/press-release/goodlatte-judiciary-republicans-call-second-special-counsel-address-issues-outside-scope-special-counsel-muellers-investigation/.

[2] Letter from Senators Grassley and Graham to FBI Director Christopher Wray, August 30, 2017, *available at* https://www.judiciary.senate.gov/imo/media/doc/2017-08-30%20CEG%20+%20LG%20to%20FBI%20(Comey%20Statement).pdf.

[3] "Did James Comey Break Rules by Drafting Hillary Clinton Statement? FBI Experts Are Divided," Newsweek, September 1, 2017, *available at* http://www.newsweek.com/comey-clinton-investigation-draft-statement-trump-658620.

[4] See, e.g., "Goodlatte Presses Justice Department on Secret Agreements with Top Clinton Advisors," October 3, 2016, *available at* https://judiciary.house.gov/press-release/goodlatte-presses-justice-department-secret-agreements-top-clinton-advisors/.

pertaining to the Clinton investigation.[5] We have not received a response. However, as the most recent Comey revelations make clear, ignoring this problem will not make it go away.

As we pointed out at the time, both Ms. Mills and Ms. Samuelson received immunity for their cooperation in the Clinton investigation, but were nevertheless permitted to sit in on the interview of Secretary Clinton. That, coupled with the revelation that the Director had already drafted an exoneration statement, strongly suggests that the interview was a mere formality, and that the Director had already decided the case would be closed.

During our FBI Oversight hearing last year, Congressman John Ratcliffe questioned the Director about this very issue. In part, that exchange was as follows:

> Mr. RATCLIFFE. Director, did you make the decision not to recommend criminal charges relating to classified information before or after Hillary Clinton was interviewed by the FBI on July the 2nd?
>
> Mr. COMEY. After.
>
> Mr. RATCLIFFE. Okay. Then I am going to need your help in trying to understand how that is possible. I think there are a lot of prosecutors or former prosecutors that are shaking our heads at how that could be the case. Because if there was ever any real possibility that Hillary Clinton might be charged for something that she admitted to on July the 2nd, why would two of the central witnesses in a potential prosecution against her be allowed to sit in the same room to hear the testimony?[6]

Why, indeed. Perhaps it was because, just as the Comey revelation suggests, the decision had already been made – prior to the interview of Secretary Clinton, Ms. Mills, Ms. Samuelson, or any of the other 14 potential witnesses – that Secretary Clinton would not be charged with any crimes for her conduct. President Obama had indicated as much, by stating publicly at the time that although Secretary Clinton showed "carelessness" in conducting government business on a private server, she had no intent to endanger national security. Of course, Secretary Clinton's supposed lack of "intent to harm national security" is a red herring, since the law merely requires the government to show "gross negligence."[7]

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[5] "Goodlatte & Judiciary Republicans Request Responses to Unanswered Oversight Letters Sent During Obama Administration," July 21, 2017, *available at* https://judiciary.house.gov/press-release/goodlatte-judiciary-republicans-request-responses-unanswered-oversight-letters-sent-obama-administration/.

[6] "Oversight of the Federal Bureau of Investigation," Hearing before the H. Comm. on Judiciary, September 28, 2016, p. 87, *available at* https://judiciary.house.gov/wp-content/uploads/2016/09/114-91_22125.pdf.

[7] 18 U.S.C. § 793(f). For a thorough account of this, see Andrew C. McCarthy, "It Wasn't Comey's Decision to Exonerate Hillary – It Was Obama's," *available at* http://www.nationalreview.com/corner/451053/not-comeys-decision-exonerate-hillary-obamas-decision.

Moreover, we note that not only did the former Director end the investigation prematurely -- and potentially at the direction, tacit or otherwise, of President Obama -- but he did so while declining to record the interviews of former Secretary Clinton or any of her close associates, as provided for by DOJ policy. The policy states:

> This policy establishes a presumption that the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and the United States Marshals Service (USMS) will electronically record statements made by individuals in their custody.
>
> This policy also encourages agents and prosecutors to consider electronic recording in investigative or other circumstances where the presumption does not apply. The policy encourages agents and prosecutors to consult with each other in such circumstances.[8]

Despite this, the DOJ and FBI declined to exercise their discretion to record the interview of former Secretary Clinton. This is truly inexplicable, given that the case was of keen national interest and importance, and involved a former Secretary of State and candidate for President of the United States who was accused of violating the Espionage Act. It only reinforces the sense that our nation's top law enforcement officials conspired to sweep the Clinton "matter" under the rug, and that there is, truly, one system for the powerful and politically well-connected, and another for everyone else.

In this case, it appears that Director Comey and other senior Justice Department and government officials may have pre-judged the "matter" before all the facts were known, thereby ensuring former Secretary Clinton would not be charged for her criminal activity. We implore you to name a second special counsel, to investigate this and other matters related to the 2016 election, including the conduct of the Justice Department regarding the investigation into Secretary Clinton's private email server.

Sincerely,

[8] "Attorney General Holder Announces Significant Policy Shift Concerning Electronic Recording of Statements," *available at* https://www.justice.gov/opa/pr/attorney-general-holder-announces-significant-policy-shift-concerning-electronic-recording (emphasis added).

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

NOV 13 2017

Dear Chairman Goodlatte:

This responds to your letters dated July 27, 2017, and September 26, 2017, in which you and other Members request the appointment of a Special Counsel to investigate various matters, including the sale of Uranium One, alleged unlawful dealings related to the Clinton Foundation and other matters. We are sending identical responses to the other Members who joined your letter.

As noted during our prior meeting in response to your letters, the Department of Justice (Department) takes seriously its responsibility to provide timely and accurate information to Congress on issues of public interest, and seeks to do so in a non-political manner that is consistent with the Department's litigation, law enforcement, and national security responsibilities. Additionally, the Department's leadership has a duty to carefully evaluate the status of ongoing matters to ensure that justice is served and that the Department's communications with Congress are accurate and complete.

To further that goal, the Attorney General has directed senior federal prosecutors to evaluate certain issues raised in your letters. These senior prosecutors will report directly to the Attorney General and the Deputy Attorney General, as appropriate, and will make recommendations as to whether any matters not currently under investigation should be opened, whether any matters currently under investigation require further resources, or whether any matters merit the appointment of a Special Counsel. This will better enable the Attorney General and the Deputy Attorney General to more effectively evaluate and manage the caseload. In conducting this review, all allegations will be reviewed in light of the Principles of Federal Prosecution. (USAM 9-27.000)

As you know, consistent with longstanding policy, the Department does not ordinarily confirm or deny investigations, and this letter should not be construed to do so. While this policy can be frustrating, especially on matters of great public concern, it is necessary to ensure that the Department acts with fairness and thoughtfulness, and always in a manner consistent with the law and rules of the Department.

In addition, you must know the Department will never evaluate any matter except on the facts and the law. Professionalism, integrity, and public confidence in the Department's work is critical for us, and no priority is higher.

Your letter referenced various allegations related to the Federal Bureau of Investigation's (FBI) handling of the investigation into former Secretary of State Hillary Clinton's use of a personal email server. On January 12, 2017, the Department's Inspector General (IG) sent a letter to you and other Members advising that the IG's office was initiating a review of, among other things:

- Allegations that Department or FBI policies or procedures were not followed in connection with, or in actions leading up to or related to, the FBI Director's public announcement on July 5, 2016, and the Director's letters to Congress on October 28 and November 6, 2016, and that certain underlying investigative decisions were based on improper considerations;

- Allegations that the FBI Deputy Director should have been recused from participating in certain investigative matters;

- Allegations that Department and FBI employees improperly disclosed non-public information; and

- Allegations that decisions regarding the timing of the FBI's release of certain Freedom of Information Act documents on October 30 and November 1, 2016, and the use of a Twitter account to publicize the same, were influenced by improper considerations.

These investigations include issues raised in your letters. In addition, the Department has forwarded a copy of your letters to the IG so he can determine whether he should expand the scope of his investigation based on the information contained in those letters.

Once the IG's review is complete, the Department will assess what, if any, additional steps are necessary to address any issues identified by that review.

We will conduct this evaluation according to the highest standards of justice. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Very truly yours,

Stephen E. Boyd
Assistant Attorney General