ELIJAH E. CUMMINGS, MARYLAND
CHAIRMAN

ONE HUNDRED SIXTEENTH CONGRESS

JIM JORDAN, OHIO
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM
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WASHINGTON, DC 20515–6143
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October 31, 2019

Ms. Monica Block
Acting Director
Office of Administration
Executive Office of the President
Eisenhower Executive Office Building
Washington, D.C. 20502

Dear Ms. Block:

We are in receipt of the October 24, 2019, letter from counsel for the Office of Administration (OA) articulating your refusal to appear at a joint hearing before the Subcommittee on Government Operations and the Subcommittee on National Security regarding the Trump Administration's failure to comply with the Securely Expediting Clearances Through Reporting Transparency Act of 2018 (SECRET Act).

The letter relies on a nonsensical reading of the SECRET Act, fails to set forth any legitimate basis for your refusal to appear, and is contrary to historical precedent. Given your refusal to appear, we have postponed the hearing to give you a final opportunity to testify voluntarily.

White House Failure to Comply with SECRET Act

Section 4 of the SECRET Act, which was passed by both houses of Congress and signed by President Donald Trump, required the White House OA Director to submit a report to Congress by August 20, 2018, that "explains the process for conducting and adjudicating security clearance investigations for personnel of the Executive Office of the President [EOP], including personnel of the White House Office."[1]

The law mandated that the OA Director submit this report to Congress by August 20, 2018. To date—more than 14 months after the report was due—you have failed to submit a report that fulfills the requirements of the SECRET Act.

The White House has not provided a legitimate basis for refusing to provide this report. Instead, your counsel's October 24, 2019, letter asserted:

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[1] SECRET Act, Pub. L. No. 115-173, § 4 (2018).

> On February 16, 2018, the White House Chief of Staff issued a memorandum discussing the security clearance process for employees within the EOP; and on April 11, 2018, the White House Counsel's Office met with the House Committee on Oversight and Reform and produced a copy of the February 16, 2018 memorandum, as well as a briefing on the EOP's security clearance process.
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> The letter also asserted:
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> The production of the February 16, 2018 memorandum and accompanying briefing by the White House Counsel's Office satisfied any reporting obligations that may exist under section 4 of the SECRET Act, and the Committee has not articulated any reason why the memorandum's production and accompanying briefing are insufficient for satisfying the needs of the Committee.[2]

Both the memorandum issued on February 16, 2018, and the briefing on April 11, 2018, occurred *before* the SECRET Act was enacted on May 22, 2018. It strains credulity to suggest that either the memorandum or subsequent briefing satisfied the requirements of the SECRET Act.

Previous Memorandum and Briefing Were Nonresponsive

The five-page memorandum issued on February 16, 2018, by then-Chief of Staff John Kelly entitled "Improvements to the Clearance Process," was not responsive to the SECRET Act. The memorandum was issued in response to public reports that the White House had allowed White House Staff Secretary Robert Porter to access classified information on an interim security clearance for more than a year after the Federal Bureau of Investigation (FBI) provided the White House with significant derogatory information about his background, including information about allegations of domestic violence.[3]

In the memorandum, General Kelly acknowledged "shortcomings" in the Trump Administration's security clearance process, conceded that "[w]e should—and in the future, must—do better," and expressed that "now is the time to take a hard look at the way the White House processes clearance requests." He stated that the goal of his proposed reforms was "to

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[2] Letter from Gineen M. Bresso, General Counsel, Office of Administration, Executive Office of the President, to Chairman Gerald E. Connolly, Subcommittee on Government Operations, and Chairman Stephen F. Lynch, Subcommittee on National Security, Committee on Oversight and Reform (Oct. 24, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Block%20Response%20to%2020191016%20Oversight%20Request%20for%20Witness.pdf).

[3] Letter from Pat Cipollone, Counsel to the President, The White House, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Feb. 25, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-02-25%20Cipollone%20to%20EEC%20re%20Security%20Clearances.pdf); *Kelly Makes Changes to White House Security Clearance Process After Abuse Allegations Against Top Aide*, Washington Post (Feb. 16, 2018) (online at www.washingtonpost.com/politics/kelly-makes-changes-to-white-house-security-clearance-process-following-abuse-allegations-against-top-aide/2018/02/16/06c5ee46-1352-11e8-8ea1-c1d91fcec3fe_story.html).

improve accountability while maintaining the critical objectivity necessary for the process to continue functioning without political interference."

However, the memorandum provided no explanation of "the process for conducting and adjudicating security clearance investigations for personnel of the Executive Office of the President, including personnel of the White House Office," a key requirement of the SECRET Act.

Instead, the memorandum included a set of aspirational action items that, if properly implemented, might have improved the White House's security clearance and investigation process, including:

- "Work with the FBI to reduce the time lag between discovery and significant derogatory information from fieldwork to the disclosure to the White House. Going forward, the goal of receiving a briefing regarding significant derogatory information about senior staff is within 48 hours of discovery" by the FBI;

- "Formalize processes between the White House Counsel's Office and the PSO [Personnel Security Office] regarding suitability and clearance reviews"; and

- "[I]n the past, credible and substantiated reports of past domestic abuse—even physical abuse—were not considered automatic disqualifiers for suitability for employment or a security clearance. That needs to be revisited. Generally, our treatment of behavior that traditionally may not have been disqualifying should be modernized."[4]

Unfortunately, many of the prospective actions in the memorandum were never implemented. Both Carl Kline, former White House Personnel Security Director, and Crede Bailey, current White House Chief Security Officer, confirmed in interviews with Committee staff that many of the proposed reforms in the memorandum remain unresolved.

For example, Mr. Bailey confirmed that the White House has not changed how it considers credible allegations of domestic violence in the security clearance adjudication process, and he confirmed that it is not an automatic disqualifier for obtaining a clearance. Mr. Bailey stated that in late 2018—months after the Robert Porter scandal—he received a call from a Central Intelligence Agency (CIA) official who brought to his attention a piece of information relating to domestic violence in a current White House staffer's background investigation file. Mr. Bailey stated that the individual was granted a Top Secret/SCI clearance despite the domestic violence allegation.

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[4] General John F. Kelly, *Memorandum Regarding Improvements to the Clearance Process*, The White House (Feb. 16, 2018) (online at https://assets.documentcloud.org/documents/4380658/Read-Kelly-s-memo-of-proposed-changes-to-White.pdf).

According to Mr. Kline and Mr. Bailey, the only reforms to the White House's security clearances process identified in the February 2018 memo that were implemented since its release include decreasing the number of interim clearances granted to White House personnel and the automatic downgrade of security clearances to the next lowest level for those personnel who have been holding interim security clearances for more than 180 days.

On April 11, 2018, the White House Counsel's Office provided a "forward-looking only" briefing on security clearance processes to then-Chairman Trey Gowdy, then-Ranking Member Elijah E. Cummings, and then-Vice Ranking Member Gerald E. Connolly. The briefers refused to address previous inadequacies in the security clearance process, and they failed to provide any type of report that "explains the process for conducting and adjudicating security clearance investigations for personnel of the Executive Office of the President, including personnel of the White House Office." Rather, they presented the already public February 18, 2018, memorandum and suggested that its proposals would result in positive changes to the White House's security clearance process.

Precedent for OA Director Testifying Before Oversight Committee

Your counsel's October 24, 2019, letter not only failed to identify any legitimate basis for your refusal to testify, but also disregarded precedent for the Committee to obtain testimony from previous OA Directors. For example, under former Republican Chairman William Clinger, the Clinton Administration's OA Director, Franklin Reeder, testified before this Committee not once, but twice:

- On June 25, 1996, Mr. Reeder testified before the Subcommittee on Government Management, Information, and Technology at a hearing entitled, "Presidential and Executive Office Accountability Act."[5]

- On September 20, 1996, Mr. Reeder testified before the Subcommittee on Civil Service at a hearing entitled, "Drug Policy in the Federal Workforce."[6]

In addition to arguing that there is no "further action required from OA under the SECRET Act," your counsel's letter argued that you should not have to testify because you have "no function or advisory role in determining whether a particular person should or should not have a clearance." However, the letter also conceded that you maintain "responsibility to create the framework that ensures that PSD [Personnel Security Division] is properly functioning and efficiently executing its mission."

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[5] House Committee on Government Reform and Oversight, Subcommittee on Government Management, Information, and Technology, *H.R. 3452, Presidential and Executive Office Accountability Act*, 104th Cong. (June 25, 1996).

[6] House Committee on Government Reform and Oversight, Subcommittee on Civil Service, *Drug Policy in the Federal Workforce*, 104th Cong. (Sept. 20, 1996).

This Committee, this Congress, and indeed, even this President agreed when we enacted the SECRET Act that the responsibility for producing this report to Congress rests with you. It is for this reason that your testimony is necessary.

Conclusion

For these reasons, we request that you please notify us by November 8, 2019, whether you intend to appear voluntarily at a hearing before the Subcommittees. If so, please contact Subcommittee staff to determine a mutually agreeable date. If not, we will be forced to consider alternative means to obtain your testimony. If you have any questions about this request, please contact Subcommittee staff at (202) 225-5051.

Sincerely,

Gerald E. Connolly
Chairman
Subcommittee on Government Operations

Stephen F. Lynch
Chairman
Subcommittee on National Security

Enclosure

cc: The Honorable Mark Meadows, Ranking Member
Subcommittee on Government Operations

The Honorable Jody Hice, Ranking Member
Subcommittee on National Security