

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051

MINORITY (202) 225-5074

<http://oversight.house.gov>

February 15, 2019

The Trump Organization
c/o Mr. Alan S. Futerfas
Law Offices of Alan S. Futerfas
565 Fifth Avenue, 7th Floor
New York, NY 10017

Dear Mr. Futerfas:

On January 8, 2019, the Committee launched an investigation into the failure of President Donald Trump to report hundreds of thousands of dollars in payments and liabilities to his former attorney, Michael Cohen, to silence women alleging extramarital affairs during the 2016 presidential campaign. As part of this investigation, the Committee sent the Trump Organization a letter requesting six categories of documents that were first requested four months earlier.¹

On January 22, 2019, you sent a response that failed to provide any of the requested documents. Instead, you stated:

In light of the ongoing inquiries concerning this subject, we respectfully decline to provide the documents you have requested at this time. Documents relating to the payments referenced in your letter have previously been provided to, and are currently in the possession of, the authorities. We understand from various public statements that the Committee has no interest in interfering with ongoing inquiries.²

I write to correct your fundamental misunderstanding of the role of Congressional oversight and to insist on full compliance with the Committee's January 8, 2019, document request.

¹ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to George Sorial, Executive Vice President and Chief Compliance Counsel, The Trump Organization (Jan. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-01-08.EEC%20to%20Sorial-Trump%20Org%20re%20Cohen%20Payments.pdf>); Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Donald F. McGahn II, Counsel to the President, The White House, and George A. Sorial, Executive Vice President and Chief Compliance Counsel, The Trump Organization (Sept. 12, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-09-12.EEC%20to%20McGahn-WH%20Sorial-TrumpOrg%20re%20Financial%20Disclosures%20Cohen%20Payments.pdf>).

² Letter from Alan S. Futerfas, Counsel for the Trump Organization, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Jan. 22, 2019).

Congress has an independent, constitutional duty to conduct oversight. There is a long history of Congress—and specifically this Committee—exercising oversight powers to examine matters that were also the subject of ongoing criminal probes. Some examples include the numerous Congressional investigations into the Benghazi attacks,³ the investigation into the IRS's alleged targeting of Tea Party organizations,⁴ the investigation into the Justice Department's Operation Fast and Furious,⁵ the investigation into the 2008 financial crisis,⁶ the investigation into Jack Abramoff and his lobbying,⁷ and the investigation into allegations of campaign finance law violations during the 1996 election.⁸

Congress typically takes great care not to impair the outcome of criminal cases while exercising its own constitutional authority to conduct robust oversight of the Executive Branch and private entities on issues that may include, but are not limited to, criminal offenses. As the Supreme Court has held:

³ Select Committee on the Events Surrounding the 2012 Terrorist Attack n Benghazi, *Final Report*, H. Rpt. 114-848, 114th Cong. (Dec. 7, 2016) (online at www.congress.gov/114/crpt/hrpt848/CRPT-114hrpt848.pdf).

⁴ Committee on Oversight and Government Reform, *Hearing on Examining the Justice Department's Response to the IRS Targeting Scandal*, 113th Cong. (July 17, 2014) (online at www.govinfo.gov/content/pkg/CHRG-113hrg93834/pdf/CHRG-113hrg93834.pdf) (emphasis added).

⁵ Committee on Oversight and Government Reform, *Minority Staff Report—Fatally Flawed: Five Years of Gunwalking in Arizona*, 112th Cong. (Jan. 30, 2012) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Fast%20and%20Furious.Minority%20Report.pdf>); *Suspected Gunman in Border Patrol Agent Brian Terry's Killing Arrested*, NBC News (Apr. 13, 2017) (online at www.nbcnews.com/news/us-news/suspected-gunman-border-patrol-agent-brian-terry-s-killing-arrested-n745896).

⁶ Committee on Oversight and Government Reform, *Hearing on the Financial Crisis and the Role of Federal Regulators*, 110th Cong. (Oct. 23, 2008) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/migrated/20081024163819.pdf>); Senate Permanent Subcommittee on Investigations, *Wall Street and the Financial Crisis: Anatomy of a Collapse*, 112th Cong. (Apr. 13, 2011) (online at [www.hsgac.senate.gov/imo/media/doc/PSI%20REPORT%20-%20Wall%20Street%20&%20the%20Financial%20Crisis-Anatomy%20of%20a%20Financial%20Collapse%20\(FINAL%205-10-11\).pdf](http://www.hsgac.senate.gov/imo/media/doc/PSI%20REPORT%20-%20Wall%20Street%20&%20the%20Financial%20Crisis-Anatomy%20of%20a%20Financial%20Collapse%20(FINAL%205-10-11).pdf))). See also Department of Justice, *Former Chairman of Taylor, Bean & Whitaker Convicted for \$2.9 Billion Fraud Scheme That Contributed to the Failure of Colonial Bank* (Apr. 19, 2011) (online at www.justice.gov/opa/pr/former-chairman-taylor-bean-whitaker-convicted-29-billion-fraud-scheme-contributed-failure).

⁷ Committee on Oversight and Government Reform, *Jack Abramoff's Contacts with White House Officials*, 110th Cong. (June 9, 2008) (online at <http://alt.cimedia.com/ajc/pdf/polinsider/abramoffreport.pdf>); House Committee on Government Reform, *Full Report on the Abramoff Scandal*, 109th Cong. (Sep. 29, 2006) (online at <https://wayback.archive-it.org/4949/20141031193026/http://oversight-archive.waxman.house.gov/abramoff/index3.asp>); Department of Justice, *Former Lobbyist Jack Abramoff Sentenced to 48 Months in Prison on Charges Involving Corruption, Fraud, Conspiracy and Tax Evasion* (Sept. 4, 2008) (online at www.justice.gov/archive/opa/pr/2008/September/08-crm-779.html); Department of Justice, *Former Lobbyist Pleads Guilty to Conspiracy to Commit Honest Services Fraud* (Jan. 30, 2009) (online at www.justice.gov/archive/opa/pr/2009/January/09-crm-078.html).

⁸ *Campaign Fund Probe Winds Down*, Washington Post (May 30, 1999) (online at www.washingtonpost.com/wp-srv/politics/special/campfin/stories/finance053099.htm); *Senate Campaign Probers Release Findings*, Washington Post (Mar. 6, 1998) (online at www.washingtonpost.com/wp-srv/politics/special/campfin/stories/cf030698a.htm).

Mr. Alan S. Futerfas

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[S]urely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding, or when crime or wrongdoing is disclosed.⁹

Congress' investigative purposes and authorities are much broader than those of criminal prosecutors or special counsels. Prosecutors seek to prove criminal conduct beyond a reasonable doubt, while Congress reviews issues of public concern that are not necessarily criminal, including practices that are not currently regulated or prohibited, in order to determine whether legislation is necessary or current law should be amended. Congress also reviews Executive Branch processes to ensure that they are implemented efficiently and effectively and to ensure that taxpayer dollars are being spent responsibly.

The Committee has, and will continue to, consult with the Department of Justice regarding our independent inquiry. That consultation is done directly with the Department of Justice, and the Committee makes its own independent determination of what information it requires.

Your client's production of documents to "the authorities" at the Department of Justice does not obviate the need to produce them to Congress since the executive and legislative branches of government are separate and independent. If your client's only copies of the documents are now in the possession of the Executive Branch, please inform the Committee and provide a list of the documents that are no longer in your possession. Otherwise, please produce all of the previously requested documents to the Committee immediately.

Please notify the Committee by February 22, 2019, whether your client intends to comply voluntarily or whether the Committee should consider alternative means to obtain compliance. If you have any questions, please contact Committee staff at (202) 225-5051.

Thank you for your prompt attention to this request.

Sincerely,



Elijah E. Cummings
Chairman

cc: The Honorable Jim Jordan, Ranking Member

⁹ *Hutcheson v. United States*, 369 U.S. 599, 618 (1962) (internal citations omitted).

Responding to Oversight Committee Document Requests

1. In complying with this request, 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. Produce all 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.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. 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, and no modifications should be made to the original metadata:

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.

7. 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, zip file, box, or folder is produced, each should contain an index describing its contents.
8. 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.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. 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.
15. 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) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. 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, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. 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.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production 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 2105 of the Rayburn House Office Building.
21. Upon completion of the production, 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 that 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, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office 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, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, 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 that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” 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.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.