

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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February 27, 2019

The Honorable Jim Jordan  
Ranking Member  
Committee on Oversight and Reform  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Jordan:

Last week, you sent two letters objecting to the Committee's efforts to investigate 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. I would like to respond to each letter in turn.

First, you sent a letter to the Office of Government Ethics (OGE)—the office charged with reviewing President Trump's financial disclosure forms—complaining about the fact that OGE responded to a duly authorized request from our Committee to produce documents relating to these matters. Your letter raised concerns about the "remarkable turnaround" by OGE a "mere nine days" later; that OGE allowed itself "to be used for partisan purposes"; and that OGE's compliance with the Committee's request "could have a chilling effect on Executive Branch officials seeking ethics guidance in the future."<sup>1</sup>

However, you did not raise any of these complaints when OGE responded in exactly the same manner to a previous request from a Republican Chairman during a Democratic Administration.

On December 23, 2015, then-Chairman Jason Chaffetz requested that OGE provide documents and communications between OGE and representatives of Secretary of State Hillary Clinton covering a period of seven years, as well as internal OGE communications about the payment or disclosure of speaking fees by Secretary Clinton, her husband, or the Clinton Foundation.<sup>2</sup>

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<sup>1</sup> Letter from Ranking Member Jim Jordan, House Committee on Oversight and Reform, to Director Emory A. Rounds III, Office of Government Ethics (Feb. 21, 2019).

<sup>2</sup> Letter from Chairman Jason Chaffetz, House Committee on Oversight and Government Reform, to Director Walter M. Shaub, Jr., Office of Government Ethics (Dec. 23, 2015).

OGE promptly responded to the Committee's request, producing the documents on January 11, 2016—just 19 days later, including over a holiday break.<sup>3</sup> OGE's production to the Committee included correspondence between Secretary Clinton and her attorney and OGE, an OGE employee's handwritten notes memorializing a conversation with a representative of the Clintons, and internal communications between OGE employees related to Secretary Clinton's disclosures.<sup>4</sup>

Second, you sent a letter to me complaining that I misinterpreted the documents OGE provided. Specifically, you took issue with my letter to the White House on February 15, 2019, stating that the OGE documents appear to indicate that lawyers representing President Trump—including Sheri Dillon, President Trump's personal attorney, and Stefan Passantino, the former Deputy White House Counsel for Compliance and Ethics who now has left the White House to represent the Trump Organization—may have provided false information about these payments to federal officials at OGE.<sup>5</sup>

My letter quoted directly from OGE documents indicating that both Ms. Dillon and Mr. Passantino—during the same joint discussion with OGE officials—discussed a retainer agreement. According to federal prosecutors in the Southern District of New York, there was no “retainer agreement” in place between President Trump and Mr. Cohen covering the payments to silence women alleging extramarital affairs. On August 21, 2018, prosecutors revealed in their complaint: “In truth and in fact, there was no such retainer agreement.”<sup>6</sup>

As my letter explained, on May 2, 2018, President Trump's personal attorney, Rudy Giuliani, offered this false retainer agreement claim publicly.<sup>7</sup> The next day, President Trump repeated Mr. Giuliani's claims regarding Mr. Cohen's “retainer.”<sup>8</sup>

On May 8, 2018, according to the OGE documents, Ms. Dillon told OGE officials: “Mr. Cohen always knew that he would be reimbursed but the mechanisms for reimbursement changed over time.”<sup>9</sup> According to these notes, Ms. Dillon stated “unequivocally that Michael

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<sup>3</sup> Letter from Director Walter M. Shaub, Jr., Office of Government Ethics, to Chairman Jason Chaffetz, House Committee on Oversight and Government Reform (Jan. 11, 2016).

<sup>4</sup> Office of Government Ethics, *Index and Summary of Documents Responsive to Information Request* (Jan. 11, 2016).

<sup>5</sup> Letter from Ranking Member Jim Jordan to Chairman Elijah E. Cummings, House Committee on Oversight and Reform (Feb. 21, 2019).

<sup>6</sup> Department of Justice, Southern District of New York, Government's Information, 17 (Aug. 21, 2018), *United States v. Cohen*, S.D.N.Y. (No. 1:18 CR 00602).

<sup>7</sup> *Rudy Giuliani on Potential Trump Interview for Mueller*, Fox News (May 2, 2018) (online at [www.foxnews.com/transcript/rudy-giuliani-on-potential-trump-interview-for-mueller](http://www.foxnews.com/transcript/rudy-giuliani-on-potential-trump-interview-for-mueller)); *Giuliani Says Trump Repaid Cohen for Stormy Daniels Hush Money*, New York Times (May 2, 2018) (online at [www.nytimes.com/2018/05/02/us/politics/trump-michael-cohen-stormy-daniels-giuliani.html](http://www.nytimes.com/2018/05/02/us/politics/trump-michael-cohen-stormy-daniels-giuliani.html)).

<sup>8</sup> Donald J. Trump (@realdonaldtrump), Twitter (May 3, 2018) (online at <https://twitter.com/realdonaldtrump/status/991992302267785216?lang=en>).

<sup>9</sup> Office of Government Ethics, *Notes to File* (received Jan. 31, 2019) (0028).

Cohen did not loan President Trump money in the natural sense of the word.”<sup>10</sup> When an OGE official “asked if we could see the retainer agreement,” Ms. Dillon said she “will not permit OGE staff to read the agreement because it is privileged.”<sup>11</sup> She then stated: “No, not even at our office.”<sup>12</sup>

In that same discussion on May 8, 2018, according to the OGE documents, Mr. Passantino stated:

My understanding [sic] that in course of legal services, he was authorized to outlay and that was part of retainer agreement. Legal fees charged on monthly basis. Sees it as revolving credit as what shouldn't be disclosed.<sup>13</sup>

Your letter offered no basis to dispute the documents relating to Ms. Dillon. With respect to Mr. Passantino, your letter stated that you “understand” the facts in his case to be different than those described in my letter, although you did not explain how you arrived at your understanding.<sup>14</sup> Specifically, your letter stated that Mr. Passantino—rather than representing that there was a retainer agreement—“was simply trying to understand the applicability of regulations and OGE guidance as to whether the payments were reportable liabilities.”<sup>15</sup>

Mr. Passantino’s conversation was not made in a vacuum; he did not ask OGE a hypothetical question about how retainer agreements generally work. The Committee’s concern is that Mr. Passantino and Ms. Dillon were discussing a specific retainer agreement with OGE that prosecutors have now determined did not exist. To be clear, I have not accused either Ms. Dillon or Mr. Passantino of a crime. It is certainly possible that someone falsely informed both of them that such a retainer agreement existed when it did not. That is, in part, what the Committee’s investigation seeks to determine.

In response to your three specific questions, I have received no documents from OGE that have not also been provided to Republicans; the Committee intends to invite both Ms. Dillon and Mr. Passantino to participate in transcribed interviews in the near future; and the reason the Committee is seeking additional documents from the White House is because the record indicates that these retainer claims were false, but the Committee needs more information about who knew what and when regarding the inaccuracy of the President’s financial disclosures.

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<sup>10</sup> *Id.* at 0029.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 0024.

<sup>13</sup> *Id.* at 0020.

<sup>14</sup> Letter from Ranking Member Jim Jordan to Chairman Elijah E. Cummings, House Committee on Oversight and Reform (Feb. 21, 2019).

<sup>15</sup> *Id.*

The Honorable Jim Jordan

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In this way, the Committee will be able to determine whether legislative, regulatory, or other changes are necessary to ensure that the President and other federal government employees file accurate financial disclosures in the future.

I hope this information is helpful.

Sincerely,

A handwritten signature in blue ink that reads "Elijah E. Cummings". The signature is written in a cursive style with a large, looping initial "E".

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Elijah E. Cummings  
Chairman