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Chairman Schiff Issues Subpoena for Whistleblower Complaint Being Unlawfully Withheld by Acting DNI from Intelligence Committees

Washington, September 13, 2019

Today, Rep. Adam Schiff (D-CA), the Chairman of the House Permanent Select Committee on Intelligence, issued a subpoena to the Acting Director of National Intelligence (DNI) Joseph Maguire to compel the production of a whistleblower complaint that the Intelligence Community Inspector General's (IC IG) determined to be credible and a matter of "urgent concern," as well as the IC IG's determination and all records pertaining to the Office of the Director of National Intelligence's (ODNI) involvement in this matter, including any and all correspondence with other Executive Branch actors such as the White House. The Acting DNI was required by statute to submit the complaint to the congressional intelligence committees more than 10 days – but he refuses to do so.

Prior to issuing the subpoena, the Committee learned that the complaint involves confidential and potentially privileged communications by persons outside the Intelligence Community and the ODNI refused to rule out that the underlying conduct relates to an area of active investigation by the Committee, raising serious concerns that the whistleblower complaint is being withheld to protect the President or other Administration officials. Absent compliance with the subpoena, the Committee plans to require Acting Director Maguire to appear before the Committee in an open hearing on Thursday, September 19, 2019.

Chairman Schiff stated:

"A month ago, a whistleblower within the intelligence community lawfully filed a complaint regarding a serious or flagrant problem, abuse, violation of law, or deficiency within the responsibility or authority of the Director of National Intelligence. The Inspector General of the Intelligence Community found that complaint not only credible, but urgent. More than ten days since the Director was obligated to transmit the complaint to the intelligence committees, the Committee has still not received the disclosure from the Director, in violation of the law.

"A Director of National Intelligence has never prevented a properly submitted whistleblower complaint that the IC IG determined to be credible and urgent from being provided to the congressional intelligence committees. Never. This raises serious concerns about whether White House, Department of Justice or other executive branch officials are trying to prevent a legitimate whistleblower complaint from reaching its intended recipient, the Congress, in order to cover up serious misconduct.

"After Watergate exposed significant intelligence abuses, a critical bargain was struck: in exchange for the Intelligence Community's willingness to reveal closely guarded national security secrets, the congressional intelligence committees and leadership promised to handle that information responsibly. It was also of vital importance that intelligence officials have a lawful and protected means of bringing misconduct to the attention of Congress and the public. By withholding a credible whistleblower complaint that potentially deals with executive branch wrongdoing, the DNI is in violation of the applicable statute and has made itself a party to the concealment of potentially serious misconduct."

The Committee learned that the DNI was withholding from the Committee an authorized and protected whistleblower disclosure involving an "urgent concern," which is defined by law as "a serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information."

On September 9, 2019, the IC IG transmitted a letter to the Committee notifying it of the existence of a whistleblower complaint. The following day, on September 10, 2019, Chairman Schiff requested the full and unredacted whistleblower complaint, the IC IG determination related to the complaint, and all records pertaining to the ODNI's involvement in this matter, including any and all correspondence with other Executive Branch actors including the White House. As noted in Schiff's letter to Acting DNI Maguire:

"We do not know whether this decision to withhold the disclosure was made only by you, or whether it involved interference by other parties, including the White House. The Committee's recent experience has heightened concern of improper White House efforts to influence your office and the Intelligence Community. The failure to transmit to the Committee an urgent and credible whistleblower complaint, as required by law, raises the prospect that an urgent matter of a serious nature is being purposefully concealed by the Committee."

On September 13, 2019, the Committee received a letter from the ODNI declining the Chairman's request and stating that the DNI, contrary to an unambiguous statutory command, is withholding the complaint from the Committee because, in part, it involves confidentially and potentially privileged communications by persons outside the Intelligence Community.

In Schiff's September 13, 2019 letter to the DNI accompanying the subpoena, Schiff writes:

"... in violation of the statute's explicit command, and in a stark break with the unbroken practice of previous Directors of National Intelligence, you have refused to transmit to the Committee the whistleblower disclosure, along with the IC IG's determination that the information in the disclosure represents a credible urgent concern—even after the Committee's formal request on September 10, 2019. So far as the Committee is aware, this marks the first time a Director of National Intelligence has ever sought to overrule the IC IG and conceal from Congress a whistleblower complaint—in this case, one the IC IG has already determined to be a credible urgent concern. You have also refused, in further contravention of the statute, to provide the whistleblower with required direction, through the IC IG, on how to contact the Committee directly in a secure manner.

"As Acting Director of National Intelligence, you have neither the legal authority nor the discretion to overrule a determination by the IC IG. Moreover, you do not possess the authority to withhold from the Committee a whistleblower disclosure from within the Intelligence Community that is intended for Congress.

"Your office has attempted to justify doing so based on a radical distortion of the statute that completely subverts the letter and spirit of the law, as well as arrogates to the Director of National Intelligence authority and discretion he does not possess. Under the statute, the Director serves as a conduit to transmit the complaint to the congressional intelligence committee with any comments the Director considers appropriate and consistent with proper security practices.

"Even though the disclosure was made by an individual within the Intelligence Community through lawful channels, you have improperly withheld that disclosure on the basis that, in your view, the complaint concerns conduct by someone outside of the Intelligence Community and because the complaint involves confidential and potentially privileged communications. In a further departure from the statute, your office consulted the Department of Justice about the complaint, even though the statute does not provide you discretion to review, appeal, reverse, or countermand in any way the IC IG's independent determination, let alone to involve another entity within the Executive Branch in the handling of a whistleblower complaint. Your office, moreover, has refused to affirm or deny that officials or lawyers at the White House have been involved in your decision to withhold the complaint from the Committee. You have also refused to rule out to me that the urgent concern, and underlying conduct, relates to an area of active investigation by the Committee.

"The Committee can only conclude, based on this remarkable confluence of factors, that the serious misconduct at issue involves the President of the United States and/or other senior White House or Administration officials. This raises grave concerns that your office, together with the Department of Justice and possibly the White House, are engaged in an unlawful effort to protect the President and conceal from the Committee information related to his possible "serious or flagrant" misconduct, abuse of power, or violation of law.

"Accordingly, due to the urgency of the matter and the unlawful decision by your office to withhold from the Committee an Intelligence Community individual's credible "urgent concern" whistleblower disclosure, the Committee hereby issues the attached subpoena compelling you to transmit immediately to the Committee the disclosure, in complete and unaltered form, as well as to produce other related materials."

Schiff's letter to the Acting DNI on September 10, 2019 can be found [here](#). Schiff's letter to the Acting DNI accompanying the subpoena on September 13, 2019 can be found [here](#).

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