

THE WHITE HOUSE

WASHINGTON

November 20, 2019

BY EMAIL

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Dear Mr. Wolosky:

Thank you for your recent letter, dated November 18, 2019. We welcome the opportunity to reiterate that your client, Dr. Fiona Hill, continues to be bound by important obligations to refrain from disclosing classified information or information subject to executive privilege in her upcoming testimony before the House Permanent Select Committee on Intelligence (the “Committee”).

Our guidance concerning Dr. Hill’s obligations, including with respect to the scope of executive privilege, remains the same as expressed in our October 14, 2019 letter (the “October 14 letter”). We appreciate that, in her initial deposition, Dr. Hill endeavored not to disclose classified information and declined to answer a question potentially calling for the disclosure of classified information. We also appreciate that Dr. Hill did not reveal any deliberative processes related to the July 25, 2019 call between President Trump and President Zelenskyy and did not testify about communications between the President and foreign heads of state or other diplomatic communications.

Our position on the applicability of executive privilege to anticipated areas of testimony in Dr. Hill’s upcoming appearance likewise remains unchanged since our prior correspondence. In particular, we continue to disagree that executive privilege operates differently in the context of an impeachment inquiry. Whether or not the House authorized the “impeachment inquiry” after Dr. Hill’s October 14 deposition, Dr. Hill is still obligated to protect potentially privileged information acquired during the course of her service. According to a recent opinion by the Department of Justice’s Office of Legal Counsel (“OLC”), just as a qualified executive privilege applies to protect information in connection with a criminal trial or a grand-jury investigation, “a congressional committee must likewise make a showing of need that is sufficient to overcome the privilege in connection with an impeachment inquiry.”¹ As stated in our October 14 letter, it is not up to an individual employee or former employee to decide to disclose potentially

¹ *Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. O.L.C. ___, *2–*3 (Nov. 1, 2019).

privileged information based on her own individual assessment of a congressional committee's need.

We further note that Chairman Schiff claimed, during Dr. Hill's testimony, that the "deliberative process privilege as an element of executive privilege . . . is not a privilege recognized by the Congress."² But Chairman Schiff had no legal basis for such a statement, and he cannot be arbiter of the existence of a privilege necessary to protect the confidentiality of deliberations within the Executive Branch. Indeed, prior Presidents have invoked executive privilege based on deliberative process on numerous occasions,³ and the only court to decide this issue rejected Chairman Schiff's view.⁴ Thus, notwithstanding the Chairman's erroneous assertions, we caution Dr. Hill about revealing information subject to the component of executive privilege protecting deliberative processes. It remains incumbent on Dr. Hill and you, as her counsel, to ensure that Dr. Hill does not reveal classified information or information subject to executive privilege.

Please do not hesitate to contact me if you have any further questions or would like to discuss this matter further.

Sincerely,



Michael M. Purpura
Deputy Counsel to the President

² F. Hill Dep. Tr. (Oct. 14, 2019), at 21:12–14; *see also* F. Hill Dep. Tr. (Oct. 14, 2019) at 30:2–5 (“To the extent that the White House may be asserting a deliberative process privilege as an element of executive privilege, this is not a privilege recognized by Congress.”).

³ *Assertion of Executive Privilege Over Documents Generated in Response to Congressional Investigation into Operation Fast and Furious*, 36 Op. O.L.C. __, *3 (June 19, 2012) (“Thus, Presidents have repeatedly asserted executive privilege to protect confidential Executive Branch deliberative materials from congressional subpoena.”) (compiling examples).

⁴ *See Comm. on Oversight & Gov't Reform v. Holder*, C.A. No. 12-1332, 2014 WL 12662665, at *1 (D.D.C. Aug. 20, 2014) (“And [the D.C. Circuit] described the deliberative process privilege and the Presidential communications privilege as ‘closely affiliated’; ‘[b]oth are executive privileges designed to protect executive branch decisionmaking.’ So, the Court rejects the Committee’s suggestion that the only privilege the executive can invoke in response to a subpoena is the Presidential communications privilege.”) (citation omitted).