U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-3000

OFFICE OF ADMINISTRATION

August 31, 2021

Mr. Austin R. Evers
Executive Director
American Oversight
1030 15th Street, N.W.
Suite B255
Washington, DC 20005

RE: Freedom of Information Act Request
FOIA Control No.: 19-FI-HQ-01441 and 19-FI-HQ-01596
Civil Action No.: 19-cv-2814

Dear Mr. Evers:

This letter is the final response to your Freedom of Information Act (FOIA) request dated and received on June 24, 2019, and July 19, 2019, respectively. You asked for copies of Department of Housing and Urban Development (HUD) records from September 1, 2018 through the date of the search, consisting of communications between HUD political appointees in the Office of Congressional and Intergovernmental Relations, Office of General Counsel, HUD leadership offices with specific White House Counsel staff regarding congressional oversight of specific matters and general policies, concerns, and considerations related to congressional oversight of the executive branch.

For this final production, HUD conducted an electronic search and located records that are responsive to your request. The Department has identified 118 responsive pages from the email accounts of Paul Compton and Ashley Ludlow.

I have determined that 49 pages are appropriate for release without excision and 66 pages are appropriate for release with excisions made pursuant to Exemptions 5 and 6 of the FOIA, 5 U.S.C. § 552 (b)(5) and (b)(6). I am withholding in full a three-page draft memo pursuant to Exemption 5. These pages are a draft memo. Exemption 5 pertains to certain inter- and intra-agency communications protected by the deliberative process privilege. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. The interest of the public in reviewing those portions of government documents does not outweigh the individuals' right to privacy. Additionally, the documents contain excisions pursuant to Exemption 7 of the FOIA, 5 U.S.C. § 552 (b)(7)(c) of the FOIA. Because some of these pages originated with HUD's Office of Inspector General (OIG), OIG reviewed these pages and asserted Exemption 7. Exemption 7 pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties.

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If you have any questions regarding your request, you may contact Department of Justice – Federal Programs Branch trial attorney, Alexander Sverdlov at 202-305-8550. Thank you for your interest in the Department's programs and policies.

Sincerely,

DEBORAH SNOWDEN

Digitally signed by: DEBORAH SNOWDEN
DN: CN = DEBORAH SNOWDEN C = US O = U.S. Government OU = Department of Housing and Urban Development
Date: 2021.08.31 15:17:04 -04'00'

Deborah R. Snowden
Deputy Chief FOIA Officer
FOIA Branch
Office of Administration

Enclosures

AMERICAN OVERSIGHT

From: Compton, Paul
Sent: 12 Apr 2019 21:22:12 +0000
To: brian.d.miller(b)(6)
Subject: FW: IG Access to Agency Attorney-Client Privileged Material - Deliberative process privilege

PRIVILEGED AND CONFIDENTIAL

ATTORNEY-WORK PRODUCT

DELIBERATIVE PROCESS

More research from staff

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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I had another thought looking at Jeremy's message to you below. Although OIG has (b)(5) Deliberative Privilege, they have not addressed whether that (b)(5) Deliberative Privilege.

HUD OIG has no congressional request policy posted, but other IG's make it clear that they will not subject congressional testimony to prior review. For example, EPA's OIG Congressional Request Protocol makes clear that EPA OIG testimony related to reports will not be subjected to advance review.

Requests for OIG testimony should be submitted in writing from the Chair of a congressional committee or subcommittee. We provide objective testimony based on OIG work. Due to our independent reporting relationship to Congress under the Inspector General Act, **OIG testimony is not subject to prior review or approval by the Office of Management and Budget or EPA officials.** Further, the OIG welcomes the opportunity to brief members of Congress and/or their staffs, upon request, on our completed work. The Inspector General Act specifies that the OIG is to review existing and proposed legislation and regulations relating to the programs and operations of the EPA, and OIG comments are not subject to prior review or approval by outside entities prior to submission.

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It might be worth considering (b)(5) Deliberative Privilege
(b)(5) Deliberative Privilege
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AMERICAN OVERSIGHT

From: Compton, Paul
Sent: 3 Apr 2019 20:02:56 +0000
To: brian.d.miller(b)(6)
Subject: FW: IG Access to Agency Attorney-Client Privileged Material

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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From: Culpepper, Miniard <Miniard.Culpepper@hud.gov>
Sent: Wednesday, April 03, 2019 2:58 PM
To: Compton, Paul <Paul.Compton@hud.gov>
Subject: FW: IG Access to Agency Attorney-Client Privileged Material

Paul, here is the info. Jeremy sent me re: the privilege issue. Let's talk later about this issue.

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Tuesday, April 02, 2019 3:05 PM
To: Culpepper, Miniard <Miniard.Culpepper@hud.gov>
Subject: IG Access to Agency Attorney-Client Privileged Material

The IG Act grants OIGs access to all records of the agency, including those that fall under any privilege assertion. The argument is founded on the notion that withholding records on the basis of common law privileges would frustrate the IGs' execution of their statutory duties. The disclosure to OIG does not constitute a waiver of the privilege because the disclosure is to an entity falling within the agency.

Here are some of the materials we have gathered.

DOJ OIG Access to Records Testimony and OIG Community Legal Position -- https://oig.justice.gov/testimony/t140910.pdf

House Oversight Comm. Report on CSB Matter - https://oversight.house.gov/wp-content/uploads/2014/06/CSB-FINAL-REPORT-Redact-version.pdf

Opinion for CSB - http://www.peer.org/assets/docs/ig/9_10_14_Legal_Opinion_Atty_Client.pdf

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HUD OIG ABA Letter Referenced in the Opinion for CSB -- https://oversight.house.gov/wp-content/uploads/2014/06/CSB-FINAL-REPORT-Redact-version.pdf

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

From: Compton, Paul
Sent: 12 Apr 2019 21:01:09 +0000
To: brian.d.miller (b)(6)
Subject: OIG Research

Research from my career staff

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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>>>>>>>>>>>>>>>>>>>>>>>>>>>>>

I was surprised to see that (b)(5) Deliberative Privilege
(b)(5) Deliberative Privilege

Investigative requests from individual members of Congress not typically accorded high priority by IG community or GAO

CIGIE congressional protocols provide that IGs, in responding to congressional request, should consider whether requests come from chairs or ranking members of relevant committees.

"There are a variety of factors and concerns to be balanced when responding to Congressional inquiries regarding audits, evaluations, inspections, or other reviews. IGs must consider the legal and privacy considerations in responding to Congressional inquiries regarding audits or reviews. The nature of the request also has bearing when contemplating responses. For example, was the request made in writing? If so, was the request made on official letterhead and signed by the Member of Congress? Was the request from a single or multiple Members of Congress? Was the request from a committee of jurisdiction? If so, was the request made by the Chairman and/or the Ranking Member?"

CIGIE Congressional Protocols, p. 12
https://www.ignet.gov/sites/default/files/CIGIE%20Congressional%20Relations%20Handbook%20January%202015.pdf

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Similarly, GAO Congressional Protocols give greater importance to requests for chairmen/ranking members of relevant congressional committees than requests from individual members.

"To ensure adherence to GAO's core values, effective management practices, and efficient use of resources, GAO will initiate work according to the following priorities:

1. Congressional mandates.
2. Senior congressional leader and committee leader requests.
3. Individual Member requests."

GAO Congressional Protocols, p. 8 https://www.gao.gov/assets/690/685901.pdf

AMERICAN OVERSIGHT

From: Ludlow, Ashley
Sent: 1 Feb 2019 16:51:51 +0000
To: Brian.D.Miller(b)(6)
Subject: Draft HUD Response to Sen. Elizabeth Warren Ltr. re Puerto Rico
Attachments: Puerto Rico funding letter - 1.21.2019.pdf, CPD Warren-PR response 1-31-19_REV.docx

Brian,

I wanted to quickly introduce myself. My name is Ashley Ludlow and I've been with HUD's Office of Congressional and Intergovernmental Relations for about a year and a half. I am now making the switch over to our Office of General Counsel, and look forward to working with you more in the coming months!

I spoke with General Counsel Paul Compton this morning who said the (b)(5) Deliberative Privilege (b)(5) Deliberative Privilege Sen. Elizabeth Warren's letter of January 21 regarding the Administration's treatment of Puerto Rico in the aftermath of Hurricanes Irma and Maria.

Please find attached a copy of Warren's letter, as well as a copy of HUD's draft response, which we're striving to submit by her requested deadline of next Tuesday, February 5.

Please don't hesitate to reach out if you have any questions, and I hope to meet you in person in the near future!

Best regards,
Ashley Ludlow

Ashley Ludlow, Esq.
Senior Advisor for Congressional Relations
Office of Congressional & Intergovernmental Relations
U.S. Department of Housing and Urban Development
T: (202) 402-5963 | C:(b)(6)

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ELIZABETH WARREN
MASSACHUSETTS

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BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

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www.warren.senate.gov

January 21, 2019

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th St. NW
Washington, DC 20503

The Honorable Ben Carson
Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Dear Director Mulvaney and Secretary Carson:

I write to inquire about two disturbing recent reports regarding the Trump Administration's treatment of Puerto Rico as the island struggles to recover from Hurricane Maria. These reports indicate that (1) in September 2018, President Trump instructed his Administration to cut off all disaster-recovery funds to Puerto Rico, and (2) that the Trump Administration is using the shutdown as an excuse to stall the disbursement of housing funds for Puerto Rico.

According to a Washington Post report from last week, President Trump, "after hearing, erroneously, that Puerto Rico was using the emergency money to pay off its debt,"[1] personally sought to cut off all emergency funds for the island. The report indicated that President Trump told then-White House Chief of Staff John F. Kelly and then-Office of Management and Budget (OMB) Director Mick Mulvaney "that he did not want a single dollar going to Puerto Rico," and that "he wanted more of the money to go to Texas and Florida."[2] Then, in December, former Department of Housing and Urban Development (HUD) Deputy Secretary Pam Patenaude reportedly felt the need to remind White House officials that "the money had been appropriated by Congress and must be sent."[3]

In the wake of these reports, I am particularly concerned about the fact that HUD has halted the disbursement of billions of dollars of housing recovery funds for Puerto Rico

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[1] Washington Post, "After butting heads with Trump administration, top HUD official departs agency," Tracy Jan, Arelis R. Hernández, Josh Dawsey, and Damian Paletta, January 16, 2019, https://www.washingtonpost.com/business/economy/top-hud-officials-departure-follows-disagreements-over-housing-policy-and-puerto-rico-disaster-funds/2019/01/16/e6ba5be4-1839-11e9-9ebf-c5fed1b7a081_story.html.
[2] *Id.*
[3] *Id.*

AMERICAN OVERSIGHT

and other states and territories affected by recent disasters as a result of the President's ongoing government shutdown.[4] HUD allocated $1.5 billion to Puerto Rico on February 1, 2018, from an appropriation enacted in September 2017,[5] and an additional $18.5 billion[6] in April 2018 from an appropriation enacted on February 9, 2018.[7] This refusal to provide this funding—which will go to "the restoration of damaged and destroyed homes, businesses and infrastructure"[8]—is directly at odds with HUD's own "Contingency Plan for Possible Lapse in Appropriations," which says that HUD will continue to disburse Community Development Block Grants and certain other grants during a shutdown.[9]

Given the President's reported orders to his senior staff to eliminate Puerto Rico's disaster recovery funding, this failure to provide congressionally approved funds[10] raises serious concerns that HUD is using the shutdown as a pretext for withholding funds from Puerto Rico.

In addition, this past week, OMB issued a Statement of Administration Policy opposing as "excessive and unnecessary" a grant of $600 million "for disaster nutrition assistance"[11] included in a House bill[12]—funds which could help 230,000 new program participants.[13] Hurricane Maria left a large majority of the island's population "food insecure" and in need of this nutrition assistance.[14]

---

[4] NBC News, "Crucial housing funds for Puerto Rico are stalled due to the government shutdown," Nicole Acevedo, January 16, 2019, https://www.nbcnews.com/news/latino/crucial-housing-funds-puerto-rico-are-stalled-due-government-shutdown-n959446.
[5] U.S. Department of Housing and Urban Development, "HUD Approves $1.5 Billion Disaster Recovery Plan in Puerto Rico," press release, July 30, 2018, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_078.
[6] U.S. Department of Housing and Urban Development, "HUD Awards Record $28 Billion to Help Hard-Hit Areas in Nine States, Puerto Rico and U.S. Virgin Islands Recover from Major Disasters," press release, April 10, 2018, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_028.
[7] H.R. 1892, Bipartisan Budget Act of 2018, https://www.congress.gov/bill/115th-congress/house-bill/1892.
[8] U.S. Department of Housing and Urban Development, "HUD Approves $1.5 Billion Disaster Recovery Plan in Puerto Rico," press release, July 30, 2018, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_078.
[9] See, e.g., U.S. Department of Housing and Urban Development, "HUD Contingency Plan for Possible Lapse in Appropriations 2018," p. 8, https://www.hud.gov/sites/documents/HUDCONTINGENCYPLANFINAL.PDF.
[10] U.S. Department of Housing and Urban Development, Federal Register Notice, "Waiver and Alternative Requirement for Community Development Block Grant-Disaster Recovery (CDBG-DR) Grantees," January 9, 2019, https://www.federalregister.gov/documents/2019/01/09/2019-00050/waiver-and-alternative-requirement-for-community-development-block-grant-disaster-recovery-cdbg-dr.
[11] H.R. 268, Supplemental Appropriations Act, 2019, https://www.congress.gov/bill/116th-congress/house-bill/268/.
[12] Office of Management and Budget, "Statement of Administration Policy: H.R. 268—Supplemental Appropriations Act, 2019," January 16, 2019, https://www.whitehouse.gov/wp-content/uploads/2019/01/saphr268h_20190116.pdf.
[13] Letter from Senator Robert Menendez, et al. to Senate Committee on Appropriations Chairman Richard Shelby, et al., December 3, 2018, https://www.warren.senate.gov/imo/media/doc/PR%20NAP%20Approps%20Letter.pdf.
[14] *Id.*

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These new reports and Administration actions appear to reveal that President Trump either does not care about or does not understand the needs of the Puerto Rican people and the federal laws that govern assistance to the U.S. citizens who live on the island. As Governor Rosselló stated in a video statement to President Trump: "Recent reports all confirm that your administration is working towards eliminating recovery dollars for Puerto Rico based on completely false and inaccurate information."[15]

In light of this deeply worrying news, I ask each of you to provide answers to the following questions no later than February 5, 2019:

1. Did the President at any time order, instruct, or indicate to you or other Administration officials that he wanted to cut off or eliminate disaster relief funds for Puerto Rico? If so:
    a. What instructions or orders did the President give, and to whom? What was the basis for these instructions or orders?
    b. What response did HUD or OMB officials provide to the President?
    c. What action did HUD or OMB officials take in response to these instructions or orders?

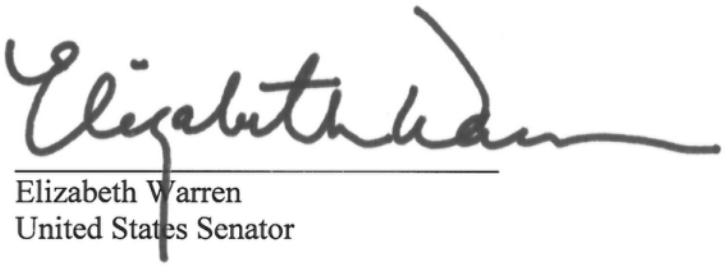
2. What is the Administration policy with regard to Congressionally authorized and appropriated funds for Puerto Rico's recovery? Does the Administration believe that these funds should be provided in full, and as expeditiously as possible?
    a. Why is HUD not disbursing Community Development Block Grants to Puerto Rico when its shutdown contingency plan indicates that such grants should continue to be disbursed?
    b. What is the value of CDBG fund disbursement that is presently being delayed as a result of the shutdown?
    c. In addition to funds for Puerto Rico, what other states or territories have CDBG grants that are being withheld or delayed as a result of the shutdown, and what is the value of the disbursements that are being delayed?
    d. What is the basis for the legal opinion that CDBG funds for Puerto Rico should not be distributed to the island during the shutdown?
    e. Did the HUD Office of Legal Counsel provide an opinion about this policy decision? If so, when did OLC do so, and upon whose instructions? Please provide a copy of the OLC opinion.
    f. Did OMB or any other White House official provide advice or guidance to HUD about this decision? If so, what was the nature of this advice and guidance, and who provided it? When and to whom was this advice or guidance provided?

[15] Governor Ricardo Rosselló, "A message to the President Donald J. Trump," January 17, 2019, https://www.facebook.com/rrossello/videos/a-message-to-the-president-donald-j-trump/324587494819552/.

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3. What is the basis for the Administration to conclude that the $600 million in House-passed nutrition assistance for Puerto Rico is "unnecessary"? Has OMB or have any other Administration officials conducted any analyses of current needs, or changes in need for nutrition assistance post-Maria? If so, what did these analyses find?

Sincerely,



Elizabeth Warren
United States Senator

AMERICAN OVERSIGHT

On behalf of Secretary Benjamin S. Carson, Sr., thank you for your letter of January 21, 2019, regarding the status of the Department's efforts to assist Puerto Rico's long-term recovery from Hurricanes Irma and Maria. Secretary Carson and the entire Department remain committed to working with Puerto Rico to meaningfully aid its long-term recovery, primarily through the largest allocation of Community Development Block Grant-Disaster Recovery (CDBG-DR) funding in the history of the program. The following information is from HUD's Office of Community Planning and Development (CPD).

(b)(5) Deliberative Privilege

(b)(5) Deliberative Privilege

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DRAFT

AMERICAN OVERSIGHT

From: Compton, Paul
Sent: 2 May 2019 22:54:36 +0000
To: McGaughey, Jon T. EOP/WHO;brian.d.miller(b)(6)
Cc: Ludlow, Ashley
Subject: FW: IG correspondence - revised copy
Attachments: OIG Correspondence re CDBG request - final.pdf

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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From: Hughes, Andrew <Andrew.Hughes@hud.gov>
Sent: Thursday, May 02, 2019 6:51 PM
To: Begg, Stephen <SBegg@hudoig.gov>
Cc: Gormley, Joseph M <Joseph.M.Gormley@hud.gov>
Subject: IG correspondence - revised copy

Hi Steve,

Attached is the correspondence which we believe captures all of our communication.

Please let me know if you need anything else and thank you.

Sincerely,

Andrew

AMERICAN OVERSIGHT

From: Paul.Compton@hud.gov
Sent: 23 Jan 2019 13:10:56 -0600
To: brian.d.miller(b)(6)
Subject: Fwd: Warren letter
Attachments: Puerto Rico funding letter - 1.21.2019.pdf, ATT00001.htm

Paul Compton
General Counsel
U.S. Dept. of Housing and Urban Development
Paul.Compton@hud.gov
W 202.402.5023
C (b)(6)

Begin forwarded message:

From: "Wolfson, Len" <Len.Wolfson@hud.gov>
Date: January 22, 2019 at 9:16:54 AM CST
To: "Hughes, Andrew" <Andrew.Hughes@hud.gov>, "Thompson, Amy C" <Amy.C.Thompson@hud.gov>, "Compton, Paul" <Paul.Compton@hud.gov>, "Woll Jr, David C" <David.C.WollJr@hud.gov>
Cc: "Appleton, Seth D" <Seth.D.Appleton@hud.gov>, "Ludlow, Ashley" <Ashley.Ludlow@hud.gov>, "Simon, Ammon G" <Ammon.G.Simon@hud.gov>
Subject: Warren letter

Senator Warren has sent the attached letter to the Secretary and Director Mulvaney regarding funding for Puerto Rico, a byproduct of last weeks WP story.

Note the request for a response by February 5.

Get Outlook for iOS

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ELIZABETH WARREN
MASSACHUSETTS

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ARMED SERVICES
SPECIAL COMMITTEE ON AGING

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www.warren.senate.gov

January 21, 2019

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th St. NW
Washington, DC 20503

The Honorable Ben Carson
Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Dear Director Mulvaney and Secretary Carson:

I write to inquire about two disturbing recent reports regarding the Trump Administration's treatment of Puerto Rico as the island struggles to recover from Hurricane Maria. These reports indicate that (1) in September 2018, President Trump instructed his Administration to cut off all disaster-recovery funds to Puerto Rico, and (2) that the Trump Administration is using the shutdown as an excuse to stall the disbursement of housing funds for Puerto Rico.

According to a Washington Post report from last week, President Trump, "after hearing, erroneously, that Puerto Rico was using the emergency money to pay off its debt,"[1] personally sought to cut off all emergency funds for the island. The report indicated that President Trump told then-White House Chief of Staff John F. Kelly and then-Office of Management and Budget (OMB) Director Mick Mulvaney "that he did not want a single dollar going to Puerto Rico," and that "he wanted more of the money to go to Texas and Florida."[2] Then, in December, former Department of Housing and Urban Development (HUD) Deputy Secretary Pam Patenaude reportedly felt the need to remind White House officials that "the money had been appropriated by Congress and must be sent."[3]

In the wake of these reports, I am particularly concerned about the fact that HUD has halted the disbursement of billions of dollars of housing recovery funds for Puerto Rico

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[1] Washington Post, "After butting heads with Trump administration, top HUD official departs agency," Tracy Jan, Arelis R. Hernández, Josh Dawsey, and Damian Paletta, January 16, 2019, https://www.washingtonpost.com/business/economy/top-hud-officials-departure-follows-disagreements-over-housing-policy-and-puerto-rico-disaster-funds/2019/01/16/e6ba5be4-1839-11e9-9ebf-c5fed1b7a081_story.html.
[2] *Id.*
[3] *Id.*

AMERICAN OVERSIGHT

and other states and territories affected by recent disasters as a result of the President's ongoing government shutdown.[4] HUD allocated $1.5 billion to Puerto Rico on February 1, 2018, from an appropriation enacted in September 2017,[5] and an additional $18.5 billion[6] in April 2018 from an appropriation enacted on February 9, 2018.[7] This refusal to provide this funding—which will go to "the restoration of damaged and destroyed homes, businesses and infrastructure"[8]—is directly at odds with HUD's own "Contingency Plan for Possible Lapse in Appropriations," which says that HUD will continue to disburse Community Development Block Grants and certain other grants during a shutdown.[9]

Given the President's reported orders to his senior staff to eliminate Puerto Rico's disaster recovery funding, this failure to provide congressionally approved funds[10] raises serious concerns that HUD is using the shutdown as a pretext for withholding funds from Puerto Rico.

In addition, this past week, OMB issued a Statement of Administration Policy opposing as "excessive and unnecessary" a grant of $600 million "for disaster nutrition assistance"[11] included in a House bill[12]—funds which could help 230,000 new program participants.[13] Hurricane Maria left a large majority of the island's population "food insecure" and in need of this nutrition assistance.[14]

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[4] NBC News, "Crucial housing funds for Puerto Rico are stalled due to the government shutdown," Nicole Acevedo, January 16, 2019, https://www.nbcnews.com/news/latino/crucial-housing-funds-puerto-rico-are-stalled-due-government-shutdown-n959446.
[5] U.S. Department of Housing and Urban Development, "HUD Approves $1.5 Billion Disaster Recovery Plan in Puerto Rico," press release, July 30, 2018, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_078.
[6] U.S. Department of Housing and Urban Development, "HUD Awards Record $28 Billion to Help Hard-Hit Areas in Nine States, Puerto Rico and U.S. Virgin Islands Recover from Major Disasters," press release, April 10, 2018, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_028.
[7] H.R. 1892, Bipartisan Budget Act of 2018, https://www.congress.gov/bill/115th-congress/house-bill/1892.
[8] U.S. Department of Housing and Urban Development, "HUD Approves $1.5 Billion Disaster Recovery Plan in Puerto Rico," press release, July 30, 2018, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_078.
[9] See, e.g., U.S. Department of Housing and Urban Development, "HUD Contingency Plan for Possible Lapse in Appropriations 2018," p. 8, https://www.hud.gov/sites/documents/HUDCONTINGENCYPLANFINAL.PDF.
[10] U.S. Department of Housing and Urban Development, Federal Register Notice, "Waiver and Alternative Requirement for Community Development Block Grant-Disaster Recovery (CDBG-DR) Grantees," January 9, 2019, https://www.federalregister.gov/documents/2019/01/09/2019-00050/waiver-and-alternative-requirement-for-community-development-block-grant-disaster-recovery-cdbg-dr.
[11] H.R. 268, Supplemental Appropriations Act, 2019, https://www.congress.gov/bill/116th-congress/house-bill/268/.
[12] Office of Management and Budget, "Statement of Administration Policy: H.R. 268—Supplemental Appropriations Act, 2019," January 16, 2019, https://www.whitehouse.gov/wp-content/uploads/2019/01/saphr268h_20190116.pdf.
[13] Letter from Senator Robert Menendez, et al. to Senate Committee on Appropriations Chairman Richard Shelby, et al., December 3, 2018, https://www.warren.senate.gov/imo/media/doc/PR%20NAP%20Approps%20Letter.pdf.
[14] *Id.*

AMERICAN OVERSIGHT

These new reports and Administration actions appear to reveal that President Trump either does not care about or does not understand the needs of the Puerto Rican people and the federal laws that govern assistance to the U.S. citizens who live on the island. As Governor Rosselló stated in a video statement to President Trump: "Recent reports all confirm that your administration is working towards eliminating recovery dollars for Puerto Rico based on completely false and inaccurate information."[15]

In light of this deeply worrying news, I ask each of you to provide answers to the following questions no later than February 5, 2019:

1. Did the President at any time order, instruct, or indicate to you or other Administration officials that he wanted to cut off or eliminate disaster relief funds for Puerto Rico? If so:
    a. What instructions or orders did the President give, and to whom? What was the basis for these instructions or orders?
    b. What response did HUD or OMB officials provide to the President?
    c. What action did HUD or OMB officials take in response to these instructions or orders?

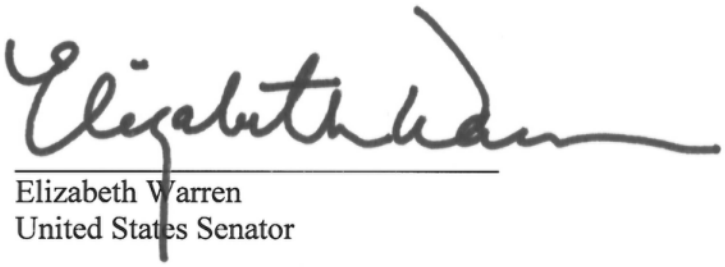
2. What is the Administration policy with regard to Congressionally authorized and appropriated funds for Puerto Rico's recovery? Does the Administration believe that these funds should be provided in full, and as expeditiously as possible?
    a. Why is HUD not disbursing Community Development Block Grants to Puerto Rico when its shutdown contingency plan indicates that such grants should continue to be disbursed?
    b. What is the value of CDBG fund disbursement that is presently being delayed as a result of the shutdown?
    c. In addition to funds for Puerto Rico, what other states or territories have CDBG grants that are being withheld or delayed as a result of the shutdown, and what is the value of the disbursements that are being delayed?
    d. What is the basis for the legal opinion that CDBG funds for Puerto Rico should not be distributed to the island during the shutdown?
    e. Did the HUD Office of Legal Counsel provide an opinion about this policy decision? If so, when did OLC do so, and upon whose instructions? Please provide a copy of the OLC opinion.
    f. Did OMB or any other White House official provide advice or guidance to HUD about this decision? If so, what was the nature of this advice and guidance, and who provided it? When and to whom was this advice or guidance provided?

[15] Governor Ricardo Rosselló, "A message to the President Donald J. Trump," January 17, 2019, https://www.facebook.com/rrossello/videos/a-message-to-the-president-donald-j-trump/324587494819552/.

AMERICAN OVERSIGHT

3. What is the basis for the Administration to conclude that the $600 million in House-passed nutrition assistance for Puerto Rico is "unnecessary"? Has OMB or have any other Administration officials conducted any analyses of current needs, or changes in need for nutrition assistance post-Maria? If so, what did these analyses find?

Sincerely,



Elizabeth Warren
United States Senator

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

From: Compton, Paul
Sent: 23 Jan 2019 19:10:59 +0000
To: brian.d.miller(b)(6)
Subject: Fwd: Warren letter
Attachments: Puerto Rico funding letter - 1.21.2019.pdf, ATT00001.htm

Paul Compton
General Counsel
U.S. Dept. of Housing and Urban Development
Paul.Compton@hud.gov
W 202.402.5023
C (b)(6)

Begin forwarded message:

From: "Wolfson, Len" <Len.Wolfson@hud.gov>
Date: January 22, 2019 at 9:16:54 AM CST
To: "Hughes, Andrew" <Andrew.Hughes@hud.gov>, "Thompson, Amy C" <Amy.C.Thompson@hud.gov>, "Compton, Paul" <Paul.Compton@hud.gov>, "Woll Jr, David C" <David.C.WollJr@hud.gov>
Cc: "Appleton, Seth D" <Seth.D.Appleton@hud.gov>, "Ludlow, Ashley" <Ashley.Ludlow@hud.gov>, "Simon, Ammon G" <Ammon.G.Simon@hud.gov>
Subject: Warren letter

Senator Warren has sent the attached letter to the Secretary and Director Mulvaney regarding funding for Puerto Rico, a byproduct of last weeks WP story.

Note the request for a response by February 5.

Get Outlook for iOS

AMERICAN OVERSIGHT

ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

UNITED STATES SENATE
WASHINGTON, DC 20510–2105
P: 202–224–4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617–565–3170

1550 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413–788–2690

www.warren.senate.gov

January 21, 2019

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th St. NW
Washington, DC 20503

The Honorable Ben Carson
Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Dear Director Mulvaney and Secretary Carson:

I write to inquire about two disturbing recent reports regarding the Trump Administration's treatment of Puerto Rico as the island struggles to recover from Hurricane Maria. These reports indicate that (1) in September 2018, President Trump instructed his Administration to cut off all disaster-recovery funds to Puerto Rico, and (2) that the Trump Administration is using the shutdown as an excuse to stall the disbursement of housing funds for Puerto Rico.

According to a Washington Post report from last week, President Trump, "after hearing, erroneously, that Puerto Rico was using the emergency money to pay off its debt,"[1] personally sought to cut off all emergency funds for the island. The report indicated that President Trump told then-White House Chief of Staff John F. Kelly and then-Office of Management and Budget (OMB) Director Mick Mulvaney "that he did not want a single dollar going to Puerto Rico," and that "he wanted more of the money to go to Texas and Florida."[2] Then, in December, former Department of Housing and Urban Development (HUD) Deputy Secretary Pam Patenaude reportedly felt the need to remind White House officials that "the money had been appropriated by Congress and must be sent."[3]

In the wake of these reports, I am particularly concerned about the fact that HUD has halted the disbursement of billions of dollars of housing recovery funds for Puerto Rico

---

[1] Washington Post, "After butting heads with Trump administration, top HUD official departs agency," Tracy Jan, Arelis R. Hernández, Josh Dawsey, and Damian Paletta, January 16, 2019, https://www.washingtonpost.com/business/economy/top-hud-officials-departure-follows-disagreements-over-housing-policy-and-puerto-rico-disaster-funds/2019/01/16/e6ba5be4-1839-11e9-9ebf-c5fed1b7a081_story.html.
[2] *Id.*
[3] *Id.*

AMERICAN OVERSIGHT

and other states and territories affected by recent disasters as a result of the President's ongoing government shutdown.[4] HUD allocated $1.5 billion to Puerto Rico on February 1, 2018, from an appropriation enacted in September 2017,[5] and an additional $18.5 billion[6] in April 2018 from an appropriation enacted on February 9, 2018.[7] This refusal to provide this funding—which will go to "the restoration of damaged and destroyed homes, businesses and infrastructure"[8]—is directly at odds with HUD's own "Contingency Plan for Possible Lapse in Appropriations," which says that HUD will continue to disburse Community Development Block Grants and certain other grants during a shutdown.[9]

Given the President's reported orders to his senior staff to eliminate Puerto Rico's disaster recovery funding, this failure to provide congressionally approved funds[10] raises serious concerns that HUD is using the shutdown as a pretext for withholding funds from Puerto Rico.

In addition, this past week, OMB issued a Statement of Administration Policy opposing as "excessive and unnecessary" a grant of $600 million "for disaster nutrition assistance"[11] included in a House bill[12]—funds which could help 230,000 new program participants.[13] Hurricane Maria left a large majority of the island's population "food insecure" and in need of this nutrition assistance.[14]

---

[4] NBC News, "Crucial housing funds for Puerto Rico are stalled due to the government shutdown," Nicole Acevedo, January 16, 2019, https://www.nbcnews.com/news/latino/crucial-housing-funds-puerto-rico-are-stalled-due-government-shutdown-n959446.
[5] U.S. Department of Housing and Urban Development, "HUD Approves $1.5 Billion Disaster Recovery Plan in Puerto Rico," press release, July 30, 2018, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_078.
[6] U.S. Department of Housing and Urban Development, "HUD Awards Record $28 Billion to Help Hard-Hit Areas in Nine States, Puerto Rico and U.S. Virgin Islands Recover from Major Disasters," press release, April 10, 2018, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_028.
[7] H.R. 1892, Bipartisan Budget Act of 2018, https://www.congress.gov/bill/115th-congress/house-bill/1892.
[8] U.S. Department of Housing and Urban Development, "HUD Approves $1.5 Billion Disaster Recovery Plan in Puerto Rico," press release, July 30, 2018, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_078.
[9] See, e.g., U.S. Department of Housing and Urban Development, "HUD Contingency Plan for Possible Lapse in Appropriations 2018," p. 8, https://www.hud.gov/sites/documents/HUDCONTINGENCYPLANFINAL.PDF.
[10] U.S. Department of Housing and Urban Development, Federal Register Notice, "Waiver and Alternative Requirement for Community Development Block Grant-Disaster Recovery (CDBG-DR) Grantees," January 9, 2019, https://www.federalregister.gov/documents/2019/01/09/2019-00050/waiver-and-alternative-requirement-for-community-development-block-grant-disaster-recovery-cdbg-dr.
[11] H.R. 268, Supplemental Appropriations Act, 2019, https://www.congress.gov/bill/116th-congress/house-bill/268/.
[12] Office of Management and Budget, "Statement of Administration Policy: H.R. 268—Supplemental Appropriations Act, 2019," January 16, 2019, https://www.whitehouse.gov/wp-content/uploads/2019/01/saphr268h_20190116.pdf.
[13] Letter from Senator Robert Menendez, et al. to Senate Committee on Appropriations Chairman Richard Shelby, et al., December 3, 2018, https://www.warren.senate.gov/imo/media/doc/PR%20NAP%20Approps%20Letter.pdf.
[14] *Id.*

AMERICAN OVERSIGHT

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In light of this deeply worrying news, I ask each of you to provide answers to the following questions no later than February 5, 2019:

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    b. What response did HUD or OMB officials provide to the President?
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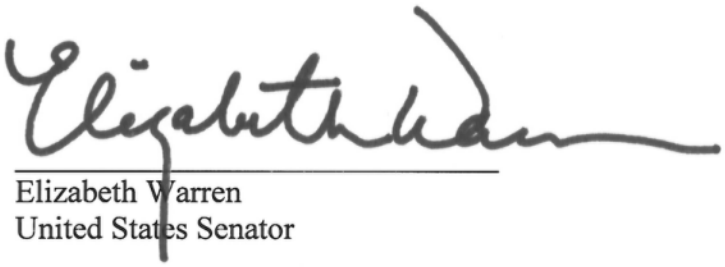
2. What is the Administration policy with regard to Congressionally authorized and appropriated funds for Puerto Rico's recovery? Does the Administration believe that these funds should be provided in full, and as expeditiously as possible?
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    e. Did the HUD Office of Legal Counsel provide an opinion about this policy decision? If so, when did OLC do so, and upon whose instructions? Please provide a copy of the OLC opinion.
    f. Did OMB or any other White House official provide advice or guidance to HUD about this decision? If so, what was the nature of this advice and guidance, and who provided it? When and to whom was this advice or guidance provided?

[15] Governor Ricardo Rosselló, "A message to the President Donald J. Trump," January 17, 2019, https://www.facebook.com/rrossello/videos/a-message-to-the-president-donald-j-trump/324587494819552/.

AMERICAN OVERSIGHT

3. What is the basis for the Administration to conclude that the $600 million in House-passed nutrition assistance for Puerto Rico is "unnecessary"? Has OMB or have any other Administration officials conducted any analyses of current needs, or changes in need for nutrition assistance post-Maria? If so, what did these analyses find?

Sincerely,



Elizabeth Warren
United States Senator

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Sent: 12 Apr 2019 21:10:47 +0000
To: Brian D. Miller
Subject: FW: IG Access to Agency Attorney-Client Privileged Material - Deliberative process privilege

PRIVILEGED AND CONFIDENTIAL

ATTORNEY-WORK PRODUCT

DELIBERATIVE PROCESS

More research from staff

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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>>>>>>>>>>>>>>>>>>>>>
I had another thought looking at Jeremy's message to you below. Although OIG has (b)(5) Deliberative (b)(5) Deliberative Privilege, they have not addressed whether that (b)(5) Deliberative Privilege.

HUD OIG has no congressional request policy posted, but other IG's make it clear that they will not subject congressional testimony to prior review. For example, EPA's OIG Congressional Request Protocol makes clear that EPA OIG testimony related to reports will not be subjected to advance review.

Requests for OIG testimony should be submitted in writing from the Chair of a congressional committee or subcommittee. We provide objective testimony based on OIG work. Due to our independent reporting relationship to Congress under the Inspector General Act, **OIG testimony is not subject to prior review or approval by the Office of Management and Budget or EPA officials.** Further, the OIG welcomes the opportunity to brief members of Congress and/or their staffs, upon request, on our completed work. The Inspector General Act specifies that the OIG is to review existing and proposed legislation and regulations relating to the programs and operations of the EPA, and OIG comments are not subject to prior review or approval by outside entities prior to submission.

It might be worth considering asking (b)(5) Deliberative Privilege (b)(5) Deliberative Privilege.

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

From: Compton, Paul
Sent: 11 Apr 2019 20:58:15 +0000
To: brian.d.miller(b)(6)
Subject: Congressionally Directed Inquiry of HUD
Attachments: Congressional Letter to HUD OIG.pdf

PRIVILEGED AND CONFIDENTIAL

ATTORNEY-CLIENT PRIVILEGE

ATTORNEY-WORK PRODUCT

J. Paul Compton, Jr.
General Counsel
Office of the General Counsel
United States Department of
Housing and Urban Development
451 7th Street S.W.
Room 10110
Washington, D.C. 20410
Tel. 202 402 5023
Paul.Compton@hud.gov

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AMERICAN OVERSIGHT

Congress of the United States
Washington, DC 20515

January 17, 2019

Ms. Helen M. Albert
Acting Inspector General
U.S. Department of Housing and Urban Development
451 7th St SW
Washington, DC 20410

Dear Ms. Albert,

We write to express our grave concerns over news reports that the United States Department of Housing and Urban Development ("HUD") Deputy Secretary Pamela Patenaude has resigned due to disagreements, in part, over this Administration's directives to interfere with the release of Puerto Rico disaster relief funds.[1] This disturbing news is another example of the failures of this Administration's disaster response and recovery efforts. The purpose of this letter is to confirm the veracity of the underlying issue – whether the current Administration is indeed purposely hindering the release of funds previously appropriated by Congress – in contravention of law.

Hurricane Maria took place on September 20, 2017 – almost 16 months ago. This hurricane had a devastating island-wide impact that resulted in the death of thousands of Americans and over $100 billion dollars in estimated damages. In response to the recovery efforts, Congress passed three supplemental appropriations bills to deal with the catastrophic effects of the 2017 natural disasters.[2]

From these appropriations, HUD has made three allocations to the Government of Puerto Rico in Community Development Block Grants-Disaster Recovery ("CDBG-DR") funds for unmet needs and mitigation activity totaling nearly $20 billion.[3] These funds would not only help Puerto Rico recover, but also foster much-needed economic growth. Despite HUD's approval of Puerto Rico's Action Plan for the use of the first of the allocations,[4] we understand that HUD has yet to make little of these funds available. Moreover, HUD's review and approval of additional action plans

[1] https://www.washingtonpost.com/business/economy/top-hud-officials-departure-follows-disagreements-over-housing-policy-and-puerto-rico-disaster-funds/2019/01/16/e6ba5be4-1839-11e9-9ebf-c5fed1b7a081_story.html?utm_term=.59dbae47cd96
[2] P.L. 115-56, P.L. 115-123 and P.L. 115-72
[3] https://www.federalregister.gov/documents/2018/08/14/2018-17365/allocations-common-application-waivers-and-alternative-requirements-for-community-development-block; and https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_028
[4] https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_078

AMERICAN OVERSIGHT

submitted by the Government of Puerto Rico are currently on hold, purportedly, due to the partial government shutdown.[5]

In light of the disturbing allegations that the Administration directed HUD to withhold disaster relief funds, we request that you open an investigation and also answer these specific questions:

1. Has the Office of Management and Budget or any other office within the White House directed HUD to unduly withhold or otherwise hinder the obligation of CDBG-DR funds to address the consequences of Hurricane Maria?

2. Was there any undue influence applied to Deputy Secretary Patenaude prior to her resignation regarding the obligation and disbursement of CDBG-DR funds to Puerto Rico?

3. The "HUD Contingency Plan for Possible Lapse in Appropriations 2018" generally provides for the continued administration of disaster relief.[6] What considerations, instructions, directives or otherwise did HUD take into account to depart from this established contingency plan?

4. Prior to the partial government shutdown that commenced on December 22, 2018, has HUD ever discontinued the processing of disaster relief during other government shutdowns? If so, please list such instances.

Your oversight of this issue is imperative to ensuring the Administration is carrying out Congress's requirement to provide support to Puerto Rico and the over 3.2 million United States citizens living there. We trust that this investigation and the answers to these questions will help us remove any administrative roadblocks.

Sincerely,

Nydia M. Velázquez
Member of Congress

Bennie G. Thompson
Member of Congress

Raúl M. Grijalva
Member of Congress

[5] https://www.federalregister.gov/documents/2019/01/09/2019-00050/waiver-and-alternative-requirement-for-community-development-block-grant-disaster-recovery-cdbg-

[6] https://www.hud.gov/sites/documents/HUDCONTINGENCYPLANFINAL.PDF

AMERICAN OVERSIGHT

From: Compton, Paul
Sent: 29 Apr 2019 15:57:45 +0000
To: brian.d.miller(b)(6)
Subject: FW: Inspector General response to ADS Montgomery
Attachments: 2019_04_29_11_22_38.pdf

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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From: Gormley, Joseph M <Joseph.M.Gormley@hud.gov>
Sent: Monday, April 29, 2019 11:35 AM
To: MDB <Brian.D.Montgomery@hud.gov>; Compton, Paul <Paul.Compton@hud.gov>
Subject: FW: Inspector General response to ADS Montgomery

May be helpful to circle up on this.

From: Begg, Stephen <SBegg@hudoig.gov>
Sent: Monday, April 29, 2019 11:30 AM
To: Gormley, Joseph M <Joseph.M.Gormley@hud.gov>
Subject: Inspector General response to ADS Montgomery

Good morning Joe,

Please find the attached letter from the Inspector General responding to the April 26 e-mail from ADS Montgomery.

Stephen M. Begg
Acting Chief of Staff
Office of Inspector General
U.S. Dept. of Housing and Urban Development
Office: (202) 402-6308 | Cell: (b)(6)

AMERICAN OVERSIGHT

U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL

April 29, 2019

Memorandum

TO: Brian Montgomery
Acting Deputy Secretary, DS

(b)(6)

FROM: Rae Oliver Davis
Inspector General, G

SUBJECT: Access to e-mail communications and Department witnesses in furtherance of OIG review of Puerto Rico disaster relief efforts

I am writing in response to your April 26th email. It is my understanding that you and the General Counsel have briefed the Secretary on the status of our pending request for electronically-stored information relevant to the OIG's Puerto Rico inquiry, and that your email is the result of decisions arising out of that briefing.

Unfortunately, your email misstates our offer to facilitate a more rapid production of email from the accounts of the Secretary and the General Counsel by agreeing to an initial use of search terms for those accounts. While we have agreed that the search terms used may include the two you reference in your email – "CDBG" and/or "Puerto Rico" – we have not agreed to limit our review to email responsive to those terms only. I have asked our Counsel to provide our initial search terms in a separate communication to the Department's Counsel. As we have previously stated, should we determine that additional information is needed beyond what is contained in email responsive to these initial search terms, we will make additional requests of the Department.

As for the remaining custodians, you stated in a meeting with my Chief of Staff on Wednesday the 24th that the email for several of these custodians was already available for production as of that day. And based on your April 26th email, it appears that email for all of the custodians may have been available for production as of last Friday. But in your email you assert that production is now contingent upon our response to the General Counsel's April 24th email listing a variety of concerns regarding various privileges. While I appreciate the Department's concerns about privilege, those concerns cannot be a basis for withholding production. As we have repeatedly made clear to the Department, disclosure to the OIG does not waive any privilege, and we do not seek to use privileged information in any report we issue. Again, we

AMERICAN OVERSIGHT

will provide the Department with an opportunity to review any report we send outside the agency prior to issuing it, and we will abide by any good faith assertions of privilege that the Department may make.

Please let me know by close of business today when we can expect production.

AMERICAN OVERSIGHT

From: Compton, Paul
Sent: 8 May 2019 22:53:31 +0000
To: McGaughey, Jon T. EOP/WHO;brian.d.miller(b)(6)
Subject: FW: Congressional Request for Evaluation on HUD OGC's EDiscovery Management System

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Monday, May 06, 2019 4:52 PM
To: Compton, Paul <Paul.Compton@hud.gov>
Cc: Culpepper, Miniard <Miniard.Culpepper@hud.gov>; Washburn, Tenille E <tenille.e.washburn@hud.gov>
Subject: RE: Congressional Request for Evaluation on HUD OGC's EDiscovery Management System

Hi Paul,

We received a request from a chair of a Congressional committee of jurisdiction for an unredacted copy of the 2017 evaluation on HUD OGC's EDiscovery management system. The committee had previously received a copy of the redacted evaluation. It would potentially violate HUD OIG's independence to provide you the request sent to us for this report. Please advise if you have any objection to us providing the unredacted copy.

Thanks,

CONTROLLED/PRIV

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: (202)402-4221

AMERICAN OVERSIGHT

Cell: (b)(6)

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This message and any attachments are intended for use only by the individual or entity to which it is addressed. The information in this email and any attachments may contain confidential, law enforcement sensitive, privileged attorney/client communications or work products, exempt from disclosure under applicable law. Do not share, copy or forward without consulting the Department of Housing and Urban Development, Office of Inspector General, Office of Legal Counsel. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any unauthorized interception, review, use, dissemination or copying of the information in this email and its attachments is prohibited. If you have received this email in error, please immediately call the HUD-OIG OLC at (202) 708-1613, or notify the sender by return email, and delete this email from your system(s).

From: Compton, Paul <Paul.Compton@hud.gov>
Sent: Friday, May 3, 2019 2:48 PM
To: Kirkland, Jeremy <JKirkland@hudoig.gov>
Cc: Culpepper, Miniard <Miniard.Culpepper@hud.gov>; Washburn, Tenille E <tenille.e.washburn@hud.gov>
Subject: RE: Congressional Request for Evaluation on HUD OGC's EDiscovery Management System

Jeremy,

Please provide us a copy of the Congressional request so that we can better evaluate your request.

JPC

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Thursday, May 02, 2019 10:31 PM
To: Compton, Paul <Paul.Compton@hud.gov>
Subject: Congressional Request for Evaluation on HUD OGC's EDiscovery Management System

AMERICAN OVERSIGHT

Hi Paul,

We received a congressional request for an unredacted copy of the evaluation on HUD OGC's EDiscovery management system. Pursuant to our prior discussions, I am coordinating with you to determine if you have any objection to us providing the attached unredacted copy.

Thanks,

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: (202)402-4221
Cell: (b)(6)

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AMERICAN OVERSIGHT

From: Compton, Paul
Sent: 23 Apr 2019 19:49:42 +0000
To: brian.d.miller(b)(6)
Subject: FW: DRAFT: Confirmation regarding treatment of privileged documents

DRAFT for your review

>>>

Jeremy,

I am writing to (b)(5) Deliberative Privilege

(b)(5) Deliberative Privilege

(b)(5) Deliberative Privilege

AMERICAN OVERSIGHT

(b)(5) Deliberative Privilege

Thank you,

JPC

J. Paul Compton, Jr.
General Counsel
Office of the General Counsel
United States Department of
Housing and Urban Development
451 7th Street S.W.
Room 10110
Washington, D.C. 20410
Tel. 202 402 5023
Paul.Compton@hud.gov

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AMERICAN OVERSIGHT

From: Compton, Paul
Sent: 23 May 2019 15:55:41 +0000
To: Jon T. EOP/WHO McGaughey;Brian D. Miller;Paul.P.Colborn@usdoj.gov
Subject: Fwd: OIG Request for ESI 2019-0001.pdf
Attachments: OIG Request for ESI 2019-0001.pdf, ATT00001.htm

Paul Compton
General Counsel
U.S. Dept. of Housing and Urban Development
Paul.Compton@hud.gov
W 202.402.5023
C (b)(6)

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Begin forwarded message:

From: "Kirkland, Jeremy" <JKirkland@hudoig.gov>
Date: May 21, 2019 at 8:57:30 PM EDT
To: Compton Paul <Paul.Compton@hud.gov>
Cc: "Begg, Stephen" <SBegg@hudoig.gov>
Subject: OIG Request for ESI 2019-0001.pdf

Hi Paul,

Please see attached notification that a request was submitted today for electronically stored information.

Thanks,

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

May 21, 2019

TO: Paul Compton
General Counsel, GC

FROM: Jeremy Kirkland,
Counsel to the Inspector General, GC (b)(6)

SUBJECT: OIG Request for Electronically-Stored Information (Request No: 2019-0001)

This memorandum informs you that the Department of Housing and Urban Development, Office of Inspector General (OIG) requested Departmental electronically-stored information (ESI) maintained by the Department in furtherance of an OIG investigation.

The Inspector General Act of 1978 ("IG Act"), as amended, authorizes the OIG to "have *timely* access to *all* records, reports, audits, reviews, documents, papers, recommendations, or other material available to [HUD] which relate to the programs and operations with respect to that which the Inspector General has responsibilities under [the] Act." 5 U.S.C. app 3, § 6(a)(1) (emphasis added). The IG Act's access provision applies "notwithstanding any other provision of law," except pursuant to a law that expressly refers to and limits the access of OIG. Id. at § 6(b). Disclosure of information to the OIG does not constitute a waiver of any privilege. No legal basis exists to withholding Departmental information from the OIG.

The Consolidated Appropriations Act of 2019 prohibits HUD from using appropriated funds to "deny . . . prevent or impede" OIG access to any agency records or information in a "timely" manner, and requires the OIG to report any such conduct to the House and Senate Appropriations Committees within five days. [1]

This request seeks ESI[2] for the following custodians and time periods:

September 1, 2017 – present

1. (b)(7)(C)
2.
3.
4.

April 8, 2019 - present

[1] *See* Consolidated Appropriations Act of 2019, P. Law 116-6, § 418 (2019).
[2] The term "ESI" includes e-mail correspondence, electronic calendar entries, and all information stored on network drives assigned to the identified custodians.

AMERICAN OVERSIGHT

1. (b)(7)(C)
2.
3.
4.
5.
6.
7.
8.
9.

The OIG requests you produce the responsive ESI within 14 calendar days of the date of this request. In the event you are unable to complete production prior to that date, we request you provide a response to this request identifying the estimated date of production and an explanation for the delay within 14 calendar days of the date of this request. The OIG requests that you certify at the time production is completed that the Department has produced all ESI within its custody and control that is responsive to this request.

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

From: Compton, Paul
Sent: 6 May 2019 21:33:07 +0000
To: Jon T. EOP/WHO McGaughey;Brian D. Miller
Subject: Fwd: Congressional Request for Evaluation on HUD OGC's EDiscovery Management System

Paul Compton
General Counsel
U.S. Dept. of Housing and Urban Development
Paul.Compton@hud.gov
W 202.402.5023
C (b)(6)

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Begin forwarded message:

From: "Kirkland, Jeremy" <JKirkland@hudoig.gov>
Date: May 6, 2019 at 3:51:40 PM CDT
To: Compton Paul <Paul.Compton@hud.gov>
Cc: "Culpepper, Miniard" <Miniard.Culpepper@hud.gov>, "Washburn, Tenille E" <tenille.e.washburn@hud.gov>
Subject: RE: Congressional Request for Evaluation on HUD OGC's EDiscovery Management System

Hi Paul,

We received a request from a chair of a Congressional committee of jurisdiction for an unredacted copy of the 2017 evaluation on HUD OGC's EDiscovery management system. The committee had previously received a copy of the redacted evaluation. It would potentially violate HUD OIG's independence to provide you the request sent to us for this report. Please advise if you have any objection to us providing the unredacted copy.

Thanks,

CONTROLLED/PRIV

AMERICAN OVERSIGHT

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: (202)402-4221
Cell: (b)(6)

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From: Compton, Paul <Paul.Compton@hud.gov>
Sent: Friday, May 3, 2019 2:48 PM
To: Kirkland, Jeremy <JKirkland@hudoig.gov>
Cc: Culpepper, Miniard <Miniard.Culpepper@hud.gov>; Washburn, Tenille E <tenille.e.washburn@hud.gov>
Subject: RE: Congressional Request for Evaluation on HUD OGC's EDiscovery Management System

Jeremy,

Please provide us a copy of the Congressional request so that we can better evaluate your request.

JPC

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please re-send it to the sender and delete the original message and any copy of it from your computer system.

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Thursday, May 02, 2019 10:31 PM
To: Compton, Paul <Paul.Compton@hud.gov>
Subject: Congressional Request for Evaluation on HUD OGC's EDiscovery Management System

Hi Paul,

We received a congressional request for an unredacted copy of the evaluation on HUD OGC's EDiscovery management system. Pursuant to our prior discussions, I am coordinating with you to determine if you have any objection to us providing the attached unredacted copy.

Thanks,

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: (202)402-4221
Cell: (b)(6)

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AMERICAN OVERSIGHT

From: Compton, Paul
Sent: 2 May 2019 18:34:15 +0000
To: McGaughey, Jon T. EOP/WHO;brian.d.miller(b)(6)
Subject: Response to IG counsel - draft
Attachments: Response to IG April 29 2019 Memorandum.docx, Letter Kirkland to Compton 4.29.19.doc.pdf

J. Paul Compton, Jr.
General Counsel
Office of the General Counsel
United States Department of
Housing and Urban Development
451 7th Street S.W.
Room 10110
Washington, D.C. 20410
Tel. 202 402 5023
Paul.Compton@hud.gov

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From: Kirkland, Jeremy
Sent: 29 Apr 2019 18:51:13 +0000
To: Compton, Paul
Subject: Letter Kirkland to Compton 4.29.19.doc.pdf
Attachments: Letter Kirkland to Compton 4.29.19.doc.pdf

Paul,

Please see attached letter seeking clarification of certain processes followed in the production of the email accounts in our current review.

Thanks,

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

MEMORANDUM

04/29/2019

TO: Paul Compton,
General Counsel, GC

FROM: Jeremy Kirkland,
Counsel to the Inspector General, GC (b)(6)

SUBJECT: Clarification Regarding Production of Department Emails

I am writing to seek clarity regarding the process the U.S. Department of Housing & Urban Development ("Department") is using to produce the twelve e-mail accounts the Office of Inspector General ("OIG") recently requested as part of its review of Puerto Rico disaster relief efforts.

The OIG has heard some reports that the Department's process consists of employees searching their own e-mails manually, in the Outlook e-mail client for responsive information. The OIG is seeking your confirmation such a process was not used, and the OIG is seeking clarification as to the specific process the Department will use to collect and to produce the requested emails. I am also requesting your confirmation that the Department is not conducting a privilege review before producing records to the OIG.

Additionally, I request clarification regarding the Department's concerns about the data integrity of the records the Department is producing. In his April 26, 2019 email to Inspector General (IG) Oliver Davis, Deputy Secretary Montgomery noted that "due to the expedited process by which some of these documents are being delivered, we are unable to run customary data verification to ensure completion and/or integrity of the word-search screened files." Please explain what the data verification and integrity tests are and why the "expedited" time frame prohibits the Department from running them.

Due to the concerns raised above regarding the process of production and the data integrity, I ask that upon production of the documents that the Department certify that it has produced all records responsive to the OIG's request.

Please provide your response to the concerns outlined in this memorandum as soon as possible.

AMERICAN OVERSIGHT

From: Compton, Paul
Sent: 23 Apr 2019 21:24:29 +0000
To: brian.d.miller(b)(6)
Subject: FW: Response Memo
Attachments: Scanned from a Xerox multifunction device.pdf

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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-----Original Message-----
From: Gormley, Joseph M <Joseph.M.Gormley@hud.gov>
Sent: Monday, April 22, 2019 5:41 PM
To: Compton, Paul <Paul.Compton@hud.gov>
Subject: FW: Response Memo

-----Original Message-----
From: Gormley, Joseph M
Sent: Monday, April 22, 2019 5:41 PM
To: Begg, Stephen <SBegg@hudoig.gov>
Subject: Response Memo

Dear Steve,

Please find attached the Acting Deputy Secretary's response to the Inspector General's memo dated April 15 concerning the review of the CDBG-DR work during the recent government shutdown.

ADS Montgomery is happy to discuss this memo or any other topic with the Inspector General at her request.

Best regards,

Joe

AMERICAN OVERSIGHT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

MEMORANDUM FOR: Rae Oliver Davis
Inspector General, G

FROM: Brian Montgomery
Acting Deputy Secretary, DS

SUBJECT: IG demands re access to email communications and Department witnesses in connection with review of disaster relief efforts

I am writing this response to the concerns you expressed in your memorandum to me of April 15, 2019 concerning the alleged denial of full and timely access to OIG in connection with a review of CDBG-DR work during the recent government shutdown requested by Congress in January of this year.

According to HUD's General Counsel, OIG first requested email records at the end of the day on Monday, April 8. That email asked that HUD produce all of the emails for 12 HUD officials, including the Secretary and the General Counsel, from September 1, 2017 to the present. As currently framed, this request seeks 2.8 million e-mails, certainly including many, many more that have no relevance to your review, at least as described to us, than those that do have relevance. HUD's General Counsel called the OIG Counsel and then met with OIG counsel three days later on April 11 and explained that, given the expansive scope of the request, retrieving the requested emails might take months, based on past experience and preliminary estimates by our technical staff. There was a full discussion of the process, including the difficulty of ascertaining time frames, but the certainty that the narrower requests are, the faster they can be processed.

In addition, OIG was advised that HUD did not have authority either to waive or to invoke executive privilege. Instead, the White House Counsel's office has instructed HUD's General Counsel to consult with it before production occurs. Accordingly, the materials would have to be reviewed before production. As a good faith demonstration that such process would not impede delivery of documents, OGC also presented at the meeting key correspondence and attorney memorandums that fully reflected the reasoning for not reviewing CDBG-DR action plans for Puerto Rico, or any other jurisdiction, during the government shutdown.[1] Those

[1] The action plan amendment for Puerto Rico under P.L. 115-123 was approved on February 28, 2019, rendering moot the essential concerns expressed in the January 17, 2019 letter by three members of Congress to the OIG. As an aside, we note that Puerto Rico has had available since September 2018 $1.5 billion in CDBG-DR funds from a prior appropriation and, as of April 15, 2019, had drawn down approximately $61,000 of such amount. Thus, the

AMERICAN OVERSIGHT

documents, with White House Counsel's Office approval, were subsequently delivered to your office on April 19.

In an effort to speed production, HUD asked OIG counsel to consider adjusting the timeframes for the request to focus on their core investigative interests and to prioritize which records custodians they wanted to have produced first. OIG counsel indicated the possibility of flexibility on these fronts, but we had no further response from your office until your April 15 memo to me, which appeared to foreclose all further attempts at mutual accommodation. I understand, as noted below, that you have reconsidered this position, though this memo addresses your original position which requested a response by today.

On April 16, HUD's General Counsel directed our e-discovery coordinator to process the data collections requested by the OIG last week. The General Counsel, consistent with past practice, directed that these searches will take precedence over existing searches that are being conducted to respond to FOIA requests, congressional oversight requests and other OIG e-discovery requests. In addition, these collections will also take precedence over any litigation-related requests where the delay of that request will not result in exposing the Department to sanctions. We are reviewing all litigation-related requests with the appropriate attorneys to determine whether additional delay of their e-discovery requests is possible.

Once the data collections have been processed and the appropriate consultation has taken place, materials will be produced. Your memo incorrectly suggests that HUD's General Counsel proposed a 6-12 month review period. After being repeatedly pressed to offer a timetable for production and without the benefit of knowing the number of e-mails encompassed by the OIG's request, HUD's General Counsel offered estimates of the total time that might be required for both production and review. In addition, projected timeframes for the data collection that were shared with OIG counsel were noted to be inherently speculative since the data collections had not yet even been submitted to our e-discovery coordinator. OGC, in the time frame presented by OIG for a response, had only a single opportunity to obtain input from staff prior to meeting with OIG. Your memo states that productions sometime take up to four to six months, but fails to note that in many instances they are accomplished in 30 days or less.[2] Although you initially rebuffed our requests for cooperation in minimizing the substantial burdens of production, the agency has committed to producing the requested materials as fast as possible consistent with its other obligations. With a reasonable scope of request, I believe that we can produce collections faster than expected; we desire to do so. I understand further discussions of that will occur today.

---

action plan delay due to the government shutdown has had no impact whatsoever on recovery funds available to Puerto Rico.

[2] Your memo also suggested that the agency's e-discovery process inappropriately affords OGC the opportunity to review and approve or deny OIG requests. Memo from Rae Oliver Davis, Inspector General to Brian Montgomery, Acting Deputy Secretary, p. 1, note 1 (April 15, 2019). HUD has not denied OIG requests entered into the system.

AMERICAN OVERSIGHT

Although we have sought to expedite this production, it is important to emphasize that this is the very same process that we have been using to respond to OIG requests for e-mail records for at least the last six years. The past delays about which you are now asserting are linked to longstanding resource and infrastructure limitations, as was confirmed by OIG's recent audit of HUD's e-discovery system. E-Discovery Management System's Capacity to Meet Customer Demand for Electronic Data: Report No. 2017-OE-30008 (Dec. 6, 2017). Under these circumstances and given OIG's long-standing knowledge of our e-discovery challenges, I think your suggestion that our projected timeframes for production are now statutory violations is unfounded. I note that the agency is just days into being cognizant of this investigation and your requests though you clearly had been considering the request for more than two months. In the meetings with you during that time, no mention of this matter was made to permit us to better respond.

(b)(5) Deliberative Privilege

(b)(5) Deliberative Privilege

(b)(5) Deliberative Privilege

AMERICAN OVERSIGHT

(b)(5) Deliberative Privilege

Considering all the factors detailed in this memo, and based on the current record, I am satisfied that we are fulfilling our obligation to provide you with reasonable access in accordance with long-standing agency protocols. The General Counsel has in no way denied, prevented or impeded timely access. OIG has not even defined what it would consider to be timely or proposed its own schedule.

HUD's General Counsel has advised me that OIG Counsel has reached out to him on April 20 with additional suggestions about potential modifications to the OIG information requests. This memo is not intended to respond to those suggestions, but I encourage you to continue to engage with HUD's General Counsel to narrow our differences and to satisfy your legitimate investigative needs without insisting on a scope that covers all senior level agency matters of every type for this particular review and undermining the constitutional privileges held by the White House and otherwise unnecessarily drawing into question serious legal issues which could be avoided through traditional means of accommodation. I am hopeful for good results from those discussions.

[3] Memorandum for All Agency General Counsels from Pat Cippolone, Counsel to the President re: Document and Information Requests (January 31, 2019) ("This consultation requirement applies with respect to all document or information requests (including subpoenas), including but not limited to Congressional committee requests, *Inspector General requests*, FOIA requests, and GAO requests.") (emphasis added)

AMERICAN OVERSIGHT

From: Compton, Paul
Sent: 2 May 2019 22:54:36 +0000
To: McGaughey, Jon T. EOP/WHO;brian.d.miller(b)(6)
Cc: Ludlow, Ashley (Ashley.Ludlow@hud.gov)
Subject: FW: IG correspondence - revised copy
Attachments: OIG Correspondence re CDBG request - final.pdf

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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From: Hughes, Andrew <Andrew.Hughes@hud.gov>
Sent: Thursday, May 02, 2019 6:51 PM
To: Begg, Stephen <SBegg@hudoig.gov>
Cc: Gormley, Joseph M <Joseph.M.Gormley@hud.gov>
Subject: IG correspondence - revised copy

Hi Steve,

Attached is the correspondence which we believe captures all of our communication.

Please let me know if you need anything else and thank you.

Sincerely,

Andrew

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Monday, April 08, 2019 5:31 PM
To: Compton, Paul; Grassi, Joseph J
Subject: Email request

Paul,

We are requesting that this email request be expedited.

Could you provide emails for the below referenced individuals for the period of time from September 1, 2017 to the present?

(b)(7)(C)

If you could let me know a timeframe tomorrow related to when to expect. Happy to meet in person.

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Wednesday, April 10, 2019 9:42 AM
To: Compton, Paul; Grassi, Joseph J
Subject: Re: Email request

Hi Paul and Joe,

I understand that you all were out of the office yesterday. Just following up to see if we could discuss expected timeline. Also wanted to use this request to discuss ongoing plan for access.

Hope all is well.

Thanks

Jeremy

On: 08 April 2019 17:30,
"Kirkland, Jeremy" <JKirkland@hudoig.gov> wrote:

Paul,

We are requesting that this email request be expedited.

Could you provide emails for the below referenced individuals for the period of time from September 1, 2017 to the present?

(b)(7)(C)

If you could let me know a timeframe tomorrow related to when to expect. Happy to meet in person.

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Wednesday, April 10, 2019 12:15 PM
To: Compton, Paul; Grassi, Joseph J
Cc: Petty, Timothy J
Subject: RE: Email request

Thanks so much, Paul. Feel free to reach out to me on my cell with any questions. I remember Joe was going to be out for several days.

Jeremy

From: Compton, Paul <Paul.Compton@hud.gov>
Sent: Wednesday, April 10, 2019 12:01 PM
To: Kirkland, Jeremy <JKirkland@hudoig.gov>; Grassi, Joseph J <Joseph.J.Grassi@hud.gov>
Cc: Timothy Petty <timothy.j.petty@hud.gov>
Subject: RE: Email request

Jeremy,

I was out yesterday without communications access and have been in meetings today. Also note that Joe is out of the office for several days and unavailable.

I'll look into this and follow up with you.

JPC

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Wednesday, April 10, 2019 9:42 AM
To: Compton, Paul <Paul.Compton@hud.gov>; Grassi, Joseph J <Joseph.J.Grassi@hud.gov>
Subject: Re: Email request

Hi Paul and Joe,

AMERICAN OVERSIGHT

I understand that you all were out of the office yesterday. Just following up to see if we could discuss expected timeline. Also wanted to use this request to discuss ongoing plan for access.

Hope all is well.

Thanks

Jeremy

On: 08 April 2019 17:30,
"Kirkland, Jeremy" <JKirkland@hudoig.gov> wrote:

Paul,

We are requesting that this email request be expedited.

Could you provide emails for the below referenced individuals for the period of time from September 1, 2017 to the present?

(b)(7)(C)

If you could let me know a timeframe tomorrow related to when to expect. Happy to meet in person.

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Wednesday, April 10, 2019 12:17 PM
To: Compton, Paul; Grassi, Joseph J
Cc: Petty, Timothy J
Subject: RE: Email request

Also, as a heads up, the Inspector General has asked me to request a standing weekly meeting on identifying the long term solution to our access concerns. Please let me know who I should coordinate that meeting with.

Thanks again,

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

From: Compton, Paul <Paul.Compton@hud.gov>
Sent: Wednesday, April 10, 2019 12:01 PM
To: Kirkland, Jeremy <JKirkland@hudoig.gov>; Grassi, Joseph J <Joseph.J.Grassi@hud.gov>
Cc: Timothy Petty <timothy.j.petty@hud.gov>
Subject: RE: Email request

Jeremy,

I was out yesterday without communications access and have been in meetings today. Also note that Joe is out of the office for several days and unavailable.

I'll look into this and follow up with you.

JPC

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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AMERICAN OVERSIGHT

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Wednesday, April 10, 2019 9:42 AM
To: Compton, Paul <Paul.Compton@hud.gov>; Grassi, Joseph J <Joseph.J.Grassi@hud.gov>
Subject: Re: Email request

Hi Paul and Joe,

I understand that you all were out of the office yesterday. Just following up to see if we could discuss expected timeline. Also wanted to use this request to discuss ongoing plan for access.

Hope all is well.

Thanks

Jeremy

On: 08 April 2019 17:30,
"Kirkland, Jeremy" <JKirkland@hudoig.gov> wrote:

Paul,

We are requesting that this email request be expedited.

Could you provide emails for the below referenced individuals for the period of time from September 1, 2017 to the present?

(b)(7)(C)

If you could let me know a timeframe tomorrow related to when to expect. Happy to meet in person.

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Compton, Paul
Sent: Wednesday, April 10, 2019 4:20 PM
To: Kirkland, Jeremy
Subject: Doc request

Jeremy,

Do you want to discuss this afternoon or set a time tomorrow?

Paul Compton
General Counsel
U.S. Dept. of Housing and Urban Development
Paul.Compton@hud.gov
W 202.402.5023
C (b)(6)

The information in this communication may be confidential and privileged, is intended only for the use of the recipient(s) named above, and may be subject to additional legal non-disclosure requirements. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please re-send it to the sender and delete the original message and any copy of it from your computer system.

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Wednesday, April 10, 2019 4:38 PM
To: Compton, Paul
Subject: Re: Doc request

I am away from the office but can talk anytime for the rest of the day.

Thanks

Jeremy

On: 10 April 2019 16:20,
"Compton, Paul" <Paul.Compton@hud.gov> wrote:

Jeremy,

Do you want to discuss this afternoon or set a time tomorrow?

Paul Compton
General Counsel
U.S. Dept. of Housing and Urban Development
Paul.Compton@hud.gov
W 202.402.5023
C (b)(6)

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AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Wednesday, April 10, 2019 4:39 PM
To: Compton, Paul
Subject: Re: Doc request

We can also set up a meeting in person tomorrow before 10 am.

Thanks

Jeremy

On: 10 April 2019 16:20,
"Compton, Paul" <Paul.Compton@hud.gov> wrote:

Jeremy,

Do you want to discuss this afternoon or set a time tomorrow?

Paul Compton
General Counsel
U.S. Dept. of Housing and Urban Development
Paul.Compton@hud.gov
W 202.402.5023
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AMERICAN OVERSIGHT

Ludlow, Ashley

From: Compton, Paul
Sent: Wednesday, April 10, 2019 4:40 PM
To: Kirkland, Jeremy
Subject: RE: Doc request

What's a good number? I'll call you at 5 pm if that works.

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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From: Kirkland, Jeremy <JKirkland@hudoig.gov>
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To: Compton, Paul <Paul.Compton@hud.gov>
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Paul Compton
General Counsel
U.S. Dept. of Housing and Urban Development
Paul.Compton@hud.gov
W 202.402.5023
C (b)(6)

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Wednesday, April 10, 2019 4:41 PM
To: Compton, Paul
Subject: Re: Doc request

Feel free to call my cell number. (b)(6)

Jeremy

On: 10 April 2019 16:40,
"Compton, Paul" <Paul.Compton@hud.gov> wrote:

What's a good number? I'll call you at 5 pm if that works.

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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From: Kirkland, Jeremy <JKirkland@hudoig.gov>
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To: Compton, Paul <Paul.Compton@hud.gov>
Subject: Re: Doc request

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Thanks

Jeremy

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"Compton, Paul" <Paul.Compton@hud.gov> wrote:

Jeremy,

Do you want to discuss this afternoon or set a time tomorrow?

AMERICAN OVERSIGHT

Paul Compton
General Counsel
U.S. Dept. of Housing and Urban Development
Paul.Compton@hud.gov
W 202.402.5023
C (b)(6)

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AMERICAN OVERSIGHT

Ludlow, Ashley

From: Compton, Paul
Sent: Wednesday, April 10, 2019 4:51 PM
To: Kirkland, Jeremy
Subject: RE: Doc request

Let's plan on 9 am at my office. 10110.

JPC

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Wednesday, April 10, 2019 4:39 PM
To: Compton, Paul <Paul.Compton@hud.gov>
Subject: Re: Doc request

We can also set up a meeting in person tomorrow before 10 am.

Thanks

Jeremy

On: 10 April 2019 16:20,
"Compton, Paul" <Paul.Compton@hud.gov> wrote:

Jeremy,

Do you want to discuss this afternoon or set a time tomorrow?

Paul Compton
General Counsel
U.S. Dept. of Housing and Urban Development
Paul.Compton@hud.gov
W 202.402.5023
C (b)(6)

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Wednesday, April 10, 2019 4:52 PM
To: Compton, Paul
Subject: Re: Doc request

Sounds good.

Jeremy

On: 10 April 2019 16:50,
"Compton, Paul" <Paul.Compton@hud.gov> wrote:

Let's plan on 9 am at my office. 10110.

JPC

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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Subject: Re: Doc request

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Jeremy,

AMERICAN OVERSIGHT

Do you want to discuss this afternoon or set a time tomorrow?

Paul Compton
General Counsel
U.S. Dept. of Housing and Urban Development
Paul.Compton@hud.gov
W 202.402.5023
C (b)(6)

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AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Monday, April 15, 2019 4:05 PM
To: Compton, Paul
Subject: FW: IG access to information
Attachments: 2019-04-15 memo to Acting Dep Sec.pdf

Hi Paul,

Please see the attached memo provided to the Acting Deputy Secretary.

Thanks,

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

From: Oliver Davis, Rae <ROliverDavis@hudoig.gov>
Sent: Monday, April 15, 2019 3:50 PM
To: 'Brian.D.Montgomery@hud.gov' <Brian.D.Montgomery@hud.gov>
Cc: Kirkland, Jeremy <JKirkland@hudoig.gov>
Subject: IG access to information

Brain,

I realize we have a meeting already on the schedule for Wednesday. I will be prepared to discuss the attached memo then or at your earliest convenience.

In the meantime, thank you for your attention to this matter. I look forward to your reply.

Rae Oliver Davis
Inspector General
United States Department of
Housing and Urban Development
451 7th Street S.W.
Room 8256
Washington, D.C. 20410
(202) 402-6010

AMERICAN OVERSIGHT

U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL

April 15, 2019

Memorandum

TO: Brian Montgomery
Acting Deputy Secretary, DS

(b)(6)

FROM: Rae Oliver Davis
Inspector General, G

SUBJECT: Access to e-mail communications and Department witnesses

I write to inform you of my concern regarding the Office of Inspector General (OIG) being denied full and prompt access to e-mail communications and Department witnesses by the Office of General Counsel (OGC). These concerns impact the OIG's ability to carry out its core mission. First, the Department continues to fail to *timely* produce *all* records responsive to OIG requests. On average, the OIG waits four to six months to receive requested records, and in response to the OIG's most recent records request, OGC has informed OIG that it plans to conduct a six to twelve month privilege review prior to producing requested records. This is unacceptable. Second, OGC has inappropriately attempted to insert agency or other government counsel in OIG interviews where OGC believes OIG's line of questioning may implicate executive privilege.

With respect to my first concern, I have raised in multiple meetings with senior Department officials, including the Secretary that the Department continues to fail to timely produce all records in response to OIG requests.[1] As I am sure you are aware, the Inspector General Act of 1978 ("IG Act"), as amended by the IG Empowerment Act of 2016, authorizes OIG to "have ***timely*** access to ***all*** records, reports, audits, reviews, documents, papers,

[1] As noted in HUD OIG Evaluation Report 2017-OE-0008, *E-Discovery Management System's Capacity to Meet Customer Demands for Electronic Data* (Dec. 6, 2017), the Department continues to process OIG records requests through OGC's eDiscovery management system. Using this system causes the unacceptable four to six month delays because OIG requests are processed in a queue along with discovery, FOIA, and congressional requests. This process also inappropriately affords OGC the opportunity to review and approve or deny OIG requests.

AMERICAN OVERSIGHT

recommendations, or other material available to the [Department] which relate to the programs and operations with respect to that which the Inspector General has responsibilities under [the] Act." 5 U.S.C. app 3, § 6(a)(1)(emphasis added). The access provided for by the IG Act applies "notwithstanding any other provision of law," except pursuant to a law that expressly refers to and limits the access of OIG. *Id. at* § 6(b). Notably, upon passage of the IG Empowerment Act in 2016, Senator Charles Grassley, who championed the bill, stated:

> It is a waste of time and money to have agencies at war with their inspectors general over access to information. The inspectors general need to spend their time identifying and helping agencies eliminate waste, fraud, and abuse-not fighting for access to the information needed to do their job. The bureaucrats need to learn Congress intended for the law to mean exactly what it says.

162 Cong. Rec. S7130, 7130-31, 2016 WL 7192551 (Dec. 9, 2016).

Despite Congress' clear message that "timely access to all records" means exactly what it says, OGC informed OIG that it planned to conduct a six to twelve month privilege review before producing records responsive to our request for e-mail communications. However, the IG Act does not carve out an exception to the "timely access to all records" requirement for agency privilege reviews. Additionally, the Department's use of resources to conduct such privilege review violates the Consolidated Appropriations Act of 2019, P. Law 116-6, § 627 (2019), which prohibits the Department from using appropriated funds to "deny . . . prevent or impede" OIG from timely access to all Department records. Notably, the Inspector General must "report to the Committees on Appropriations of the House of Representatives and the Senate within 5 calendar days any failures to comply with this requirement." *Id.*

The OIG is certainly sensitive to the Department's concerns about privilege waivers. However, production to the OIG does not waive privilege.[2] Furthermore, OIG repeatedly has confirmed to OGC that OIG has no intention of reporting privileged information outside the Department, and that OIG will provide the Department with an opportunity to review and assert privilege for all reports that potentially implicate privilege before they are published or released.

With respect to my second concern, OGC has attempted to insert agency counsel in OIG interviews where OGC believes our line of questioning may implicate executive privilege. From this point forward, OIG will deny all such requests by OGC. As mentioned above, disclosures made to OIG during an interview would not waive privilege, and thus, counsel is not necessary

---

[2] *See Defenders of Wildlife v. U.S. Department of the Interior*, 314 F. Supp. 2d 1, 20-21 (D.D.C. 2004) (documents remained protected by deliberative process privilege despite reference to those documents in an OIG report); *Dangler v. N.Y. City Off Track Betting Corp.*, 1998 WL 23543, at *1 (S.D.N.Y. 1998) (Giving information to the inspector general of a New York City agency did not waive privilege); cf. *NASA v. FLRA*, 527 U.S. 229 (1999) (recognizing that OIG personnel are agency representatives); *Shermco Indus. Inc. v. Secretary of Air Force*, 613 F.2d 1314 (5th Cir. 1980)(provision of memorandum to GAO did not constitute waiver of privilege).

AMERICAN OVERSIGHT

to protect such privilege. Counsel has no need to know the information discussed during the interview and their presence may have a chilling effect on the witness.

Unless the Department provides OIG timely access to the e-mail communications, electronic records, and Department witnesses, I will have no choice but to inform relevant committees of Congress of the failure of the Department to comply with the IG Act and the Consolidated Appropriations Act of 2019. I request a written response from you no later than close of business, April 22, 2019. Thank you for your consideration and attention to this important matter.

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Thursday, April 18, 2019 4:34 PM
To: Compton, Paul
Cc: MDB; Oliver Davis, Rae
Subject: Access to Department E-Mail Communications
Attachments: 2019_04_18_16_14_34.pdf

Paul,

Please find the attached memo responding to your Tuesday night email.

Thank you for your attention to this important matter.

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL

April 18, 2019

Memorandum

TO: Paul Compton
General Counsel, GC

FROM: Jeremy Kirkland
Counsel to the Inspector General, GC

(b)(6)

SUBJECT: Access to Department E-mail Communications

Thank you for your email Tuesday night. I appreciate your effort to prioritize HUD OIG's April 8, 2019 request for production of 12 e-mail accounts for an 18-month period, but your email failed to state exactly when HUD OIG will receive full production of the requested e-mail accounts. The Inspector General specifically requested an exact timeline of when the Department planned to produce the e-mail account in her April 15, 2019 letter to Acting Deputy Secretary Montgomery. I am extremely concerned that the six- to 12-month timeframe you communicated to me in our meeting on April 11, 2019, which the Acting Deputy Secretary confirmed to the Inspector General in a meeting on April 16th, remains unchanged. To be clear, the six- to 12-month timeframe is unacceptable and in violation of the IG Act and the 2019 Appropriations Act's language that requires agencies provide their OIGs with "timely access to all records."

Your e-mail states your intention to use the Office of General Counsel's (OGC) e-discovery management system and the "usual IT contractors" to collect and produce the requested e-mail accounts. To the extent that using OGC's e-discovery management system is causing or contributing to your lengthy time estimate for completing production, using that system is unacceptable. Since 2017, the OIG waits on average four to six months to receive requested records, with approximately 30 of those requests taking more than six months. This lengthy and unacceptable timeframe has persisted despite the OIG's 2017 evaluation report detailing the inefficiency in this system[1] and the Inspector General's repeated conversations with senior HUD officials, including the Secretary, about this problem over the last three months.

The Department has shown that it has the capability to use an alternate system to produce emails, as evidenced by the seven-day turnaround in response to OIG's March 8, 2019, request

[1] *See* HUD OIG Evaluation Report 2017-OE-0008, E-Discovery Management System's Capacity to Meet Customer Demands for Electronic Data (Dec. 6, 2017).

AMERICAN OVERSIGHT

for two employees' email accounts for a 21-month period. OIG will no longer accept unnecessary delays in our access to e-mail communications. The Department has an obligation to provide this information to us in a timely fashion. To the extent that the Department cannot do that using its own processes, OIG requests you provide our staff with direct access to these records to ensure we can obtain them in a manner that does hamper our ability to perform our statutory oversight function.

In meetings with OIG, OGC has suggested that it seeks to conduct a privilege review prior producing the accounts to OIG. As previously discussed, conducting a privilege review is not a valid basis to delay producing the emails. In my April 3, 2019 email to Acting Associate General Counsel of Litigation Miniard Culpepper, I provided you with case law and the DOJ Office of Legal Counsel 2008 Opinion to the National Science Foundation ("OLC Opinion") stating that agency disclosure of privileged material to its OIG does not waive privilege. In an April 4, 2019 email to you and Mr. Culpepper, I also reminded you of the Joint Statement of Cooperation between HUD and OIG, quoting the Agreement's language requiring "HUD personnel to produce materials requested by the OIG in a timely and complete fashion" and stating that "there is no basis for withholding any information from OIG when requested." I specifically requested that you respond whether HUD was changing its previously held position adopted in the Joint Statement of Cooperation. Mr. Culpepper responded on April 4, 2019, acknowledging the continued validity of the Joint Statement of Cooperation.

In her April 15, 2019, letter to Deputy Secretary Montgomery, IG Oliver Davis reiterated that the Department cannot delay production of emails for the purpose of conducting a privilege review. She underscored that the IG Act does not carve out an exception to the "timely access to all records" requirement for agency privilege reviews. I am certainly sensitive to the Department's concerns about privilege waivers. However, OIG has communicated to you, others in OGC, and the Deputy Secretary our commitment to allow the Department an opportunity to review and assert privilege prior to releasing outside of the OIG any potentially privileged material.

The OIG continues to await a written response to the April 15, 2019 letter, no later than close of business April 22, 2019. We stand ready for you to provide a more reasonable timeframe to produce the 12 email accounts and an explanation as to why it will take that amount of time. If you fail to do so, we will be forced to notify Congress of this delay in access. Thank you for your attention to this important matter.

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Friday, April 19, 2019 1:37 PM
To: Compton, Paul
Subject: RE: Access to Department E-Mail Communications

Paul,

Thanks for taking my call to discuss a path forward. As I mentioned, if you can provide a more reasonable time frame for production of the e-mail communications, HUD OIG is willing to consider search terms for certain higher level officials (specifically the Secretary and you). We would still expect that the department will go ahead and collect the entire request so that it doesn't delay any production pursuant to follow up requests. As I also confirmed, the OIG may have to come back to ask for more. In addition, we are not agreeing that this is how we always intend to do.

Look forward to chatting on Monday.

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

From: Kirkland, Jeremy
Sent: Thursday, April 18, 2019 4:34 PM
To: 'Compton, Paul' <Paul.Compton@hud.gov>
Cc: 'MDB' <Brian.D.Montgomery@hud.gov>; Oliver Davis, Rae <ROliverDavis@hudoig.gov>
Subject: Access to Department E-Mail Communications

Paul,

Please find the attached memo responding to your Tuesday night email.

Thank you for your attention to this important matter.

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Compton, Paul
Sent: Friday, April 19, 2019 3:58 PM
To: Kirkland, Jeremy
Cc: Culpepper, Miniard; Simpson, Kevin M
Subject: Key CDBG-DR action plan treatment during lapse documents
Attachments: Scanned from a Xerox multifunction device.pdf; Scanned from a Xerox multifunction device.pdf; Scanned from a Xerox multifunction device.pdf; Scanned from a Xerox multifunction device.pdf

Jeremy,

Consistent with our discussion, and in accordance with our protocols with the Office of White House Counsel, please find attached the documents we previously provided to you to inspection relating to decisions made regarding whether review of CDBG-DR action plans constituted excepted activity under the Anti-Deficiency Act.

Nothing herein is intended to or shall be deemed to constitute a waiver of any applicable privilege, including, without limitation, executive privilege, which I understand may continue to be asserted vis a vis third parties. Further, I understand treatment of those privileges may be subject to more detailed understandings as part of our broader discussions regarding your information requests in connection with this review. In that respect, our delivery of these documents should not be considered precedential with respect to any other or similar matters.

JPC

Paul Compton
General Counsel
U.S. Dept. of Housing and Urban Development
Washington, D.C. 20410
paul.compton@hud.gov
202.402.5002

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[Attachments omitted – Privileged / Subject to Privilege]

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Monday, April 22, 2019 11:23 AM
To: Compton, Paul
Subject: RE: Access to Department E-Mail Communications

Hi Paul,

Just checking back to see whether you have been able to identify a more reasonable time frame for production of the e-mail communications. As mentioned, HUD OIG plans to provide search terms for certain higher level officials.

Thanks again.

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

From: Kirkland, Jeremy
Sent: Friday, April 19, 2019 1:37 PM
To: 'Compton, Paul' <Paul.Compton@hud.gov>
Subject: RE: Access to Department E-Mail Communications

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Look forward to chatting on Monday.

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

From: Kirkland, Jeremy
Sent: Thursday, April 18, 2019 4:34 PM
To: 'Compton, Paul' <Paul.Compton@hud.gov>
Cc: 'MDB' <Brian.D.Montgomery@hud.gov>; Oliver Davis, Rae <ROliverDavis@hudoig.gov>
Subject: Access to Department E-Mail Communications

Paul,

Please find the attached memo responding to your Tuesday night email.

Thank you for your attention to this important matter.

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Compton, Paul
Sent: Monday, April 22, 2019 11:29 AM
To: Kirkland, Jeremy
Subject: RE: Access to Department E-Mail Communications

Could we visit today at 3?

Could you provide us with a sense of how much the terms will reduce the total volume, e.g., reduction of 75%, 90%, 95%? My sense is that anything that focuses on CDBG-DR and/or Puerto Rico would substantially reduce volume in all but a few custodians. Narrowing time frame would enhance the effect across the board.

If you have terms and/or time frame, I could also run a very rough test in my own current mailbox.

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Monday, April 22, 2019 11:23 AM
To: Compton, Paul <Paul.Compton@hud.gov>
Subject: RE: Access to Department E-Mail Communications

Hi Paul,

Just checking back to see whether you have been able to identify a more reasonable time frame for production of the e-mail communications. As mentioned, HUD OIG plans to provide search terms for certain higher level officials.

Thanks again.

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

From: Kirkland, Jeremy
Sent: Friday, April 19, 2019 1:37 PM
To: 'Compton, Paul' <Paul.Compton@hud.gov>
Subject: RE: Access to Department E-Mail Communications

Paul,

Thanks for taking my call to discuss a path forward. As I mentioned, if you can provide a more reasonable time frame for production of the e-mail communications, HUD OIG is willing to consider search terms for certain higher level officials (specifically the Secretary and you). We would still expect that the department will go ahead and collect the entire request so that it doesn't delay any production pursuant to follow up requests. As I also confirmed, the OIG may have to come back to ask for more. In addition, we are not agreeing that this is how we always intend to do.

Look forward to chatting on Monday.

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

From: Kirkland, Jeremy
Sent: Thursday, April 18, 2019 4:34 PM
To: 'Compton, Paul' <Paul.Compton@hud.gov>
Cc: 'MDB' <Brian.D.Montgomery@hud.gov>; Oliver Davis, Rae <ROliverDavis@hudoig.gov>
Subject: Access to Department E-Mail Communications

Paul,

Please find the attached memo responding to your Tuesday night email.

Thank you for your attention to this important matter.

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Monday, April 22, 2019 11:55 AM
To: Compton, Paul
Subject: RE: Access to Department E-Mail Communications

Sure. 3:00 should work. I would suspect that the search terms for the certain higher level officials would focus on CDBG-DR and Puerto Rico.

Thanks,

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

From: Compton, Paul <Paul.Compton@hud.gov>
Sent: Monday, April 22, 2019 11:29 AM
To: Kirkland, Jeremy <JKirkland@hudoig.gov>
Subject: RE: Access to Department E-Mail Communications

Could we visit today at 3?

Could you provide us with a sense of how much the terms will reduce the total volume, e.g., reduction of 75%, 90%, 95%? My sense is that anything that focuses on CDBG-DR and/or Puerto Rico would substantially reduce volume in all but a few custodians. Narrowing time frame would enhance the effect across the board.

If you have terms and/or time frame, I could also run a very rough test in my own current mailbox.

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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AMERICAN OVERSIGHT

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Monday, April 22, 2019 11:23 AM
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Subject: RE: Access to Department E-Mail Communications

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Thanks again.

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
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Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

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Subject: RE: Access to Department E-Mail Communications

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Look forward to chatting on Monday.

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

From: Kirkland, Jeremy
Sent: Thursday, April 18, 2019 4:34 PM
To: 'Compton, Paul' <Paul.Compton@hud.gov>

AMERICAN OVERSIGHT

cc: MDB <Brian.D.Montgomery@hud.gov>, Oliver Davis, Rae <ROliverDavis@hudoig.gov>
Subject: Access to Department E-Mail Communications

Paul,

Please find the attached memo responding to your Tuesday night email.

Thank you for your attention to this important matter.

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Gormley, Joseph M
Sent: Monday, April 22, 2019 5:41 PM
To: Compton, Paul
Subject: FW: Response Memo
Attachments: Scanned from a Xerox multifunction device.pdf

-----Original Message-----
From: Gormley, Joseph M
Sent: Monday, April 22, 2019 5:41 PM
To: Begg, Stephen <SBegg@hudoig.gov>
Subject: Response Memo

Dear Steve,

Please find attached the Acting Deputy Secretary's response to the Inspector General's memo dated April 15 concerning the review of the CDBG-DR work during the recent government shutdown.

ADS Montgomery is happy to discuss this memo or any other topic with the Inspector General at her request.

Best regards,

Joe

AMERICAN OVERSIGHT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

MEMORANDUM FOR: Rae Oliver Davis
Inspector General, G

FROM: Brian Montgomery
Acting Deputy Secretary, DS

SUBJECT: IG demands re access to email communications and Department witnesses in connection with review of disaster relief efforts

I am writing this response to the concerns you expressed in your memorandum to me of April 15, 2019 concerning the alleged denial of full and timely access to OIG in connection with a review of CDBG-DR work during the recent government shutdown requested by Congress in January of this year.

According to HUD's General Counsel, OIG first requested email records at the end of the day on Monday, April 8. That email asked that HUD produce all of the emails for 12 HUD officials, including the Secretary and the General Counsel, from September 1, 2017 to the present. As currently framed, this request seeks 2.8 million e-mails, certainly including many, many more that have no relevance to your review, at least as described to us, than those that do have relevance. HUD's General Counsel called the OIG Counsel and then met with OIG counsel three days later on April 11 and explained that, given the expansive scope of the request, retrieving the requested emails might take months, based on past experience and preliminary estimates by our technical staff. There was a full discussion of the process, including the difficulty of ascertaining time frames, but the certainty that the narrower requests are, the faster they can be processed.

In addition, OIG was advised that HUD did not have authority either to waive or to invoke executive privilege. Instead, the White House Counsel's office has instructed HUD's General Counsel to consult with it before production occurs. Accordingly, the materials would have to be reviewed before production. As a good faith demonstration that such process would not impede delivery of documents, OGC also presented at the meeting key correspondence and attorney memorandums that fully reflected the reasoning for not reviewing CDBG-DR action plans for Puerto Rico, or any other jurisdiction, during the government shutdown.[1] Those

[1] The action plan amendment for Puerto Rico under P.L. 115-123 was approved on February 28, 2019, rendering moot the essential concerns expressed in the January 17, 2019 letter by three members of Congress to the OIG. As an aside, we note that Puerto Rico has had available since September 2018 $1.5 billion in CDBG-DR funds from a prior appropriation and, as of April 15, 2019, had drawn down approximately $61,000 of such amount. Thus, the

AMERICAN OVERSIGHT

documents, with White House Counsel's Office approval, were subsequently delivered to your office on April 19.

In an effort to speed production, HUD asked OIG counsel to consider adjusting the timeframes for the request to focus on their core investigative interests and to prioritize which records custodians they wanted to have produced first. OIG counsel indicated the possibility of flexibility on these fronts, but we had no further response from your office until your April 15 memo to me, which appeared to foreclose all further attempts at mutual accommodation. I understand, as noted below, that you have reconsidered this position, though this memo addresses your original position which requested a response by today.

On April 16, HUD's General Counsel directed our e-discovery coordinator to process the data collections requested by the OIG last week. The General Counsel, consistent with past practice, directed that these searches will take precedence over existing searches that are being conducted to respond to FOIA requests, congressional oversight requests and other OIG e-discovery requests. In addition, these collections will also take precedence over any litigation-related requests where the delay of that request will not result in exposing the Department to sanctions. We are reviewing all litigation-related requests with the appropriate attorneys to determine whether additional delay of their e-discovery requests is possible.

Once the data collections have been processed and the appropriate consultation has taken place, materials will be produced. Your memo incorrectly suggests that HUD's General Counsel proposed a 6-12 month review period. After being repeatedly pressed to offer a timetable for production and without the benefit of knowing the number of e-mails encompassed by the OIG's request, HUD's General Counsel offered estimates of the total time that might be required for both production and review. In addition, projected timeframes for the data collection that were shared with OIG counsel were noted to be inherently speculative since the data collections had not yet even been submitted to our e-discovery coordinator. OGC, in the time frame presented by OIG for a response, had only a single opportunity to obtain input from staff prior to meeting with OIG. Your memo states that productions sometime take up to four to six months, but fails to note that in many instances they are accomplished in 30 days or less.[2] Although you initially rebuffed our requests for cooperation in minimizing the substantial burdens of production, the agency has committed to producing the requested materials as fast as possible consistent with its other obligations. With a reasonable scope of request, I believe that we can produce collections faster than expected; we desire to do so. I understand further discussions of that will occur today.

---

action plan delay due to the government shutdown has had no impact whatsoever on recovery funds available to Puerto Rico.

[2] Your memo also suggested that the agency's e-discovery process inappropriately affords OGC the opportunity to review and approve or deny OIG requests. Memo from Rae Oliver Davis, Inspector General to Brian Montgomery, Acting Deputy Secretary, p. 1, note 1 (April 15, 2019). HUD has not denied OIG requests entered into the system.

AMERICAN OVERSIGHT

Although we have sought to expedite this production, it is important to emphasize that this is the very same process that we have been using to respond to OIG requests for e-mail records for at least the last six years. The past delays about which you are now asserting are linked to longstanding resource and infrastructure limitations, as was confirmed by OIG's recent audit of HUD's e-discovery system. E-Discovery Management System's Capacity to Meet Customer Demand for Electronic Data: Report No. 2017-OE-30008 (Dec. 6, 2017). Under these circumstances and given OIG's long-standing knowledge of our e-discovery challenges, I think your suggestion that our projected timeframes for production are now statutory violations is unfounded. I note that the agency is just days into being cognizant of this investigation and your requests though you clearly had been considering the request for more than two months. In the meetings with you during that time, no mention of this matter was made to permit us to better respond.

Your memo also referenced our differences on the presence of agency counsel during a witness interview. On March 26, OIG contacted an Acting Assistant Secretary seeking to conduct a recorded interview in connection with this review. He was advised that the interview concerned his official actions. On March 29, that official presented himself for interview accompanied by career agency counsel who announced he would participate only to protect the confidentiality and privilege interests of the Executive Branch. OIG refused to proceed with that interview. Since that time, we have engaged with OIG counsel in an attempt to accommodate OIG's investigative interests without compromising Executive Branch prerogatives and, indeed, directives. As your own memo acknowledges ("[f]rom this point forward, OIG will deny all such requests (to have agency counsel present during witness interviews) by OGC"), OIG has previously permitted agency counsel to attend witness interviews on various occasions. Further, OIG representatives have repeatedly acknowledged that personal counsel is permitted to attend interviews as well as counsel for third parties and, by law, union representatives. As with the e-mail production timeframes, OIG is suddenly insisting that practices that have long been common features of our interactions now constitute unlawful obstruction.

As we advised OIG on April 11, the agency's position on this matter is identical to the one taken by the Department of Justice with respect to a recent congressional demand to interview a witness without agency counsel present. The Department of Justice has declined to present the requested witness for interview without agency counsel present on the grounds that to do so would unconstitutionally infringe upon the prerogatives of the Executive Branch. Letter from Stephen E. Boyd, Assistant Attorney General to The Honorable Elijah E. Cummings, p. 2 (April 9, 2019) ("Department counsel must be present at depositions of the Department's officials to protect the constitutional equities of the Executive Branch.")

While I defer to our General Counsel on the legal details, it seems very clear that the White House is raising concerns about executive privilege that have a constitutional basis and, in

AMERICAN OVERSIGHT

pursuit of the protection of those privileges, have asked all agency counsel to notify and consult with them to protect those privileges.[3] To the extent that such actions may be at tension with what you regard as your statutory rights of access, it appears your real disagreement is with the White House and not with agency leadership.

Considering all the factors detailed in this memo, and based on the current record, I am satisfied that we are fulfilling our obligation to provide you with reasonable access in accordance with long-standing agency protocols. The General Counsel has in no way denied, prevented or impeded timely access. OIG has not even defined what it would consider to be timely or proposed its own schedule.

HUD's General Counsel has advised me that OIG Counsel has reached out to him on April 20 with additional suggestions about potential modifications to the OIG information requests. This memo is not intended to respond to those suggestions, but I encourage you to continue to engage with HUD's General Counsel to narrow our differences and to satisfy your legitimate investigative needs without insisting on a scope that covers all senior level agency matters of every type for this particular review and undermining the constitutional privileges held by the White House and otherwise unnecessarily drawing into question serious legal issues which could be avoided through traditional means of accommodation. I am hopeful for good results from those discussions.

[3] Memorandum for All Agency General Counsels from Pat Cippolone, Counsel to the President re: Document and Information Requests (January 31, 2019) ("This consultation requirement applies with respect to all document or information requests (including subpoenas), including but not limited to Congressional committee requests, *Inspector General requests*, FOIA requests, and GAO requests.") (emphasis added)

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Compton, Paul
Sent: Tuesday, April 23, 2019 6:13 PM
To: Kirkland, Jeremy
Cc: MDB; Gormley, Joseph M; Culpepper, Miniard (Miniard.Culpepper@hud.gov); Simpson, Kevin M (Kevin.M.Simpson@hud.gov)
Subject: Confirmation regarding treatment of privileged documents

Jeremy,

I am writing to further our efforts to accommodate each other's interests concerning OIG's request for e-mail communications which may contain privileged communications in connection with a review of CDBG-DR issues relating to Puerto Rico and the treatment thereof during the recent government shutdown.

Since our meeting yesterday, we have evaluated the effect that the search terms, as specified by you, would have on the size of the collection. Our rough estimate is that it would effect a reduction of 95% to 98% in the number of emails. Also since that meeting, I understand that the Inspector General met with the Acting Deputy Secretary today. As a result of that meeting, the Acting Deputy Secretary believes a follow up meeting with the Inspector General, you and other staff she believes appropriate, and the Acting Deputy Secretary, me and our appropriate staff, would be helpful. Accordingly, we are deferring discussion of time estimates until that meeting.

One issue that may impact time estimates in a favorable way is us having a more definitive understanding of OIG's position regarding treatment of privileges. At several points in our discussions, you have offered OIG's view that privileged communications can be disclosed by the agency to OIG without compromising those privileges because OIG will coordinate with the agency before disclosing such communications outside of the agency.

I think this is a potentially helpful accommodation by OIG and in furtherance thereof seek your confirmation, on behalf of the HUD Inspector General, on the following specific points in connection therewith:

- OIG's position is that disclosure of any privileged communication or documents by HUD to OIG does not waive or otherwise impair any legal privilege afforded to such documents or communication.

- OIG commits that the agency will be consulted on the proposed disclosure of any privileged communications outside of the agency, including any attorney-client communications, attorney work product or communications between the White House/EOP/OMB and the agency that may be protectible under executive privilege or any associated privileges, such as the deliberative process privilege or the presidential communication privilege.

- OIG commits to defer to the agency's good faith determination of the applicability of the attorney-client, attorney work product or executive privileges as defined above and not to disclose such communications outside of the agency without the consent of the agency. OIG commits to abide by the agency's requests for non-disclosure even where such requests are made on behalf of the White House to allow the White House to preserve its ability to invoke privilege at a later date and even where the White House has not yet decided to invoke any of its privileges.

- The commitment by OIG not to disclose such privileged communications covers not only formal reports and drafts thereof (which you agree the agency may review prior to dissemination), but also extend to all communications, formal or informal, with Congress and to all written or oral testimony to Congress.

AMERICAN OVERSIGHT

Your confirmation of these matters will assist in further expediting the delivery of material requested by the OIG as we will hopefully be able to discuss further on Wednesday.

Thank you,

JPC

J. Paul Compton, Jr.
General Counsel
Office of the General Counsel
United States Department of
Housing and Urban Development
451 7th Street S.W.
Room 10110
Washington, D.C. 20410
Tel. 202 402 5023
Paul.Compton@hud.gov

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AMERICAN OVERSIGHT

U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL

April 24, 2019

Memorandum

TO: Brian Montgomery
Acting Deputy Secretary, DS

(b)(6)

FROM: Rae Oliver Davis
Inspector General, G

SUBJECT: Access to e-mail communications and Department witnesses in furtherance of OIG review of Puerto Rico disaster relief efforts

Thank you for the meeting yesterday and for your April 22 response regarding the Office of Inspector General's (OIG) request for access to Department information in furtherance of our review.[1] I appreciated your commitment yesterday to providing me with an answer by this morning as to when we could expect production of e-mail communications that we requested and whether the Department will review the e-mails for executive privilege before producing them to the OIG.

After our meeting yesterday, my staff engaged with yours, and later in the evening my Counsel received an e-mail from the Department's General Counsel that did not provide any of the answers we expected. Unfortunately, the General Counsel's e-mail retreated from your commitments and asked instead to meet regarding several issues that the OIG has already laid to rest through our statements in meetings and in writing over the past three weeks. I do not believe that additional meetings between Counsel for the OIG and the Department is the best course of action. Instead, my hope is that you can honor your commitment to provide me with specific information on when we can expect production of the e-mails that we requested and whether the Department will conduct privilege reviews of those e-mails before producing them to the OIG.

Since making our request for e-mails on April 8, the OIG has participated in numerous meetings and discussions with you, your staff, the General Counsel, and Department attorneys, in which we offered accommodations and assurances so that we could receive the information we need to perform our work. We have assured the Department in every meeting and in writing that the OIG does not intend to release privileged information in our report, and that we will

[1] Your response characterized the nature and scope of our review, and stated your position on several aspects of Puerto Rico disaster relief efforts. To remain objective and independent in our ongoing work, we cannot confirm or deny your characterization of our work is accurate, or address factual assertions that might relate to our review.

AMERICAN OVERSIGHT

provide the Department with an opportunity to review the report before it is made public so that privilege may be properly asserted. We also offered the accommodation of using search terms on certain e-mail accounts to help the Department provide information to us more quickly.

Despite our repeated requests we have not received definitive answers as to when production will begin, when production might be completed, and whether the Department will review e-mails for privilege before producing them to the OIG. We were told on April 11 that production could take between six to twelve months, which is an unacceptably long period of time for the OIG to wait for information. Your April 22 response says that timeframe was speculative and not intended for our reliance. As of today, we have not received any information indicating the timeframe for production is anything less than six to twelve months, which leaves the OIG with no understanding of when we can resume our work. [2]

In addition, your April 22 response outlined the Department's position on OIG access to records and witnesses. Your response stated the Department planned to conduct a privilege review of the e-mails that the OIG requested before producing any to the OIG. Your response also stated the Department's position that it is proper for agency counsel to participate in OIG interviews of agency employees in order to protect confidentiality and privilege.[3] Privilege reviews and agency counsel participation in OIG interviews are both departures from the statutory requirement that the Department provide timely access to all information requested by the OIG. Without assurances that the Department will provide the OIG all of the information that we requested and a clear understanding of when that will occur, I will have no choice but to bring this matter to the attention of Congress.

Over the last three weeks, the OIG has outlined repeatedly that no legal basis exists to withhold information from the OIG and disclosure of information to the OIG does not waive executive or any other privilege. Thus, conducting a privilege review of Department records before producing them to the OIG is unnecessary and will only further delay our access to records that the OIG has the authority to obtain. To ensure that the Department has a full and fair opportunity to protect privilege, the OIG has committed in meetings and in writing to allow the Department to review our reports before they are made public so that privilege may be properly asserted.

It is also unnecessary for agency counsel to participate in OIG interviews of agency employees in order to protect privilege. Agency counsel does not represent agency employees and their presence in OIG interviews has the potential to discourage employees from providing

---

[2] You state that OGC provided four e-mails to OIG on April 19 "[a]s a good faith demonstration" that the Department "would not impede delivery of documents." OGC previously presented these e-mails to OIG representatives at an April 11 meeting but did not produce them at that time because they were not authorized to do so. Although we appreciate receiving these four records after OGC obtained authority to give the OIG access to them, this demonstration is not enough to show that the Department intends to provide the OIG with the timely and full access required to perform our work.

[3] In support of this position, the Department relies on a recent Department of Justice response to a congressional demand to interview an agency witness, which is not analogous to the situation at hand. The OIG is part of the Executive Branch, not the Legislative Branch. The law provides us with access to Department information that may be privileged from disclosure to Congress.

AMERICAN OVERSIGHT

complete and accurate information. Whistleblowers may also be discouraged from coming forward for fear that agency counsel will be inserted into their communications with the OIG.

And as I outlined in my April 15 memorandum to you, the Department's appropriations are not available to fund the salaries of employees who assist in the withholding of information from the OIG.

Moreover, it is in the Department's interest to provide us with all of the information we need so that we can expeditiously conclude and report our work. In several meetings, Department officials have noted that our Puerto Rico review will find that the Department was executing their duties as best they could. The fastest, least burdensome way for the Department to assist OIG in gathering and reporting facts about Puerto Rico disaster relief assistance is to provide us with full access to all of the requested e-mails and witnesses immediately.

With respect to producing e-mail communications expeditiously, your April 22 response describes the scope of our e-mail request as expansive because the Department estimates that it seeks 2.8 million e-mails. We are unsure of exactly how you reached that number given that the Office of General Counsel (OGC) informed my staff that the records have not yet been collected. In our experience, this number of e-mails can be collected, processed, and produced in a short amount of time with minimal effort. We have asked OGC repeatedly to provide us with specific technical details about size of the data we requested. OGC has not been able to answer our technical questions or provide any information about the collection and production process. That is concerning given that we have been asking those questions for weeks so that we can understand when we might begin receiving the requested e-mails.

Your response also noted that the OIG has used the OGC e-Discovery system to make e-mail requests for the past several years. And your response stated that the OIG has failed to acknowledge that the Department produces many of the e-mails that the OIG requests in 30 days or less. Although the Department has produced e-mails in 30 days on occasion, that speed of delivery is the exception rather than the norm, which we have stated is between four and six months. And the delays that OIG experiences in receiving requested e-mail productions have increased in recent years. As soon as I became Inspector General, I alerted you, the Secretary, and the General Counsel personally that these delays are unacceptable and cannot continue.

Those delays ultimately harm the American public because they prevent us from completing meaningful reviews and reporting our work effectively and timely. For example, in our evaluation of the Department's oversight of the Alexander County Housing Authority, we submitted a request on November 22, 2017 for five employees' emails and waited until May 21 and June 6, 2018, before we received production of the requested accounts.

In conclusion, I ask that you follow through on the commitments you made yesterday to provide me with specific information about our request for access to Department information in furtherance of this review. I am requesting you provide the OIG with a date that you will begin producing the requested e-mails, a date that you anticipate completing the production, and whether the Department will conduct privilege reviews of the requested e-mails before providing

AMERICAN OVERSIGHT

them to the OIG. Without adequate responses to those specific requests, I will elevate this matter to the Secretary.

AMERICAN OVERSIGHT

Ludlow, Ashley

From: MDB
Sent: Friday, April 26, 2019 1:50 PM
To: OliverDavis, Rae
Cc: Gormley, Joseph M; Kirkland, Jeremy; Compton, Paul; Begg, Stephen
Subject: Response

Dear Rae:

Subject to your confirmation of the treatment of privilege described in the email of April 23, 2019 by HUD General Counsel to OIG Counsel, this email is to confirm, that the Department is prepared to deliver to you:

(1) Late today or Monday (depending on the arrival time of a courier from our contractor of the hard drive media) the complete email files for nine custodians (Victoria Barton, Irving Dennis, Janet Golrick, Stanley Gimont, Andrew Hughes, Emily Kornegay, Michael Moran, Pamela Patenaude and Neal Rackleff), from September 1, 2017 to the date of your request;
(2) Late today or Monday (depending again on the arrival time of a courier from our contractor of the hard drive media) the complete email files for David Woll from October 1, 2018 to the date of your request (subject to your concurrence that such date is acceptable in light of the fact that prior to October 1, 2018 Mr. Woll was Deputy General Counsel with no responsibility for CDBG-DR matters); and
(3) Immediately on cloud storage in the customary manner the email files of custodians consisting of the Secretary and General Counsel, for the time period September 1, 2017 to the date of your request screened with the word-search terms ("CDBG" and/or "Puerto Rico", along with common synonyms therefore) which you provided for the Secretary and General Counsel.

We note that due to the expedited process by which some of these documents are being delivered, we are unable to run customary data verification to ensure completion and/or integrity of the word-search screened files but have commenced that process and will provide verification within approximately the next two weeks.

Please confirm the treatment of privilege and we will commence the delivery process.

Best regards,

Brian Montgomery

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Monday, April 29, 2019 12:03 PM
To: Compton, Paul
Subject: Search terms for Secretary Carson and General Counsel Compton's e-mail accounts

Paul,

Please find included the search terms for the email accounts of the Secretary and the General Counsel. These search terms apply only for those two e-mail accounts. Should we determine that additional information is needed, we may amend the search terms and make additional document requests.

Puerto Rico
PR
115-123
115-56
Hurricane*
Disaster*
CDBG*
DR*
Maria
Irma
Shutdown
Furlough
Lapse*
Contingen*
Office of Management and Budget
OMB
Except*
Exempt*
Essential
Delay*
Slow*
Draw*
Action plan
Grant agreement
Amend*
Mitigat*
Vivienda
Gil
Ensenat [ensure search captures with and without the tilde]
Dennis
Gonzalez

If your internal process requires that this request be sent to your IT contractors, please do so.

Thanks,

Jeremy

AMERICAN OVERSIGHT

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

Ludlow, Ashley

From: Kirkland, Jeremy <JKirkland@hudoig.gov>
Sent: Monday, April 29, 2019 2:51 PM
To: Compton, Paul
Subject: Letter Kirkland to Compton 4.29.19.doc.pdf
Attachments: Letter Kirkland to Compton 4.29.19.doc.pdf

Paul,

Please see attached letter seeking clarification of certain processes followed in the production of the email accounts in our current review.

Thanks,

Jeremy

Jeremy M. Kirkland
Counsel to the Inspector General
U.S. Department of Housing and Urban Development,
Office of Inspector General
Office: 202-402-4221
Cell: (b)(6)

AMERICAN OVERSIGHT

MEMORANDUM

04/29/2019

TO: Paul Compton,
General Counsel, GC

FROM: Jeremy Kirkland,
Counsel to the Inspector General, GC (b)(6)

SUBJECT: Clarification Regarding Production of Department Emails

I am writing to seek clarity regarding the process the U.S. Department of Housing & Urban Development ("Department") is using to produce the twelve e-mail accounts the Office of Inspector General ("OIG") recently requested as part of its review of Puerto Rico disaster relief efforts.

The OIG has heard some reports that the Department's process consists of employees searching their own e-mails manually, in the Outlook e-mail client for responsive information. The OIG is seeking your confirmation such a process was not used, and the OIG is seeking clarification as to the specific process the Department will use to collect and to produce the requested emails. I am also requesting your confirmation that the Department is not conducting a privilege review before producing records to the OIG.

Additionally, I request clarification regarding the Department's concerns about the data integrity of the records the Department is producing. In his April 26, 2019 email to Inspector General (IG) Oliver Davis, Deputy Secretary Montgomery noted that "due to the expedited process by which some of these documents are being delivered, we are unable to run customary data verification to ensure completion and/or integrity of the word-search screened files." Please explain what the data verification and integrity tests are and why the "expedited" time frame prohibits the Department from running them.

Due to the concerns raised above regarding the process of production and the data integrity, I ask that upon production of the documents that the Department certify that it has produced all records responsive to the OIG's request.

Please provide your response to the concerns outlined in this memorandum as soon as possible.

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Ludlow, Ashley

From: Petty, Timothy J
Sent: Tuesday, April 30, 2019 1:51 PM
To: Compton, Paul; Ludlow, Ashley
Subject: FW: OIG Management Alert
Attachments: HUDOIGApril2019ManagementAlert.pdf

From: Beaudette, James M <James.M.Beaudette@hud.gov>
Sent: Tuesday, April 30, 2019 1:25 PM
To: Petty, Timothy J <Timothy.J.Petty@hud.gov>
Subject: FW: OIG Management Alert

FYI

The information in this communication may be confidential and privileged, is intended only for the use of the recipient(s) named above, and may be subject to additional legal non disclosure requirements. If the reader of this message is not the intended recipient, you are hereby notjfied that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please re-send it to the sender and delete the original message and any copy of it from your computer system.

From: Hatcher, Kathleen <KHatcher@hudoig.gov>
Sent: Tuesday, April 30, 2019 1:15 PM
To: Beaudette, James M <James.M.Beaudette@hud.gov>
Subject: FW: OIG Management Alert

From: Hatcher, Kathleen
Sent: Tuesday, April 30, 2019 12:33 PM
To: Wolfson, Len <Len.Wolfson@hud.gov>; 'Dendas, Michael W' <Michael.W.Dendas@hud.gov>; 'Kelley, Michael J' <Michael.J.Kelley@hud.gov>
Cc: Jones, Chuck <CJones@hudoig.gov>
Subject: OIG Management Alert

Good afternoon Len, Mike and Mike – Waned to send you a copy of the latest Management Alert. It will get posted to our website on tomorrow.

Best,
Kathleen

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Management Alert

OIG Access to Electronically-Stored Information

2019-IG-001



OFFICE OF INSPECTOR GENERAL
U.S. Department of Housing and Urban Development

AMERICAN OVERSIGHT

April 29, 2019

TO: Benjamin Carson, Sr.,
Secretary, S

(b)(6)

FROM: Rae Oliver Davis,
Inspector General, G

SUBJECT: Management Alert: OIG Access to Electronically-Stored Information
Memorandum No: 2019-IG-001

I write to inform you of the deficiencies in the process used by the U.S. Department of Housing and Urban Development ("Department") to respond to requests for electronically-stored information ("ESI"), which result in unreasonable delays in the Office of Inspector General's (OIG) access to departmental information. Failure to obtain timely access to Departmental ESI hampers the OIG's ability to carry out its oversight function. Delayed access to Departmental records causes OIG oversight efforts to be diluted, become stale, or worse, halt entirely. Access to ESI—most notably e-mail communications—is critical for the OIG to operate effectively.

The Department must take immediate action to address the shortcomings in its process to ensure that the OIG has timely access to all requested records as required by the Inspector General Act of 1978 ("IG Act").[1]

HUD's Process for Responding to OIG Requests for ESI Produces Unacceptable Delays

Currently, the Department processes OIG requests for ESI through an e-Discovery management system that the Office of General Counsel (OGC) controls and maintains. OGC relies on contractors to collect and process ESI in response to such requests. The OIG has repeatedly notified the Department that OGC's process unreasonably delays production of records in response to OIG requests.

In December 2017, the OIG published an evaluation report ("the Evaluation") detailing the inefficiencies in the Department's process for responding to requests for ESI. The OIG's evaluation showed (1) the Department provides untimely responses to OIG requests for ESI, (2) untimely responses have significant, negative effects on OIG investigations and other oversight work, and (3) untimely responses to OIG requests fail to comply with the law requiring timely

[1] The Inspector General Act of 1978 ("IG Act"), as amended, authorizes the OIG to "have *timely* access to *all* records, reports, audits, reviews, documents, papers, recommendations, or other material available to [HUD] which relate to the programs and operations with respect to that which the Inspector General has responsibilities under [the] Act." 5 U.S.C. app 3, § 6(a)(1) (emphasis added). The IG Act's access provision applies "notwithstanding any other provision of law," except pursuant to a law that expressly refers to and limits the access of OIG. Id. at § 6(b).

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OIG access to all Department information.[2] The Evaluation determined that the Department's reliance on a poorly-scoped contract to process requests for ESI, which includes those made by OIG as well as those made in litigation, under the FOIA, and by congressional oversight committees, was causing the unacceptable delays. The OIG also noted that the consequences for a failure to respond timely to requests for ESI have serious legal, financial, and reputational implications.[3]

The Evaluation forecasted that the volume of ESI requests would increase. The OIG recommended that OGC conduct a capacity study to project future ESI demands and utilize that study to inform future contracting decisions affecting its ability to respond to requests for ESI. OGC concurred with the Evaluation's findings and recommendations. Since the Department completed its capacity study, the OIG has continued to highlight the delays caused by the Department's contract and e-Discovery management system.

HUD Has Not Taken Adequate Steps to Address Known Deficiencies in its Process that Continue to Delay Responses to Requests for ESI

Despite being aware of the fact that its process lacks the sufficient capacity to respond to the demand for ESI requests, the Department has not acted to improve the process or the timeliness of its ESI productions. Regarding the delays specific to OIG, the OIG has put the Department on ample notice that responses to our requests are untimely, that such delays negatively affect our work, and that the delays in OIG access fail to comply with the law. In fact, the OIG's average wait time for ESI has increased from approximately 95 calendar days in 2017 to 151 calendar days in 2018, an increase of more than 60 percent.

Moreover, 20 requests in 2018 took longer than 6 months, and in one instance, it took the Department 8 months to produce four Department employees' emails. Notably, during the OIG's evaluation of the Department's oversight of the Alexander County Housing Authority, the OIG submitted a request for five employees' emails on November 22, 2017, and waited until May 21 and June 6, 2018, before we received the requested records.

Delays in Timely Access to ESI Harm the Effectiveness of OIG Oversight Activities

The Department's lengthy delays in producing ESI hamper the OIG in carrying out its statutory mission to detect and prevent fraud, waste, and abuse. The delays impact critical investigative decisions. The Department's failure to deliver ESI in a timely manner forces our oversight staff to consider how long such requests will delay the completion of their work, as opposed to focusing solely on how useful relevant ESI may be.

[2] *See* HUD OIG Evaluation Report 2017-OE-0008, E-Discovery Management System's Capacity to Meet Customer Demands for Electronic Data (Dec. 6, 2017).

[3] For example, the Department could face sanctions and money judgments if it fails to meet court deadlines to produce ESI.

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Effective witness interviews depend on timely receipt of ESI. This is particularly true of e-mails, which can be evidence that provides insight into a witness's knowledge, and a means to challenge or refresh the witness's recollection. Because it is important to have documentary evidence before conducting witness interviews, the OIG has delayed scheduling or postponed certain interviews in many investigative matters while waiting for the Department to produce e-mails. In other instances, the OIG has proceeded with witness interviews without critical documentary evidence and learned later that the scope or nature of an interview would have been materially different if the Department had produced the requested ESI timely.[4]

It is important to note that the OIG often requests ESI to carry out our most significant oversight work in matters that will likely be of great interest to the public and to Congress. These matters can involve allegations of senior-official misconduct, ethics violations, insider threats, leaks of nonpublic or pre-decisional information, theft of government information, misuse of government funds, or gross mismanagement. These matters also involve significant, nationwide risks to the health and safety of HUD beneficiaries, the stability of HUD's insurance funds, and the integrity of the agency's housing finance platforms. Simply put, these matters represent the greatest risks to the Department, the American public, and the overall economy, and the delayed completion of our work while we wait for ESI exacerbates those risks.

OGC's Involvement in the Process for Providing the OIG with Requested ESI Raises Additional Concerns

Under the Department's current process, OGC reviews and approves all OIG requests for ESI. While OGC has pointed out that it has never formally rejected an OIG request for ESI, the fact that all such requests go through OGC creates a threat to the OIG's independence. Because OGC must approve all OIG requests, the potential exists for the Department to attempt to scope and direct our work.

The current process provides OGC with knowledge of which particular employees' emails the OIG wishes to review and for what time period. This compromises the independence of the OIG's oversight and law enforcement responsibilities by providing the Department insight into our investigative matters, priorities, and processes. It also provides the Department with an opportunity to slow or delay particular OIG requests for ESI based on whose emails the OIG requests or on speculation about the OIG's investigative interests.

The current process also threatens the OIG's ability to keep the identity of whistleblowers confidential, as required by IG Act. OGC's role in the process of reviewing and approving OIG requests may allow Department officials to identify confidential witnesses or whistleblowers and may reveal the contents of protected communications they have made to the OIG.

[4] In a significant criminal investigation that the OIG worked jointly with the Department of Justice, prosecutors requested a grand jury subpoena for Department e-mails rather than continuing to wait for the same e-mails to be produced to the OIG through the Department's process and risk further detriment to the investigation.

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Disclosures about OIG reviews to Department officials could jeopardize our ability to gather documentary evidence and testimony from witnesses. The OIG must also keep information about our work confidential to ensure the safety of OIG staff conducting law enforcement operations. Moreover, a conflict-of-interest may arise when the OIG requests the e-mails of OGC employees who have access to our requests and have the authority to review and approve them.

The Department Must Change Its Process to Provide the OIG with Timely Access to ESI

The Department needs to take action immediately to improve its process for producing ESI to the OIG and ensure that the OIG has timely access to Departmental records. The Department must also put in place a process that protects the confidentiality of our requests to avoid threatening our independence and to protect the identity of whistleblowers.

Given the Department's past challenges in managing this process, the OIG should have direct access to Departmental ESI to ensure the OIG can obtain ESI in a manner that does not hinder the OIG's ability to perform its oversight function. While Department officials have confirmed that this solution would be technically possible, OGC has apparently recommended against it, citing a concern for preserving executive and attorney-client privilege. Such an objection is without merit, as OIG access to the Department's records does not waive any departmental privilege.

I respectfully request a response to this memorandum outlining the actions you plan to take within 15 days.

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

GENERAL COUNSEL

MAY - 2 2019

TO: Jeremy Kirkland,
Counsel to the Inspector General

FROM: Paul Compton,
General Counsel

SUBJECT: Clarification Regarding Production of Department Emails

I am writing in response to the concerns you expressed in your memorandum to me of April 29, 2019 concerning the "Clarification Regarding Production of Department Emails" recently requested as part of your review of the Puerto Rico CDBG-DR action plan treatment during the government shutdown.

Your memo referenced that "[t]he OIG has heard some reports that the Department's process consists of employees searching their own emails manually, in the Outlook email client for responsive information." Employees are not searching their own emails manually in the Outlook client for production to you. The preliminary word search used to screen, but not collect, the Secretary's and my emails were conducted via Outlook by OGC staff other than the persons subject to the collections. This was done in order to expedite production, as you requested, and was the subject of the caveat in the correspondence of April 26, 2019, from the Acting Deputy Secretary to OIG regarding confirmation of the accuracy of the search. Since that time, you provided additional search terms which will be processed through the Kazeon system.

OIG electronic document requests are typically processed as follows: (1) The authorized OIG requestor submits its request, identifying the specific custodian(s), date range, and data source (e.g., email) on the OGC ediscovery SharePoint site. (2) The request is routed via a SharePoint workflow to the OGC ediscovery team which authorizes the Department's ediscovery contractor, Leidos, to proceed with the request.[1] Leidos places the request in the data collection queue in front of all non-expedited FOIAs, but behind any litigation requests where delay would subject the Department to sanctions. (3) Once the request arrives at the front of the queue, Leidos submits a HUD service desk ticket to the Department's Outlook email coordinator, Federated IT, to extract the requested data. (4) Once the data has been extracted, Federated IT exports the data to a secure location to which Leidos has access. (5) Leidos notifies OIG that the data has been collected. (6) The OIG requestor then submits a request for access to the data (submits a "case review request"). (7) Once the "case review request" is submitted, it is routed to the OGC ediscovery team to authorize Ledios to proceed. At this point, the request is placed in the data access queue, where, like the data collection queue, it is placed in front of all non-expedited FOIAs, but behind any litigation requests where delay would subject the Department to sanctions. (8) Once the request arrives at the front of the data access queue, Leidos checks the integrity of the data (i.e., confirms the files have not been

[1] The OGC ediscovery team has never rejected an OIG request; its role is ministerial. The OGC ediscovery team's approval is only for purposes of notifying, in accordance with our vendor agreement protocols, the ediscovery contractor to proceed.

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corrupted, combines files if needed, etc.). (9) Leidos then notifies OIG to provide the final approval for data access. (10) Once Leidos receives notice that the OIG has provided final approval, Leidos copies the data to a secure location to which the OGC ediscovery team has access.[2] (11) Leidos notifies the OIG requestor that the data is available for their access, copying the OGC ediscovery team. (12) The OGC ediscovery team transfers the data to either a cloud location accessible to the OIG, or, if the file is too large, to an encrypted flash or hard drive. (13) The OGC ediscovery team notifies OIG that the responsive data is on the cloud or available for pick up.[3] This is the same process in place and reviewed in your "E-Discovery Management System's Capacity To Meet Customer Demand for Electronic Data" dated December 6, 2017.

The Department deviated from the Department's standard processes outlined above in its retrieval of data responsive to the OIG's April 8, 2019 request as a result of your request directly to me to expedite collection. In response to that request, the OGC ediscovery project manager submitted the data request and a separate Leidos help desk ticket to move the OIG request to the very top of the queue ahead of all matters, including critical litigation. Once Leidos submitted the service desk ticket to Federated IT (Step 3 above), the OGC ediscovery project manager directly contacted Federated IT and requested they make the request a priority. The OGC ediscovery project manager then made a similar request to Leidos to move the OIG matter to the top of the data access queue.

In your memo you also request confirmation that the Department is not conducting a privilege review before producing records to the OIG. Consistent with the following representations given by the Inspector General in her April 29, 2019 memo – "As we have repeatedly made clear to the Department disclosure to the OIG does not waive any privilege, and we do not seek to use privileged information in any report we issue. Again, we will provide the Department with an opportunity to review any report we send outside the agency prior to issuing it, and we will abide by good faith assertions of privilege the Department may make" – HUD determined not to conduct a privilege review before producing records to the OIG. However, HUD does not waive any rights it may have to do so in the future.

Finally, as for your concern regarding the integrity of the data, as discussed more specifically above, when the data is initially collected, we are unable to verify accuracy of a portion of the data until it has been loaded onto the Kazeon ediscovery tool. In an effort to accommodate your request for expedited production, the Secretary's and my emails, for which you initially provided two search terms, were searched in Outlook. You were advised of the availability of those emails on Friday, April 26. As stated in the Acting Deputy Secretary's email to you of April 26, 2019, because Outlook is sometimes an inconsistent search tool, we are unable to verify the completeness and/or integrity of that data. Leidos is, however, in the process of loading all of the Secretary's and my emails from September 1, 2017 to the date of your request to Kazeon, at which point data integrity will be verified and a search will be conducted for emails responsive to the additional terms

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[2] Where search terms are being used, Leidos loads the data into Kazeon, the Department's ediscovery tool. Once the data is loaded into Kazeon, the OGC attorneys conduct the search.

[3] The OGC ediscovery team has been working for over a year to streamline the request process for OIG and FOIA matters by condensing the steps to allow for submission of approvals at the same time as the request, thus eliminating the need for a second round of requests. This process, which would eliminate Steps 5-7 above, was recently implemented.

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provided in your email of April 29, 2019. We estimate this process will take approximately two weeks' time.

I trust this adequately responds to the concerns raised in your April 29, 2019 memorandum.

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From: Compton, Paul
Sent: 26 Apr 2019 20:40:49 +0000
To: brian.d.miller(b)(6)
Subject: FW: Response

PRIVILEGED AND CONFIDENTIAL

ATTORNEY-CLIENT PRIVILEGE

FYI –

Paul Compton
General Counsel
Paul.Compton@HUD.gov
D 202 402 5023
T 202 402 2244
C (b)(6)

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From: MDB <Brian.D.Montgomery@hud.gov>
Sent: Friday, April 26, 2019 1:50 PM
To: OliverDavis, Rae <ROliverDavis@hudoig.gov>
Cc: Gormley, Joseph M <Joseph.M.Gormley@hud.gov>; Kirkland, Jeremy <JKirkland@hudoig.gov>; Compton, Paul <Paul.Compton@hud.gov>; Begg, Stephen <SBegg@hudoig.gov>
Subject: Response

Dear Rae:

Subject to your confirmation of the treatment of privilege described in the email of April 23, 2019 by HUD General Counsel to OIG Counsel, this email is to confirm, that the Department is prepared to deliver to you:

1. Late today or Monday (depending on the arrival time of a courier from our contractor of the hard drive media) the complete email files for nine custodians (b)(7)(C) (b)(7)(C) from September 1, 2017 to the date of your request;
2. Late today or Monday (depending again on the arrival time of a courier from our contractor of the hard drive media) the complete email files fo(b)(7)(C) from October 1, 2018 to the date of your request (subject to your concurrence that such

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date is acceptable in light of the fact that prior to October 1, 2018 Mr. Woll was Deputy General Counsel with no responsibility for CDBG-DR matters); and

3. Immediately on cloud storage in the customary manner the email files of custodians consisting of the Secretary and General Counsel, for the time period September 1, 2017 to the date of your request screened with the word-search terms ("CDBG" and/or "Puerto Rico", along with common synonyms therefore) which you provided for the Secretary and General Counsel.

We note that due to the expedited process by which some of these documents are being delivered, we are unable to run customary data verification to ensure completion and/or integrity of the word-search screened files but have commenced that process and will provide verification within approximately the next two weeks.

Please confirm the treatment of privilege and we will commence the delivery process.

Best regards,

Brian Montgomery

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