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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510–6250

January 30, 2017

Donald F. McGahn
White House Counsel
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, DC 20501

Dear Mr. McGahn:

As the current and former ranking members of the Senate Committee with jurisdiction over presidential and federal records, we write today regarding concerns over White House staff's compliance with the Presidential Records Act.

Recent public reports indicate that at least four senior officials in President Trump's Administration, including Counselor to the President, White House Press Secretary, Chief Strategist and Senior Counselor, and a Senior Advisor to the President, maintained active email accounts on a private Republican National Committee (RNC) email system while serving in the White House.[1] We have also learned that since the original publication of these reports, "the RNC has deleted the emails" belonging to three of these White House staffers.[2] The RNC did not indicate whether or not any of these email accounts were used to conduct government business.

As you know, the Presidential Records Act carries specific disclosure requirements for official business conducted using non-official electronic messaging accounts. Under the statute, covered employees may not create or send a Presidential record using a non-official electronic messaging account unless the employee:

(1) Copies an official electronic messaging account in the original creation or transmission of the Presidential record; or
(2) Forwards a complete copy of the Presidential record to an official electronic messaging account of the covered employee not later than 20 days after the original creation or transmission of the Presidential record.[3]

The intentional violation by a covered employee serves as a basis for disciplinary action in accordance with federal laws.[4]

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[1] *See e.g.*, Mark Hensch, *Trump White House Senior Staff Have Private Email Accounts*, THE HILL (Jan. 25, 2017).

[2] Nina Burleigh, *Trump White House Senior Staff Have Private Email Accounts*, NEWSWEEK (Jan. 25, 2017).

[3] The Presidential Records Act, 44 U.S.C. § 2209 (a) (2014).

[4] *Id* at (b).

Covered employees include the immediate staff of the President, as well as a unit or individual of the Executive Office of the President whose function is to advise and assist the President.[5]

We respectfully request the following information, no later than February 10, 2017:

1. A written response outlining the steps the White House has taken or plans to take, to determine whether any covered employees on President Trump's White House staff used a non-government email account to conduct official business;

2. If your office determined or determines that any covered employees on President Trump's White House staff did use or are still using such accounts for official business, please provide a list of those employees as well as a written response outlining how the White House intends to ensure those employees' compliance with the Presidential Records Act;

3. Provide Trump White House staff with written policies and procedures regarding compliance with the Presidential Records Act, in order to ensure the effective preservation of Presidential records and the protection of national security information; and

4. Provide us with a copy of all written policies and procedures provided to Trump White House staff as well as regular updates regarding compliance with these standards.

If you or members of your staff have any questions about this request, please feel free to ask your staff to contact [redacted] Ranking Member McCaskill's office at [redacted] 202-224-2627 or [redacted] Senator Carper's office at [redacted] 202-224-2441. Thank you very much for your attention to this matter.

With best personal regards, we are

Sincerely yours,

Claire McCaskill
Ranking Member

Tom Carper
United States Senator

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[5] *Id.* at (c)(1).

cc: The Honorable Ron Johnson
Chairman

The Honorable David S. Ferriero
Archivist of the United States
U.S. National Archives and Records Administration