



Office of the Director of National Intelligence

17 March 2025

Jason Leopold

[REDACTED]
[REDACTED]
[REDACTED]

Re: Litigation 21-cv-02874, ODNI FOIA Case DF-2021-00201

Mr. Leopold,

This letter is an interim response to your Freedom of Information Act (FOIA) request, dated 27 April 2021, in which you requested the following:

1. All emails, text messages, including attachments, sent and received by former Principal Deputy to the Acting Director of National Intelligence Kash Patel.
2. All memos, reports, briefing materials sent to and prepared for Kash Patel.

Your request is being processed in accordance with the FOIA, 5 U.S.C. § 552, as amended. This response addresses the processing of documents responsive to item one of your aforementioned request (Bates Pages: 21-cv-02874 (DF-2021-00201) 003874 – 004174). Upon review, Six (6) documents can be released to you in full (Bates Pages: 21-cv-02874 (DF-2021-00201) 003875, 003880 – 003890, 003893 – 003902, 004070 – 004093). Fifteen (15) documents are being released to you in part (Bates Page: 21-cv-02874 (DF-2021-00201) 0003874, 003876 – 003879, 003903 – 003918, 003957, 003993 – 003994, 004068 – 004069, 004094 – 004095, 004120, 004129 – 004130, 004168 – 004169) and ten (10) documents are being withheld in full (Bates Pages: 21-cv-02874 (DF-2021-00201) 003891 – 003892, 003919 – 003956, 003958 – 003992, 003995 – 004067, 004096 – 004119, 004121 – 004128, 004131 – 004167, 004170 – 004174) pursuant to the following FOIA exemptions:

- (b)(1), which applies to information that is currently and properly classified pursuant to Executive Order 13526, Section 1.4(c).
- (b)(3), which applies to information exempt from disclosure by statute; in this case, the National Security Act of 1947, amended,
 - Section 102A(i)(1), 50 U.S.C. § 3024(i)(1), which protects information pertaining to intelligence sources and methods; and

- Section 50 U.S.C. § 3024(m), which protect identifying information of ODNI personnel;
- (b)(5), which applies to information that concerns communications within or between agencies that are protected by legal privileges; and
- (b)(6), which applies to information, the release of which would clearly constitute an unwarranted invasion of personal privacy.

The National Security Council also withheld information pursuant to FOIA exemptions (b)(1), (b)(5), and (b)(6).

During the review process, we considered the foreseeable harm standard and have determined that the withheld information is not releasable.

If you have any questions, your attorney may contact Attorney Keri L. Berman of the Department of Justice at (202) 353-4537.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Koch", with a stylized flourish at the end.

Gregory M. Koch
Chief, Information Management Office
FOIA Public Liaison

Enclosures

From: Beth E. Sanner-DNI-
To: Kashyap P. Patel-DNI-
Subject: FW: FYI -- just came out on Twitter
Date: Wednesday, April 1, 2020 1:22:36 PM
Attachments: image001_converted.pdf

Classification: ~~SECRET//NOFORN~~

[Redacted]

(b)(3)

=====

From: [Redacted] (b)(3)
Sent: Wednesday, April 01, 2020 1:21 PM (b)(6)
To: [Redacted] Beth E. Sanner-DNI- [Redacted] (b)(3)
Subject: FYI -- just came out on Twitter (b)(3)

Classification: ~~SECRET//NOFORN~~

[Redacted]

(b)(3)

=====

(b)(6) [Redacted] is tracking over at EEOB.

[Redacted]

(b)(3)
(b)(6)

=====
Classification: ~~SECRET//NOFORN~~

=====
Classification: ~~SECRET//NOFORN~~



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Upon information and belief, Iran or its proxies are planning a sneak attack on U.S. troops and/or assets in Iraq. If this happens, Iran will pay a very heavy price, indeed!

💬 1.8K

↻ 4K

❤️ 1.3K



(b)(3)
(b)(6)
From: [redacted]
To: Kashyap P. Patel-DNI-
Subject: FW: Good Chatting with You Today
Date: Monday, March 2, 2020 5:01:45 PM

Classification: UNCLASSIFIED//~~FOUO~~
=====

His current efforts/focus area at below link [redacted]

(b)(5)

[redacted] (b)(3)

From: [redacted] (b)(3)
Sent: Monday, March 02, 2020 4:34 PM (b)(6)
To: Kashyap P. Patel-DNI-[redacted] (b)(3)
Subject: FW: Good Chatting with You Today

Classification: UNCLASSIFIED//~~FOUO~~
=====

Fyi

(b)(3)
From: John B. Sherman-DNI-[redacted]
Sent: Monday, March 02, 2020 4:24 PM
To: [redacted] (b)(3)
Subject: Good Chatting with You Today (b)(6)

Classification: UNCLASSIFIED//~~FOUO~~
=====

(b)(3)
(b)(6)

I appreciated the chance to get caught up with you today, and I look forward to any discussions that might happen in the coming days with our new leaders.

Also, don't hesitate to let me know if you need [redacted] advice in the coming months...I've gotten pretty good at that! (b)(6)

Best,

John

John B. Sherman
IC Chief Information Officer
Office of the Director of National Intelligence



(b)(3)

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Classification: UNCLASSIFIED//~~FOUO~~

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Classification: UNCLASSIFIED//~~FOUO~~

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Classification: UNCLASSIFIED//~~FOUO~~

From: [redacted]
To: Kashyap P. Patel-DNI- (b)(3)
Cc: [redacted] (b)(6)
Subject: FW: GPS | More background
Date: Tuesday, April 14, 2020 1:57:05 PM
Attachments: C4ISRNET article converted.pdf
[redacted] FCC Ligado Order 20Nov19a Classified final.docx
(b)(5) 44360 1-NTIA (Kinkoph) Letter to FCC (Pai) re Ligado Applications (04-10-2020) converted.pdf

Classification: ~~SECRET//~~ [redacted] ~~NOFORN~~ (b)(3)

Upon removal of attachments, this document is ~~SECRET//NOFORN~~

[redacted]

(b)(3)

I flagged this topic for the boss, but will defer to you to discuss this him further and advise if a briefing is desired.

[redacted]

(b)(3)

From: [redacted]
Sent: Tuesday, April 14, 2020 1:33 PM
To: Kashyap P. Patel-DNI- <PATELKP@dni.ic.gov>
Cc: [redacted]

(b)(6)

[redacted]

(b)(3)

(b)(6)

Subject: GPS | More background

Classification: ~~SECRET//~~ [redacted] ~~NOFORN~~ (b)(3)

Upon removal of attachments, this document is ~~SECRET//NOFORN~~

[redacted]

(b)(3)

Kash:

~~(S//NF)~~ Good afternoon. Per our phonecon, here is additional background. Tomorrow, at the Interdepartmental Radio Advisory Committee (IRAC), FCC will likely discuss the LIGADO (USPERS) application to operate adjacent to the GPS signal. [redacted]

(b)(3)

(b)(5)

[redacted]

~~(U//FOUO)~~ I've attached three documents for further background, as you deem necessary:

- 1) The DSD letter and accompanying departmental letters expressing concerns about the LIGADO (USPERS) decision – you will see that Commerce, Defense, Energy, DHS, Interior, Justice, Transportation, USAF, USA, USCG, NASA, and the National Science Foundation all expressed concerns
- 2) The Open press article discussing potential FCC support for LIGADO (USPERS) operations
- 3) ODNI/MPAC Backgrounder on the issue, from last NOV when the issue raised its head last

(U) Let me know if you need anything else.

Best,

(b)(3)

[Redacted]

(b)(6)

=====
Classification: ~~SECRET/[Redacted]/NOFORN~~ (b)(3)

=====
Classification: ~~SECRET/[Redacted]/NOFORN~~ (b)(3)

The Federal Communications Commission is poised to approve a draft order as soon as today that would reallocate a specific portion of the radio spectrum for broadband communications, overruling a decade of strong objections from the Department of Defense.

Senior Pentagon leaders warn that such a move will lead to “unacceptable” harm to the GPS system by creating new interference that could disrupt satellites critical to national security.

The decision, described by multiple sources to C4ISRNET, would allow the privately held Ligado Networks, formerly known as LightSquared, to operate in L-band frequency range despite years of government resistance, largely led by the DoD.

The emphasis comes amid renewed focus on 5G technology from key White House administration officials.

Sources say the drive to approve Ligado is coming from the White House National Economic Council. That office is led by Larry Kudlow, who has expressed interest in the economic benefits of expanding the nation’s 5G capabilities.

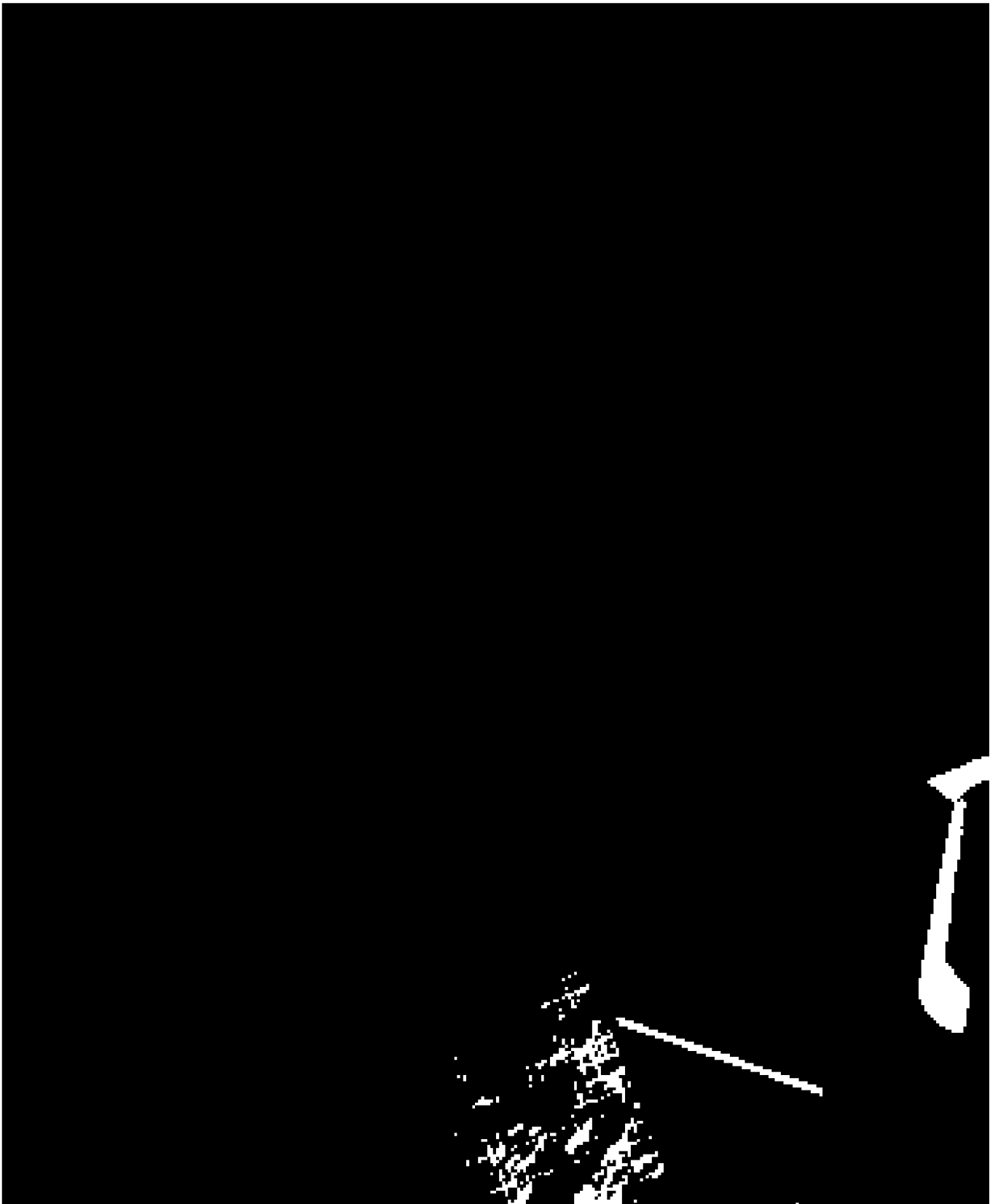
In addition, Attorney General William Barr announced April 7 he will lead a new national security group known as “Team Telecom.” Barr, a former telecom executive, has also talked about expanding the United States’ 5G capabilities — or next-generation mobile communications technology — as a way to fend off China’s dominance in the sector.

A source familiar with the proceedings said “the approach being considered provides protection to government GPS orders of magnitude above the point at which there would be harmful interference, while advancing America’s economic and national security interests and leading the world in 5G.”

If approved, the Ligado draft order would appear to override concerns from the DoD that Ligado would cause “unacceptable operational impacts to the warfighter” while promising a solution that is “not feasible, affordable or technically executable,” according to the Pentagon.

Other experts, who see Ligado as a way to help boost the economy and to help compete with China, claim that the Defense Department’s analysis does not show that interference is a certainty.

The DoD, the White House, and the National Telecommunications and Information Administration — which is part of the Commerce Department — declined to comment for this story. The FCC did not return a request for comment by press time.



The U.S. Air Force uses its network of GPS systems for everything from missiles to fitness tracking. (U.S. Air Force)

A yearslong fight

For roughly 10 years, officials from Ligado, and its predecessor LightSquared, have tried to get approval from the Federal Communications Commission to use part of the L-band spectrum for communications.

L-band is described as the range of frequencies between 1 to 2 GHz. GPS, and other international navigation systems, rely on L-band because it can easily penetrate clouds, fog, rain and vegetation. Ligado owns a license to operate the spectrum near GPS to build what the firm describes as a 5G network that would boost connectivity for the industrial “internet of things” market. The company uses the SkyTerra-1 satellite, which launched in 2010 and is in geostationary orbit, and it has planned to deploy thousands of terminals to provide connectivity in the continental United States.

Many federal government leaders, including those from NASA, the Federal Aviation Administration, the Department of Transportation, and the National Oceanic and Atmospheric Administration, worry about the proximity of that spectrum to the radio frequency used by GPS satellites.

In an op-ed for The Hill newspaper in 2017, former FCC Commissioner Robert McDowell said the decision would be akin to “allowing a frat house (LightSquared) to move into the lot next to an already established library (existing satellite licensees), which needs a quiet neighborhood to operate.”



Air Force leaders don't want to give up spectrum for 5G

Top U.S. Air Force officials doubled down Tuesday on the message the Pentagon will not vacate airwaves that telecom firms want in their race with China to build the next-generation mobile networks, known as 5G.

Joe Gould

Some satellite operators, including Iridium, whose services are used by the DoD, are also worried about potential interference from Ligado.

But perhaps nowhere has the opposition been greater than at the Pentagon. The Air Force's GPS satellites underpin the Pentagon's information advantage in position, navigation and timing. GPS is used for targeting, weapons guidance and reconnaissance. In addition, the department has spent tens of billions of dollars on the satellites and associated ground systems in the last several decades.

Discussion about LightSquared's impacts appeared during congressional hearings as far back as 2011, but the most recent public concern within defense committees about the issue came during a March 15, 2016, hearing. During testimony before the House Armed Services Committee's Strategic Forces Subcommittee, Gen. John Hyten, then the head of Air Force Space Command and now the vice chairman of the Joint Chiefs of Staff, worried about Ligado's impact on GPS, saying: "We cannot do something that will infringe on our national security, period."



To protect GPS satellites, Esper is against private 5G proposal

A plan to use L-Band spectrum for 5G could disrupt GPS satellites, the Secretary of Defense said.

Nathan Strout

In December 2018, the National Executive Committee for Space-Based Positioning, Navigation, and Timing recommended against approving Ligado Networks' request to use the spectrum. In April 2019, then-acting Defense Secretary Patrick Shanahan sent a letter to the FCC recommending it reject the company's proposal, while now-Defense Secretary Mark Esper sent a similar rejection request in November 2019.

The most recent push by the DoD began with a Feb. 14 memo, written by Thu Luu, the Air Force's executive agent for GPS. The memo was co-signed by representatives from 12 other agencies, including NASA, the Federal Aviation Administration, and the departments of the Interior, Commerce, Justice, Transportation and Homeland Security. Officials sent the memo from the DoD to the Interdepartment Radio Advisory Committee, an office inside the Commerce Department that oversees the spectrum that enables America's GPS capabilities.

On March 12, Michael Griffin, the DoD's head of research and engineering, and Dana Deasy, the department's chief information officer, sent another letter, with the memo attached, this time addressing an office inside the National Telecommunications and Information Administration, or NTIA. The two officials reiterated the concerns in the memo and twice asked that it be entered into the public record, as the information would be "critical" to any decision made on Ligado.

Then, on March 24, the Pentagon escalated its concern to a higher level, through a letter from David Norquist, the department's No. 2 official, to Wilbur Ross, the secretary of commerce. Once again, Norquist asked that the information be sent to the Federal Communications Commission's panel in charge of making a decision on the Ligado case.

But weeks later, there is no sign of the department memos in the FCC's public docket, which sources say is due in part to pressure from Kudlow's office, the White House National Economic Council.

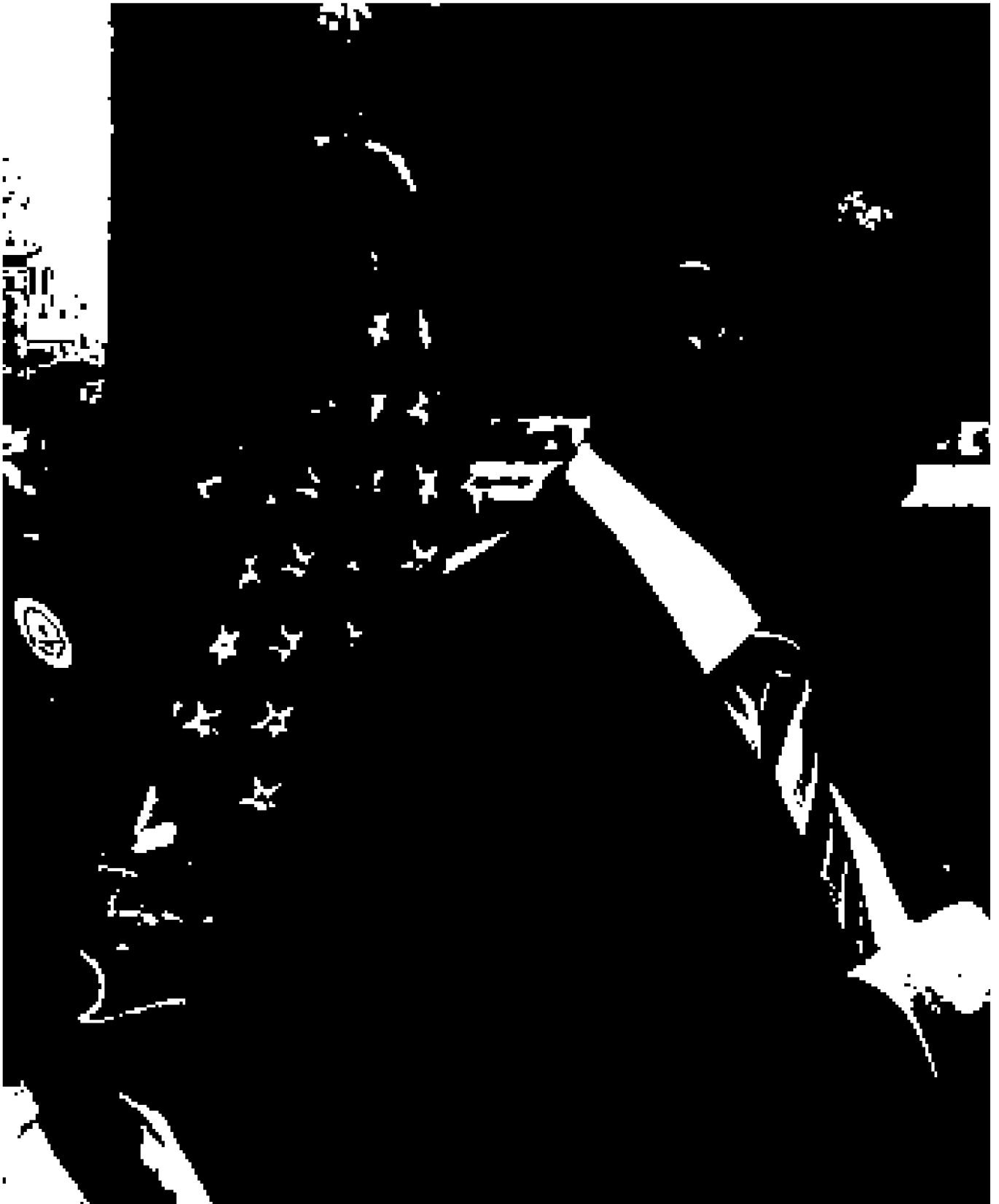
Technical concerns

Over the years, Ligado officials have argued their system would use less spectrum, have lower power levels and reduce out-of-channel emissions. In the face of complaints from major commercial GPS companies such as Garmin and John Deere, Ligado has also offered to reduce the amount of spectrum it had initially planned. The company has also said it will work with government agencies to repair and replace equipment if necessary.

At the same time, proponents have argued that the NTIA, not the Pentagon, oversees spectrum use for the executive branch.

However, in a Dec. 6 letter, Douglas Kinkoph, the acting deputy assistant secretary for communications and information at the Commerce Department, said the NTIA is "unable to recommend the Commission's approval of the Ligado applications." He cited the DoD's opposition as well as other 5G efforts in the letter.

Concerns among the DoD and other government agencies have not calmed since then.



U.S. President Donald Trump, right, shakes hands with Federal Communications Commission Chairman Ajit Pai during an announcement about 5G network deployment on April 12, 2019. (Nicholas Kamm/AFP via Getty Images)

Luu, the Air Force's executive agent for GPS, wrote in the Feb. 14 memo that it would be "practically impossible" for the DoD to identify the impacted receivers and replace them without investing "significant time and resources to effect software modifications, trial and testing, and validation." She specifically cited a 2016 test at White Sands Missile Range in New Mexico, the results of which are classified.

Part of the problem stems from the fact that some older GPS receivers "listen in" on signals next door, meaning those in the Ligado spectrum, according to 2012 testimony. As a result, DoD officials want a small margin of error when it comes to interference. But Ligado's supporters argue the Pentagon's standard is unnecessarily stringent. The FCC proposal will suggest a wider margin of error for interference outside of the GPS spectrum — a win for L-band proponents.

Luu argued that any mitigation plan put forward by Ligado will be "impractical and un-executable in that they would shift the risk of interference to, and place enormous burdens on, agencies and other GPS users to monitor and report the interference. ... Ligado's proposal to replace government GPS receivers that are affected by its proposed network is a tacit admission that there would be interference.

"Additionally, the mitigation proposal by Ligado, even if technically feasible, only covers those receivers owned by the government and would leave many high-value federal uses of civil GPS receivers not owned by the government, such as high precision receivers, vulnerable to interference, as Ligado has admitted in its filings."

Even if such a solution was shown to work, it could take "on the order of billions of dollars and delay fielding of modified equipment needed to respond to rapidly evolving threats by decades," Luu said.

'Free market' principles

Now, despite the DoD's national security concerns, it appears Ligado is on track to receive its authorization, perhaps as soon as April 10.

What changed, according to the sources who spoke to C4ISRNET, is both a growing interest from the White House in the economic and political benefits of expanding 5G capabilities, as well as an increased sense in parts of the government that the GPS concerns may be overblown.

"Fortunately, it has been proven time and time again that Federal users can reduce their spectrum holdings without putting at risk their vital missions. Nonetheless, these same entities, especially the Department of Defense (DoD), which is the largest holder of the most ideal mid-band spectrum, are exceptionally reluctant to part with one single megahertz," FCC Commissioner Mike O'Rielly said in an April 8 letter to President Donald Trump. "Simply put, every excuse, delay tactic, and political chit is used to prevent the repurposing of any spectrum."

Ligado has repeatedly pushed the FCC to make a decision on its approval, saying it is integral to the advancement of 5G services in the United States. That argument has gained traction with those concerned about China's growing 5G capabilities, which Beijing has used to gain political leverage across the globe.

Some, such as Attorney General Barr, have argued it's long past time for the FCC to decide the issue. In a Feb. 6 speech, he said that "by using the L-band for uplink, we could dramatically reduce the number of base stations required to complete national coverage. It has been suggested that this could cut the time for U.S. 5G deployment from a decade to 18 months, and save approximately \$80 million. While some technical issues about using the L-band are being debated, it is imperative that the FCC resolves this question."



Attorney General William Barr gives the keynote address at an event with the Center for Strategic and International Studies on Feb. 6, 2020, in Washington. (Cliff Owen/AP)

The new “Team Telecom,” stood up by an executive order from Trump, is tasked with reviewing and assessing “applications to determine whether granting a license or the transfer of a license poses a risk to national security or law enforcement interests of the United States.”

While Barr is chair of the new group, it does include a seat for the secretaries of defense and homeland security, among others.

In an op-ed for the Wall Street Journal in January, former NASA Administrator Dan Goldin said “more than 5,000 hours of testing has shown there is no harmful interference to GPS. This isn’t a technology problem; it’s a bureaucracy problem. ... [I]f we do not accelerate the deployment of U.S. 5G now, we risk the very economic, national security and technological leadership we endeavor to protect.

Doug Smith, the chief executive of Ligado, asked the FCC in February for approval, saying it had waited four years for the commission to vote on a proposed spectrum plan that would help Ligado build the network it needs.

“The FCC already has all of the information it needs to make an informed decision that is in the public interest. The FCC should decide the matter promptly so that we do not miss this opportunity to advance the future of 5G in America,” a Feb. 20 letter read.

That argument may be behind the interest in the company from Kudlow’s office, the sources said. Kudlow, in his role as economic adviser to Trump, is hoping for an economic turnaround following the new coronavirus pandemic, and has expressed a desire to grow America’s native 5G capability.

Before the COVID-19 outbreak, Kudlow was planning a major 5G summit at the White House, tentatively for sometime in April, which was planned to include a mix of major telecom players and a handful of smaller firms — another sign of the administration’s interest in 5G.

Speaking at an April 2019 event, Kudlow indicated it was the White House’s preference to apply “free market, free enterprise principles” to building 5G capabilities.

FOR AGENDA

Doc. 44360/1



UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

April 10, 2020

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ligado Networks LLC, License Modification Applications (as amended), IBFS File Nos. SAT-MOD-20151231-00090, SAT-MOD-20151231-00091, and SES-MOD20151231-00981; SES-AMD-20180531-00856, SAT-AMD-20180531-00044, SAT-AMD-20180531-00045 (IB Docket Nos. 11-109 and 12-340)

Dear Chairman Pai:

On behalf of the executive branch, the National Telecommunications and Information Administration (NTIA) submits the enclosed supplemental materials for consideration by the Federal Communications Commission (Commission) regarding the above-referenced license modification applications of Ligado Networks (Ligado), as amended.¹ This letter and its enclosures are provided for inclusion in the record of the application proceedings, supplementing my letter to you dated December 6, 2019, in which I indicated that NTIA was “unable to recommend the Commission’s approval of the Ligado applications.”²

I enclose a letter from the Deputy Secretary of Defense to the Secretary of Commerce dated March 24, 2020.³ In the letter, the Deputy Secretary, citing 10 USC §2281, states that “approval of the Ligado application would adversely affect the military potential of GPS and the Department of Defense is strongly opposed.” “After reviewing the existing public record of the Ligado proceeding,” he continues, “I believe the information Air Force has submitted to the IRAC would be of significant value to the FCC in making its decision regarding Ligado’s license modification application. I therefore request that you have NTIA communicate this additional information to the FCC expeditiously to be put on the public record.” I received a

¹ See 47 U.S.C. §902(b)(2)(J) (2012) (delegating to NTIA the “responsibility to ensure that the views of the executive branch on telecommunications matters are effectively presented to the Commission”).

² See Letter from Douglas W. Kinkoph, Deputy Assistant Secretary (Acting), NTIA, to Ajit Pai, Chairman, FCC (Dec. 6, 2019).

³ Letter from David L. Norquist, Deputy Secretary, Department of Defense, to Hon. Wilbur L. Ross, Jr., Secretary, Department of Commerce (Mar. 24, 2020) (copy enclosed).

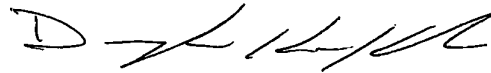
similar and consistent letter from senior officials of the Department of Defense on March 12, 2020.⁴

The letters refer to the enclosed memorandum from the Air Force – joined by several executive branch departments and agencies – providing supplemental information to the Interdepartment Radio Advisory Committee (IRAC) that detailed numerous expected impacts Ligado’s proposed license modifications would cause.⁵ The memorandum concluded that Ligado’s modifications “would cause unacceptable operational impacts...and adversely affect the military potential of GPS,” and further noted that “Ligado’s proposed accommodations of identifying and then repairing or replacing potentially-impacted legacy equipment is not feasible, affordable or technically executable.”⁶

NTIA notes that in a 2011 Order and Authorization, the Commission’s International Bureau declared that its processes for authorizing then-LightSquared to commence commercial operations on its MSS L-band frequencies would be complete only “once the Commission, after consultation with NTIA, concludes that the harmful interference concerns have been resolved.”⁷ We believe the Commission cannot reasonably reach such a conclusion.

Should you have any questions about this submission, please do not hesitate to contact me.

Sincerely,



Douglas W. Kinkoph
Associate Administrator,
Performing the Delegated Duties of the
Assistant Secretary for Communications and
Information

Enclosures

⁴ Letter from Dana Deasy, Chief Information Officer, Department of Defense, and Michael Griffin, Under Secretary for Research and Engineering, Department of Defense, to Douglas W. Kinkoph, Deputy Assistant Secretary (Acting), NTIA (Mar. 12, 2020) (copy enclosed).

⁵ Memorandum from Thu Luu, Executive Agent for GPS, Department of the Air Force, to IRAC Chairman (Feb. 14, 2020) (copy enclosed).

⁶ *Id.* at 1.

⁷ *LightSquared Subsidiary LLC*, Order and Authorization, DA 11-133, 26 FCC Rcd 566, 586-588 (IB 2011).



**DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010**

MAR 24 2020

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
Washington, DC 20230

Dear Mr. Secretary:

On December 6, 2019, the Acting Assistant Secretary of Commerce for Communications and Information and Administrator of the National Telecommunications and Information Administration (NTIA) sent a letter, on behalf of the Executive Branch, to the Chairman of the Federal Communications Commission (FCC) recommending rejection of the license modification request of Ligado Networks. The Air Force, on behalf of DoD and endorsed by the interagency, has provided additional supplemental information to the Chairman of the Interdepartment Radio Advisory Committee (IRAC) on expected national security and defense impacts to Global Positioning System (GPS) operations if the proposed license modification request were granted. I request this additional information be transmitted by NTIA to the FCC for inclusion in the public record of the Ligado proceeding (FCC International Bureau Docket Numbers 11-109 and 12-340).

Per 10 U.S.C. 2281, the Secretary of Defense "may not agree to any restriction on the GPS proposed by the head of a department or agency of the United States outside DoD that would adversely affect the military potential of GPS." Approval of the Ligado application would adversely affect the military potential of GPS and the Department of Defense is strongly opposed. After reviewing the existing public record of the Ligado proceeding, I believe the information Air Force has submitted to the IRAC would be of significant value to the FCC in making its decision regarding Ligado's license modification application. I therefore request that you have NTIA communicate this additional information to the FCC expeditiously to be put on the public record.

I have consulted with my Chief Technical Officer and Chief Information Officer and both agree.

Your personal attention to this matter would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel L. Alt", is written below the word "Sincerely,".

cc:

Acting Assistant Secretary for Communications
and Information and Administrator, NTIA





OFFICE OF THE SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

MAR 12 2020

Douglas W. Kinkoph

Associate Administrator, Office of Telecommunications and Information Applications, Performing the non-exclusive functions and duties of the Assistant Secretary of Commerce for Communications and Information

National Telecommunications and Information Administration, U.S. Department of Commerce
Washington, DC 20230

Dear Mr. Kinkoph:

On December 6, 2019, you sent a letter on behalf of the Executive Branch, to the Chairman of the Federal Communications Commission (FCC) stating that the National Telecommunications and Information Administration (NTIA) is unable to recommend the Commission's approval of the Ligado applications. The Air Force, the Executive Agent for the Department of Defense (DoD) for the Global Positioning System (GPS) and DoD's member of the Interdepartment Radio Advisory Committee (IRAC), has provided additional information to the Chair of the IRAC, endorsed by other interested agencies on expected national security and defense impacts to GPS operations if the proposed Ligado license modification request is granted by the FCC. The Department requests this additional information be transmitted to the FCC for inclusion into the public record of the Ligado proceeding (FCC International Bureau Docket Numbers 11-109 and 12-340).

Consistent with the authority delegated by the Secretary of Defense in DoD Directive 4650.05, "Positioning, Navigation, and Timing (PNT)", the undersigned agree with the enclosed memorandum for the IRAC Chair. Specifically, FCC approval of Ligado's license modification would cause unacceptable operational impacts and adversely affect the military potential of GPS. The Secretary of Defense, pursuant to 10 USC §2281, "may not agree to any restriction on the GPS System proposed by the head of a department or agency of the United States outside DoD that would adversely affect the military potential of GPS". After review of the public record of the Ligado proceeding, the Air Force's memorandum submitted to the IRAC Chair would be critical to the FCC in making its decision regarding Ligado's license modification application. The Department remains strongly opposed to the granting of the license modification sought by Ligado. Accordingly, the Department requests NTIA to provide this additional information to the FCC and that such information be expeditiously submitted in the public record.

Your personal attention to this matter would be greatly appreciated.

A handwritten signature in black ink, appearing to read "Dana Deasy".

Dana Deasy
Department of Defense Chief Information
Officer

A handwritten signature in black ink, appearing to read "Michael Griffin".

Michael Griffin
Under Secretary of Defense for Research and
Engineering

cc:

Charles Cooper

Associate Administrator in NTIA's Office of Spectrum Management

Feb 14, 2020

MEMORANDUM FOR IRAC CHAIRMAN

National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

The Air Force, in the exercise of the Department of Defense's (DoD) statutory duties under 10 U.S.C. §2281, and as the Executive Agent for the Global Positioning System (GPS), and in its role as a member of the National Telecommunication Information Administration (NTIA) Interdepartment Radio Advisory Committee (IRAC), hereby submits supplemental information in support of the Department of Commerce National Telecommunications and Information Administration's letter to Federal Communications Commission (FCC) Chairman Ajit Pai of December 6, 2019. Specifically, this letter provides additional detail regarding the expected impacts on national security, operational impacts to the warfighter, and effects on the military potential of GPS by the proposed license modification sought by Ligado Networks (Ligado).

Extensive and technically rigorous testing and analysis conducted over the past nine years by DoD, the National Space-based Positioning, Navigation and Timing Systems Engineering Forum (NPEF), the Department and Transportation (DOT), and the Air Force¹ has shown – and Ligado itself has conceded – that the proposed Ligado (previously LightSquared) license modification threatens disruption of the GPS, which is a critical National Security System. As such, the Secretary of Defense, pursuant to 10 U.S.C. §2281, "may not agree to any restriction on the GPS System proposed by the head of a department or agency of the United States outside DoD that would adversely affect the military potential of GPS." It is DoD's position that FCC approval of Ligado's license modification would cause unacceptable operational impacts to the warfighter and adversely affect the military potential of GPS by negatively impacting GPS receivers. Ligado's proposed accommodations of identifying and then repairing or replacing potentially-impacted legacy equipment is not feasible, affordable or technically executable given the vast number of systems implicated, including critical national security and weapon systems. Accordingly, DoD remains strongly opposed to granting the license modification sought by Ligado.

On December 6, 2019, the Acting Deputy Assistant Secretary of Commerce for Communications and Information and the Administrator of the NTIA sent a letter to the Chairman of the FCC indicating the executive branch could not support approval of the license modification request of

¹ The Air Force conducted GPS receiver testing at White Sands Missile Range (WSMR) in April 2016. These tests, the results of which are classified, supported the conclusions drawn from the DOT testing at WSMR conducted during the same month.

Ligado. This decision was supported by recommendations by the National Space-based Positioning, Navigation, and Timing Executive Committee (PNT EXCOM) and by the June and November 2019 letters from the Secretary of Defense expressing strong opposition to the Ligado license modification request.

DoD is providing this supplemental information in support of the NTIA letter with specific focus on expected national security and defense impacts to GPS, including operational impacts to the warfighter, if the proposed license modification request were granted.

The Department is providing the following specific information in three categories: 1) national defense mission categories that would be negatively impacted; 2) cost and resource implications of identifying and repairing or replacing any potentially adversely affected GPS receivers supporting national defense missions; and 3) the time, disruption, and programmatic impact to identify and repair or replace the potentially affected GPS receivers supporting national defense missions. Individually and collectively, each of these categories would adversely affect the national defense and security of the United States. It is the Department's position that there are no practical measures to meaningfully mitigate the impact of the proposed Ligado license modification.

The mitigation measures Ligado has proposed are impractical and un-executable in that they would shift the risk of interference to, and place enormous burdens on, agencies and other GPS users to monitor and report the interference. Moreover, Ligado's mitigation proposals would not protect the vast majority of GPS receivers, such as airborne uses, that are not restricted to specific defined areas of operation such as military installations. Ligado's proposal to replace government GPS receivers that are affected by its proposed network,² is a tacit admission that there would be interference, and is further addressed below in terms of cost, operational and mission impact, and timelines to replace these receivers. Additionally, the mitigation proposal by Ligado, even if technically feasible, only covers those receivers owned by the government and would leave many high-value federal uses of civil GPS receivers not owned by the government, such as high precision receivers,³ vulnerable to interference, as Ligado has admitted in its filings.

Expected Operational and Mission Impacts

The U.S. National Security Strategy emphasizes the importance of maintaining leadership and freedom of action in space as a vital U.S. interest as well as responding to any interference to the

² See, e.g., Letter from G. Waldron, Counsel to Ligado, Amendment to [FCC] License Modification Applications, IBFS File Nos. SES-MOD-20151231-00981, etc., IB Docket No. 11-109, at 2 (May 31, 2018).

³ See, e.g., Ligado Notice of Ex Parte Presentation in IB Docket No. 11-109, (Nov. 21, 2019); Ligado Notice of Ex Parte Presentation in IB Docket No. 11-109 (Aug. 6, 2019).

Department's critical space capabilities.⁴ The National Defense Strategy stresses the importance of building a more lethal force and strengthening (interoperable) alliances and partnerships.⁵ GPS is one such space capability critical to the lethality of the Department's forces and around which, over the years, the Department has structured its weapons systems and business processes. GPS is widely and heavily integrated throughout DoD in operations and applications including, but not limited to, precision weapons, air, land, and sea navigation, communications and network synchronization, command and control, civil engineering, and surveillance applications. Given the sophistication, classification, and the nature of how GPS receivers are embedded into all aspects of DoD testing, training, exercise and operations, it would be practically impossible for DoD to identify and repair or replace all of the potentially adversely affected receivers. These are not simple "plug-n-play" devices but would require significant time and resources to effect software modifications, trial and testing, and validation. The Department simply cannot accept such negative operational and mission impacts to our warfighting capabilities. In addition, military GPS receivers are also used by Federal civil agencies, specifically the National Aeronautics and Space Administration (NASA), the Department of Homeland Security (DHS), and the Department of State through agreements with the DoD. For example, NASA uses high-precision military GPS receivers for their launch anomaly monitoring and destruct systems. DHS and the border patrol use military GPS receivers in unmanned aerial surveillance systems (UAS). In addition, some law enforcement and intelligence agencies use military GPS in their UAS. The State Department's diplomatic security service also uses military GPS receivers. It would be untenable for the United States to pursue an initiative that undermines these capabilities, and it would be exceptionally detrimental to national security.

Ligado's proposal would have significant effect on legacy military receivers and civil receivers used by DoD.

Legacy Military GPS Receivers: Modernized GPS receivers cannot replace all military GPS receivers currently in use. Even after the transition to modernized military receivers is completed (by 2035 at the earliest), some high precision receivers would remain vulnerable to interference from the Ligado network transmissions. Remaining legacy military receivers are unable to lock onto weak signals and lack the anti-jam capabilities more typical of more modern military receivers. In addition to continued military use, other Federal agencies and many partner nations will continue to use these legacy high precision receivers. Even as the U.S. military transitions to modernized GPS receivers, it is unclear as to when, or if, legacy GPS high precision receivers used by other critical agencies will be modernized.

Civil GPS Receivers Used by DoD: DoD makes use of civil GPS receivers in non-combat environments, such as surveying, flight training, training, exercises, other national security

⁴ National Security Strategy of the United States of America, December 2017

⁵ Summary of the National Defense Strategy of the United States, 2018

events, and scientific applications. Like their civilian counterparts, DoD surveyors and construction units often rely on high-precision GPS receivers that are exceedingly sensitive to interference from signals at nearby frequencies. As analysis indicates, these high precision GPS receivers potentially could be adversely affected at significant distances from the Ligado-proposed terrestrial transmitters, which would negatively impact high precision receiver use in major military installations near urban areas of the United States. Ligado has admitted in its filings that there would be such interference. Additionally, both civilian and commercial applications for high precision wideband-GPS provide far-reaching benefits to the public interest, including capabilities that go beyond the PNT services for which it was originally developed. The great potential capabilities wideband GPS applications hold would also be the most susceptible to the adjacent band interference from Ligado's proposed network. Further, DoD uses civil and commercial infrastructure of many types on bases and test/training ranges domestically and abroad. To the extent that operation of commercial infrastructure is degraded by Ligado's proposed signals, DoD's use of electrical power, communications networks, operation of unmanned vehicles (including UAS), precision landings, helicopter operations, collection of location based services data, first responder applications, and other applications demanding high accuracy would be at increased risk.

Cost and Resource Impacts

By 2024, DoD will have invested more than \$15 billion taxpayer dollars since 2000 to sustain and modernize the GPS constellation and continue to modernize GPS user equipment integration across the force. As described earlier, almost every GPS receiver fielded throughout the DoD joint force potentially could be adversely affected if Ligado's proposal is approved. As indicated in the Fiscal Year 2020 President's Budget, DoD is currently planning to spend more than \$1.8 billion taxpayer dollars to procure, integrate and test modernized GPS receivers, from 2019-2024, into user platforms across the Services. The \$1.8 billion figure will grow to a total of approximately \$3.5 billion when all of the approximately 1 million GPS receivers currently in the DoD inventory are transitioned to modernized GPS receivers before 2035. This cost includes the integration of the receivers into each of thousands of different air, maritime, and ground vehicles, as well as weapons.

Regarding Ligado's proposal to identify and repair or replace potentially affected GPS receivers owned by the U.S. government, given the classified nature of the military use and the sheer number of platforms potentially affected, Ligado could not possibly know the magnitude of the problem or the costs and operational impacts relative to military receivers. To avoid an adverse effect to the Department's capabilities if Ligado's proposal were approved, DoD would need to undertake unprecedented accelerated testing, modification, and integration actions, which is cost- and schedule-prohibitive and would likely result in significantly degraded national security. For each integration, DoD would need to take the asset out of service, test the platform to ensure that the upgrade worked as planned and did not cause a negative impact to other parts of the weapons system prior to re-fielding. To be clear, every weapons system or platform in the DoD inventory

must be tested as an integrated system and it would cause significant operational impact (including substantial retesting) if modernized military GPS receivers require further modification. Adding such a requirement to mitigate the adverse effect to the military potential of GPS from this potential interference would be extremely difficult and likely cost prohibitive given current technology.

Time Required to Replace Impacted Receivers

Modification or replacement of GPS receivers within DoD has historically taken approximately a decade due to the sheer receiver numbers, complications with how receivers are integrated in thousands of platforms and systems, depot and scheduling, and global operations. The first M-code capable receivers are now going through integration and testing and will begin installation in DoD platforms beginning in 2020. The full transition is not expected to be complete until at least 2035, based on past experience transitioning from first and second-generation GPS equipment to the present third generation. Any change to the requirements for these modernized receivers as a result of approving Ligado's proposed network and the need to mitigate the resultant interference would only extend that timeline, putting DoD forces and warfighting capabilities at risk due to the rapidly evolving threats.

It is therefore DoD's position that approval of Ligado's proposal would adversely affect the military potential of GPS significantly, based on the extensive testing done by DoD and others. Consistent with 10 U.S.C. §2281, DoD cannot accept this adverse impact to military use of GPS and the resultant negative operational impacts to our warfighting capabilities. Modification or replacement of GPS receivers across the force to avoid adverse impacts from such a proposal, even if a solution were shown to be feasible, could take on the order of billions of dollars and delay fielding of modified equipment needed to respond to rapidly evolving threats by decades.

In his June 7, 2019 letter to FCC Chairman Pai, Acting Secretary of Defense Shanahan stated there are too many unknowns and the risks are far too great to federal operations to allow Ligado's proposed system to proceed. We collectively agree with that assessment. Accordingly, the Department of Defense, pursuant to its statutory duties, restates its formal objection to Ligado's request for a license modification and, along with the below signatories, requests that it be rejected.

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.1268853266

Ms. Thu Luu
Department of the Air Force
Executive Agent for GPS

The undersigned IRAC agencies endorse and support the position stated by the Department of the Air Force and the Department of Defense:

BAUER.SARAH.C Digitally signed by
ORTEVILLE.1094 BAUER.SARAH.CORTEVILLE.
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Ms. Sarah Bauer
Department of the Army

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HARD.JR.104123498 WILLIS.KENNETH.RICHARD.JR.1041
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Mr. Kenneth Willis
Department of the Navy

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Mr. Ivan Navarro
Department of Commerce

RENE Digitally signed by
BALANGA RENE BALANGA
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Mr. Rene (RJ) Balanga
NASA

RAMON Digitally signed by
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Mr. Ramon L. Gladden
Department of the Interior

QUAN VU Digitally signed by QUAN VU
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Mr. Quan Vu
Department of Justice

JOHN J Digitally signed by
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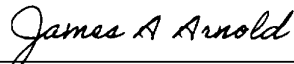
Mr. John Cornicelli
Department of Homeland Security

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Mr. George Dudley
Department of Energy


Jonathan Digitally signed by
Williams Jonathan Williams
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Mr. Jonathan Williams
National Science Foundation


Mr. James Arnold
Department of Transportation

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Mr. Jerry Ulcek
U.S. Coast Guard


Mr. Michael Richmond
Federal Aviation Administration

From: Bradley A. Brooker-DNI-
To: Kashyap P. Patel-DNI-
Cc: Ryan P. Crumpler-DNI-
Subject: FW: HPSCI Transcripts
Date: Tuesday, April 21, 2020 1:30:34 PM
Attachments: 1) 2017-05-11 HPSCI Terms of Access (signed).pdf

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Kash –

As a follow-up, please see the attached Terms of Access agreed to by HPSCI and the IC. The last paragraph discusses the classification review and makes clear that documents, such as the transcripts, are HPSCI records, not Executive Branch records.

Thanks,
Brad

From: Bradley A. Brooker-DNI- (b)(3)
Sent: Tuesday, April 21, 2020 1:17 PM (b)(6)
To: Gregory Koch-DNI- [REDACTED] Corin
R. Stone-DNI- [REDACTED]
Cc: Ryan P. Crumpler-DNI- [REDACTED] Kashyap P. Patel-DNI- [REDACTED]
Subject: HPSCI Transcripts

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All –

Bringing an oldie, but goody, back to the top of your in-box. A few questions:

- (1) We have released to HPSCI 43 transcripts. Do we still have copies of the transcripts as returned to HPSCI?
- (2) For the remaining 10, can you please re-circulate the status of each one. I believe the IC has completed review of all ten so please identify which of the 10 need WH classification review and which need privilege review.

Thank you,
Brad

Brad Brooker
Acting General Counsel
Office of the Director of National Intelligence Office of General Counsel



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**Terms of Access for HPSCI Investigation into
Russian Active Measures Directed at the 2016 Elections and Other Issues**

In order to guide the Intelligence Community's (IC) support of the investigation by the House Permanent Select Committee on Intelligence (HPSCI) into Russian active measures directed at the 2016 election and related issues, while also ensuring necessary protections for sensitive and perishable sources and methods, the Office of the Director of National Intelligence (ODNI), acting on behalf of each of the elements of the Intelligence Community (IC), and HPSCI agree to these Terms of Access (TOA).

I. Definitions

1. Intelligence Community Assessment (ICA) – There are three versions of the ICA entitled “Assessing Russian Activities and Intentions in Recent US Elections” which were produced to provide the IC's best assessment of the motivation and scope of Moscow's intentions regarding the 2016 U.S. elections: (1) a highly-compartmented version; (2) a TS//SCI version; and (3) a declassified, public version.
2. ICA Source Documents – The ICA source documents are those documents that were referenced by IC analysts in their analysis of Russian activities and intentions and were cited as sources used to come to analytic conclusions. ICA source documents are not all-inclusive or exhaustive and do not represent the entirety of the IC's collection and analysis on the subject.
3. Designated Staff – “Designated Staff” are the national security advisor designees of the Speaker and Minority Leader of the House of Representatives, and those HPSCI staff designated by the Committee in writing to support the Committee's investigation into Russian active measures directed at the 2016 election and related issues. Up to 11 HPSCI staff in addition to the HPSCI Staff Directors for the Majority and Minority may be Designated Staff.
4. The Majority and Minority each shall identify their Designated Staff to the IC, by name, in written lists to be submitted no more than five days after the day on which these ToA are executed.
5. The Majority and Minority reserve the right to make substitutions to their respective lists of Designated Staff, when necessary because of long term staff absences or illnesses, the hiring or departure of personnel assigned to work on the HPSCI investigation, or like circumstances. Such substitutions shall be promptly notified to the IC in writing. The parties to the ToA may also agree at any time, in writing, to make changes to the total number of Designated Staff, or to permit additional substitutions to Majority or Minority lists of Designated Staff.
6. Additional Material. Any IC documents, records, information, or communications, regardless of form, relevant to the announced parameters of HPSCI's investigation, other than the ICA or its source documents.
7. Reading Room. A Room located and maintained that contains the highly compartmented ICA and accompanying ICA source documents, and additional compartmented or special access IC intelligence materials responsive to the HPSCI Russia investigation not provided to the Committee for storage in Committee spaces. The Room shall also contain workstations, printers and safes as specified in Section VI.

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8. Compartmented ICA – The compartmented ICA will be made available to HPSCI Members, the Speaker and Minority Leader of the U.S. House of Representatives, and Designated Staff. The IC will maintain positive control of the compartmented ICA at the Reading Room [redacted] unless HPSCI and the IC agree to alternative arrangements for storage and handling in writing. [redacted] Congressional Affairs will facilitate access to the Reading Room. (b)(3)
9. TS//SCI ICA – The TS//SCI ICA has been made available to HPSCI Members, House and Appropriations Subcommittee on Defense Members, House Leadership, and their respective cleared staff (including Designated Staff). In addition, the TS//SCI ICA may be made available to additional Members as determined by the HPSCI, the Speaker and Minority Leader of the U.S. House of Representatives, consistent with House and committee rules.
10. Declassified ICA – The declassified ICA has been posted to the Internet and is available to the general public at icontherecord.tumblr.com.

III. Access to ICA Source Documents

11. Compartmented ICA Source Documents – The ICA source documents that are compartmented or held in special access channels outside normal TS//SCI channels, will be made available to HPSCI Members, the Speaker and Minority Leader of the U.S. House of Representatives, and Designated Staff. The IC will maintain positive control of these ICA source documents at the Reading Room [redacted] unless HPSCI and the IC agree to alternative arrangements for storage and handling in writing. [redacted] Congressional Affairs will facilitate access to the Reading Room. (b)(3)
12. TS//SCI ICA Source Documents – The ICA source documents that are not compartmented or held in special access channels outside normal TS//SCI channels will be provided in hard copy to the HPSCI for temporary storage in their spaces to facilitate ease of access by their Members, the Speaker and Minority Leader of the U.S. House of Representatives, and Designated Staff.
13. Non-compartmented TS//SCI source documents provided to HPSCI may not be photocopied, but may be loaded by HPSCI into not more than two standalone computers in HPSCI spaces, subject to strict access controls, for ease of review by HPSCI Members and Designated Staff. These computers will not be connected to any network, although HPSCI may connect the computers to printers and to each other, and to a scanner to permit the documents' loading into the computers. Unless otherwise agreed upon, hardcopy documents will be returned to the IC and the stand alone computer system described in this paragraph will be destroyed, or at the end of the 115th Congress, whichever occurs sooner. The IC agrees to facilitate the destruction of these computers at the HPSCI's request.
14. Declassified ICA Source Documents – The source documents that supported the declassified ICA are the same that supported the TS//SCI ICA.

IV. Access to Additional Materials

15. The IC acknowledges that a central objective of these ToA is to ensure that HPSCI Members and Designated Staff have the broadest possible access to additional materials

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relevant to the Russia investigation. The IC further acknowledges that achieving that objective necessarily entails affording a greater measure of Member- and staff-level access than would be the case during the course of ordinary oversight.

16. HPSCI will be asking IC elements for access to additional materials beyond the ICA or ICA Source Documents. Before providing access to such additional materials, IC elements may require a written request from either HPSCI's Chairman (or his designee) or the Ranking Member. Any request to produce additional materials also shall be deemed a request for access for HPSCI Members, the Speaker and Minority Leader of the U.S. House of Representatives, and Designated Staff:
17. There is a strong presumption that requests for access to additional materials, to include any highly compartmented materials and/or materials held in special access channels outside normal TS//SCI channels, will be granted swiftly; and that access will be granted to the Speaker and Minority Leader of the House of Representatives, all HPSCI members, and all Designated Staff.
18. If an IC element believes that HPSCI has requested access to additional materials that are both exceptionally sensitive and either highly compartmented or held in special access channels outside normal TS//SCI channels, the element shall notify HPSCI. Such materials will remain in the positive control of the IC and generally be made available to HPSCI Members, the Speaker and Minority Leader of the U.S. House of Representatives, and Designated Staff in the Reading Room [redacted] In rare instances an IC element may possess additional materials so sensitive that they cannot be stored in the Reading Room. In such instances, the element will provide written notification of the existence of such materials citing this paragraph, and will engage the HPSCI leadership on how best to proceed on a case by case basis. [redacted] Congressional Affairs will facilitate access to the Reading Room. (b)(3)
19. IC elements shall not propose additional limitations on Member or Designated Staff access to additional materials, except when necessary to protect the most sensitive sources and methods, and when the additional materials in question have been identified in a written notification furnished to HPSCI pursuant to paragraph 18. Any proposal to limit access shall be made promptly by an IC element to HPSCI in writing.
20. Additional materials shall be handled pursuant to these ToA, consistent with applicable security procedures. Additional materials that are not exceptionally sensitive and either compartmented or held in special access channels outside normal TS//SCI channels, including TS//SCI and declassified additional materials, shall be produced to HPSCI.

To illustrate application of this section and these ToA, and to guide their future interpretation, upon execution of these ToA all HPSCI Members and all Designated Staff are granted access to: (1) the Compartmented ICA and Compartmented ICA Source Documents; (2) [redacted] counterintelligence materials made available at the Reading Room, other than Compartmented ICA source documents; and [redacted] materials previously made available to HPSCI [redacted] (b)(3)

V. Member and Staff Notetaking and Work Product

21. Subject to this Section and Section VI, at the Reading Room, Members and Designated Staff are permitted to take notes, and Designated Staff are permitted to draft HPSCI work product. Notes and HPSCI work product to be removed from the Reading Room may not contain

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information [REDACTED]

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[REDACTED] nor shall such information be reproduced in other written Committee products. All notes and HPSCI work product must be transported and stored in a manner consistent with their classification and other applicable security procedures.

Before Member and Designated Staff remove notes or other work product from the Reading Room, HPSCI Designated Staff shall submit such materials to appropriate IC security personnel only for review to ensure the proper application of security procedures, consistent with these ToA, to the documents being transported to HPSCI in accordance with this Section. The IC agrees to engage in an expeditious classification review. To expedite this review, Designated Staff will portion mark and provide reference citations to the fullest extent possible. Designated Staff may challenge any IC redaction.

VI. Computer Workstations and Safes for HPSCI Use

22. Four stand-alone desktop or laptop computers will be provided to HPSCI Members and Designated Staff for purposes of both notetaking and authoring portions of any final report that cites or discusses the substance of the Compartmented ICA or Compartmented ICA Source Documents. Microsoft Word shall be loaded on each computer. Additionally, two stand-alone printers to service the four desktops or laptops will be provided to HPSCI. Four computers and two printers shall be located in the Reading Room described in Section I. The computers shall not be connected to any [REDACTED] network. Only HPSCI Members and Designated Staff shall have access to the computers; HPSCI Members and Designated Staff shall not connect any removable media or external devices to the computers.

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(b)(3) 23. HPSCI Members and Designated Staff will be deemed to have authorized access to any material loaded [REDACTED] to the desktops or laptops provided to HPSCI staff pursuant to these ToA. Consistent with security and information technology procedures and these ToA, access to [REDACTED] desktops or laptops, and any work product generated on them, will be restricted to HPSCI Members and Designated Staff only. [REDACTED] will not conduct any routine maintenance or IT support on the computers without written prior authorization from the HPSCI Majority or Minority Staff Director, as applicable. If requested by HPSCI, such maintenance or support shall be conducted in the presence of Designated Staff. The computers and printers will not be transported to HPSCI; nor will they be purged or accessed by IC personnel—or anyone other than HPSCI Members and Designated Staff—without HPSCI concurrence. Upon the conclusion of the investigation, all remaining documents in the Reading Room will be destroyed, as will any government-furnished computers.

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24. HPSCI will be provided two dedicated safes (one each for Majority and Minority) in the Reading Room to properly store notes and work product generated by Members and Designated Staff.

VII. Redactions of Documents Provided to the Committees

25. In any IC document provided to the committees subject to these ToA, the IC will redact any names of U.S. government personnel (a) below the rank of SES or SES-equivalent, (b) serving in a non-supervisory capacity, and/or (c) serving undercover. The IC will also redact contact information for U.S. government personnel other than legislative liaison officers and internal administrative information.

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26. The IC will redact the name of any named human source or information that could specifically identify a human source in any document provided to the committees.
27. The IC may redact foreign government information or foreign intelligence service sources.
28. The IC may redact information included in a source report that is unrelated to the subject matter of the congressional investigations.
29. Any IC proposals for further redactions, and any HPSCI requests for the removal of redactions, shall be resolved on a case-by-case basis jointly by HPSCI staff and the ODNI Office of General Counsel, who shall coordinate with other agencies and elements as appropriate.

VIII. Availability of IC Officials

30. Upon request by HPSCI, the IC shall make available to HPSCI current IC officials who drafted the ICA, and/or with subject matter expertise or personal knowledge of events relevant to the investigation. Such officials shall participate in informal discussions, transcribed interviews, and/or hearings, as HPSCI may elect.
31. Transcribed interviews of IC officials shall be conducted consistent with applicable security procedures, and may take place at HPSCI spaces. Prior to each transcribed interview, Designated Staff and the IC will confer regarding security arrangements, including with respect to the potential use of compartmented or special access materials or information during the interview. Depending on the information to be covered, the IC and HPSCI may agree to conduct a transcribed interview, or portion thereof, at or other suitable venue.
32. HPSCI shall provide reasonable notice to IC officials asked to participate in informal discussions, transcribed interviews, and/or hearings. Such events shall be scheduled, to the fullest extent possible, at mutually convenient times and dates.
33. Consistent with HPSCI rules and applicable security procedures, upon request of an IC official, his or her outside counsel and/or counsel for and a representative of the IC element that employs or employed the official may attend an informal discussion, transcribed interview, or hearing in connection with the investigation.
34. No IC personnel may access the transcript of an interview, except as provided in this paragraph. Upon that official's request, an IC official who has participated in a transcribed interview shall be given a reasonable opportunity to inspect the interview's transcript, in order to determine whether the questions and the IC official's answers were correctly transcribed. The official's outside counsel, and/or counsel for or a representative of the IC element that employs or employed the official may assist in inspecting the transcript for this purpose. Suggested corrections shall be made to HPSCI in writing, within seven days of a transcript's being made available. Corrections may not be made to change the substance of testimony. The IC also may conduct a security and/or declassification review of an interview transcript, upon request by HPSCI. A copy of the transcript will be provided to the IC official who participated in the interview and a designated point of contact in his or her IC element's Office of Legislative Affairs and Office of General Counsel. No further dissemination of the transcript will be permitted unless the HPSCI and the IC have agreed prior to such dissemination.

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UNCLASSIFIED//~~FOUO~~**IX. IC Designees to Support Congressional Investigations**

- (b)(3) 35. [redacted] will each designate an individual within their respective offices of congressional/legislative affairs who will address all requests from Designated Staff, and will serve as the principal interlocutor between HPSCI and IC agencies.

X. Preservation of Documents

- (b)(3) 36. [redacted] will make reasonable efforts to preserve all written and electronically stored information that was created, collected, or otherwise within the IC's custody or control between January 1, 2014 and January 20, 2017, and that is potentially relevant to the identified subject matter of the HPSCI investigation.
37. Consistent with these ToA, all IC information, regardless of form, shall be handled and retained in accordance with applicable Federal records laws and IC procedures, and may be requested by HPSCI in connection with its investigation.
38. Regarding written or electronically stored information created, collected, or otherwise within the IC's custody or control after January 20, 2017, the IC agrees that, upon HPSCI request, the IC will produce responsive information consistent with these ToA.

XI. Classification Review

39. Upon completion of any HPSCI final report, the IC agrees to engage in a timely classification review, and HPSCI agrees to take appropriate measures to facilitate expeditious review, to include citations and portion markings. Any copy of the HPSCI notes, the HPSCI report, or portions thereof, provided to the IC for classification review will be treated as a Congressional, not agency record, and may be purged from agency systems following the completion of the investigation and the issuance of the HPSCI's report.

AGREED AND ACCEPTED:**On behalf of the Intelligence Community:**

[redacted]

11 May 2017

Ms. Deirdre Walsh
 Director, Office of Legislative Affairs
 Office of the Director of National Intelligence

**For the House Permanent Select
Committee on Intelligence**

[redacted]

11 May 2017

✓ Mr. Damon Nelson, Majority Staff Director

[redacted]

11 May 2017

✓ Mr. Michael Bahar, Minority Staff Director

(b)(6)

UNCLASSIFIED//~~FOUO~~

From: Kashyap P. Patel-DNI-
To: Richard A. Grenell-DNI-
Subject: FW: IC CIO Candidates to replace John Sherman
Date: Friday, April 24, 2020 3:26:31 PM

Classification: UNCLASSIFIED//~~FOUO~~
=====

I got a different candidate from [redacted] (b)(6)

From: Kevin P. Meiners-DNI-[redacted] (b)(3)

Sent: Friday, April 24, 2020 3:04 PM

To: Richard A. Grenell-DNI-[redacted] Deirdre M. Walsh-DNI-

(b)(3)

[redacted] Kashyap P. Patel-DNI-[redacted] [redacted] (b)(3)
[redacted] (b)(6)

Subject: IC CIO Candidates to replace John Sherman

Classification: UNCLASSIFIED//~~FOUO~~
=====

Sir,

We put out a call to the DEXCOM members soliciting nominations to replace John Sherman. We received several candidate nominations and have ranked the top two external nominations for your consideration.

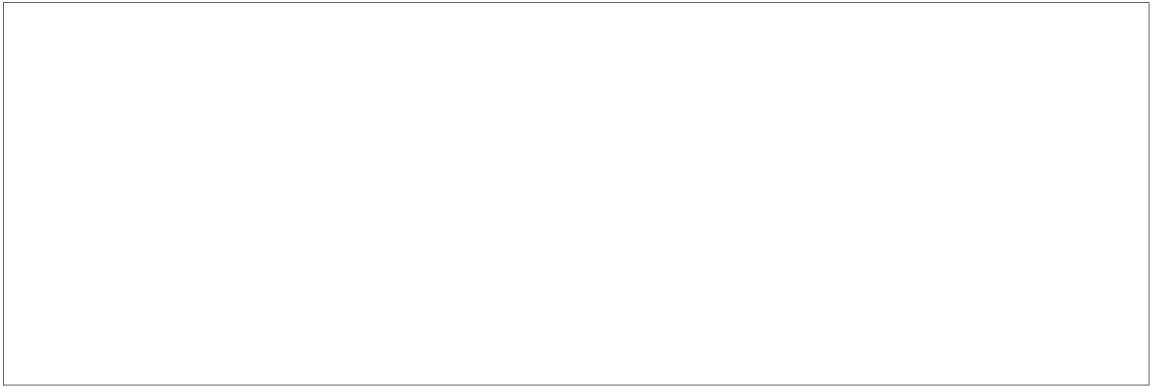
(b)(5)
(b)(6)

EXTERNAL (From the IC):

[redacted]

[redacted]

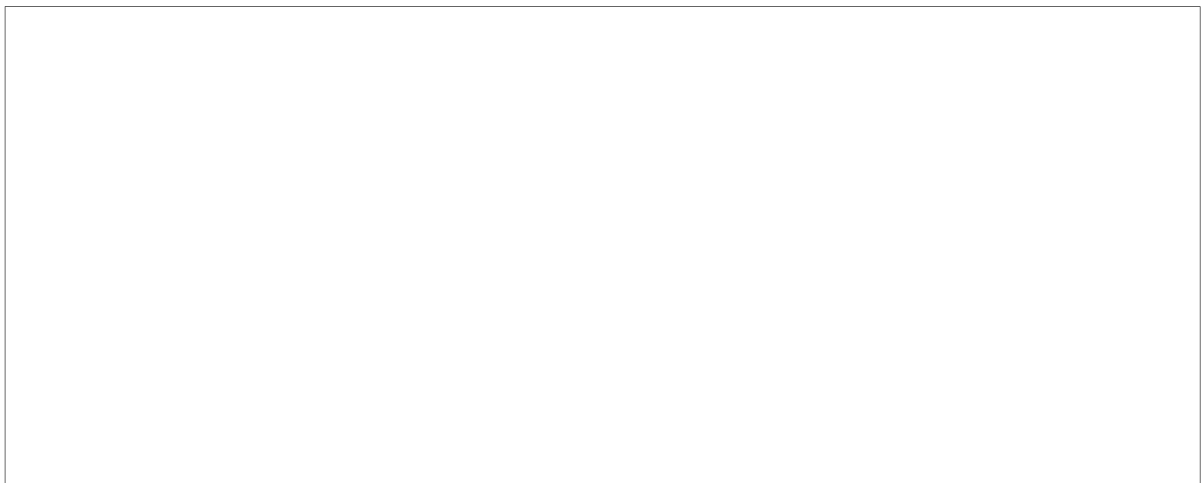
(b)(5)
(b)(6)



(b)(5)
(b)(6)

We also have one internal candidate nomination for your consideration.

INTERNAL (From the ODNI):



(b)(3)
(b)(5)
(b)(6)

We will provide you with a hardcopy book with biographies and resumes on these candidates pending your guidance. Please let us know if you have questions.

Respectfully,



(b)(3)
(b)(6)

=====
Classification: UNCLASSIFIED//~~FOUO~~

=====
Classification: UNCLASSIFIED//~~FOUO~~

From: [redacted]
To: [redacted]
Cc: Ryan P. Crumpler-DNI- [redacted] Kashyap P. Patel-DNI- (b)(3)
Subject: FW: Incoming SSCI Letters 18 March 2020 (b)(6)
Date: Thursday, March 19, 2020 5:17:04 PM

Classification: ~~SECRET//NOFORN~~

[redacted] (b)(3)
=====

Can we fit 5 mins on the boss's calendar tomorrow to discuss this Hill response?

Thanks.

From: [redacted]
Sent: Thursday, March 19, 2020 5:00 PM (b)(3)
To: [redacted] (b)(6)
Subject: RE: Incoming SSCI Letters 18 March 2020

Classification: ~~SECRET//NOFORN~~

[redacted] (b)(3)
=====

Yes, Sir – what time works best? I know Ryan's morning looks flexible except 1000-1100.

(b)(3)
(b)(6)
From: [redacted] (b)(3)
Sent: Thursday, March 19, 2020 4:40 PM (b)(6)
To: [redacted] Ryan P. Crumpler-DNI- [redacted]
Cc: Kashyap P. Patel-DNI- [redacted] Richard A. Grenell-DNI- [redacted] (b)(3)
Subject: RE: Incoming SSCI Letters 18 March 2020

Classification: ~~SECRET//NOFORN~~

[redacted] (b)(3)
=====

Thanks [redacted] and Ryan – let's discuss tomorrow with Ambassador Grenell.
(b)(3)
(b)(6)

(b)(3)
(b)(6)
From: [redacted]
Sent: Thursday, March 19, 2020 4:36 PM
To: [redacted] Ryan P. Crumpler-DNI- [redacted] (b)(3)

(b)(3)

Cc: Kashyap P. Patel-DNI-[redacted] Richard A. Grenell-DNI-[redacted]

Subject: RE: Incoming SSCI Letters 18 March 2020

Classification: ~~SECRET//NOFORN~~

[redacted]

(b)(3)

Good Afternoon, Sir:

Ryan and I discussed yesterday evening. We believe [redacted]

[redacted]

(b)(3)
(b)(5)

We think [redacted]

[redacted]

(b)(3)
(b)(5)

[redacted]

(b)(3)
(b)(5)

Hope that makes sense, and certainly open to other suggestions/approaches. Please let us know how you'd like to proceed.

(b)(3)
(b)(6)

[redacted]

From: [redacted]

Sent: Thursday, March 19, 2020 3:24 PM

(b)(3)
(b)(6)

To: [redacted] Ryan P. Crumpler-DNI-[redacted]

Cc: Kashyap P. Patel-DNI-[redacted] Richard A. Grenell-DNI-[redacted]

Subject: RE: Incoming SSCI Letters 18 March 2020

(b)(3)

Classification: ~~SECRET//NOFORN~~

[redacted]

(b)(3)

Ryan,

[Redacted]

(b)(5)

Thanks.

(b)(3)

(b)(6)

From: [Redacted]

Sent: Wednesday, March 18, 2020 5:03 PM (b)(3)

To: Richard A. Grenell-DNI-[Redacted]

Cc: Kashyap P. Patel-DNI-[Redacted] Beth E. (b)(3)

(b)(3) Sanner-DNI-[Redacted] Ryan P. Crumpler-DNI-[Redacted] (b)(6)

Subject: Incoming SSCI Letters 18 March 2020

Classification: ~~SECRET//NOFORN~~

[Redacted]

(b)(3)

Sir,

(U) Attached for your review are two incoming letters from SSCI Chair and Vice Chair concerning notification of COVID-19 precautionary measures and the short-term external hiring pause. Please let us know how you'd like to proceed.

[Redacted]

(b)(3)

(b)(6)

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Classification: ~~SECRET//NOFORN~~

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Classification: ~~SECRET//NOFORN~~

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Classification: ~~SECRET//NOFORN~~

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Classification: ~~SECRET//NOFORN~~

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Classification: ~~SECRET//NOFORN~~

=====
Classification: SECRET//NOFORN

From: Kashyap P. Patel-DNI-
To: Richard A. Grenell-DNI-
Subject: FW: OIG Sequestration Redactions
Date: Monday, April 6, 2020 4:35:11 PM
Attachments: OIG Report Redacted Footnote Pages 4-6-2020.pdf

Classification: ~~TOP SECRET~~/ [] ~~NOFORN~~ [] (b)(3)

[]

(b)(3)

Here you go. This is not the entire oig report, just the pages involving footnotes in question (also, it is not in page sequential order). Here are the 38 footnotes with redactions (they are all highlighted in the attachment):

(b)(3)

(b)(5)

[]

(b)(5)

[]

Im heading your way

now.

kash

(b)(6)

(b)(7)(c)

(b)(7)(e)

-----Original Message-----

From: Demers John C NSD USA GOV []

Sent: Monday, April 6, 2020 3:55 PM

(b)(3)

To: Kashyap P. Patel-DNI- []

Subject: FW: OIG Sequestration Redactions --- ~~TOP SECRET~~/ [] ~~NOFORN~~ []

Classification: ~~TOP SECRET~~/ [] ~~NOFORN~~ [] (b)(3)

Classified By: Demers John C NSD USA GOV Derived From: FBI NSISC dated 20090615 Declassify On: 50X1-HUM

[]

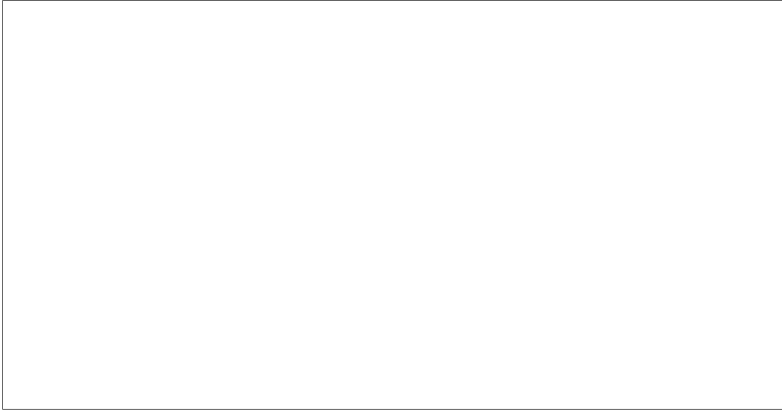
(b)(3)

Kash,

Please see attached. This is what we are working off of. The reference to sequestration is to section 1809 of FISA that prohibits the use or disclosure of any take from an unauthorized FISA. The will need to remain redacted. The other redactions in yellow should be for discussion.

Thanks,
John

Please let me take a moment to reconfirm what this document is.



(b)(5)
(b)(6)

Classification: ~~TOP SECRET~~ ~~NOFORN~~ (b)(3)

From: Kashyap P. Patel-DNI-
To: Richard A. Grenell-DNI-
Subject: FW: Scan
Date: Friday, April 10, 2020 2:50:05 PM
Attachments: [OIG Report.pdf](#)

Classification: ~~TOP SECRET~~ [redacted] ~~NOFORN~~ [redacted]

[redacted]

(b)(3)

=====

In case you need it, these are the corresponding pages of the fully unredacted IG Report, with the footnotes.

From: [redacted] (b)(3)
Sent: Friday, April 10, 2020 2:44 PM (b)(6)
To: Kashyap P. Patel-DNI- [redacted] (b)(3)
Subject: Scan

Classification: ~~TOP SECRET~~ [redacted] ~~NOFORN~~ [redacted]

[redacted]

(b)(3)

=====

Classification: ~~TOP SECRET~~ [redacted] ~~NOFORN~~ [redacted] (b)(3)

=====

Classification: ~~TOP SECRET~~ [redacted] ~~NOFORN~~ [redacted]

From: [redacted] (b)(3)
To: Kashyap P. Patel-DNI- (b)(6)
Subject: FW: Top line reform ideas
Date: Thursday, March 26, 2020 5:34:10 PM
Attachments: Phase I Reform Options 2.0_response.docx
NSCT SIP FINAL.pdf
20191113 SIP CSG SOC final.pdf
signedPOA.pdf

Classification: ~~SECRET//NOFORN~~

[redacted]

(b)(3)

=====

(b)(3)
(b)(6)

Suggestions from Lora and [redacted] on primarily NCTC reform. Just need to get this into bullet form and we'll have the options list for Hill discussions.

I'll forward separately to Beth and the rest of the leadership group as soon as I take a look.

From: Lora A. Shiao-[redacted] (b)(3)
Sent: Thursday, March 26, 2020 5:27 PM
To: [redacted] (b)(3)
Cc: [redacted] (b)(6)
Subject: RE: Top line reform ideas

Classification: ~~SECRET//NOFORN~~

[redacted]

(b)(3)

=====

Hey there –

(b)(3)
(b)(6)

[redacted] and I pulled together some of our thoughts in the attached. For the pieces related to DSOP, we've also provided several reference materials here:

1. The NSCT Strategic Implementation Plan (which calls tasks strategic assessments)
2. The SIP CSG SOC that tasked NCTC/DSOP to conduct assessments of the NSCT
3. The FY20 Program of Assessments signed by former SAP/CT and nominated D/NCTC Chris Miller

Thanks much,
Lora

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Classification: ~~SECRET//NOFORN~~

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Classification: ~~SECRET//NOFORN~~

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Classification: ~~SECRET//NOFORN~~

From: Bradley A. Brooker-DNI-
To: Kashyap P. Patel-DNI-
Cc: Ryan P. Crumpler-DNI-
Subject: FW: Transcripts update.....
Date: Monday, April 20, 2020 3:48:18 PM
Attachments: 08-08-09 Ltr from HPSCI Chairmain Schiff.pdf
08-08-09 Ltr from HPSCI Chairmain Schiff Enclosures.pdf
2019.09.09-Ltr from Purpura to Schiff converted.pdf

Classification: UNCLASSIFIED//~~FOUO~~
=====

Resending. See letter from Purpura to Schiff. We completed review of 43 of the 53 transcripts.

From: Bradley A. Brooker-DNI- (b)(3)
Sent: Monday, March 09, 2020 5:06 PM
To: Beth E. Sanner-DNI-[redacted] Kashyap P. Patel-DNI-[redacted]
Cc: Ryan P. Crumpler-DNI-[redacted]
Subject: RE: Transcripts update.....

Classification: UNCLASSIFIED//~~FOUO~~
=====

+ Ryan

Kash—I have attached all of the relevant correspondence. Ryan can confirm if I missed anything.

Happy to discuss, but the bottom line is this sort of died once impeachment went into full swing.

From: Beth E. Sanner-DNI-[redacted]
Sent: Monday, March 09, 2020 4:56 PM (b)(3)
To: Kashyap P. Patel-DNI-[redacted]
Cc: Bradley A. Brooker-DNI-[redacted]
Subject: Transcripts update.....

Classification: UNCLASSIFIED//~~FOUO~~
=====

Kash,

Brad has the latest on the issue you raised with me.

Thanks!

Beth

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Classification: UNCLASSIFIED//~~FOUO~~
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Classification: UNCLASSIFIED//~~FOUO~~



**Permanent Select Committee
on Intelligence
U.S. House of Representatives**

August 8, 2019

The Honorable Daniel Coats
Director of National Intelligence
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Director Coats:

Nearly nine months have passed since November 2018, when the House Permanent Select Committee on Intelligence (HPSCI or Committee) furnished 53 interview transcripts to the Office of the Director of National Intelligence (ODNI) solely for the purpose of conducting a classification review that would allow the transcripts to be released to the public. The transcripts are of witness interviews conducted during the 115th Congress as part of the Committee's duly authorized investigation into Russia's interference in the 2016 U.S. election, and are of significant public interest and national importance.

Despite devoting considerable time and resources to the effort, ODNI still has not completed its classification review. The most recent cause of delay stems from the White House's unwarranted and unsolicited intrusion into what should be a narrow, apolitical classification review process. This interference by the White House into Congress's oversight and investigation responsibilities raises serious separation of powers and institutional concerns.

To date, ODNI has returned to the Committee 43 transcripts with preliminary classification determinations and "consolidated initial redactions." However, ODNI has refused to return the remaining ten transcripts because, after its own initial review, ODNI believes it has identified information that potentially implicates "White House equities." Specifically, ODNI posits that these ten transcripts require further review by the White House because they may contain (1) "White House-originated classified information" and/or (2) information which may be subject to executive privilege.¹ ODNI has to this point acceded to the White House's insistence on reviewing the transcripts for privilege issues, notwithstanding the Committee's firm stance that privilege concerns are not germane to a simple classification review. At our July 12,

¹ Of the ten transcripts, two are unclassified but purportedly may contain executive privilege information (Corey Lewandowski (Mar. 2018) and Keith Schiller); one is unclassified//FOUO and purportedly may contain executive privilege information (Stephen Bannon (Jan. 2018)); and seven are classified and purportedly may contain executive privilege information and/or "White House-originated classified information" (Jared Kushner, Benjamin Rhodes, Loretta Lynch, Mary McCord, Sally Yates, Samantha Power, and Susan Rice).

2019 meeting, ODNI's General Counsel stated that ODNI's classification review process will be complete once the ten transcripts are returned to the Committee. Accordingly, the Committee understands that ODNI has completed its classification review of the 43 transcripts that do not involve "White House equities."

Since at least March 2019, when the topic of "White House equities" first arose, the Committee has attempted, in good faith, to resolve these issues. We have exchanged letters,² staff have participated in meetings, and you and I have personally discussed the impasse. Indeed, in a letter dated June 14, 2019, Committee staff proposed a process to allow for a narrow review, on mutually-agreed terms, of the transcripts for "White House-originated classified information." Then, most recently on July 12, 2019, I met with you and representatives of the White House Counsel's Office, at your request, to discuss the issue of executive privilege.

I have carefully considered the arguments set forth by White House Counsel Pat Cipollone at the July 12 meeting in support of a review for executive privilege—including reassurances that such a review would be cursory, speedy, and without precedential weight—but for the reasons set forth below, and articulated in prior correspondence and meetings, the Committee has concluded that any executive privilege review is inappropriate under these circumstances. Accordingly, the Committee insists that ODNI return the remaining ten transcripts to the Committee with proposed redactions for classified information so that they can be publicly released soon thereafter.

National Security Council review for "White House-originated classified information"

Without precisely defining "White House-originated classified information," ODNI claims that White House National Security Council (NSC) staff must review seven of the ten outstanding transcripts to determine whether they contain such classified information. As noted in prior correspondence, "White House-originated classified information" should apply, if at all, only in the most limited circumstances. Moreover, specific Intelligence Community elements should be in a position to determine classification without White House involvement.

However, notwithstanding our serious reservations and in an effort to resolve this issue, Committee staff proposed an extraordinary accommodation in a letter dated June 14, 2019 through a narrowly-tailored and closely-monitored process that would allow a career NSC staff member to review excerpts of the relevant transcripts for "White House-originated classified information." The process would limit improper White House interference and protect information that is classified for legitimate reasons.

Although ODNI suggested at the July 12 meeting that further discussion at the staff level will resolve the issue of "White House originated classified information," ODNI has neither formally responded to our June 14 letter nor provided a counter-proposal. The Committee assumes that ODNI's delay in responding to our June 14 proposal is not linked to the issue of executive privilege, as those two issues should be distinct and independent, and it would be entirely inappropriate for ODNI to conflate the two and try to leverage one against the other to further the interests of the White House. Indeed, as ODNI knows full well, a classification review simply determines if disclosure of information is likely to cause harm to the national

² The letters are enclosed herewith.

security of the United States. A classification review is neither designed nor intended to determine if the President should be able to withhold information from Congress or the public based on executive privilege, a concept that has nothing to do with protecting national security interests.

Accordingly, if ODNI does not respond to the Committee's June 14 letter by August 14, 2019, the Committee will interpret such lack of response as a rejection of the Committee's proposal to address "White House originated classified information," and the Committee will be forced to act accordingly.

Review for information potentially subject to a claim of executive privilege

While I appreciated the opportunity to meet with Mr. Cipollone and you on July 12, 2019, the Committee's position remains unchanged: A retroactive review of the Committee's transcripts for executive privilege is wholly inappropriate. The Committee provided the transcripts to ODNI for the sole purpose of that agency conducting a *classification* review in preparation for public disclosure. And as acknowledged by you in your role as "intermediary" between the Committee and the White House, any review for executive privilege is well outside ODNI's purview. Furthermore, the White House had ample opportunity to assert any applicable privileges both before witnesses testified and during their interviews. In fact, the White House instructed select witnesses to decline to answer certain questions about the presidential transition, their tenure at the White House, and their interactions after leaving the White House—even going so far as to police the President's interests in real-time during the interviews. Moreover, there were no agreements—express or implied—between the Committee and the White House authorizing *post hoc* assertions of executive privilege.

At our July 12 meeting, Mr. Cipollone proposed that a neutral party outside the White House review the transcripts for executive privilege. Even assuming we could come to agreement on an appropriate third party with the necessary clearances, this proposal is fundamentally flawed: to the extent the White House had a privilege to assert, any such privilege has been waived. Neither ODNI nor the White House has cited any law or judicial opinion in support of the position that the Executive Branch is entitled to conduct a *post hoc* review of Congressional interview transcripts, and the Committee is aware of none. Simply put, the White House has no right to review Congressional documents for executive privilege whether as part of a classification review or otherwise. Under the present circumstances—where the executive branch chose not to assert privilege and allowed a witness to voluntarily provide testimony to a co-equal branch of government—the Committee will not allow the White House to claw back information to shield it from public disclosure.

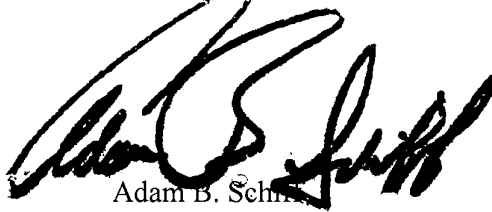
At the July 12 meeting, Mr. Cipollone acknowledged that the Committee is the ultimate arbiter of whether and to what extent a review for executive privilege should be conducted of the Committee's transcripts. After careful consideration of the White House's arguments in support of an executive privilege review, the Committee has decided that no form of executive privilege review is appropriate. The Committee therefore insists that ODNI reject once and for all the White House's attempts to improperly interfere in ODNI's classification review responsibilities, and to stop holding the Committee's transcripts hostage on behalf of the White House.

* * *

The Committee has an obligation to preserve the integrity of the information obtained as part of its constitutionally-mandated oversight and investigations, and, like ODNI, is committed to protecting information that should be considered or remain classified for legitimate reasons. The Committee therefore requires that ODNI complete forthwith the apolitical classification review it was asked to perform nearly nine months ago. To that end, the Committee asks that (1) ODNI return the three transcripts which do not include any potential “White House-originated classified information” no later than August 14, 2019; (2) apply the protocol for review of “White House-originated classified information” pursuant to HPSCI’s June 14 proposal, or another proposal mutually agreed upon by the Committee and ODNI; and (3) work with Committee staff to finalize the redactions of all 53 transcripts so that they can be publicly released when Congress returns in September.³

However, should ODNI continue to refuse to complete the classification review process because of the White House’s improper and unsupported assertions of executive privilege—and ODNI’s inappropriate coupling of that issue with classification review—the Committee will have no choice but to proceed with the public release of some or all of the transcripts, taking account of ODNI’s proposed redactions to date.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam B. Schiff', written over a horizontal line.

Adam B. Schiff
Chairman

CC: Ranking Member Devin Nunes

Enclosures:

1. Letter from Benjamin T. Fallon, Assistant Director of National Intelligence for Legislative Affairs, to Chairman Devin Nunes and Ranking Member Adam B. Schiff (November 28, 2018)
2. Letter from Chairman Adam B. Schiff to Director of National Intelligence Daniel Coats (March 26, 2019)

³ As part of the adjudication process, Committee staff are prepared to meet with ODNI and the other stakeholders to finalize the redactions. For example, some of the consolidated initial redactions already provided to the Committee may have to be modified because they relate to information that has since been publicly disclosed in Special Counsel Robert Mueller’s *Report on the Investigation into Russian Interference in the 2016 Presidential Election*.

3. Letter from Benjamin T. Fallon, Assistant Director of National Intelligence for Legislative Affairs, to Chairman Adam B. Schiff (April 30, 2019)
4. Letter from Benjamin T. Fallon, Assistant Director of National Intelligence for Legislative Affairs, to Chairman Adam B. Schiff (May 29, 2019)
5. Letter from Chairman Adam B. Schiff to Director of National Intelligence Daniel Coats (June 4, 2019)
6. Letter from Director of National Intelligence Daniel Coats to Chairman Adam B. Schiff (June 7, 2019)
7. Letter from Maher Bitar, General Counsel, House Permanent Select Committee on Intelligence, to Jason Klitenic, General Counsel, Office of the Director of National Intelligence (June 14, 2019)

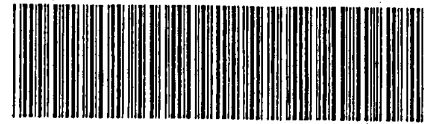
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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

The Honorable Devin Nunes
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, DC 20515

NOV 20 RECD
NOV 28 2018

The Honorable Adam B. Schiff
Ranking Member
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, DC 20515



HPSCI-2018-1660

Dear Chairman Nunes and Ranking Member Schiff:

I am confirming receipt of the transcripts that were sent to us for classification review for public release. While we are not in a position to commit to completing the review by a specific date, I want to assure you that we are developing a process that will allow us to complete our review in an expedited fashion. As we have done with other similar reviews, we will conduct a review of the transcripts for public release, which will include reviewing both for classification and for other information that we do not believe should be publicly available (e.g., personal information of employees and law enforcement sensitive information). We will ensure that the versions provided back to the Committee clearly differentiate between the two categories. To that end, the transcripts will be provided to relevant departments and agencies most likely to have classified and sensitive unclassified equities through IntelDocs, a secure, classified portal. This could include the Central Intelligence Agency, Department of Justice, Federal Bureau of Investigation, Special Counsel's Office, National Security Agency, and Office of the Director of National Intelligence. Other departments or agencies could be identified once the review commences, including the State Department and the National Security Council.

It is our understanding that the Committee plans to publicly release the transcripts after the entire review is complete and has requested that all redacted transcripts be returned to the Committee at one time. Accordingly, when review of all the transcripts is complete, we will return them to the Committee as one collection on CD. Along with the transcripts, we will also provide a separate document that clearly identifies the basis for the redactions.

We hope to make this process as transparent to the Committee as possible, so please feel free to contact my office at (703) 275-2474 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "B. T. Fallon", with a long horizontal flourish extending to the right.

Benjamin T. Fallon
Assistant DNI for Legislative Affairs

UNCLASSIFIED

ADAM B. SCHIFF, CALIFORNIA
CHAIRMAN
TIMOTHY BERGREEN, STAFF DIRECTOR
(202) 225-7690
www.intelligence.house.gov



ONE HUNDRED SIXTEENTH CONGRESS
DEVIN NUNES, CALIFORNIA
RANKING MEMBER
SCOTT GLABE, MINORITY STAFF DIRECTOR

**Permanent Select Committee
on Intelligence
U.S. House of Representatives**

March 26, 2019

The Honorable Daniel Coats
Director of National Intelligence
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Director Coats:

During a March 20, 2019 briefing, personnel with the Office of the Director of National Intelligence (ODNI) told staff for the House Permanent Select Committee on Intelligence (HPSCI) that ODNI, as part of its ongoing classification review, intended to share – but had not yet done so – certain HPSCI interview transcripts with the White House that implicated “White House equities.”

ODNI subsequently clarified that, as part of its review, it “looked for mention of interactions or communications with current or former [White House] and [National Security Council] officials either during transition or after and descriptions of policies or direction established within the [White House] and [National Security Council].” This included review for information that “could be privileged,” which is described as a determination that “can only be made by” the White House.

Under no circumstances shall ODNI, or any other element of the Intelligence Community (IC), share any HPSCI transcripts with the White House, President Trump, or any persons associated with the White House or the President. Such transcripts remain the sole property of HPSCI, and were transmitted to ODNI for the limited purpose of enabling a classification review by IC elements and the Department of Justice.

Thank you for your prompt attention to this matter. I hope that our staff can reach agreement soon on a schedule for returning the transcripts to the Committee for ultimate public release.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam B. Schiff', written over the word 'Sincerely,'.

Adam B. Schiff
Chairman

UNCLASSIFIED

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

APR 30 2019

Chairman Adam B. Schiff
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Schiff:

Thank you for your March 26, 2019, letter regarding the classification review of House Permanent Select Committee on Intelligence (HPSCI) interview transcripts.

In November 2018, the HPSCI delivered 53 transcripts to the Office of the Director of National Intelligence (ODNI) totaling nearly 6,000 pages to lead an interagency classification review in order to facilitate the public release of the transcripts in redacted form. By letter dated November 28, 2018, to both you and former Chairman Nunes, ODNI acknowledged receipt of the transcripts and set forth the process, consistent with its long-standing practice, with which the Intelligence Community (IC) would undertake the review. More specifically, the letter noted that the review would "include reviewing both for classification and other information we do not believe should be publicly available (e.g., personal information of employees and law enforcement sensitive information)." The letter also highlighted that ODNI would coordinate with all relevant federal entities most likely to have classified and sensitive unclassified equities, expressly including the National Security Council. The process set out in the November 28 letter is the same process used for all classification reviews whether they come from the Congress, Inspectors General, or the Government Accountability Office. We did not receive any concerns from the HPSCI with our described approach.

A few weeks ago, your staff asked to meet with ODNI to review the progress. During that meeting, held on March 20, we explained that we were reviewing the transcripts in alphabetical order by first name to ensure no appearance of partisanship; we highlighted that certain transcripts had improper classification markings; and we briefed on the interagency coordination process, including the fact that certain transcripts had been identified as having White House equities that needed White House review. We also explained why it was critical that the IC review conclude with a finalized consolidation process and with the return of the fully-reviewed transcripts to the HPSCI in a single batch.

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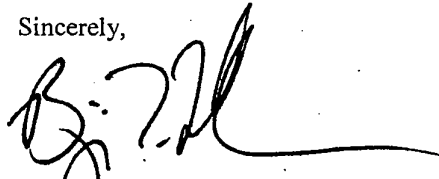
Chairman Adam B. Schiff

Our discussions over the last several weeks have been incredibly fruitful and we are continuing the process to review and redact information implicating IC equities, including the final consolidation process. As was requested at our April 4 meeting, we are prepared to provide the HPSCI with transcripts containing consolidated initial redactions (while reserving the right to identify additional redactions in the future) so that your Committee can voice any questions or concerns prior to the completion of this process. I also want to assure you that the IC is working hard to attempt to complete this review by the new May timeframe imposed by your staff, and the Director has asked relevant IC leaders to take steps to complete their work within this timeframe. However, due to the extremely sensitive classified information identified in several of the transcripts to date, many originally marked unclassified, we believe that a premature release of any transcripts would damage extremely sensitive classified intelligence sources and methods.

In your letter you directed that "under no circumstances shall ODNI, or any other element of the Intelligence Community (IC), share any HPSCI transcripts with the White House, President Trump, or any persons associated with the White House or the President." As has been discussed with your staff, ODNI identified White House equities in certain transcripts, and long-established Executive Branch review procedures for both classified information and executive privilege interests require ODNI to refer these transcripts to the White House. Nevertheless, to accommodate the Committee's request, ODNI proposes that the Department of Justice Office of Legal Counsel review transcripts that may contain information subject to executive privilege, and NSC staff review transcripts that may contain White House-originated classified information. Without this review, several of the transcripts may be returned to HPSCI in their original, classified form without the accurate classification markings because the normal review process could not be completed. The IC continues to review the remaining transcripts to identify non-White House-originated classified information that must be redacted before any public release.

We view the HPSCI as our trusted partner in our shared national security mission. To that end, we hope we can find a satisfactory solution to protect all Executive branch classified and sensitive equities in the transcripts.

Sincerely,



Benjamin T. Fallon
Assistant DNI for Legislative Affairs

cc: Ranking Member Devin Nunes

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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511



HPSCI-2019-666



MAY 31 2019

MAY 29 2019

The Honorable Adam B. Schiff
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Schiff:

(U//~~FOUO~~) I am writing to advise you of the current status of the Office of the Director of National Intelligence (ODNI) led classification review of the 53 House Permanent Select Committee on Intelligence (HPSCI) transcripts the committee sent us last November. We expect to complete our review of a majority of the transcripts by June 4, 2019. At that point 42 transcripts will be returned to the HPSCI containing consolidated initial redactions, so that your Committee can voice any questions or concerns prior to the completion of this process.

(U//~~FOUO~~) The remaining 11 transcripts, which contain White House/NSC equities, will be returned to the HPSCI in classified form because ODNI has not received a response to our letter of April 30, 2019, in which we requested guidance regarding the handling of transcripts with White House equities. Absent that guidance, we cannot perform a classification review of those 11 transcripts. The ODNI has not shared the remaining 11 transcripts with the White House during this period. The Intelligence Community (IC) reserves the right to identify additional redactions in the future on all transcripts since the consolidation review is not yet complete.

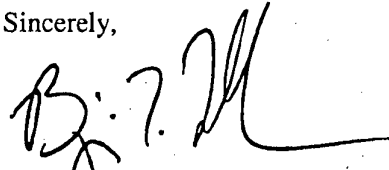
(U//~~FOUO~~) Additionally, we were surprised by the HPSCI's recent public release of two transcripts from 2019 that had not undergone a classification review by the IC. Given the nature of the HPSCI's inquiry, we must ensure our nation's most sensitive intelligence sources and methods are protected. The public release of transcripts of this nature without an IC classification review risks compromise of sensitive sources and methods that could cause harm to national security and foreign relations. We understood that to be the reason the committee sought our classification review of the original set of 53 transcripts sent to us in November.

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(U//~~FOUO~~) As you know, we worked out an agreement with your staff regarding a process for review of the 53 transcripts. Moving forward, we urge that any future releases of the committee's transcripts related to the investigation of Russian Influence in the 2016 election be formally coordinated with the IC to protect national security equities, ensure consistency, and reduce risk to sensitive sources and methods.

Sincerely,

A handwritten signature in black ink, appearing to read "B. T. Fallon", with a long horizontal flourish extending to the right.

Benjamin T. Fallon
Assistant DNI for Legislative Affairs

cc: Ranking Member Devin Nunes

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ADAM B. SCHIFF, CALIFORNIA
CHAIRMAN
TIMOTHY BERGREEN, STAFF DIRECTOR
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ONE HUNDRED SIXTEENTH CONGRESS
DEVIN NUNES, CALIFORNIA
RANKING MEMBER
ALLEN SOUZA, MINORITY STAFF DIRECTOR

**Permanent Select Committee
on Intelligence
U.S. House of Representatives**

June 4, 2019

The Honorable Daniel Coats
Director of National Intelligence
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Director Coats:

In November 2018, the House Permanent Select Committee on Intelligence (HPSCI or Committee) furnished 53 interview transcripts to the Office of the Director of National Intelligence (ODNI) solely for the purpose of conducting a classification review that would allow the transcripts to be released to the public. The witness interviews in question were conducted during the 115th Congress as part of the Committee's duly authorized investigation into Russia's interference in the 2016 U.S. election. The transcripts are of significant public interest and national importance.

During a March 20, 2019 meeting with representatives from your office and other Intelligence Community (IC) elements, Committee staff learned, for the first time, that ODNI intended to share with the White House certain HPSCI interview transcripts that ODNI believed implicated "White House equities." Committee staff firmly objected and made clear that ODNI should refrain from sharing any Committee transcripts with the White House. In a March 26 letter to you, I reiterated that "[u]nder no circumstances shall ODNI, or any other element of the Intelligence Community (IC), share any HPSCI transcripts with the White House, President Trump, or any persons associated with the White House or the President."¹ That ODNI has even considered disclosure to the White House of congressional transcripts, which remain Committee property and relate to an investigation that probed the actions of Donald J. Trump himself—before and after he was elected president—and his associates, is disturbing and raises troubling questions about improper White House influence and intrusion into what should be a narrow, apolitical review for classification only.

In a letter dated April 30, 2019, your office persisted, nonetheless, in claiming that some transcripts may implicate "White House equities" and thus must undergo further reviews (i) by the Department of Justice's (DOJ) Office of Legal Counsel, for information potentially subject to a claim of executive privilege; and (ii) by staff of the White House's National Security

¹ Letter from Chairman Adam B. Schiff to The Honorable Daniel Coats (March 26, 2019).

Council, for any “White House-originated classification information.”² Your office went so far as to warn, in a manner that only heightened the Committee’s concern of White House interference, that absent such review, “several of the transcripts may be returned to HPSCI in their original, classified form without the accurate classification markings because the normal review process could not be completed.”

Then, in a letter dated May 29, 2019, your office advised that 42 of the 53 transcripts would be returned to the Committee with “consolidated initial redactions,” but that “the remaining 11 transcripts, which contain White House/NSC equities, will be returned to the HPSCI in classified form” absent further guidance.³ Your office further stated that the “Intelligence Community (IC) reserves the right to identify additional redactions in the future on all transcripts since the consolidation review is not yet complete.”⁴

After an exceedingly lengthy classification review that has lasted nearly seven months, the Committee can only conclude that ODNI is now holding the Committee’s transcripts hostage on behalf of the White House. The Committee emphatically rejects ODNI’s position, which threatens to undermine core separation of powers principles, and will only further delay the long-overdue public disclosure of the transcripts. ODNI’s insistence that 11 transcripts belonging to the Committee must be reviewed by DOJ’s Office of Legal Counsel for executive privilege and by the National Security Council for “White House-originated classification information”—before *any* transcript can be released to the public— is profoundly flawed and untenable.

Review for information potentially subject to a claim of executive privilege

As an initial matter, the Committee did not provide transcripts to ODNI for the purpose of conducting a privilege review. On September 28, 2018, during the 115th Congress, the Committee voted to send the 53 transcripts to ODNI for the sole purpose of a *classification* review in preparation for public disclosure. Any review for potential privilege, including executive privilege, falls far outside the scope of the Committee’s request.

Moreover, the White House had ample opportunity to protect the President’s executive or other privileges, either before witnesses testified or during their interviews. Instead, the White House frequently opted not to assert any privilege prior to witnesses testifying or producing documents to the Committee, thus foregoing and waiving any claims of privilege. Indeed, the President’s private lawyers emphasized that very point in seeking to portray the Administration

² Letter from Benjamin T. Fallon, Assistant DNI for Legislative Affairs, to Chairman Adam B. Schiff (April 30, 2019).

³ Letter from Benjamin T. Fallon, Assistant DNI for Legislative Affairs, to Chairman Adam B. Schiff (May 29, 2019).

⁴ I understand, based on this statement and discussions between ODNI and Committee staff, that ODNI is taking the position that the IC must undertake yet another review of all 53 of the transcripts before any public release, because holistic “classification by compilation” determinations could alter classification levels and redactions. However, the application of this theory of classification here is problematic, as it pertains to an arbitrary set of transcripts that the Committee provided to ODNI at a particular date and time and which by definition would not account for the entire universe of information related to the investigation, generated before or after the date of submission. In addition, ODNI’s insistence that 11 transcripts be reviewed for “White House equities” will only further delay the public release of the remainder of the transcripts.

as having cooperated fully with investigations conducted by the Special Counsel and Congressional committees.⁵

In very limited instances, the White House intervened in and attempted to suppress the testimony of select witnesses, even as other similarly situated witnesses testified without constraints. Without formally asserting any privilege and over the objections of Committee Members, the White House Counsel's Office instructed a small number of witnesses to decline to answer the Committee's questions not only about their tenure at the White House, but also about activities during the presidential transition and after the termination of their White House service. By policing the President's interests in real-time for select witnesses, the White House ensured that nothing these witnesses *did* testify to is covered by executive or any other privilege.

Finally, under the present circumstances—where the executive branch chose not to assert privilege and allowed a witness to voluntarily provide testimony to a co-equal branch of government—the Committee will not allow the White House to claw back information in the Congressional record to shield it from public disclosure. It is simply not the role of ODNI to intervene in the Committee's affairs in this manner, nor could the Committee's narrow request be reasonably interpreted to include a privilege review.

National Security Council review for "White House-originated classified information"

ODNI's proposal that the National Security Council review a subset of the 53 transcripts for "White House-originated classification information" is similarly problematic. White House-originated classification information should apply, if at all, only in the most limited circumstances, and the likelihood that any witness would have testified before the Committee about such matters is exceedingly low. Specific IC elements, moreover, should be in a position to determine classification without White House involvement.⁶ The Committee therefore requests that ODNI return the 11 transcripts to the Committee with proposed redactions due to classification concerns and identify those portions, by page and line number, that may implicate

⁵ In a letter to the Special Counsel, the President's personal lawyers argued that an interview by their client with the Special Counsel's Office would be both unnecessary and inconsistent with applicable law—because, in their view, relevant information about any possible misconduct by the President already could be found in the voluminous White House and other executive branch documents, and in the extensive testimony of White House and other witnesses, which the White House had made available to prosecutors *and to Congress*. In doing so, the President deliberately had declined to withhold any information on executive or other privilege grounds.

[T]he Congressional Committees have received the full cooperation and testimony of both present and former White House staff members, including White House Counsel, as well as the President's most senior advisers and his most senior Campaign employees. *The majority of that information could have been rightfully withheld on multiple privilege grounds, including but not limited to the presidential communications privilege.*

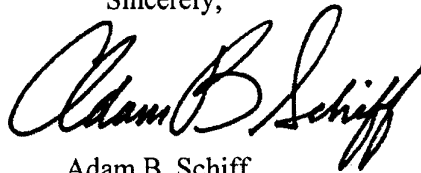
Letter from John Dowd to Robert S. Mueller III, Special Counsel, re: Request for Testimony on Alleged Obstruction of Justice (January 29, 2018) (emphasis supplied).

⁶ Though certain classified programs are initiated by the President, such programs, and the information relevant to them, are managed by the heads of elements of the Intelligence Community, including the Director of the Central Intelligence Agency—to whom the President has delegated his original classifying authority. The Committee believes that, upon reviewing the transcripts, such officials or appropriate subordinates can identify any areas needing redaction, in the unlikely event that any "White House-originated classified" information was discussed during an interview.

such White House-originated classification equities. With this information in hand, the Committee can then assess the information in question and take appropriate action, in coordination with ODNI.

The Committee appreciates ODNI's substantial efforts to complete the classification review and requests that by **June 10, 2019**, ODNI return the 11 remaining transcripts with any suggested redactions necessary to protect classified information, including for those portions that may contain "White House-originated classification information." If your office is unwilling to do so, it may be necessary for you to testify before the Committee regarding ODNI's handling of the classification review, including to determine, among other things, the full nature and extent of the White House's involvement and any direction to ODNI and other IC elements.

Sincerely,

A handwritten signature in black ink, reading "Adam B. Schiff". The signature is fluid and cursive, with the first name "Adam" and last name "Schiff" clearly legible.

Adam B. Schiff
Chairman

CC: Ranking Member Devin Nunes

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DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

The Honorable Adam B. Schiff
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, DC 20515

June 7, 2019

Dear Chairman Schiff:

I was disappointed to receive your June 4, 2019 letter concerning the Intelligence Community's (IC's) review for public release of transcripts related to the House Permanent Select Committee on Intelligence's (HPSCI's) investigation into the 2016 elections. At the outset, it is important to highlight the IC has been fully transparent with the Committee on our review process from the start and certainly well before March 2019. Shortly after receipt of the transcripts, the Office of the Director of National Intelligence (ODNI) sent a letter on November 28, 2018 to the Committee, addressed to both you and then-Chairman Nunes, describing the review process. That letter made clear the IC, through the ODNI, would review the transcripts for classified information and sensitive non-public information that should not be made publicly available. That letter also highlighted the agencies that would most likely have sensitive and classified equities (CIA, NSA, DOJ, FBI, Special Counsel's Office, ODNI), and specifically noted the National Security Council could be involved in the review as well. We did not receive any objections to this process from the Committee in response to that letter.

This review process started in the last Congress, and the Committee's leadership has since changed. It is certainly within the Committee's prerogative to provide new direction to the IC. However, it is critical to stress the process used by the IC, for reviewing the HPSCI's transcripts, is the same process used in every other classification review undertaken by the IC and it is strictly non-partisan. We have been consistently transparent about our process, as we have been about our goal to protect classified information and sensitive non-public information from release.

The IC's collective investment in this effort—including reassigning individuals from high-priority mission areas and devoting personnel full-time to review—has been immense. These reviews are complex and require specialized skills to properly adjudicate multiple agencies' equities and safeguard intelligence sources and methods. Adding to this complexity, many of the transcripts were egregiously mismarked when received by the ODNI. For example, ten transcripts, marked as unclassified by the Committee, contained classified information and six contained sensitive compartmented information. Moreover, none of the classified transcripts were properly marked at the appropriate level and seven contained sub-compartmented human and signals intelligence information, requiring security measures to prevent unauthorized disclosures.

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More concerning still, the review revealed several instances where the Committee either introduced classified information or referenced compartmented information in the presence of people who were likely not read into those compartments. Disclosure of classified information, to individuals not cleared to receive it, erodes the IC's confidence that our most sensitive data is being adequately safeguarded.

Our proposals in prior letters are good faith attempts to reach common ground on a process that would protect classified and sensitive non-public information, while honoring the Committee's desire to inform the public of its investigative findings. I am alarmed that the Committee's preferred course of action prevents the IC from properly protecting this information.

Your letter requests the ODNI return the remaining eleven transcripts and identify, by page and line number, information that may implicate White House-originated classified information. This request misunderstands the classification review process. When the ODNI receives a request for classification review, it conducts an initial review of the material to determine which agencies may have equities and then sends the material to those agencies for review. Only those agencies are in a position to correctly identify their information and propose redactions for their specific sensitive and classified equities. Any attempt by the ODNI to perform this task, on behalf of originating agencies or offices, could result in both erroneous over- and under-inclusive redactions. To that end, your proposal would not sufficiently safeguard classified national security information and would be contrary to our long-standing classification review process.

Given the importance of this review to the Committee and the IC, and the multiple equities at stake, I request to meet with you as soon as possible to find a mutually acceptable path forward that both protects sensitive and classified national security information and enables the Committee to perform its oversight role. As part of our meeting, I would like to discuss how the Committee plans to address any unauthorized disclosures and measures it intends to undertake to ensure information is protected going forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel R. Coats". The signature is fluid and cursive, with the first name "Daniel" being the most prominent part.

Daniel R. Coats

Cc:
Ranking Member Devin Nunes

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ADAM B. SCHIFF, CALIFORNIA
CHAIRMAN

JUDITH BERGREEN, STAFF DIRECTOR
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RANKING MEMBER

ALLEN SOUZA, MINORITY STAFF DIRECTOR

**Permanent Select Committee
on Intelligence
U.S. House of Representatives**

June 14, 2019

Jason Klitenic, Esq.
General Counsel
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Mr. Klitenic:

I write to follow up on Director of National Intelligence Daniel Coats and Principal Deputy Director of National Intelligence Sue Gordon's June 11, 2019 meeting with Chairman Schiff regarding the Intelligence Community's classification review of House Permanent Select Committee on Intelligence (Committee) interview transcripts. The Committee greatly appreciates Director Coats and Principal Deputy Director Gordon's attention to the classification review and desire to expeditiously conclude the effort, which has lasted nearly seven months.

The Committee's concerns, as expressed at the meeting and in prior written correspondence, relate to the Office of the Director of National Intelligence's (ODNI) determination that 11 transcripts may include information that implicate purported "White House equities." In prior correspondence, ODNI insisted that these 11 transcripts be reviewed by (1) the Department of Justice's (DOJ) Office of Legal Counsel, for information potentially subject to a claim of executive privilege by President Donald J. Trump; and (2) staff of the White House's National Security Council (NSC), for any "White House-originated classification information." For reasons articulated in the Chairman's June 4 letter to DNI Coats, any review for executive privilege is entirely inappropriate, and the Committee strongly opposes any attempts by the White House to intrude or interfere in ODNI's classification review.

As explained in the Chairman's prior correspondence with the Director, the Committee has an obligation to preserve the integrity of its constitutionally-mandated oversight and investigations. The Committee is likewise committed to protecting information that should be considered or remain classified for legitimate reasons. The Committee therefore proposes the following narrowly-tailored and closely-monitored classification review process that preserves the Committee's interests, while providing ODNI an extraordinary accommodation to expeditiously conclude its classification review:

1. ODNI immediately sends to the Committee the specific excerpts of the six transcripts it has determined may include "White House-originated classification information," along with a copy of the NSC staff's classification guide, as well as return to the Committee the

five other transcripts, which ODNI had originally asserted may contain executive privilege information;¹

2. ODNI identifies for the Committee the specific career NSC staff member who will conduct the classification review on behalf of the NSC, including their career experience and expertise in undertaking classification reviews;
3. The designated NSC staff member enters into a nondisclosure agreement — the terms of which are mutually agreed by ODNI and HPSCI, and copies of which ODNI and the Committee retain — in which he/she agrees to review the excerpts solely for this narrow classification purpose and commits not to disclose any information contained in or about the Committee transcripts, to include disclosure to any other persons in the Executive Office of the President, including, but not limited to, the President, White House officials, White House Counsel's Office personnel, and other NSC staff;
4. The designated NSC staff member is authorized to review, in a location identified by ODNI, only those select excerpts of the six transcripts with possible "White House-originated classification information"; and
5. Committee staff are present alongside the designated NSC staff member as he/she undertakes the review to ensure real-time, concurrent oversight of the review and to clarify any classification suggestions the designated NSC staff member may identify pursuant to the NSC classification guide.

Following the NSC employee's review, ODNI will expeditiously conduct a final holistic "classification by compilation" review of all 53 transcripts, and provide proposed consolidated redactions to the Committee.² Soon thereafter, Committee staff and the Intelligence Committee (IC) equity holders will meet to resolve any disagreements about the IC's proposed redactions. Once the adjudication process is complete, ODNI will affirm in writing that it has completed its classification review, and the Committee will make the transcripts publicly available.

¹ At the June 11 meeting, ODNI clarified that six of the eleven transcripts may contain "White House-originated classification information": Loretta Lynch, Mary McCord, Samantha Power, Benjamin Rhodes, Susan Rice, and Sally Yates. ODNI also stated that it had completed a classification review of the five remaining transcripts which ODNI had originally asserted may contain executive privilege information (Stephen Bannon (Jan. 2018), Dan Coats, Jared Kushner, Corey Lewandowski (Mar. 2018), and Keith Schiller). ODNI should immediately return these five transcripts with "consolidated initial redactions" to the Committee.

² Although we continue to believe that application of the "classification by compilation" theory to the Committee's transcripts is problematic, this issue does not need to be resolved so long as the review does not further delay public release of the transcripts.

Please confirm ODNI's concurrence with this proposal. We are also available to speak at your earliest convenience to answer any questions you or your office may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maher Bitar', written in a cursive style.

Maher Bitar
General Counsel

CC: Ben Fallon, Assistant DNI for Legislative Affairs

THE WHITE HOUSE
WASHINGTON

September 9, 2019

The Honorable Adam B. Schiff
Chairman
Permanent Select Committee on Intelligence
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Schiff:

I write in response to your August 8, 2019 letter to then-Director of National Intelligence (“DNI”) Daniel Coats regarding your request that the Office of the DNI (“ODNI”) complete its review of 53 witness interview transcripts before completing the standard procedure of consulting with the Executive Branch entities with equities in the confidential information.

The Executive Branch has fully completed review of 43 of the 53 transcripts. The only reason why the Executive Branch has not completed its review of the remaining transcripts is that the Committee has purported to direct ODNI not to share those transcripts with the staff from the Executive Office of the President (“EOP”), which through the National Security Council (“NSC”) originated some of the classified information and must review the transcripts prior to any public release. On July 12, 2019, we met with you in good faith to discuss our positions regarding the 10 transcripts, and we still believe that it is possible to reach a mutually satisfactory resolution. We are very concerned, however, about the Committee’s threat to release potentially classified material without appropriate Executive Branch review. *See* Letter from Adam B. Schiff, Chairman, House Permanent Select Committee on Intelligence (“Committee”), to Daniel Coats, Director of National Intelligence, ODNI 1, 4 (Aug. 8, 2019) (stating that the Committee may “proceed with the public release of some or all of the transcripts” without a complete Executive Branch review). Such a measure could risk exceptionally grave damage to the national security and would be particularly unjustified given the alternatives that we have offered to the Committee to permit an appropriate and responsible release of the transcripts.

At the July 12 meeting, we provided several suggestions concerning the Executive Branch’s review of the transcripts, and we asked the Committee which suggestions it believed would be acceptable. While we maintained that the Committee could accept or decline our suggestions, an executive privilege review is ultimately within the sole discretion of the Executive Branch. Your August 8 letter, however, incorrectly suggests that Pat Cipollone “acknowledge[d] that the Committee is the ultimate arbiter of whether and to what extent a review for executive privilege should be conducted of the Committee’s transcripts.” *Id.* at 3. In fact, the contrary point was made during our July 12 meeting. While we disagree with other points in your letter, we do not believe it would be productive to address each of them. Instead, we reiterate our suggestions of potential accommodations below and remain open to receiving your input as well as the Committee’s own suggestions in an effort to find a mutually satisfactory path forward.

Chairman Adam B. Schiff

Page 2

ODNI Should Continue to Follow the Executive Branch's Standard Procedure

The Executive Branch employs a standard procedure when reviewing materials for public release, and the ODNI must continue to follow that procedure. Before an Executive Branch agency may prepare a document for public release, it must account for all Executive Branch privilege considerations. This includes a review for privileged information belonging to the Executive Branch, including information protected by executive privilege because it is classified national security information under the standard of Executive Order 13526, "Classified National Security Information (Dec. 29, 2009), as well as information protected by executive privilege for other confidentiality reasons. To properly account for all privileged information, the standard process for an Executive Branch agency is to consult with any other Executive Branch entity whose information may be at issue. In this case, it is necessary for ODNI to consult with the EOP, which contains multiple components, including the NSC.

ODNI's need to consult with the EOP is based on longstanding Executive Branch procedures. ODNI has indicated that it needs to consult with the EOP regarding 10 of the 53 transcripts because those transcripts may contain classified or otherwise privileged information originating from the EOP. Just as ODNI consulted with numerous other Executive Branch entities, including the Central Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation, the ODNI must also consult with the EOP. Contrary to your August 8 letter, there is nothing improper or "unwarranted" about the ODNI applying this standard procedure, which it has routinely used across administrations of both parties, and consulting with the EOP in accordance with that procedure. *Id.* at 1. Rather, the Committee is insisting that the Executive Branch depart from this longstanding practice. *See id.* at 2-3.

The Committee's suggestion that this standard consultation for executive privilege is an "intrusion" into an "apolitical" process is baseless. *Id.* at 1. The EOP represents not only the interests of the current Presidential administration but also the interests of prior and future administrations, regardless of political party. This is particularly true where, as here, 6 of the 10 transcripts at issue involve testimony by high-ranking political appointees of the Obama Administration, several of whom worked in the EOP. *See id.* at n. 1. ODNI's application of its standard procedure to these transcripts—which would include a review by the EOP in consultation with all relevant prior administrations, regardless of party—is precisely the type of "apolitical" review you purport to seek. Deviating from this routine procedure for this Congress and this Committee would be more likely to create the impression of an "intrusion" into what has long been the standard process.

Accommodation for Review of Information Protected by Executive Privilege Due to Classification

Although we see no reason to deviate from the Executive Branch's standard procedure for reviewing privileged national security information subject to classification and believe the Committee's proposal of June 14, 2019 is a vast departure from this longstanding precedent followed by administrations of both parties, we suggest the following accommodation in a good-faith effort to reach a mutually agreeable resolution. With respect to the transcripts identified as

Chairman Adam B. Schiff

Page 3

potentially containing classified privileged information, we are prepared to identify a career employee on the NSC staff who will conduct the classification review. We are further prepared to discuss with the Committee any concerns it might have regarding the career staff member's qualifications prior to the review. Consistent with precedent and established procedure, the career staff member should have access to all parts of any of the transcripts that he or she identifies as necessary to complete the classification review, and we agree to defer that decision to the career staff member. We further agree to discuss any concerns that the Committee might have regarding the classification decisions made by the career staff member.

Accommodation for Review of Remaining Information Protected by Executive Privilege

With respect to the transcripts that may contain information protected by executive privilege for reasons other than national security classification, we suggest having a career official from the Department of Justice's Office of Legal Counsel review the transcripts and make the necessary determinations regarding whether information in the transcripts is protected by executive privilege.

The Committee's refusal of this reasonable accommodation appears to be based on the claim that any executive privilege claim with respect to public disclosure was waived when the witnesses testified before the Committee. *See id.* at 3. We disagree with the Committee's position. The Executive Branch can confidentially share information with the Committee without waiving a claim of privilege against public disclosure. However, we need not resolve this disagreement now to move forward. As we discussed during our July 12 meeting, the disagreement may become narrowed or moot if the Department of Justice career official determines that some or all of the transcripts do not contain any privileged information. If so, the career official's review would, in fact, help expedite the Committee's public release of the transcripts. Sharing the transcripts with the career official, when the Committee intends to publicly release the transcripts in any event, would not prejudice the Committee by disclosing any sensitive information that the Committee intends to withhold.

If the Committee agrees with our suggestions, we believe that the remaining review, including the classification review, can be completed within seven business days. We have endeavored to resolve this matter expeditiously and, as you are aware, could have completed this process long ago. Therefore, any suggestion that the Executive Branch is responsible for the delay is unfounded. *See id.* at 1. To the extent that there are outstanding issues with any part of the Executive Branch's review of the transcripts, we commit to continuing the dialogue with the Committee so that we can find a mutually satisfactory resolution.

Chairman Adam B. Schiff

Page 4

We believe that we can reach a fair and sufficient accommodation. Pat Cipollone and I would like to speak with you at your earliest convenience to discuss a path forward. Please let us know your availability.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael M. Purpura".

Michael M. Purpura
Deputy Counsel to the President

cc: The Honorable Devin Nunes, Ranking Member

(b)(3)

(b)(6)

From:
To: DNI WATCH REPORTING; DNI Action; DNI SENSITIVE SOUTH ASIA EI NODIS EWASH (b)(1)
Subject: ***INCOMING eWASH: WH0310: (b)(5)
Date: Friday, May 1, 2020 7:24:25 PM
Attachments: 1495eWashRevised.pdf

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(b)(3)

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Subject: ***INCOMING eWASH: WH0436: Pkg. 1466 [REDACTED]
Date: Monday, June 15, 2020 11:21:33 AM (b)(1)
Attachments: 45201466.pdf (b)(5)

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DHS	SECRETARY		
EPA	ADMINISTRATOR		
USUN	PERMANENT REPRESENTATIVE		

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<u>EX-IM BANK</u>	<u>PRESIDENT</u>	<u> </u>	<u> </u>
<u>USDFC</u>	<u>CHIEF EXECUTIVE OFFICER</u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
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Date: Wednesday, March 18, 2020 5:14:05 PM
Attachments: 0965ewash.pdf

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Subject: ***INCOMING eWASH: WH0298:
Date: Tuesday, April 28, 2020 9:13:42 PM
Attachments: 1465eWash.pdf

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SUBJECT:	(C//NF) Agenda and Discussion Papers for the April 30 DC Meeting on China COVID-19 Response		PAGES:	<u>25</u>

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