

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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April 9, 2019

The Honorable David Bernhardt
Acting Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Acting Secretary Bernhardt:

I am in receipt of a letter addressed to you from Oversight Chairman Elijah E. Cummings and Natural Resources Chairman Raul Grijalva, dated March 28, 2019.¹ I understand the Chairmen are seeking transcribed interviews with Department of the Interior (DOI) officials about the process by which your calendars are preserved and produced under the Freedom of Information Act (FOIA). Although FOIA compliance has traditionally been a bipartisan issue, the Chairmen requested these interviews without consulting with Republican Members of their Committees.

In their letter, the Chairmen cited a single cherry-picked excerpt of an exchange between Chairman Cummings and DOI's Deputy Chief FOIA Officer, Rachel Spector, during the Oversight Committee's hearing to "raise questions about whether you . . . are adequately preserving records of your schedule and daily appointments."² Specifically, the Chairmen allege that Ms. Spector testified that she is "aware of an issue" concerning the deletion of your calendars.³ However, as I recall Ms. Spector's testimony, I understood her statement—"I have some familiarity with the issue"—to refer to public *allegations* that your calendars had been deleted—not the deletion of the calendars.⁴ In fact, Ms. Spector specifically testified that she "do[es] not know" whether your calendars have been deleted,⁵ a fact the Chairmen omitted from their letter.⁶

Unfortunately, Chairman Cummings has a habit of using selective sections of statements to advance his partisan investigations. On February 15, 2019, Chairman Cummings wrongly accused two respected lawyers of making false statements without ever speaking to them and by

¹ Letter from Rep. Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform, to Hon. David Bernhardt, Acting Sec'y, U.S. Dep't of the Interior (Mar. 28, 2019).

² *Id.*

³ *Id.*

⁴ *FOIA: Examining Transparency Under the Trump Administration Before the H. Comm. on Oversight & Reform*, 116th Cong. 72 (2019).

⁵ *Id.*

⁶ Letter, *supra* note 1.

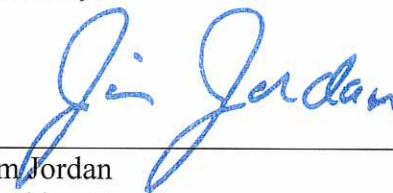
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relying only on passages of incomplete, one-sided handwritten notes of a conference call. The Chairman specifically excluded exculpatory passages from notes prepared by another attendee of the same teleconference. On April 1, 2019, Chairman Cummings released excerpts from a highly sensitive closed-door transcribed interview—without ever consulting with Republican Members or having a vote of the Committee—to generate headlines in a separate partisan investigation.⁷

These actions are not indicative of the fair and responsible oversight that Chairman Cummings promised. His request to you also appears to be duplicative in that Chairman Cummings has requested the National Archives and Records Administration (NARA) review recordkeeping practices at DOI.⁸ It is my understanding that NARA will issue a report to our Committee with its findings following its review.⁹ I look forward to the findings of NARA's review.

FOIA compliance is a good-government issue that both Republicans and Democrats support. To achieve effective oversight of the executive branch, the work of the Committee must be fair and inclusive of all the facts. I hope that Chairman Cummings will join me in pursuing responsible and bipartisan FOIA oversight. In the interim, I felt it prudent to inform you directly about this matter. If you have any questions, please contact Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Jim Jordan
Ranking Member

cc: The Honorable Elijah E. Cummings, Chairman

⁷ Memorandum from Democratic Staff to members of the H. Comm. on Oversight & Reform, *Summary of Interview with White House Whistleblower on Security Clearances* (Apr. 1, 2019).

⁸ Letter from Rep. Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform, to Mr. Laurence Brewer, Chief Records Officer for the U.S. Gov't, Nat'l Archives & Records Admin. (Mar. 19, 2019).

⁹ Letter from Mr. Laurence Brewer, Chief Records Officer for the U.S. Gov't, Nat'l Archives & Records Admin., to Rep. Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform (Apr. 1, 2019).