

Congress of the United States
Washington, DC 20515

April 3, 2020

The Honorable Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Wheeler:

We are writing to urge you to immediately revoke and remove from your agency's website a legally deficient memorandum issued by your General Counsel that purports to limit the authority of the Office of Inspector General (OIG) to conduct investigations under federal law. We also ask that you instruct all agency employees to fully cooperate with the OIG's audits and investigations.

On December 12, 2019, we wrote to you to express our profound concern with a report from the OIG to Congress describing efforts by the leadership of the Environmental Protection Agency (EPA) to obstruct the OIG's work.¹

In particular, we raised concerns with a memo issued on November 5, 2019, by Matthew Z. Leopold, the EPA General Counsel, asserting that the Inspector General Act "does not authorize the OIG to take oral interviews." He also claimed, "It is ultimately the Administrator that maintains control of the information sought and decides what constitutes an adequate accommodation."² In an update to his memo three days later, Mr. Leopold wrote that the "Inspector General lacks the statutory authority to *compel* an employee to appear at an interview."³

In response to our December 12, 2019, letter, Mr. Leopold provided a briefing to our staff on January 24, 2020. When confronted with the statutory authorities for the OIG to conduct its work, Mr. Leopold appeared to abandon many of his suspect legal arguments. In addition to

¹ Letter from Chairwoman Eddie Bernice Johnson, Committee on Science, Space and Technology, Chairman Frank Pallone Jr., Committee on Energy and Commerce, and Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Administrator Andrew Wheeler, Environmental Protection Agency (Dec. 12, 2019) (online at <https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/12.12.19%20Joint%20Committee%20Letter%20to%20EPA%20re%20OIG%20Cooperation.pdf>).

² Memorandum from Matthew Z. Leopold, General Counsel, Environmental Protection Agency, to Andrew R. Wheeler, Administrator, Environmental Protection Agency (Nov. 5, 2019) (online at www.epa.gov/sites/production/files/2019-11/documents/epa_general_counsel_opinion_on_oig_7-day_letter.pdf).

³ Memorandum from Matthew Z. Leopold, General Counsel, Environmental Protection Agency, to Andrew R. Wheeler, Administrator, Environmental Protection Agency (Nov. 8, 2019) (online at www.epa.gov/sites/production/files/2019-12/documents/ig_act_legal_opinion_11.08.19-508a.pdf).

claiming that his memorandum was not intended to apply broadly to all EPA employees, he conceded that EPA employees are “on the hook” for complying with OIG interview requests and that the EPA Administrator may not substitute his own judgment to determine whether the OIG needs information.

Mr. Leopold stated during the briefing that the memorandum was “my sole legal opinion” and that the “words are mine.” He refused to answer questions about how his legal opinion was drafted and whether anyone at the Office of Legal Counsel, Department of Justice, or White House Counsel were involved in its preparation. The involvement of other federal agencies in such an inaccurate and misleading legal opinion could indicate a broader misunderstanding and lack of commitment to compliance with the Inspector General Act.

Despite the legal deficiencies in Mr. Leopold’s memo and his back-tracking during the briefing, it remains posted on EPA’s website and available to all EPA employees. It is imperative that you set the record straight and provide accurate guidance to EPA employees. For these reasons, we request that you formally revoke the November 5 memorandum, remove it from your website, and reiterate to all EPA employees the requirement to cooperate with the OIG’s request for interviews.

In addition, we ask that you produce the following documents and information by April 17, 2020:

1. All documents and communications regarding the development of the November 5, 2019, memorandum, including any communications with individuals outside EPA; and
2. All documents and communications regarding the development of the November 8, 2020, memorandum, including any communications with individuals outside EPA.

An attachment to this letter provides additional instructions for responding to the Committee’s request. If you have any questions regarding this request, please contact House Oversight and Reform Committee staff at (202) 512-5051.

Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Eddie Bernice Johnson
Chairwoman
Committee on Science, Space and
Technology

A handwritten signature in blue ink that reads "Frank Pallone Jr." with a horizontal line underneath.

Frank Pallone Jr.
Chairman
Committee on Energy and Commerce

Enclosure

cc: The Honorable Jim Jordan, Ranking Member
Committee on Oversight and Reform

The Honorable Frank Lucas, Ranking Member
Committee on Science, Space and Technology

The Honorable Greg Walden, Ranking Member
Committee on Energy and Commerce

Responding to Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Oversight and Reform, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a

part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.