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## Don't Brief the Trump Team: How the GSA and FBI Secretly Shared Trump Transition Team Records

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# **Don't Brief the Trump Team:**

**How the GSA and the FBI Secretly  
Shared Trump Transition Team Records**

U.S. Senate Committee on Homeland Security  
and Governmental Affairs

U.S. Senate Committee on Finance  
Majority Staff Report

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**Majority Staff Report  
Committee on Homeland Security and Governmental Affairs  
Committee on Finance  
United States Senate**

## **EXECUTIVE SUMMARY**

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The United States is renowned for its peaceful transitions of power. Since at least the early 1960s, presidential candidates have received government assistance in forming and administering their transition teams. Government assistance to transition teams is crucial to “promot[ing] the orderly transfer of the executive power in connection with the expiration of the term of office of a President and the inauguration of a new President.”<sup>1</sup> In providing this support, Congress soberly assessed that “[t]he national interest requires that such transitions in the office of the President be accomplished so as to assure continuity in the faithful execution of the laws and in the conduct of any affairs of the Federal Government, both domestic and foreign,” and that “[a]ny disruption occasioned by the transfer of executive power could produce results detrimental to the safety and well-being of the United States and its people.”<sup>2</sup> Every major presidential candidate over the past five decades—both winners and losers in the general election—has made use of government assistance to support his or her transition team under the assumption that government employees were cooperating with the team in good faith.

That presumption of good faith was called into question in 2016. This majority staff report tells an important, yet overlooked, story about how the Federal Bureau of Investigation (FBI) and Special Counsel Robert Mueller’s Office (Special Counsel) secretly sought and received access to the private records of Donald J. Trump’s presidential transition team, Trump for America, Inc. They did so despite the terms of a memorandum of understanding between the Trump transition team and the General Services Administration (GSA)—the executive agency responsible for providing services to both candidates’ transition teams—that those records were the transition team’s private property that would not be retained at the conclusion of the transition.<sup>3</sup> At the time of the events highlighted by this report, Denise Turner Roth, an Obama appointee, was Administrator of GSA until Timothy Horne’s appointment as acting Administrator on January 20, 2017. Mr. Horne served until Emily Murphy was sworn in as GSA Administrator on December 12, 2017.<sup>4</sup>

Even after the Trump transition team learned about the FBI’s secret preservation request, the GSA nevertheless refused to provide the Trump transition team copies of its own records.<sup>5</sup> Instead, after denying the Trump transition team its basic legal rights to control its own information, including the opportunity to protect privileged or confidential information, the GSA turned those same records over to the Special Counsel without requiring any legal process, such as a subpoena or warrant.<sup>6</sup>

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<sup>1</sup> Presidential Transition Act of 1963, Pub. L. No. 88-277, § 2, 78 Stat. 153, 153 (1964).

<sup>2</sup> *Id.* at 153–54.

<sup>3</sup> *See infra* Section I.

<sup>4</sup> Timothy O. Horne, Acting Administrator, U.S. Gen. Serv. Admin., ACT-IAC Advancing Government, <https://www.actiac.org/timothy-o-horne>; Emily W. Murphy, Administrator, U.S. Gen. Serv. Admin., <https://www.gsa.gov/about-us/organization/leadership-directory/administrator>.

<sup>5</sup> *See infra* Section IV.

<sup>6</sup> *See infra* Section V.

On December 19, 2017, the Committee on Homeland Security and Governmental Affairs received a letter from Kory Langhofer, Trump for America’s General Counsel, explaining that the GSA provided Trump for America’s records to the Special Counsel without giving prior notice, obtaining its consent, or providing it an opportunity to review the records for privilege or relevance.<sup>7</sup> The Committees’ review of the information provided by the GSA and the FBI confirmed this conduct and further revealed several other problems with the GSA’s stewardship of the Trump transition records.<sup>8</sup> The Committees’ findings include:

- On February 15, 2017, after watching the news about Lt. Gen. Michael Flynn’s resignation as national security advisor, GSA officials proactively contacted the FBI (through the GSA’s Office of the Inspector General) to ask if they should preserve the Trump transition team records;<sup>9</sup>
  - In response, the FBI asked the GSA to preserve all Trump transition team records associated with Lt. Gen. Flynn;
  - The GSA then decided to preserve *all* remaining transition team records even though the GSA assured Trump for America in their memorandum of understanding that transition team records would not be retained;
  - The GSA decided not to tell the White House about this decision;<sup>10</sup> and
  - The GSA decided not to tell counsel for Trump for America about this decision;
- The GSA preserved all remaining Trump transition team records for months even though the GSA did not receive a formal preservation request until June 12, 2017;<sup>11</sup>
- After Trump for America learned about the preservation, the GSA refused to provide it with copies of all remaining transition team records; and
- In August 2017, the Special Counsel sought and received the production of all remaining transition team records for 13 different Trump for America officials, including then-CIA Director Mike Pompeo, then-national security advisor to the vice president Keith Kellogg, and Jared Kushner;<sup>12</sup>

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<sup>7</sup> Letter to Chairman Ron Johnson and Ranking Member Claire McCaskill, S. Comm. on Homeland Sec. & Governmental Affairs, and Chairman Trey Gowdy and Ranking Member Elijah Cummings, H. Comm. on Oversight and Gov’t Reform, from Kory Langhofer, Counsel to Trump for America, Inc. (Dec. 16, 2017).

<sup>8</sup> Over the course of this investigation, the GSA produced thousands of lightly redacted pages that were responsive to requests made by both Committees. In contrast, the FBI produced heavily redacted documents, including some of the same documents that the GSA produced with no or minimal redactions. For this reason, the Committees had little insight into the internal communications at the FBI about this matter, especially as compared to GSA. Accordingly, this majority staff report relies almost exclusively on the GSA records related to this matter.

<sup>9</sup> See *infra* Section II.

<sup>10</sup> See *infra* Section III.

<sup>11</sup> See *infra* Section II.

<sup>12</sup> See *infra* Section V.

- The Special Counsel requested these records through two letterhead memoranda from FBI Assistant General Counsel Kevin Clinesmith,<sup>13</sup> not with a subpoena or search warrant; and
- The GSA produced these records to the Special Counsel without affording Trump for America an opportunity to review the records for relevancy or privilege.

More specifically, as reflected in other work by the Committees and other related investigations, this is yet another example of the disparate treatment the Trump campaign and administration received from the federal bureaucracy. For example, the U.S. Department of Justice Inspector General’s report about the FBI’s investigation of the Trump campaign described the FBI’s use of a transition team briefing as an opportunity to investigate the campaign itself.<sup>14</sup> Similarly, rather than provide the Trump campaign a defensive briefing about its counterintelligence concerns, as the FBI did for the Clinton campaign, the FBI quickly dismissed and never reconsidered that possibility.<sup>15</sup> Instead, the FBI opened a full counterintelligence investigation into the Trump campaign and deployed, among other investigative techniques, confidential human sources, and Foreign Intelligence Surveillance Act warrants targeting Trump campaign officials.<sup>16</sup>

Perhaps the most fitting contrast to the GSA’s decision to preserve Trump transition team records concerns the Special Counsel’s Office itself. Recent public disclosures revealed that 15 phones belonging to attorneys in the Special Counsel’s Office were conveniently wiped of all data for various reasons.<sup>17</sup> The destruction of the data on those devices not only risked violating the rights of future criminal defendants but also impeded oversight efforts by the Inspector General and Congress.<sup>18</sup> In other words, around the same time that the Special Counsel’s Office encouraged the GSA and others to bend the rules to provide it with records that should not have

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<sup>13</sup> On August 19, 2020, Clinesmith pleaded guilty to a one-count criminal information alleging that he made and used a false writing and document during his work on the FBI’s investigation of the Trump campaign. *See* Matt Zapotosky & Ann Marimow, *Ex-FBI lawyer admits to falsifying document in probe of Trump’s campaign*, Wash. Post (Aug. 19, 2020), [https://www.washingtonpost.com/national-security/kevin-clinesmith-fbi-pleads-guilty/2020/08/19/6c0dec54-e0a0-11ea-8dd2-d07812bf00f7\\_story.html](https://www.washingtonpost.com/national-security/kevin-clinesmith-fbi-pleads-guilty/2020/08/19/6c0dec54-e0a0-11ea-8dd2-d07812bf00f7_story.html); Criminal Information, *U.S. v. Clinesmith*, 1:20-cr-165 (Aug. 14, 2020), <https://int.nyt.com/data/documenttools/kevin-clinesmith-court-documents-filed-by-john-durham/73f2632106afc317/full.pdf>; *see also* U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), *Review of Four FISA Applications and Other Aspects of the FBI’s Crossfire Hurricane Investigation* 254-56 (Dec. 2019), <https://www.justice.gov/storage/120919-examination.pdf>.

<sup>14</sup> *See* DOJ OIG FISA Report at 340–44.

<sup>15</sup> *See id.* at 55–56, 75–77; Letter from Stephen Boyd, Assistant Attorney Gen., to Chairman Lindsey Graham, et al. (Aug. 21, 2020), <https://www.judiciary.senate.gov/imo/media/doc/2020-08-21%20Submission%20SJC%20SSCI.pdf>.

<sup>16</sup> *See* DOJ OIG FISA Report at 305–344.

<sup>17</sup> *See generally* DOJ documents produced under the Freedom of Information Act (FOIA) (Sept. 4, 2020), [https://www.justice.gov/oip/foia-library/general\\_topics/communications\\_strzok\\_and\\_page\\_09\\_04\\_20/download](https://www.justice.gov/oip/foia-library/general_topics/communications_strzok_and_page_09_04_20/download).

<sup>18</sup> Letter from Chairman Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs, to Michael Horowitz, U.S. DOJ Inspector Gen. (Sept. 11, 2020), <https://www.politico.com/f/?id=00000174-7f74-d809-a9f5-ff766ff60000>.

existed—and to do so secretly—the investigating attorneys were also deleting information from their phones that may have been relevant to any criminal case they later charged.

At bottom, the GSA and the FBI undermined the transition process by preserving Trump transition team records contrary to the terms of the memorandum of understanding, hiding that fact from the Trump transition team, and refusing to provide the team with copies of its own records. These actions have called into question the GSA’s role as a neutral service provider, and those doubts have consequences. Future presidential transition teams must have confidence that their use of government resources and facilities for internal communications and deliberations—including key decisions such as nominations, staffing, and significant policy changes—will not expose them to exploitation by third parties, including political opponents. Government officials who break those promises compromise faith in the system and risk the effectiveness of the transition process.

The Committee on Homeland Security and Governmental Affairs has already taken one step to address these issues. Chairman Johnson introduced the Presidential Transition Enhancement Act to codify the memorandum of understanding between the GSA and presidential transition teams, to require that either party provide advance notice of any intention to deviate from the memorandum, and to ensure that presidential transition teams designate a representative for receiving any third party inquiries or legal process concerning transition records held by the GSA. On March 3, 2020, President Trump signed the Presidential Transition Enhancement Act into law.<sup>19</sup> Although legislative fixes are important, they are not always sufficient. The purpose of this staff report is transparency, to provide the public an understanding of how exactly the transition process was corrupted in 2016 so that it does not happen again.

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<sup>19</sup> Presidential Transition Enhancement Act of 2019, Pub. L. No. 116-121, 134 Stat. 138 (2020); *see also* residential Transition Enhancement Act of 2018, 115<sup>th</sup> Cong. (2019).

## **I. BACKGROUND: LEGAL OWNERSHIP OF PRESIDENTIAL TRANSITION TEAM RECORDS**

In 2016, then-candidate Donald J. Trump established Trump for America, Inc. as his transition organization.<sup>20</sup> Presidential transition teams are private entities responsible for certain pre- and post-election activities. Under federal law, transition teams may privately fund their transition operations, operating as a 501(c)(4) organization, while also receiving authorized appropriations.<sup>21</sup> For these reasons, transition teams are not subject to the Federal Records Act<sup>22</sup> or the Presidential Records Act,<sup>23</sup> and therefore the records they generate are the private property of the organization.<sup>24</sup> Consequently, as a matter of practice, transition teams typically destroy their records after presidential elections or inaugurations.

This practice is typically reflected in a memorandum of understanding between the transition team and the General Services Administration (GSA), the federal agency charged with providing office space and communications services to presidential transition teams.<sup>25</sup> For example, in 2008, the GSA agreed with the transition team for then-Senator Barack Obama to repurpose GSA-supplied software and equipment for other GSA users or clients.<sup>26</sup> The memorandum of understanding between the GSA and the transition team for Mitt Romney was more explicit, stating that “all such property will be repurposed, after removal of any sensitive data and/or full hard drive cleanup, to GSA users or clients after the election if there is no transition or the inauguration if there is a transition.”<sup>27</sup> In 2016, the memorandum between the GSA and Trump for America expressly addressed what the GSA would do with the electronic devices it provided to Trump for America:

GSA will provide an architected infrastructure to meet telecommunications and IT services and equipment for use by the Office of the President-elect, with installation included as part of the “turn-key” office space. GSA will supply software and equipment, and the equipment will be returned by February 19,

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<sup>20</sup> Letter from Christopher J. Christie, Transition Chairman, Trump for America, Inc., to Timothy Horne, Fed. Transition Coordinator, Gen. Serv. Admin. (Aug. 1, 2016) [GSA 004583].

<sup>21</sup> Pre-Election Presidential Transition Act of 2010, Pub. L. No. 111-283, § 2, 124 Stat. 3045, 3046-47 (2010); *see also* 3 U.S.C. § 102 note.

<sup>22</sup> 44 U.S.C. § 3101.

<sup>23</sup> 44 U.S.C. § 2201.

<sup>24</sup> Mem. from Laurence Brewer, Chief Records Officer, Nat’l Archives & Records Admin., to federal agency records officers on guidance relating to president-elect transition team materials (Nov. 16, 2016), *available at* <https://www.archives.gov/records-mgmt/memos/ac09-2017> (“The materials that [presidential-elect transition team] members create or receive are not Federal or Presidential records, but are considered private materials.”).

<sup>25</sup> 3 U.S.C. § 102 note.

<sup>26</sup> Mem. of Understanding between the Obama-Biden Transition Project and Gen. Serv. Admin. (Nov. 5, 2008).

<sup>27</sup> Mem. of Understanding between Gen. Serv. Admin. and R2P Inc. (Sept. 17, 2012).

2017. This equipment will be inventoried and all data on these devices will be deleted.<sup>28</sup>

In addition to this express promise about how transition team records would be handled, GSA officials affirmed repeatedly—internally,<sup>29</sup> to Trump for America,<sup>30</sup> to the FBI,<sup>31</sup> and to the Special Counsel<sup>32</sup>—that Trump for America records were private property.

## **II. CONTRARY TO THE MEMORANDUM OF UNDERSTANDING, THE GSA PRESERVED TRUMP TRANSITION TEAM RECORDS.**

Despite a clear understanding that Trump for America owned its records and an express promise about how those records would be handled at the conclusion of the transition, GSA officials—at the urging of the FBI and Office of the Special Counsel—nonetheless decided to preserve and disclose those records to various investigative entities, all while concealing these facts from Trump for America. This decision not only violated the memorandum of understanding and past practice, but it also deprived Trump for America of its legal rights and the opportunity to review its own records for privileged or otherwise confidential information before it was disclosed to third parties.<sup>33</sup>

By January 26, 2017, pursuant to the terms of the memorandum, the GSA was well underway in removing data from information technology equipment and software that Trump for America officials had returned to the GSA.<sup>34</sup> However, beginning on February 15, 2017, that

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<sup>28</sup> Mem. of Understanding between the Gen. Serv. Admin. and Donald J. Trump, at 10 (2016). The parties amended the MOU on January 19, 2017, requiring GSA-supplied IT equipment to be returned by March 31, 2017.

<sup>29</sup> Email from Seth Greenfeld to Lenny Loewentritt (June 1, 2017, 10:53 EDT) [GSA 000812] (“[T]he records are actually [Trump transition] records and not GSA records (although, obviously, we have physical custody).”).

<sup>30</sup> Email from Seth Greenfeld to Brandon Van Grack, Special Assistant U.S. Attorney, U.S. Dep’t of Justice (June 9, 2017, 10:12 EDT) [GSA 003788] (“I personally explained to some different members of the Presidential Transition Team that GSA does not view the records generated in conducting [transition] business as GSA records subject to the Federal Records Act or FOIA and that GSA deletes the records when the Transition is over.”).

<sup>31</sup> Email from Seth Greenfeld to Sally Moyer, Assistant Gen. Counsel, Fed. Bureau of Investigation (June 2, 2017, 08:36 EDT) [GSA 000810] (“GSA does not view these as GSA records for Federal Records Act and FOIA purposes but rather [Trump transition] records which happen to be in GSA’s custody.”).

<sup>32</sup> Email from Seth Greenfeld to Lenny Loewentritt (June 8, 2017, 11:27 EDT) [GSA 000304] (summarizing a phone conversation with assistant special counsel Brandon Van Grack: “I explained GSA’s support in Transition (e.g., office space, equipment, and other administrative support), and that GSA does not view the records in question as GSA records in both a Federal Records Act and FOIA context. Therefore, I see GSA simply as in custody of the documents, but that they are PTT documents”).

<sup>33</sup> Email from Erik Simmons to Claudia Nadig, Brett Armstrong, Deputy Associate Admin. for Resilience and Interagency Programs, Off. of Mission Assurance, Gen. Serv. Admin., Duane Smith, Lenny Loewentritt, Seth Greenfeld, and Steve Grewal (Aug. 24, 2017, 11:11 EDT) [GSA 004391]; *see also* Letter from Kory Langhofer, Counsel, Trump for America, Inc., to Chairman Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs (Dec. 16, 2017).

<sup>34</sup> Email from Erik Simmons to Seth Greenfeld (Jan. 26, 2017, 05:47 EST) (“When we start to de-install equipment, we normally delete all system files. ... I wanted to ensure that there is nothing that we need to retain because once the system is wiped, there is no way to recover any of that data.”) [GSA 004284]; Email from Seth Greenfeld to Erik

changed. As GSA Associate General Counsel Seth Greenfeld summarized in a later email, “given the news cycles, GSA decided it was prudent to inquire about preservation during the machine wiping process, so we reached out to the [GSA] I[n]spector] G[eneral], who contacted the FBI or DOJ and got the ball rolling for GSA’s preservation of records.”<sup>35</sup> In other words, on their own initiative, certain GSA officials asked the GSA’s Office of the Inspector General (OIG) to ask the FBI if Trump transition team records should be preserved because of what they read in the news. According to GSA OIG counsel Ed Martin, the “news cycle” that sparked this concern was the resignation of then-national security advisor Lt. Gen. Michael Flynn.<sup>36</sup>

On February 15, 2017, Mr. Martin emailed Mr. Greenfeld, “[p]er our conversation, the OIG recommends you preserve all transition team records.”<sup>37</sup> Later that day, Mr. Greenfeld wrote to GSA Deputy General Counsel Lenny Loewentritt:

This deviates from what we told the PTT would be GSA’s practice. We told the [transition team] that we do not store information after the Transition and we sanitize machines when they are returned to us. I already instructed the GSA’s Support Team to preserve all the information at the request of DOJ (through our OIG), but do we need something more formal from DOJ or the OIG, or is Mr. Martin’s e-mail enough? I want to make sure any evidence is available but I also want to make sure GSA is not open to some type of complaint. I do not care about “bad press”, but want to make sure we are not violating anything more serious.<sup>38</sup>

On February 15, 2017, because certain GSA officials were concerned by the news about the resignation of Lt. Gen. Flynn, the GSA began preserving *all* Trump for America records based on a phone call between the GSA Inspector General and the FBI. The GSA has not identified, and the Committees have not been able to determine, the GSA official who first suggested that Trump transition team records be preserved and how that suggestion made its way to the GSA’s OIG.

The GSA did not receive “something more formal” from the FBI until March 9, 2017, when FBI General Counsel Jim Baker sent an email requesting preservation.<sup>39</sup> In that email, Baker requested only the preservation of “all stored communications, records, and electronic media associated with General Michael Flynn,” as well as “a cellular telephone, laptop, call logs,

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Simmons (Jan. 26, 2017, 08:31 EST) (stating, “You are referring to the actual content on machines and PTT personnel’s information (e.g., content of the actual e-mail exchanges or the substance of a Word document), right? If so, there is no requirement for GSA to capture and retain that information.”) [GSA 004284].

<sup>35</sup> Email from Seth Greenfeld to Lenny Loewentritt (June 8, 2017, 11:27 EDT) [GSA 000304].

<sup>36</sup> Interview with Ed Martin (Sep. 10, 2020) (notes on file with the Comms.).

<sup>37</sup> Email from Edward Martin, Counsel, Gen. Serv. Admin. Off. of Inspector Gen., to Seth Greenfeld (Feb. 15, 2017, 10:22 EST) [GSA 003396].

<sup>38</sup> Email from Seth Greenfeld to Lenny Loewentritt (Feb. 15, 2017, 16:19 EST) [GSA 003397].

<sup>39</sup> Email from James A. Baker, Gen. Counsel, Fed. Bureau of Investigation, to Lenny Loewentritt (Mar. 9, 2017, 14:16 EST) [GSA 000278].

and email communications used by or associated with General Flynn.”<sup>40</sup> But Baker also made another request of the GSA. Specifically, for the remainder of the Trump transition team records, Baker conveyed that “the FBI requests that the GSA confer with the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI) before disposing of those materials.”<sup>41</sup> Baker did not elaborate on the intelligence committees’ interest in those records, nor did he explain why the FBI was making such a request on behalf of those committees.

By mid- to late-May 2017, the GSA continued to preserve *all* Trump for America records despite not having received a formal preservation request from any investigative body. As far as the Committees can tell, the GSA did not receive a formal preservation request for Trump for America records until June 12, 2017, when it received a preservation request from SSCI.<sup>42</sup> At some point before then, at a date that could not be determined based on the records produced to the Committees, the FBI apparently asked the GSA to expand its preservation beyond Lt. Gen. Flynn and to include all remaining GSA records.<sup>43</sup> However, the FBI did not send the GSA a formal preservation request until June 22, 2017, which, at that time, was a request by the Special Counsel’s Office.

On June 2, 2017, the FBI sent a letter to Mr. Loewentritt stating, “[b]ased on our conversation [yesterday], the FBI is interested in obtaining further information to determine what information you possess which may be related to our investigation.”<sup>44</sup> In the cover email conveying this letter, FBI Supervisory Special Agent Mary Gleason wrote, “Thank you again for your time yesterday. Based on our discussion, we prepared the attached request for

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<sup>40</sup> Email from James A. Baker to Lenny Loewentritt (Mar. 9, 2017, 14:16 EST) [GSA 000278].

<sup>41</sup> Email from James A. Baker to Lenny Loewentritt (Mar. 9, 2017, 14:16 EST) [GSA 000278]. On February 17, 2017, the Senate Select Committee on Intelligence wrote a letter to the GSA requesting that it preserve information “in furtherance of the Committee’s ongoing investigation into Russian actions targeting the 2016 U.S. elections and democratic processes globally.” However, due to a processing error, GSA OGC was unaware of this request until June 12, 2017.

<sup>42</sup> Based on emails produced to the Committee from the GSA, it appears the first contact between the GSA and the Senate Select Committee on Intelligence was on or shortly before May 23, 2017. See Email from Seth Greenfeld to Lenny Loewentritt and Eugenia Ellison (May 23, 2017, 11:11 EDT) [GSA 003889]

<sup>43</sup> For example, on May 22, 2017, an Assistant U.S. Attorney wrote to Mr. Loewentritt, “In terms of our second letter, we would ask that you simply preserve, as you are already doing and put on hold any production. In terms of any other issues, the FBI will be the best resource to guide your preservation/production.” Email from Ari Redbord to Lenny Loewentritt (May 22, 2017, 18:49 EDT) [GSA 001354]. However, the records received by the Committee do not seem to include a “second letter” or, for that matter, a “first letter,” as referenced by Mr. Redbord. Additionally, on May 26, 2017, FBI attorney Sally Moyer wrote to the GSA, “I was able to coordinate with both the DC [sic] US [sic] Attorney’s Office and the Special Counsel. We ask that you continue to preserve the stored communications, records, and electronic media as previously requested in a manner that maintains the integrity of both the content and the metadata of the information.” Email from Sally Moyer, Chief, Counterintelligence Law Unit I, Fed. Bureau of Investigation, to Lenny Loewentritt, Seth Greenfeld, and Janet Harney, Associate Gen. Counsel, Gen. Serv. Admin. (May 26, 2017, 17:41 EDT) [GSA 000586].

<sup>44</sup> Letter from John A. Brown to Brett Armstrong (June 1, 2017) [GSA 004859].

information.”<sup>45</sup> Neither the email nor the letter addressed the preservation of Trump transition team records. The records produced to the Committees do not appear to include any record reflecting the content of the June 1, 2017 discussion between the FBI and the GSA.

Nonetheless, on June 16, 2017, the GSA issued the following internal agency preservation notice to its information technology support staff:

[D]o not destroy any potentially relevant information pertaining to the electronic records created, used, or accessed by [presidential transition team] personnel which GSA may have in its possession or has access through GSA contracts or other mechanisms. “Potentially relevant information” includes any tangible thing, whether electronically stored or not, that relates to the matter.<sup>46</sup>

The notice also stated:

It is acknowledged that GSA has been preserving this information since a February 15, 2017, e-mail from [Mr. Greenfeld] to Erik Simmons and Aimee Whiteman...and that all cleansing of laptop computers and cellular phones ceased, that equipment is securely stored, GSA copied e-mails and other records from the Google cloud and is preserving it, and GSA is maintaining contracts and accounts in an active status with Google to ensure information is available if needed.<sup>47</sup>

On June 22, 2017, the FBI finally sent a formal preservation request letter for Trump transition team records to the GSA.<sup>48</sup> The letter to the GSA stated:

Based on our conversation on 06/01/2017, and consistent with our follow up letterhead memoranda dated 06/01/2017,<sup>49</sup> the FBI has determined that items in the possession of GSA may contain information relevant to our investigative efforts. The FBI therefore formally requests that GSA immediately preserves all Documents and Responsive Materials in their current format, so as to preserve their forensic integrity, which are potentially relevant to our investigative efforts that are in the possession, custody, or control of GSA. . . . All Documents and Responsive Materials should be preserved even if destruction of documents or records might, but for this request, be permissible. Additionally, this request to

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<sup>45</sup> Email from Mary Gleason, Supervisory Special Agent, Counterintelligence Division, Fed. Bureau of Investigation, to Lenny Loewentritt, Brett Armstrong, Sally Moyer, and Kevin Clinesmith (June 2, 2017, 13:11 EDT) [GSA 001327].

<sup>46</sup> Mem. from Seth Greenfeld to David Shive, Steve Grewal, and Erik Simmons (June 16, 2017) [GSA 5013].

<sup>47</sup> *Id.*

<sup>48</sup> Letter from ██████████ to William Brazis, Gen. Counsel, Def. Info. Sys. Admin. [sic], U.S. Dep’t of Def. (June 22, 2017) [GSA 4779-80]; Letter from ██████████ to Lenny Loewentritt, (June 22, 2017) [GSA 004827].

<sup>49</sup> Mem. from John Brown, FBI Special Agent in Charge, to Brett Armstrong (June 1, 2017) [FBI000167].

preserve Documents and Responsive Materials applies to potentially privileged material.<sup>50</sup>

In summary, contrary to the express terms of its memorandum of understanding with Trump for America, the GSA began preserving transition team records on February 15, 2017, based on a phone call between the GSA OIG and the FBI. Moreover, even though the basis for the request was the news of the resignation of Lt. Gen. Flynn, the GSA began preserving all remaining Trump for America records. On March 9, 2017, FBI General Counsel James Baker sent the GSA an email requesting the preservation of records related to Lt. Gen. Flynn, but he also asked the GSA to “confer” with the Senate and House intelligence committees about all other remaining Trump transition team records. Based on the record produced to the Committees, there does not appear to have been an informal conferral between the GSA and the FBI or a Congressional committee until late May 2017. In other words, for several months, the GSA preserved all remaining Trump for America records without a formal preservation request, which was eventually received on June 22, 2017. Even though the legal status and disposition of presidential transition team records was well established, the GSA and the FBI brushed those rights, rules, and precedent aside, through informal calls and emails, in their quest to investigate Trump campaign, transition, and administration officials.

### **III. THE GSA INTENTIONALLY WITHHELD NOTIFICATION FROM TRUMP FOR AMERICA OF ITS DECISION TO PRESERVE TRANSITION RECORDS IN VIOLATION OF THE TERMS OF THE MEMORANDUM OF UNDERSTANDING.**

There were several opportunities for the GSA to notify Trump for America about its decision to preserve all transition team records; however, GSA purposefully withheld this information from Trump for America for months, at first on its own initiative and then pursuant to requests by the FBI.

When the GSA’s Senior Assistant General Counsel Seth Greenfeld first directed the GSA staff to stop deleting Trump transition team records from its equipment, one GSA official asked, “Any responsibility for us to inform the [White House] that this request has been made? I ask because their understanding of the situation is that everything gets deleted/destroyed when equipment is turned in and the transition ends.”<sup>51</sup> Mr. Greenfeld replied, “At this time, I recommend against briefing anyone at the White House.”<sup>52</sup> The next morning, Mr. Greenfeld wrote, “I spoke with Lenny Loewentritt yesterday and [Acting Administrator] Tim Horne was in his office, and they agreed with me. Also, I e-mailed the General Counsel for the IG so they are aware too of our position.”<sup>53</sup>

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<sup>50</sup> Letter from ██████████ to Lenny Loewentritt (June 22, 2017) [GSA 004827].

<sup>51</sup> Email from Aimee Whiteman to Seth Greenfeld and Erik Simmons (Feb. 15, 2017, 16:36 EST) [GSA 002497].

<sup>52</sup> Email from Seth Greenfeld to Aimee Whiteman and Erik Simmons (Feb. 15, 2017, 16:57 EST) [GSA 004274].

<sup>53</sup> Email from Seth Greenfeld to Aimee Whiteman and Erik Simmons (Feb. 16, 2017, 08:28 EST) [GSA 004263].

Over a month later, on March 23, 2017, Mr. Greenfeld noted in an email exchange with Mr. Simmons that the “White House Counsel’s Office is aware” that the GSA continued to store GSA equipment containing Trump transition team records.<sup>54</sup> From the records produced, the Committees have not been able to determine when or how the GSA informed White House Counsel about the preservation of transition team records, and whether that awareness included the full range and scope of the several different preservation requests from the FBI. In an interview with Committee staff, Mr. Greenfeld could not recall a communication with White House Counsel’s Office that he referenced in his March 23, 2017 email.<sup>55</sup>

On April 11, 2017, Kory Langhofer, counsel for Trump for America, contacted the GSA to discuss the possible preservation of certain Trump for America records.<sup>56</sup> Another GSA official, Anne Marie Davis, responded to Mr. Langhofer, “we would NOT delete any information from today [Tuesday] thru Monday.”<sup>57</sup> Ms. Davis did not inform Mr. Langhofer that the GSA was already preserving all transition team records. Moreover, by telling Mr. Langhofer that the GSA would not destroy Trump for America records for a week, Ms. Davis did not provide Mr. Langhofer with any reason to doubt that the GSA was destroying Trump for America records pursuant to the terms of the memorandum of understanding, even though the GSA decided two months earlier to preserve all remaining Trump for America records. Further, on April 17, 2017, Mr. Simmons told Mr. Langhofer that the GSA “had wiped 80% of the hardware and [he] would need to contact OGC if they needed more information.”<sup>58</sup> Again, by noting that the Trump for America records were nearly all destroyed, GSA officials not only failed to notify Trump for America of the ongoing preservation efforts, but also intentionally misled its counsel by suggesting that the destruction of records pursuant to the memorandum was ongoing and nearly complete.

On April 26, 2017, Mr. Langhofer sent the GSA a request to preserve all remaining Trump for America records because it had received document requests from the Senate Select Committee on Intelligence and these records were also implicated in a civil lawsuit.<sup>59</sup> A month later, on May 18, 2017, Mr. Langhofer emailed Mr. Greenfeld “to confirm that the GSA has halted the wiping of [transition team] emails, hard drives, and cell phones as we discussed briefly

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<sup>54</sup> Email from Seth Greenfeld to Erik Simmons (Mar. 23, 2017, 16:06 EDT) [GSA 002618].

<sup>55</sup> Interview with Seth Greenfeld (Apr. 5, 2018) (On file with the Comms.).

<sup>56</sup> On February 22, 2020, a GSA official emailed Mr. Langhofer about the “final shutdown” of the transition networks and explained that “February 28th is a hard shutdown of the network: We have no flexibility on that date as we are bound by what is outlined in the MOU extension ... [and] [t]herefore, requests for file downloads and transfers should be submitted to support@it.ptt.gov by [close of business] Friday at the latest.” GSA 004088. That same day, Mr. Langhofer requested that the GSA preserve a subset of his records (those entitled “President Trump Transition Guide”), and all emails and documents for Charles Gantt (TFA CFO) and Monica Block (Trump for America Dir. of Operations). Email from Kory Langhofer to GSA et al. (Feb. 22, 2017, 4:25 PM) [GSA 004087] *see also* email from Erik Simmons to Kory Langhofer (Feb. 23, 2017, 7:25 PM EDT) (confirming preservation request).

<sup>57</sup> Email from Anne Marie Davis to Erik Simmons and Seth Greenfeld (Apr. 11, 2017, 18:06 EDT) [GSA 002588].

<sup>58</sup> Email from Erik Simmons to Seth Greenfeld (Apr. 17, 2017, 15:14 EDT) [GSA 002567].

<sup>59</sup> *See* Email from Seth Greenfeld to Erik Simmons (Apr. 26, 2017, 15:31 EDT) [GSA 004051].

a couple weeks ago.”<sup>60</sup> Mr. Greenfeld replied, “GSA is not wiping any additional devices and has not since we last spoke.”<sup>61</sup> By stating that the GSA had not wiped any devices “since we last spoke,” Mr. Greenfeld ignored the fact that the GSA had been preserving all of those records since February 15, 2017. Yet again, this statement misleadingly suggested to Trump for America’s counsel that the GSA had not been preserving transition team records prior to April 17, 2017. In an internal email that same day, Mr. Greenfeld confirmed for his colleagues that the GSA was not entirely forthcoming with Trump for America’s counsel: “GSA never told [Mr. Langhofer] of the DOJ/FBI request to us. We simply informed him of the fact that about 80% of the machines were previously wiped[.]”<sup>62</sup>

Based on the records produced, the Committees have not identified the GSA’s basis for withholding from Trump for America the relevant facts relating to the preservation request by the FBI. But on May 26, 2017, Ms. Moyer wrote to Mr. Loewentritt, “[the FBI has] no objection to you indicating to others who request the [transition team] materials that you are under preservation obligations from the Department of Justice/FBI.”<sup>63</sup> Despite this explicit authorization, the GSA failed to immediately correct the record and only informed Trump for America on June 5, 2017—10 days later—that the FBI had requested the preservation of all transition team records on February 15, 2017.<sup>64</sup>

#### **IV. FOR WEEKS, THE GSA REFUSED TO PROVIDE TRUMP FOR AMERICA WITH ACCESS TO ITS OWN RECORDS.**

On May 18, 2017, Trump for America sent its first request to the GSA for the production of transition team records.<sup>65</sup> Specifically, Kory Langhofer, counsel for Trump for America, asked the GSA “to save all the email and Google Drive data to an external hard drive and then have it FedEx’ed to [him].”<sup>66</sup> Mr. Langhofer also asked the GSA for a list of the transition team members’ equipment that had not erased and whether the wiped equipment could still be accessed for a forensic review.<sup>67</sup>

Mr. Greenfeld forwarded Mr. Langhofer’s request for Trump transition team records and information to other GSA attorneys:

I am not sure we want to turn over hard drives or forensic reviews as that could be what DOJ, the FBI, or others want to do with our machines, and if Kory

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<sup>60</sup> Email from Kory Langhofer to Seth Greenfeld (May 18, 2017, 03:04 EDT) [GSA 004050].

<sup>61</sup> Email from Seth Greenfeld to Kory Langhofer (May 18, 2017, 08:18 EDT) [GSA 004046].

<sup>62</sup> Email from Seth Greenfeld to Lenny Loewentritt and Janet Harney (May 18, 2017, 09:56 EDT) [GSA 000707].

<sup>63</sup> Email from Sally Moyer to Lenny Loewentritt and Seth Greenfeld (May 26, 2017, 21:41 EDT) [GSA 001123].

<sup>64</sup> Email from Seth Greenfeld to Kory Langhofer (June 5, 2017, 10:05 EDT) [GSA 003797].

<sup>65</sup> Email from Kory Langhofer to Seth Greenfeld (May 18, 2017, 15:47 EDT) [GSA 003988].

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

[Langhofer]’s folks go first, evidence could be lost or changed. I am comfortable making a copy of everything and giving it to him, but I am not sure how to respond to the other questions.<sup>68</sup>

In response, however, Mr. Loewentritt counseled Mr. Greenfeld to be even less forthcoming with Trump for America.<sup>69</sup> According to Mr. Greenfeld, “[Mr. Loewentritt] said I should just tell Kory that the machines are not available to him and not answer any follow-up questions. I’m sure there will be follow-up questions. If Kory [Langhofer] presses, I may tell him that he can always have the party asking for the access contact GSA.”<sup>70</sup>

On May 19, 2017, Trump for America contacted the GSA again about their request for transition team records and information. Mr. Greenfeld wrote to Mr. Loewentritt:

I forwarded you a voice-mail message from Kory Langhofer. He is now asking for a copy of all the GSA records GSA has copied for the [transition team]. I have not responded, but I feel like I owe him some type of reply by Monday at the latest, as his message said he is under some time crunch now and I feel badly simply ignoring him. Please let me know what you want to say or if I should continue to not respond as we discussed yesterday.<sup>71</sup>

Mr. Loewentritt responded to Mr. Greenfeld, “we have a call with the appropriate Government folks on Monday. Till then we should not respond.”<sup>72</sup>

The next day, May 20, 2017, Trump for America again contacted the GSA requesting its own transition team records and information.<sup>73</sup> Mr. Greenfeld forwarded this email to Mr. Loewentritt, writing:

Below is another e-mail from Kory. I will need to give him some answer today so please ask the FBI when you speak with them. He knows GSA has everything backed up, and he is just asking for copies; GSA will not release the actual machines or grant access to the actual system so there is no way they or anyone

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<sup>68</sup> Email from Seth Greenfeld to Lenny Loewentritt, Janet Harney, and Eugenia Ellison (May 18, 2017, 16:04 EDT) [GSA 003982].

<sup>69</sup> Email from Seth Greenfeld to Janet Harney, Lenny Loewentritt, and Eugenia Ellison (May 18, 2017, 16:50 EDT) [GSA 003970].

<sup>70</sup> Email from Seth Greenfeld to Janet Harney, Lenny Loewentritt, and Eugenia Ellison (May 18, 2017, 16:50 EDT) [GSA 003970].

<sup>71</sup> Email from Seth Greenfeld to Lenny Loewentritt (May 19, 2017, 15:52 EDT) [GSA 000012].

<sup>72</sup> Email from Lenny Loewentritt to Seth Greenfeld and Janet Harney (May 19, 2017, 16:13 EDT) [GSA 003223]. The Committee has been unable to identify to whom Mr. Loewentritt was referring as “the appropriate Government folks.”

<sup>73</sup> Email from Kory Langhofer to Seth Greenfeld (May 20, 2017, 17:21 EDT) [GSA 00028].

else can tamper with evidence. In addition, these are actually their records so I am having a hard time seeing an argument to withhold copies from them.<sup>74</sup>

Mr. Loewentritt continued to look to the FBI for guidance. Mr. Loewentritt forwarded this email to other GSA officials, stating, “this private attorney is continuously demanding to see the documents that we have on the matter. We need to have the call with our friends in the [Sensitive Compartmented Information Facility (SCIF)] to get direction from the DOJ/FBI.”<sup>75</sup> The records produced to the Committees do not indicate why any conversation about these records, most of which were unclassified, needed to occur in a SCIF, a specialized room for accessing and discussing classified information.

Mr. Langhofer followed up with Mr. Greenfeld later that day about the Trump transition team records, asking “[h]ow quickly can the IT folks get us a copy of all the data? We have one pending documents request and need to know how to negotiate re: our deadline for document production.”<sup>76</sup> The next morning, Mr. Greenfeld sent this request to Mr. Simmons,<sup>77</sup> who responded “quickly.”<sup>78</sup> Mr. Greenfeld emailed to Mr. Langhofer later that day, “I am hopeful I can have something for you by tomorrow afternoon. I will follow-up with you though.”<sup>79</sup> Minutes later, Mr. Greenfeld wrote an email to himself, which stated:

Note to self-Lenny and Eugenia said they spoke with Sally [Moyer] (FBI) earlier and she had no concern with releasing a copy of the [transition team] records to the [transition team], but she does not want anyone to actually touch the machines. Also, she will follow-up in writing to Lenny. This is what we are waiting for.<sup>80</sup>

Later that day, Mr. Greenfeld asked Mr. Loewentritt, “I was curious if you received the follow-up from Sally [Moyer] yet? I know the [transition team] attorney is anxious to get the copies.”<sup>81</sup> Mr. Loewentritt replied, “not a word yet.”<sup>82</sup> Mr. Greenfeld asked Mr. Loewentritt the next day, May 24, 2017, “Still nothing from Sally [Moyer]?”<sup>83</sup>

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<sup>74</sup> Email from Seth Greenfeld to Lenny Loewentritt (May 22, 2017, 08:37 EDT) [GSA 000027].

<sup>75</sup> Email from Lenny Loewentritt to Brett Armstrong, Bobby Carter, and Janet Harney (May 22, 2017, 09:41 EDT) [GSA 000234].

<sup>76</sup> Email from Kory Langhofer to Seth Greenfeld (May 22, 2017, 18:26 EDT) [GSA 003864].

<sup>77</sup> Email from Seth Greenfeld to Erik Simmons (May 22, 2017, 08:50 EDT) [GSA 003897] (“How long would it take to make a copy of the [transition team] documents? We are not currently authorized to release anything to anyone, but if we get the green light, how quickly can we get a copy to the [transition team]? Can you make a copy now and just hold it in the event we get permission to release it to them?”).

<sup>78</sup> Email from Erik Simmons to Seth Greenfeld (May 23, 2017, 09:08 EDT) [GSA 003895].

<sup>79</sup> Email from Kory Langhofer to Seth Greenfeld (May 22, 2017, 18:26 EDT) [GSA 003864].

<sup>80</sup> Email from Seth Greenfeld to self (May 23, 2017, 12:25 EDT) [GSA 003864].

<sup>81</sup> Email from Seth Greenfeld to Lenny Loewentritt (May 23, 2017, 16:55 EDT) [GSA 003849].

<sup>82</sup> Email from Lenny Loewentritt to Seth Greenfeld (May 23, 2017, 16:56 EDT) [GSA 003849].

<sup>83</sup> Email from Seth Greenfeld to Lenny Loewentritt (May 24, 2017, 12:01 EDT) [GSA 003849].

Two days later, on May 26, 2017, Mr. Loewentritt wrote to Ms. Moyer, “Sally, we spoke this past week about requests for documents from the attorney representing the Trump transition, Kory Langhofer, from Statecraft PLLC. We are still awaiting guidance. If we need to chat again, please let me know.”<sup>84</sup> Ms. Moyer replied:

I apologize for the delay. As I just explained to Brett [Armstrong], I was able to coordinate with both the DC US Attorney’s Office and the Special Counsel. We ask that you continue to preserve the stored communications, records, and electronic media as previously requested in a manner that maintains the integrity of both the content and the metadata of the information. We have no objection to you indicating to others who request the materials that you are under preservation obligations from the Department of Justice/FBI.<sup>85</sup>

Although Ms. Moyer’s May 26, 2017 email did not directly answer the GSA’s question about whether it could release copies of transition team records to Trump for America, it did make clear that the FBI had no objection to the GSA informing Trump for America of the record preservation requests. Based on the records produced to the Committees, neither the GSA nor the FBI expressly identified a legal basis for withholding that information from Trump for America for several months.

For the next several weeks, however, the GSA continued to debate whether it should provide Trump for America with copies of its own records. On May 31, 2017, Mr. Greenfeld wrote to Mr. Simmons, “I was told the FBI does not object to us releasing copies to the Transition folks (Kory).”<sup>86</sup> Mr. Greenfeld then wrote in an email to himself:

Lenny told me last week that Sally [Moyer] indicated on a phone call that she had no objection to GSA sharing a copy of the documents downloaded from the cloud with the [transition team] as long as the integrity of the machines and metadata was preserved. I instructed GSA IT to provide a copy of the documents to the [transition team] but ensure no one accesses the machines or accounts themselves.<sup>87</sup>

The next day, June 1, 2017, Mr. Simmons emailed Mr. Greenfeld, “I was just in a meeting with Lenny [Loewentritt] and he told me NOT to send anything out [to Trump for America] at this time until you guys have further discussions with DOJ. Please let me know once you have the green light. . . . Will you send an update to Kory [Langhofer]?”<sup>88</sup> Mr.

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<sup>84</sup> Email from Lenny Loewentritt to Sally Moyer, Seth Greenfeld, and Janet Harney (May 26, 2017, 14:01 EDT) [GSA 000173].

<sup>85</sup> Email from Sally Moyer to Lenny Loewentritt, Seth Greenfeld, and Janet Harney (May 26, 2017, 17:41 EDT) [GSA 000173].

<sup>86</sup> Email from Seth Greenfeld to Erik Simmons (May 31, 2017, 08:37 EDT) [GSA 000572].

<sup>87</sup> Email from Seth Greenfeld to self (May 31, 2017, 09:01 EDT) [GSA 003827].

<sup>88</sup> Email from Erik Simmons to Seth Greenfeld (June 1, 2017, 10:29 EDT) [GSA 003822].

Greenfeld replied: “Sure, but I will also talk to Lenny because he told me Sally [Moyer] from the FBI told him last week on the phone that we could send the copies.”<sup>89</sup> Mr. Greenfeld then wrote to Mr. Loewentritt:

Erik Simmons just informed me that you said he cannot send a copy of the [transition team]’s documents to the [transition team]? You told me last week that Sally Moyer from the FBI did not object as long as no one accessed the actual machines. Why are we changing course now? They are getting copies only and no one is accessing any equipment. There is no chance of anyone tampering with any evidence or potential evidence. They are simply getting copies of their own records of which GSA already has a copy. Did Erik misunderstand?<sup>90</sup>

Mr. Greenfeld then added:

In addition, if we are not releasing the copies at the request of the FBI or DOJ, I think they need to give us the legal basis as the records are actually [transition team] records and not GSA records (although, obviously, we have physical custody). If GSA is sued for these by the [transition team], I do not think GSA should simply defend itself with: “The FBI asked us not to do it.”<sup>91</sup>

The next day, June 2, 2017, Mr. Greenfeld contacted Ms. Moyer directly. After making clear that “GSA does not view these as GSA records . . . but rather [transition team] records which happen to be in GSA’s custody,” he asked Ms. Moyer whether FBI “object[s] to GSA providing a copy to [Trump for America]?”<sup>92</sup> Records produced to the Committees do not show that Ms. Moyer ever responded to this email.

Having been promised the Trump for America records by May 24, 2017, Mr. Langhofer emailed Mr. Greenfeld on June 5, 2017, writing “[w]e still have not received the package.”<sup>93</sup> Mr. Greenfeld replied:

I am very sorry, but it still has not been mailed, although the copy is ready to go. GSA is at present subject to a Department of Justice / FBI preservation obligation and is, at this time, not permitted to send you the copy. I am trying to shake this loose for you as I see no reason why the copy cannot be provided, but until GSA receives express permission, it will not be mailed. As soon as GSA receives the go ahead, it will be expressed to you.<sup>94</sup>

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<sup>89</sup> Email from Seth Greenfeld to Erik Simmons (June 1, 2017, 10:35 EDT) [GSA 003817].

<sup>90</sup> Email from Seth Greenfeld to Lenny Loewentritt (June 1, 2017, 10:46 EDT) [GSA 003816].

<sup>91</sup> Email from Seth Greenfeld to Lenny Loewentritt (June 1, 2017, 10:53 EDT) [GSA 003814].

<sup>92</sup> Email from Seth Greenfeld to Sally Moyer (June 2, 2017, 08:36 EDT) [GSA 000810].

<sup>93</sup> Email from Kory Langhofer to Seth Greenfeld (June 5, 2017, 09:17 EDT) [GSA 003803].

<sup>94</sup> Email from Seth Greenfeld to Kory Langhofer (June 5, 2017, 10:05 EDT) [GSA 003797].

This appears to be the first time that the GSA notified Mr. Langhofer or anyone at Trump for America of the records preservation that the GSA initiated on February 15, 2017. Mr. Greenfeld then pressed Ms. Moyer about this matter again:

Does the FBI object to GSA providing a copy of the [transition team] records to one of the [transition team]’s attorney [sic]? I see no legal reason to not provide them, but I was asked to confirm with you based on some conversations of which I was not involved. Please let me know if it is OK to provide the copy or not.<sup>95</sup>

Based on the records produced to the Committees, Ms. Moyer did not respond to this email. Hours later, Mr. Greenfeld emailed Ms. Moyer yet again:

Kory Langhofer, the attorney for the [transition team] asking for a copy of the [transition team] documents, reached out to me again today asking for the copies. He said they are under a document preservation and production request from the [Senate Select Committee on Intelligence]. They also expect a request from DOJ. As you wrote in an e-mail a week or so ago, I informed him that GSA is under a document preservation request from DOJ/FBI, and we did not mail him the copy of the records. He will be calling you to see about how this should be addressed for them with [Senate Select Committee on Intelligence] and possibly getting a copy of the records as they think there may be some privileges.<sup>96</sup>

Ms. Moyer responded, “Is Mr. Langhofer requesting a copy of hard copy documents or would he like a digital copy of the devices or cloud services? Unfortunately, any copies of the latter would have an impact on our forensics review.”<sup>97</sup> Mr. Greenfeld responded, “He is requesting an electronic copy of the documents from the cloud, which I believe were made by GSA before the formal requests were made by DOJ/FBI so they are available on a thumb-drive. ... [I]t is simply providing a copy of the copy GSA made.”<sup>98</sup> Ms. Moyer then replied that she would “re-engage with the US Attorney’s Office and Special Counsel.”<sup>99</sup> The records produced to the Committees do not reflect whether Ms. Moyer and Mr. Greenfeld discussed this matter further.

On June 8, 2017, however, Mr. Greenfeld spoke with Special Counsel attorney Brandon Van Grack and memorialized that phone conversation in an email to Mr. Loewentritt:

I spoke with Brandon Van[ ]Grack . . . from Special Counsel Mueller’s staff. We spoke about the document request from the [transition team] attorney and how GSA views the records. I explained . . . that GSA does not view the records in

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<sup>95</sup> Email from Seth Greenfeld to Sally Moyer (June 5, 2017, 09:39 EDT) [GSA 000799].

<sup>96</sup> Email from Seth Greenfeld to Sally Moyer (June 5, 2017, 14:36 EDT) [GSA 003799].

<sup>97</sup> Email from Sally Moyer to Seth Greenfeld (June 5, 2017, 17:51 EDT) [GSA 000783].

<sup>98</sup> Email from Seth Greenfeld to Sally Moyer (June 5, 2017, 18:22 EDT) [GSA 00783].

<sup>99</sup> Email from Sally Moyer to Seth Greenfeld (June 5, 2017, 22:23 EDT) [GSA 00783].

question as GSA records in both a Federal Records Act and FOIA context. Therefore, I see GSA simply as in custody of the documents, but that they are [transition team] documents. . . . Mr. Van[ ]Grack and I spoke about others' access to the records and I said I saw three buckets, (1) [transition team], (2) general public, and (3) law enforcement. I stated I saw these as [transition team] records and they should be given copies as I see no legal reason at this time to withhold the records from [transition team]. . . . Mr. Van[ ]Grack thanked me, said our conversation was extremely helpful and informative, and that he will speak with others there and get back to me regarding the [transition team]'s request[.]<sup>100</sup>

On June 20, 2017, Mr. Langhofer yet again inquired about the status of Trump for America's request and explained, "We are eager to start reviewing and producing emails."<sup>101</sup> Mr. Greenfeld replied the next morning, "Unfortunately, I have not heard anything yet, and we are frustrated too."<sup>102</sup> Mr. Greenfeld then emailed to Mr. Van Grack, "We are just curious if there is an update for us. The [transition team] is anxious to get the copies so it can begin reviewing the documents and produce records to Congress. I understand they are getting some pressure from the Hill."<sup>103</sup>

According to a June 21, 2017, email written by Mr. Greenfeld:

Brandon [Van Grack] from DOJ called me back this morning. . . . While [DOJ] will not specifically instruct GSA to release or not release copies to the [transition team] (or anyone else), it will be up to GSA to interpret the request and choose a course of action that is consistent, which means we should be able to release the copies to the [transition team]. I recommend waiting for the actual document from the FBI though so we can read exactly what it says.<sup>104</sup>

The next day, on June 22, 2017—more than four months after informally asking the GSA to preserve all transition team records—the FBI sent the GSA "an official preservation letter" for transition team records.<sup>105</sup> Mr. Greenfeld emailed to GSA officials the next morning, "This is

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<sup>100</sup> Email from Seth Greenfeld to Lenny Loewentritt (June 8, 2017, 11:27 EDT) [GSA 001296].

<sup>101</sup> Email from Kory Langhofer to Seth Greenfeld, Richard Beckler, Mike Morrissey, Mitchell Stein Carey, Thomas Basile, Statecraft Law PLLC, Chris Murray, and Lenny Loewentritt (June 20, 2017, 18:36 EDT) [GSA 000320].

<sup>102</sup> Email from Seth Greenfeld to Kory Langhofer, Richard Beckler, Mike Morrissey, Thomas Basile, Chris Murray, and Lenny Loewentritt (June 21, 2017, 08:24 EDT) [GSA 003759].

<sup>103</sup> Email from Seth Greenfeld to Brandon Van Grack, Investigator, Off. of the Special Counsel, U.S. Dep't of Justice (June 21, 2017, 08:27 EDT) [GSA 003758].

<sup>104</sup> Email from Seth Greenfeld to Lenny Loewentritt and Richard Beckler (June 21, 2017, 11:27 EDT) [GSA 003757].

<sup>105</sup> Email from Mary Gleason to Lenny Loewentritt, Brett Armstrong, Brandon Van Grack, [REDACTED], and Kevin Clinesmith (June 22, 2017, 19:41 EDT) [GSA 00141]; *see also* Letter from [REDACTED] to Lenny Loewentritt, (June 22, 2017) [GSA 004827].

what Brandon [Van Grack] described to me on the phone, so I do not see a problem with GSA sending copies to Kory [Langhofer] as it does not conflict with this letter.”<sup>106</sup> A couple of hours later, Mr. Greenfeld emailed Mr. Langhofer stating, “Your package is on the way,” and provided the tracking information for the shipment of the copy of transition team records.<sup>107</sup>

In total, apparently pursuant to instructions from the FBI, the GSA denied Trump for America access to copies of its own records for five weeks. Moreover, several months after it began preserving all transition records, the GSA was still trying to understand the FBI’s legal basis for refusing to share copies of the preserved records with Trump for America. As Senior Assistant General Counsel Greenfeld acknowledged on June 1, 2017, “[the FBI] need[s] to give us the legal basis as the records are actually [transition team] records and not GSA records (although, obviously, we have physical custody)” because, “[i]f GSA is sued for these by the [transition team], I do not think GSA should simply defend itself with: ‘The FBI asked us not to do it.’”<sup>108</sup>

**V. ALTHOUGH THE GSA ASSESSED THAT A SUBPOENA OR WARRANT WAS REQUIRED FOR THE FBI TO ACCESS TRUMP FOR AMERICA RECORDS, THE GSA ULTIMATELY CONSENTED TO THE PRODUCTION OF THOSE RECORDS TO THE FBI WITHOUT ANY LEGAL PROCESS.**

Although the GSA repeatedly discussed with the FBI and Department of Justice the need for a subpoena or search warrant to access Trump for America’s PTT records, the GSA ultimately transferred custody and control of those records to the FBI without any legal process.

- On June 8, 2017, in an email Mr. Greenfeld sent to memorialize a conversation with Brandon Van Grack, he wrote, “as for law enforcement access to the records, I stated that I thought a subpoena was necessary as they are not GSA’s records (as I detailed before) and that a subpoena will remove evidence admissibility issues if there is a prosecution of someone in the future, but I ultimately defer to law enforcement on the issue of a need for a subpoena.”<sup>109</sup>
- On June 13, 2017, Mr. Greenfeld wrote to Duane Smith, Assistant General Counsel at the GSA:

GSA has records related to what our agency did with respect to Lt Gen [sic] Flynn (e.g. equipment furnished). GSA is also in possession of

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<sup>106</sup> Email from Seth Greenfeld to Lenny Loewentritt, Duane Smith, Richard Beckler, Claudia Nadig, and Eugenia Ellison (June 23, 2017, 08:18 EDT) [GSA 000288].

<sup>107</sup> Email from Seth Greenfeld to Kory Langhofer (June 23, 2017, 11:11 EDT) [GSA 000869].

<sup>108</sup> Email from Seth Greenfeld to Lenny Loewentritt (June 1, 2017, 10:53 EDT) [GSA 003814].

<sup>109</sup> Email from Seth Greenfeld to Lenny Loewentritt (June 8, 2017, 11:27 EDT) [GSA 00781].

[transition team] records. GSA will probably need a subpoena to produce those [transition team] records as they are not records from a Federal Records Act or FOIA standpoint, and we will need to coordinate with DOJ/FBI. ... GSA will need to coordinate with White House prior to any response too, which I am sure Lenny already noted. They definitely have an interest in this and may want to try to articulate a separation of powers/executive privilege on something[.]<sup>110</sup>

- On June 16, 2017, the GSA again spoke with a Special Counsel attorney about access to the Trump transition team records:

[GSA Acting General Counsel] Richard [Beckler] explained that GSA . . . does not consider [transition team records] to be GSA records, and GSA does not claim ownership or know what information is detailed in the records or subject to a claim of privilege as GSA has never looked at the content of the material, and GSA thinks the DOJ/FBI, SSCI, White House, and [transition team] need to discuss how records in GSA’s possession will be addressed as GSA is just like a warehouse. ... Brandon [Van Grack] explained that the FBI and Special Counsel are working hand in hand ... [and that] DOJ will decide how to proceed and if records are requested from GSA, a subpoena will be issued or a search warrant will be executed[.]<sup>111</sup>

- On June 23, 2017, Mr. Greenfeld wrote to David Shive, the GSA’s Chief Information Officer, about Trump for America’s transition records, “For [FBI] to get [transition team records], there may need to be a subpoena and possibly a search warrant.”<sup>112</sup>

On August 23, 2017, FBI Assistant General Counsel Kevin Clinesmith sent the GSA a letterhead memorandum “formally requesting GSA to provide FBI with all Documents and Responsive Materials attributed to the individual users identified below.”<sup>113</sup> The nine Trump for America officials identified by the FBI were Daniel Gelbinovich, Sarah Flaherty, Michael G. Flynn, Michael T. Flynn, Keith Kellogg, Jared Kushner, K.T. McFarland, Jason Miller, and Michael Pompeo.<sup>114</sup>

Despite the several prior intra- and interagency conversations about the legal process thought to be necessary for the FBI to access records that the GSA did not own, the FBI provided

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<sup>110</sup> Email from Seth Greenfeld to Duane Smith (June 13, 2017, 18:20 EDT) [GSA 003780].

<sup>111</sup> Email from Seth Greenfeld to Richard Beckler and Lenny Loewentritt (June 16, 2017, 17:22 EDT) [GSA 000283].

<sup>112</sup> Email from Seth Greenfeld to David Shive, Steve Grewal, and Lenny Loewentritt (June 23, 2017, 11:26 EDT) [GSA 003349].

<sup>113</sup> Mem. from Kevin Clinesmith to Brett Armstrong, et al. (Aug. 23, 2017) [GSA004814-15].

<sup>114</sup> *Id.*

no such legal process. The request directed “that GSA prioritize providing any e-mail communications associated with the individual users’ accounts. To all extents feasible, the FBI requests GSA to provide the e-mail communications in an initial production as soon as possible and thereafter produce any other remaining Document and Responsive Materials in a second production.”<sup>115</sup> This request also added, “[t]he FBI anticipates that additional Documents and Responsive Materials associated with other individual users will be requested in the future. Accordingly, the FBI requests that GSA continue to comply with the June 22, 2017 preservation letter for all accounts associated with the [transition team].”<sup>116</sup>

Brett Armstrong, the GSA official who received this letterhead memorandum, forwarded it to a GSA colleague, writing, “Looks like the attorneys were having further discussion with the FBI. They sent this letter just now. You were not an addressee. Lenny [Loewentritt] has called a meeting this afternoon and invited us.”<sup>117</sup> Notably, when the FBI requested these productions, neither GSA Acting General Counsel Richard Beckler (illness)<sup>118</sup> nor the lead assistant general counsel on this issue, Seth Greenfeld (vacation),<sup>119</sup> were available.

The next morning, August 24, 2017, Mr. Simmons informed GSA officials, “As per the August 23, 2017[] letter from the FBI, I have transferred the 9 requested [transition team] e-mail zip files to Mary Gleason (FBI). This information was given to her via flash drive and attached is the signed property receipt.”<sup>120</sup> Later that day, “the FBI contacted [Mr. Simmons] and requested that [the GSA] transfer several laptops and phones to them that were associated with their August 23, 2017 letter. This hardware was given to them and attached is the signed property receipt. ... [W]e plan to transfer additional hardware to the FBI next week.”<sup>121</sup>

On August 25, 2017, the FBI emailed the GSA to memorialize a conversation between itself and the Defense Information Systems Agency (DISA) about the secure equipment provided to GSA for the transition team to process classified information. According to this email:

DISA concurs with the following same procedures for obtaining that equipment as we have established for FBI requests to GSA; namely. [sic] it will be provided to the FBI via consent, the FBI will maintain custodial possession only; and then

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<sup>115</sup> Letter from ██████████ to Brett Armstrong (Aug. 23, 2017) [GSA 004814].

<sup>116</sup> *Id.*

<sup>117</sup> Email from Brett Armstrong to Bobby Carter (Aug. 23, 2017, 12:21 EDT) [GSA 003542].

<sup>118</sup> Letter to Chairman Ron Johnson and Ranking Member Claire McCaskill, S. Comm. on Homeland Sec. & Governmental Affairs, and Chairman Trey Gowdy and Ranking Member Elijah Cummings, H. Comm. on Oversight and Gov’t Reform, from Kory Langhofer, Counsel to Trump for America, Inc. (Dec. 16, 2017).

<sup>119</sup> Mr. Greenfeld confirmed that he was on leave the week of Aug. 21, 2017. Interview with Seth Greenfeld (Apr. 5, 2018) (On file with the Comms.).

<sup>120</sup> Email from Erik Simmons to Claudia Nadig, Brett Armstrong, Duane Smith, Lenny Loewentritt, Seth Greenfeld, and Steve Grewal (Aug. 24, 2017, 11:11 EDT) [GSA 002046].

<sup>121</sup> Email from Erik Simmons to Brett Armstrong, Claudia Nadig, Bobby Carter, Duane Smith, Lenny Loewentritt, Seth Greenfeld, and Steve Grewal (Aug. 25, 2017, 13:11 EDT) [GSA 001590].

the FBI will seek legal process prior to gaining access to any devices held within custodial possession.<sup>122</sup>

Although the GSA repeatedly discussed the need for legal process before turning over Trump transition team records, by late August, GSA officials seem to have changed their minds. This email reflects an agreement between the FBI and the GSA whereby the GSA “consent[ed]” to transfer custody of records it did not own to the FBI, and then the FBI would “seek legal process” to gain access to these devices.<sup>123</sup> The records produced to the Committees do not appear to reflect the terms of this agreement, nor do they address the legal basis pursuant to which the GSA produced records and devices it did not own while at the same time recognizing that the FBI must use legal process to access the Trump transition team records.

On August 30, 2017, FBI Assistant General Counsel Kevin Clinesmith sent the GSA a second letterhead memorandum “formally requesting GSA to provide FBI with all Documents and Responsive Materials attributed to the individual users identified below.”<sup>124</sup> The four Trump for America officials identified by the FBI were Sean Spicer, Reince Priebus, Stephen Bannon, and Marshall Billingslea.<sup>125</sup> In the cover email, the FBI explained:

We have an additional four individuals we are currently interested it [sic]. . . . If possible, can you at least have their emails downloaded by tomorrow when I pick up the other information? . . . [W]e want to have it available when they swear out a warrant before then.<sup>126</sup>

The GSA produced these transition team materials to the FBI on the afternoon of August 31, 2017.<sup>127</sup> The Committee has not identified records reflecting any additional consultation or deliberation among GSA officials prior to producing these transition team records to the FBI.

Although the FBI’s August 30, 2017 cover email referenced applying for a search warrant, the Committees are aware of only one court-ordered disclosure of records, specifically, information related to the transition records of Lt. Gen. Flynn, K.T. McFarland, Michael Flynn’s son, and Daniel Gelbinovich.<sup>128</sup> The records produced by the GSA and the FBI to the

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<sup>122</sup> Email from Kevin Clinesmith to Brett Armstrong, Duane Smith, Lenny Loewentritt, Claudia Nadig, Seth Greenfeld, Mary Gleason, Richard Grove, Off. of Gen. Counsel, Def. Info. Sys. Agency, U.S. Dep’t of Def. (Aug. 25, 2017, 21:12 EDT) [GSA 001928].

<sup>123</sup> Email from Kevin Clinesmith to Brett Armstrong, et al. (Aug. 25, 2017) [GSA 001460].

<sup>124</sup> Mem. from Kevin Clinesmith to Brett Armstrong, et al. (Aug. 30, 2017) [GSA004816-17].

<sup>125</sup> *Id.*

<sup>126</sup> Email from Mary Gleason to Brett Armstrong, Erik Simmons, and Kevin Clinesmith (Aug. 30, 2017, 14:55 EDT) [GSA 002270].

<sup>127</sup> Email from Erik Simmons to Brett Armstrong, Claudia Nadig, Bobby Carter, Duane Smith, Lenny Loewentritt, Seth Greenfeld and Steve Grewal (Sept. 1, 2017, 09:57 EDT) [GSA 000971].

<sup>128</sup> Order, *In re Application of the U.S. for an Order Pursuant to 18 U.S.C. § 2703(d) Directed at Google Related to [the transition email accounts for those four individuals]*, 1:17-mc-2005 (D.D.C. Aug. 18, 2017) [GSA004400-4404] (ordering the disclosure of customer/subscriber information but not content).

Committees do not reflect when the GSA notified Trump for America of the production of its records to the FBI but, during a staff interview, Mr. Greenfeld stated that he notified Trump for American in late November or December 2017 after Mr. Langhofer requested access to transition team devices.<sup>129</sup> Mr. Langhofer told the Committees that Trump for America learned of these productions on December 12 and 13, 2017.<sup>130</sup>

## **VI. CONCLUSION**

The GSA's memorandum of understanding with the Trump transition team assured that, among other promises, it would not retain transition records. Moreover, throughout the transition and the ensuing investigations, the GSA unequivocally acknowledged the Trump transition team's legal ownership over its own transition records. But the GSA did not honor this promise or protect the legal rights of the Trump transition team.

Instead, on February 15, 2017, after GSA officials saw news reports about the resignation of then-national security advisor Lt. Gen. Michael Flynn, the GSA proactively contacted the FBI about preserving all remaining Trump transition team records. After conferring with the FBI, the GSA immediately began to preserve those records. Notably, around that same time, GSA officials also decided that they would not inform either the White House or the Trump transition team about the decision to preserve records contrary to the express terms of the memorandum of understanding. Regardless of the propriety of preserving *all* remaining transition records because of concerns regarding *one* former transition official, the decision not to inform the Trump transition team—the lawful owner of those records—deprived that team of the opportunity to make timely and meaningful decisions about how to protect its interests in those records.

Around the same time, the GSA ignored the Trump transition team's requests for copies of its own records. In mid-May 2017, the Trump transition team requested copies of its own records but, for reasons that were never explained, the GSA did not provide copies for five weeks. In early June 2017, the Trump transition team finally learned that the GSA had preserved its records, but it would not receive notice of the production of those records to the FBI until late 2017. Finally, in August 2017, the Special Counsel's Office requested and received access to the transition records for 13 transition officials, four of whom were then-current officials in the Trump administration, including then-CIA Director Mike Pompeo and Jared Kushner. The GSA did not inform the Trump transition team about the production of its records to the FBI. For months, neither the GSA nor the FBI were forthcoming with the Trump transition team.

This conduct undermines the GSA's role as a neutral provider of services to presidential transition teams. These actions provide a basis for future transition teams to question or even

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<sup>129</sup> Interview with Seth Greenfeld (Apr. 5, 2018) (On file with the Comms.).

<sup>130</sup> Letter to Chairman Ron Johnson and Ranking Member Claire McCaskill, S. Comm. on Homeland Sec. & Governmental Affairs, and Chairman Trey Gowdy and Ranking Member Elijah Cummings, H. Comm. on Oversight and Gov't Reform, from Kory Langhofer, Counsel to Trump for America, Inc. (Dec. 16, 2017).

doubt the services offered by the GSA, which risks the effectiveness of the transfer of power from one administration to the next. Although Congress has enacted one piece of legislation to address these issues, legislative fixes will never be perfect. The purpose of this report is transparency. Shining a light on how the process was corrupted against the Trump transition team is likely to expose other areas of weakness that may need correction. It also should serve as a stark warning so that it will never happen again.