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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

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DAVID M. WEINBERG, MINORITY STAFF DIRECTOR

September 15, 2020

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Johnson:

You have scheduled a Committee vote to authorize additional subpoenas and deposition notices relating to the unmasking of Lieutenant General Michael Flynn. In order to cast informed votes, Members of our Committee must understand the basis of the allegations you purport to be investigating. This requires that our Members receive both a briefing from the National Security Agency (NSA) on the process of unmasking, a process this Committee is not familiar with, and the documents necessary to understand this particular unmasking: the underlying NSA foreign intelligence reports that gave rise to an unmasking request of a person that turned out to be Lt. Gen. Flynn, any finished intelligence products that used these reports, and the unmasking requests, which include justifications. You have already requested these documents, which are critical to ensuring the Committee understands the full context of the unmasking. I respectfully ask that you schedule a briefing and insist on the Committee Members receiving these documents prior to any vote on this matter.

As background, the allegation that an individual sought the unmasking of Lt. Gen. Flynn's name in NSA intelligence reports in order to leak the fact of his calls with Russian Ambassador Sergey Kislyak and spur an investigation is nonsense. The Federal Bureau of Investigation (FBI), not the NSA, obtained recordings of Lt. Gen. Flynn's calls with Ambassador Kislyak—and, because including Lt. Gen. Flynn's name was critical to understanding the conversations, the FBI *never masked* Lt. Gen. Flynn's name in its now-public transcripts of the calls.¹

Nevertheless, in your May 12, 2020, letter to Acting Director of National Intelligence Richard Grenell and Attorney General William Barr, you requested “**all information** regarding the ‘unmasking’ of U.S. persons requested by members of President Obama’s administration around the time of the 2016 election through January 2017.”² The next day, Acting Director Grenell responded with only a “list of recipients who may have received Lt. Gen Flynn’s identity in response to a request processed between 8 November 2016 and 31 January 2017 to unmask an identity that had been generically referred to in an

¹ Ellen Nakashima, *Michael Flynn’s name was never masked in FBI document on his communications with Russian ambassador*, The Washington Post (May 20, 2020) [https://www.washingtonpost.com/national-security/michael-flynn-name-was-never-masked-in-fbi-document-on-his-communications-with-russian-ambassador/2020/05/20/e94ee050-9a0b-11ea-ac72-3841fcc9b35f_story.html].

² Letter from Chairmen Ron Johnson and Charles Grassley to Acting Director of National Intelligence Richard A. Grenell and Attorney General William P. Barr at 1 (May 12, 2020) (emphasis added) [<https://www.hsgac.senate.gov/imo/media/doc/2020-05-12%20RHJ,%20CEG%20Letter%20to%20ODNI%20re%20Unmaskings.pdf>].

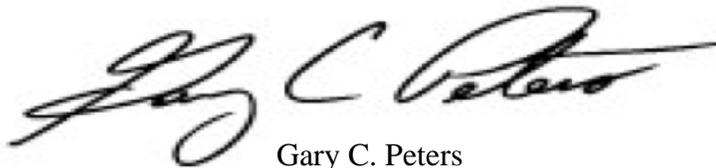
NSA foreign intelligence report.”³ You then immediately released the list, without any accompanying official action of the Committees, ostensibly “in the spirit of transparency.”⁴

You now seek to depose witnesses on this matter, and yet, despite requesting “all information regarding the ‘unmasking,’” you have not received the information necessary to understand the underlying facts. You have not received the NSA foreign intelligence reports, the finished intelligence products that use these reports, or the unmasking requests, which include justifications for the requests. These documents are especially important for understanding why officials would make unmasking requests, including for reasons of national security. These documents are also important to clarify the specific unmasking justification given the conflation in the public narrative between these NSA unmasking requests and the FBI transcripts of Lt. Gen. Flynn’s calls with Ambassador Kislayk, which never masked Lt. Gen. Flynn’s name. Our Committee Members need this information to properly weigh your requests for authorization of subpoenas and deposition notices.

Acting Director Grenell’s response to you also notes that “(e)ach individual was an **authorized recipient** of the original report and the unmasking was approved through **NSA’s standard process** which includes the justification for the request.”⁵ Our Committee Members do not have the requisite understanding of this “standard process.” It appears, however, that such requests are routinely made with strong justifications.⁶ In addition, while the response you received from Acting Director Grenell included a list of 39 “authorized recipient(s),” it also stated that only “16 authorized individuals” actually *requested* unmaskings and that “we cannot confirm [the 39 authorized recipients] saw the unmasked information.” How this all fits in to the “standard process” is not apparent. Our Committee Members need to understand this process in order to vote responsibly.

I respectfully request that you schedule an NSA briefing on unmasking, insist on receiving the underlying intelligence reports, finished intelligence products, and unmasking requests, and share these documents with Members of the Committee before any vote on authorizing further subpoenas. No serious investigation could proceed without first taking these steps.

Sincerely,



Gary C. Peters
Ranking Member

³ Letter from Acting Director of National Intelligence Richard A. Grenell to the Honorable Charles E. Grassley and the Honorable Ron Johnson at 1 (May 13, 2020) (emphasis added) [[https://www.hsgac.senate.gov/imo/media/doc/2020-05-13%20ODNI%20to%20CEG%20RHJ%20\(Unmasking\).pdf](https://www.hsgac.senate.gov/imo/media/doc/2020-05-13%20ODNI%20to%20CEG%20RHJ%20(Unmasking).pdf)].

⁴ Letter from Chairman Ron Johnson and Chairman Charles Grassley to Secretary of State Pompeo (June 11, 2020).

⁵ Letter from Acting Director of National Intelligence Richard A. Grenell to the Honorable Charles E. Grassley and the Honorable Ron Johnson at 1 (May 13, 2020) (emphasis added) [[https://www.hsgac.senate.gov/imo/media/doc/2020-05-13%20ODNI%20to%20CEG%20RHJ%20\(Unmasking\).pdf](https://www.hsgac.senate.gov/imo/media/doc/2020-05-13%20ODNI%20to%20CEG%20RHJ%20(Unmasking).pdf)].

⁶ For example, according to the Office of the Director of National Intelligence, in 2019 the Intelligence Community approved 6,845 of 7,724 unmasking requests. Office of the Director of National Intelligence, Statistical Transparency Report Regarding the Use of National Security Authorities (2019) at 22 [https://www.dni.gov/files/CLPT/documents/2020_ASTR_for_CY2019_FINAL.pdf].