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# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

May 24, 2017

CHRISTOPHER R. HIXON, STAFF DIRECTOR  
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

Donald F. McGahn  
White House Counsel  
Eisenhower Executive Office Building  
1650 Pennsylvania Avenue, NW  
Washington, DC 20501

Dear Mr. McGahn:

I write to request information regarding the Trump Administration's policy and guidance related to communications between White House employees and federal agencies regarding acquisition, procurement, and federal grants.

On January 27, 2017, you sent a memorandum to all White House staff related to "communications restrictions with personnel at the Department of Justice."<sup>1</sup> The memorandum provided guidance to White House employees regarding several categories of contacts including "limitations on discussing ongoing or contemplated cases or investigations."<sup>2</sup> Previous administrations have issued similar memoranda to White House staff that also provide guidance regarding communications with executive branch and independent agencies where, in the words of a former White House Counsel under President George H.W. Bush, "those agencies have an adjudicative, investigatory, enforcement, intelligence, or procurement function."<sup>3</sup> Agency decisions in these areas are all intended to remain outside the political sphere, and strict limitations on political influence are necessary to protect the integrity of these processes.

Your memorandum establishes limitations on White House staff discussing investigations and other matters, and alerts staff that they "must consult the Counsel's office for guidance" if they are not certain that a contact is permissible. The memorandum notes that "these rules exist to ensure both efficient execution of the Administration's policies and the highest level of integrity with respect to civil or criminal enforcement proceedings handled by DOJ."<sup>4</sup> To that

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<sup>1</sup> Memorandum from Donald F. McGahn II, Counsel to the President to All White House Staff regarding *Communications Restrictions with Personnel at the Department of Justice* (Jan. 2017).

<sup>2</sup> *Id.*

<sup>3</sup> Memorandum from C. Boyden Gray, Counsel to the President to White House Staff regarding *Prohibited Contacts with Agencies* (1989).

<sup>4</sup> Memorandum from Donald F. McGahn II, Counsel to the President to All White House Staff regarding *Communications Restrictions with Personnel at the Department of Justice* (Jan. 2017).

extent, your memorandum provides similar guidance as other White House Counsels, of both Republican and Democratic administrations, have provided to White House employees regarding their communications with the Department of Justice (DOJ).

Your memorandum differs, however, in that it is limited to a discussion of contacts between the White House staff and the DOJ. Memoranda from previous White House Counsels of both Republican and Democratic administrations have also provided guidance to White House employees regarding their communications with executive branch and independent agencies regarding various issues including acquisition, procurement, and grants. For example, a memorandum on “prohibited contacts with agencies” to White House staff from C. Boyden Gray, Counsel to President George H.W. Bush, stated “no member of the White House staff should contact any procurement officer about a contract in which he has a personal financial interest or in which a friend, relative, or business associate has a financial interest.”<sup>5</sup> The memorandum directed White House staff that in order to “avoid the appearance of conflict and subsequent embarrassment, White House staff members who feel they must contact procurement agencies with regarding to pending matters should also first contact the Office of the Counsel to the President.”<sup>6</sup> This limitation applied to “calls or contacts in which influence is directly exerted, but also as to so-called ‘status’ calls” by White House personnel.<sup>7</sup> On January 16, 1996, Jack Quinn, Counsel to President Bill Clinton, issued a memorandum outlining policies for White House staff “contacts with agencies.”<sup>8</sup> The memorandum states: “Some contacts between White House staff and federal agencies are permitted, and some are prohibited. Unless you are certain that a particular contact is permissible, you should take care before making the contact to consult with the Counsel’s Office.”<sup>9</sup> President Obama’s White House Counsel, Kathryn Ruemmler, also provided lengthy guidance to White House staff regarding contacts with agencies, including a portion that has been described as setting limitations on contacting federal agencies about “the merits of a particular grant or other funding decision involving specific parties.”<sup>10</sup>

Having worked for years to strengthen the federal contracting process, and to ensure that contracting decisions are made on the merit of the application, I have particular interest in how the Trump Administration is preserving the integrity of this process. Congress has passed numerous laws to protect the integrity of competitive bidding and merit-based selection

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<sup>5</sup> Memorandum from C. Boyden Gray, Counsel to the President to White House Staff regarding *Prohibited Contacts with Agencies* (1989).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Memorandum from Jack Quinn, Counsel to the President *et. al.* to White House Staff regarding *Contacts with Agencies* (Jan. 1996).

<sup>9</sup> *Id.*

<sup>10</sup> Memorandum from United to Protect Democracy to Interest Parties regarding *White House Communications with the DOJ and FBI* (Mar. 2017).

procedures for awarding federal grants and contracts.<sup>11</sup> As President George H.W. Bush's White House Counsel noted in 1989, the American public is "increasingly sensitive to the allegations of improper influence in the awarding of government contracts."<sup>12</sup> Consistent with the practice of your predecessors, I urge you to ensure that the White House staff has been appropriately advised regarding limitations on their communications with federal agencies on procurement and funding decisions, as well as the range of other enforcement and investigatory functions for which such limitations are appropriate. In addition, I urge you to put in place procedures to monitor and promote compliance with any such guidance.

To better understand the Trump Administration's policy regarding communications between White House staff and federal agencies' contracts, grants, or other funding decisions, I request that you please provide the following information not later than close of business on June 7, 2017:

1. Please provide copies of any and all memoranda or other guidance provided to White House staff on or after January 20, 2017, related to their communications with federal agencies about such decisions.
2. If no such guidance exists, please provide a time table for when your office will provide guidance to White House staff related to their communications with federal agencies about such decisions.
3. Please describe what processes and procedures the White House Counsel's Office has in place to monitor and ensure compliance with any guidance it has provided to White House staff related to their communications with any federal agencies.
4. Please provide a description of any instances since January 20, 2017, where the White House Counsel's Office has discovered that a White House employee violated the directives it has provided related to communications with federal agencies. This description should include information regarding the type of communication, the White House employee involved, the agency involved, any decision made by the agency regarding the matter at issue, and whether any remedial action was taken regarding the White House employee's conduct.

Should you have any questions regarding this inquiry, please contact Donald Sherman on my staff at [Donald\\_Sherman@hsgac.senate.gov](mailto:Donald_Sherman@hsgac.senate.gov) or by phone at (202) 224-2627. Please send any official correspondence relating to this request to [Amanda\\_Trosen@hsgac.senate.gov](mailto:Amanda_Trosen@hsgac.senate.gov). Thank you in advance for your prompt attention to this request. I look forward to your response.

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<sup>11</sup> See e.g., 41 U.S.C. § 3105.

<sup>12</sup> Memorandum from C. Boyden Gray, Counsel to the President to White House Staff regarding *Prohibited Contacts with Agencies* (1989).

Donald F. McGahn  
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Sincerely,

A handwritten signature in blue ink, appearing to read "Claire McCaskill". The signature is fluid and cursive, with the first name "Claire" written in a larger, more prominent script than the last name "McCaskill".

Claire McCaskill  
Ranking Member

cc: Ron Johnson  
Chairman