

# TRUMP APPEARS TO HAVE WITHHELD THE KT MCFARLAND EMAIL ABOUT THE “THROWN ELECTION”

*This post explains what appears to be the real reason for the fake outrage about Mueller obtaining information from GSA: by doing so, he appears to have obtained proof that the Transition was withholding emails material to the investigation. Go to this post for a more general summary of what we know about the claim.*

Here's the letter that Trump For America lawyer sent to Congress to cause a big hullabaloo about how Robert Mueller obtained transition period emails. I unpacked it in this Twitter thread and commented on it in an update to this post.

But this passage deserves a separate post, because it seems to go to the heart of why the Republicans are spewing propaganda like this.

Additionally, certain portions of the PTT materials the Special Counsel's Office obtained from the GSA, including materials that are susceptible to privilege claims, have been leaked to the press by unknown persons. Moreover, the leaked records have been provided to the press without important context and in a manner that appears calculated to inflict maximum reputational damage on the PTT and its personnel, without the inclusion of records showing that PTT personnel acted properly – which in turn forces TFA to make an impossible choice between (a) protecting its legal privileges by keeping its records confidential and (b) waiving its privileges by publicly releasing records

that counteract the selective leaks and misguided news reports. In short, since the GSA improperly provided them to the Special Counsel's Office, the PTT's privileged materials have not only been reviewed privately by the Special Counsel's Office without notification to TFA – they have also been misused publicly.

Kory Langhofer is insinuating – without quite risking the claim – that after GSA shared certain emails with Robert Mueller's office, "unknown persons" leaked them to the press. The insinuation is that Mueller's team leaked them.

I can think of just one set of emails that fit this description: emails from KT McFarland that provided proof that Mike Flynn lied to the FBI about his conversations with Sergei Kislyak on December 29, 2016. The NYT quoted extensively from them in a December 2 story.

Among other things, McFarland stated in the emails that Russia "has just thrown the U.S.A. election to" Trump.

On Dec. 29, a transition adviser to Mr. Trump, K. T. McFarland, wrote in an email to a colleague that sanctions announced hours before by the Obama administration in retaliation for Russian election meddling were aimed at discrediting Mr. Trump's victory. The sanctions could also make it much harder for Mr. Trump to ease tensions with Russia, "which has just thrown the U.S.A. election to him," she wrote in the emails obtained by The Times.

[snip]

Mr. Obama, she wrote, was trying to "box Trump in diplomatically with Russia," which could limit his options with other countries, including Iran and Syria. "Russia is key that unlocks door," she wrote.

She also wrote that the sanctions over Russian election meddling were intended to “lure Trump in trap of saying something” in defense of Russia, and were aimed at “discrediting Trump’s victory by saying it was due to Russian interference.”

“If there is a tit-for-tat escalation Trump will have difficulty improving relations with Russia, which has just thrown U.S.A. election to him,” she wrote.

Contrary to Langhofer’s suggestion, NYT made some effort to mitigate the damage of McFarland’s comment seemingly confirming the Trump team knew the election had been stolen, including speaking to a White House lawyer about it.

It is not clear whether Ms. McFarland was saying she believed that the election had in fact been thrown. A White House lawyer said on Friday that she meant only that the Democrats were portraying it that way.

And while NYT’s explanation that they got the emails “from someone who had access to transition team communications” certainly could include Mueller’s team among the culprits, it could also include GSA officials themselves or – even more likely – a former Trump official with a grudge. At least three were CCed on the email in question: Bannon, Priebus, and Spicer.

Mr. Bossert forwarded Ms. McFarland’s Dec. 29 email exchange about the sanctions to six other Trump advisers, including Mr. Flynn; Reince Priebus, who had been named as chief of staff; Stephen K. Bannon, the senior strategist; and Sean Spicer, who would become the press secretary.

In other words, Langhofer uses the leak as an excuse to suggest wrong-doing by Mueller, when other possibilities are far more likely.

But consider the other implication of this: Langhofer is suggesting that this email chain (which included no named active lawyers, nor included Trump directly, though they were written in Trump's presence at Mar a Lago) is "susceptible to privilege claims." He is further suggesting that GSA is the only way this email could have been released (ignoring, of course, the Bannon/Priebus/Spicer) options.

If that's right, then he's suggesting that Trump was involved in this email chain directly. There's no reason to believe he was CCed. But since the emails were written from Mar-a-Lago, it's likely he was consulted in the drafting of the emails.

In addition, Langhofer is *also* admitting that Trump's team didn't release these emails directly – at least not to Congress.

Emails which couldn't be more central to the point of Mueller's investigation.

Did the GOP just admit that Trump withheld this email? Because if so, it suggests the "thrown election" comment is far more damning than the NYT laid out.

Update: It's not clear whether Mueller ever tried to obtain these records via GSA (though it's possible FBI obtained emails before the inauguration). But this, from the letter, makes it clear at least Congress had made requests, which led TFA to try to take GSA out of the loop *even though SCO had a document preservation request*.

In order to comply with congressional document production requests, TFA ordered from the GSA electronic copies of all PTT emails and other data. Career GSA staff initially expressed concern that providing copies of PTT emails to TFA might violate a document

preservation request that the GSA had received from the Special Counsel's Office.

Withholding this email from Congress would be particularly problematic, as McFarland testified in conjunction with her now-frozen nomination to be Ambassador to Singapore that she knew nothing about Flynn's communications with Kislyak. h/t SS

Update: Ah, this explains how Mueller was getting emails: via voluntary production, along with everything the Transition was giving Congress. Which means the email was withheld, and this October subpoena was an attempt to see whether they'd cough it up on their own.

Special counsel Robert Mueller's team in mid-October issued a subpoena to President Donald Trump's campaign requesting Russia-related documents from more than a dozen top officials, according to a person familiar with the matter.

The subpoena, which requested documents and emails from the listed campaign officials that reference a set of Russia-related keywords, marked Mr. Mueller's first official order for information from the campaign, according to the person. The subpoena didn't compel any officials to testify before Mr. Mueller's grand jury, the person said.

The subpoena caught the campaign by surprise, the person said. The campaign had previously been voluntarily complying with the special counsel's requests for information, and had been sharing with Mr. Mueller's team the documents it provided to congressional committees as part of their probes of Russian interference into the 2016 presidential election.

[snip]

Mueller's team had previously issued subpoenas individually to several top campaign officials, including former campaign chairman Paul Manafort and former national security adviser Mike Flynn.

[Correction: I've been corrected on this passage, which makes it clear this is about campaign emails, not transition ones. But I assume he made parallel requests for all three phases of Trump organization.]

Update: Mueller's spox, Peter Carr, issued a statement saying, "When we have obtained emails in the course of our ongoing criminal investigation, we have secured either the account owner's consent or appropriate criminal process." Given what I've laid out here, I actually think "C" may have been the case:

- Subpoena to Flynn, obtain voluntary compliance for specific things as well as evidence shared with Congress prior to August
- In August (perhaps after being alerted to withheld documents by Priebus/Spicer/Bannon/Papadopoulos?) obtain emails from GSA, technically the device owners
- In October, subpoena for Russian-related emails from the same ~13 people