

# TRUMP TRANSITION TEAM OUTRAGED TO BE TREATED AS TRANSITION TEAM!!

*This is a general post on the GOP claim Mueller improperly obtained emails from ~13 Transition officials, updated as new news comes available. This post explains what is really going on: the Transition appears to have withheld emails – including the KT McFarland one referring to the election as having been “thrown” – and Mueller obtained proof they were withholding things.*

Both Fox News and Axios have pieces reflecting the outrage!!! among Trump people that they got asked questions about emails they thought they had hidden from Mueller’s investigation. Axios reveals that Mueller obtained the full contents of 12 accounts (Reuters says 13), one including 7,000 emails, from people on the “political leadership” and “foreign-policy team;” it says it includes “sensitive emails of Jared Kushner.”

Fox reveals that a transition lawyer wrote Congress today claiming that it was unlawful for government employees to turn over emails hosted on government servers for a criminal investigation.

A lawyer for the Trump presidential transition team is accusing Special Counsel Robert Mueller’s office of inappropriately obtaining transition documents as part of its Russia probe, including confidential attorney-client communications and privileged communications.

In a letter obtained by Fox News and sent to House and Senate committees on Saturday, the transition team’s attorney alleges “unlawful conduct” by the career staff at the General Services Administration in handing over

transition documents to the special counsel's office.

Officials familiar with the case argue Mueller could have a problem relating to the 4th Amendment – which protects against unreasonable searches and seizures.

Kory Langhofer, the counsel to Trump for America, wrote in the letter that the the GSA “did not own or control the records in question.”

But, Langhofer says, Mueller's team has “extensively used the materials in question, including portions that are susceptible to claims of privilege.”

And Axios explains that the Trump people actually sorted through this stuff. “The sources say that transition officials assumed that Mueller would come calling, and had sifted through the emails and separated the ones they considered privileged.”

I'm really looking forward to hearing the full story about this, rather than just this partisan spin. For example, I'm interested in whether Mueller realized via some means (perhaps from someone like Reince Priebus or Sean Spicer – update, or George Papadopoulos) that the White House had withheld stuff that was clearly responsive to his requests, so he used that to ask GSA to turn over the full set.

I'm also interested in how they'll claim any of this was privileged. The top 13 political and foreign policy people on the Trump team might include (asterisks mark people confirmed to be among those whose accounts were obtained):

1. Pence
2. Bannon
3. Jared\*
4. Flynn\*
5. KT McFarland

6. Spicer
7. Priebus
8. Nunes
9. Sessions
10. Seb Gorka
11. Stephen Miller
12. Hope Hicks
13. Ivanka
14. Don Jr
15. Rebekah Mercer
16. Kelly Anne Conway
17. Rudy Giuliani
18. Steven Mnuchin
19. Rick Gates
20. Corey Lewandowski
21. Tom Bossert

Just one of those people – Sessions – is a practicing lawyer (and he wasn't, then), and he wasn't playing a legal role in the transition (though both Sessions and Nunes may have been using their congressional email, in which case Mueller likely *would* show far more deference; update: I've added Rudy 911 to the list, and he'd obviously qualify as a practicing lawyer). Though I suppose they might have been talking with a lawyer. But I would bet Mueller's legal whiz, Michael Dreeben, would point to the Clinton White House Counsel precedent and say that transition lawyers don't get privilege.

Furthermore, Trump *wasn't President yet!* This has come up repeatedly in congressional hearings. You don't get privilege until after you're president, in part to prevent you from doing things like – say – undermining existing foreign policy efforts of the actually still serving President. So even if these people were repeating things Trump said, it wouldn't be entitled to privilege yet.

Finally, consider that some of these people were testifying to the grand jury months and months

ago. But we're only seeing this complaint today. That's probably true for two reasons. One, because Mueller used the emails in question (most notably, the emails between McFarland and Flynn from December 29 where they discussed Russian sanctions) to obtain a guilty plea from Flynn. And, second, because Republicans are pushing to get Trump to fire Mueller.

Update: I've added Pence, Don Jr., Ivanka, Hope Hicks, Kelly Anne Conway, Rudy Giuliani, Steven Mnuchin back in here.

Update: Here's more from Reuters.

Langhofer, the Trump transition team lawyer, wrote in his letter that the GSA's transfer of materials was discovered on Dec. 12 and 13.

The FBI had requested the materials from GSA staff last Aug. 23, asking for copies of the emails, laptops, cell phones and other materials associated with nine members of the Trump transition team response for national security and policy matters, the letter said.

On Aug. 30, the FBI requested the materials of four additional senior members of the Trump transition team, it said.

The GSA transfer may only have been discovered this week (probably as a result of Congress' investigation). But the witnesses had to have known these emails went beyond the scope of what the transition turned over. And the request date definitely is late enough for Mueller to have discovered not everything got turned over, perhaps even from George Papadopoulos, who flipped in late July.

Update: One more thing. Remember that there were worries that transition officials were copying files out of a SCIF. That, by itself, would create an Insider Threat concern that would

merit FBI obtaining these emails directly.

Update: Here's a report dated June 15 on a transition lawyer instructing aides and volunteers to save anything relating to Russia, Ukraine, or known targets (Flynn, Manafort, Page, Gates, and Stone).

Update: AP reports that Flynn was (unsurprisingly) among those whose email was obtained.

Update: Here's the letter. I unpacked it here. It's a load of – I believe this is the technical term – shite. First, it stakes everything on PTT not being an agency. That doesn't matter at all for a criminal investigation – Robert Mueller was no FOIAing this stuff. It then later invokes a bunch of privileges (the exception is the attorney client one) that only come with the consequent responsibilities. It then complains that Mueller's team didn't use a taint team.

Perhaps the craziest thing is they call for a law that would only permit someone to access such emails for a national security purpose – as if an espionage related investigation isn't national security purpose!

Update: Chris Geidner got GSA's side of the story. Turns out they claim the now dead cover up GC didn't make the agreement the TFA lawyer says he did. In any case, GSA device users agreed their devices could be monitored.

“Beckler never made that commitment,” he said of the claim that any requests for transition records would be routed to the Trump campaign's counsel.

Specifically, Loewentritt said, “in using our devices,” transition team members were informed that materials “would not be held back in any law enforcement” actions.

Loewentritt read to BuzzFeed News a series of agreements that anyone had to agree to when using GSA materials during

the transition, including that there could be monitoring and auditing of devices and that, "Therefore, no expectation of privacy can be assumed."

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."