



May 9, 2017

Thomas Hungar  
General Counsel  
House of Representatives  
Office of General Counsel  
219 Cannon House Office Building  
Washington, D.C. 20515-6532

Dear Mr. Hungar:

Recent reports indicate that the House Committee on Financial Services and the House Ways and Means Committee have instructed agencies to exclude from public records laws all correspondence with the committees, as well as any material prepared in response to committee requests—all apparently on advice from your office.<sup>1</sup> American Oversight respectfully requests that the House Office of General Counsel immediately publicly release the purported legal justification for these expansive directives.

According to press reports, your office subscribes to the view that congressional records are exempt from FOIA and that any communications from Congress are congressional records “whenever Congress expresses the intention that such communications are to retain their status as congressional records.”<sup>2</sup> This sweeping and circular position appears to be a radical extrapolation from specific language in case law.<sup>3</sup> Contrary to your assertion, however, no case holds that all, or even most, of congressional correspondence with executive branch agencies is exempt from disclosure. In each case in which courts have protected from disclosure “congressional records” in the possession of executive branch agencies, the courts have

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<sup>1</sup> Mary Ann Georgantopoulos, *These Federal Agencies Agreed To Conceal Some Of Their Communications From The Public*, BUZZFEED NEWS, May 7, 2017, [https://www.buzzfeed.com/maryanngeorgantopoulos/federal-agencies-conceal-communications?utm\\_term=.mrZB0rV0J#.mjjd8Ej8R](https://www.buzzfeed.com/maryanngeorgantopoulos/federal-agencies-conceal-communications?utm_term=.mrZB0rV0J#.mjjd8Ej8R); Mary Ann Georgantopoulos, *Now Another House Committee Doesn't Want You To Read Its Emails With Government Officials*, BUZZFEED NEWS, May 5, 2017, [https://www.buzzfeed.com/maryanngeorgantopoulos/house-committee-foia-part-2?utm\\_term=.jama5pR57#.pnWj7YN7Q](https://www.buzzfeed.com/maryanngeorgantopoulos/house-committee-foia-part-2?utm_term=.jama5pR57#.pnWj7YN7Q); Mary Ann Georgantopoulos, *A House Committee Doesn't Want You To See Its Correspondence With Government Officials*, BUZZFEED NEWS, May 4, 2017 [https://www.buzzfeed.com/maryanngeorgantopoulos/house-committee-wants-records-with-treasury-secret?utm\\_term=.coQ7LWaLX#.yqJ3ZbVZk](https://www.buzzfeed.com/maryanngeorgantopoulos/house-committee-wants-records-with-treasury-secret?utm_term=.coQ7LWaLX#.yqJ3ZbVZk).

<sup>2</sup> Mary Ann Georgantopoulos, *These Federal Agencies Agreed To Conceal Some Of Their Communications From The Public*, BUZZFEED NEWS, May 7, 2017.

<sup>3</sup> See *United We Stand Am., Inc. v. IRS*, 359 F.3d 595, 597 (D.C. Cir. 2004).



examined the specific content of the documents in question and found case-specific reasons why disclosing the documents would impair Congress's constitutional role.<sup>4</sup>

The directives issued by the House Committee on Financial Services and the House Ways and Means Committee would take this narrow, case-by-case approach and replace it with a presumption of secrecy for an entire category of information. Indeed, the House Ways and Means Committee reportedly is including such language in a stock footer in staff emails regardless of their subject matter.<sup>5</sup> Such an approach directly contradicts Congress's initiative to impose a presumption of *disclosure* through the FOIA Improvement Act of 2016.

Unfortunately, several executive agencies reportedly intend to comply with the committees' overbroad directives.<sup>6</sup> As a result, FOIA requesters may never learn that agencies are withholding responsive documents based on a rationale outside of the FOIA statute itself. The public will suffer from this extra-statutory policy. At minimum, the public should have access to the analysis behind it.

We look forward to your prompt response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers  
Executive Director  
American Oversight

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<sup>4</sup> See, e.g., *United We Stand Am., Inc. v. IRS*, 359 F.3d 595, 597–602 (D.C. Cir. 2004); *Golund v. CIA*, 607 F.2d 339, 348 (D.C. Cir. 1978); *Am. Civil Liberties Union v. CIA*, 105 F. Supp. 3d 25 (D.D.C. 2015).

<sup>5</sup> Mary Ann Georgantopoulos, *Now Another House Committee Doesn't Want You To Read Its Emails With Government Officials*, BUZZFEED NEWS, May 5, 2017.

<sup>6</sup> Mary Ann Georgantopoulos, *These Federal Agencies Agreed To Conceal Some Of Their Communications From The Public*, BUZZFEED NEWS, May 7, 2017.