



**Committee on Transportation and Infrastructure**  
**U.S. House of Representatives**

**Peter A. DeFazio**  
**Chairman**

**Washington, DC 20515**

**Sam Graves, MO**  
**Ranking Member**

Katherine W. Dedrick, Staff Director

Paul J. Sass, Republican Staff Director

September 10, 2019

Ms. Emily W. Murphy  
Administrator  
U.S. General Services Administration (GSA)  
1800 F Street NW  
Washington, DC 20405

Dear Administrator Murphy:

We are writing to respond to your request for the legislative purpose supporting our January 22, 2019, letter seeking information and documents related to the General Services Administration's (GSA) leasing of the Old Post Office Building (OPO) and your refusal to provide the committee with business records related to this lease. Under Rule X of the Rules of the House of Representatives, the House Committee on Transportation and Infrastructure has legislative and oversight jurisdiction over "[p]urchase of sites and construction of post offices, custom-houses, Federal courthouses, and Government buildings within the District of Columbia" and "[p]ublic buildings and occupied or improved grounds of the United States generally."<sup>1</sup> As you are aware, the Old Post Office Building is a federally-owned building located in the District of Columbia redeveloped pursuant to the Old Post Office Building Redevelopment Act of 2008.<sup>2</sup>

While we do appreciate the records GSA has already provided to the committee, your agency has specifically refused to provide several categories of records, including financial documents of the Trump Old Post Office LLC ("Tenant") and GSA legal memos and opinions regarding the Old Post Office lease. Your agency has also claimed that GSA has not challenged the committee's oversight authority, yet GSA has relied on the attorney representing the Tenant who has made claims asserting our "request for Confidential Information lacks any legitimate legislative purpose" in your response to our staff.<sup>3</sup> In addition, GSA has claimed that "GSA is bound by its contractual obligations, which protect from disclosure certain Confidential Information, as defined by the terms of the lease." Neither of these claims have any bearing on our committee's oversight of GSA, our investigation

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<sup>1</sup> Rules of the House of Representatives, 116th Cong. Rule X(1)(r) (2019), accessed here: <https://rules.house.gov/sites/democrats.rules.house.gov/files/116-1/116-House-Rules-Clerk.pdf>.

<sup>2</sup> Old Post Office Building Redevelopment Act of 2008, Pub. L. No. 110-359, 122 Stat. 4005 (2008).

<sup>3</sup> Letter from Stefan Passantino, attorney at Michael Best & Friedrich LLP, representing Trump Old Post Office LLC ("Tenant") to Kevin Terry, the General Services Administration's (GSA's) Contracting Officer on the Old Post Office lease, April 17, 2019.

into the federal lease of the Old Post Office building to the Trump International Hotel or our request to obtain copies of relevant records to help inform this inquiry.

In actuality, Section 37.1 of the ground lease between the United States (as “Landlord”) and the Tenant makes three specific references to circumstances where “Confidential Information” may be disclosed by GSA. The first includes consent from the Tenant, which in this case is the Trump Old Post Office LLC, which owns and manages the Trump International Hotel. Importantly, President Trump is the sole beneficiary of a trust with a controlling interest in the Trump Old Post Office LLC. Your agency appears to be solely relying on this first reference in the lease for its response to our committee regarding your refusal to provide relevant business records. However, GSA fails to reference the second or third categories in the lease which clearly permits GSA to provide confidential business information to “any other agency or department of the United States who need to know such information in performance of their duties on behalf of the United States” and as required by law or who are “not employees of Landlord [GSA] but who need to know such information in performance of their work on behalf of the United States...”<sup>4</sup>

The Committee on Transportation and Infrastructure has a clear oversight duty to examine the management of your agency, its programs, projects and leases. We can see no legitimate rationale for any claim that the Old Post Office lease should fall into a special category and be excluded from appropriate congressional oversight and review. The committee’s oversight of your agency and request for GSA’s legal memos and opinions regarding this building, and the business records of the Tenant of a federal building owned by GSA is legitimate, proper and justified.

The Tenant’s attorney attempts to dictate to GSA what your proper role is in responding to a congressional inquiry.<sup>5</sup> The attorney misconstrues Congress’s legitimate oversight authority and attempts to thwart our committee’s investigation into legitimate issues regarding the Constitutional Clauses relevant to this lease and the apparent conflicts-of-interest that exist between President Trump and the leasing of the Old Post Office building for use by the Trump International Hotel.

There are clearly multiple legitimate reasons for our committee to be examining GSA’s lease of the Old Post Office Building to the Trump International Hotel. However, it is not beholden upon the committee to proactively identify any ultimate legislative action or potential oversight goal regarding any of our investigations. As the Supreme Court has previously ruled, “valid legislative” inquiries do not need to be publicly declared to make them valid, and their ultimate outcome does not need to be “predictable.”<sup>6</sup> “Nor is the legitimacy of a congressional inquiry to be defined by what it produces,” according to the Supreme Court opinion in *Eastland v. United States Servicemen’s Fund*.<sup>7</sup>

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<sup>4</sup> Ground Leaser by & between the U.S. (as “Landlord”) & Trump Old Post Office LLC (as “Tenant”), Lease No.: GS-LS-11-1307 (Aug. 5, 2013).

<sup>5</sup> Interestingly, GSA did not raise any issues about T&I’s legislative purpose in seeking records regarding the Old Post Office building lease or the request for business related financial data from the Trump International Hotel generated as a result of this lease until these issues were raised by the counsel to the Trump Old Post Office LLC, months after our inquiry had begun.

<sup>6</sup> Todd Garvey, “Legislative Purpose and Adviser Immunity in Congressional Investigations, Congressional Research Service (CRS), May 24, 2019, accessed here: <https://www.crs.gov/reports/pdf/LSB10301>.

<sup>7</sup> *Eastland v. United States Servicemen’s Fund*, U.S. Supreme Court, No. 73-1923, Argued: January 22, 1975; Decided: May 27, 1975, accessed here: <https://caselaw.findlaw.com/us-supreme-court/421/491.html>.

In regard to confidential business information, congressional committees frequently request and are granted confidential business records in order to fulfill their required oversight duties to the public. Both Democratic and Republican chairs of committees and subcommittees have routinely been provided with confidential business sensitive information from both federal agencies and private entities.<sup>8</sup> Restrictions limiting distribution of confidential business records to the public under the Freedom of Information Act (FOIA), for instance, simply do not apply to Congress.<sup>9</sup>

The business records and GSA legal memos and opinions regarding the Trump International Hotel that the committee has requested may lead to legislation within its jurisdiction, including, but not limited to, federal real property, federal real property disposal, federal leasing practices, improvement or changes to GSA's leasing management procedures and related issues. As you are keenly aware, one of the committee's duties is to oversee GSA's management of its real property portfolio and GSA's implementation of public private partnerships. Efforts not to fulfill our request for key information relevant to the Old Post Office building lease hamper our ability to conduct legitimate oversight of these issues.

While we appreciate the records that GSA has provided to the committee so far, providing a cover page of the monthly financial reports and related financial information we requested is wholly inadequate. GSA has cited attorney-client privilege and deliberative process privilege in withholding legal memos from the committee. Ultimately, the committee has discretion in accepting these privileges and can consider the need for the documents for the committee's ability to fulfill its constitutional oversight role.<sup>10</sup> We expect that GSA will fulfill its obligation to the U.S. Congress, our committee and the public by providing the totality of the information we have sought. We await delivery of those records.

As we have indicated in our previous letter, please deliver one set of these records to the Majority Staff in Room 2165 of the Rayburn House Office Building and one set of records to the Minority Staff in Room 2164 of the Rayburn House Office Building. Any questions regarding this request should be directed to Lauren Dudley, T&I's Majority Oversight Counsel at (202) 225-4472.

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<sup>8</sup> There are multiple examples of confidential business records being provided to Congress. In 2012, for instance, the former Republican Chairman of the House Committee on Oversight and Government Reform, Darrell Issa, received confidential business information regarding an investigation into certain projects being funded by the Department of Energy, see here: [https://www.governmentattic.org/18docs/DOEcongCorres\\_2012-2013un.pdf](https://www.governmentattic.org/18docs/DOEcongCorres_2012-2013un.pdf). Earlier this year the Committee on Transportation and Infrastructure wrote to and received confidential business information from both The Boeing Company and the Federal Aviation Administration (FAA) as part of the committee's investigation into the 737 MAX aircraft. Previously, our committee has requested and received from GSA and other federal agencies Confidential Information that was proprietary or procurement sensitive information generated by private developers for federal GSA projects. Specific GSA projects include the Securities and Exchange Commission (SEC) lease at Constitution Center in Washington, D.C. and a U.S. Department of Health and Human Services (HHS) lease at a private site in the state of Maryland. The committee in turn used that information to consider potential legislative changes to federal leasing and federal real property issues.

<sup>9</sup> Elaine Halchin, Todd Garvey, et al., "Congressional Oversight Manual," Congressional Research Service (CRS), December 19, 2014, accessed here: <https://www.crs.gov/reports/pdf/RL30240>

<sup>10</sup> 2 U.S.C. §190d; Elaine Halchin, Todd Garvey, et al., "Congressional Oversight Manual," Congressional Research Service (CRS), December 19, 2014, accessed here: <https://www.crs.gov/reports/pdf/RL30240>



The Honorable Emily W. Murphy  
September 10, 2019  
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Thank you for your assistance in this matter.

Sincerely,



PETER A. DeFAZIO  
Chair



DINA TITUS  
Chair  
Subcommittee on Economic Development,  
Public Buildings, and  
Emergency Management

cc: The Honorable Sam Graves, Ranking Member  
Committee on Transportation & Infrastructure

The Honorable Mark Meadows, Ranking Member  
Subcommittee on Economic Development,  
Public Buildings, and Emergency Management