



United States Department of State

Washington, D.C. 20520

October 14, 2019

Andrew Wright  
K&L Gates LLP  
1601 K St NW  
Washington, DC 20006

Dear Mr. Wright:

We are writing to confirm the discussions that the Department of State has had with you over the past several days. We understand that you have received the Department's letter dated October 10, which transmitted an instruction from Counsel to the President Pat Cipollone concerning various demands by the U.S. House of Representatives Permanent Select Committee on Intelligence, Committee on Oversight and Reform, and Committee on Foreign Affairs.

In the event that your client nevertheless appears before the Committees, any such appearance would not relieve your client of his legal obligations to protect classified information and potentially privileged communications. The confidential communications between your client and foreign government officials may be classified and may be subject to claims of privilege. The President's position on the protection of information related to foreign policy and national security is guided by longstanding, bipartisan precedent established as early as the first presidential administration.<sup>1</sup> As Attorney General Reno explained during the Clinton Administration:

History is replete with examples of the Executive's refusal to produce to Congress diplomatic communications and related documents because of the prejudicial impact such disclosure could have on the President's ability to conduct foreign relations. It is equally well established that executive privilege applies to communications to and from the President and Vice President and to White House and NSC deliberative communications.<sup>2</sup>

In addition, the Department's internal communications, or those with other Executive Branch officials, related to foreign affairs may be classified and privileged. As Secretary Pompeo explained in his letter dated October 1, and as Mr. Cipollone's letter reiterated, the Department

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<sup>1</sup> See *History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress*, 6 Op. O.L.C. 751, 753 (1982) (noting that in response to a request for documents relating to negotiation of the Jay Treaty with Great Britain, President Washington sent a letter to Congress stating, "[t]o admit, then, a right in the House of Representatives to demand, and to have, as a matter of course, all the papers respecting a negotiation with a foreign Power, would be to establish a dangerous precedent.") (citation omitted).

<sup>2</sup> *Foreign Affairs with Respect to Haiti*, 20 Op. O.L.C. 5, 6 (1996).

of Justice has determined that the absence of agency counsel during an agency employee's testimony is unconstitutional and deprives the Department of the opportunity to raise objections to ensure that your client does not breach his obligations with respect to privileged and classified material.<sup>3</sup> Because the Committees continue to refuse to allow agency counsel to attend, it is incumbent on your client and you, as his counsel, to guard against unauthorized disclosure. To be clear, without an opportunity for the Department to review the information that may be disclosed to the Committees by your client, your client is not authorized to reveal or release any information subject to executive privilege, and no classified information may be disclosed in the absence of the required safeguards necessary to ensure its protections.

Finally, with respect to the Committees' request to your client for documents that constitute official State Department records, we appreciate the acknowledgement that you have provided that, in the absence of an opportunity for the Department to review such documents, your client is not authorized to disclose to Congress any records relating to official duties for the reasons set forth in the letter of October 10.

Please contact us if you have any further questions or would like to discuss this matter further.

Sincerely yours,

A handwritten signature in black ink that reads "Brian Bulatao". The signature is written in a cursive style with a large, looping initial "B".

Brian Bulatao  
Undersecretary of State

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<sup>3</sup> See generally *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. \_\_ (May 23, 2019).