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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

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January 30, 2014

Honorable Stevan E. Bunnell
General Counsel
U.S. Department of Homeland Security
3801 Nebraska Ave. NW
Washington, DC 20528

Dear Mr. Bunnell:

As you may recall, in November 2013 the Homeland Security and Governmental Affairs Committee (HSGAC) requested from the Department of Homeland Security (DHS) all mission logs related to U.S. Customs and Border Patrol's (CBP) drone program from 2010 to 2013. This followed several months of requests for information about CBP's drone program, including subsets of mission logs within that four-year period.

DHS informed this Committee last May that a public interest organization had made a public records (FOIA) request to DHS for similar drone documents. Many of the documents responsive to that request were relevant to our November request. We were informed of the organization's FOIA request, and the responsive documents, because DHS counsel shared this information with us. DHS Office of General Counsel (OGC) staff shared this information because the Department of Justice (DOJ) was releasing the documents to the group in response to litigation. In short, DOJ appears to have determined that the public had a right to access the information contained in the documents.

Over the past few weeks, DHS has produced to us documents it characterizes as CBP UAV mission logs from calendar years 2010 through 2013. This cooperation comes after weeks of negotiations, a result of the Department requesting special, explicit commitments from the Committee that it would handle, store and dispose of these documents with great caution and care due to their extremely sensitive nature.

DHS insisted these documents were so sensitive they could not be produced without explicit promises they would be handled with utmost care, and reviewed only by Committee staff. The Department further requested the Committee promise not to release any document without receiving permission from DHS, and to return or destroy all documents when they had been reviewed. The Committee declined to oblige this virtually unprecedented request.

The documents DHS produced are extensively redacted. DHS claims it redacted information relating to activities by other agencies. The release of that information to Congress, it stated, is “under review,” presumably with the other agencies.

My staff has reviewed the logs DHS produced for calendar year 2010. From this limited review, it appears that DHS has redacted information in the documents it provided to the Committee that is not redacted in the same documents DOJ released publicly.

For 2010 alone, my staff has tallied at least 20 instances in which the publicly-released documents appear to contain legible passages which are redacted entirely or in large part from the documents DHS provided the Committee. In other words, DHS appears to have chosen to withhold information from Congress which the DOJ – and, we must assume, DHS – has determined was appropriate to share with the American public. I have attached examples to this letter for your review.

Also of concern is the apparent lack of coordination between DHS and outside agencies, particularly the Department of Justice. DHS stated to the Committee that the passages it redacted were “pending review” with an outside agency. However, a comparison of the redacted passages with the publicly-released documents reveals that several of those passages relate to support for DOJ components, including the FBI. If the DOJ compels public release of documents detailing activities on behalf of its own component, and the documents are subsequently released to the public, it is not clear why DHS would later withhold the same information from Congress in order to consult with DOJ.

Of secondary concern but still significant, my staff noted several instances in which information that was provided to Congress does not seem to appear, even in redacted form, in the public documents released to the public interest group, suggesting that information may have been withheld in full from the organization without explanation or accounting.

The Department’s conduct in this matter has impacted the Committee’s ability to conduct its Constitutional responsibilities to oversee DHS operations. It has delayed access to relevant documents, and what it has provided falls short of what it is required to share with anyone, let alone in response to a Congressional request.

For over a year, this Committee has pressed the Department for more information regarding its unmanned aerial vehicle operations. These improperly redacted documents raise even more questions. If these vehicles are being operated in accordance with U.S. laws and in support of the Department's statutory mission, the lawfulness and efficacy of their operations should be easily demonstrable. This exercise may be said to demonstrate many things, but it does not demonstrate efficiency or transparency. Congress and the American people have a right to expect more from a Department which asks to be trusted with powerful tools and great authorities.

Please provide a full, unredacted set of the documents requested to the Committee as soon as possible, and an explanation for how and why these redactions were approved by your office. Thank you in advance for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "Tom Coburn". The signature is written in a cursive style with a prominent, sweeping initial "T".

Sen. Tom Coburn, MD
Ranking Member