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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
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April 5, 2017

**VIA ELECTRONIC TRANSMISSION**

The Honorable Mike Pompeo  
Director  
Central Intelligence Agency  
Washington, DC 20505

The Honorable Dan Coats  
Director of National Intelligence  
Office of the Director of National Intelligence  
Washington, DC 20511

The Honorable Christopher R. Sharpley  
Acting Inspector General  
Central Intelligence Agency  
Washington, DC 20505

The Honorable I. Charles McCullough, III  
Inspector General of the Intelligence  
Community  
Washington, DC 20511

Dear Director Pompeo, Director Coats, Acting Inspector General Sharpley, and Inspector General McCullough:

On April 14, 2014, I wrote to Directors Brennan and Clapper, carbon-copying Inspector General McCullough and Inspector General Buckley, among others, regarding two Congressional Notifications (CNs) that the Office of the Inspector General of the Intelligence Community had sent to Capitol Hill. The first CN was dated March 28, 2014, and had the unclassified subject line "Whistleblower Communications." The second CN was dated March 31, 2014, and had the unclassified subject line "Whistleblower Communications – Clarification." Both documents were classified SECRET/NOFORN. Among other requests, my April 2014 letter specifically asked that the CNs be declassified as soon as possible. Almost three years have passed since I sent my letter, and I have yet to receive declassified versions of the documents in response to my request. That is unacceptable.

As I mentioned in my April 2014 letter, the information contained in the two CNs raises serious policy implications as well as potential Constitutional separation-of-powers issues. The CNs do not appear to contain any information about sources or methods, and there is a strong public interest in their content. As a matter of respect for a co-equal branch of government, my declassification request should have been processed in a timely manner.

Executive Order 13526 establishes this mandatory declassification review, stating that, upon request, all classified information "shall be subject to a review for declassification," provided that "the request for a review describes the document or material containing the

information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort” and the information is not contained within an operational file exempt from disclosure under other laws. My April 2014 letter clearly described the materials with sufficient specificity, and there is no reason to believe that the CNs are part of an operational file. Moreover, under 32 C.F.R. § 2001.33, “[i]n responding to mandatory declassification review requests, agencies shall make a final determination **within one year from the date of receipt.**” (emphasis added); *see* 32 C.F.R. § 1908.01 *et seq.* Yet, nearly three years later, my request has not been answered. Not only has the agency disregarded the role of Congress by ignoring my declassification request, it has not even afforded me the basic declassification processes due to every American citizen.

In addition to seeking a mandatory declassification review pursuant to Section 3.5 of Executive Order 13526, I also challenge their classification pursuant to Section 1.8 of that Executive Order, which states that “[a]uthorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information[.]” I am such an authorized holder and I believe that the CNs’ classification status is improper for the reasons stated above, and because it is implausible that disclosure of the purportedly classified information within the CNs could reasonably be expected to cause serious damage to national security. As Section 1.7 of Executive Order 13526 states, “[i]n no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to ... conceal violations of law ... [or to] prevent embarrassment to a person, organization, or agency.” Both my mandatory declassification review and my classification challenge justify the classification downgrading of the CNs and their public release.

In light of this, please declassify the above-referenced CNs as soon as possible. If you choose not to declassify these two documents, please provide the Committee with a detailed written explanation of the declination by no later than April 19, 2017. If you have any questions about these requests, please contact Patrick Davis of my Committee Staff at (202) 224-5225. Thank you for your attention to this important matter.

Charles E. Grassley



Chairman  
Senate Committee on the Judiciary

cc: The Honorable Dianne Feinstein, Ranking Member  
U.S. Senate Committee on the Judiciary

The Honorable Richard Burr, Chairman  
U.S. Senate Select Committee on Intelligence

The Honorable Mark Warner, Vice Chairman  
U.S. Senate Select Committee on Intelligence

Mr. Michael Lavergne, Information and Privacy Coordinator  
Central Intelligence Agency