

Politics

Trump transition team charges Mueller obtained emails improperly, but legal experts challenge those claims

By **Anne Gearan** and **Philip Rucker** December 17 at 12:58 PM

A lawyer representing President Trump's transition team claimed Saturday that special counsel Robert S. Mueller III improperly obtained a trove of transition emails as part of the inquiry into Russian influence in the 2016 election and other matters.

The batch of emails totaling thousands of pages of communications was provided to Mueller by the federal General Services Administration, a lawyer representing the organization known as Trump for America said in a letter delivered to congressional investigators.

"This morning we sent a letter to Congress concerning the unauthorized sharing of private and transition emails with the Mueller team," lawyer Kory Langhofer said in an interview Saturday.

A spokesman for Mueller's team rejected the allegations of impropriety.

"When we have obtained emails in the course of our ongoing criminal investigation, we have secured either the account owner's consent or appropriate criminal process," said Peter Carr, a spokesman for Mueller's office.

The letter from Langhofer is the latest in a series of legal and public relations moves by Trump's allies to attempt to undermine Mueller's investigation and portray it as politically motivated.

Mueller's investigation is looking at whether any crimes were committed as part of what U.S. intelligence agencies say was systematic Russian meddling in the election Trump won. Trump has consistently said there was "no collusion" between his campaign and Moscow, an assertion he repeated Friday.

The letter from Langhofer, who was counsel to Trump for America, alleged that career employees of the GSA improperly provided privileged communications to investigators working for Mueller.

Transition documents are private property, not government records, the Trump organization contends. The letter invokes federal law and decades of precedent to argue that Mueller overstepped.

The transfer of transition documents is “unlawful conduct that undermines the Presidential Transition Act of 1963,” the letter said, “and will impair the ability of future presidential transition teams to candidly discuss policy and internal matters that benefit the country as a whole.”

The letter was sent to the House Oversight and Government Reform Committee as well as the Senate Homeland Security and Governmental Affairs Committee.

The Trump transition alleges that the handover was done by “career staff at the General Services Administration” and suggested that those employees may have had political motives.

But some legal experts challenged Langhofer’s charge that anything improper occurred.

Randall Eliason, a former federal prosecutor who teaches white collar crime at George Washington University Law School, said it was not at all surprising that Mueller’s team sought Trump transition emails. “It would be almost prosecutorial misconduct for them not to,” he said. He said it was also not surprising that Mueller would ask GSA for emails sent using government accounts.

“It’s not your personal email. If it ends in .gov, you don’t have any exception of privacy,” he said.

But he said if Trump’s team had a valid legal claim, there is a standard avenue to pursue — they would file a sealed motion to the judge supervising the grand jury and ask the judge to rule the emails were improperly seized and provide a remedy, like requiring Mueller’s team to return the emails or excluding their use in the investigation.

“You go to the judge and complain,” he said. “You don’t issue a press release or go to Congress. It appears from the outside that this is part of a pattern of trying to undermine Mueller’s investigation.”

Eliason said he could think of “no apparent privilege” that would apply to emails sent between private citizens who have not yet joined the government, as Trump’s team suggested.

Trump’s lawyers were given a courtesy notice that the transition team lawyer planned to register a complaint, according to a person familiar with the discussion. The transition team lawyer learned of the records being provided to Mueller by GSA on Tuesday when a member of the transition was being interviewed by investigators and was shown a copy of their own email using transition account.

One White House adviser disputed pundits' and lawyers' claims that the only way the transition could object was to file a motion before the chief judge overseeing the grand jury.

"This wasn't a subpoena pursuant to a grand jury. GSA just turned them over," the adviser said.

The president's lawyers are scheduled to meet with Muller's team later this week for a status conference. His lawyers are expected to ask the special counsel if there are any other outstanding questions or materials that the team needs before it brings its probe to conclusion.

Democrats were quick to challenge the charge that either GSA or Mueller's team acted improperly.

Rep. Elijah E. Cummings of Maryland, the senior Democrat on the Oversight and Government Reform Committee, said the 1963 Presidential Transition Act "simply does not support withholding transition team emails from criminal investigators."

"The President's lawyers have said they want to fully comply with Special Counsel Mueller's investigation, so it is odd that they now suggest they would have withheld key documents from federal investigators," Cummings said in a statement.

On Sunday, a Republican aide to the House Oversight and Government Reform Committee said the specific issues raised in Langhofer's letter should be dealt with by the legal system — not Congress.

"To the extent the letter raises issues on how to improve subsequent transitions, the Committee takes the letter under advisement," they said in an email.

The GSA provided facilities to the Trump transition team in the weeks before Trump's Jan. 20 inauguration. Langhofer claims that GSA had assured Trump for America that while it retained copies of transition records, it would not release them without consulting the organization.

GSA Deputy Counsel Lenny Loewentritt disputed Langhofer's claim in an interview with BuzzFeed News Saturday. He told the news site that members of the transition team were informed that by using devices provided by GSA, materials "would not be held back in any law enforcement" requests.

GSA did not respond to a request for comment from The Washington Post.

Mueller's team, Langhofer's letter said, "has extensively used the materials in question, including portions that are susceptible to claims of privilege, and without notifying TFA or taking customary precautions to protect TFA's rights and privileges."


The complaint on behalf of the Trump transition team suggests that the organization is preparing to challenge the origin of material that could shed light on contacts and discussions involving former White House national security adviser Michael Flynn and others.


Mueller's investigation has produced four criminal cases so far, including charges to which Flynn has agreed to plead guilty.

This story has been updated to include analysis of Langhofer's letter from a legal expert, a response from a key Democratic congressman and additional context.

Mike DeBonis, Rosalind S. Helderman and Carol Leonnig contributed to this report.

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