

Exhibit 3



U.S. Department of Justice

Civil Division
Federal Programs Branch

Mailing Address
P.O. Box 883
Washington, D.C. 20044

Overnight Delivery Address
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Joseph E. Borson
Trial Attorney

Tel: (202) 514-1944
Fax: (202) 616-8460
Joseph.Borson@usdoj.gov

November 16, 2017

Harry Sandick
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036-6710
hsandick@pbwt.com

Re: *Dunlap v. Presidential Advisory Commission on Election Integrity, et al.*, No. 17-cv-2361 (CKK) (D.D.C.)

Dear Mr. Sandick:

Thank you for your letter of November 14, 2017, and your email of November 15, 2017. In that letter, you requested, on behalf of your client, Secretary Dunlap, unspecified documents to which you stated he was entitled to under the Federal Advisory Committee Act (“FACA”). You also requested that the Commission confirm that it will not destroy any Commission documents during the pendency of this litigation. Furthermore, in your email sent on the evening of November 15, you indicated that you planned to file a motion for a preliminary injunction on November 16. I write on behalf of the defendants in this matter.

First, I want to assure you that all materials related to the Commission are currently being preserved pursuant to the Presidential Records Act and litigation holds that were issued in several related cases. As a reminder, Secretary Dunlap also has Presidential Record Act and preservation responsibilities, and you should ensure that he is complying with those with respect to this litigation.

Second, I also would like to assure you that no records related to the substantive or collective advisory work of the Commission have been withheld from Secretary Dunlap or any other Commission member. While individual Commission members and Commission staff have created and received miscellaneous documents and electronic records during the Commission’s pendency, as indicated in the *Vaughn*-type index filed in *Lawyers’ Committee for Civil Rights Under Law v. Presidential Advisory Commission on Election Integrity*, No. 17-cv-1354 (CKK) (D.D.C.), as further indicated in that filing these materials are not part of the substantive or collective work of the Commission. It is for this reason that the Commission has taken the position, in that filing and in others, that these incidental communications are not subject to disclosure under FACA section 10(b).

Furthermore, in *Cummock v. Gore*, 180 F.3d 282 (D.C. Cir. 1999), the D.C. Circuit held that “the Commission could not deny [a Commissioner] access to information that [the Commission] reviewed and relied upon in formulating its recommendation.” *Id.* at 292; *see also id.* (commission member is “entitled to review” “information that was made available to the Commission during the course of its deliberative process”). But none of the information referenced above constitutes material used by the Commission in the course of its deliberations, nor has any of it been relied upon by the Commission in formulating its recommendations (of which, of course, there have been none).

As to any upcoming meeting, your client is fully aware that no future meeting has yet been proposed or scheduled. Mr. Kossack sent Secretary Dunlap an email on October 27, 2017, confirming to Secretary Dunlap that no meeting is scheduled, and that Mr. Kossack would “notify [Secretary Dunlap] immediately as soon as the next meeting is scheduled.” Any future meeting will be also noticed in the Federal Register at least fifteen days in advance. *See* 41 C.F.R. § 102-3.150. Meanwhile, no substantive analysis or deliberations is ongoing.

In sum, Secretary Dunlap has not been excluded from any Commission work or substantive, collective discussions or deliberations and there is no intention that he, or any other Commission member, be so excluded in the future. We would be happy to work with Secretary Dunlap to ensure that he feels comfortable in the future with the level of information he is receiving from the Commission. I stress, however, that there is no particular urgency to resolving these issues given the above-described status of Commission deliberations and the fact that no meeting has been scheduled.

We regret that this matter has proceeded to litigation, without any preliminary contact from you, and hope that we can discuss these issues frankly without being constrained by the litigation status. In light of the representations above, we expect that this resolves the need for any emergency injunctive relief, as you indicated in your email sent late in the day on November 15. In any event, as we mentioned above, the Commission will inform Secretary Dunlap of any plans for scheduling future meetings, and will, of course, permit and encourage Secretary Dunlap’s participation on an equal basis as the other Commission members. The Commission further will not punish, retaliate, or terminate Secretary Dunlap as a Commission member for asserting his rights under FACA. With respect to any documents to which Secretary Dunlap believes he is entitled, as mentioned above, we are happy to work with Secretary Dunlap to ensure he feels comfortable with the information he receives, as guided by the requirements of FACA section 10(b). In light of these representations and given the current state of the Commission’s activities, emergency judicial relief is not warranted.

Finally, on an issue related to Secretary Dunlap’s response to our request for documents in September (for which we are grateful for his cooperation), I note that his letter of October 17, 2017, references a text message he received from a journalist. In responding to our document request in September, Secretary Dunlap did not identify any text messages, either sent or received. Could you please confirm that he did not at that time of the certification have any relevant text messages? The issue of text messages has been raised by the plaintiff in the *Lawyers’ Committee* case. While we are fully justified in relying on Secretary Dunlap’s good faith certification that he complied with our document request, given the reference in his letter to

a text message, we want to ensure that our representations (and his) are fully accurate.

Please let us know if you have any further questions.

Sincerely,

/s/ Joseph E. Borson

ELIZABETH J. SHAPIRO

CAROL FEDERIGHI

KRISTINA A. WOLFE

JOSEPH E. BORSON

United States Department of Justice

Civil Division, Federal Programs Branch

P.O. Box 883

Washington, DC 20044

Phone: (202) 514-1944

Email: joseph.borson@usdoj.gov

Counsel for Defendants