

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

October 5, 2017

Mr. Daniel Jorjani
Principal Deputy Solicitor
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Mr. Jorjani:

Over the past two months alone, the media reported on information based on at least four instances of improper disclosure of internal Department of the Interior (DOI) documents. These documents include memoranda from: Secretary Zinke for the President related to the Antiquities Act;¹ Acting Fish and Wildlife Service Director James Kurth related to geological and geophysical exploration regulations;² Acting National Park Service Director Michael Reynolds related to the Sportsmen's Heritage and Recreation Enhancement (SHARE) Act;³ and a draft notice of intent concerning Bureau of Land Management sage grouse habitat management plans.⁴

Specifically, the unauthorized disclosed versions of these documents are apparently internal working documents, and are accompanied by edits or notations highlighting their nature. For example, the memorandum related to the Antiquities Act is clearly marked as "Draft Deliberative – Not for Distribution."⁵ The memoranda from acting directors Kurth and Reynolds have editing markings by computer and hand, respectively, also indicating the draft nature of these documents.⁶

The Committee places great importance on transparency in the federal government. Improper disclosure of internal agency information, however, both classified and nonclassified, is an unacceptable practice. Such disclosures can disrupt the sensitive work and missions of federal agencies. Improper release of information, could include, but not be limited to "recommendations for a policy that have not yet been adopted, draft agency decisions, drafts of proposals for rules, and opinions or recommendations of government attorneys."⁷ Release of such documents could therefore result in improper financial advantage for unauthorized recipients of information.

As you are aware, penalties, including imprisonment, for unauthorized disclosure of classified information is set by criminal statute under 18 U.S.C § 798. The consequences for improper disclosure of

¹ Matthew Daly, *Interior Chief Urges Shrinking 4 National Monuments in West*, WASH. POST, Sept. 18, 2017, https://www.washingtonpost.com/politics/interior-secretary-recommends-shrinking-6-national-monuments/2017/09/17/c9a82d5e-9c1d-11e7-b2a7-bc70b6f98089_story.html?utm_term=.a83d7f5327c1.

² Ken Silverstein, *Trump's Actions to Allow Drilling in the Arctic Trigger a Seismic Fight*, FORBES, Sept. 17, 2017, <https://www.forbes.com/sites/kensilverstein/2017/09/17/trumps-actions-to-allow-drilling-in-the-arctic-triggers-a-seismic-fight/#637038536dcb>.

³ Stuart Leavenworth, *Exclusive: Trump Team Goes to Bat for NRA-Backed Bill, Deleting Park Service Concerns*, MCCLATCHY, Aug. 23, 2017, <http://www.mcclatchydc.com/news/nation-world/national/article168730552.html>.

⁴ Lisa Friedman, *Interior Department to Overhaul Obama's Sage Grouse Protection Plan*, N.Y. TIMES, Sept. 28, 2017, <https://www.nytimes.com/2017/09/28/climate/trump-sage-grouse.html?mcubz=0>.

⁵ *Supra* note 1.

⁶ *Supra* notes 2 and 3.

⁷ David Berry, *Theft and Misuse of Government Information*, J. OF PUBLIC INQUIRY 43 (Fall/Winter 2003).

Mr. Daniel Jorjani
October 5, 2017
Page 2

nonclassified materials may differ, but also have detrimental effects on the agency's ability to properly execute policies in service to the American people. While individual federal employees may hold differing personal opinions on various policy matters, all executive branch employees are subject to Executive Order 12731, also known as "Principles of Ethical Conduct for Government Officers and Employees."

Executive Order 12731 addresses the basic obligation of public service and "forms the framework for the ethical behavior required and expected of all Federal employees."⁸ In particular, Executive Order 12731 states that "[e]mployees shall protect and conserve Federal property and shall not use it for other than authorized activities."⁹ It is important to note that "[g]overnment records are government property."¹⁰ For example, "[i]f a person copies a government record by using government equipment and supplies, those duplicate copies likewise belong to the government."¹¹ Therefore, unauthorized disclosure of government records "can be prosecuted as a crime under the general theft of government property statute 18 U.S.C. § 641."¹²

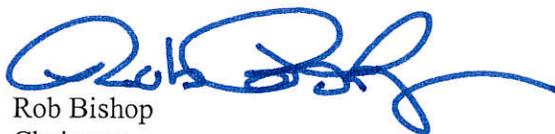
Proper mechanisms exist for the disclosure of information by federal employees, including the reporting of waste, fraud, and abuse to appropriate entities such as agency inspector general offices or the United States Congress.¹³ At the same time, it is vital that those responsible for unauthorized releases are held accountable.

The Committee seeks to better understand DOI's policies and guidelines related to unauthorized disclosures of nonclassified information. Therefore, to assist the Committee with its oversight, please provide a briefing on this matter as soon as possible, but no later than 5:00 p.m. on October 12, 2017.

In addition, please produce any documents, policies, or guidelines concerning the unauthorized disclosure of nonclassified information by DOI employees. Please provide these documents as soon as possible, but no later than 5:00 p.m. on October 19, 2017.

Please contact Melissa Beaumont and Sang Yi of the Oversight and Investigations Subcommittee staff at (202) 225-7107 with any questions about this request. Thank you for your attention to this matter.

Sincerely,



Rob Bishop
Chairman
Committee on Natural Resources



Bruce Westerman
Chairman
Subcommittee on
Oversight and Investigations

Enclosure

cc: The Honorable Raúl M. Grijalva, Ranking Member, Committee on Natural Resources
The Honorable A. Donald McEachin, Ranking Member, Subcommittee on Oversight and Investigations

⁸ *Basic Obligation of Public Service*, U.S. DEP'T OF THE INTERIOR, <https://www.doi.gov/ethics/basic-obligations-of-public-service> (last visited Oct. 2, 2017).

⁹ Exec. Order No. 12731, Part I, Section 101(i) (1990).

¹⁰ *Supra* note 7, at 44.

¹¹ *United States v. DiGilio*, 538 F.2d 972, 977 (3d Cir. 1976), *cited in supra* note 7 at 44.

¹² *Supra* note 7, at 44.

¹³ Inspector General Act of 1978, Pub. L. No. 95-452 (1978). *See also*, 5 U.S.C. § 2302(b).