



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:

MAR 27 2018

Re: B-329372

Edda Emmanuelli Perez  
Managing Associate General Counsel  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Ms. Perez:

I am writing in response to your letter dated September 25, 2017, concerning a telephone call between the Secretary of the Department of the Interior (“Interior”) and two United States Senators from the State of Alaska. Your four specific questions are addressed below.

1. The Alaska Dispatch News reported that the phone call occurred on Wednesday, July 26, 2017. Please confirm that this phone call occurred on that date. Please describe what the Secretary said to the Senators during the phone call.

We have confirmed that the Secretary spoke by telephone to both Senators on July 26, 2017, but decline to provide further details about what was said as such details are immaterial to the legal issues you have raised.

2. Please identify the appropriation obligated for the salary and related expenses of the Secretary. Please provide your views on whether the appropriation is available for the purpose of communicating with senators about pending healthcare legislation. *See* 31 U.S.C. § 1301(a) (“Appropriations shall be applied only to the objects for which the appropriations were made unless otherwise provided by law.”).

The Department obligated funds from the Departmental Operations account provided by the Consolidated Appropriations Act, 2017<sup>1</sup> to pay the salary and expenses of the Secretary at the time of the call. In our view, this appropriation was available for the Secretary’s call with the senators regardless of the topic that was discussed because the

---

<sup>1</sup> Title I, Division G of P.L. 115-31.

Secretary is authorized to engage in activities beyond his statutory duties<sup>2</sup> and entitled to his salary incident to the office he holds—not the performance of any particular activity.<sup>3</sup>

3. Please provide your views on whether any statements made by the Secretary during the phone call violated the anti-lobbying restriction or the publicity or propaganda restriction applicable to DOI in fiscal year 2017.

Your office has determined on numerous occasions that anti-lobbying and publicity or propaganda restrictions in appropriations acts do not prohibit direct communication between agency officials and Members of Congress.<sup>4</sup>

4. Please provide your views on whether any recent actions by DOI implicate the Impoundment Control Act. *See* Pub. L. No. 93-344, title X, 88 Stat. 297, 332 (July 12, 1974), *classified at* 2 U.S.C. §§ 681-688. Please explain whether DOI has withheld the obligation or expenditure of budget authority for contracts, cooperative agreements, or grants with the State of Alaska or Alaskan entities.

To my knowledge, the Department has not withheld any obligations or expenditures of budget authority impacting the State of Alaska or Alaskan entities and, therefore, the Impoundment and Control Act has not been implicated.

I hope this information is helpful in resolving any legal concerns raised by the Secretary's telephone call. If you would like to discuss the views outlined above, please contact Assistant Solicitor Timothy Murphy, at [timothy.murphy@sol.doi.gov](mailto:timothy.murphy@sol.doi.gov) or (202) 208-3510.

Sincerely,

Daniel H. Jorjani  
Principal Deputy Solicitor



---

<sup>2</sup> *See Marbury v. Madison*, 5 U.S. 137, 166 (1803); *see also* Centralizing Border Control Policy Under the Supervision of the Attorney General, 26 Op. O.L.C. 22, 26 (March 20, 2002) (citing *U.S. v. Grant*, 237 F.2d 511 (1956)).

<sup>3</sup> *See* Participation in Congressional Hearings during Appropriations Lapse, 19 Op. O.L.C. 301 (November 16, 1995).

<sup>4</sup> *See generally* Principles of Federal Appropriations Law, Vol. I, Chapter 4, Part C (citing multiple GAO opinions holding that anti-lobby and publicity or propaganda restrictions do not apply to the direct communications of executive branch officials with Members of Congress).