

TRUMP ADMINISTRATION ACCOUNTABILITY PROJECT



Disappearance of Michael Cohen Financial Reports from the Department of Treasury

President Donald Trump's former friend and personal lawyer, Michael Cohen, now imprisoned for tax evasion and campaign finance violations, owned a shell company through which his illegal activity was conducted. That corporation, unironically named "Essential Consultants," was famously used to pay off adult-film actress Stormy Daniels \$130,000 to keep her alleged affair with Trump a secret during the 2016 Presidential campaign. Essential Consultant's bank accounts were flagged multiple times by multiple banks for suspicious activities and signs of money laundering.¹

In May 2018, a U.S. Treasury Department official received a suspicious-activity report ("SAR") documenting hundreds of thousands of dollars paid to Cohen by U.S. corporations, Novartis and AT&T, as well as payments from a Russian oligarch named Viktor Vekselberg.² That SAR referenced two *previously* filed SARs. The Treasury official searched Treasury's Financial Crimes Enforcement Network ("FinCEN") database for the two referenced SARs to no avail. The official suspected that these two reports were intentionally removed from the database. Those two removed SARs detailed a separate round of suspicious transactions that Cohen engaged in through Essential Consultants, worth approximately \$3 million.³

The Bank Secrecy Act of 1970 and the USA Patriot Act of 2001 (together, the "Acts") require financial institutions to assist U.S. government agencies in preventing financial crimes by (1) keeping records of cash purchases of negotiable instruments, (2) filing reports of cash transactions that exceed \$10,000, and (3) reporting suspicious activity that might signal criminal activity.⁴ The Acts mandate that Treasury establish FinCEN to "maintain a government-wide data access service,"⁵ and "analyze and disseminate the available information...[to] law enforcement agencies."⁶ The Acts additionally require Treasury to "establish and maintain operating procedures" specifically (1) "for the coordinated and efficient transmittal of information to, entry of information into, and withdrawal of information from, the data maintenance system..."⁷ As part of that latter mandate, Treasury is to focus on "the cataloguing of information in a manner that facilitates rapid retrieval by law enforcement personnel of meaningful data."⁸ Treasury's own policy, dated July 1, 2014 and recently reaffirmed on January 14, 2020, claims the purpose of FinCEN is to "support law enforcement efforts" by "information collection, analysis, and sharing."⁹

Treasury retains significant discretion in how to run FinCEN, as long as FinCEN's purpose is fulfilled. The Acts did not define most of these mandates in very specific language. For example, Congress did not define the term "meaningful data" when it obligated Treasury to ensure law enforcement could use the system to collect meaningful data. Generally, when a term is not

statutorily defined, courts look to the natural meaning of the term.¹⁰ Here, data is “meaningful” if it has a serious, important, or useful quality or purpose. This makes sense in the context of a database for law enforcement purposes. A set of data can only be meaningful for law enforcement if that data is complete. Where there are holes, law enforcement is handicapped. If a piece of data—like a SAR—points to *other* pieces of data that were intentionally removed, the former and latter reports lose all usefulness in enforcing financial crimes.

A Treasury official or DOJ attorney looking at the first SAR would be unable to pursue an investigation into Donald Trump’s personal attorney because Treasury has failed to fulfill its statutory obligation to keep a meaningful and complete database.

Treasury has clearly failed to simply retain certain data required by Congressional mandate, which generally speaking requires doing nothing once the data is in the system. However, the data that mysteriously disappeared here is especially important to President Trump. The two files could have implicated the president in illegal activity. Needless to say the Trump Administration is in a position to remove files consequential to the president. We only know of the mysterious disappearance of these two reports from FinCEN. How many other reports close to the Administration were removed? And who removed them? What was their intent? These are critical questions for a future Administration to address.

¹ See Ronan Farrow, *Missing Files Motivated the Leak of Michael Cohen’s Financial Records*, THE NEW YORKER (May 16, 2018), <https://www.newyorker.com/news/news-desk/missing-files-motivated-the-leak-of-michael-cohens-financial-records>.

² *Id.*

³ *Id.*

⁴ Office of the Comptroller of the Currency, *Suspicious Activity Reports (SAR)*, TREASURY DEPARTMENT, <https://www.occ.treas.gov/topics/supervision-and-examination/bank-operations/financial-crime/suspicious-activity-reports/index-suspicious-activity-reports.html>

⁵ 31 U.S.C. § 310(b)(2)(B).

⁶ § 310(b)(2)(C)(i).

⁷ § 310(c)(1).

⁸ § 310(c)(1).

⁹ U.S. DEPT. OF THE TREASURY, ORDER 180-01, FINANCIAL CRIMES ENFORCEMENT NETWORK (2020).

¹⁰ *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995).