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PREVENTING VIOLATIONS OF FEDERAL TRANSPARENCY LAWS

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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PREVENTING VIOLATIONS OF FEDERAL TRANSPARENCY LAWS

Tuesday, September 10, 2013,

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, D.C.

The committee met, pursuant to call, at 9:05 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, McHenry, Jordan, Gosar, DesJarlais, Gowdy, Bentivolio, Cummings, Maloney, Connolly, Davis, and Lujan Grisham.

Staff Present: Ali Ahmad, Majority Senior Communications Advisor; Molly Boyl, Majority Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Majority Staff Director; Caitlin Carroll, Majority Deputy Press Secretary; Sharon Casey, Majority Senior Assistant Clerk; Steve Castor, Majority Chief Counsel; Drew Colliatie, Majority Professional Staff Member; John Cuaderes, Majority Deputy Staff Director; Brian Daner, Majority Counsel; Jessica L. Donlon, Majority Senior Counsel; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Linda Good, Majority Chief Clerk; Christopher Hixon, Majority Chief Counsel for Oversight; Michael R. Kiko, Majority Staff Assistant; Jim Lewis, Majority Senior Policy Advisor; Mark D. Marin, Majority Deputy Staff Director for Oversight; Tegan Millspaw, Majority Professional Staff Member; Ashok M. Pinto, Majority Chief Counsel, Investigations; Jeffrey Post, Majority Professional Staff Member; Jonathan J. Skladany, Majority Deputy General Counsel; Rebecca Watkins, Majority Communications Director; Jedd Bellman, Minority Counsel; Krista Boyd, Minority Deputy Director of Legislation/Counsel; Julia Krieger, Minority New Media Press Secretary; Elisa LaNier, Minority Director of Operations; Una Lee, Minority Counsel; Dave Rapallo, Minority Staff Director; Donald Sherman, Minority Counsel; and Daniel Roberts, Minority Staff Assistant/Legislative Correspondent.

Chairman ISSA. The committee will come to order.

The Oversight Committee exists to secure two fundamental principles: first, Americans have a right to know that the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective Government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold Government accountable to taxpayers, because taxpayers have a right to know what they get from their Government. It is our job to work

in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

Today, pursuant to that mission statement, the Oversight Committee meets to follow up on our commitment for openness, transparent and, in fact, compliance with rule of law. The committee is responsible for protecting the integrity of all of Congress' oversight capability. Citizens and journalists use the Freedom of Information Act, often called FOIA, but that statute allows no access to private emails. And yet it has become habitual for high-ranking and obviously, trickle-down, low-ranking individuals to simply, either out of laziness or in order to circumvent later discovery, sometimes by this committee, sometimes by the public, sometimes, quite frankly, by their own bosses, the Federal Records Act, the Presidential Records Act, and the intent of Congress.

Although the Federal Records Act and the Presidential Records Act do not apply to all Federal employees, nor should they, nor is it their intention to have it, communication of official activity is in fact a property of the agency in which people work. The computers that you do business on, if you are a Federal employee, or even a contractor acting in a similar role, is in fact a Government asset, and the Government has a right to know and the Government has a responsibility to be able to respond to FOIA of the public and journalists, Congress, but, most importantly, the inspector generals themselves.

The fact is that IGS' investigations are inherently less successful if they are denied access to the very material that would show the history and the activity of individuals. Years ago someone might pull the carbon copy and simply destroy it. At that time it was an easy and willful act. But today simply doing it on private email and then routinely deleting, most people don't feel that they are doing anything wrong, but they are.

This trend very clearly began, according to our investigation, in the later part of the Bush Administration. One of my predecessors, Mr. Waxman, looked deeply into the dual use by the previous administration where individuals, in order to comply with Government versus political activity in the White House, used an RNC account completely separated from the official account. Additionally during that time they blocked the use of Gmail and Hotmail and so on from the White House. Yet, Mr. Waxman made a point many times in this hearing room that, in fact, there was a question about whether or not this practice was acceptable, honest, or consistent; and he even sent subpoenas for the purpose of receiving the Republican National Committee's documents.

I disagreed with him on that, because the law clearly said that the White House had a right to do political activities, there were individuals designated who had that right, and there appeared to be an appropriate firewall.

That investigation, in my opinion, is not conclusive. But it is a far cry from what began at the moment that Ms. Jackson entered the EPA. The EPA already had a 2008 study, I repeat, a 2008 study, in the later years of the Bush Administration, that showed they did not have the control system in place to ensure that they were capturing the information. This in no part has nothing to do

with who was in the White House; it had to do with the ease and simplicity of using private emails. Most people in America today understand that almost any smartphone can not just do a primary email, but multiple emails; whether it is a BlackBerry, an Android, or an iPhone.

All of this technology is the reason we are here today. The individuals that are here today all stand, at least a portion of them, as individuals who have not complied with the Federal Records Act, who have clearly circumvented that. We are not here to indict individuals, though. Our witnesses today are here because we want to show a pervasive problem that began at the sunset of the Bush Administration or the dawn of the Obama Administration, but has not been corrected; in fact, has proliferated.

This committee has an absolute responsibility to either change the behavior or change the law, or both. It is our commitment to do that. It is the commitment of this President, orally and in writing, to be the most transparent in history. Transparency requires two things: one, that you let the sun shine in; and, secondly, that the information be available in the sunlight.

The fact is when private emails are used and often deleted, they eliminate the ability, even when the sun shines in, to provide it.

We will hear today that all emails have been accounted for for many individuals. I have to tell you it simply isn't true. What has happened is all emails that can be found through ordinary efforts have been found. But very clearly emails have been lost. During the last two administrations ago, again, under Mr. Waxman, we insisted in this committee that the White House spend tens of millions of dollars to replicate official emails that were lost during the conversion from Lotus Notes to Microsoft Office; millions and millions of dollars simply to gather a few emails and make sure none were lost for future generations. To me, that says it has been important to this committee no matter who is in the chair; and that is not going to change.

Particularly important to us is that, in fact, education within the Federal workforce is not sufficient and, and I think Mr. Cummings will join me in this, from the time that we sat on this dais together, he and myself, we have heard the same excuse from one part of Government after another, and that is it is too difficult to get into my official system.

This committee also has primary responsibility for cybersecurity. Let me assure you of one thing. We cannot have greater security of Federal records if, in fact. Gmail, Hotmail, or a host of other sites are in fact not even under Federal control and have important information.

To that end, I have offered legislation, and I believe that this committee will in fact see that in this Congress legislation in support of the President and the Administration's effort to make real and lasting change will be enacted.

The committee, again, has examined violations of this Federal transparency under both Republican and Democratic administrations. It is the new Internet, the smartphone, and the ease of these activities that has ultimately made it this pervasive. I hope that we will continue to see that H.R. 1233 and 1234 become law. But it will only be a combination of that and sincere effort by the Admin-

istration, by agencies large and small, to capture information and to ensure that "complexity or difficulty" of getting into official emails is no longer an excuse heard by this committee or any other committee of Congress.

And certainly I want to say for the members of the press who will be listening and seeing this, our greatest effort is to ensure that their FOIAs are, in fact, a complete search of the Federal record.

With that, I want to thank my ranking member for being a partner in this effort and I will yield back.

Mr. CUMMINGS. Thank you very much, Mr. Chairman, and good morning to everyone. Mr. Chairman, thank you for holding this hearing this morning.

One of the things that I am hoping that each witness will do, as I listened to the chairman's statement, I am always very careful about people's reputations. This is very important to me. We have one life to live. This is no dress rehearsal and this is that life. So I want to make sure that if you did not intend to circumvent the records and transparency laws, I would appreciate it if you would tell us that when you testify, because I don't want that to be out there if it is not accurate.

Although some may suggest that the committee's focus on Federal employees using personal email accounts seems trivial, especially in light of the grave national security questions Congress is currently facing. I believe Government transparency is a significant matter that potentially affects every policy we implement. With that, I agree with the chairman.

For this reason, I support responsible efforts to ensure that our Government is operating in a transparent manner, and I have advocated strongly for this committee to exercise its jurisdiction to conduct robust oversight aimed at improving transparency.

Over the past five years, our Nation has made great strides towards these goals, and we should acknowledge those improvements. Any suggestion that the Obama Administration is somehow less transparent or less compliant with Federal records laws than the previous administration fails to recognize reality. During the Bush Administration, as the chairman has stated, the White House— well, he didn't state this, but let me tell you, for your information.

During the Bush Administration, the White House lost hundreds of days of official emails and top officials routinely used their Republican National Committee email accounts for official business. An investigation by this committee revealed that of 88 officials who used RNC email accounts for official business, no emails were preserved for 51 of them.

I would like to enter into the record an article from the Associated Press, dated 2007, which said this: "the White House said Wednesday it had mishandled Republican Party-sponsored email accounts used by nearly two dozen presidential aides, resulting in the loss of an undetermined number of emails concerning official White House business."

I ask that that article be admitted.

Chairman ISSA. Without objection, so ordered.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Those emails involved the U.S. attorney firings, the Jack Abramoff scandal, and a host of other matters, and they were lost not for a day, not for a year, but forever. These systemic deficiencies prevented Congress and the American people from fully understanding how their Government was operating at the highest levels.

In contrast, President Obama has taken significant steps to improve records management. The White House email system now automatically preserves all emails from White House accounts. On November 28, 2011, President Obama became the first President since Truman to issue a directive to agencies on managing Federal records. As we will hear today, the President instructed the archivist and the director of OMB to craft a 21st century framework to improve agency performance and begin managing email records in an electronic format by 2016.

So is the Obama Administration more transparent than its predecessor? In my opinion, absolutely. Can we do more to increase transparency and compliance with Federal records laws? Absolutely. And we must. I hope today's hearing focuses on how we can do that.

Today we will hear from four witnesses who used personal email accounts to conduct official business. To be clear, no Federal law prohibits the use of personal email for official business so long as those emails are properly preserved. Very important. In this case, it appears that the majority of the emails at issue were in fact properly preserved because employees copied them to their official accounts to ensure that agency servers archived them. In cases in which this did not happen, it appears that employees have gone back to recover emails in order to ensure that they are fully available for review.

Clearly, we can always do better in terms of ensuring that Federal employees know the rules and comply with them. To this end, I introduced H.R. 1234, the Electronic Message Preservation Act, in order to modernize the Federal Records Act and the Presidential Records Act for the electronic age.

Mr. Chairman, an amendment you added during our committee markup is directly on point for this hearing, and I applaud you for that. It would ensure that email records created using non-official accounts are preserved and accessible through agency record-keeping systems by requiring employees to forward email records to their official accounts within five days.

But my bill has languished since it passed out of this committee back in March. Mr. Chairman, I hope that you will join me in urging the House leadership to bring my bill to the House floor as soon as possible.

Finally, I want to thank the witnesses for being here today. Each of you has served or is serving this Country in a critical Government position. Several of you rearranged your schedules to be here, some even under the threat of subpoena. Of course, the committee deserves answers to our questions, but you also deserve to be treated with respect and dignity. I want you to know that we appreciate your service and your cooperation.

With that, I yield back.

Chairman ISSA. I thank the gentleman.

All members will have seven days in which to submit opening statements and other extraneous material for the record.

Before I introduce my witnesses, I ask unanimous consent that the Senate Minority Report, EPA's FOIA and Federal Records Failures Uncovered, dated September 9, 2013, be entered into the record and copies be made and distributed so that all members and witnesses would have the report.

Without objection, so ordered.

We now welcome our distinguished panel of witnesses.

Mr. Gary Gensler is chairman of the important, although numerically sometimes considered small, U.S. Commodity Futures Trading Commission.

Ms. Lisa Jackson is the former Administrator of the EPA, or Environmental Protection Agency, and currently is the Vice President of Environmental Initiatives for Apple Corporation Inc.

Mr. Jonathan Silver is the former Executive Director of the Loan Program Office at the U.S. Department of Energy. Mr. Silver is now a Visiting Distinguished Senior Fellow for Third Way. Welcome.

Mr. Andrew McLaughlin is the former Deputy Chief Technology Officer, Executive Office of the President. Mr. McLaughlin is currently the Senior Vice President of Betaworks and Chief Executive Officer of Diggs and Instapaper. Very impressive; there is life after Government.

And the Honorable David Ferriero is the Archivist of the United States and the man we count on to work hand-in-hand with all the agencies to modernize and capture this information.

Pursuant to the committee rules, I would ask that all witnesses please rise and take the oath before testifying and raise your right hands.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witnesses respond in the affirmative.]

Chairman ISSA. Let the record reflect that all witnesses answered in the affirmative.

Please be seated.

You are a large panel today. You are all skilled professionals, so suffice to say your entire opening statement will be placed in the record, but we would like you to come as close to or less than the five minutes, to leave plenty of time for questioning.

With that, we recognize Mr. Gensler.

STATEMENT OF THE HONORABLE GARY GENSLER

Mr. GENSLER. Good morning, Chairman Issa, Ranking Member Cummings, members of this committee.

Promoting transparency in Government is critical so that the public can have a clear window and participate in Government decision-making. The Federal Records Act and the related FOIA are key to such transparency.

I thank this committee for this hearing and the work on these matters bringing it into sharper focus.

I joined the Commodity Futures Trading Commission in May of 2009 in the wake of the worst financial crisis in 80 years. Eight million Americans lost their jobs.

The remarkably dedicated CFTC staff have worked around the clock to bring much-needed reforms to the swaps market, which was at the center of the crisis. We also took numerous steps since then to bring transparency to our work. We voluntarily post external meeting notes, who is there, what they have handed us, on our website. Over 2,200 meetings. We have increased tenfold our public meetings; and we have held nearly two dozen roundtables to facilitate public interaction.

Literally, we rolled up our sleeves and worked day and night. Though I used my official email account far more than my personal, to get the job done, I did routinely engage with CFTC staff and others through my personal email, particularly outside of normal business hours. Having come to this job after years of not working in a traditional office setting and primarily being a single, stay-at-home dad, frankly, I was not attuned to the ways of accessing work email at home. And at the CFTC we did not have a robust training program and I personally didn't receive training on either remote access or Federal records.

As head of the agency, I take full responsibility with regard to records management, training, and promoting transparency at the CFTC, and I want to thank the agency's inspector general, who highlighted this and that it is better to avoid using personal email, even though no law prohibited it. The IG said that I used official email far more frequently than my personal, as he counted approximately 10 times more official emails than personal. He also said that there was no indication that the chairman was attempting to hide the use of the personal email from CFTC employees and attempts to conduct secret official business. In fact, many of the emails were with the general counsel and the chief information officer and the executive director. In a subsequent letter to Congress he said we do not believe it violated any Federal law.

When this committee sought the emails from my personal account, I immediately tasked staff with gathering and delivering all responsive documents, and we did provide approximately 11,000 emails that were sent to or originated or copied to personal email. Approximately 99 percent were exchanged with another Government official and were on Federal systems, and, in fact, 97 percent were at the CFTC already. The remaining documents that were not already there are there now, and I have tasked that staff look at them to make sure they are filed appropriately.

But moving forward, let me say I believe we can and need to do better. First, I have directed staff to revise the CFTC's email policies, working along with Archivist Ferriero and his staff, and I am glad he has agreed, in meetings with me, that he will help us revise our CFTC policies, ensuring a stricter and tighter guidance.

Second, I have directed our executive director and general counsel to significantly enhance the agency's training on Federal records and, related, how to access emails and do it in an efficient way. We have to promote telework and a flexible work schedule.

And, third, while we have already made significant changes in technology, I have directed staff to ensure that we have flexible

and efficient tools not only for access but, importantly, record-keeping, and that is why I applaud the archivist's efforts to bring Capstone into reality. This is a system where all the emails of senior officials will be captured. Ensuring full compliance with the Federal Records Act and other transparency laws is critical to the public's faith in and understanding of our Government, and particularly of the CFTC.

I thank you.

[Prepared statement of Mr. Gensler follows:]

Statement of Gary Gensler
Chairman, Commodity Futures Trading Commission
Before the
U.S. House Committee on Oversight and Government Reform
Washington, DC
September 10, 2013

Good morning Chairman Issa, Ranking Member Cummings and members of the Committee.

Thank you for holding this hearing on promoting transparency in government.

Promoting transparency in government is critical so that the public can have a clear window into and participate in the decision-making of their government. The Federal Records Act is key to ensuring for such transparency. The Committee's work has brought this matter into sharper focus.

I joined the Commodity Futures Trading Commission (CFTC) in May of 2009 in the wake of the worst financial crisis in 80 years. Eight million Americans lost their jobs.

The remarkably dedicated CFTC staff have worked around the clock to bring much-needed reforms to the swaps market, which was at the center of the crisis. As we worked to implement reforms, we also took numerous steps to bring greater transparency to the work of the CFTC. We have, among other things:

- Voluntarily posted more than 2,200 external meetings on our website;
- Increased by nearly tenfold the number of public Commission meetings where rules are openly debated; and
- Initiated public roundtables – holding nearly two dozen – to facilitate public interaction on matters before the Commission.

My CFTC colleagues and I rolled up our sleeves and worked day and night. Though I used my official e-mail account far more than my personal e-mail, to get the job done I did routinely engage with CFTC staff and others through my personal e-mail particularly outside normal business hours. Having come to this job after years of not working in a traditional office setting and primarily being a single, stay-at-home dad, I was not attuned to the ways of accessing work e-mail at home. At the CFTC we didn't have a robust training program – and I personally did not receive training – on either remote access or federal records.

As head of the agency, I take full responsibility with regard to records management, training and promoting transparency at the CFTC.

I want to thank the agency's Inspector General who highlighted in a May 2013 report that it is better to avoid using personal e-mail, even though there is no law prohibiting it.

The IG reported that I used my official CFTC e-mail account "far more frequently" than my personal e-mail, as he counted approximately ten times more e-mails using my CFTC e-mail as

compared to my personal e-mail. He also reported that there was "no indication that the Chairman was attempting to hide the use of his personal e-mail from other CFTC employees in an attempt to conduct 'secret' official business." In a subsequent letter to members of Congress, the IG said of my personal e-mail use, "We do not believe it violated any federal statute."

When this Committee sought e-mails from my personal account, I immediately tasked staff with gathering and delivering all responsive documents.

We provided approximately 11,000 e-mails together with some 3,000 attachments that were sent to, originated from, or copied to my personal e-mail. Approximately 99 percent of these were exchanged with another government official and were on federal systems. Approximately 97 percent were sent to or received from CFTC staff and were on CFTC systems. The remaining documents that were not already at the CFTC are now on CFTC systems. I have directed staff to ensure that all of these documents are filed in a CFTC recordkeeping system as appropriate.

Moving forward, though, I believe that we can and need to do better.

First, I have directed staff to revise and tighten the CFTC e-mail policy, including appropriately restricting the use of personal e-mail. I want to thank David Ferriero, Archivist of the United States, who has agreed to make his staff available to ensure that as we revise our policies, they are in accordance with the Archivist's guidance.

Second, I have directed the CFTC's Executive Director and General Counsel to significantly enhance the agency's training on the Federal Records Act and transparency in government, both for new staff as they arrive and for existing staff. Further, to promote an environment that supports telework and flexible schedules, we also must ensure staff are properly trained on how to access official e-mail remotely.

Third, while we've already made some significant changes at the CFTC with regard to enhancing technology, I have directed staff to do more to make these tools flexible and efficient, particularly with regard to access and recordkeeping. I also fully support devoting resources to meet the National Archives and Records Administration's goals for Capstone electronic e-mail retention by government agencies.

Ensuring full compliance with the Federal Records Act and other transparency laws is critical to the important work of the CFTC. It is critical in maintaining the public's faith in and understanding of the CFTC.

Thank you.

Chairman ISSA. Thank you.
Ms. Jackson.

STATEMENT OF THE HONORABLE LISA P. JACKSON

Ms. JACKSON. Good morning, Chairman Issa, Ranking Member Cummings, and members of the committee. I appreciate having a chance to offer my statement to the committee this morning.

Serving as administrator of the U.S. Environmental Protection Agency was a great privilege and the high point of my 25-year career in public service. I joined the EPA shortly after graduate school, after earning a master's degree in chemical engineering. I spent 15 years on the staff at EPA, at headquarters here in Washington and later in the field office in New York before joining the New Jersey Department of Environmental Protection in 2002. I believe my public service ethic came from my father, a Navy vet, mailman, and then a machinist for the U.S. Postal Service.

In January 2009, like EPA administrators before me, I was assigned two email addresses at EPA.gov. One address was to be published on the EPA website and the inbox was managed by EPA staff. The second address was shared with a more limited number of people and the inbox was managed primarily by me.

As you know firsthand, public officials get a lot of email. The EPA has estimated that the administrator receives well over a million emails every year. That is a new email message almost every 30 seconds, around the clock, 365 days a year. Managing an inbox that big is more than one person can handle and do their job effectively, to say the least. That is why many members of Congress, as well as the Executive Branch, set up a second account. It is about time management and efficiency.

I would like to address the naming of my second account. I suggested that we label the second account Admin Jackson, or something similar with my name or title in it. But career staffers recommended using a full name, since the email address database was publicly available and searchable. People looking to have unimpeded access or a faster way to reach the administrator would be searching for a secondary address, so I was advised against anything obvious. My husband and sons were still living in East Windsor, New Jersey, and our family dog's name is Ricky. So, with tongue in cheek, I named my account Windsor.Richard@EPA.gov.

Regardless of the choice of name, the account was for official business and subject to the Freedom of Information Act. There was a learning curve for me on who should have access to the second account. I eventually decided that the account should be primarily for my senior staff and White House staff. EPA has released thousands of emails from this account. I used it every day to do my job more effectively.

I would like to address personal email. When I was confirmed as administrator, like most people, I had a personal email account. We public officials are, after all, also private citizens. I maintained a personal email account for personal matters. Every public official has to use her best judgment in ensuring appropriate use of personal emails. My practice was to forward any email that I deemed pertaining to Government business into an official EPA.gov email account so that it could be captured for record-keeping purposes.

I respectfully call the committee's attention to an example of this practice. On February 8th, 2009, I forwarded an email from my home email account to an official EPA email account. The business value of the email was questionable, but out of an abundance of caution I forwarded it to a staffer as an FYI with a note to ensure that it was not given undue weight in the policymaking process. This email chain can be found on EPA's website and I would like to, here, submit it for the record, Mr. Chairman. It was released as part of a Freedom of Information Act request and I offer it as evidence that my action captured the email for transparency and record-keeping purposes.

I have come to accept that there are those who will second guess the judgments that I made or question the motives behind those judgments. On one hand, there can certainly be honest and reasoned debate over my judgments, and, on the other, there are some who want to theorize that there is a hidden agenda. The principle reason I come here today is to make it perfectly clear that it was my practice to ensure that any official business conducted by me or through my email accounts was appropriately captured for record-keeping purposes.

Mr. Cummings, to answer your question, I certainly did not intend to circumvent records or transparency laws. To the contrary, I intended for my records to be captured for purposes of record-keeping.

I recognize that the issue of preserving official Government correspondence is of critical importance, and in the digital age these issues are difficult ones. I commend you, Mr. Chairman, and the committee for tackling them. In a world that has been transformed by our ever-increasing ability to connect, it is my hope that you can find a path forward that encourages transparency without unduly restricting job efficiency, personal convenience, and privacy.

Thank you. I am happy to answer any questions.

[Prepared statement of Ms. Jackson follows:]

STATEMENT OF LISA P. JACKSON
FORMER ADMINISTRATOR OF THE EPA BEFORE THE
HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

Good morning Chairman Issa, Ranking Member Cummings and members of the committee. I appreciate having a chance to offer my statement to the committee this morning.

Serving as Administrator of the U.S. Environmental Protection Agency was a great privilege and the high point of my 25-year career in public service. I joined the EPA shortly after graduate school, after earning a master's degree in chemical engineering. I spent 15 years on the staff at EPA, at headquarters here in Washington and later in the field office in New York before joining the New Jersey Department of Environmental Protection in 2002. I believe my public service ethic came from my father - a Navy vet, and mailman and machinist for the U.S. Postal Service.

In January 2009, like EPA Administrators before me, I was assigned two e-mail addresses at EPA.gov. One address was to be published on the EPA website and the inbox was managed by EPA staff. A second address was shared with a more limited number of people and the inbox was managed primarily by me.

As you know firsthand, public officials get a lot of e-mail. The EPA has estimated that the Administrator receives well over a million e-mails every year. (*That's a new e-mail message almost every 30 seconds, around the clock, 365 days a year.*) Managing an inbox that big is more than one person can handle and still do their job effectively, to say

the least. That's why many members of congress as well as the executive branch set up a second account. It's about time management and efficiency.

I'd like to address the naming of my second account. I suggested that we label the second account "adminjackson" or something similar with my name or title in it. But career staffers recommended using a full name, since the e-mail address database was publicly available and searchable. People looking to have unimpeded access or a faster way to reach the Administrator would be searching for a secondary address, so I was advised against anything obvious. My husband and sons were still living in East Windsor, New Jersey, and our family dog's name is Ricky. So, with tongue in cheek, I named my account Windsor-DOT-Richard at EPA-DOT-gov. Regardless of the choice of name, the account was for official business and subject to the Freedom of Information Act. There was a learning curve for me on who should have access to the second account. I eventually decided that the account should be primarily for my senior staff and White House staff. EPA has released thousands of e-mails from this account. I used it every day to do my job more effectively.

I'd like to address personal e-mail. When I was confirmed as Administrator, like most people, I had a personal e-mail account. We public officials are, after all, also private citizens. I maintained a personal email account for personal matters. Every public official has to use her best judgment in ensuring appropriate use of personal e-mails. My practice was to forward any email that I deemed pertaining to government business into an official EPA.gov email account so that it could be captured for record-keeping purposes.

I respectfully call the committee's attention to an example of this practice. On February 8, 2009, I forwarded an email from my home e-mail account to an official EPA email account. The business value of the e-mail was questionable but, out of an abundance of caution, I forwarded it to a staffer as an FYI, with a note to ensure that it was not given undue weight in the policy-making process. This e-mail chain can be found on EPA's website and I am here submitting it for the record. It was released as part of a Freedom of Information Act request, and I offer it as evidence that my action captured this email for transparency and record-keeping purposes.

I have come to accept that there are those who will second-guess the judgments that I made or question the motives behind those judgments. On one hand, there can certainly be honest and reasoned debate over my judgments, and on the other hand, there are some who want to theorize that there is a hidden agenda. The principle reason I wanted to come here today is to make it perfectly clear that it was my practice to ensure that any official business conducted by me or through my email accounts was appropriately captured for record keeping purposes.

I recognize that the issue of preserving official government correspondence is of critical importance and, in the digital age, these issues are difficult ones. I commend you, Mr. Chairman, and the Committee for tackling them. In a world that has been transformed by our ever increasing ability to connect, it is my hope that you can find a path forward that encourages transparency without unduly restricting job efficiency, personal convenience and privacy.

Thank you. I am happy to answer any questions you may have.

Chairman ISSA. Thank you.
Mr. Silver.

STATEMENT OF JONATHAN SILVER

Mr. SILVER. Good morning, Mr. Chairman and Congressman Cummings. Thank you for having me today. My name is Jonathan Silver and I have been asked to appear today as the committee examines issues around email record-keeping in the Federal Government. I previously served as the Executive Director of the Loan Programs Office at the Department of Energy, a position I left almost two years ago. I should note, therefore, that I am here today in my capacity as a private citizen and am not in a position to speak to or about the current retention policies and practices at the Department.

I testified before this committee's Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending in 2012, where these issues were discussed in depth. In 2011 I testified in front of a different House committee that also addressed some of these issues. I have also been interviewed on several occasions by various committee staff.

I last came before this committee more than a year ago, during the committee's review of one of the 1705 program loans. During the course of that review, I voluntarily provided all the relevant documents I had from my personal email account, covering not only the time I was at the Department of Energy, but also, at the committee's request, emails for an entire year before I was even in the Federal Government.

Today I will, of course, answer the Committee's questions again to the best of my ability. My appearance today, along with my swift compliance with your document requests a year and a half ago, demonstrates, I think, my willingness to assist the committee in its work. I would note, Mr. Chairman, that I also offered to make myself available to committee staff in an informal setting prior to this hearing.

As you know, Mr. Chairman, the 1705 loan program had a statutory sunset date of September 30th, 2011, and substantial funds needed to be deployed by that date. It is important to remember that my office was working diligently to deploy that capital within a time frame established by Congress. We worked day and night to get the job done. Working under such a tight deadline required ongoing communications during and after business hours, and at night and on weekends. This was challenging because, as anyone who has worked at the Department can tell you, the Government's IT systems are old and cumbersome.

The overwhelming majority of the emails produced from my personal account are copies of emails from my DOE account containing documents, duplicate copies, white papers, analyses, spreadsheets, and others that already existed on the DOE servers. I occasionally forwarded or had forwarded to me documents from work in order to be able to work while traveling, out of the office, or at night and on weekends. I also sent and received some emails asking about logistics, or for updates, or to share an observation. I used my personal email in an effort to be as efficient and productive as possible, not in an attempt to be evasive.

In 2009, when I joined the Department, I do not recall being provided training in what was or was not a Federal Records Act issue. And to respond directly to you, Congressman Cummings, at no time did I intend to try to circumvent the Federal Records Act.

While I strongly support transparency in the Federal Government, when I left the Government two years ago, I did not have a clear understanding of the Department's requirements concerning personal email retention. As soon as I was apprised of these obligations, I immediately turned over all the relevant documents I had, both to the Department of Energy and directly to this committee. It is my understanding that that production has satisfied any obligation I may have had under the Federal Records Act.

Thank you for the opportunity to appear today, and I look forward to answering any questions you may have.

[Prepared statement of Mr. Silver follows:]

TESTIMONY OF JONATHAN SILVER

HEARING BEFORE THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
"PREVENTING VIOLATIONS OF FEDERAL TRANSPARENCY LAWS"

Tuesday, September 10, 2013

Good morning.

My name is Jonathan Silver and I have been asked to appear today as the Committee examines issues around email record-keeping in the federal government. I previously served as the Executive Director of the Loan Programs Office at the Department of Energy, a position I left almost two years ago. I should note, therefore, that I am here today in my capacity as a private citizen and am not in a position to speak to, or about, the current retention policies and practices at the Department.

I testified before this Committee's Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending in 2012, where these issues were discussed in depth. In 2011, I testified in front of a different House Committee that also addressed some of these issues. I have also been interviewed on several occasions by various Committee staff.

I last came before this Committee more than a year ago during the Committee's review of one of the 1705 program loans. During the course of that review, I voluntarily provided all the relevant documents I had from my personal email account, covering not only the time I was at the Department of Energy, but also, at the Committee's request, emails for an entire year before I was even in the federal government.

Today I will, of course, answer the Committee's questions again to the best of my ability. My appearance today, along with my swift compliance with your document requests a year and a half ago, demonstrates my willingness to assist the Committee in its work. I would note, Mr. Chairman, that I also offered to make myself available to Committee staff in an informal setting prior to this hearing, but that offer was declined.

As you know, Mr. Chairman, the 1705 loan program had a statutory sunset date of September 30, 2011, and substantial funds needed to be deployed by that date. It is important to remember that my office was working diligently to deploy that capital within a timeframe established by Congress. We

worked day and night to get the job done. Working under such a tight deadline required ongoing communications during and after business hours, and at night and on weekends. This was challenging because, as anyone who has worked at the Department can tell you, the government's IT systems are old and cumbersome.

The overwhelming majority of the emails produced from my personal account are copies of emails from my DOE account containing documents, duplicate copies, white papers, analyses, spreadsheets and others that already existed on the DOE servers. I occasionally forwarded, or had forwarded to me, documents from work in order to be able to work while traveling, out of the office, or at night and on weekends. I also sent and received some emails asking about logistics, or for updates, or to share an observation. I used my personal email in an effort to be as efficient and productive as possible, not in an attempt to be evasive.

When I left the government two years ago, I did not have a clear understanding of the Department's requirements concerning personal email retention. As soon as I was apprised of these obligations, I immediately turned over all the relevant documents I had both to the Department of Energy and directly to this Committee. It is my understanding that that production satisfied any obligation I may have had under the Federal Records Act.

I am ready to answer any questions you may have. Thank you.

Chairman ISSA. Do you want to answer Mr. Cummings' question as Ms. Jackson did?

Mr. SILVER. I thought I did, sir. But, if I didn't, let me say again that I directly respond to Congressman Cummings' question by saying that I had, at no time, any intent to circumvent the Federal Records Act.

Chairman ISSA. Thank you.

Mr. McLaughlin.

STATEMENT OF ANDREW MCLAUGHLIN

Mr. MCLAUGHLIN. Good morning, Mr. Chairman, Mr. Ranking Member, members of the committee. I actually think this is an incredibly interesting set of issues, so what I would like to do is make an observation and then three suggestions for the committee's consideration as you move legislation forward to the full House.

My observation is simply this: The world that we are moving into is one where any new Executive Branch employee is not only going to have a single private personal email account, but may well have dozens of communications accounts on different services. I have listed probably two dozen common services that I would expect any 20-something to have in my written testimony. So the world that we are moving into is one where friends, contacts, former co-workers, members of the public can find you on those services and can send communications in.

So I have one personal example that I think is also relevant. I think I am sort of sitting here at the table as an example of an ordinary, somewhat reasonably conscientious employee who got a whole bunch of communications into my personal accounts, forwarded the bulk of them over to my official accounts, but missed some; and, when I got a FOIA request, went back, found them, forwarded them in, and that was my experience.

But the world that we are living in now is one where the Federal agencies will not even have official accounts on these communication services. There is literally no way to send them in. So I have three suggestions for the committee's consideration.

The first one is the committee might want to specify that if a communication can't easily be forwarded into an official account, there should be some kind of safe harbor practice that would count as a transmission into the Federal Government. For example, capturing a screen shot of an image.

Now, I have to say some communications tools that are very common among 20-sometimes these days, like Snapchat, are built in such a way as to make it almost impossible to grab a screen shot and forward that communication in. But you could imagine a safe harbor approach where you could take a screen shot, pass that along to your email account, and have that be a safe harbor for compliance with the Federal Records Act and the Presidential Records Act.

And I should say H.R. 1233 does a very nice job of clearing up two problems: one is knowing where you have to send a communication in order for it to count as having been transmitted, in other words, into your official account; and the second part is that it says that it must be done within five days. As you know, there

is currently no time limit on when a record has to be transmitted over in order to be compliant with the law. I think those are two positive changes.

So idea number two is it is very difficult right now for a member of the public to find a way to officially communicate with an employee. For all the usual obvious reasons of spam, of privacy, of security, we don't publish every Federal employee's official email address. It can often be very difficult to find.

One thing that is very common now in customer service operations or, if you look at, for example, a lot of newspaper websites that want their journalists to be accessible, but don't want them to be targets for constant spam, is that they use things like a web forum, where you can submit a request to be in contact with that individual and it gets routed to that individual and they can then respond. But it is a reasonably workable hack that allows people to reach you so that they don't feel like they have to go and communicate with you on some known personal account because that is the only one that they have access to.

Suggestion number three is the committee could urge agencies, or even require agencies, to come up with language that must be attached, where possible, to the personal accounts of employees. So, for example, on a Tumbler account, you have a profile. And you could imagine a sentence being required to be inserted that says, if you want to talk to me about official business, don't talk to me here. Don't send me a message here, send it to my email address. This would be easier to do on some of the bigger services like Facebook, LinkedIn, Tumbler, Twitter, that have public-facing profiles. Other services would make it much more difficult. But you could imagine that the agencies would have to at least specify some basic language for some of the most popular communications platforms and try to route official communications elsewhere.

Let me just say one final note, which is just by way of example. One of the things that happens over and over again is that people just communicate with you on your personal accounts. Sometimes you may not even read it. If you go on vacation, you don't go back through your personal emails. One of the things that happened to me was a long experience involving Haiti, where the only way to communicate with individuals on the ground that were running ISPs that I happen to know that needed fuel was to use Skype, and Skype was a tool that the White House had not approved but was the only way to reach these people in Port-au-Prince that were keeping the servers running.

So we used it, we captured screen shots, we transferred it all over. But it is a great example of where the most effective tool to get government business done may not even be an official tool, and the emergency, urgency exception applies, but there is no standard ordinary practice for how to forward those communications into records, and that is something that I think any responsible agency ought to address.

I will be happy to answer the committee's questions. Thank you very much.

[Prepared statement of Mr. McLaughlin follows:]

Testimony of Andrew McLaughlin
before the House Committee on Oversight and Government Reform
on September 10, 2013
at a hearing on "Preventing Violations of Federal Transparency Laws".

Updating Federal Recordkeeping Practices
for the Era of Ubiquitous Digital Communications

Chairman Issa, Ranking Member Cummings, and distinguished members of the Committee on Oversight and Government Reform:

The subject of today's hearing raises an enormously interesting and challenging set of policy issues around the need to update agency rules and practices for the collection and preservation of records in an age of ever-more-numerous, rapidly-evolving, and increasingly decentralized channels of digital communication. I appreciate the opportunity to offer my thoughts and recommendations.

By way of introduction, I am a senior executive at betaworks, a New York City-based builder of, and investor in, technology- and data-driven media companies. I am CEO of Digg and Instapaper, two betaworks companies that offer innovative news curation and reading products for web and mobile devices. Outside of work, I chair the board of Access Now, which defends the free speech and privacy interests of activists, journalists, and citizens in high-risk countries; and I serve on the boards of the Sunlight Foundation, which uses the power of the Internet to catalyze greater openness and transparency in government, and Public Knowledge, which advocates for an open Internet and the public's access to knowledge.

Previously, I have held academic positions at Harvard Law School's Berkman Center for Internet & Society, Stanford Law School's Center for Internet & Society, and Princeton University's Center for Information Technology Policy. In 2011, I served as start-up executive director of Civic Commons, a project of Code for America, and taught an international constitutional law class on freedom of expression at Stanford Law School. In the private sector, I have worked as a senior executive at Tumblr (2011-12), Google (2004-09), and the Internet Corporation for Assigned Names and Numbers (1999-2003). I have entered public service three times: In 2009-10, I served in the White House's Office of Science and Technology Policy as a Deputy Chief Technology Officer; in 1997-98, I was counsel to this very Committee; and in 1994-95, I clerked on the United States Court of Appeals for the Eighth Circuit.

I. The Challenge of Ubiquitous Digital Communications

Government recordkeeping now confronts an era in which employees have a vastly expanded, and expanding, menu of personal and social communication channels. Email is no longer the the overwhelmingly dominant means of online person-to-person communication. While email will surely persist in something resembling its current form for decades, it is becoming less centrally important every year -- particularly among the generations of Americans that will be joining federal agencies in the coming decade.

Let's examine what a typical, newly-minted, digitally-native, twenty-something Executive Branch employee in 2013 will be bringing to the job. She will likely have not only a personal email account, but a smartphone with text messaging and an arsenal of apps designed either specifically for messaging or capable of being used to receive direct, work-relevant communications. To name only some of the apps that are popular right now, she might have accounts on Facebook, Twitter, Skype, Tumblr, LinkedIn, WhatsApp, AOL Instant Messenger, Yahoo! Messenger, Line, Viber, Voxer, Kik, Glide, Tinychat, Handcent SMS, GroupMe, WeChat, Google+, Path, Dropbox, Google Drive, Moped, Tango, and ooVoo. And that's not even counting photo- and video-sharing services that support direct or indirect messaging: Instagram, Vine, Pinterest, Flickr, Snapchat, Vimeo, and YouTube, to name just some of the most prominent.

While the new employee may not use any of her personal accounts to send work-related communications, her friends, friends of friends, former classmates and co-workers, and, indeed, random members of the public will almost certainly use them to try to reach her in the context of her new job. Indeed, I learned this very directly -- in today's electronic world, once you become a federal employee people will inevitably seek to contact you on your known or discoverable personal accounts. Even if you are conscientious about forwarding work-related emails to your official account to preserve them as government records, you can easily miss a few. Moreover, for many of the new communication apps mentioned above, there is no easy way to forward work-related communications to an official system: federal agencies are lagging, not leading, adopters of new technologies, and so in most cases, the new service will not be approved for use and there will be no official agency or employee accounts on it, no matter how popular.

Thus, from the perspective of the Federal Records Act ("FRA"), this explosion in employee use of online and mobile person-to-person communication services presents a significant challenge. Given that federal employees are directed to avoid using official resources for personal matters, It would be unreasonable to bar federal employees from using personal communications accounts, even during work hours. And it is equally unreasonable to expect that all federal agencies and their employees must actively operate an official account on every new communications service that appears on the Internet or in the iPhone or Android app store. The challenge I address today, therefore, is how to steer into federal records systems, in more reliable, thorough, and timely ways, those work-related communications that federal agency employees do not initiate but receive on their personal accounts.

II. Improving Federal Employee Recordkeeping Policies and Practices

I first commend the Committee for the reforms and improvements set forth in H.R. 1233, The Presidential and Federal Records Act Amendments of 2013, which was reported to the full House on June 25 of this year. In addition to updating the definition of "records" and codifying a number of existing federal agency practices, H.R. 1233 includes two important and useful clarifications of a federal employee's obligations whenever using a personal electronic messaging account in connection with official business: namely, that any records created on a non-official account (1) must be copied or forwarded directly to the employee's official messaging account, and (2) must be forwarded within five days of first being created or sent. Current law and practice provide that such messages must be preserved just like any other federal records, but do not specify how or when they must be transferred onto federal systems.

However, this useful clarification of responsibilities does not supply adequate guidance to employees who receive messages or other records relating to public business on digital communication platforms other than email. For example, if a federal employee receives a work-related communication via a direct message on Twitter, an InMail message on LinkedIn, an instant message on Skype, a text message on WhatsApp, or a shared document in Google Drive, there may be no obvious way to forward it to an official account -- in no small measure because the employee will almost certainly not have an official account on that particular service. If the expectation is that the employee should take a screenshot and then use personal email to send it into her official email account, then I urge the Committee to consider amending the legislation to make that explicit, at least as a safe harbor for compliance.[1]

A second idea for improvement of federal recordkeeping requirements is that federal agencies make it possible for individuals outside the federal government to reach the official email addresses and other official digital communications accounts of federal employees. For security, privacy, and anti-spam reasons, most federal agencies do not publish employee email addresses in plain text on the web. That, in turn, leads many people to try to reach employees on non-official accounts, which are typically much easier to locate. But there are many ways to make it easy to contact specific federal employees even without publishing their email addresses. For example, agencies could utilize contact forms, where inbound messages can be submitted through a web page and then automatically or manually routed to the employee's official email account. This technique is widely used in online customer service operations, as well as by many newspapers and online publications that want their journalists and writers to be easily reachable, but not easily spam-able.

A third idea that may merit the Committee's consideration is a requirement that federal employees add notes to their personal communications accounts specifically stating that official business should be directed to their official accounts. These notes would probably have to be

[1] Even that approach has a notable downside for the long-term archival utility of the preserved record, as screenshot image files are not easily searchable.

specifically crafted, platform-by-platform and service-by-service. In the case of email, such a note could be added to an automatic signature footer or auto-responder. For Facebook, Twitter, LinkedIn, Skype, or Tumblr, it could be added to a public-facing field in the individual's profile. For other services, it might be more difficult or even impossible to incorporate an effective signal. Agencies could be directed to develop regularly-updated guidance on the language to be added to employees' personal accounts on the most widely used digital communications platforms.

III. Digital Recordkeeping Challenges for Congress

Finally, though this hearing focuses on the Executive Branch, the subject matter is relevant to Congress.

To be sure, Members of Congress are not subject to any obligation to retain and preserve records, digital or otherwise, with the National Archives or any other institution. Even absent such a requirement, many Members choose to build and maintain official archives and then, at the conclusion of their service, transfer them to local academic or historical institutions, often in or near their districts. But as Members and their offices embrace and rely upon new digital services and tools for communicating with their constituents, they may find themselves increasingly unable to collect, retain, and preserve a complete historical record of their time and actions in office. Accordingly, the members of this Committee might want to consider whether Congress needs institutional technical capabilities and policies to assist Members who elect to archive their official communications on digital communication platforms, from both official and non-official accounts.

Thank you for your consideration of my thoughts and suggestions. I look forward to answering the Committee's questions and serving as a resource as the Committee's work continues beyond this hearing.

Chairman ISSA. Mr. Ferriero, they have certainly teed up the fact that nobody knows how to deal with the new ones, that your job is impossible. Take as long as you want to respond.

[Laughter.]

STATEMENT OF THE HONORABLE DAVID S. FERRIERO

Mr. FERRIERO. Chairman Issa, Ranking Member Cummings, Member Gowdy, thanks for holding this hearing on the importance of Federal record-keeping and the challenges we all face in managing the vast and growing number of email records.

As background and context on our latest work in this area, on November 28th, 2011, the President issued a Memorandum on Managing Government Records, which launched a multi-year Executive Branch-wide effort to reform and modernize records management policies and practices.

In the memorandum, the President stated: "When records are well managed, agencies can use them to assess the impact of programs, to reduce redundant efforts, to save money, and to share knowledge within and across their organizations. In these ways, proper records management is the backbone of open Government."

At the President's direction, I joined with the acting director of OMB to issue an implementation directive to all heads of executive departments and agencies and independent agencies, largely based in part on the work done by this committee in H.R. 1233 and 1234.

The directive describes two high-level goals and a series of actions that NARA, OMB, and the departments and agencies of the Federal Government must take to modernize records management policies and practices.

The two high-level goals are: first, require electronic record-keeping to ensure transparency, efficiency, and accountability; and, secondly, demonstrate compliance with the Federal records management statutes and regulations.

I am pleased to say that we are making progress toward achieving these goals. For example, in response to the directive, each agency designated a senior official to oversee and ensure compliance with records management statutes and regulations; not the records manager, a senior agency official with that responsibility. Last month, NARA issued guidance to assist agencies in meeting the directive's call to manage email records in an electronic format by the end of 2016.

Among the additional activities underway as a result of the directive, the Office of Personnel Management is working with NARA to establish a formal records management occupational series. There is no such thing as a records manager in the Federal occupational series. And by the end of 2014 agency records officers must obtain the NARA Certificate of Federal Records Management Training and all Federal agencies must establish a method to inform all employees of their records manager responsibilities and develop records management training for appropriate staff.

I believe that the Presidential Memorandum and the implementing directive have set us on the path to addressing the challenges in modernizing and reforming records management.

The effective management of email records is a significant part of records management reform. In that regard, the committee's con-

cern over the use of private or unofficial email accounts used to conduct Federal business is also a topic of interest to the National Archives. The National Archives discourages the use of private email accounts to conduct Federal business, but understands that there are situations where such use does occur.

Accordingly, where a private email account must be used to conduct Government business because, for example, the Government-provided email service is not available for technical reasons, the Federal records generated through these private accounts must be moved to the official record-keeping system of the agency as soon as practicable and then managed according to the Federal Records Act, the Freedom of Information Act, and other legal requirements and their implementing regulations.

As I just noted, NARA recently released an agency-wide bulletin introducing a new approach to managing the billions of email messages that are sent or received in Federal agencies. We have also issued a bulletin reminding agency heads about the need to appropriately manage and protect Federal records. Both of these bulletins and the President's directive are attached to my written statement.

There are a number of challenges and opportunities related to the use of electronic records in the Federal Government. The technological landscape is constantly changing and the volume of records is always growing. The focus of today's hearing is email and the agencies covered by the Federal Records Act, but the challenges involved with records generated from social media platforms, as you have just heard, and the other two branches of the Federal Government are every bit as difficult.

The talented staff of the National Archives and Records Administration looks forward to working through these issues. The long-term success of the National Archives and the historical record of our Nation depends on our collective success.

Thank you for the opportunity to appear today, and I look forward to answering your questions.

[Prepared statement of Mr. Ferriero follows:]

TESTIMONY OF DAVID S. FERRIERO

ARCHIVIST OF THE UNITED STATES

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

U.S. HOUSE OF REPRESENTATIVES

ON

PREVENTING VIOLATIONS OF FEDERAL TRANSPARENCY LAWS

SEPTEMBER 10, 2013

Chairman Issa, Ranking Member Cummings, and Distinguished Members of the Committee:

Thank you for holding this hearing on the importance of Federal record keeping, and the challenges we all face in managing the vast and growing numbers of email records.

As background and context on our latest work in this area, on November 28, 2011, the President issued a Presidential Memorandum on Managing Government Records. As part of the Administration's broader Open Government Initiative, and the National Action Plan for Open Government, the Memorandum launched a multi-year, executive branch-wide effort to reform and modernize records management policies and practices.

In the Memorandum, President Obama stated:

> When records are well managed, agencies can use them to assess the impact of programs, to reduce redundant efforts, to save money, and to share knowledge within and across their organizations. In these ways, proper records management is the backbone of open Government.

Essentially, what the President called on the National Archives (NARA) and the rest of the Federal government to do was move us from a traditional, analog records environment to a more sophisticated, digital records and information management world.

At the President's direction, in August 2012, I joined with the acting Director of the Office of Management and Budget (OMB) to issue an implementing Directive to all heads of executive departments and agencies and independent agencies.

This Managing Government Records Directive (OMB-M-12-18) describes two high-level goals and a series of actions that NARA, OMB, and all Departments and agencies of the Federal government must take to modernize records management policies and practices.

The two high-level goals are:

- First, require electronic recordkeeping to ensure transparency, efficiency, and accountability.
- Second, demonstrate compliance with Federal records management statutes and regulations.

There are a number of activities associated with each of these goals, including:

- By November 15, 2012, each agency had to designate a Senior Agency Official to oversee and ensure compliance with records management statutes and regulations.
- By the end of 2016, Federal agencies must manage all email records in an electronic format.
- By the end of 2019, Federal agencies must manage all permanent electronic records electronically to the fullest extent possible.

To make these top line actions happen, there are a number of additional activities that NARA and other Departments and agencies are also working on. A partial listing of these activities includes:

- By the end of 2013, NARA will revise guidance for the transfer of permanent electronic records to the National Archives.
- By the end of 2013, the Office of Personnel Management will establish a formal records management occupational series.
- By the end of 2013, NARA will identify a government-wide analytical tool to evaluate the effectiveness of records management programs. This tool will supplement our analysis of the annual Records Management Self-Assessment data NARA gathers from agencies each year.
- By the end of 2013, NARA – in collaboration with the Federal CIO Council, the Federal Records Council, private industry, and other stakeholders -- will produce a comprehensive plan to describe suitable approaches for the automated management of email, social media, and other types of digital content.
- By the end of 2014, Agency Records Officers must obtain the NARA Certificate of Federal Records Management Training, and all Federal agencies must establish a method to inform all employees of their records management responsibilities and develop suitable records management training for appropriate staff.
- By the end of 2015, NARA will improve the current Request for Records Disposition Authority process.
- By the end of 2017, NARA will complete an overhaul of the General Records Schedules.

I believe that the Presidential Memorandum and the implementing Directive have set us on the path to addressing the challenges in modernizing and reforming records management.

The effective management of email records is a central, animating issue for the National Archives and the government as a whole. In that regard, the Committee's concern over the use of private, or unofficial, email accounts used to conduct Federal business is also a topic of interest to the National Archives.

The National Archives discourages the use of private email accounts to conduct Federal business, but understands that there are situations where such use does occur. Accordingly, where a private email account must be used to conduct government business – because, for example, the government-provided email service is not available for technical reasons – the Federal records generated through these private accounts must be moved to the official recordkeeping system of the agency as soon as practicable, and then managed according to the Federal Records Act, the Freedom of Information Act, and other legal requirements and their implementing regulations.

We have recently issued two NARA Bulletins that provide additional guidance to agency officials on the management of Federal records, including email. The first, NARA Bulletin 2013-02, Guidance on a New Approach to Managing Email Records – called for by the Managing Government Records Directive (M-12-18) – introduces a new approach to managing the billions of email messages that are sent or received in Federal agencies. The second, NARA Bulletin 2013-03, reminds agency heads about the need to appropriately manage and protect Federal records. In both Bulletins, we reinforce that email, like all Federal records, must be managed appropriately. I have included these Bulletins and the Directive with my testimony.

There are a number of challenges and opportunities related to the use of electronic records in the Federal government. The technological landscape is constantly changing. The focus of today's hearing is email, and the agencies covered by the Federal Records Act, but the challenges involved with records generated from social media platforms, and the other two branches of the Federal government, are every bit as difficult.

The talented staff of the National Archives and Records Administration looks forward to working through these issues. The long-term success of the National Archives – and the historical record of our nation – depends on our collective success.

Thank you for the opportunity to appear today. I look forward to answering your questions.

The White House
Office of the Press Secretary

For Immediate Release

November 28, 2011

Presidential Memorandum -- Managing Government Records

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Managing Government Records

Section 1. Purpose. This memorandum begins an executive branch wide effort to reform records management policies and practices. Improving records management will improve performance and promote openness and accountability by better documenting agency actions and decisions. Records transferred to the National Archives and Records Administration (NARA) provide the prism through which future generations will understand and learn from our actions and decisions. Modernized records management will also help executive departments and agencies (agencies) minimize costs and operate more efficiently. Improved records management thus builds on Executive Order 13589 of November 9, 2011 (Promoting Efficient Spending), which directed agencies to reduce spending and focus on mission critical functions.
When records are well managed, agencies can use them to assess the impact of programs, to reduce redundant efforts, to save money, and to share knowledge within and across their organizations. In these ways, proper records management is the backbone of open Government.

Decades of technological advances have transformed agency operations, creating challenges and opportunities for agency records management. Greater reliance on electronic communication and systems has radically increased the volume and diversity of information that agencies must manage. With proper planning, technology can make these records less burdensome to manage and easier to use and share. But if records management policies and practices are not updated for a digital age, the surge in information could overwhelm agency systems, leading to higher costs and lost records.

We must address these challenges while using the opportunity to develop a 21st-century framework for the management of Government records. This framework will provide a foundation for open Government, leverage information to improve agency performance, and reduce unnecessary costs and burdens.

Sec. 2. Agency Commitments to Records Management Reform. (a) The head of each agency shall:

(i) ensure that the successful implementation of records management requirements in law, regulation, and this memorandum is a priority for senior agency management;

(ii) ensure that proper resources are allocated to the effective implementation of such requirements; and

(iii) within 30 days of the date of this memorandum, designate in writing to the Archivist of the United States (Archivist), a senior agency official to supervise the review required by subsection (b) of this section, in coordination with the agency's Records Officer, Chief Information Officer, and General Counsel.

(b) Within 120 days of the date of this memorandum, each agency head shall submit a report to the Archivist and the Director of the Office of Management and Budget (OMB) that:

(i) describes the agency's current plans for improving or maintaining its records management program, particularly with respect to managing electronic records, including email and social media, deploying cloud based services or storage solutions, and meeting other records challenges;

(ii) identifies any provisions, or omissions, in relevant statutes, regulations, or official NARA guidance that currently pose an obstacle to the agency's adoption of sound, cost effective records management policies and practices; and

(iii) identifies policies or programs that, if included in the Records Management Directive required by section 3 of this memorandum or adopted or implemented by NARA, would assist the agency's efforts to improve records management.

The reports submitted pursuant to this subsection should supplement, and therefore need not duplicate, information provided by agencies to NARA pursuant to other reporting obligations.

Sec. 3. Records Management Directive. (a) Within 120 days of the deadline for reports submitted pursuant to section 2(b) of this memorandum, the Director of OMB and the Archivist, in coordination with the Associate Attorney General, shall issue a Records Management Directive that directs agency heads to take specific steps to reform and improve records management policies and practices within their agency. The directive shall focus on:

(i) creating a Government wide records management framework that is more efficient and cost effective;

(ii) promoting records management policies and practices that enhance the capability of agencies to fulfill their statutory missions;

(iii) maintaining accountability through documentation of agency actions;

(iv) increasing open Government and appropriate public access to Government records;

(v) supporting agency compliance with applicable legal requirements related to the preservation of information relevant to litigation; and

(vi) transitioning from paper-based records management to electronic records management where feasible.

(b) In the course of developing the directive, the Archivist, in coordination with the Director of OMB and the Associate Attorney General, shall review relevant statutes, regulations, and official NARA guidance to identify opportunities for reforms that would facilitate improved Government wide records management practices, particularly with respect to electronic records. The Archivist, in coordination with the Director of OMB and the Associate Attorney General, shall present to the President the results of this review, no later than the date of the directive's issuance, to facilitate potential updates to the laws, regulations, and policies governing the management of Federal records.

(c) In developing the directive, the Director of OMB and the Archivist, in coordination with the Associate Attorney General, shall consult with other affected agencies, interagency groups, and public stakeholders.

Sec. 4. General Provisions. (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 5. Publication. The Archivist is hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA

August 24, 2012

M-12-18

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES AND INDEPENDENT AGENCIES

FROM: Jeffrey D. Zients
Acting Director
Office of Management and Budget

David S. Ferriero
Archivist of the United States
National Archives and Records Administration

SUBJECT: Managing Government Records Directive

On November 28, 2011, President Obama signed the Presidential Memorandum—Managing Government Records. This memorandum marked the beginning of an Executive Branch-wide effort to reform records management policies and practices and to develop a 21st-century framework for the management of Government records. The expected benefits of this effort include:

- improved performance and promotion of openness and accountability by better documenting agency actions and decisions;
- further identification and transfer to the National Archives and Records Administration (NARA) of the permanently valuable historical records through which future generations will understand and learn from our actions and decisions; and
- assistance to executive departments and agencies (referred to collectively as agencies) in minimizing costs and operating more efficiently.

Records are the foundation of open government, supporting the principles of transparency, participation, and collaboration. Well-managed records can be used to assess the impact of programs, to improve business processes, and to share knowledge across the Government. Records protect the rights and interests of people, and hold officials accountable for their actions. Permanent records document our nation's history.

This Directive creates a robust records management framework that complies with statutes and regulations to achieve the benefits outlined in the Presidential Memorandum. This Directive was informed by agency reports submitted pursuant to Sec. 2 (b) of the Presidential Memorandum and feedback from consultations with agencies, interagency groups, and public stakeholders.

This Directive requires that to the fullest extent possible, agencies eliminate paper and use electronic recordkeeping. It is applicable to all executive agencies and to all records, without regard to security classification or any other restriction.

This Directive also identifies specific actions that will be taken by NARA, the Office of Management and Budget (OMB), and the Office of Personnel Management (OPM) to support agency records management programs. In addition, NARA will undertake a review to update relevant portions of the Code of Federal Regulations to take into account the provisions of this Directive.

Attachment

Part I.

Federal agencies shall work toward two central goals.

Goal 1: Require Electronic Recordkeeping to Ensure Transparency, Efficiency, and Accountability

To promote openness and accountability and reduce costs in the long term, the Federal Government should commit immediately to the transition to a digital government. Agencies must meet the following targets:

1.1 ***By 2019, Federal agencies will manage all permanent electronic records in an electronic format***

By December 31, 2019, all permanent electronic records in Federal agencies will be managed electronically to the fullest extent possible for eventual transfer and accessioning by NARA in an electronic format. By December 31, 2013, each agency will develop and begin to implement plans to achieve this transition. Agencies should also consider the benefits of digitizing permanent records created in hard-copy format or other analog formats (e.g., microfiche, microfilm, analog video, analog audio).

1.2 ***By 2016, Federal agencies will manage both permanent and temporary email records in an accessible electronic format***

By December 31, 2016, Federal agencies must manage all email records in an electronic format. Email records must be retained in an appropriate electronic system that supports records management and litigation requirements (which may include preservation-in-place models), including the capability to identify, retrieve, and retain the records for as long as they are needed. Beginning one year after issuance of this Directive, each agency must report annually to OMB and NARA the status of its progress toward this goal.

Goal 2: Demonstrate Compliance with Federal Records Management Statutes and Regulations

The Federal Government should commit to manage more effectively all records consistent with Federal statutes and regulations and professional standards. Agencies must meet the following requirements:

2.1 ***Agencies Must Designate a Senior Agency Official (SAO)***

The Presidential Memorandum previously required all agencies to designate a Senior Agency Official (SAO) to oversee a review of their records management program. This Directive also requires agencies to designate an SAO, but with broader agency-wide responsibilities with respect to records management. By November 15, 2012, each agency will name its SAO, and by November 15th of each subsequent year, all agencies

will reaffirm or name any new SAO. The SAO is responsible for coordinating with the Agency Records Officer and appropriate agency officials to ensure the agency's compliance with records management statutes and regulations.

The SAO is a senior official at the Assistant Secretary level or its equivalent who has direct responsibility for ensuring that the department or agency efficiently and appropriately complies with all applicable records management statutes, regulations, and NARA policy, and the requirements of this Directive. The SAO must be located within the organization so as to make adjustments to agency practices, personnel, and funding as may be necessary to ensure compliance and support the business needs of the department or agency.

2.2 *SAO Shall Ensure that Permanent Records are Identified for Transfer and Reported to NARA*

By December 31, 2013, the SAO shall ensure permanent records that have been in existence for more than 30 years are identified for transfer and reported to NARA.

2.3 *Agency Records Officers Must Obtain NARA Certificate of Federal Records Management Training*

By December 31, 2014, the designated Agency Records Officer for each agency must hold the NARA certificate of Federal Records Management Training. New incumbents must possess the certificate within one year of assuming the position of Agency Records Officer. Agency Records Officers are generally responsible for overseeing the day to day agency recordkeeping requirements outlined in 36 CFR 1222.22, Subpart B.

2.4 *Agencies Must Establish Records Management Training*

By December 31, 2014, all Federal agencies must establish a method to inform all employees of their records management responsibilities in law and policy, and develop suitable records management training for appropriate staff.

2.5 *SAO Shall Ensure that Records are Scheduled*

By December 31, 2016, the SAO shall work with the Agency Records Officer to ensure records schedules have been submitted to NARA for all existing paper and other non-electronic records. To facilitate this goal, the Agency Records Officer will work with NARA to identify all unscheduled records, by December 31, 2013. This should include all records stored at NARA and at agencies' records storage facilities that have not yet been properly scheduled.

Part II.

NARA and other agencies (OMB and OPM) will take the following actions to assist agencies in meeting the two central goals of this Directive.

Section A: Require Electronic Recordkeeping to Ensure Transparency, Efficiency, and Accountability

A1 ***Revise NARA transfer guidance for permanent electronic records***
By December 31, 2013, NARA will complete, and make available, revised guidance, including metadata requirements, for transferring permanent electronic records, to include additional sustainable formats commonly used to meet agency business needs. NARA will update this guidance regularly as required to stay current with technology changes.

A2 ***Create new email guidance***
By December 31, 2013, NARA will issue new guidance that describes methods for managing, disposing, and transferring email.

A3 ***Investigate and stimulate applied research in automated technologies to reduce the burden of records management responsibilities***

A3.1 NARA, the Federal Chief Information Officers Council and the Federal Records Council will work with private industry and other stakeholders to produce economically viable automated records management solutions. By December 31, 2013, NARA will produce a comprehensive plan in collaboration with its stakeholders to describe suitable approaches for the automated management of email, social media, and other types of digital record content, including advanced search techniques. The plan will detail expected outcomes and outline potential associated risks.

A3.2 By December 31, 2014, the Federal Chief Information Officers Council, and the Federal Records Council, working with NARA, will obtain external involvement for the development of open source records management solutions.

A4 ***Embed records management requirements into cloud architectures and other Federal IT systems and commercially-available products***

A4.1 By December 31, 2013, NARA will incorporate into existing reporting requirements an annual agency update on new cloud initiatives, including a description of how each new initiative meets Federal Records Act obligations and the goals outlined in this Directive. For the initial report the agency will identify any existing use of cloud services or storage, and the date of implementation.

A4.2 By the next revision of OMB Circular A-130, OMB will update A-130 to explicitly require that agencies must incorporate records management requirements when moving to cloud-based services or storage solutions.

A5 ***Evaluate the feasibility for secure "data at rest" storage and management services for Federal agency-owned electronic records***

By December 31, 2013, NARA will determine the feasibility of establishing a secure cloud-based service to store and manage unclassified electronic records on behalf of agencies. This basic, shared service will adhere to NARA records management regulations and provide standards and tools to preserve records and make them accessible within their originating agency until NARA performs disposition.

Section B: Create a Robust Records Management Framework that Demonstrates Compliance with Federal Statutes and Regulations and Promotes Partnerships

B1 ***The Archivist of the United States will convene the first of periodic meetings of all Senior Agency Officials***

By December 31, 2012, the Archivist of the United States will convene the first of periodic meetings of all SAOs to discuss progress in implementation of this Directive; agency Federal records management responsibilities; and partnerships for improving records management in the Federal Government. Additionally, NARA will complete a review of all of its records management reporting requirements by December 31, 2012, and produce a report template for a single annual report that each SAO will send to the Chief Records Officer for the U.S. Government commencing on October 1, 2013.

B2 ***Create a Community of Interest to solve records management challenges***

By December 31, 2013, NARA, in cooperation with the Federal Chief Information Officers Council, the Federal Records Council, and other Government-wide councils that express interest, will establish a Community of Interest (COI) to bring together leaders from the information technology, legal counsel, and records management communities to solve specific records management challenges. The COI will develop and propose guidance, share information, create training, and identify tools that support electronic records management.

B3 **Establish** ***a formal records management occupational series***

By December 31, 2013, OPM will establish a formal records management occupational series to elevate records management roles, responsibilities, and skill sets for agency records officers and other records professionals.

B4 ***Continue to improve the effectiveness of Federal records management programs through analytical tools and enhanced NARA oversight***

By December 31, 2013, NARA will identify a government-wide analytical tool to evaluate the effectiveness of records management programs. While continuing to conduct assessments, inspections, and studies of agency records management programs, NARA expects that a tool or similar analytical approach will help NARA and the agencies to measure program compliance more effectively, assess risks, and aid in agency decision-making. The use of a new analytical tool in these ongoing activities will identify issues that undermine effective agency records management programs as well as highlight the best practices that will inform agency-specific or government-wide opportunities for improvement.

Section C: Improve NARA Processes to Serve Agency Needs

C1 ***Improve the Current Request for Records Disposition Authority Process***

By December 31, 2015, NARA will improve the current Request for Records Disposition Authority process. Consistent with current Federal records management statutes, or with changes to existing statutes (if required), NARA will also develop criteria that agencies can apply to the scheduling, appraisal, and overall management of temporary records that can be effectively monitored with appropriate NARA oversight.

C2 ***Overhaul the General Records Schedules***

By December 31, 2017, to reduce the need for unique records schedules submitted for approval to the Archivist, NARA, in consultation with appropriate oversight agencies, will make substantive changes to the General Records Schedules (GRS). These significant changes will include, combining the records series into more appropriate aggregations for easier disposition action by agencies, and expanding the number of permanent records series in the GRS to reduce the scheduling and appraisal burden on agencies.

National Archives and
Records Administration
Washington, DC 20408

NARA BULLETIN
NO. 2013-02

TO: Heads of Federal Agencies

SUBJECT: Guidance on a New Approach to Managing Email Records

EXPIRATION DATE: August 31, 2016

1. What is the purpose of this Bulletin?

This Bulletin provides agencies with a new records management approach, known as "Capstone," for managing their Federal record emails electronically. This Bulletin discusses the considerations that agencies should review if they choose to implement the Capstone approach to manage their email records.

NARA developed the Capstone approach as part of NARA's continuing efforts to evaluate how agencies have used various email repositories to manage email records (see NARA Bulletin 2011-03, "Guidance Concerning the use of E-mail Archiving Applications to Store E-mail"). This approach was developed in recognition of the difficulty in practicing traditional records management on the overwhelming volume of email that Federal agencies produce. Capstone will provide agencies with feasible solutions to email records management challenges, especially as they consider cloud-based solutions. Moreover, the Capstone approach supports the Presidential Memorandum on Managing Government Records and allows agencies to comply with the requirement in OMB/NARA M-12-18 Managing Government Records Directive to "manage both permanent *and* temporary email records in an accessible electronic format" by December 31, 2016.

NARA bulletins provide fundamental guidance to Federal agency staff, who must then determine the most appropriate ways to incorporate recordkeeping requirements into their business processes and identify the specific means by which their agencies will fulfill their responsibilities under the Federal Records Act.

2. What is the Capstone approach?

Capstone offers agencies the option of using a more simplified and automated approach to managing email, as opposed to using either print and file systems or records management applications that require staff to file email records individually. Using this approach, an agency can categorize and schedule email based on the work and/or position of the email account owner. The Capstone approach allows for the capture of records that should be preserved as permanent from the accounts of officials at or near the top of an agency or an organizational subcomponent. An agency may designate email accounts of additional employees as Capstone when they are in positions that are likely to create or receive permanent email records. Following this approach,

an agency can schedule all of the email in Capstone accounts as permanent records. The agency could then schedule the remaining email accounts in the agency or organizational unit, which are not captured as permanent, as temporary and preserve all of them for a set period of time based on the agency's needs. Alternatively, approved existing or new disposition authorities may be used for assigning disposition to email not captured as permanent.

While this approach has significant benefits, there are also risks that the agency must consider, including choosing the appropriate Capstone accounts, the possible need to meet other records management responsibilities, and the possibility of incidentally collecting personal and other non-record email. Agencies must determine whether end users may delete non-record, transitory, or personal email from their accounts. This will depend on agency technology and policy requirements.

3. What are the advantages of the Capstone approach?

The Capstone approach simplifies electronic management of email records for agencies and may provide the following advantages:

- Cuts down reliance on print-and-file, click-and-file drag and drop, or other user-dependent policies;
- Optimizes access to records responsive to discovery or FOIA requests;
- Preserves permanent email records for eventual transfer to NARA;
- Provides a practical approach to managing legacy email accounts;
- Eases the burden of email management on the end-user;
- Represents a simplified approach to the disposition of temporary and permanent email records;
- Reduces the risk of unauthorized destruction of email records; and
- Leverages technologies that exist at many agencies for other purposes – e.g., email archives/e-vaults used for e-discovery, including in cloud-based platforms.

4. What should an agency consider before deciding to use the Capstone approach?

Before implementing Capstone, an agency must determine its suitability for individual agency programs. This determination is made in consultation with appropriate stakeholders from the Office of the Chief Information Officer, Office of the General Counsel, and other agency decision makers.

Within an agency, the appropriate organizational level to implement Capstone may vary. An agency may have multiple implementations of Capstone depending on the business functions of their programs. Considerations when using Capstone include:

- Is the Capstone approach compatible with an agency's current email and other records management/archiving systems?
- Does the current email repository capture metadata required in 36 CFR 1236.22, or can it be configured to do so?

- Do all permanent email records contain required metadata at the time of transfer to NARA?
- Are records accessible to authorized staff for business purposes?
- Does the agency's repository have appropriate security controls to prevent unauthorized access, modification, or deletion of email records?
- Can the technology be configured to allow Capstone officials to remove or delete personal and non-record emails from permanent capture?
- Depending on agency technology and implementation, is the tradeoff of potentially capturing personal and non-record messages in Capstone accounts acceptable?
- Will new agency policies addressing FOIA, discovery, IT security, and other issues need to be developed to implement Capstone?
- What specific training will be required to implement Capstone?
- Will records be retained too long or too short a time in terms of agency needs when implementing the Capstone approach?
- Will Capstone records be duplicated in separate filing systems?
- Do some Capstone records have legal requirements to be destroyed after a specific time?

After considering the above questions, an agency will be able to determine if Capstone will enhance its records management program. If an agency decides to use the approach, the agency must identify their Capstone accounts and determine if they will apply the Capstone approach to legacy email accounts. Once these decisions are made, agencies will need to apply an appropriate disposition authority. Agencies are encouraged to consult with their NARA Appraisal Archivists to determine the appropriate strategy for managing email records created in their agency.

5. Does Capstone change agencies' recordkeeping responsibilities for email?

Capstone can reduce the burden on individual end-users by encouraging the greater use of automated methods for managing email accounts. Agencies are responsible for managing their records in accordance with NARA regulations and to fulfill the requirements of the Managing Government Records Directive. When using the Capstone approach for capturing and managing email, agencies must continue to:

a. *Ensure email records are scheduled.*
   Agencies should work with their NARA Appraisal Archivist to ensure email records are covered by an approved disposition authority. This may include creating new schedules, using existing schedules, or using an applicable General Records Schedule.

b. *Prevent the unauthorized access, modification, or deletion of declared records.*
   Agencies must ensure the email repository has appropriate security measures in place to prevent unauthorized access and/or destruction of records. Records must retain authenticity, reliability, and trustworthiness throughout capture, maintenance, and transfer.

c. *Ensure all records in the repository are retrievable and usable.*
   Email records maintained in a repository must be accessible to appropriate staff for as long as needed to conduct agency business. Agencies should also consider retrievability

and usability when migrating from one repository to another.

d. *Consider whether email records and attachments can or should be associated with related records under agency guidance.*
As a supplement to the Capstone approach, an agency may want or need to associate certain email records that relate to other records, such as case files or project files, with the related records. This consideration depends on an agency's needs and how it chooses to implement its Capstone approach. This may be accomplished by:

1. Using electronic pointers (such as metadata tags) to establish linkages, or
2. In select cases, filing with associated paper or electronic case or project files.

e. *Capture and maintain required metadata.*
An agency is responsible for ensuring that email metadata listed in 36 CFR 1236.22, Parts (1) and (3) are preserved. Required metadata elements include the date of the email and the names and email addresses of all senders and recipients particularly if the system uses nicknames, distribution lists, or a blind copy feature. The agency may wish to retain and preserve additional metadata for legal and business purposes. Regardless of the repository, agencies must examine email upon transfer to another repository or to NARA to ensure that names and addresses are appropriately associated with each email. Agencies are responsible for working with vendors and their information technology departments to confirm that their repository is capturing and can export the required metadata elements.

6. How do agencies identify Capstone email accounts?

When adopting the Capstone approach, agencies must identify those email accounts most likely to contain records that should be preserved as permanent. Agencies will determine Capstone accounts based on their business needs. They should identify the accounts of individuals who, by virtue of their work, office, or position, are likely to create or receive permanently valuable Federal records. NARA's Appraisal Archivists can assist agencies in helping to determine Capstone accounts. For example, these accounts may include:

> [H]eads of departments and independent agencies; their deputies and assistants; the heads of program offices and staff offices including assistant secretaries, administrators, and commissioners; directors of offices, bureaus, or equivalent; principal regional officials; staff assistants to those aforementioned officials, such as special assistants, confidential assistants, and administrative assistants; and career Federal employees, political appointees, and officers of the Armed Forces serving in equivalent or comparable positions. (GRS 23, Item 5)

Agencies may wish to use the U.S. Government Manual or the United States Government Policy and Supporting Positions (Plum Book) as a starting point to identify potential Capstone accounts. The goal is to capture the email accounts of high level policy/decision makers-- including any secondary or alias accounts-- and the accounts of those authorized to communicate on their behalf in the development of agency policy or important decision-making. There may be other

accounts containing permanent records not covered by these suggestions that relate to the mission of the agency and would meet the criteria for a Capstone account.

7. Must agencies use a specific technology to implement Capstone?

No, Capstone implementation is not dependent on a specific technology or software. This approach is designed to utilize technologies that already exist at many agencies. Agencies may use native email systems, email archiving applications (which many agencies are already utilizing for other purposes), or other repositories to implement Capstone. Evolving technologies, such as auto-categorization and advanced search capabilities, may enable agencies to cull out transitory, non-record, and personal email. In the absence of a technological solution, agencies must rely on policy, procedures, and training to fully implement Capstone.

8. How does NARA's Pre-accessioning policy apply to Capstone?

Pre-accessioning is an option for agencies when implementing the Capstone approach. Pre-accessioning is when NARA receives and fully processes a copy of permanently valuable electronic records before those records are scheduled to legally become part of the National Archives of the United States. In other words, pre-accessioning means that NARA assumes physical custody of a *copy* of the records, usually well before it is time to assume legal custody. The transferring agency retains a complete and fully functional copy of the transferred records even after a pre-accessioning transfer, and that copy must be maintained until NARA assumes legal custody at a future date.

Pre-accessioning allows NARA to preserve permanently valuable electronic records early in their lifecycle while the agency retains its authority and responsibility for providing access. This is done in part to mitigate risk over time, since electronic records are subject to potential obsolescence between the time they are created and the time that they are ready for NARA to assume legal custody, which may be many years in the future. It also gives NARA a means to provide agencies with off-site, no-cost security copies of the pre-accessioned records. For more information about Pre-accessioning, refer to NARA Bulletin 2009-03: Pre-accessioning permanent electronic records and Pre-accessioning: A Strategy for Preserving Electronic Records.

9. What other NARA resources are available?

NARA has the following additional resources that may be useful:

- Guidance on Managing Records in Cloud Computing Environments: A NARA bulletin addressing records management considerations in cloud computing environments.

- Toolkit for Managing Electronic Records: A resource for agencies to share and access records management guidance and best practices. Examples include tools that address the creation of business rules for managing email and related issues.

- Records Express: The official blog of the Office of the Chief Records Officer at NARA highlights guidance and upcoming events. It also discusses how we are working with our agency partners to improve records management in the Federal government.

- Frequently Asked Questions about Records Management: Provides a list of FAQs on noteworthy records management topics.

10. Whom should I contact for more information?

If additional information is needed, or if you have any questions, please contact your agency Records Officer or the NARA Appraisal Archivist or records management contact with whom you regularly work. Please refer to the List of NARA Contacts for Your Agency, available at http://www.archives.gov/records-mgmt/appraisal/.

DAVID S. FERRIERO
Archivist of the United States

National Archives and
Records Administration
Washington, DC 20408

NARA BULLETIN
NO. 2013-03

TO: Heads of Federal Agencies

SUBJECT: Guidance for agency employees on the management of Federal records, including email accounts, and the protection of Federal records from unauthorized removal

EXPIRATION DATE: September 30, 2016

1. What is the purpose of this bulletin?

This bulletin is being issued to reaffirm that agencies and agency employees must manage Federal records appropriately and protect them from unauthorized removal from agency custody. Also, this bulletin clarifies records management responsibilities regarding the use of personal email accounts for official business and the use of more than one Federal email account. NARA recommends that Federal agencies refer to this guidance when advising incoming and departing agency employees about their records management responsibilities.

2. What must heads of Federal agencies do to implement this bulletin?

Heads of Federal agencies must provide guidance on the proper management of Federal records, including the handling of records containing information exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), the Privacy Act (5 U.S.C. 522a), or other applicable laws. Managing records effectively ensures that permanently valuable records become part of the National Archives and Records Administration (NARA) while other records and information of temporary value are retained for as long as needed and then properly disposed. In addition, the heads of Federal agencies must issue instructions to staff on the identification, management, retention, and disposition of email messages determined to be Federal records (36 CFR 1236.22(a). Finally, they must notify employees that there are criminal penalties for the unlawful removal or destruction of Federal records (18 U.S.C. 2071 and 36 CFR 1230.12) and the unlawful disclosure of national security information (18 U.S.C. 793, 794, and 798).

3. What materials are Federal records?

As defined in 44 U.S.C. 3301, Federal records are documentary materials that agencies create and receive while conducting business that provide evidence of the agency's organization, functions, policies, decisions, procedures, and operations, or that contain information of value. Government employees, including Federal contractors, create and maintain Federal records as part of their duties and responsibilities. Federal records can exist in a variety of electronic forms including images, video and audio recordings, websites, social media and collaboration tools, databases, shared drive files, and email.

In certain cases, drafts and notes may be "working files and similar materials" that should be maintained as Federal records (see 36 CFR 1222.12). Whether they are in electronic or paper form, "preliminary drafts and rough notes" and other similar materials must be maintained as records if they meet the criteria specified in 36 CFR 1222.12(c).

4. Can email messages be Federal records?

Yes, email messages created or received in the course of official business are Federal records if they meet the definition mentioned above, and agency employees must manage them accordingly. Under NARA's current policy and regulations, defined in 36 CFR 1236.22(a), agencies must issue instructions to staff on the identification, management, retention, and disposition of email messages determined to be Federal records. Employees who create a significant amount of permanent email records should consult with their records officer to determine the most effective way to manage them, including using NARA's recent "Capstone" guidance, NARA Bulletin 2013-02, entitled "Guidance on a New Approach to Managing Email Records."

5. What are agencies' and agency employees' recordkeeping responsibilities when the use of personal email accounts is authorized?

While agency employees should not generally use personal email accounts to conduct official agency business, there may be times when agencies authorize the use of personal email accounts, such as in emergency situations when Federal accounts are not accessible or when an employee is initially contacted through a personal account. In these situations, agency employees must ensure that all Federal records sent or received on personal email systems are captured and managed in accordance with agency recordkeeping practices. Agency policies and procedures must also ensure compliance with other statutes and obligations, such as FOIA and discovery.

6. What are agency responsibilities when employees have more than one Federal email account?

NARA recognizes that employees may have a business need for more than one agency-administered email account. Business needs may include, but are not limited to:

- Using separate accounts for public and internal correspondence;
- Creating accounts for a specific agency initiative which may have multiple users; and
- Using separate accounts for classified information and unclassified information.

Regardless of how many Federal email accounts individuals use to conduct official business, agencies must ensure that all accounts are managed, accessible, and identifiable according to Federal recordkeeping requirements, as established in 36 CFR 1236.22. Agencies must ensure that the name of an individual employee is linked with each account in order to comply with FOIA, discovery, and the requirement to transfer permanent email records (or accounts if the agency is using the Capstone approach) to NARA. In most cases, this requires the full name or readily identifiable nickname that is maintained on a distribution list.

7. Are there Federal documentary materials that do not qualify as records?

Materials such as extra copies of records kept solely for convenience of reference, library or museum materials, and stocks of publications and processed documents are excluded from the definition of "record" (44 U.S.C. 3301). These "non-record" work-related materials nevertheless belong to and are controlled by the Government (36 CFR 1222.14) and must not be removed unless approved as cited in 36 CFR 1222.18.

8. Under what circumstances may employees remove records and documentary materials from Government custody?

a. Employees must not remove Federal records from Government custody without proper authorization. Under 36 CFR 1222.24, agencies must develop procedures to ensure that departing employees do not remove Federal records.

b. Within agency guidelines, employees may remove extra copies of records or other work-related, non-record materials when they leave the agency, with the approval of a designated official of the agency, such as the agency's records officer or legal counsel.

    1. When determining whether to permit departing employees to remove extra copies, the agency should also consider the extent to which such removal could affect the agency's ability to invoke various legal privileges, and should consider the use of nondisclosure agreements in appropriate cases.

    2. Copies of records that are national security classified must remain under the control of the agency. If the agency permits removal, they must be transferred to a facility that has an appropriate level security storage area and safeguarded in accordance with Information Security Oversight Office requirements for national security classified materials (36 CFR 1222.18 and 32 CFR 2001.40 - 2001.53).

    3. Copies of records that are otherwise restricted (e.g., as privileged or under the Privacy Act) must be maintained in accordance with the appropriate agency requirements.

c. Employees may remove documentary materials that are of a purely personal nature when they leave the agency. Personal materials include family and personal correspondence and materials documenting professional activities and outside business or political pursuits (36 CFR 1220.18 and 36 CFR 1222.20). However, in many cases, employees intermingle their personal and official files. In those cases, the agency may need to review and approve the removal of personal materials to ensure that all agency policies are followed properly.

9. What does an agency do if there is an unauthorized removal of records?

If an agency knows of any actual or potential threat to records (e.g., removal, alteration, or destruction), it must contact NARA as required by 44 U.S.C. 2905 & 3106 and 36 CFR 1230.14. NARA will assist the agency in the recovery of any unlawfully removed records, including contacting the Attorney General, if necessary. It is also important to follow all agency internal reporting requirements, which may include reporting the threat to the agency's legal counsel and to its Inspector General.

10. Is further information available within my agency?

Each agency's records officer has more information about the maintenance and disposition of records and other documentary materials. The agency's records officer, legal counsel, Senior Agency Official for records management, or information security officer has more information about the agency's policies on the removal of extra copies of records and how to secure approval. The list of agency records officers is available online at http://www.archives.gov/records-mgmt/agency/officers-lists.html .

11. Is further information available from NARA?

a. NARA's publication *Agency Recordkeeping Requirements* is available online at http://www.archives.gov/records-mgmt/policy/agency-recordkeeping-requirements.html.

b. NARA's records management regulations (36 CFR Chapter XII, Subchapter B), including the identification and protection of Federal records, is available online at http://www.archives.gov/about/regulations/regulations.html.

12. What assistance is available from NARA?

a. In addition to contacting the agency's records officer, employees may refer to NARA's records management web site for relevant regulations, guidance, publications, and tools for managing Federal records and documentary materials. These and other helpful resources may be found at: http://www.archives.gov/records-mgmt/.

b. NARA's Records Management Services Division, within the Office of the Chief Records Officer, provides assistance and advice to agency records officers in the Washington, DC, area, and in the field. The agency's records officer may contact the NARA appraisal archivist with whom that agency normally works. A list of the appraisal and scheduling teams is posted on the NARA web site at http://www.archives.gov/records-mgmt/appraisal/.

DAVID S. FERRIERO
Archivist of the United States

Chairman ISSA. Thank you.

Before I begin my questioning, I apologize, but this is sort of committee business that I didn't expect to have.

Mr. Silver, you are represented by Dickstein, Shapiro & Morin?

Mr. SILVER. Yes, sir.

Chairman ISSA. In your opening statement you said you wanted to be transparent. I have in my possession a disturbing email that comes from an individual apparently working at Dickstein, Shapiro that actually asks a member of this committee not to ask questions of you. Are you familiar with this? You can consult with your counsel.

Mr. SILVER. I am sorry, Congressman, I am not at all familiar with that, and I am told that we will look into it.

Chairman ISSA. Well, I want more than look into it. I want an explanation from your counsel on why we shouldn't refer this to the American Bar Association. I am informed that this is an employee who is in the lobby side of Dickstein Shapiro, who made multiple contacts to committee members, and at least one of them to staff representing a member specifically asked them not to ask you questions. We are providing your counsel with it, but from a committee standpoint, and you are not the attorney.

I am speaking quite frankly, that is why it is not my question to you. The question of whether we refer this to the Bar Association, whether in fact it is an interference with Congress, which I find it to be, and the like will need to be resolved with the ranking member and myself after this hearing.

But we have had a long history. Dickstein, Shapiro & Morin has represented a lot of individuals here. This one crosses the line, and I wanted to make sure it was on the record, not on behalf of Mr. Silver, but the fact that, when represented by counsel, we expect you to know more than the witness and keep the witness out of this embarrassing situation.

Mr. Cummings?

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I want to thank you for sharing this email with me. As a lawyer and as an officer of the court, this concerns me greatly. Having represented lawyers in Maryland in disciplinary matters, you are absolutely right to be questioning this. I hope that this is not what it appears to be, because I think it would be very unfortunate. And you are absolutely right, it would be clearly out of bounds. I hope it is not what it appears to be.

Thank you very much. And I will join you in your efforts to look into it.

Chairman ISSA. Thank you.

Now we will go to a line of questioning.

Mr. Silver, this question had nothing to do with your conduct; I simply had to get it into the record.

I am going to start with Mr. Gensler. The CFTC.com, who owns it?

Mr. GENSLER. Mr. Chairman, I am not familiar with any website CFTC.com.

Chairman ISSA. It is not a website; it is an email address, in addition to the U.S. and dot.gov, it is a commercial site, and I guess we are trying to find out, because we have emails delivered in

preparation on this, whether or not that is a CFTC asset and, if so, if it is being captured.

Mr. GENSLER. I am not familiar with any web address at CFTC.com. This was a question that was raised by your hard-working staff late yesterday, and I know our technology staff is taking a look at what this might be, but I am not familiar with any such site. It is not one I have ever used, sir.

Chairman ISSA. You have used it. That is part of the discovery, is you may not have intended to use it, but we have emails now that say they are coming from you at a dot.com.

Mr. GENSLER. What our senior technologist told me last night, and I think he will have to work with you to look at it, is that it may be that somebody put in a name, not an actual address, but a name, just as they might misspell my name, instead of Gary with one R, with two Rs.

Chairman ISSA. Well, again, we will look into it. Again, it is part of that whole question.

Mr. Gensler, just to put it in the record, you headed an important organization, some 600 people and a tremendous amount of dollars that passed through. Did you receive any training as to the Federal Records Act?

Mr. GENSLER. I am the head of the agency and I take full responsibility, but, no, I did not receive training on the Federal Records Act as I came into the agency. I spent a lot of time on training these last three or four months.

Chairman ISSA. Ms. Jackson, you have spent a lifetime since graduate school. Have you received training on the Federal Records Act?

Ms. JACKSON. I did receive record retention training, as I recall, sir. EPA would have those records, though, they are not in my possession.

Chairman ISSA. Mr. Silver, how about yourself?

Mr. SILVER. To the best of my recollection, Congressman, I did not receive specific training on the Federal Records Act.

Chairman ISSA. Mr. McLaughlin, if people don't get trained, is there any way that all those ideas and suggestions mean anything?

Mr. MCLAUGHLIN. No, sir.

Chairman ISSA. Okay. Particularly agency heads.

Mr. Silver, you made some very specific statements, and I want to call you on one of them because they don't seem to square. I have an email between you and Morgan Wright dated August 21st, 2011, and it says, "Don't ever send an email on DOE email with private email address. That makes them subpoenable."

Tell me why I shouldn't consider that a deliberate circumvention, since you were pervasive in setting up and creating, and even putting other people onto non-Government email and you conducted business, even while you were at the office, from these non-Government emails. Why is it I should not consider that a deliberate circumvention?

Mr. SILVER. Congressman, I did certainly use my private email from time to time, but, as I said before and want to reiterate now, it was certainly never my intent to evade. The email that you refer to is a response to an email chain that precedes it that is on the DOE servers, and somebody noted that there was a personal email

address in the header to somebody, and mine was an admonishment and a reminder that you should not mix these two things.

Chairman ISSA. Is it coincidental that when we looked for emails related to the need to backfill money for one of the largest bankruptcies related to the energy loans, that those emails related to that, the emails related to pumping in money at the end to try to stop or delay a fall were on private emails? And they were not forwarded.

Mr. SILVER. I am sorry, the question is, do those exist?

Chairman ISSA. Well, they did exist.

Mr. SILVER. Yes.

Chairman ISSA. Mr. Gensler, you went through the 99 percent and the forwarding and so on.

Mr. Silver, you didn't. You very clearly, from what my records show, and my memory, for that matter, you created a separate account, you used it to talk to people about problems in the loan program and about, ultimately, how to hide or delay the knowledge of an impending bankruptcy at Solyndra, right?

Mr. SILVER. Well, Congressman, I was communicating with longstanding confidence people who I had worked with for many, many years, some who wrote to me because they had my personal email on it. I responded in kind. I did send some of those emails. It was not my intention to evade anything there, but we were in the heat of trying to struggle with this company and we wrote some personal emails, yes, we did.

Chairman ISSA. Okay. Well, we will put some more of them in the record later, but I just have one last one.

Ms. Jackson, who is Allison Taylor?

Ms. JACKSON. Allison Taylor is a friend. She is someone I have known for quite some time.

Chairman ISSA. But you work for the President, right?

Ms. JACKSON. When I worked at the U.S. Environmental Protection Agency I worked for the President.

Chairman ISSA. Okay, so you are working for the President. The President has a prohibition on basically your coordination with lobbyists. She is a lobbyist, isn't she?

Ms. JACKSON. I believe she is a registered lobbyist, yes, sir.

Chairman ISSA. Okay.

Ms. JACKSON. I don't know if she is today.

Chairman ISSA. Well, my understanding is Allison Taylor at Seamans.com. Do you know what she did for Seamans?

Ms. JACKSON. I believe she ran the sustainability business or the government affairs. I am not sure. The way I knew her was actually in a personal manner as well.

Chairman ISSA. So you only knew her in a personal manner?

Ms. JACKSON. That is not fair to say. I can't separate knowing someone in this city. They have jobs, people have jobs and lives.

Chairman ISSA. Well, I apologize, but that was what the Abramoff scandal was about, is that people said we were friends, when in fact he was a lobbyist.

From your Richard Windsor account, the official private account, the one the public didn't have, in 2009 you did an email that has a P.S.: P.S. Can you use my home email account rather than the one when you need to contact me directly? Tx, Lisa.

To me, that sounds like you didn't want the efficiency of not being bothered; just the opposite, you were giving a lobbyist your personal email account for other communication when she wanted to reach you directly.

Ms. JACKSON. Sir, again, if you look at the entire email chain, you can see that there are a couple things going on. She makes note that she has requested an official meeting through official channels, through my chief of staff. And she goes on; it is a chatty email and she says there is no business to be done.

So what I was doing was telling a personal friend, someone I knew personally, hey, if you want to contact me, don't use my official account that I am using to get business done day in and day out. You have already made a request for a meeting. Contact me at home. Now, certainly, if anything in that email, when she contacted me at home, was business related, then my practice would be to send that in to the official account, as the example I demonstrated.

Chairman ISSA. Okay. Well, we will put the entire chain in the record, and I am sure others will use it.

I recognize the ranking member.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Ms. Jackson, just a real quick question just kind of following up on what the chairman was asking about. You said Allison Taylor was a friend. Can you explain that relationship so we will have some clarification?

Ms. JACKSON. Certainly. It was a preexisting relationship, it existed before I was confirmed as administrator of the agency. I knew her. She had worked for many years. I first met her on the Hill I believe working for Mr. Dingle in Energy and Commerce. She is someone in environmental circles that is thought of extraordinarily highly and we have many mutual friends as well. If you look at the email in question, it is Lisa and Allison, it is an email that had a business component. That's why I felt as though there was a personal component.

Mr. CUMMINGS. Was there any effort to evade the records and transparency laws here?

Ms. JACKSON. No, sir. In fact, it is a public record that I am saying to her, feel free to use my personal account, but it was not to evade or circumvent records or transparency.

Mr. CUMMINGS. Mr. Ferriero, is there anything in the Federal Records Act or any other law that you know of that prohibits the use of a secondary official account or the so-called alias email account?

Mr. FERRIERO. No, there is not.

Mr. CUMMINGS. In fact, the NARA issued guidance for agencies yesterday, is that right?

Mr. FERRIERO. That is right.

Mr. CUMMINGS. In part addressed alias email accounts when an official uses an email address with a pseudonym. NARA's guidance says, "NARA recognizes that employees may have a business need for more than one agency administered email account." One of the business needs NARA identifies is "using separate accounts for public internal correspondence." Now, can you describe NARA's position on how agencies should treat secondary accounts?

Mr. FERRIERO. Let me just clarify. Yesterday's bulletin clarifies our stand on the need to ensure that multiple email accounts are accounted for. NARA guidance before that always said, regardless of medium that you are using, you need to capture Federal records. So this one clarifies the electronic mail situation.

I think the situation that EPA described in terms of a million email messages coming in a day to an address is a good example of the need for multiple addresses. And as far as NARA is concerned, we don't care how many addresses you have as long as those that are doing Federal business are captured in the Federal system so that they are available for future use.

Mr. CUMMINGS. Now, coming back to you, Ms. Jackson, there seems to be quite a bit of concern about your use of an alias email account to conduct official business. You have said that you used the alias, Richard Windsor, in addition to a standard EPA email address bearing your first and last name, you explained that. In a letter to Science Committee Chairman Ralph Hall, EPA explained the need for this alias email as follows, and I want to quote and find out whether you agree with this. It says, "The secondary account is an everyday working email account of the administrator to communicate with staff and other Government officials. The secondary email account is used for practical purposes. Given the large volume of emails sent to the public account, more than 1.5 million in fiscal year 2012, for instance, the secondary email account is necessary for effective management and communication between the administrator and colleagues."

Is this an accurate explanation of your reason for using a secondary email account? I thought you said a million. They are saying 1.5.

Ms. JACKSON. I estimated low. Yes, I believe that EPA has used the 1.5. I took a conservative number. And, yes, it is generally the same as the explanation I gave, which is it is not unusual in the public account for thousands of emails to come in overnight commenting on a rule or a concern; write the EPA administrator and tell him or her this or that. So for practical purposes, for time management purposes, for the ability to do the job using email, that is why I had a secondary official email account.

Mr. CUMMINGS. And who did you communicate with using Richard Windsor email address?

Ms. JACKSON. In general, I used it to communicate with my senior staff at the Environmental Protection Agency, with White House staff, with some members of the Administration. But they were senior members of the Administration. I limited the use of it over time because I couldn't have too many people using it or it would defeat the purpose of having a secondary official account.

Mr. CUMMINGS. Now, do you know whether this was a new practice of the EPA, this practice that you just talked about?

Ms. JACKSON. No, sir. My predecessors before me had secondary official email accounts.

Mr. CUMMINGS. In fact, many of your predecessors in Democratic and Republican administrations alike employed email aliases to conduct official business. Among others, President George W. Bush's first EPA administrator, Christine Todd-Whitman, used the

address "ToWit;" Markus Peacock, who was an acting administrator under President Bush used the address "Tofu."

Ms. Jackson, were the records in your primary and secondary email accounts preserved as required by the Federal Records Act?

Ms. JACKSON. Both of those accounts are preserved and archived; they are in the possession of EPA, their custody, their control. They are official accounts and that is what they were set up as.

Mr. CUMMINGS. Now, as far as you know, were the records in both your primary and secondary email accounts searched when necessary in response to the Freedom of Information Act request?

Ms. JACKSON. As far as I know, that is exactly what happened, and I certainly know that there were times when I would be asked do you think there are records in your accounts responsive, and I would say go ahead and search them. They were searchable, yes, sir.

Mr. CUMMINGS. Now, Mr. Gensler, I want to come back to you. The chairman rightfully had asked, I think it was, Mr. Silver whether he had answered my question. Did you answer that question? Maybe I missed it. The one about transparency, whether you intentionally——

Mr. GENSLER. Thank you for bringing me back to that. Just as the inspector general of our agency said, I think I quoted that I hadn't violated any Federal records law. Also, to your question, I did not intend to circumvent the Federal Records Act.

Mr. CUMMINGS. Okay. I understand that you have employed several different aliases during your tenure. Why did you decide to use email aliases?

Mr. GENSLER. Though at the CFTC we don't have quite the volume that is over at the EPA, as I came into the office there were many concerned citizens, sometimes hundreds in a day, that would email into GEGensler@CFTC.gov. Everyone at the CFTC has that same nomenclature. So the Office of Data Technology, along with the executive director and the lawyers, set up another account that just took my initials, actually, but set up another account which was linked. The FOIA office had it linked. We have gone back, just in preparation for this hearing, to see whether, over these last years, whether they were always linked. And it was the senior staff of the agency and of Government could communicate on this secondary account, which, as I say, were linked in the FOIA office and the data technology and is archived.

Mr. CUMMINGS. My last question to you, Ms. Jackson and to you, Mr. Gensler. I am sure, having had to come before this committee, you have thought about this a lot, and I am just wondering are there things that you think the Congress ought to be doing or your agencies could be doing so as to make sure, I am sure you agree with what we are trying to get to here. Things that we might be able to do so that future folks in your positions are within bounds of what we are trying to accomplish.

Mr. GENSLER. I do, and I want to thank both you and the chairman for allowing me the time to meet with you. I really do applaud this committee. I think that this separation between official business and personal business is important so that the public really has trust in their Government, that the press has exposure into it,

and yet we can keep our private lives private, and that there is that separation.

And I must say, looking back at the CFTC, though the inspector general said we didn't violate any laws, which is good, I think we could have done better, and there is 99 percent of these, in my case, that were here in Government accounts, but what about that 1 percent? So we have brought it in now. We have gone back and we have looked at FOIA requests and we see that there is not anything a problem.

Three things: I think we have to tighten our roles. NARA has done that yesterday. I want to do that at the CFTC. And if you do that through H.R. 1234, while I am not an expert there, I do support the general approach to really modernize our record-keeping laws to the 21st century.

Two, I think training is critical, and I have directed our executive director and general counsel to update our training both on onboarding employees and also the current staff.

And thirdly is technology. We are going to need to spend money on this Capstone approach, but I think Capstone is a really good thing because it means it captures everything. Even the inadvertent deletion can't be deleted.

Mr. CUMMINGS. Ms. Jackson?

Ms. JACKSON. Thank you, Mr. Cummings. I would echo the idea of clarity as much as possible in a very complex situation. I thank the committee for trying to give more clarity, because I think every official with good intent is trying to follow the law as best they can, use their best judgment. And I would also urge that there be, if there are a set of rules and policies and they are followed, that second-guessing by looking at the official records and trying to guess whether or not somebody was complying is quite difficult, because those records are all public and available. So I would just ask for fairness in judgment as well, that there be a set of requirements and that people understand them, be trained on them, and then look to those requirements and not a moving target.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman ISSA. Thank you. And I just want to piggy-back what the ranking member said, or your line of questioning. I hope everyone seeing this today understands that members of Congress, if they just put Darryl.Issa@House.gov, it would be useless from a standpoint of doing business, and I think Mr. Cummings and I both have that situation. I know members who tried having a plain, ordinary name. So I want to recognize that a common, the same approaches at your agency often doesn't work for the head of an agency, or even for some key people within an agency.

Having said that, Ms. Jackson, one of the concerns of the committee is during the entire period before your alias was known, FOIA requests, if they were germane, did not give true name, and one of the challenges we are going to have for Mr. Ferriero and in our legislation is to make sure that if a name like IT.something or an absolute fake name, and in your case the name appeared to be clearly somebody else, a man, when there is a FOIA, it has to be understood, it has to be converted to a true name; and that may be the bigger challenge, is that I can be Darryl.Issa, Mr. Cummings can be Cummings.dot, or I could be Joe Bag of Donuts and you can

be Sam Good Neighbor, but if a document is produced, it has to be at a true name. And that will be something the committee will be working on going forward, is the fact that true names have to somehow come out, to the extent that they are not redacted.

Now, to the extent that they are redacted, I guess it wouldn't actually matter what the email address was.

With that, we go to the gentleman from South Carolina, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Silver, what do you think the purpose of the Federal Records Act is? We will get to the plain language in a minute. What is the purpose of it?

Mr. SILVER. Well, I am not a lawyer.

Mr. GOWDY. You don't have to be a lawyer to know the purpose of the Federal Records Act.

Mr. SILVER. I think the purpose of the Federal Records Act, Congressman, is to make sure that there is as complete and robust a record of agency activities as is possible.

Mr. GOWDY. You would be right. Now, the last time you were with us, I asked you specifically whether or not you had deleted any emails that might fall under the jurisdiction of the Federal Records Act. Do you recall your response?

Mr. SILVER. I think I said at the time that I had certainly deleted emails, but it was not in an attempt to evade, it was a regular cleaning out of my inbox.

Mr. GOWDY. Was that testimony true at the time you gave it and is it currently true?

Mr. SILVER. Yes.

Mr. GOWDY. It was true at the time?

Mr. SILVER. It was true at the time.

Mr. GOWDY. Now, I am informed that a third of your personal emails were not produced to the committee prior to your testimony. Do you agree or disagree with that?

Mr. SILVER. I agree with that. As you know, Congressman, I had come back in the Country two days before the hearing. We produced as much as we could before the hearing and we produced everything that we hadn't yet produced until after the hearing.

Mr. GOWDY. Well, that is an interesting statement you just made, because are you aware that some of the emails we got from your personal email account we didn't get from you, we got from other sources?

Mr. SILVER. I am sure that is true, because I had deleted some.

Mr. GOWDY. Well, then you would not have given us everything, and your prior testimony about not deleting anything would have also been incorrect.

Mr. SILVER. No, that is not right, Congressman. I gave you everything that I had.

Mr. GOWDY. Mr. Silver, I want to read an email to you and I want you to help me kind of walk through it, okay? "Don't ever send an email on Department of Energy email with private email addresses. That makes them subpoenable." Now, we are going to overlook the word that subpoenable is not a word. Why were you concerned about subpoenas?

Mr. SILVER. As I said before your arrival, Congressman——

Mr. GOWDY. No, I was here for it.

Mr. SILVER. That email was an intent to remind and admonish the staff who had received an earlier email that was on the DOE server that somebody had included somebody's personal email address on that they should try to keep those two things separate.

Mr. GOWDY. Why? That is my question. What were you concerned about be subpoenaed?

Mr. SILVER. I wasn't concerned that any specific thing was going to be subpoenaed.

Mr. GOWDY. Well, then why did you use that phraseology, Mr. Silver? That is not a throwaway line. That is not hope you are doing well, call me sometime.

Mr. SILVER. No, it is inartful, no question about it.

Mr. GOWDY. No, no, no, I didn't say it was inartful. I think it was exactly what you intended to communicate. My question to you is what were you concerned would be subpoenaed.

Mr. SILVER. I was not concerned that any specific thing would be subpoenaed.

Mr. GOWDY. Well, then why did you say it, Mr. Silver? That makes them subpoenable.

Mr. SILVER. I was trying to remind the staff that all their personal emails and whatever that includes, whatever they do, whoever they are doing it——

Mr. GOWDY. Well, don't you think that flies directly in the face of the Federal Records Act, that you would be concerned that something would be discovered? I mean, subpoenable is another word for discoverable, right? They mean the same thing, essentially.

Mr. SILVER. Yes.

Mr. GOWDY. So your DOE emails are already discoverable. You were concerned that personal emails would be discovered, right?

Mr. SILVER. I was reminding the staff that their personal emails should remain personal to themselves.

Mr. GOWDY. Well, that is not what you said, Mr. Silver. I mean, that may have been what you meant, but that is certainly not what you said. What you said was that makes them subpoenable, or discoverable, or can be found out.

Mr. SILVER. As I said, Congressman, what I meant was that they should keep their personal and professional emails separate.

Mr. GOWDY. I asked you specifically whether or not you were concerned that concealment might be a motive for using personal emails, because you told us it was all about convenience, that you only forwarded emails that had large attachments or documents, and that it made it difficult for you to read on your BlackBerry. Do you recall that testimony?

Mr. SILVER. I do. I said that was largely the case. But, yes, I do recall that.

Mr. GOWDY. All right. Did you forward any emails from your DOE account to your personal account that did not have documents attached to them?

Mr. SILVER. I am sure I did.

Mr. GOWDY. Well, the very email that you and I have been discussing came from your personal email account, right?

Mr. SILVER. That email does originate from my personal account, yes.

Mr. GOWDY. Right. And that didn't have a lot of documents attached to it and it wasn't necessarily hard to read, was it? It was just two sentences.

Mr. SILVER. Right. That is correct.

Mr. GOWDY. Ms. Jackson, "Can you use my home email rather than this one when you need to contact me directly?" Why did you say that?

Ms. JACKSON. Because Allison Taylor, the author in the email chain, was a friend and I believed that a personal friend should use personal email.

Mr. GOWDY. Is there an exception for personal friends in the Federal Records Act?

Ms. JACKSON. Sir, as I have already stated, my intention was to comply with the Federal Records Act.

Mr. GOWDY. That wasn't my question, actually. Is there an exemption or an exception that you are aware of for personal friends? It is not a complicated question. Are you aware of an exception to the Federal Records Act for personal friends, yes or no?

Ms. JACKSON. The Federal Records Act, the intent is to make sure that official Government business is captured in official Government accounts.

Mr. GOWDY. Well, what she was emailing you, would you consider that to have been official Government business?

Ms. JACKSON. As I said earlier, sir, she had requested, through official channels, a meeting for her employer.

Mr. GOWDY. And do you think that was a personal meeting or a meeting in your professional capacity as the administrator?

Ms. JACKSON. The meeting was being handled through professional channels, sir.

Mr. GOWDY. All right, so it was a professional email that she sent to you, and your response was contact me on my personal email.

Ms. JACKSON. No, no. The response included saying that we would work to set up the meeting, and what I say is if you need to contact me directly—this is a friend talking to another friend—please call me on my personal email.

Mr. GOWDY. Is it possible that a friend could contact you about official business? Is that possible?

Ms. JACKSON. It is certainly possible.

Mr. GOWDY. Well, it clearly has to be possible because that is what has happened here.

Ms. JACKSON. Well, I would be happy to answer the question, sir. I would say yes, it is certainly possible.

Mr. GOWDY. Okay. So why would there be an exception for friends to use your personal email even if it might be official Government work?

Ms. JACKSON. Sir, friends use personal email. If there is official Government work involved, then, under EPA policy, I would then have to forward it in to an official account so that it could be captured for record-keeping and archiving purposes.

Mr. GOWDY. Well, Ms. Jackson, I am sure you can see how a skeptical reader of that email might reach another conclusion, wouldn't you?

Ms. JACKSON. I think that if someone has the intent to see something more there, that is fine, but the email talks about a meeting being scheduled through official channels.

Mr. GOWDY. Right. And she used the Richard Windsor email and she didn't have any trouble getting to you through that email, and your response was can you use my home email rather than this one when you need to contact me directly.

Ms. JACKSON. Again, if you look at the entirety of the email chain——

Mr. GOWDY. I don't have the entirety of it. I would be happy to look at it.

Ms. JACKSON. Well, it is available on the EPA website and it has been released under FOIA.

Mr. GOWDY. I would be happy to.

Ms. JACKSON. I also gave it for the record.

Mr. GOWDY. Thank you, Mr. Chairman.

Chairman ISSA. Would the gentleman yield for a second?

Mr. GOWDY. Certainly.

Chairman ISSA. I just want to make sure the record is clear. For Allison Taylor to contact you at your Windsor account, you had to give her your Windsor account, it wasn't public.

Ms. JACKSON. I actually do not know how she got the account address, sir. I do not know. I don't have those records. I don't have the Windsor email accounts available.

Chairman ISSA. And I think Mr. Gowdy hit everything except one sub-question. You said in your testimony that you would determine when something would be forwarded. Isn't it true, under the Federal Records Act, you don't get to decide what is relevant, it is your entire database is often looked at for discovery? So in the case of your private email, you are deciding what you think, and Mr. Silver and Mr. Gensler are deciding what is relevant, rather than a neutral third-party deciding whether something should be discoverable; and I think that may be a part of what Mr. Gowdy was alluding to, is that by a lobbyist contacting you outside of Government chain, it becomes much more, well, I will turn over what I think is relevant and delete the rest.

With that, we go to Mr. Davis.

Ms. JACKSON. Mr. Chairman, may I respond to that?

Chairman ISSA. There wasn't a question there. That was an observation that somebody had your personal Government account and you gave a lobbyist your personal account.

Ms. JACKSON. No, sir, I did not say that.

Chairman ISSA. And that person was asking for an official meeting in that train. You keep saying go to your website. Your website shows that you had a lobbyist trying to do official business with EPA; you had somebody that was in the process of trying to work with your agency, and you are giving them a private email and not telling them if you want to talk to me about the dinner dance, go to my personal email.

No, you were telling them here is my personal email and use it. You were not, in that train, so specific on how to divide your personal life with this friend who you don't even know how she got your non-public Government account.

You may answer.

Ms. JACKSON. Thank you, Mr. Chairman. Respectfully, the email train, if you look at the entirety, includes a request for a meeting that has gone through official channels. It is addressed to me as Lisa; I address her as Allison. She says there is no business to be done, we think you're a rock star. I mean, it is conversational in nature. So my only intent was to simply say, hey, friend, if you want to contact me directly, here is my personal email account. The business that was done was handled through official channels, sir.

Chairman ISSA. Ms. Jackson, I appreciate all that, but let's understand that the IG and your former agency have made it clear that we have lost forever, and will not have, your entire train of official activities. They have discovered that much of what we are asking for simply no longer exists, and that has been told to this committee. So in the case of your activities using personal accounts, we will not get full discovery, the public will not get it.

The fact is EPA has not met its responsibility for transparency and, quite frankly, ma'am, that means that you have put us at risk of lawsuits for decisions made in which people suspect that emails that have been lost would help their case rather than yours. That is a real problem and that is the result of when people don't do their job right, and clearly you didn't do your job right when it came to making those available, and that is also in the record and people may look at it.

Mr. Davis, I apologize for the lateness of that. The gentleman is recognized.

Mr. DAVIS. Thank you very much, Mr. Chairman.

Mr. Ferriero, let me try and make sure that we have the facts straight on the laws that we are talking about today. I have heard accusations from the other side of the aisle saying that some of the witnesses at the table today "broke the law" because they used their personal email account for official business. Could you please answer this question yes or no: Is it against the law for a Federal employee to use a non-Government email account for official Government business?

Chairman ISSA. Would the gentleman yield to make sure that the accusation is correct? Mr. Davis, would you yield?

Mr. DAVIS. Yes.

Chairman ISSA. I just wanted to add to that, because I think his answer is important. Our allegation is not that people use private email, but that in many, many cases those private emails of doing official business were not forwarded in any time frame, at least until we were in discovery with subpoenas, to the Government. That is our accusation of breaking the law. I just want to make that clear. I thank the gentleman.

Mr. DAVIS. Thank you very much, and I resume.

Mr. FERRIERO. With the chairman's clarification, the guidance that we have provided is that it is the recognition that personal email accounts can be used, but that, if they are used for official business, then that communication needs to be forwarded to their Government accounts.

Mr. DAVIS. So that it can be revealed.

Mr. FERRIERO. Exactly.

Mr. DAVIS. Or accessed.

Mr. FERRIERO. So that it can be captured just as all Government records are captured.

Mr. DAVIS. Thank you very much. Let me ask you this. The Federal Records Act requires that agencies preserve Federal records, regardless of how they are created. Is that correct?

Mr. FERRIERO. That is correct.

Mr. DAVIS. Not every email an agency employee writes would even be a Federal record, is that correct?

Mr. FERRIERO. Say that again?

Mr. DAVIS. Not every email an agency employee writes would even be a Federal record.

Mr. FERRIERO. That is possible.

Mr. DAVIS. Can you explain what would be considered a record?

Mr. FERRIERO. Anything related to the business of the agency.

Mr. DAVIS. So if there is something of a personal nature that does not relate to the business of the agency, must that be accessible?

Mr. FERRIERO. No.

Mr. DAVIS. If an employee creates an email record using a nonpublic account, what should the employee then do?

Mr. FERRIERO. If they are transacting Government business on that personal account, then that message needs to be forwarded to their Government account so that it is captured as record.

Mr. DAVIS. So the Federal Records Act does not include any specific penalties for violations of the law.

Mr. FERRIERO. That is right.

Mr. DAVIS. I think, then, that we all agree that Federal employees should avoid non-official email accounts for official business. But as NARA acknowledges in the guidance it issued yesterday, there are times when using a personal email account is necessary. NARA's guidance says: "While agency employees should not generally use personal email accounts to conduct official agency business, there may be times when agencies authorize the use of personal email accounts, such as in emergency situations when Federal accounts are not accessible or when an employee is initially contacted through a personal account. In these situations agency employees must ensure that all Federal records sent or received on personal email systems are captured and managed in accordance with agency record-keeping practices."

So, Mr. Ferriero, you agree that there are times when an employee may need to use a personal email account in order to perform their duties, is that correct?

Mr. FERRIERO. That is correct.

Mr. DAVIS. Thank you very much.

I yield back, Mr. Chairman.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Florida, Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman. I came in a little late, but let me just talk to Mr. Silver, if I may. A couple questions for Mr. Silver.

You were the executive director of the loan program of the Department of Energy from, when was it, 2009?

Mr. SILVER. November of 2009 until the end of September of 2011.

Mr. MICA. And you were, I guess, in that position when the Administration issued some energy loans that resulted in significant taxpayer losses, including Solyndra, Beacon Power, Abound Solar, and Fisker Automotive, is that correct?

Mr. SILVER. Yes and no, Congressman. I was the head of the agency.

Mr. MICA. During the time.

Mr. SILVER. Yes. Not all of those ran into trouble during that period, but yes.

Mr. MICA. And then I see here that when you came and testified before us, Mr. Cummings, our ranking member, at the July 18th hearing, 2012, you stated, as I say, almost nobody, and certainly nobody I am aware of in the loan program, even knew who the individuals were who had invested either, directly or indirectly, in these companies. That was your statement?

Mr. SILVER. Yes, I did make that statement. There seems to be some confusion about that. We obviously know who the investor groups are, because we negotiate with them; that is the nature of the business. I took the question to mean did we know anything about their donation history and did we know the underlying investors. So, for example, in a venture capital firm, we have no idea who the limited partners of that firm are.

Mr. MICA. So you did know people like Aaron Price, Ira Aaron Price?

Mr. SILVER. Yes, Ira Aaron Price.

Mr. MICA. You did know him before?

Mr. SILVER. Certainly. He is one of the partners of one of the firms that was an investor.

Mr. MICA. Did you know, at the time, he was major investor in Abound Solar and Tesla?

Mr. SILVER. Did I know at the time? At what time, sir? Yes, I knew he was an investor.

Mr. MICA. At the time they received Government loans.

Mr. SILVER. Of course. I hadn't, but members of my staff had negotiated with he and his firm and the other investors on the terms of the transaction.

Mr. MICA. Did you communicate with him by telephone or by email?

Mr. SILVER. Undoubtedly both, sir.

Mr. MICA. Okay. And private email?

Mr. SILVER. I don't recall, but I wouldn't be surprised.

Mr. MICA. Okay. And how about a John Doerr, an investor in Fisker?

Mr. SILVER. He is a partner at Kleiner Perkins.

Mr. MICA. Yes. Did you communicate with him on personal email or by phone calls?

Mr. SILVER. Probably both, sir.

Mr. MICA. It seems a little bit in conflict to what you told Mr. Cummings. Did you know also that Mr. Doerr was, again, an investor in Fisker at the time?

Mr. SILVER. I did, although—yes, I did.

Mr. MICA. So do you still stand by your statement that you had given to Mr. Cummings?

Mr. SILVER. Yes, sir, I do. It is a very fair question. I was responding to whether or not we knew who the—in the investment world, which I come from, the question about who is an investor is as a function——

Mr. MICA. Well, he was trying to find out what kind of relationship and if you knew people that you were giving these loans to. The question has always been about what type of communications, and it appears that communications that were personal in nature also took place with these people who had a financial stake, correct?

Mr. SILVER. Well, yes, I do know them personally. Personal communications did take place.

Mr. MICA. Okay, so you have been with this Third Way think tank since you left?

Mr. SILVER. I am sorry. I apologize. Again, sir?

Mr. MICA. Have you been with Third Way? It is a think tank?

Mr. SILVER. Yes, sir.

Mr. MICA. Have you done any other consulting work or received any compensations from anyone else other than Third Way since you left DOE?

Mr. SILVER. Yes, sir. I am on the board of several privately held companies.

Mr. MICA. Any of these firms receive Government assistance?

Mr. SILVER. No, sir.

Mr. MICA. None of them?

Mr. SILVER. None.

Mr. MICA. What about your relationship to some of the individuals that I just mentioned? What about contacts post-employment with Mr. Doerr and Aaron?

Mr. SILVER. I am sorry, can you repeat the question?

Mr. MICA. I mentioned two individuals in particular which you had personal communications and also received these loans or assistance. What has been your relationship with them post your employment with DOE?

Mr. SILVER. I maintain a personal relationship with them, but I have no professional or financial relationship with either.

Mr. MICA. Do either of them or any of the firms you were associated with contribute to this Third Way?

Mr. SILVER. No, sir, not to the best of my knowledge.

Mr. MICA. To your knowledge?

Mr. SILVER. Not to the best of my knowledge.

Mr. MICA. Okay.

Thank you, Mr. Chairman.

Mr. JORDAN. [Presiding] I thank the gentleman.

The gentleman from Virginia is recognized.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Welcome to our panel. You have to understand I am not quite sure what we are doing here today. I guess it is to try to create a breathless scandal, another one. If we really want to look into the misuse of emails and the blending of political, personal, and professional, we really ought to be calling a number of officials from the previous administration back here, because that was pretty egregious, actually, where there was a deliberate circumvention and

then destruction, Mr. Ferriero. They weren't archived; 81 of them. Eighty-one individuals. Systematic. This isn't systematic.

My colleagues seem to want to make a case study out of poor Ms. Jackson, who is guilty of the crime of trying to protect the environment of the United States and, as far as I can tell from the evidence, tried her best to, among many, many other things she is dealing with, make sure she got her emails right. And when they weren't right she corrected it.

Now, I want to make sure, though, that I am being fair to you, Ms. Jackson, because if you are this evil genius who is trying to misuse Government property and eviscerate the concept of transparency for all time, we want to get that on the record. So let me make sure I am following what happened. When you became the administrator of the Environmental Protection Agency, you were assigned two EPA.gov email addresses, is that correct?

Ms. JACKSON. Yes, sir.

Mr. CONNOLLY. And I am sure, given all you were facing after the economic collapse that was overseen by the previous administration, you were really focused like a laser beam on these two email addresses you were given. I mean, you just studied them; you wanted to make sure they were going to work. You called people in to brief you. I mean, you spent your time on that, right?

Ms. JACKSON. No, sir. The career staff set up the accounts, as they had for previous administrations.

Mr. CONNOLLY. Stop right there. So this wasn't unique to you?

Ms. JACKSON. No, sir. This was a practice that had become common through several administrators before me.

Mr. CONNOLLY. So, for example, your predecessor in the Bush Administration and your predecessor in the Clinton Administration were similarly given two email addresses, is that correct?

Ms. JACKSON. I can't confirm the Clinton Administration, I don't know, but from media reports I know that is absolutely true for the Bush Administration.

Mr. CONNOLLY. Okay. So then they had to figure out a name for your account, is that right?

Ms. JACKSON. Yes, sir. They asked for a name.

Mr. CONNOLLY. So why wouldn't they just say Lisa Jackson?

Ms. JACKSON. Well, I suggested Admin Jackson because it was easy to remember.

Mr. CONNOLLY. And what did they say?

Ms. JACKSON. Career staff recommended not to use something easily searchable because our database was searchable, and if people could search and find it, then that would negate the advantage of having a secondary email account.

Mr. CONNOLLY. Someone could actually, who shouldn't have access to what you were trying to do, hack in.

Ms. JACKSON. Well, it just meant you would get too many emails to be able to use the account.

Mr. CONNOLLY. Right. Well, there is that too. But, also, someone could easily, no homework, no problem, don't even need to get sophisticated, it is under Lisa Jackson. And they thought that was prudent not to do.

Ms. JACKSON. Apparently that is what they had learned through experience.

Mr. CONNOLLY. Okay. So the name used was Richard Windsor, is that correct?

Ms. JACKSON. That is correct.

Mr. CONNOLLY. And throughout your tenure that secondary email account was used for official business and subject to the FOIA, Freedom of Information Act, is that correct?

Ms. JACKSON. Yes, sir. I used it every day.

Mr. CONNOLLY. So it wasn't misused?

Ms. JACKSON. Sir, it is an EPA account; it was set up that way so that information could move into it and be captured and, in fact, that is exactly what happened. It was my practice to use it that way so that they could be captured. And EPA is in the process of releasing thousands of those emails.

Mr. CONNOLLY. Well, I am just sorry, Ms. Jackson, that you are a convenient target to demonize another official from this Administration and try to make something bigger than it is.

Mr. Gensler, in CFTC, I am reading your testimony and you said, I have directed the executive director and the general counsel to enhance the agency's training on the Federal Records Act and transparency in Government and to promote further an environment that supports telework and flexible schedules.

I was intrigued by that. I am a big champion of telework, so I am glad you are going to promote that. But, obviously, emails matter a lot if you are going to be doing that. Could you just expand a little bit on that in terms of doesn't that pose some challenges, too; not just technological, but security?

Mr. GENSLER. It does. As I have come to learn more about this, I think there are three related issues: transparency laws, like the Federal Records Act and FOIA, which really are about enhancing the public's awareness and trust in Government; information security for sure, because we don't want breaches; and then, thirdly, just the technology itself.

And I am not a technology expert, but I would say when I came to the agency we did not have a robust training mechanism either on the Federal Records Act or on technology. I am the chairman of the agency and I take full responsibility, and I do think we can and need to do better, so that is why I have directed the appropriate senior people at our agency, let's go back and make sure that when we bring people onto the agency in their first week, not months later, not even years later, but they really get robust training about everything that David Ferriero wants us to get.

But also that we promote telework in a way that there is efficient means to see that email or other documents through various access devices when you are at home, but access devices that comply with the Federal Records Act. So it is doing both. And this third sort of prong is information security.

Mr. CONNOLLY. Mr. Chairman, would you allow me an extra minute? Because we went six minutes over time. I thank the Chair; you have always been fair.

Mr. Ferriero and Mr. McLaughlin, to this point, I would like you to just address, all right, put aside whether somebody systematically, deliberately circumvents the law. That is a fair concern if it is occurring. My sense is that overwhelmingly what goes on here is we are trying to adjust to the technology, we are trying to meet

multiple goals; compliance with this law, compliance with that law, promoting telework, which is also the law, I might add, to say nothing of the core mission, by the way, not incidental. So, you know what, sometimes we slip up.

Sometimes on my official account my daughter sends me a picture that has nothing to do with my business. I have multiple accounts; I have Facebook, I have Twitter. I have to remember which is political and which is official and which is personal, and I am busy, and sometimes with the best of intention I might slip.

Could you talk about that a little bit, in terms of both the technological challenge of that, Mr. McLaughlin and, Mr. Ferriero, the issue of compliance? Because we do need to be fair to people in terms of technology sometimes poses a challenge and human beings make mistakes, versus this pernicious, insidious desire to circumvent the law because there is something awful going on and we are going to get to the bottom of it.

Mr. FERRIERO. So the common theme for me, as the archivist, in listening has to do with exactly what this new directive is addressing, and that is the need for getting serious in the Federal Government about compliance with the Federal Records Act; the need for training; the need for adequate technology; the responsibility of a senior agency official to take responsibility in the agency; better certification of records managers; creating the records manager job description in the Federal Government, which does not exist now.

This is the development of a new culture around records that involves the inspector general, legal counsel, the CIO, the entire agency in helping make the transition to electronic records much more robust and, as the chairman said when he opened this hearing, to make it possible for Americans to know what is going on. That is the purpose of the keeping of the records.

Mr. MCLAUGHLIN. Mr. Connolly, it is a huge conundrum, and actually what this debate sort of strikes me as is yet another example where I suspect we will catch up with email practices and policies and the technologies for capturing them right at the moment that everything is shifting over to new proprietary platforms, new messaging services, what is called over-the-top.

So, for example, you may be used to doing SMS text messaging on your phone. If you were in your twenties, you would be doing something which looks and feels the same, but is actually an app on your smartphone that is using a completely parallel system where the traditional governmental techniques for capturing that text message don't even exist.

And if I could maybe add a fourth idea to the three that I laid out in my prepared testimony, just from listening, one thing that is clear is that as the technologies evolve rapidly, agency practices have to keep up. They will not keep up technologically, but the human practices of training, periodic reminders, and, if I were to add a fourth idea to my list, it would be a departure checklist, so that as you are leaving the agency you get a checklist where you go through with counsel or with somebody from the relevant records management official in the agency and you go through your private accounts and you do some of the obvious things that you should do.

In my case this happened when a FOIA request came in. So I sat down with a lawyer and we went through my personal account; we typed in the searches, we got those emails, most of which had been captured and forwarded over, but some of which hadn't. I think I am like a poster child for a typical mid-level official who tries to be conscientious and misses some things. That is what happens.

So a regular administrative practice can make up for a lot of the technological gap that is going to continue to exist.

Mr. CONNOLLY. Mr. Chairman, thank you so much.

Mr. JORDAN. I thank the gentleman.

And no one argues that there is going to be inadvertent use of some personal accounts, I think, but what we are talking about here is thousands of pages, in the case of Mr. Silver, thousands of pages of emails which, frankly, the last time we had Mr. Silver in front of the committee we didn't have all those. We now do.

So I want to go back to where, Mr. Silver, we are starting with you. I want to go back to where some of my colleagues were earlier, specifically an exchange you had with Representative Gowdy, where Mr. Gowdy said convenience may be an explanation for why people enter things on their personal account instead of their work account. Would you also agree that concealment may be a motive for folks who want to use their personal account and not their official account? Your response from the transcript, well, it certainly was not my motive, sir. Pretty strong and emphatic language. And yet we have this email that I think the chairman has already cited, that we can probably put on the screen, where you are communicating with a Mr. Wright, Morgan Wright, and you say don't ever send an email on the Department of Energy email with private addresses. That makes them subject to subpoena.

So I just want to ask you, I think the obvious question, the conclusion many would reach is it looks like you weren't being square with Mr. Gowdy when you answered his question back on July 18th, 2012.

Mr. SILVER. Congressman, all I can say again is that I was, that I was not trying to evade anything, and that the email that you have put up here was a reminder, an admonition to a small group of staff.

Mr. JORDAN. So why not send that admonition back on your Government account? Why send it on your personal account?

Mr. SILVER. To be candid, I don't know what happened there. I don't remember where I was.

Mr. JORDAN. I tell you what I think happened. I think you were trying to conceal it.

Let's go to the next email. And the reason I think you were trying to conceal it is because you were, we talked about this the last time you were with us. I wish I would have had this email the last time we got together. But I think you were trying to help your friends. We got an email from Mr. Lord, CEO of BrightSource. BrightSource got money from the 1705 loan guarantee program, isn't that correct, Mr. Silver?

Mr. SILVER. Yes, they did.

Mr. JORDAN. Yes. And here in this email you are talking about Mr. Lord, CEO of an organization, asking to get taxpayer money. You invite him to stay at your house, guest bedroom is ready.

Go to the next email. We talked about this the last time you were with us, too, Mr. Silver. This is an email exchange between you and Mr. Willard, where, again, they are asking to get taxpayer money and they ask you to write a letter that is going to go to the White House chief of staff. Pretty important person, wouldn't you agree, Mr. Silver? White House chief of staff pretty important. They ask you to edit the letter that John Bryson, who would later become Secretary of Commerce, who is the chairman of the board of BrightSource, they ask you to edit a letter that you are going to send to the White House chief of staff.

So it seems to me just common sense would say you are concealing things using private email accounts because you are trying to help your buddies get taxpayer money. And, in fact, you are doing it so much, you are so focused on helping your friends get money in this program, you are editing the letters that they are going to send to the White House. Now, that is unbelievable. Don't you think taxpayers would probably say, wait a minute, something doesn't quite look kosher here?

Mr. SILVER. Congressman, as I said the last time you and I had this conversation——

Mr. JORDAN. You did edit that letter, right?

Mr. SILVER. I did edit a letter.

Mr. JORDAN. That letter went to Bill Daly, White House chief of staff, right?

Mr. SILVER. Wrong.

Mr. JORDAN. All right. But you edited it and it was supposed to go to Bill Daly. And you say in there we want the White House to quarterback this loan closure between Management and Budget and Department of Energy, right?

Mr. SILVER. Congressman, if you read——

Mr. JORDAN. That is what it says. You wrote it.

Mr. SILVER. If you read the first two sentences of that email, you will see that I say I don't think this is a particularly good idea. But the point I made to you before——

Mr. JORDAN. But you are making my point, because John Lord was your friend, the same guy you invited to stay at your house, you were willing to do it even though you didn't think it was a good idea.

Mr. SILVER. The loan had already been conditionally approved. It had been approved by the career staff at the Department of Energy. It had been approved by the career staff.

Mr. JORDAN. Mr. Silver, I think you are missing the point. I think you are missing the point.

Mr. SILVER. No, sir.

Mr. JORDAN. No, no, no.

Mr. SILVER. Sorry.

Mr. JORDAN. Mr. Gowdy asked you a specific question. We didn't have this email. We got it two days after the hearing was over, conveniently for you. We didn't have that email, so you could answer Mr. Gowdy and say concealment wasn't part of my motive, even though we have an email you send on your private email account

telling people don't ever give Department of Energy addresses on email; might be subject to subpoena. And we have you helping your friends here. I mean, that is what the record clearly shows. I think anyone with common sense could make that conclusion.

And to add insult to injury, this is the part we forget, the taxpayers not only had it concealed from them; their representative, Mr. Gowdy, was not only lied to, the program had 22 of the 26 companies that got money had a credit rating of BB-, six of them went bankrupt, taxpayers have lost millions of dollars.

The taxpayer got the shaft all the way around in this program. Your friends got helped. You weren't square with Congress. And finally, finally we have, and I think the chairman brought this up, finally we have your lobbyist—let's put that one up too. This, to me, adds insult to injury. Finally we have your lobbyist saying to the committee just a couple days ago, don't direct any questions to Mr. Silver.

Now, this is unbelievable. You can mislead a member of Congress when he is asking questions; you can help your friends; you can lose billions of taxpayer money and still have the gall for your lobbyist to ask members of Congress not to ask you any questions. Now, do you think the taxpayers might take offense to that whole scenario, that whole story, that whole narrative, which is absolutely proven by the facts in front of us?

Mr. SILVER. I think, Congressman, that that is a wholesale mischaracterization of what happened.

Mr. JORDAN. Did you not send that email that says don't do this, it could be subject to subpoena? Did you send that email?

Mr. SILVER. I did send that email.

Mr. JORDAN. Did you edit a letter from the CEO of BrightSource, the email where the CEO of BrightSource asked you to edit a letter from the chairman of the board of BrightSource going to the White House chief of staff, is that true?

Mr. SILVER. Only after they had already received the conditional——

Mr. JORDAN. You edited that letter, right?

Mr. SILVER. I did.

Mr. JORDAN. Okay. And is it not true that your lobbyist asked us not to ask you questions?

Mr. SILVER. I know nothing about that, sir.

Mr. JORDAN. Well, is this individual your lobbyist?

Mr. SILVER. It was brought up.

Mr. JORDAN. No, no, that is a yes or no. Is she your lobbyist?

Mr. SILVER. No. I don't have a lobbyist, sir. I don't know anything about this topic.

Mr. CUMMINGS. Mr. Chairman, would the chairman yield?

Mr. JORDAN. I would be happy to yield.

Mr. CUMMINGS. I think, first of all, there is nothing wrong with your line of questioning, but Chairman Issa and I agreed, I thought, that we would look into that particular issue because it is an attorney-client situation. But he and I expressed concern. I don't know whether you were here, and that we would look into it jointly off the record.

Mr. JORDAN. I appreciate it.

Finally, isn't it true that Solyndra, Beacon Power, Abound Solar, VPG, and Fisker have all filed for bankruptcy and all received taxpayer money?

Mr. SILVER. Yes, which brings the total loss to 3 percent of the portfolio.

Mr. JORDAN. Which is millions and millions of dollars, right?

Mr. SILVER. And a fraction of what Congress assumed when they appropriated funds for the program.

Mr. JORDAN. What is your point? Taxpayers lost money.

Mr. SILVER. My point is that not every investment will be successful, but the vast majority have been.

Mr. JORDAN. So the fact that taxpayers lost money, that is a success story?

Mr. SILVER. The program is a success.

Mr. JORDAN. Twenty-two out of 26 companies had a BB-credit rating; no one in the private sector, you guys go ahead and do it, six of them go bankrupt, and that is a success?

Mr. SILVER. The BB-, sir, is a function of a speculative rating by a ratings agency.

Mr. JORDAN. Well, it looks like you probably should have paid a little more attention to it at least for the six that went bankrupt.

Mr. SILVER. The ratings are included in the analysis that is undertaken by the professional career staff.

Mr. JORDAN. Mr. Silver, you lied to Mr. Gowdy, you helped your friends, taxpayers lost a bunch of money, and your lobbyist had the gall to say, members, don't ask him questions. That is what took place.

Mr. SILVER. I did not lie to Mr. Gowdy at all, sir.

Mr. JORDAN. And I will finish here. So it is not concealment when you tell someone don't do this, it could be subject to subpoena? That is not concealment?

Mr. SILVER. It is not the way I intended it.

Mr. JORDAN. But the common taxpayer who paid for these programs, for the six companies that lost millions of dollars, that went bankrupt, the taxpayer might think different. The taxpayer might say, you know what, that sure looks and sounds like concealment to me.

Mr. SILVER. I think it was inartfully written and I can understand that there is a different interpretation, but it is not what I meant, sir. That is all I can tell you.

Mr. JORDAN. All right, I thank the gentleman.

Now recognize Mr. Gosar, the gentleman from Arizona.

I stand corrected. The gentleman from Michigan is recognized.

Mr. BENTIVOLIO. Thank you, Mr .Chairman.

The Washington Post reported that over the past 12 years John C. Beal was often away from his job as a high level staffer at the Environmental Protection Agency. He cultivated an air of mystery and explained his lengthy absences by telling his bosses that he was doing top secret work, including for the CIA, in some capacity. For years, apparently, no one checked. Now Beal is charged with stealing nearly $900,000 from the EPA, actually from the taxpayers, by receiving pay and bonuses he did not deserve.

My question is for Lisa Jackson. Did your aliases, Richard Windsor, win a scholar of ethical behavior award or any other award or certificate from the EPA?

Ms. JACKSON. When I used my secondary official EPA account to take training——

Mr. BENTIVOLIO. As Richard Windsor.

Ms. JACKSON. It was Windsor.Richard@EPA.gov.

Mr. BENTIVOLIO. Okay, so you did win?

Ms. JACKSON. No, no, no, I didn't answer your question yet. When I used that account to take any type of training, which I thought was an important thing for me to do as leader of the agency, the end of the training certifies completion of training in the name on the account. So I am not the administrator of the EPA any more; I am a private citizen, sir. You can direct your question to EPA as to what was awarded. But what I can say is that I completed the training that I was supposed to.

Mr. BENTIVOLIO. And you received a certificate.

Ms. JACKSON. I did not receive——

Mr. BENTIVOLIO. Well, Mr. Windsor. I am really confused.

Ms. JACKSON. Sir, we have already gone over that. The use of a secondary name was common practice, is common practice. The archivist has already said that there is nothing wrong with having additional official accounts, and that those accounts need to be named. Now, you can quibble with the name if you like, but what I did was to do Government business on a Government account.

Mr. BENTIVOLIO. Well, the name Mr. Beal apparently must have done the same thing.

Ms. JACKSON. Sir, if you have questions about Mr. Beal, I suggest you direct them to the agency.

Mr. BENTIVOLIO. Thank you. During the training that won your alias, Richard Windsor, award or certificate from the EPA, did any part of the training remind you that using an alias for official business was prohibited?

Ms. JACKSON. No, sir. In fact, the archivist earlier stated that one may have secondary or multiple official Government accounts. I had a secondary official Government account, like my predecessors before me, and that was done for time management and to be able to do my job.

Mr. BENTIVOLIO. In light of this story, I really have to ask did Richard Windsor receive any kind of pay from the EPA on top of the salary you already received as Lisa Jackson?

Ms. JACKSON. I don't even understand your question, sir.

Mr. BENTIVOLIO. Okay. Well, let me ask you another question. At any time during your service with the EPA, did you receive a bonus?

Ms. JACKSON. I don't believe that——

Mr. BENTIVOLIO. Did you receive any pay whatsoever as Richard Windsor?

Ms. JACKSON. Sir, first off, I worked for the EPA for 15 years. I received bonuses as a career employee. May I assume you are asking about my time as EPA administrator?

Mr. BENTIVOLIO. Yes.

Ms. JACKSON. When I was EPA administrator, I received no salary increase or bonus.

Mr. BENTIVOLIO. Okay, thank you.

Mr. GOSAR. [Presiding] I thank the gentleman.

Mr. McLaughlin, I think you brought some interesting ideas to the table. In the private sector, I am a health care professional. Particularly with patients, we are very, very, very careful, so we have pre-check lists when we have patients or people that are going to deal with patient information. So I like your idea of a post-checklist, but you also have to have a pre-checklist to orient that. So I think where I am going with this question is I want to see some rectification, and I am not happy with what I hear.

Mr. Gensler, when you looked at the process, did you feel like it was right?

Mr. GENSLER. I think, Mr. Chairman, that we kind of need to do better. I look at this, our training was not robust at the agency. I am the head of the agency; I take full responsibility. I think we have to have better training. But I also think we need to tighten and enhance our policies because, as the archivist laid out just yesterday for the first time in writing, directly speaking to personal email, we need to narrow the use of it and, when it is used, to get that into Federal records. Fortunately, in my case, 99 percent was already in a Government system somewhere, but it still left that 1 percent. So I have learned a lot in these three or four months looking at this, that we need to do better, and I applaud this committee's efforts with regard to the House bill that you are trying to move forward on this.

Mr. GOSAR. So I am a very big person on personal accountability, personal responsibility. Leadership in my office stopped with me, whether it was my hygienist, whether it be my dental assistant or my receptionist. Anything wrong, it was accountable to me. It seems to me that we need some type of a third party, would you not agree, for oversight, that has a little bit more jurisdiction than just an inspector general? I am alluding, maybe, to the Department of Justice.

Mr. GENSLER. Well, I know our laws are vigorous. I am not familiar enough with the Federal Records law to how it should be amended, but our inspector general raised this, looked at it specifically for Congress, said that there were no laws that were violated.

Mr. GOSAR. Mr. Ferriero, would you agree that we need to have some different type of teeth in here? Because this is my second term of Congress and I have no ability as a member of Congress to actually get records in many cases, whether it be from previous administrations or this Administration. It is part of my constitutional duty. Do you not think that we also ought to have the Department of Justice being involved in some type of oversight of these records?

Mr. FERRIERO. I think that part of this education process for each agency and reminding the inspector generals, which I have done personally at their annual meeting, my chief records officer has done, that they have a role to play, too. It is not something that has been followed through to its greatest extent.

Mr. GOSAR. Are there any other things that you can see for expedience of the records? Because we draw this out in court proceedings. Do you have some other ideas in regards to how we would

approach this so that we actually have a speedier release of documentation?

Mr. FERRIERO. Well, I think that the Capstone system, which we have instituted, trialed in the National Archives over the past several months, and attached to my testimony are kind of the outline of that process, goes a long way to address some of the problems that you have heard this morning.

Mr. GOSAR. Okay.

Ms. Jackson, did it feel like it was wrong, the practice? I mean, I got the feeling, from listening to both sides here, that your comment was, well, previous administrations had done it. That is not an excuse. Did it feel like it was wrong?

Ms. JACKSON. No, sir. I feel as though I did everything I could to comply with the law and the policy as it was explained and as I understood it.

Mr. GOSAR. Did you even question the practice, I mean, when it was first proposed to you?

Ms. JACKSON. As I mentioned, I questioned, why can't I just have a name, Admin Jackson, on the account. But I did not question the secondary email account because it was practice. And as we have heard, it was used commonly and is recognized by the archivist as being an okay practice as long as judgment is used to ensure that if anything is in the personal account, that it is forwarded in for record-keeping purposes.

Mr. GOSAR. But that leaves a lot for the individual, and you are forthright in regards to acknowledgment of that, but we are subject to human display, and there is always that question in human display.

Ms. JACKSON. Absolutely, sir. I agree that there is an exercise of judgment implicit in what the archivist is describing. That is exactly what I did to the best of my ability; that is what I worked to do every day. So if there are changing requirements, I think training is a wonderful opportunity because, as requirements change, I think there needs to be a constant awareness of that.

Mr. GOSAR. So do you actually believe that there also ought to be some accountability? I mean, mistakes were made. In the private sector, when I make a mistake, I am liable for it. We have to have some added accountability here in the Federal level too.

Ms. JACKSON. That is exactly why I am here, sir, because I wanted to be here to explain the steps I took to ensure that my records were managed appropriately.

Mr. GOSAR. Do you agree with everything that Mr. Ferriero has put forwards in regards to oversight, or is there anything else you would like to add?

Ms. JACKSON. I would simply like to add that I came here today because I wanted to be able to explain what I did and why I did it, and I believe very strongly that the use of my email account was in order to be consistent with the requirements, which appear to be changing. So I don't envy him that job or, sir, frankly, you that job because this is a very complex issue.

Mr. GOSAR. Would you agree with that, Mr. Silver?

Mr. SILVER. Yes, sir, I would. I am certainly no expert, but everything I heard made sense to me. In my particular situation, I clear-

ly would have benefitted from additional guidance and training, there is no question about that.

Mr. GOSAR. Do you actually see why we are even making comments? Because it looks like interested discussions should be an impartial type of jurisdiction.

Mr. SILVER. Yes, I am agreeing with you.

Mr. GOSAR. Okay. Do you see anything that you would propose, looking in hindsight, that you actually want to forward?

Mr. SILVER. I am not terribly qualified to offer up the kinds of advice that Mr. McLaughlin did, but I would say that there is clearly a challenge with how to handle relationships you have had for many, many years prior to coming into these offices. There could be some additional clarification and guidance around that.

Mr. GOSAR. And what about penalties?

Mr. SILVER. I am unqualified to comment on that, sir.

Mr. GOSAR. Why not?

Mr. SILVER. I don't know what—I defer to the——

Mr. GOSAR. Aren't you a steward of the Federal taxpayer?

Mr. SILVER. Well, obviously I was.

Mr. GOSAR. You were. And I think that is the ultimate accountability, don't you believe?

Mr. SILVER. I completely agree with you.

Mr. GOSAR. Okay.

Mr. McLaughlin, do you have anything you would like to add?

Mr. MCLAUGHLIN. All I would do is just reiterate my earlier point that the world of technology is changing very fast. Anybody entering Federal service right now is going to have a multitude, greater number of channels and accounts that people can reach them on, so the best ideas that I have been able to come up with are a pre-checklist, better training, a post-checklist when you are leaving so that you go through and make sure you have cleared out everything that should have been moved in.

I have commended the committee for the two clarifications in H.R. 1233, which would specify where you have to forward things and five days in which to do it, but I still think, for the reasons that I have laid out in my prepared testimony, that that is going to quickly actually be outdated and inadequate to the task.

So, anyway, I suggested some other ideas; form language for any of your personal accounts that should go out in an auto responder and a public profile so that you are instructing people how to steer things into your official accounts; making it easier for people to communicate with Federal employees even when you want to keep the email addresses themselves hidden.

I think all of these things would help, but ultimately what you are depending on is for people to exercise good judgment, and I don't think you can remind them often enough of their responsibilities in order to reinforce what I think is the general goodwill and intent of Federal employees across the board.

Mr. GOSAR. And it always starts from the top within an agency, does it not?

Mr. MCLAUGHLIN. Yes, sir.

Mr. GOSAR. Thank you.

Mr. Cummings?

Mr. CUMMINGS. I am finished. Thank you very much.

I want to thank the witnesses for being here today. I have to get to another hearing. Thank you.

Mr. GOSAR. With that, I would dismiss this committee. Adjourned.

[Whereupon, at 11:09 a.m., the committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Bush aides' use of GOP e-mail probed

Updated 4/12/2007 10:23 AM

WASHINGTON (AP) — The White House said Wednesday it had mishandled Republican Party-sponsored e-mail accounts used by nearly two dozen presidential aides, resulting in the loss of an undetermined number of e-mails concerning official White House business.

Congressional investigators looking into the administration's firing of eight federal prosecutors already had the non-governmental e-mail accounts in their sights because some White House aides used them to help plan the U.S. attorneys' ouster. Democrats were questioning whether the use of the GOP-provided e-mail accounts was proof that the firings were political.

Democrats also have been asking if White House officials are purposely conducting sensitive official presidential business via non-governmental accounts to get around a law requiring preservation — and eventual disclosure — of presidential records. The announcement of the lost e-mails — a rare admission of error from the Bush White House at a delicate time for the administration's relations with Democratically controlled Capitol Hill — gave new fodder for inquiry on this front.

The Republican National Committee set up the accounts for about 20 Bush aides, such as Karl Rove and his deputies, who get involved in politics, spokesman Scott Stanzel said. Having the GOP create non-White House addresses and provide separate BlackBerries, laptops and other communications gear was designed to avoid running afoul of Hatch Act rules barring federal employees from engaging in political activities with government resources or on government time, he said.

Under President Clinton, White House aides used separate equipment for political spadework but did not have separate accounts.

"This is entirely appropriate," Stanzel said of the Bush White House practice.

He said staffers used their RNC accounts instead of White House accounts to discuss the prosecutor issue or conduct other official business for several reasons, including extra caution about complying with the Hatch Act as well as the convenience of using one account instead of several. Stanzel said he could not speak to whether anyone was intentionally trying to avoid White House archiving because he had not spoken to all those involved.

Stanzel said some e-mails have been lost because the White House lacked clear policies on complying with Presidential Records Act requirements.

Before 2004, for instance, e-mails to and from the accounts were typically automatically deleted every 30 days along with all other RNC e-mails. Even though that was changed in 2004, so that the White House staffers with those accounts were excluded from the RNC's automatic deletion policy, some of their e-mails were lost anyway when individual aides deleted their own files, Stanzel said.

He could not say what had been lost, and said the White House is working to recover as many as they can. The White House has now shut off employees' ability to delete e-mails on the separate accounts, and is briefing staffers on how to better make determinations about when — and when not — to use them, Stanzel said.

The disclosure could complicate a standoff between the White House and congressional Democrats over the fired prosecutors.

The White House had promised to look through its staffers' e-mails for anything relevant to the prosecutors' dismissal. No matter the domain name, it said it would provide documents to the Senate and House Judiciary committees as long as they are not internal communications, but exchanges with people outside the White House.

But the White House also had insisted that this offer of documents be accepted, all-or-nothing, along with its insistence that aides would talk to Congress about the firings, but not under oath. So far, Democrats have refused.

Democrats have begun highlighting the separate accounts because they say their use appears to go beyond the strictly political.

"We have become increasingly sensitized over the last several days to the White House staff wearing several 'hats' and using Republican National Committee and campaign e-mail addresses," said a letter from the Senate and House Judiciary chairmen to White House counsel Fred Fielding on March 28. "We hope you agree that such sleight of hand should not be used to circumvent and compromise the comprehensiveness of our investigation."

The non-governmental accounts were accidentally discovered by Democrats when the Justice Department released hundreds of documents related to the prosecutor firings.

One exchange showed deputy White House political director J. Scott Jennings sending an e-mail titled "USATTY" to Attorney General Alberto Gonzales' then-chief of staff, Kyle Sampson, from an address with a gwb43.com domain name.

"Does a list of all vacant, or about to be vacant, US Attorney slots exist anywhere?" Jennings wrote on Dec. 3 from his political account. Replied Sampson, a few minutes later: "My office. Want me to send to you tomorrow?"

Jennings had also communicated with Sampson and other Justice Department officials in August from his RNC-supplied address about how to install the administration's preferred replacement, onetime Rove aide Tim Griffin, for Arkansas U.S. Attorney Bud Cummins.

In one, Jennings passed on a strategy he said was suggested by Cummins, to have Griffin come on as an attorney in the Little Rock office until Cummins finalized his post-government plans. Jennings said the plan would "alleviate pressure/implication that Tim forced Bud out."

Sampson's e-mails all appeared to be from his official usdoj.gov account.

The separate e-mail accounts also have become an issue in the case of disgraced lobbyist Jack Abramoff, who was convicted on bribery charges and is in prison for fraud.

Abramoff had several exchanges with Susan Ralston, then a Rove assistant, via non-government e-mail addresses with domain names like rnchq.org and georgewbush.com, to discuss issues in the Interior Department affecting the lobbyist's Indian clients.

United States Senate
Environment and Public Works Committee

Minority Report

A Call for Sunshine:

EPA's FOIA and Federal Records Failures Uncovered

September 9, 2013

Contact: Luke Bolar – Luke_Bolar@epw.senate.gov (202) 224-6176
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U.S. Senate Environment and Public Works Committee (Minority)

EXECUTIVE SUMMARY

At the beginning of his first term, President Obama pledged that his Administration "will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration."[1] Within the first month of his second term, President Obama further claimed that his "is the most transparent administration in history."[2] Former U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson echoed these sentiments in the so-called "Fishbowl Memo" stating that, "The American people will not trust us to protect their health or their environment if they do not trust us to be transparent and inclusive in our decision-making...To earn this trust, we must conduct business with the public openly and fairly."[3] However, at least with respect to EPA, it appears that this commitment to transparency has been illusory and detached from actual practice. In reality, from day one of the Obama Administration, the EPA has pursued a path of obfuscation, operating in the shadows, and out of legally required sunlight.

Specifically, the Agency established an alias identity to hide the actions of the former Administrator; has purposefully been unresponsive to FOIA requests, oftentimes redacting information the public has a right to know; and mismanaged its electronic records system such that federal records have been jeopardized. Moreover, EPA's leadership abandoned the historic model of a specialized public servant who seeks to fairly administer the law and has instead embraced a number of controversial tactics to advance a secretive agenda. These tactics include circumventing transparency obligations to avoid public scrutiny and manipulation of the FOIA process to benefit their allies. Finally, as Congress has raised questions about EPA's lack of transparency, the Agency has steadfastly ignored its constitutional obligation to subject itself to Congressional oversight, apparently in an effort to prevent the public from knowing what is going on behind closed doors.

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[1] Memorandum from President Barack Obama, *Transparency and Open Government* (Jan. 21, 2009), *available at* http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment.
[2] Jonathan Easley, *Obama says his is 'most transparent administration' ever,* THE HILL, Feb. 14, 2013, http://thehill.com/blogs/blog-briefing-room/news/283335-obama-this-is-the-most-transparent-administration-in-history.
[3] Robin Bravender, *Jackson commits to transparency,* ENVIRONMENT & ENERGY NEWS, Apr. 24, 2009, **http://www.eenews.net/greenwire/stories/77182**.

This report provides a detailed accounting of EPA's actions under the Obama Administration that reveals multiple attempts to hinder transparency. Each item in this report makes clear: the Obama EPA operates in such a way that frustrates oversight and impedes the public's ability to know what their government is up to.

FINDINGS

- The Committee's investigation of EPA's record keeping practices originated with concerns over former EPA Administrator Lisa Jackson's use of a secondary, alias email account. The discovery of the "Richard Windsor" account triggered a closer look into EPA's record keeping practices. Thereafter, the Committee found EPA employees inappropriately using personal email accounts to conduct official business. The Committee also found EPA's system for capturing and preserving federal records is haphazard and riddled with internal conflicts-of-interest.

- In addition to its troubling record keeping practices, EPA has a dismal history of competently and timely responding to FOIA requests. Notably, on multiple occasions EPA has either acted deliberately or out of extreme carelessness to delay and hamper FOIA requests from American citizens.

- The Richard Windsor account was used well beyond the scope of the secondary email accounts employed by prior EPA Administrators and other cabinet-level officials. Moreover, it appears that the Richard Windsor account violates EPA's own records policy.

- EPA officials revealed that the Agency's FOIA office, the individuals responsible for proper administration of FOIA, may have been entirely unaware of the Richard Windsor account.

- Multiple high ranking officials have used non-EPA email accounts to conduct official agency business. Use of non-official, or personal email accounts expressly violates internal EPA policy that forbids the use of non-official e-mail accounts to conduct official agency business.

- The impediments to EPA transparency extend beyond EPA's framework for managing information and identifying responsive documents. EPA's shortcomings also involve the manner in which EPA responds to FOIA requests, including the prolific, and often

inappropriate, use of exemptions to withhold information from the public, as well as the scope of responses to FOIA requests. These failures prevent the Agency from satisfying its duty to be proactive in disclosing information to the public, as well as its duty to respond fully and promptly to the request.

- The manner in which EPA has trained its staff on the implementation of transparency laws is insufficient. Regional employees have not taken the proper training and lack a comprehensive understanding of how to process a FOIA request.

- In one instance it appears that EPA deliberately altered the date on a FOIA response to avoid the legal consequences of missing a deadline and then excluded this document from a FOIA production to avoid scrutiny and embarrassment.

- EPA has also exploited FOIA to protect its own interests while disregarding the public interest by acting with bias in processing fee waiver requests and facilitating requests for environmentalist allies.

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INTRODUCTION

As President Obama articulated in his Freedom of Information Act (FOIA) Memorandum, "[a] democracy requires accountability and accountability requires transparency.... In our democracy, the FOIA, which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government."[4] In advancing this goal, the President declared that "[o]penness will strengthen our democracy and promote efficiency and effectiveness in Government."[5] Unfortunately, the Senate Committee on Environment and Public Works continues to uncover a disconcerting number of instances wherein EPA has failed to live up to this stated goal. The Committee's investigation of EPA's record keeping practices originated with concerns over former EPA Administrator Lisa Jackson's use of a secondary, alias email account. The discovery of the "Richard Windsor" account triggered a closer look into EPA's record keeping practices. Thereafter, the Committee found EPA employees inappropriately using personal email accounts to conduct official business. The Committee also recognized EPA's system for capturing and preserving federal records is haphazard and riddled with internal conflicts-of-interest.

In addition to its troubling record keeping practices, EPA has a dismal history of competently and timely responding to FOIA requests. Notably, on multiple occasions EPA has either acted deliberately or out of extreme carelessness to delay and hamper FOIA requests from American citizens. When EPA does release information responsive to a FOIA request, the documents are heavily redacted, abusing legal exemptions in an attempt to provide as little information to the requestor as possible. Moreover, the Committee is aware of instances where the Agency has withheld information that is responsive to requests, for the simple reason that it may embarrass the Agency. EPA's poor track record suggests that the Agency does not take its transparency obligations seriously, and purposefully hides information from the public to protect the Agency's allies and radical agenda.

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[4] Memorandum from President Barack Obama, *Freedom of Information Act* (Jan. 21, 2009), *available at* http://www.whitehouse.gov/the_press_office/FreedomofInformationAct.
[5] Memorandum from President Barack Obama, *Transparency and Open Government* (Jan. 21, 2009), *available at* http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment.

EPA's Obligations under Freedom of Information Act and Federal Records Act

Federal agencies, including the EPA, should have a comprehensive and consistent policy on records retention and FOIA administration in accordance with the Federal Records Act (FRA) and the FOIA.[6] The FRA governs the collection, retention, and preservation of federal records.[7] It mandates that all agencies "create and maintain authentic, reliable, and usable records."[8] The definition of a record is broad and includes documents, regardless of form or characteristics, made or received by an agency in connection with the transaction of public business.[9] In short, if a document relates to official business, it is considered a record. This includes emails sent or received on an employee's personal email account.[10] The FOIA works in tandem with the FRA and provides the public access to agency records.[11] The FRA, therefore, ensures that agencies properly collect and retain records to administer the FOIA. To comply with the FOIA, an agency relies on searching records to generate a FOIA response. Accordingly, without adequately preserving agency records, the American people may be limited in their ability to obtain a complete FOIA response. All federal employees may potentially create federal records and, therefore, have records management responsibilities. The National Archive and Records Administration's (NARA) regulations require agencies to "inform all employees that they are responsible and accountable for keeping accurate and complete records of their activities."[12]

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[6] *See* 44 U.S.C. § 3101 (2013).
[7] *Id.*
[8] *See* 36 C.F.R. § 1220.32 (2013); *see also Presidential Records in the New Millennium: Updating the Presidential Records Act and other Federal Recordkeeping Statutes to Improve Electronic Records Preservation: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. (2011), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg70518/pdf/CHRG-112hhrg70518.pdf.
[9] Records are defined as "all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them." *See* 44 U.S.C. § 3301 (2013).
[10] *Presidential Records in the New Millennium: Updating the Presidential Records Act and other Federal Recordkeeping Statutes to Improve Electronic Records Preservation: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. 35-37 (2011), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg70518/pdf/CHRG-112hhrg70518.pdf.
[11] National security, personal privacy, and trade secrets are among the categories of information that are protected from public release pursuant to the Freedom of Information Act. *See* 5 U.S.C. § 552(b).
[12] *See* 36 C.F.R. § 1222.24 (2013).

The Committee has uncovered substantial evidence that calls into question the integrity of EPA's system for identifying and preserving federal records. In the first instance, the Committee has learned that the Agency assigned a secret alias email address to former EPA Administrators. Further frustrating the integrity of the system is the fact the Agency cannot indicate definitively if these accounts were reviewed in records requests.[13] In addition, our investigation has revealed that multiple high ranking officials have used non-EPA email accounts to conduct official agency business. These practices have the potential to undermine the Agency's ability to preserve records under the FRA and to appropriately respond to FOIA requests.

The Committee notes, that although the Agency has agreed to reform practices as required under records keeping laws, an agreement made with Senate EPW Republicans pursuant to the Gina McCarthy nomination and confirmation process, the Inspector General review is ongoing and such agreement does not obviate outstanding concerns regarding multiple instances of failure to reply or adequately respond to FOIA requests.

Alarming E-mail Practices

Since the Committee learned that the former EPA Administrator Lisa Jackson had a secondary, alias email account under the name of Richard Windsor (windsor.richard@epa.gov), the Committee has embarked on an in-depth inquiry to understand how EPA administers its transparency and record keeping obligations. While Congress and the public have raised serious concerns over EPA's use of an alias account, EPA has defended its practice on the grounds that, "everyone is doing it."[14] However, the Committee's investigation has revealed that the Richard Windsor account was used well beyond the scope of the secondary email accounts employed by prior EPA Administrators and other cabinet-level officials. Moreover, it appears that, the Richard Windsor account violates EPA's own records policy.

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[13] Briefing for staff of H. Comm. on Oversight & Gov't Reform (Feb. 25, 2013).

[14] Press Release, U.S. Senate Comm. on Env't & Public Works, *Eye on the EPA: Transparency Request #1, FOIA Failures* (Apr. 22, 2013) *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=Minority.Blogs&ContentRecord_id=331eecf3-eba0-2412-32c3-6f6beef731d0.

EPA's policy requires email records to include transmission data that identifies the sender and the recipient(s). This information is considered "essential elements that constitute a complete e-mail record."[15] However, these essential elements are clearly missing on emails sent and received by "Richard Windsor," since Windsor is fictitious. Accordingly, it appears that a key method used to identify agency records is missing from the alias account.

In addition to violating internal records policy, Jackson's alias account took on an identity separate from the Administrator herself. While it is true that former Administrators have used an alternative email address – such as "ToConnor" or "ToWhit;"[16] the Committee has obtained proof that Richard Windsor went further than masking the identity of the sender and was in fact used as a separate secret identity. In at least one instance, Jackson actually carried on correspondence as the fictional Richard Windsor in an email chain with an unsuspecting individual who emailed "Richard" and asked "him" to pass along information to the Administrator.[17] Replying as "Richard," the Administrator agreed to the request.[18] In a separate instance, the Committee learned that "EPA awarded certificates naming 'Richard Windsor' a 'scholar of ethical behavior.'"[19]

The fact that the Administrator of the EPA operated under a secret identity is alarming enough. However, a Congressional briefing sparked additional concerns.[20] EPA officials revealed that the Agency's FOIA office, the individuals responsible for proper administration of

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[15] PowerPoint, U.S. Envtl. Prot. Agency, *EPA Records and ECMS Briefing: EPA Incoming Political Appointees* (2009), *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=60afa4b3-3e5d-4e6f-b81e-64998f0d3c67.

[16] Dina Cappiello, *Tofu? ToWhit? Senators discuss EPA email aliases*, The Associated Press, Apr. 11, 2013, http://bigstory.ap.org/article/tofu-towhit-congress-reveals-epa-email-aliases.

[17] E-mail from Lisa Jackson, Adm'r, U.S. Envtl. Prot. Agency, as "Richard Windsor," to Michael Martin, Founder and CEO, Effect Partners (Mar. 4, 2010, 10:43:23 AM), http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=c90d98cd-056c-4ca8-b8ce-034d2d240c0f.

[18] E-mail from Lisa Jackson, Adm'r, U.S. Envtl. Prot. Agency, as "Richard Windsor," to Robert Goulding, U.S. Envtl. Prot. Agency (Mar. 11, 2010, 07:17 AM), http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=c90d98cd-056c-4ca8-b8ce-034d2d240c0f.

[19] CJ Ciaramella, *Richard Windsor, Model Employee: Fake EPA employee received awards from the EPA*, THE WASHINGTON FREE BEACON, Jun. 3, 2013, http://freebeacon.com/richard-windsor-model-employee/.

[20] Briefing for staff of H. Comm. on Oversight & Gov't Reform (Feb. 25, 2013).

FOIA, may have been entirely unaware of the Richard Windsor account.[21] Moreover, none of the EPA officials present at the briefing knew who was responsible for archiving and preserving the Administrator's emails.[22] In fact, none of the officials could even attest to whether *any* of Jackson's alias emails were ever archived for federal record keeping purposes;[23] either Jackson herself or a personal assistant performed these duties. Such a scheme would allow the Administrator to determine the scope of a FOIA response that touched on her correspondence, creating the potential for a conflict-of-interest inconsistent with the intent of federal sunshine laws.

Notwithstanding the record keeping obstacles created by the Richard Windsor account, there was no consistent policy in place to determine what individuals had access to Jackson via the secret account. In fact, the Committee has learned that other senior officials in the Obama Administration were without knowledge of Jackson's alias account. According to an email from former Administrator of the Office of Information and Regulatory Affairs, Cass Sunstein, to the Richard Windsor account, Sunstein explained to Jackson that, "I have your special email from my friend Lisa H. – hope that's ok!."[24] In another example, Deputy Director and General Counsel for the White House Council on Environmental Quality, Gary Guzy, responded to Jackson as if she was an assistant named "Richard."[25] While Jackson later corrects Guzy noting, "Its Lisa Jackson and that's my private email,"[26] this exchange illustrates yet another example of the Richard Windsor account defying transparency norms. It appears Jackson merely handpicked individuals, in and out of the government, with whom she shared her "special" email address, yet Congress and the public were excluded. Notably, the Committee has identified

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[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] E-mail from Cass R. Sunstein, Adm'r, Office of Information & Regulatory Affairs, Office of Management and Budget, to Lisa Jackson, Adm'r, U.S. Envtl. Prot. Agency, as "Richard Windsor" (Feb. 12, 2009, 02:06 PM), 394, http://www.epa.gov/epafoia1/docs/Release-4-Part-C.pdf.
[25] E-mail from Gary S. Guzy, Deputy Dir. & Gen. Counsel, Council on Environmental Quality, to Lisa Jackson, Adm'r, U.S. Envtl. Prot. Agency, as "Richard Windsor" (Feb. 16, 2010, 02:43 PM), 417, http://www.epa.gov/epafoia1/docs/Release-4-Part-F.pdf.
[26] E-mail from Lisa Jackson, Adm'r, U.S. Envtl. Prot. Agency, as "Richard Windsor," to Gary S. Guzy, Deputy Dir. & Gen. Counsel, Council on Environmental Quality (Feb. 16, 2010, 03:21 PM), 417, http://www.epa.gov/epafoia1/docs/Release-4-Part-F.pdf.

emails from an environmental lobbyist at Siemens Corporation, as well as the President of Greener by Design, communicating with Jackson via her Richard Windsor account.[27]

Employees' Prolific Use of Personal Email

In addition to the concerns surrounding the Richard Windsor alias email account, the Committee has also uncovered evidence that the use of *non-official* email accounts was a widespread practice across the Agency. Use of non-official, or personal email accounts expressly violates internal EPA policy that forbids the use of non-official e-mail accounts to conduct official agency business. EPA record keeping policy instructs employees:

> Do not use any outside e-mail system to conduct official Agency business. If, during an emergency, you use a non-official email system, you are responsible for ensuring that any e-mail records and attachments are saved in your office's recordkeeping system.[28]

This policy is meant to ensure that such offline communications do not occur, and on the rare instances in which they do, the documents are still preserved as federal records. To be clear, the medium an agency official uses to communicate is inconsequential to these transparency statutes; if the content qualifies as a federal record, then it should be treated and preserved as such. If such communications are not properly captured and stored, it follows that they will not be produced in response to a FOIA request – resulting in a breach of two federal statutes. The Government Accountability Office (GAO) has notified the Agency of the weakness in this policy; however, the EPA under the Obama Administration failed to adopt GAO's recommendations.[29]

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[27] E-mail from Alison Taylor, Vice President, Siemens Corp., to Lisa Jackson, Adm'r, U.S. Envtl. Prot. Agency, as "Richard Windsor" (Dec. 8, 2009, 06:55 PM), http://www.epa.gov/epafoia1/docs/Fifth_Release_Attachments_Part_A.pdf; E-mail from Adam Zellner, President, Greener by Design, to Lisa Jackson, Adm'r, U.S. Envtl. Prot. Agency, as "Richard Windsor" (Jan. 21, 2010, 03:00 PM), 158, http://www.epa.gov/epafoia1/docs/Part-FF.pdf.

[28] ENVTL. PROT. AGENCY, *Frequent Questions about E-Mail and Records*, http://www.epa.gov/records/faqs/email.htm (last accessed Sept. 6, 2013).

[29] GOV'T ACCOUNTABILITY OFFICE, FEDERAL RECORDS: NATIONAL ARCHIVES AND SELECTED AGENCIES NEED TO STRENGTHEN E-MAIL MANAGEMENT, 61, GAO008-742 (June 2008).

Despite the Agency's policy and multiple statements denying the truth,[30] the Committee has discovered that former Region 8 Administrator James Martin regularly used a non-official e-mail account to correspond with individuals and groups outside of EPA, regarding Agency business. For example, Martin regularly communicated with Vickie Patton, General Counsel of the Environmental Defense Fund, about Agency priorities on a private account.[31] On multiple occasions, Martin also corresponded with Alan Salazar, Chief Strategy Officer for Governor Hickenlooper,[32] and staff of the Colorado Conservation League, as well as others.[33]

In addition to Martin, the Committee has obtained evidence that Region 9 Administrator Jared Blumenfeld used his private email account (@Comcast.net) for work purposes.[34] Ranking Member Vitter and House Committee on Oversight and Government Reform Chairman Darrell Issa (R-CA-49) sent Blumenfeld a letter asking for his cooperation and personal certification of whether he captured federal records from his private account.[35] While the letter requested that Blumenfeld provide a direct response, which would be as simple as "yes" or "no," EPA headquarters replied on his behalf, indicating that there was no issue with the email in question.[36] When the media questioned EPA about Blumenfeld's email practices, EPA responded that,

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[30] EPA announced to the press: "As detailed in public filings, the regional administrator does not use his personal account to conduct official business... That Mr. Martin responded to one email sent to a personal email account to confirm a meeting that appears on his official government calendar does not alter that fact." *See* CJ Ciaramella, *EPA Official Resigns: Another snared in secret email prove says GOP senator*, THE WASHINGTON FREE BEACON, Feb. 19, 2013, http://freebeacon.com/epa-official-resigns/.

[28] E-mail from James Martin, Adm'r, U.S. Envtl. Prot. Agency Region 8, to Vickie Patton, Envtl. Defense Fund (Apr. 16, 2012, 10:12:05 AM), http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=8432c575-ed1a-4aab-b614-7e1623096a86.

[29] E-mail from James Martin, Adm'r, U.S. Envtl. Prot. Agency Region 8, to Alan Salazar, Chief Strategy Officer for Colo. Gov. Hickenlooper (Aug. 4, 2012, 10:12:14 AM), http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=7e8937bf-d7a7-4f3c-8129-12f319748a0e.

[33] E-mail from Pete Maysmith, Executive Director, Colorado Conservation Voters, to James Martin, Adm'r, U.S. Envtl. Prot. Agency Region 8 (Dec. 12, 2012, 12:47:31 PM), http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=d86b4d1f-bf89-4828-aec1-5e24a2e436ac.

[34] Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Jared Blumenfeld, Reg'l Adm'r, U.S. Envtl. Prot. Agency Region 9 (Mar. 18, 2013).

[35] *Id.*

[36] Letter from Arvin Ganesan, Assoc. Adm'r, U.S. Envtl. Prot. Agency, to Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works (Apr. 9, 2013).

"There's nothing wrong with this."[37] Despite EPA's protestations to the contrary, using a personal email address to conduct official business violates its own internal policy. Accordingly, the Committee notified Blumenfeld that EPA's response was inadequate as it required a direct response from him as to whether or not he used non-official email accounts to conduct agency business. After several inquiries went unanswered, the Committee received a response letter from Blumenfeld on September 6, 2013, certifying that he has in fact used a non-official email account for agency business.[38]

The use of private email to conduct agency business is not restricted to EPA's regional offices, as the Committee has discovered that multiple senior officials at EPA headquarters engaged in such email practices. Notably, former Administrator Lisa Jackson on at least one occasion instructed an environmental lobbyist with Siemens Corporation to communicate via Jackson's personal email account.[39] In response to a letter by Ranking Member Vitter and House Committee on Oversight and Government Reform Chairman Darrell Issa questioning Jackson's personal email use, Jackson's attorney indicated that the former Administrator had used personal email, but she no longer has responsive emails in her possession.[40] The Committee has also uncovered emails that reveal former Senior Policy Counsel Bob Sussman[41] and former Associate Administrator for Congressional and Intergovernmental Relations David McIntosh[42] used private email accounts to conduct Agency business.

Finally, it has come to the Committee's attention that EPA encourages the use of instant messaging (IM) via platforms like "Sametime Connect," "G-Chat," and AOL Instant Messenger

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[37] Press Release, U.S. Senate Comm. on Env't & Public Works, *Eye on the EPA: Transparency Request #2, Inconsistent E-mail Practices and Policies* (Apr. 23, 2013), http://www.epw.senate.gov/public/index.cfm?FuseAction=Minority.Blogs&ContentRecord_id=38b021a0-b096-a376-6e0f-3a95fab62e39.

[38] Letter from Jared Blumenfeld, Reg'l Adm'r, U.S. Envtl. Prot. Agency Region 9, to Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works (Sept. 6, 2013).

[39] Specifically, Jackson instructed, "P.S. Can you use my home email rather than this one when you need to contact me directly? Tx, Lisa." E-mail from Alison Taylor, Vice President, Siemens Corp., to Lisa Jackson, Adm'r, U.S. Envtl. Prot. Agency, as "Richard Windsor" (Dec. 8, 2009, 06:55 PM), http://www.epa.gov/epafoia1/docs/Fifth_Release_Attachments_Part_A.pdf;

[40] Letter from Barry Coburn, Coburn & Greenbaum PLLC, to Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works (Sept. 4, 2013).

[41] E-mail from Bob Sussman, to Lisa Jackson as Richard Windsor, Adm'r, U.S. Envtl. Prot. Agency (Feb. 16, 2009, 09:21 AM).

[42] E-mail from David McIntosh, to Lisa Jackson as Richard Windsor, Adm'r, U.S. Envtl. Prot. Agency (Mar. 9, 2010, 05: 12 PM).

to communicate with individuals outside the Agency.[43] While EPA policy explicitly states that content on IMs can be considered a federal record,[44] the Committee is not aware of a single instance of EPA releasing IMs in response to a FOIA or Congressional request.[45] Although the Agency has prompted the EPA's Inspector General to focus on potential problems relating to EPA's treatment of IMs,[46] this merely acknowledges the problem without providing a solution, or notifying the public of deficiencies in prior FOIA responses.

Inadequate Records Management

In order to fulfill their obligations under the Federal Records Act (FRA) and the Freedom of Information Act (FOIA), federal agencies should have a sensible system to access documents to adequately preserve records and respond to FOIA requests. Specifically, the U.S. Attorney General has advised that "[o]pen government requires not just a presumption of disclosure, but also an *effective system* for responding to FOIA requests. Each agency must be fully accountable for its administration of the FOIA" (emphasis added).[47] However, the Committee has uncovered several defects in EPA's system of preserving and searching for records. The use of both alias and personal email accounts has significant implications for transparency and will impede record collection efforts. In addition, EPA's record keeping ability has been impaired by the recent migration to a new server, poor employee training, and minimal support from the Department of Justice.

Prior to EPA's transition to Microsoft Office 365 on February 19, 2013, each EPA employee was responsible for proactively selecting emails as records to be archived, then

[43] PowerPoint, U.S. Envtl. Prot. Agency, *Web Collaboration Tools WWG* (2010) *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=9ff2bab4-4e26-4fe1-b9b7-bc7f2f8bc51e.

[44] NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, *Frequently asked questions about Instant Messaging*, http://www.archives.gov/records-mgmt/initiatives/im-faq.html (last accessed Sept. 6, 2013).

[45] This includes an extensive search of EPA's FOIA responses available on FOIAonline. *See* https://foiaonline.regulations.gov/foia/action/public/search (last accessed Sept. 6, 2013).

[46] Letter from Hon. Bob Perciasepe, Acting Adm'r, U.S. Envtl. Prot. Agency, to all employees of the U.S. Envtl. Prot. Agency (Apr. 8, 2013) *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=8ce8ca6f-58f2-45e2-9a2c-c1ba65ec88f1.

[47] Memorandum from U.S. Attorney General Eric Holder, *The Freedom of Information Act* (Mar. 19, 2009) *available at* http://www.justice.gov/ag/foia-memo-march2009.pdf.

moving them into separate files within the former Lotus Notes system. This system gave too much discretion to an individual employee; essentially it was an honor system whereby individual employees were trusted with the authority to capture what they deemed to be potentially responsive records. Under this system, searches for responsive records to a FOIA request may be limited to the handpicked records an employee retained. Accordingly, this system had the potential to impede the American people's rightful access to government information. While the EPA no longer uses Lotus Notes, EPA's recent transition to Microsoft Office has generated similar challenges. Importantly, EPA employees continue to maintain a considerable amount of discretion in determining which documents are preserved as federal records and which documents are responsive to FOIA requests.[48]

Need for Records Training of All Employees

While EPA's system to preserve records is inadequate, more troubling is the lack of oversight over individual employee retention of responsive records and subsequent searches under FOIA. According to former Acting Administrator Bob Perciasepe, recordkeeping is "a daily responsibility of every EPA employee. Maintaining records consistent with our statutory and regulatory obligations is a central tenet for doing the public's business in an open and transparent manner."[49] However, absent consistent and mandatory training on the preservation and collection of records, Perciasepe's directive was empty.

Evidence suggests that the manner in which EPA has trained its staff on the implementation of transparency laws is insufficient. Notably, there is an apparent disconnect between EPA headquarters (HQ) and EPA regional offices on how to comply with FOIA. When an individual submits a FOIA request, EPA HQ sends the request to either the appropriate office

[48] Perciasepe stated, "The Agency has employees whose work responsibilities include managing, coordinating and responding to FOIA requests, but we all have the responsibility to know and be aware of our FOIA obligations so that we can respond appropriately and fully when requested." Letter from Hon. Bob Perciasepe, Acting Adm'r, U.S. Envtl. Prot. Agency, to all employees of the U.S. Envtl. Prot. Agency (Apr. 8, 2013) *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=8ce8ca6f-58f2-45e2-9a2c-c1ba65ec88f1.

[49] Letter from Hon. Bob Perciasepe, Acting Adm'r, U.S. Envtl. Prot. Agency, to all employees of the U.S. Envtl. Prot. Agency (Apr. 8, 2013) *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=8ce8ca6f-58f2-45e2-9a2c-c1ba65ec88f1.

within HQ, or to the regional office wherein responsive documents may be located.[50] However, regional offices do not have adequate access to guidance from the Office of General Counsel (OGC). Furthermore, the Committee has learned that regional employees have not taken the proper training and lack a comprehensive understanding of how to process a FOIA request.

As a result, EPA fields a team of oft-confused and misinformed staff. In one instance, a Region 6 official expressed this lack of sufficient training in an email: "I cannot provide guidance on what can be released. According to ORC [the Office of Regional Counsel], we should have taken that training and are apparently on our own."[51] Additionally, another befuddled regional employee stated her frustration in determining the FOIA processing costs on a different occasion: "I cannot figure out how we would have an estimate until everyone has finished their search for responsive documents? Bottom line – how do I answer OGCs e-mail so we sound like we know what we are doing?"[52] In light of these communications, the Committee is concerned that EPA employees nation-wide are not receiving adequate training from HQ or support from ORC, OGC, and FOIA officers.

Aside from EPA's internal offices, the Office of Information Policy within the Department of Justice (DOJ) has the responsibility of encouraging and enforcing agency compliance with FOIA and ensuring that relevant guidelines are implemented across the government.[53] As such, the Committee alerted Attorney General Eric Holder to the dangers of EPA's current records management practices and lack of training.[54] The Committee requested that Attorney General Holder initiate an investigation into the EPA's FOIA practices and brief

[50] Briefing for staff of S. Comm. on Env't & Pub. Works & H. Comm. on Oversight & Gov't Reform, including James B. Martin, former Adm'r, U.S. Envtl. Prot. Agency Region 8 (Apr. 22, 2013); *See also* U.S. ENVTL. PROT. AGENCY, *Freedom of Information Act (FOIA): Policy and Guidance*, http://www.epa.gov/epafoia1/reference.html (last accessed Sept. 6, 2013).

[51] E-mail from Joe Kordzi, U.S. Envtl. Prot. Agency Region 6, to Carrie Thomas, U.S. Envtl. Prot. Agency Region 6 (Jan. 4, 2011, 11:19 AM) *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=cd4e677a-52b9-412f-9464-d2963fee7dec.

[52] E-mail from Lucinda Watson, U.S. Envtl. Prot. Agency Region 6, to Carrie Thomas, U.S. Envtl. Prot. Agency Region 6 (Jan. 13, 2011, 12:49 PM) *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=cd4e677a-52b9-412f-9464-d2963fee7dec.

[53] Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, Hon. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, to Eric Holder, Attorney General, U.S. Dep't of Justice (Mar. 7, 2013).

[54] Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, Hon. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, to Eric Holder, Attorney General, U.S. Dep't of Justice (Mar. 7, 2013).

Congressional staff on the results by April 4, 2013.[55] After several months, DOJ provided a delayed response letter on July 26, 2013, which affirmed the Committee's concerns.[56]

Expectations for Reform

Although EPA has done little to prove its commitment to training its employees thus far, the Committee acknowledges EPA's recent promises for reform. In a response letter to the Committee on April 8, 2013, former Acting Administrator Bob Perciasepe reiterated the Obama Administration's commitment to transparency and ensuring accountability within the Agency. He made concessions that "further improvements" should be made, and notified the Committee that he had:

> Charged [EPA's] Assistant Administrator for the Office of Environmental Information with, among other things: (1) providing mandatory in-depth training of FOIA coordinators, officers, employees and managers who make decisions on the release of documents by December 31, 2013, with a focus on exemptions, redactions and discretionary release, and (2) providing FOIA training for all EPA staff in FY 2014 focusing on what is a FOIA request, roles and responsibilities in responding to FOIA requests, timeliness of response, and exemptions and discretionary release. FOIA training also will become a mandatory part of new employee orientation.[57]

These steps appear promising, as the Agency attempts to "strive for excellence with respect to transparency and accountability."[58] However, until reforms have been implemented and tested against the letter and spirit of the law, judgment should be reserved.

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[55] *Id.*
[56] Letter from Peter J. Kadzik, Principal Dep. Assistant Attorney General, U.S. Dep't of Justice, to Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (July 26, 2013).
[57] Letter from Hon. Bob Perciasepe, Acting Adm'r, U.S. Envtl. Prot. Agency, to Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works (Apr. 8, 2013).
[58] Letter from Hon. Bob Perciasepe, Acting Adm'r, U.S. Envtl. Prot. Agency, to Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works (Apr. 8, 2013).

EPA's Duty to be Responsive

The impediments to EPA transparency extend beyond EPA's framework for managing information and identifying responsive documents. EPA's shortcomings also involve the manner in which EPA responds to FOIA requests, including the prolific, and often inappropriate, use of exemptions to withhold information from the public, as well as the scope of responses to FOIA requests.[59] These failures prevent the Agency from satisfying its duty to be proactive in disclosing information to the public, as well as its duty to respond fully and promptly to the request.

EPA has a duty to be responsive and impartial in responding to all FOIA requests. The Department of Justice, the agency charged with overseeing compliance with the FOIA, articulated clear instructions for every agency to follow. According to these guidelines, agencies should not withhold information simply because it may do so legally. Rather, the Attorney General strongly encourages agencies to closely evaluate responsive material and release even protected information when doing so will not harm the agency's protected interest. In carrying out this duty, agencies are encouraged to make discretionary, and if appropriate, partial disclosures of information.[60] In every case, agencies should take reasonable steps to segregate and release non-exempt information. Under no circumstances should the agencies "keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."[61]

However, EPA has time and again failed to live up to these clear transparency objectives. According to the Society for Environmental Journalists (SEJ), "The EPA is one of the most closed, opaque agencies to the press" and "the policies [Gina McCarthy] endorsed bottleneck the free flow of information to the public."[62] The EPW Committee has also uncovered substantial evidence that the EPA struggles to realize the President's commitment to transparency, though

[59] Floor Speech by Senator David Vitter, U.S. Senate, 113th Cong., Mar. 13, 2013, *available at* http://congress.gov/cgi-lis/query/D?r113:10:./temp/~r113l472qJ::
[60] Memorandum from Eric Holder, U.S. Attorney General, Dep't of Justice, (Mar. 19, 2009), *available at* http://www.justice.gov/ag/foia-memo-march2009.pdf.
[61] Memorandum from Eric Holder, U.S. Attorney General, Dep't of Justice, (Mar. 19, 2009), *available at* http://www.justice.gov/ag/foia-memo-march2009.pdf.
[62] Open letter from the Society of Environmental Journalists (Apr. 10, 2013), *available at* http://www.sej.org/new-epa-head-must-ensure-transparency-reversing-block-reporters-access.

they are not alone in this shortcoming.[63] On multiple occasions, the Committee has uncovered instances where EPA has either acted deliberately or out of extreme carelessness to delay and obstruct FOIA requests from American citizens. As a result, Congress, the press, and ultimately the America people have been denied their statutory right to know what the EPA is doing.

Falling Short of the Standard

The Committee has learned of multiple instances in which EPA's FOIA response has fallen woefully short of fulfilling its duty to be responsive and impartial. In March 2013, the Committee brought its concerns to the Department of Justice and requested an investigation into inappropriate FOIA practices at EPA. In this letter, several members of Congress raised concerns that EPA had a standard protocol for responding to undesirable FOIA and fee waiver requests.[64] Specifically, the letter focused on email correspondence whereby Geoffrey Wilcox of the Office of General Counsel (OGC) advised a Region 6 official:

> Unless something had changed, my understanding is that there are some standard protocols we usually follow in such FOIA requests. One of the first steps is to alert the requestor that they need to narrow their request because it is overbroad, and secondarily that it will probably cost more than the amount of $ they agreed to pay.[65]

Essentially, the OGC advised the region that the EPA policy is to impose procedural and financial hurdles for the requester. This stands in sharp contrast to the Attorney General's instruction that "FOIA professionals should be mindful of their obligation to work 'in a spirit of

[63] Steve Inskeep, *AP Analysis Finds U.S. Tightening Grip on Information*, NATIONAL PUBLIC RADIO, Mar. 13, 2013, http://www.npr.org/2013/03/13/174174579/ap-analysis-finds-u-s-tightening-grip-on-information.

[64] Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, Hon. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, to Eric Holder, Attorney General, U.S. Dep't of Justice (Mar. 7, 2013).

[65] E-mail from Geoffrey Wilcox, Office of General Counsel, U.S. Envtl. Prot. Agency, to Joe Kordzi, U.S. Envtl. Prot. Agency Region 6 (Jan. 12, 2011, 05:22 PM) *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=cd4e677a-52b9-412f-9464-d2963fee7dee.

cooperation' with FOIA requesters, as President Obama has directed. Unnecessary bureaucratic hurdles have no place in the 'new era of open Government' that the President has proclaimed."[66]

Furthermore, the Committee is aware of other examples where the Agency has either acted with extreme carelessness or mal intent. For example, EPA literally lost a FOIA request submitted by the U.S. Chamber of Commerce (Chamber), and demonstrated complete disregard for missed statutory deadlines.[67] In this instance, EPA originally requested and Chamber granted a 45-day extension to respond to the FOIA request on September 14, 2012, which pushed EPA's deadline to December 1, 2012.[68] However, EPA missed this deadline and on January 25, 2013, EPA informed the Chamber that the request no longer appeared on the Agency's FOIA list.[69] As of March 1, 2013 – after eight months of no progress - it was determined that the FOIA request was definitely lost.[70]

Insufficient and Falsified Responses

The EPW Committee is also aware that EPA has failed to fully respond to other FOIA requests. One example includes EPA's response to a FOIA inquiry from the Competitive Enterprise Institute (CEI), which requested EPA's FOIA fee waiver determinations from January 1, 2012 to April 26, 2013.[71] While EPA's response included over 1,200 pages of documents to

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[66] Memorandum from Eric Holder, U.S. Attorney General, Dep't of Justice, (Mar. 19, 2009), *available at* http://www.justice.gov/ag/foia-memo-march2009.pdf.

[67] *The Obama Administration's Regulatory War on Jobs, the Economy, and America's Global Competitiveness: Hearing Before the Subcomm. on Regulatory Reform, Commercial & Antitrust Law of the H. Comm. on the Judiciary*, 113th Cong. 12 (2013) (testimony of William L. Kovacs, Senior Vice President, Env't, Tech., & Regulatory Affairs, U.S. Chamber of Commerce) *available at* http://judiciary.house.gov/hearings/113th/02282013/Kovacs%2002282013.pdf [hereinafter *Kovacs Testimony before H. Subcomm. on Regulatory Reform, Commercial & Antitrust Law, 2013*].

[68] Kovacs Testimony before H. Subcomm. on Regulatory Reform, Commercial & Antitrust Law, 2013.

[69] Kovacs Testimony before H. Subcomm. on Regulatory Reform, Commercial & Antitrust Law, 2013.

[70] Kovacs Testimony before H. Subcomm. on Regulatory Reform, Commercial & Antitrust Law, 2013.

[71] FOIA request submitted by Christopher C. Horner, Competitive Enterprise Institute, Tracking No. EPA-HQ-2013-004176, FOIAonline (Mar. 5, 2013), *available at* https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d2800340b9.

CEI, the Agency did not provide a complete response, as the Committee uncovered at least one responsive document submitted to the Institute for Energy Research (IER) that was withheld.[72]

This particular exclusion is noteworthy, as it appears that the correspondence in question, which was not produced by EPA, was actually doctored by the Agency. IER received the doctored letter in response to a FOIA request, sent on November 19, 2012, which asked for documents related to Administrator Jackson's potential use of an alias email address to avoid public scrutiny of the Agency's activities on the Keystone XL pipeline permit application.[73] EPA denied this request in a letter dated December 1, 2012.[74] However, backlighting revealed that the letter was originally dated December 18, 2012.[75] While it is possible the Agency altered the date to fix an administrative mistake, the Committee suspects that EPA acted with negligence or continued effort to delay the response, followed by a deliberate attempt to mislead. EPA would have had a motive to deceive because agencies are required to respond to FOIA requests within 20 business days, and may not request an extension for more than ten working days, except in unusual circumstances.[76] Moreover, under the OPEN Government Act of 2007, "An agency cannot assess fees if the response is delayed beyond thirty days of the initial request date."[77] Accordingly, it appears that EPA deliberately altered the date to avoid the legal consequences of missing a deadline and then excluded this document from a FOIA production to avoid scrutiny and embarrassment.[78] Namely, EPA would not have been legally able to assess IER fees if they had, in fact, missed their statutory deadline.

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[72] Letter from Larry F. Gottesman, National FOIA Officer, U.S. Envtl. Prot. Agency, to Daniel Simmons, Institute for Energy Research (Dec. 1, 2013), *available at* http://www.instituteforenergyresearch.org/wp-content/uploads/2013/01/EPA-FOIA-Fee-Waiver-Denial-12.31.12.pdf.

[73] Press Release, Institute for Energy Research, *IER Renews Keystone KL FOIA Request, Cites Lisa Jackson Alias* (Nov. 19, 2012) *available at* http://www.instituteforenergyresearch.org/2012/11/19/ier-renews-keystone-xl-foia-request-cites-lisa-jackson-alias/.

[74] Letter from Larry F. Gottesman, National FOIA Officer, U.S. Envtl. Prot. Agency, to Daniel Simmons, Institute for Energy Research (Dec. 1, 2013) *available at* http://www.instituteforenergyresearch.org/wp-content/uploads/2013/01/EPA-FOIA-Fee-Waiver-Denial-12.31.12.pdf.

[75] Press Release, Institute for Energy Research, *Breaking News: EPA Cover-up Exposed?* (Jan. 16, 2013) *available at* http://www.instituteforenergyresearch.org/2013/01/16/epa-cover-up-exposed/; *see also* Image of backlit letter *available at* http://www.instituteforenergyresearch.org/?attachment_id=15331.

[76] *See* 5 U.S.C. § 552(a)(6).

[77] *See* 5 U.S.C. § 552 (a)(6)(C)(iii).

[78] Press Release, Institute for Energy Research, *Breaking News: EPA Cover-up Exposed?* (Jan. 16, 2013), http://www.instituteforenergyresearch.org/2013/01/16/epa-cover-up-exposed/.

Misapplication and Abuse of Exemptions

EPA has not only manipulated the FOIA process; the Agency has also exploited FOIA to protect its own interests while disregarding the public interest.[79] While FOIA provides nine exemptions designed to protect the disclosure of delicate information,[80] President Obama has made clear to federal agencies that "The [FOIA] should be administered with a clear presumption: In the face of doubt, openness prevails."[81] Despite the President's directive, the Committee has observed EPA excessively applying FOIA exemption 5 and 6 to redact information that should be open to the public.

EPA frequently invokes exemption 5, an exemption meant to safeguard the government's deliberate policymaking process, to information the statute did not intend to shield, such as employees' reaction to news articles. This information is clearly inconsequential to an agency's deliberative process.[82] Moreover, President Obama has previously instructed federal agencies that information should not be redacted "merely because officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve."[83] In other FOIA releases, EPA has redacted the entire email message, including the subject, the text and signature block by repeatedly claiming deliberative process under exemption 5.[84] As a practical matter,

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[79] Letter from Hon. Deb Fischer, U.S. Senator, Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. James Inhofe, U.S. Senator, Hon. John Barrasso, U.S. Senator, Hon. Mike Crapo, U.S. Senator, Hon. Roger Wicker, U.S. Senator, Hon. John Boozman, U.S. Senator, Hon. Jeff Sessions, U.S. Senator, to Hon. Bob Perciasepe, Acting Adm'r, U.S. Envtl. Prot. Agency (Apr. 4, 2013).

[80] *See* 5 U.S.C. § 552.

[81] Memorandum from President Barack Obama, 74 Fed. Reg. 4683 (Jan. 21, 2009), *available at* http://www.whitehouse.gov/the_press_office/FreedomofInformationAct.

[82] Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Govt. Reform, Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, to Hon. Gina McCarthy, Assistant Adm'r for the Office of Air and Radiation, U.S. Envtl. Prot. Agency (Apr. 10, 2013).

[83] Memorandum from President Barack Obama, 74 Fed. Reg. 4683 (Jan. 21, 2009), *available at* http://www.whitehouse.gov/the_press_office/FreedomofInformationAct.

[84] *See* Part A, Release 2 - HQ- FOI-01268-12, Email from Allyn Brooks-LaSure to Richard Windsor (Apr. 15, 2009, 01268-EPA-97); Email from Seth Oster to Richard Windsor (June 24, 2009, 01268-EPA-207); Email from Scott Fulton to Richard Windsor (Aug. 15, 2009, 01268-EPA-261), http://www.epa.gov/foia/docs/Part-A-HQ-FOI-01268-12-ReleaseRedact-NoAttachments-Production-2.pdf (last accessed Apr. 8, 2013); *see also* Part C, Release 2 - HQ-FOI-01268-12, Email from Seth Oster to Richard Windsor (Jan. 20, 2010, 01268-EPA-527); Email from Seth Oster to Richard Windsor (Jan. 8, 2010, 01268-EPA-518); Email from Arvin Ganesan to Richard Windsor (Feb. 24, 2010, 01268-EPA-548), http://www.epa.gov/foia/docs/Part-C-HQ-FOI-01268-12-ReleaseRedact-NoAttachments-Production-2.pdf(last accessed Apr. 8, 2013).

such redactions render the document completely unresponsive. Moreover, this practice ignores the U.S. Attorney General's instructions to identify portions of a document that may be released, even if other sections contain protected information.[85]

In addition, the Committee has discovered instances where EPA applies exemption 6 to withhold EPA officials' email addresses. However, the U.S. Attorney General's guidance states that exemption 6 applies only when an individual's personal interest in protecting information outweighs the public interest in obtaining the information.[86] The rule requires a balancing test where the courts, the Attorney General and President Obama have instructed agencies to give weight to the public interest and encourage public disclosure.[87] The Supreme Court has interpreted the public interest as the American people's desire to know "what the government is up to."[88] While the privacy of personal information deserves delicate treatment in this analysis, the Supreme Court has cautioned that the privacy interest in exemption 6 "belongs to the individual, not the agency holding the information."[89] Based on these facts and legal analysis, it is clear that EPA had unjustifiably used FOIA exemption 6 to withhold the Richard Windsor email address, as well as others, that the public has a right to know.

EPA's Responsibility to Remain Unbiased

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[85] Memorandum from Eric Holder, U.S. Attorney General, Dep't of Justice, (Mar. 19, 2009), *available at* http://www.justice.gov/ag/foia-memo-march2009.pdf; *see also* Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Govt. Reform, to Hon. Gina McCarthy, Assistant Adm'r for the Office of Air and Radiation, U.S. Envtl. Prot. Agency (Apr. 10, 2013).

[86] Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Govt. Reform, Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Technology, to Hon. Arthur Elkins, Inspector General, U.S. Envtl. Prot. Agency (Feb. 7, 2013).

[87] Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Govt. Reform, Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, to Hon. Gina McCarthy, Assistant Adm'r for the Office of Air and Radiation, U.S. Envtl. Prot. Agency (Apr. 10, 2013); *see also* Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Govt. Reform, Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Technology, to Hon. Arthur Elkins, Inspector General, U.S. Envtl. Prot. Agency (Feb. 7, 2013).

[88] *NARA v. Favish,* 541 U.S. 157, 171-72 (2004) (quoting *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)); *see also* Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Govt. Reform, Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Technology, to Hon. Arthur Elkins, Inspector General, U.S. Envtl. Prot. Agency (Feb. 7, 2013).

[89] Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't. & Pub. Works, Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Govt. Reform, Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Technology, to Hon. Arthur Elkins, Inspector General, U.S. Envtl. Prot. Agency (Feb. 7, 2013), note 10.

In addition to the EPA's troubles with transparency, there are serious questions related to the cozy relationship between EPA leadership and environmental allies. The Committee is concerned that EPA's leadership has abandoned the historic model of specialized public servant who seeks to fairly administer the law and has instead embraced a number of controversial tactics to advance a radical green agenda, while avoiding meaningful accountability. Agencies are extended great deference under the law because they are theoretically composed of neutral, non-biased, highly specialized public servants with "more than ordinary knowledge" about certain policy matters.[90] Further, agencies are bound to a policy of neutrality pursuant to the Administrative Procedure Act (APA).[91] The APA guarantees due process and equal access to information for all citizens and serves as yet another important access tool for those seeking information about government activities.[92] However, the Committee uncovered EPA's practices that deviate from these neutrality requirements, including, biased processing of FOIA fee waiver requests and FOIA administration that neglects the public interest.

Politicizing Fee Waivers

The Committee has raised concerns over what appears to be a clear and inappropriate bias at EPA to award fee waiver requests for national environmental organizations, while at the same time categorically denying fee waivers requested by states, and rejecting the majority of fee waiver requests from conservative-leaning groups.[93] This is troubling because the "fee waiver"

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[90] *See Chevron v. U.S.*, 467 U.S. 487, 482-84 (1984). It is a "well settled principle" that great deference is accorded to agencies by the Court when Congress has remained silent on the issue and a full understanding of the policy in the given situation calls for a level of "more than ordinary knowledge" of the matter. This deference is provided for in situations in which the agency's construction of the statute is not arbitrary, capricious, or manifestly contrary to the statute.

[91] The Administrative Procedure Act, 5 U.S.C. § 500 *et seq* (1946). See also, *Administrative Procedure Hearings Before the Committee on the Judiciary The U.S. House of Representatives, Seventy-ninth Congress, First Session: On the Subject of Federal Administrative Procedure,* 79th Cong. 49 (1945) (statement of David A Simmons, President, American Bar Association).

[92] *Id. See also* CONG. REC. March 26, 1946 at 298 (statement by Willis Smith), *available at* http://www.justice.gov/jmd/ls/legislative_histories/pl79-404/proceedings-05-1946.pdf, "The purpose of which is to improve the administration of justice by prescribing fair administrative procedure. [The APA] is a bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the federal government."

[93] Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. James Inhofe, Ranking Member, S. Subcomm. on Oversight, Comm. on Env't & Pub. Works, Hon. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Hon. Bob Perciasepe, Acting Adm'r, U.S. Envtl. Prot. Agency (May 17, 2013) [hereinafter *FOIA Fee Waiver Letter*].

provision under the law is the primary way to provide the public with a pathway to obtain government documents.[94] Otherwise, fees associated with the collection and dissemination of this data could pose an insurmountable hurdle to the public.[95] Accordingly, the law allows an agency to waive fees if the release of information will benefit the public as a whole. Specifically, the law states: "Fees may be waived or reduced if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."[96]

Under the Obama Administration, EPA has failed to embrace the principals behind the FOIA fee waiver process. Instead, the Agency has used the process to subsidize their allies' access to information. In effect, EPA has unequivocally politicized the fee waiver process.[97] After reviewing over 1,200 pages of EPA fee waiver determination letters sent between January 1, 2012, and April 26, 2013, the Committee has identified clear patterns of misuse.[98] Based on the Committee's analysis, EPA granted 92% of requests for fee waivers made by key environmental groups, such as Sierra Club, EarthJustice, National Resources Defense Council, and Public Employees for Environmental Responsibility.[99] In a shocking disparity, EPA only granted fee waivers for conservative-leaning think tanks 27% of the time.[100] Moreover, EPA denied nearly every request for a fee waiver from state, local, and tribal government entities.[101] Based on this analysis, it appears that EPA facilitates the FOIA process by granting fee waivers for major environmental groups, while simultaneously using it as a barrier against states and conservative organizations.[102] This clear abuse of discretion suggests that EPA's actions may be part of a broader scheme to advance the Agency's political agenda.

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[94] *See* 5 U.S.C. 552.
[95] H.R. REP. No. 109-226, A CITIZEN'S GUIDE ON USING THE FREEDOM OF INFORMATION ACT AND THE PRIVACY ACT OF 1974 TO REQUEST GOVERNMENT RECORDS (2005), *available at* http://www.gpo.gov/fdsys/pkg/CRPT-106hrpt50/pdf/CRPT-106hrpt50.pdf [hereinafter *Citizen's Guide to FOIA*].
[96] Citizen's Guide to FOIA.
[97] FOIA Fee Waiver Letter.
[98] FOIA Fee Waiver Letter.
[99] FOIA Fee Waiver Letter, attachment, 2.
[100] FOIA Fee Waiver Letter, attachment, 4.
[101] FOIA Fee Waiver Letter, attachment, 3.
[102] FOIA Fee Waiver Letter, attachment, 1.

On May 17, 2013, the Committee informed the Agency of this discrepancy and requested additional information as well as a briefing, to repair the problem.[103] In response, EPA spokeswoman Alisha Johnson made a statement to the press that EPA "make[s] FOIA waiver determinations based on legal requirements, and these are consistently applied to all fee-waiver requests, so those determinations are not based on the identity of the reporter or the requester in general... to ensure that [EPA's] FOIA process remains fair and transparent."[104] Despite these statements, former Acting Administrator Perciasepe requested that the EPA's Office of the Inspector General (OIG) conduct an audit into the Agency's FOIA fee waiver practices.[105]

Notwithstanding the OIG's investigation into EPA's FOIA fee waiver process, Congressional oversight is required. The commitment by the OIG to evaluate "equity in decision making used by EPA for fee-waiver decisions"[106] is undermined by more recent public statements by the Agency, claiming that advocates never had to pay any fees to the EPA, regardless of whether the Agency officially waived the cost.[107] This is a red herring that ignores the fact that as a matter of law EPA could not assess fees, and glosses over the real issue: the Agency erected procedural barriers for states and conservative groups in an effort to delay or avoid responding to the request. Accordingly, these statements call into question the Agency's sincerity in resolving the matter.

Improper Release of Private Citizens' Information

In addition to EPA's bias in granting fee waivers for national environmental groups, EPA has also improperly released private and confidential business information of farmers and

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[103] FOIA Fee Waiver Letter.
[104] Jillian Kay Melchior, *The EPA's Conservative Problem*, NATIONAL REVIEW, May 22, 2013, http://www.nationalreview.com/article/349009/epa%E2%80%99s-conservative-problem-jillian-kay-melchior.
[105] Memorandum from Carolyn Copper, Asst. Inspector General, Office of Program Evaluation, U.S. Envtl. Prot. Agency Office of Inspector General, to Malcolm D. Jackson, Asst. Adm'r and Chief Information Officer, Office of Environmental Information,. U.S. Envtl. Prot. Agency, *Notification of Evaluation of EPA's Freedom of Information Act Fee Waiver Process* (Jun. 19, 2013) *available at* http://www.epa.gov/oig/reports/notificationMemos/newStarts_06-19-13_FOIA_Fee_Waiver_Process.pdf.
[106] Memorandum from Carolyn Copper, Asst. Inspector General, Office of Program Evaluation, U.S. Envtl. Prot. Agency Office of Inspector General, to Malcolm D. Jackson, Asst. Adm'r and Chief Information Officer, Office of Environmental Information,. U.S. Envtl. Prot. Agency, *Notification of Evaluation of EPA's Freedom of Information Act Fee Waiver Process* (Jun. 19, 2013), *available at* http://www.epa.gov/oig/reports/notificationMemos/newStarts_06-19-13_FOIA_Fee_Waiver_Process.pdf.
[107] Erica Martinson, *EPA: Numbers disprove conservative claim of bias*, POLITICO PRO, Jun. 10, 2013, http://www.politico.com/story/2013/06/epa-numbers-disprove-conservative-claim-of-bias-92460.html.

ranchers to national environmental groups. For years environmentalist have been advocating for the regulation of concentrated animal feeding operations (CAFOs). In response, EPA has attempted, on several occasions, to collect comprehensive data from CAFOs.[108] EPA proposed a rule (CAFO Reporting Rule) in October 2011 that would have required CAFO owners to submit information on their operations, including location and contact information. EPA withdrew this rule in July 2012 and instead began working with states to gather the data. Before any of the CAFO data collected by EPA was made public, EarthJustice, Natural Resources Defense Council (NRDC) and the Pew Charitable Trust, submitted FOIA requests for the data in October 2012.[109] This timeline alone suggests that these groups were privy to EPA's plan to collect the data, and raises the possibility that EPA may have been collecting the data on the groups' behalf. Moreover, Acting Administrator for the Office of Water, Nancy Stoner, previously served as the Co-Director of the NRDC's water program.[110] Accordingly, it appears that a former NRDC employee released non-public information to her former colleagues on a matter she had worked on prior to her employment at the EPA.

In addition to EPA serving as an apparent information bundler for these environmental allies, the Agency also handed over all the data without any consideration for the farmers' and ranchers' information that was enclosed. As a result, EPA included private information of CAFO owners that should have been redacted, including the precise locations of CAFOs, the animal type and number of head therein, as well as their personal contact information, including names, addresses, phone numbers, and email addresses.[111] Importantly, such release of personal contact information could result in serious and unacceptable risks for farmers, ranchers, and their families – a risk exemption 6 was designed to avoid.[112] FOIA exemption 6 was intended to protect private citizens and private information; it was not intended to hide public records as EPA has practiced throughout the Obama Administration.

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[108] Letter from Hon. Deb Fischer, U.S. Senator, Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. James Inhofe, U.S. Senator, Hon. John Barrasso, U.S. Senator, Hon. Mike Crapo, U.S. Senator, Hon. Roger Wicker, U.S. Senator, Hon. John Boozman, U.S. Senator, Hon. Jeff Sessions, U.S. Senator, to Hon. Bob Perciasepe, Acting Adm'r, U.S. Envtl. Prot. Agency (Apr. 4, 2013) [hereinafter *CAFO Letter*].
[109] *Id.*
[110] U.S. Envtl. Prot. Agency, *About EPA: Nancy Stoner, Acting Assistant Administrator for Water*, http://www2.epa.gov/aboutepa/nancy-stoner-acting-assistant-administrator-water (last accessed Jul. 10, 2013).
[111] EPA's release of the geographical location and the animal specifications of CAFOs falls within the broad definition of business information and should have been withheld. *See* CAFO Letter.
[112] *Id.*

The Committee wrote EPA expressing its concerns over the CAFO FOIA response on April 4, 2013, and asked a series of questions on EPA's handling of the request.[113] EPA subsequently admitted their FOIA response included private information of CAFO owners in ten states and then asked the three FOIA requesters to either destroy or return EPA's original FOIA response.[114] Thereafter, EPA provided the FOIA requesters with new copies of the response that included redactions for the same ten states.[115] In providing the data a second time, Nancy Stoner said: "The EPA has thoroughly evaluated every data element from each of these states and concluded that personal information ... implicates a substantial privacy interest that outweighs any public interest in disclosure."[116] However, within weeks of the second release, EPA acknowledged that the Agency had failed to conduct a thorough review and had *again* released data that should have been redacted.[117] Accordingly, EPA asked the three requesters to destroy or return the second FOIA response and thereafter, the Agency had to send the three requesters a newly redacted response – a *third* time.[118] Subsequently, the American Farm Bureau and the National Pork Producers Council have obtained a temporary restraining order in federal district court asking the court to prevent EPA from releasing additional information on livestock producers under FOIA.[119]

On July 15, 2013, the Committee received a delayed response letter from EPA, which failed to address the Committee's concerns.[120] In the first instance, the response did not include any of the requested documents relating to the FOIA requests. Moreover, the response failed to identify the EPA officials in charge of investigating the release and those responsible for processing the FOIA requests. Indeed, the response affirmed the Committee's concerns that the information released included "personal information – personal names, phone numbers, email addresses, individual mailing addresses (as opposed to business addresses) and some notes related to personal matters – implicates a privacy interest that outweighs any public interest in

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[113] *Id.*
[114] Letter from Nancy Stoner, Acting Assistant Adm'r for the Office of Water, U.S. Envtl. Prot. Agency, to Agricultural Groups (Feb. 28, 2013).
[115] *Id.*
[116] *Id.*
[117] Amanda Peterka, *EPA stumbles again in releasing more CAFO documents*, ENVIRONMENT & ENERGY DAILY, May 3, 2013, http://www.eenews.net/stories/1059980558.
[118] *Id.*
[119] *Id.*
[120] Letter from Nancy Stoner, Acting Assistant Adm'r for the Office of Water, U.S. Envtl. Prot. Agency, to Hon. Deb Fischer, U.S. Senator (July 15, 2013).

disclosure."[121] As such, the Committee remains disturbed by the Agency's administration of these FOIA requests given the individuals whose information was compromised. Such actions defeat the integrity of the Agency's neutrality, and EPA's gross negligence in repeatedly submitting erred responses exposes the Agency's true misuse of the FOIA process.

CONCLUSION

The Committee's investigation reveals that under the leadership of Lisa P. Jackson, EPA developed a culture of secrecy and evasion, which has since allowed them to hide their actions from the public and from Congress. Ultimately, the purpose of using secret emails, personal emails, applying excessive redactions to documents released via FOIA, and erecting other barriers to transparency is to avoid scrutiny and accountability. These actions were taken contrary to official EPA policy and sometimes, contrary to the law. While in some instances the Agency has begrudgingly admitted their mistakes, the culture of secrecy runs deep, and it will take the proactive intervention of EPA's new leadership to right the ship and require the transparency the President promised the American people.

[121] *Id.*

COBURN
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November 29, 2013

The Honorable Darrell Issa
Chairperson
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Re: Lisa Jackson

Dear Chairman Issa:

I am writing in response to your letter dated October 21, 2013. In your correspondence, you request that our client, Lisa Jackson, respond to a follow-up question from Representative John J. Duncan regarding Ms. Jackson's appearance before your committee on September 10, 2013. Below please find the text of the question along with Ms. Jackson's response:

Question: Ms. Jackson, how do you respond to the charges that are implicit in Judge Lamberth's comments?

Response: Ms. Jackson disputes the characterization that Judge Lamberth's opinion contains any "charges." Furthermore, the opinion referenced in Representative Duncan's question was issued in connection with ongoing litigation between Landmark Legal Foundation and the Environmental Protection Agency. As Ms. Jackson is no longer with the EPA, it would be inappropriate for her to comment on pending civil litigation to which she is not a party. It is Ms. Jackson's understanding that the EPA and the Department of Justice are handling the litigation and will respond as appropriate to any inquiries regarding the matter.

To the extent that this question seeks information regarding Ms. Jackson's e-mail-related practices while she was with the EPA, we respectfully direct your attention to the testimony she provided before the Committee on September 10, 2013.

1710 Rhode Island Avenue, NW · 2nd Floor · Washington DC 20036
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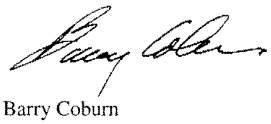
Please contact me at (202) 643-9472, or by email at barry@coburngreenbaum.com, if you have further questions or need additional information.

Respectfully submitted,



Barry Coburn

cc: Representative John J. Duncan
Sharon Casey

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