



THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

May 3, 2011

MEMORANDUM

To: Members and Staff, Subcommittee on Oversight and Investigations

From: Majority Staff, Subcommittee on Oversight and Investigations Staff

Subject: Supplemental Information Regarding “White House Transparency, Visitor Logs and Lobbyists”

On Tuesday, May 3, 2011, at 10:30 a.m. in Room 2123 of Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing entitled “White House Transparency, Visitor Logs, and Lobbyists.” The hearing will examine the Administration’s policies on transparency and lobbyist access to the Executive branch. This memo provides supplemental information to assist members and staff in preparing for the hearing.

The Subcommittee invited Brad Kiley, Director of the Office of Management and Administration at the White House, or his designee. We had hoped to be able to ask the Administration about its transparency policies and how they are enforced, however, the White House declined our request to send a witness. Instead we have three expert witnesses. Mr. Tom Fitton, the President of Judicial Watch; Mr. John Wonderlich, the Policy Director of the Sunlight Foundation; and Ms. Anne Weismann, Chief Counsel of Citizens for Responsibility and Ethics in Washington.

Visitors Logs

In the first six months of the Obama administration, the advocacy organization Citizens for Responsibility and Ethics in Washington (CREW) and msnbc.com both [filed](#) Freedom of Information Act (FOIA) requests for White House visitor records and were denied. Specifically, CREW sought records of visits to the White House by [health care](#) and [coal](#) executives and lobbyists, in order to determine the degree of their influence on health care and energy legislative proposals. According to [CREW](#), “the Obama administration claimed the records are presidential, not agency records, and otherwise exempt in their entirety because of the possibility in some instances they could reveal information protected by the presidential communications privilege.” CREW eventually [filed suit](#) for release of these records.

During this same period of time, the Obama administration was challenging two District Court opinions that required the release of certain visitor records from the Bush administration. The District Court judge had ruled in [two opinions](#) that the records requested by CREW are agency records subject to FOIA requests. The Obama administration [defended](#) the Bush administration policy with respect to these records and challenged the disclosure order in the DC Circuit. As Anne Weismann, Chief Counsel for CREW, [said](#) in a statement to the *Washington Post*, “The Obama administration has now taken exactly the same position as the Bush administration.”

Against this backdrop, in September 2009 the administration reached a [settlement](#) with CREW. The White House agreed to release visitor records in exchange for CREW dropping its pending litigation. While the Administration has tried to claim that the visitors logs make them the most transparent in history, the facts surrounding their release simply do not support this. A federal judge ruled that the logs were subject to the Freedom of Information Act during the Bush administration. Despite this ruling, the Obama administration chose to litigate the issue in the first few months of its administration, rather than publicly disclosing the logs. The logs were only released as part of settlement to dismiss four pending law suits.

The terms of the settlement are much more favorable to the White House than would be the case if records were disclosed through the FOIA process. Under the terms of the settlement, each month records of visitors from the previous 90-120 days would be made available online. Under the FOIA law, records are required to be disclosed within 20 days or a requester can file suit for the records. Moreover, the FOIA process allows a court to determine whether exceptions to the FOIA law should apply to records. The White House’s process is unclear. An unnamed person in the White House determines which records to disclose, with no neutral arbiter to decide whether the records were properly withheld. As a result of these shortcomings, Judicial Watch has already filed [suit](#) seeking documents withheld by the Administration. The Administration continues to advance the same [arguments](#) put forth by the Bush Administration.

The administration has attempted to use the settlement as proof of their unprecedented transparency. Yet, the logs released contain a substantial number of additional [problems](#). Only 1% of the 500,000 meetings from President Obama’s first 8 months in office have been released, and there are significant gaps in the data. For example, visitors are often listed as meeting with secretaries or similarly situated low level staffers who provided them with access to the building or scheduled the appointment. Only individuals with detailed knowledge of special interests groups and their employees would also be able to determine what groups were attending these meetings because no company or group affiliation is listed. A substantial amount of the data is also not particularly informative or newsworthy, as two thirds of the 1,000,000 names released so far are individuals on guided group tours. Finally, thousands of known visitors to the White House, including lobbyists, are missing.

Lobbyists

While a candidate for President, Obama [said](#) lobbyists “will not work in my White House.” On his second day in office, the President signed the so-called “lobbyist ban”--an

[executive order](#) banning lobbyists from working on issues on which they lobbied. The so-called lobbyist ban is another example of how the White House has given lip service to transparency and reform but not followed through on his promise. Even in the first few weeks of the Obama White House, “more than a dozen former lobbyists” obtained jobs in the Administration. A year later, more than [40 former lobbyists](#) were working in senior positions in the Administration, despite the President’s claim in his State of the Union Address that “[w]e’ve excluded lobbyists from policy-making jobs.”

Moreover, there are a [number](#) of [reports](#) indicating that a wave of lobbyists deregistered from the public lobbying disclosure system in 2008, in the wake of the President’s rhetoric against allowing lobbyists to hold positions in his White House. The rate of deregistration increased in 2009 after the President announced his policy. The [public disclosure](#) system requires lobbyists to identify the clients they lobby on behalf of, the amount of money they receive from lobbying, the issues they lobby on, and the houses of Congress or agencies which they lobbied. Establishing a policy that encourages people to deregister from the disclosure system has no doubt decreased transparency regarding the activities of lobbyists, while the number of waivers from the lobbying ban indicate that the President has in fact failed to ban lobbyists from his Administration.

The White House has repeatedly touted the “historic transparency” related to its release of the White House visitor logs. However, [multiple news](#) outlets have reported that White House staff have purposely and repeatedly circumvented those visitor logs by meeting with lobbyists at Caribou Coffee and other locations outside of the White House. As a candidate for office, Senator Obama repeatedly [said](#) that meetings between lobbyists and the staff of regulatory agencies should be made public, “broadcast online or disclosed in some way.” As President however, his staff has been holding meetings at coffee shops in order to avoid having those meetings included on a publicly disclosed list.

An investigative news [report](#) has also found that at least one executive branch agency has required lobbyists to sign confidentiality agreements in order to participate in talks with the agency. This is an unprecedented act of secrecy. If we had a witness from the White House at today’s hearing, we would have asked whether the President has adopted a policy prohibiting this practice, and whether the individuals involved have been appropriately reprimanded.

FOIA

In a memorandum to the heads of Executive agencies, President Obama [announced](#) that “The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails.” If this were in fact the guiding principle of the Administration’s FOIA policy, this would be a welcome act of transparency. Unfortunately, like so many of the President’s other transparency policies, the policy has no teeth—there is no system in place to monitor compliance and no enforcement mechanism in place to penalize agencies that adopt a different presumption.

In fact, a [study](#) released in March of this year by the George Washington University and the Knight Foundation shows that barely half of 90 agencies reviewed have taken any steps at all to fulfill FOIA policies set by President Obama. A [study](#) by the Associated Press in 2010 that looked at 17 different agencies in depth found that the executive branch's use of nearly every one of the FOIA law's nine exemptions increased in the previous year under the Obama administration. A more recent [report](#) from March of this year found that there were 544,360 information requests last year under the U.S. Freedom of Information Act to the 35 largest agencies, an increase of nearly 41,000 from the previous year. But the government responded to nearly 12,400 fewer requests. The Administration refused to release records in nearly one third of all requests.

Czars

President Obama created several new highly influential positions early on in his administration, including the Assistant to the President for Energy and Climate Change and the Director of the White House Office of Health Reform. Despite *candidate* Obama's [vow](#) to "not use signing statements to nullify or undermine congressional instructions as enacted into law," President Obama issued a signing statement on April 15th saying that he would effectively bypass this section of the legislation. The signing statement asserts that the President "has the prerogative to obtain advice that will assist him in carrying out his constitutional responsibilities, and do so not only from executive branch officials and employees outside the White House, but also from advisers within it." It is important to note, however, that President Obama's past and present czars were not mere advisers. In fact they spearheaded President Obama's most controversial initiatives, including the health care reform law, often behind closed doors rather than through the open and transparent process that the American people were promised.

Not only did the czars circumvent the accountability and scrutiny that comes with Senate confirmation, but FOIA requests for even basic descriptions of their job responsibilities and staff have been denied. Judicial Watch filed a FOIA request to the Administration seeking information on Carol Browner's role in crafting cap and trade legislation and other policy work. That request was denied, and Judicial Watch has had to file suit to attempt to obtain the relevant information. Judicial Watch has [filed](#) similar lawsuits and FOIA requests for information related to other czars.

Executive Order

Three weeks ago the White House secretly circulated an [executive order](#) on political spending disclosure. The American people heard about the order only through a [leak](#). Had the leak not happened, the order would have been issued without any public comment. Congress has created a large and complicated set of rules on political spending disclosure, and the President is attempting to use an executive order to circumvent the considered judgment of Congress with no public disclosure or discussion.

Not only has the President bypassed Congress, but this is another example of the White House's seeming preference for selective transparency. While the draft Executive Order states

that it is intended to “increase transparency and accountability,” it apparently would apply to approximately 186,000 government contractors but not to unions. This executive order lays the groundwork for the executive branch to apply a political litmus test to companies that wish to do business with the government. It is a direct affront to First Amendment rights in that it will require companies to disclose the personal political activities of the company, as well as their officers and directors. The federal government should not consider a bidder’s political views in the procurement process to reward political allies or punish political opponents, or to chill legitimate freedom of expression.

Staff Contacts

If you have any questions about this hearing, please contact Stacy Cline or Sean Hayes, Counsels for the Subcommittee on Oversight and Investigations, at (202) 225-2927.