

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

August 8, 2012

Ms. Kathryn Ruemmler
Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Ms. Ruemmler:

On July 31, 2012, the Energy and Commerce Committee issued a report entitled “Promises Made, Promises Broken: The Obama Administration’s Disappointing Transparency Record,” which detailed how White House officials encouraged holding meetings off White House grounds in order to avoid public disclosure on the official White House visitors’ logs. The report also described how Administration personnel, including former White House Deputy Chief of Staff Jim Messina, used personal e-mail accounts to perform official government duties. Both of these actions contradict the Administration’s promise to operate as the “most open and transparent administration in history,” while the use of personal e-mail accounts may constitute a violation of the Presidential Records Act of 1978 (PRA) (44 U.S.C. §§ 2201 – 2207).

On August 2, 2012, the Honorable Henry Waxman, the Democratic Ranking Member of this Committee, stated that “[t]he Presidential Records Act was enacted to ensure that White House records are preserved for history and are owned by the American people . . . Everyone who is covered by the law should follow it, regardless of which party controls the White House.”¹ We strongly agree with Mr. Waxman’s statement and are sending you this letter in yet another attempt to determine whether the White House is, indeed, meeting its legal obligations under the PRA.

During its investigation into agreements made between White House officials and health care and labor union representatives prior to passage of the Patient Protection and Affordable

¹ Sterling C. Beard, *Dem Rep. Waxman Criticizes White House For Lack of Transparency*, The Hill (Aug. 2, 2012), available at <http://thehill.com/blogs/blog-briefing-room/news/241889-waxman-criticizes-white-house-on-transparency>.

Care Act (PPACA), the Committee discovered evidence that Mr. Messina had been using his personal e-mail account to perform his official White House duties. In 2011, the Committee issued letters to both the White House and Mr. Messina requesting information concerning the use of personal e-mail accounts and inquiring as to what steps had been taken to preserve such communications, as required by the PRA. For almost ten months, however, the White House and Mr. Messina have consistently refused to respond to the Committee's requests. We therefore reiterate the requests made almost ten months ago in the two letters attached hereto as Exhibits A and B. Please fully respond to those requests by August 16, 2012.

Last Wednesday, August 1, White House Press Secretary Jay Carney finally acknowledged that Mr. Messina "had a longstanding personal email account in which he got traffic[]" and that "[i]n an effort to comply with all the regulations pertaining to emails, he would forward emails to his White House account or copy his White House account so that those emails would be part of [the] presidential record."² These new claims directly contradict Mr. Carney's June 2, 2011, assertion that "all of our work is conducted on work email accounts[.]"³ Further, documents obtained by the Committee indicate no copying to an official White House account by Mr. Messina.

In addition, documents obtained by the Committee as part of its investigation into the LightSquared/GPS interference dispute indicate that an official in the White House Office of Science and Technology Policy specifically instructed an interested stakeholder to communicate with him solely on his personal e-mail account. He stated, from that account, "For both of you – on this or any other related subject or policy matter, please continue to communicate with me only on my personal email...."⁴ The official, like Mr. Messina, did not copy his White House account on the outgoing e-mail.

While the White House now claims, in contradiction to its earlier statements, that White House employees may have been instructed to forward e-mails from their personal accounts to their official White House accounts if they involved official government business, a question remains as to whether these employees followed the White House policy. A failure to do so could constitute a violation of the PRA. A further and more important question also remains: how widespread is the practice of White House officials using personal e-mail accounts to conduct official White House business?

² Jennifer Epstein, *Cutter: Aides Forward Emails to W.H. System*, Politico (Aug. 1, 2012), available at <http://www.politico.com/politico44/2012/08/cutter-aides-forward-emails-to-wh-system-130815.html> (quoting White House Press Secretary Jay Carney). Stephanie Cutter, a former Deputy Senior Advisor to the President and current Deputy Campaign Manager for Obama for America, echoed Carney's claims in an interview with CNN's Candy Crowley. She stated, in relevant part, that "at the White House we were all instructed for official business to just forward those emails into the White House system. And so that's what we've all done." *Id.*

³ Jay Carney, Press Secretary, The White House, Press Briefing by Press Secretary Jay Carney (June 2, 2011), transcript available at <http://www.whitehouse.gov/the-press-office/2011/06/02/press-briefing-press-secretary-jay-carney-622011>.

⁴ E-mail from Jeffrey Smith, Senior Advisor, White House Office of Science & Technology Policy, to Jim Kirkland, Vice President & Gen. Counsel, Trimble Navigation (June 1, 2011, 8:37 PM).

Pursuant to Rules X and XI of the United States House of Representatives, the Committee respectfully requests that you provide documents and written answers to the following questions by August 16, 2012.

- Q1. Please describe the policies and procedures used by the White House to inform its employees of their obligations under the Presidential Records Act and when these policies and procedures were first implemented. Include descriptions and dates of any meetings or briefings held to inform White House staff of their duties.
- Q2. In direct contradiction of previous statements, the White House has finally acknowledged that Mr. Messina “had a longstanding personal email account in which he got traffic.” Please provide copies of all e-mails Mr. Messina received or sent from any non-governmental e-mail accounts which related in any way to official White House business. For each e-mail in which it is not apparent from the face of the e-mail, please state whether Mr. Messina either copied his official e-mail account or forwarded his personal e-mail communications to his official White House account as required by the Presidential Records Act, and provide copies of any such forwarded e-mails.
- Q3. Please state whether any other employee of the White House used a personal e-mail account to conduct official government business between January 20, 2009, and the present, and produce copies of all such e-mails. Also state whether these employees either copied their official White House accounts or forwarded their personal e-mail communications to their official White House accounts as required by the Presidential Records Act, and provide copies of all such e-mails.
- Q4. Attached to this letter is an e-mail dated March 18, 2010, from then-White House Deputy Chief of Staff Jim Messina to Pharmaceutical Research and Manufacturers of America lobbyist Jeffrey Forbes in which Mr. Messina writes that he will “roll” then-Speaker of the House of Representatives Nancy Pelosi in order to obtain the necessary appropriations to fund the President’s health care law. Please provide the e-mail, with a date and time stamp, showing that Mr. Messina forwarded this e-mail to his official White House account so that it would be preserved in accordance with the Presidential Records Act. If such e-mail is not available, provide a description and supporting documents showing how the e-mail was preserved in accordance with the law.
- Q5. Attached to this letter is an e-mail dated June 1, 2011, from Jeff Smith, Senior Advisor to the Director of the White House Office of Science and Technology Policy, to Jim Kirkland, Vice President and General Counsel of Trimble Navigation, in which Mr. Smith instructs Mr. Kirkland to communicate with him “only on [his] personal email....” Please provide the e-mail, with a date and time stamp, showing that Mr. Smith forwarded this e-mail to his official White House account so that it would be preserved in accordance with the Presidential Records Act. If such e-mail is not available, provide a description and supporting documents showing how the e-mail was preserved in accordance with the law.

Please contact Subcommittee on Oversight and Investigations staff at (202) 225-2927 to arrange for delivery of these materials.

Sincerely,



Fred Upton
Chairman



Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

Attachments

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

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Minority (202) 225-3841

October 13, 2011

Ms. Kathryn Ruemmler
Counsel to the President
The White House
Washington, D.C. 20500

Dear Ms. Ruemmler:

We write in response to your most recent letter regarding our requests for information about meetings between White House Office of Health Reform (WHOHR) personnel and various lobbying groups as part of the Administration's effort to pass the health care legislation that became the Patient Protection and Affordable Care Act (PPACA).

Your responses to date have focused on the staged events the White House organized as part of a publicity campaign to build support for the health care law. As you are aware, no actual negotiations took place at these events and to date your predecessor has provided this Committee with relatively useless information, such as the press releases that accompanied those events. This is neither transparent nor productive. As we have discovered in our investigation, all of the substantive negotiations regarding the health care legislation took place between the White House, lobbyists and industry representatives behind closed doors, or in email and telephone communications which have not been disclosed to the public.

The minimal records you have provided to the Committee demonstrate how little is known about the negotiations that forced PPACA on all Americans. Your most recent production to the Committee simply included a list of scheduled meetings from March 2009 to March 2010 based on WHOHR Director Nancy-Ann DeParle's calendar. This is not the information your predecessor had agreed to provide. In our discussions with WHOHR, we agreed that as a first step your predecessor would provide a list of all meetings involving members of the White House Office of Health Reform and non-governmental groups, and the subject matter of each meeting. Instead, we were provided only a list of meetings "based on" Nancy-Ann DeParle's calendar. Please send us the list of the meetings engaged in by the other members of WHOHR immediately.

The list we were provided only serves to highlight the apparent inadequacies of your production. For instance, the first two private meetings listed are with the AFL-CIO on March 10, 2009, and America's Health Insurance Plans (AHIP) on March 11, 2009. As with numerous other meetings we have uncovered during the course of our investigation, neither of these meetings appears in the White House Visitors Records you provided on March 4, 2011.

This only raises more questions about the process. For example, what was discussed at the meetings with the AFL-CIO and AHIP? Do the meetings not appear in the White House Visitor Records because they took place elsewhere, and if so, why were they not held at the White House? Why did the Administration choose to meet first with these groups? You claim that the list "provides a reasonably comprehensive picture of meetings" between WHOHR and stakeholders, but these questions show that the picture of these meetings remains incomplete.

Based on information provided to the Committee by outside groups involved in the negotiations on health care legislation, we can attest that the DeParle calendar is far from comprehensive. While the incomplete records you have provided do list the dates and attendees of some meetings, they fail to provide any information regarding the subject matter of the meetings, as we had agreed. Please provide an updated list with the agreed-upon information by the close of business on October 19, 2011.

In the meantime, we have gathered a significant amount of information from other sources that reveals the true nature of White House negotiations with special interest groups. These discussions have not previously been disclosed and the evidence we have gathered shows that senior White House officials outside of the WHOHR were extensively involved in these negotiations. One of these individuals, then Deputy Chief of Staff Jim Messina, used both his personal email address and his Democratic National Committee email address to conduct these discussions. Use of email accounts other than his authorized White House email account avoids creating a paper trail that must be preserved under the Presidential Records Act (PRA)(44 U.S.C. 2201-2207). If steps were not taken to preserve these discussions, it would be a clear violation of the PRA. This behavior also directly contradicts statements made by White House Press Secretary Jay Carney that the Administration requires that "all of our work is conducted on work email accounts."¹ The use of a private email account to secretly orchestrate the passage of PPACA contradicts the stated position of the White House and undermines this Administration's claims of transparency.

This practice is disturbing on many levels. Why were these communications conducted on non-governmental email systems? Was this done to avoid the requirements of the Presidential Records Act? Were copies of all such communications preserved? This practice is all the more troubling given the White House's habit of holding meetings at a Caribou Coffee and other locations outside of the White House which avoided disclosing them on White House visitor logs, and the recent reports that foreign entities have hacked into the personal email accounts of senior U.S. officials.² Considering that you have only attempted to provide a

¹ Press Briefing by Press Secretary Jay Carney (June 2, 2011) available at <http://www.whitehouse.gov/the-press-office/2011/06/02/press-briefing-press-secretary-jay-carney-622011>.

² Kirit Radia, *U.S. to Probe Alleged Chinese Hack of Senior Officials' Gmail Accounts*, ABC NEWS, June 2, 2011.

“reasonably comprehensive” record so far, we are concerned that some of the material we are seeking may have been destroyed, inadvertently or otherwise.³

Accordingly, please produce the following information by close of business, November 1, 2011. The time period for the following requests is March 2, 2009, to April 1, 2011:

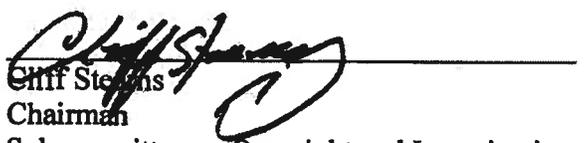
1. A list of all personnel in the Executive Office of the President who were involved in meetings or negotiations relating in any way to health care reform issues, a list of the meetings they attended and the subject matter of such meetings, and all email addresses used for communications relating in any way to the health care reform legislation; and,
2. All documents, communications, notes, and any other materials prepared or utilized by those individuals related to their work on health care reform issues.

Given that we have discovered that White House officials have utilized private e-mail accounts to conduct business related to the negotiation and passage of the PPACA, we also ask that you instruct any and all employees who may have done so to preserve those communications. Please have your staff contact Sean Hayes, Counsel for the Subcommittee on Oversight and Investigations, at (202) 225-2927 to discuss this matter as soon as possible.

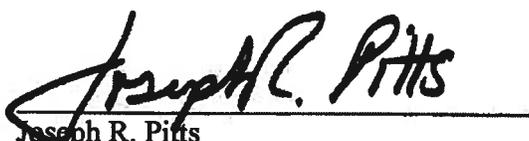
Sincerely,



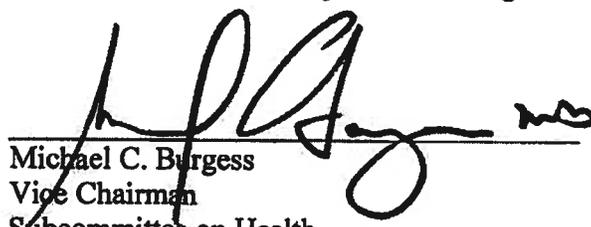
Fred Upton
Chairman



Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations



Joseph R. Pitts
Chairman
Subcommittee on Health



Michael C. Burgess
Vice Chairman
Subcommittee on Health

cc: Ms. Nancy-Ann DeParle

The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member

³ We assume that you sent out a document preservation letter to all relevant White House personnel as soon as you received our initial letter on February 18, 2011. Please confirm that this is the case and provide us with a copy of that letter.

Letter to Ms. Kathryn Ruemmler
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Subcommittee on Oversight and Investigations

The Honorable Frank Pallone, Jr., Ranking Member
Subcommittee on Health

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS
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Minority (202) 225-3841

October 13, 2011

Mr. Jim Messina
Campaign Manager
Obama for America
P.O. Box 803638
Chicago, IL 60680

Dear Mr. Messina:

We are writing to you concerning your involvement in meetings and negotiations that took place between members of the Obama Administration and various outside groups as part of an effort to pass what eventually became the Patient Protection and Affordable Care Act (PPACA).

These meetings violated President Obama's repeated promises to operate the most open and transparent administration in history. They also violated his promise to televise all meetings regarding health care reform. We believe that the American people have a right to know how they ended up with the PPACA, a law that will raise their health care costs, limit their health care choices, and add trillions of dollars to the government's debt.

During our investigation of the actions undertaken by the Administration, the White House Office of Health Reform, and various outside groups, we have learned that you utilized both your personal email address and your designated Democratic National Committee email address to conduct business related to the negotiation and passage of the PPACA. The use of such email addresses to conduct official White House business appears to be a violation of the Presidential Records Act (44 U.S.C. 2201-2207). Such actions also directly contradict President Obama's commitment "to making his administration the most open and transparent in history." The possible violation of the Presidential Records Act is especially alarming given recent reports that certain foreign governments have hacked or attempted to hack the personal email accounts of White House officials. We write to ensure that you preserve all records related to your health care reform efforts. This includes, but is not limited to, any documents contained on personal computers or in personal email accounts.

We also request that you provide all documents in your possession related to your work on health care reform. The relevant time period for the following requests is February 1, 2009, to the date you left the White House. Please provide the following documents and information by November 1, 2011:

1. A list of the email accounts you utilized to conduct discussions related in any way to health care reform.
2. All email communications from your private email accounts between you and any other member of the Administration discussing any portion of the process that led to the PPACA. This would include, but is not limited to, emails discussing specific aspects of the legislation¹, the procedures and strategies undertaken to pass health care legislation, the status of discussions with any outside groups related to health care legislation, and any other topics that would be considered reasonably related to your efforts to pass health care legislation, including discussions of advertising and advocacy for health care reform.
3. All email communications from your private email accounts between you and any outside groups, unions, or other individual entities related to your efforts to pass health care legislation. This includes, but is not limited to, all subject areas listed in Request #2 as well as any discussions regarding advertising or other efforts that could be undertaken by outside groups related in any way to health care reform or promises or agreements made during that process.
4. Memoranda, PowerPoint presentations, or any other documents related to health care legislation.

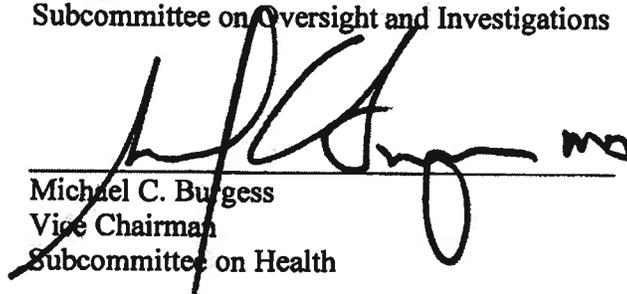
Please contact Sean Hayes, Counsel for Oversight and Investigations, at (202) 225-2927, if you have any questions about the nature of the information requested or the manner of production.

Sincerely,


Fred Upton
Chairman


Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations


Joseph R. Pitts
Chairman
Subcommittee on Health


Michael C. Burgess
Vice Chairman
Subcommittee on Health

¹ This includes the many different versions of health care legislation that were proposed and debated in 2009 and 2010 and not solely the PPACA.

Letter to Mr. Jim Messina
Page 3

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Frank Pallone, Jr., Ranking Member
Subcommittee on Health

From: Jeffrey Forbes [REDACTED]
Sent: Thursday, March 18, 2010 10:28 PM
To: Bryant Hall
Subject: Fw:

Jeffrey A. Forbes
CFW
[REDACTED]

----- Original Message -----

From: jimmessina [REDACTED] <jimmessina [REDACTED]>
To: Jeffrey Forbes
Sent: Thu Mar 18 22:17:07 2010
Subject: Re:

But worried about tomorrow. I will roll pelosi to get the 4 billion. But that guy who works for bryant is setting him up: smith. Cause there is no way the language we scored for them is anywhere near 4. But hopefully the other way will, or maybe they are right. As you may have heard I am literally rolling over the house. But there just isn't 8-10 billion for something they said 2-3 for last night

-----Original Message-----

From: Jeff Forbes
To: Jim Messina [REDACTED]
Subject: Re:
Sent: Mar 18, 2010 10:10 PM

I hope that is true - I am not blaming you - the language was diff - russ supposedly admitted it

Jeffrey A. Forbes
CFW
[REDACTED]

----- Original Message -----

From: jimmessina [REDACTED] <jimmessina [REDACTED]>
To: Jeffrey Forbes
Sent: Thu Mar 18 22:09:23 2010
Subject: Re:

The weird thing is the donut deal, and you know russ, russ showed him the language twice. They said yes. We weren't really involved. It was russ. And I trust russ.

Kindler told rahm and I that bryant was fine

-----Original Message-----

From: Jeff Forbes
To: Jim Messina [REDACTED]
Subject: Re:
Sent: Mar 18, 2010 10:04 PM

Jim Kirkland

From: Jim Kirkland
Sent: Monday, June 06, 2011 7:21 PM
To: Jeff Smith
Cc: [REDACTED]
Subject: RE: FYI

Jim,

Thanks for your willingness to discuss the issue. As I mentioned to Jeff, our goal is not to make the LightSquared issue partisan and to present the GPS view of the issues to the right White House staff at the right time to support a good decision on this. Having spent a fair amount of my career seeking to help bring new competition to the broadband and telecom markets, I definitely get what the FCC is trying to do here. Let me know if there is a time window that works for you tomorrow. My mobile number is [REDACTED].

Best regards

Jim Kirkland

-----Original Message-----

From: Jeff Smith [REDACTED]
Sent: Wednesday, June 01, 2011 8:37 AM
To: Jim Kirkland
Cc: [REDACTED]
Subject: FYI

Jim Kirkland --

I reached Jim Kohlenberger on the phone yesterday. and am sending him a copy of this note...yes, he remembers you and said he'd be glad to speak with you...the best number to reach him at is his cell phone which is [REDACTED]...other number is [REDACTED]...

He is familiar with the situation...although as he was careful to point out, he may be constrained on some points...nonetheless, you can, as always, take his advice and suggestions to the bank...I told him that you may be in DC in the next few days and that he should expect a call from you...

Jim Kohlenberger -- thanks for any helpful points you can pass along...

For both of you -- on this or any other related subject or policy matter, please continue to communicate with me only on my personal email which is [REDACTED]...cell is [REDACTED]...

Best,

-- Jeff