

Congress of the United States
Washington, DC 20515

January 29, 2013

Mr. James B. Martin
Administrator, Region 8
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202

Dear Administrator Martin:

We write to inquire about your use of Apple's me.com, a non-official e-mail account to conduct official business as the Region 8 Administrator for the Environmental Protection Agency. In particular, documents released pursuant to litigation recently obtained by the Committees confirm that you have used this non-official e-mail account to conduct official business.¹ We are concerned that your use of the me.com e-mail account may be an attempt to circumvent the Federal Records Act, the Freedom of Information Act, and Congressional oversight. Accordingly, we are writing to request your cooperation as the Committees investigate whether this is an isolated incident or symptomatic of a broader problem at EPA.

In the limited production obtained by our respective Committees, it appears that on at least one occasion you used an Apple me.com address, a non-official e-mail account, to schedule an official business meeting. Specifically, an email from Vickie Patton, the General Counsel for the Environmental Defense Fund to this private e-mail said, "Hi Jim, Next Monday or Tuesday December 12/13 at 9am depending on which is best for you."² In response, you replied from this private e-mail account with, "January 13 at 9:00 am works for me if that works for you. (Lost your original note – is that the date and time you proposed?)."³ It is our understanding that this meeting did in fact take place at the EPA regional office. Moreover, it is unclear whether you attempted to preserve the correspondence as an EPA record, as is required by law.

The use of personal, non-official e-mail accounts raises concerns that you could be attempting to insulate this and other e-mail correspondence from a Freedom of Information Act⁴ request. Moreover, your actions may also constitute violation of the Federal Records Act.⁵ In accordance with the Federal Records Act and guidance from the D.C. Circuit, federal agencies must preserve e-mail messages if they are:

¹ See Michael Bastasch, *Top EPA official used private email account to correspond with environmental groups*, Daily Caller News Foundation (Jan. 10, 2013), available at <http://dailycaller.com/2013/01/10/top-epa-official-uses-private-email-account-to-correspond-with-environmental-groups/>.

² See <http://www.scribd.com/doc/119719232/CEI-v-EPA-Region-8-Martin-Reply-Declaration> (last accessed Jan. 16, 2013).

³ *Id.*

⁴ See 5 U.S.C. § 552

⁵ See 44 U.S.C. § 31

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 data in them.⁶ (emphasis added).

To be clear, it does not appear that this transaction was an isolated incident. Rather, the body of emails suggests that you regularly used this personal email account to stay informed on matters relating to your official duties. For example, not only did Ms. Patton regularly send updates to the me.com account, according to one document, you used this non-official account to request contact information for another government employee, which was provided as a private e-mail address.⁷

As the Region 8 Administrator, I expect you would have knowledge of EPA's policy that explicitly prohibits use of non-EPA e-mails for business purposes. In 2008, EPA wrote to the Government Accountability Office that "EPA has a clear and consistent policy framework against the use of nongovernmental e-mail systems for official EPA business."⁸ During EPA's briefing on Records Management to incoming political appointees in 2009, EPA instructed, "[d]o not use any outside e-mail account to conduct official Agency business."⁹ More recently, in October 2012, EPA sent an agency-wide e-mail reminding employees of this policy. Specifically, the email stated: "[t]his is a reminder to all EPA Employees that *EPA prohibits the use of non-EPA E-Mail Systems when conducting agency business*. This guidance is stated in Agency Records Training, New Employee Orientations and Briefings for Senior Agency Officials."¹⁰ (emphasis added).

In both the agency-wide e-mail and the Frequently Asked Questions about E-Mail and Records webpage, EPA states that employees are prohibited from using "any outside e-mail system to conduct official Agency business. If, *during an emergency*, you use a non-EPA e-mail system, you are responsible for ensuring that any e-mail records and attachments are saved in your office's recordkeeping system."¹¹ (emphasis added) It does not appear that there were any emergency circumstances surrounding the use of your personal email, but even if there were, it appears that you still failed to preserve the e-mails in the proper recordkeeping system. Thus, under all plausible circumstances, your private e-mails demonstrate a clear violation of EPA policy and federal law.

⁶ *Armstrong v. Executive Office of the President*, 1 F.3d 1274, 1278 (D.C. Cir. 1993).

⁷ Note 2 *supra*.

⁸ GOV'T ACCOUNTABILITY OFFICE, FEDERAL RECORDS: NATIONAL ARCHIVES AND SELECTED AGENCIES NEED TO STRENGTHEN E-MAIL MANAGEMENT, 61, GAO008-742 (June 2008).

⁹ *Records and ECMS Briefing, EPA Incoming Political Appointees 2009* [On file with Committee].

¹⁰ *NRMP Alert: Do Not Use Outside Email Systems to Conduct Agency Business* [On file with Committee].

¹¹ ENVTL. PROT. AGENCY, *Frequent Questions about E-Mail and Records* <http://www.epa.gov/records/faqs/email.htm> (last accessed Jan. 16, 2013).

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In an effort to better understand whether or not the emails provided to our Committees are an unfortunate, but isolated incident, or if they are part of a larger scheme to defeat federal transparency laws, we request that you provide all emails sent or received from any private email account from April 1, 2010, through present day that refer or relate to your responsibilities as an EPA official. This request includes all emails sent or received by you, whether or not they are currently in your "inbox." Moreover, I request that you make yourself available for a transcribed interview with both Committee staffs the week of February 11, 2013.

Thank you for your prompt attention to this matter. If you have any questions, please contact Kristina Moore with the Committee on Environment and Public Works at (202) 224-6176 or Tyler Grimm with the Committee on Oversight and Government Reform at (202) 225-5074.

Sincerely,



David Vitter
Ranking Member
Environment and Public Works



Darrell E. Issa
Chairman
Oversight and Government Reform

Cc: Chairman Barbara Boxer, Senate Committee on Environment and Public Works
Ranking Member, House Oversight and Government Reform