

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

March 6, 2015

The Honorable Michael S. Schwartz  
Chairman  
U.S. Railroad Retirement Board  
844 North Rush Street  
Chicago, IL 60611-2092

Dear Mr. Schwartz:

The Committee on Oversight and Government Reform is investigating whether the U.S. Railroad Retirement Board (RRB) occupational disability program is still at risk of being defrauded. On February 10, 2014, RRB Inspector General Martin J. Dickman issued a seven-day letter to Congress.<sup>1</sup> According to Dickman, the method of granting occupational disability payments to former employees of the Long Island Rail Road is seriously flawed, resulting in a roughly 96 percent approval rate for those who apply. According to Dickman, the current approval rate remains as high as it was before a fraud ring was exposed more than five years ago. Dickman recommended that, unless the RRB implemented significant changes quickly, the occupational disability program be terminated or severely cut back.

In response to Dickman's seven-day letter, the Committee initiated a review of the occupational disability program. The Committee first requested documents related to the program on April 29, 2014.<sup>2</sup> The Committee reviewed thousands of internal RRB documents and communications, and on October 2, 2014, RRB General Counsel Karl T. Blank certified that the RRB had provided all responsive records to the Committee. Blank stated: "This completes the submissions of the Railroad Retirement Board in response to your letter dated April 29, 2014."<sup>3</sup>

According to Dickman, however, documents relevant to the Committee's investigation—and responsive to other requests for information, including from Rep. Gary Palmer, who requested documents on February 18, 2015—may have been stored in non-official e-mail accounts and encrypted devices off the RRB's network. On February 4, 2015, Dickman issued a memorandum that described how RRB employees use private e-mail accounts and encrypted IronKey devices to conduct official RRB business.<sup>4</sup> According to Dickman's February 4, 2015, memorandum:

[S]ome agency employees have been using private email accounts and encrypted IronKey devices to communicate, on a regular basis and in their official capacity,

<sup>1</sup> Letter from Martin J. Dickman, Inspector Gen., RRB, to Hon. Michael S. Schwartz, Chairman, RRB (Feb. 10, 2014).

<sup>2</sup> Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Hon. Michael S. Schwartz, Chairman, RRB (Apr. 29, 2014).

<sup>3</sup> Letter from Karl T. Blank, General Counsel, RRB, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Oct. 2, 2014).

<sup>4</sup> Memorandum from RRB Inspector Gen. Martin J. Dickman to members of the RRB, *Private Email Accounts and IronKey Devices* (Feb. 4, 2015).

outside of the Government's computer network and the RRB's customary email/internet service.<sup>5</sup>

The use of non-official and off-network e-mail accounts creates problems for congressional oversight and FOIA requesters, as well as potential compliance issues with respect to RRB's federal records obligations. The use of non-official e-mail accounts and inaccessible data storage devices to conduct government business raises the prospect that records—as defined by the Presidential Records Act (PRA) and the Federal Records Act (FRA)—may not be properly archived. The PRA and the FRA creates processes under which presidential and federal records must be preserved, regardless of the medium used to create those records. Therefore, an RRB messaging system that operates independently from official systems could result in transgressions of these vital recordkeeping laws. This practice also creates difficulties in fulfilling FOIA or litigation requests. Furthermore, it may implicate criminal or civil penalties for the unlawful concealment of federal records.<sup>6</sup>

The fact that some RRB employees used non-official and off-network e-mail accounts also raises the concern that, contrary to Blank's certification, there are in fact additional records that are responsive to the Committee's original document request. These documents and communications may have bypassed standard means for fulfilling congressional document requests.

To help the Committee understand how and why some RRB employees used non-official and off-network communications platforms, please provide detailed responses to the following questions as soon as possible, but no later than 12:00 noon on March 20, 2015:

1. What steps has the RRB taken to ensure that all federal records are maintained in compliance with relevant requirements, including all documents and communications where RRB employees used non-official e-mail accounts and encrypted IronKey devices for transmission and storage?
2. How many RRB employees have been identified as having used non-official e-mail accounts or IronKey devices when conducting official government business? Please identify these officials.
3. Provide a detailed explanation as to why some employees used Ironkey devices to store their communications off the RRB network.
4. Has the RRB advised its employees against using non-official e-mail to conduct official business? If yes, please provide the documents and communications relating thereto.
5. Does the RRB know whether employees forwarded e-mails from non-official accounts to their official accounts, or if they saved a paper copy of the e-mails? If yes, please provide the Committee with an accounting.
6. Has the RRB asked employees to forward e-mails from non-official accounts to their official accounts? If yes, please provide the documents and communications relating thereto.
7. Has the RRB provided any additional guidance to employees following the improper use of private e-mail accounts and encrypted IronKey devices as reported by the IG? If yes, please provide the documents and communications relating thereto.

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<sup>5</sup> *Id.*

<sup>6</sup> *See* 18 U.S.C. § 2071.

8. Has the RRB determined whether any e-mails transmitted and stored using private e-mail accounts and encrypted IronKey devices are responsive to the Committee's April 29, 2014, document request? If yes, please provide the documents and communications relating thereto.

An attachment to this letter provides additional information about responding to the Committee's request. When producing documents to the Committee, please deliver production sets to the Majority staff in Room 2157 of the Rayburn House Office Building and the Minority staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

The Committee on Oversight and Government Reform is the principal investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, the Committee has authority to investigate "any matter" at "any time."

If you have any questions about this request, please contact Alexa Armstrong or Jonathan Skladany of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman



Mark Meadows  
Chairman  
Subcommittee on Government  
Operations

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Gerald E. Connolly, Ranking Minority Member  
Subcommittee on Government Operations

## Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;  
  
BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,  
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,  
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,  
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,  
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,  
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.