

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5074
Minority (202) 225-5051

January 15, 2013

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

The Committee on Oversight and Government Reform (Committee) is conducting oversight of agency compliance in regards to electronic mail (email) policies and practices related to possible breaches of the Presidential Records Act (PRA), the Federal Records Act (FRA), and the Freedom of Information Act (FOIA). News articles and a letter to you from the House Committee on Science, Space, and Technology recently exposed your use of an alias email account under the moniker “Richard Windsor.” The Agency has publicly confirmed your use of this email account.¹

The Committee’s oversight of issues related to non-traditional email practices has a long and bipartisan history. Former Chairman Henry Waxman investigated similar matters during the 110th Congress involving White House personnel.² Chairman Waxman wrote to then-Comptroller General David Walker on March 23, 2007, “In order to provide evidence of the government’s functions, activities, decisions, procedures, and essential transactions, email records must be properly stored and preserved and readily retrievable.”³ More recently, the Committee examined the practice of Department of Energy officials using personal email accounts to conduct official business in an apparent attempt to evade requirements of the PRA, the FRA, and FOIA.⁴

¹ Erica Martinson, “Lisa Jackson’s ‘Windsor’ Knot,” *Politico*, November 20, 2012. Available at <<http://www.politico.com/news/stories/1112/84112.html?hp=r9>>.

² See e.g. Letter from Rep. Henry Waxman, Chairman, House Committee on Oversight and Government Reform, to Mr. Mike Duncan, Chairman, Republican National Committee, April 4, 2007.

³ Letter from Rep. Henry Waxman, Chairman, House Committee on Oversight and Government Reform, to the Honorable David Walker, Comptroller General of the United States, March 23, 2007.

⁴ See e.g. Letter from Rep. Darrell Issa, Chairman, House Committee on Oversight and Government Reform, to the Honorable Steven Chu, Secretary, U.S. Department of Energy, August 14, 2012.

The use of an alias to conduct government business via email raises the prospect that communications and records – as defined by the PRA and the FRA – may not be properly archived. The FRA and PRA require all messages sent or received from any email account in connection with official EPA business to be archived and preserved. The use of an alias account to conduct official Agency business makes compliance with the FRA and PRA more difficult because the alias may not be matched to an actual Agency employee. The use of an alias email account to conduct government business also creates difficulties in fulfilling FOIA or litigation requests. Furthermore, conducting official business using an alias may implicate criminal or civil penalties for the unlawful concealment of federal records (18 U.S.C. 2071).

So that the Committee can understand the circumstances surrounding the potential use of alias email addresses to conduct official government business, please provide the following information, in electronic format:

1. A list of all email accounts you have used to conduct official government business between January 20, 2009, and January 15, 2013.
2. All documents and communications referring or relating to alias or alternative email accounts including the creation of the account “Richard Windsor” between January 20, 2009, and January 15, 2013.
3. All electronic mail communications with the name “Richard Windsor” and any other alias email accounts used by you to conduct official government business between January 20, 2009, and January 15, 2013.
4. Copies of EPA’s email policy guidance and any changes made between January 20, 2009, and January 15, 2013.
5. A full and complete explanation of the controls in place to ensure communications to and from alias email accounts are properly captured and filed for purposes of complying with the Presidential Records Act, the Federal Records Act, and the Freedom of Information Act.
6. A list, including titles of all EPA employees who have more than one EPA email account and a full and complete explanation of why there is a need for more than one. For each person who has multiple email accounts please provide a list of their accounts.

We request you provide the requested documents and information as soon as possible, but no later than noon on January 29, 2013. When producing documents to the Committee, please deliver separate production sets to both 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.

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In addition, I request a briefing for Committee staff on EPA's email policies, including the use of alias email accounts by EPA personnel. Please contact Tyler Grimm of the Committee Staff by January 21, 2013 to schedule this briefing.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

If you have any questions regarding any aspect of this request, please contact Tyler Grimm or Mike Whatley of the Committee staff at (202) 225-5074. Thank you for your prompt attention to this matter.

Sincerely



Darrell Issa
Chairman

Enclosure

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

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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.

Schedule 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.