

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

<http://oversight.house.gov>

January 29, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

Press reports have raised serious questions about the Environmental Protection Agency's performance with respect to alerting the public about a health crisis related to the Flint, Michigan water supply.¹ The agency knew about contaminants in the drinking water in Flint by February 2015, when Regulations Manager Miguel Del Toral identified potential problems related to Flint's failure to prevent lead from leaking into the water supply.² It was months before Mr. Del Toral's concerns were made public, and only then because his findings were leaked.³

On June 24, 2015, Mr. Del Toral produced a lengthy internal memorandum that detailed "a number of water quality issues" in Flint and recommended immediate steps to remedy the problem.⁴ Mr. Del Toral warned that the high concentrations of lead and other substances in the water supply as a result of the absence of corrosion control mechanisms posed a serious threat to the people of Flint. He wrote:

A major concern from a public health standpoint is the absence of corrosion control treatment in the City of Flint for mitigating lead and copper levels in the drinking water. Recent drinking water sample results indicate the presence of high lead results in the drinking water, which is to be expected in a public water system that is not providing corrosion control treatment. The lack of any mitigating treatment for lead is of serious concern for residents that live in homes with lead service lines, which are common through the City of Flint.⁵

¹ See, e.g., Jim Lynch, *EPA stayed silent on Flint's tainted water*, THE DETROIT NEWS, Jan. 12, 2016.

² *Id.*

³ *Id.*

⁴ Memorandum from Miguel Del Toral, EPA Regulations Manager, to Thomas Roy, Chief, EPA Ground Water and Drinking Water Branch (June 24, 2015), <http://flintwaterstudy.org/wp-content/uploads/2015/11/Miguels-Memo.pdf>.

⁵ *Id.*

Mr. Del Toral's memorandum raised concerns in the Flint community after it was leaked to the public in July 2015.⁶ Despite the serious findings therein, Region 5 Administrator Susan Hedman advised Flint's mayor that "it would be premature to draw any conclusions" about lead in Flint's water supply based on the memo.⁷

As the situation quickly grew worse, Ms. Hedman repeatedly refused to take much-needed action and instead made excuses that showed a clear lack of concern for the citizens of Flint, and a failure to grasp the seriousness of the problem.⁸ By late 2015, the City of Flint had declared an emergency due to the drinking water crisis.

It is clear that EPA Region 5, at Ms. Hedman's direction, failed to promptly and properly respond to the Flint water crisis. Ms. Hedman ultimately resigned for that reason.⁹ Her sudden departure, however, raises serious questions about EPA's response to the Flint crisis. In order for the Committee to better understand this issue, please make Ms. Hedman available for a transcribed interview as soon as possible. Additionally, provide the following documents and information:

1. All documents and communications to or from Ms. Hedman referring or relating to Flint's water supply.
2. All documents and communications to or from Ms. Hedman referring or relating to Miguel Del Toral from January 1, 2015, to the present.
3. All documents and communications to or from Ms. Hedman referring or relating to the June 24, 2015, memorandum by Miguel Del Toral.
4. All documents and communications referring or relating to Ms. Hedman and the Safe Drinking Water Act.
5. All documents and communications to or from Miguel Del Toral referring or relating to Flint, his June 24, 2015, memorandum and his work duties at EPA between January 1, 2015, and November 1, 2015.

Please provide the requested information as soon as possible, but no later than 5:00 p.m. on February 9, 2016. 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,

⁶ Lindsey Smith, *Leaked internal memo shows federal regulator's concerns about lead in Flint's water*, Michigan Radio, Jul. 13, 2015, available at <http://michiganradio.org/post/leaked-internal-memo-shows-federal-regulator-s-concerns-about-lead-flint-s-water#stream/0> (last visited Jan. 26, 2016).

⁷ Whet Moser, *What Did the EPA Do Wrong in Flint?*, CHICAGO MAG., Jan. 25, 2016.

⁸ Jim Lynch, *EPA stayed silent on Flint's tainted water*, THE DETROIT NEWS, Jan. 12, 2016.

⁹ Melissa Nann Burke and Jim Lynch, *Top EPA official in Midwest resigning amid Flint crisis*, THE DETROIT NEWS, Jan. 21, 2016.

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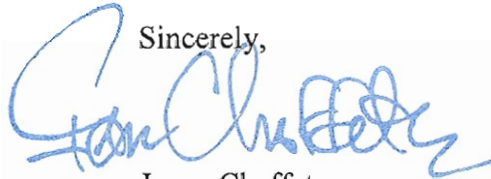
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to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

Please contact William McGrath at (202) 225-5074 with any questions about this request. Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Chaffetz". The signature is stylized and written in a cursive-like font.

Jason Chaffetz
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

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.