

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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May 14, 2015

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

Dear Administrator McCarthy,

The Committee on Science, Space, and Technology has been seeking answers to questions regarding the Environmental Protection Agency's (EPA) use of electronic communications to avoid transparency for nearly six months.¹ According to EPA General Counsel Avi S. Garbow, who provided EPA's latest written response on April 23, the "EPA is committed to doing the public's business in the public eye."² Unfortunately, this response fails to live up to Mr. Garbow's promise and does not provide all documents covered by the Committee's subpoena.

According to the response from Mr. Garbow, "[a]ny suggestion that the Agency is somehow evading public scrutiny of its work through the use of text messages is misguided, and belied by the absolute rigor in which the Agency faithfully complies with its obligations of public engagement and transparency in rulemaking."³ This statement, however, directly contradicts EPA's response to the Committee's subpoena. Indeed, the information provided by EPA raises more questions than answers. According to a news report in *The Hill*, EPA revealed "more than 1,000 pages of text messages and cell phone records from [EPA] head Gina McCarthy."⁴ In reality, EPA provided the Committee with two text messages sent to Administrator McCarthy. All remaining text messages relate to other employees, or are in the form of billings records that only include phone numbers sending and receiving messages—not actual text messages.

¹ See Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space & Technology, to Hon. Arthur A. Elkins, Jr., Inspector General, EPA (Nov. 10, 2014).

² Letter from Ms. Avi S. Garbow, General Counsel, EPA, to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space & Technology (Apr. 23, 2015).

³ *Id.*

⁴ Timothy Cama, *EPA Reveals More Than 1,000 Pages of Texts, Phone Records from Chief*, THE HILL, Apr. 23, 2015, available at <http://thehill.com/policy/energy-environment/239937-epa-reveals-more-than-1000-pages-of-texts-phone-records-from-chief>.

Further, while claiming to be open and transparent, EPA apparently shared the results of an internal analysis of Administrator McCarthy's billing records with the news media but failed to provide the Committee with similar information. According to *The Hill*, citing EPA's internal review of the documents, "75 percent of her communications were with family members."⁵ Of the remaining texts, 4.2 percent are with her scheduling and security staff and 9.2 percent were with other EPA employees."⁶ Unfortunately, the Committee was not given the opportunity to review or verify this analysis. Additionally, EPA's analysis does not account for nearly 12 percent of text messages—raising questions as to why the remaining text messages were not categorized by the agency. Moreover, many of the documents EPA did provide to the Committee were duplicative and readily available on the internet. Another portion of the documents provided to the Committee still contain redactions despite the Committee's specific request to receive unredacted documents.

More concerning, it appears EPA failed to provide documents and information that are central to the Committee's oversight. The subpoena requests "any and all communications regarding the official use of text messaging and other electronic communications" from 2009 to present. According to information obtained by the Committee, officials in the EPA Office of Policy, including a senior-level employee, used text messages and personal e-mail addresses to conduct official government business in an apparent attempt to avoid transparency. Documents show that in 2011, then-EPA Associate Administrator for Policy Michael Goo seemingly used his private e-mail account to routinely communicate with outside groups attempting to influence agency policy. In one e-mail sent from a personal e-mail account to a lobbyist, he writes "**ok I will call number on text message.**" Despite the Committee's specific request for this information, EPA failed to provide the e-mail.

Another e-mail sent from the Sierra Club to Mr. Goo's private e-mail account states, "[a]ttached is a memo I didn't want to send in public." Mr. Goo was complicit in the lack of transparency by complying with the Sierra Club's request because he failed to disclose the e-mail for two years. Indeed, no personal e-mails were apparently captured by EPA e-mail servers until Mr. Goo forwarded e-mails to his official government account in August 2013. Mr. Goo's actions are troubling because it creates the appearance of secrecy. For two years, his communications with the Sierra Club and other outside groups were hidden from Congressional inquiries and Freedom of Information Act (FOIA) requests—potentially violating the Federal Records Act.

News reports highlight Mr. Goo's efforts to skirt transparency and his ties to environmental groups attempting to influence the Administration's agenda. Mr. Goo reportedly arranged meetings "at the Starbucks in the JW Marriott hotel on Pennsylvania Avenue, close to the EPA" in an effort to prevent participants of meetings from signing in at the EPA building and creating public records.⁷ According to the *New York Times*, Mr. Goo was a member of the Natural Resources Defense Council "mafia" where he served as legislative director for 18

⁵ *Id.*

⁶ *Id.*

⁷ John Roberts, 'Secret Dealing? Emails Show Cozy Relationship Between EPA, Environmental Groups', FOX NEWS, Jan. 22, 2014, available at <http://www.foxnews.com/politics/2014/01/22/emails-show-cozy-relationship-between-epa-environmental-groups-on-keystone-coal/>.

months.⁸ As a senior official at the EPA, Mr. Goo “was charged with overseeing regulations going through White House reviews and providing policy advice.”⁹ After serving from 2011 to 2013 at EPA, he reportedly was one of the “cool kids” who joined the DOE policy shop that was labeled an “Ivory Tower.”¹⁰

Mr. Goo is not the only EPA official in the Office of Policy to conduct agency business via text messages. According to information obtained by the Committee, Alex Barron, currently Deputy Associate Administrator for the Office of Policy, wrote an e-mail to Mr. Goo and copied Shannon Kenny, currently Principal Deputy Associate Administrator, suggesting Mr. Goo text him on his personnel cellular phone regarding EPA business. This e-mail shows that current employees in the Office of Policy communicated with Mr. Goo about agency business using electronic communications that were not captured by EPA servers. Given Mr. Goo’s history of communicating with third party groups through private e-mail and text messages, and his efforts to schedule meetings outside of the agency, Mr. Barron’s e-mail creates the appearance that the Office of Policy may still use similar practices.

Against this backdrop, it should come as no surprise that the Committee has additional questions regarding EPA officials in the Office of Policy using electronic communications to skirt transparency. The Office of Policy holds a significant position in the EPA. It is a serious matter for the Office of Policy to use means of communications that avoid Congressional oversight and public scrutiny, particularly when third party groups are attempting to influence its decisions. In order to ascertain whether the types of electronic communications routinely used by Michael Goo are still occurring in the Office of Policy, and pursuant to Rule X of the U.S. House of Representatives, the Committee requests the following documents and information as soon as possible, but not later than noon on May 28, 2015.

1. All document and communications, including text messages, personal e-mail and government e-mail, sent or received by Michael Goo from 2011 to 2013, referring or relating to outside groups, including but not limited to the White House, Sierra Club, League of Conservation Voters, and the Natural Resources Defense Council.
2. All documents and communications, including text messages, personal e-mail and government e-mail, sent or received by Joel Beauvais, Alex Barron, or Shannon Kenny from 2011 to present, referring or relating to outside groups, including but not limited to, the White House, Sierra Club, League of Conservation Voters, and the Natural Resources Defense Council.

⁸ Darren Samuelsohn, *NRDC Mafia Finding Homes on Hill*, EPA, N.Y. TIMES, Mar. 6, 2009, available at <http://www.nytimes.com/gwire/2009/03/06/06greenwire-nrdc-mafia-finding-homes-on-hill-in-epa-10024.html>.

⁹ Robin Bravender & Katherine Ling, *Cool Kids Jump to Moniz’s New Policy Shop*, E&E NEWS, Nov. 12, 2013, available at <http://www.eenews.net/greenwire/stories/1059990330>.

¹⁰ *Id.*

3. All documents related to EPA's review of Administrator McCarthy's billings records cited in a news report in the *The Hill*, entitled "EPA Reveals More Than 1,000 Pages of Texts, Phone Records from Chief" that categorizes documents EPA provided the Committee based on percentages of who the Administrator communicated with via text message.

If you have any questions about this request, please contact Committee Staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,



Lamar Smith
Chairman

cc: The Honorable Eddie Bernice Johnson, Ranking Minority Member