

# Congress of the United States

## House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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March 6, 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 continues its oversight of the Environmental Protection Agency's (EPA) preservation of text messages as required by the Federal Records Act.<sup>1</sup> As part of this oversight, I wrote to the EPA Office of Inspector General on November 10, 2014, requesting an investigation regarding allegations that text messages were improperly deleted from Administrator Gina McCarthy's agency phone.<sup>2</sup> In addition, I wrote to the EPA on January 27, 2015, to request, among other things, e-mails and text messages from agency officials.<sup>3</sup> On February 26, 2015, the EPA provided documents;<sup>4</sup> however, the agency failed to include documents responsive to the Committee's request, including *any* e-mails or text messages from 2009-2012. Those documents and information are central to the Committee's investigation.

The Committee's concerns about the EPA allegedly misplacing or deleting text messages stems from an article in *The Hill* regarding text messages to and from Administrator Gina McCarthy and then-Administrator Lisa Jackson. According to the report, "[EPA] has decided to formally notify the National Archives and Records Administration (NARA) about the potential loss of federal records relating to text messages."<sup>5</sup> In the same article, an EPA spokeswoman

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<sup>1</sup> 44 U.S.C. §3101.

<sup>2</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space & Technology, to Hon. Arthur A. Elkins, Jr., Inspector General, EPA (Nov. 10, 2014).

<sup>3</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space & Technology, to Hon. Gina McCarthy, Administrator, EPA (Jan. 27, 2015).

<sup>4</sup> Letter from Renee Wynn, Acting Assistant Adm'r, EPA, to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space & Technology (Feb. 26, 2015).

<sup>5</sup> Timothy Cama, *EPA Tells Court it May Have Lost Text Messages*, THE HILL, October 8, 2014, available at <http://thehill.com/policy/energy-environment/220162-epa-may-have-lost-text-messages>.

was quoted as saying, “Despite the filing...the agency maintains that the text messages neither had to be preserved nor were subject to disclosure. Text messages can legally be deleted.”<sup>6</sup>

Documents provided by EPA on February 26 demonstrate a continued lack of transparency at the agency. EPA responded two weeks after the Committee’s due date with information that appears to be for the most part publicly available. According to information obtained by the Committee, the EPA failed to provide e-mails from high-ranking officials, including Administrator Gina McCarthy, discussing text messages relating to official agency business. This follows a disturbing pattern of a lack of transparency relating to internal communications. For example, in 2013, the EPA withheld documents from the Committee related to then-Administrator Lisa Jackson’s secret e-mail account.<sup>7</sup>

In order to ascertain whether the EPA improperly deleted text messages, the Committee requested relevant documents and information on January 27. Committee staff has contacted your staff several times via e-mail and telephone. Regrettably, the EPA has not produced all documents and information responsive to the Committee’s request. In light of this, and pursuant to Rule X of the U.S. House of Representatives, the Committee requests the documents and information previously requested on January 27, 2015. If EPA continues to withhold emails, text messages, and other documents from the Committee, I will have no alternative but to consider the use of compulsory process to obtain the requested documents and information. Please produce all materials responsive to the Committee’s request as soon as possible, but no later than noon on Friday, March 13, 2015.

Moreover, the Committee’s January 27 letter also requested information regarding the EPA’s process for responding to Freedom of Information Act (FOIA) requests. The Committee is concerned about EPA’s responsiveness given that, on March 2, 2015, a federal court issued an opinion calling into question the agency’s process for responding to those requests.<sup>8</sup> According to news reports, a federal judge called the EPA’s handling of a 2012 FOIA request “suspicious.”<sup>9</sup> The judge reportedly “accused the agency of insulting him by first claiming it had conducted a full search for records, then years later retracted that claim in a footnote to another document without giving any explanation for how it erred.”<sup>10</sup> The court found that “the agency either intentionally sought to evade the FOIA request in order to destroy documents or demonstrated extreme apathy and carelessness.”<sup>11</sup> Apparently, FOIA officers and top aides to former EPA

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<sup>6</sup> *Id.*

<sup>7</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space & Technology, to Hon. Lisa Jackson, Administrator, EPA (Jan. 23, 2013).

<sup>8</sup> See Spencer S. Hsu, *Judge Blasts EPA for ‘Suspicious’ Handling of Conservative Group’s FOIA*, WASH. POST, Mar. 2, 2015, available at [http://www.washingtonpost.com/local/crime/judge-blasts-epa-for-suspicious-handling-of-conservative-groups-foia/2015/03/02/7f49fee0-c100-11e4-9ec2-b418f57a4a99\\_story.html](http://www.washingtonpost.com/local/crime/judge-blasts-epa-for-suspicious-handling-of-conservative-groups-foia/2015/03/02/7f49fee0-c100-11e4-9ec2-b418f57a4a99_story.html).

<sup>9</sup> *Id.*

<sup>10</sup> Stephen Dinan, *Judge Rules EPA Lied About Transparency, Tells Agency to Halt Discrimination Against Conservatives*, WASH. TIMES, Mar. 2, 2015, available at <http://www.washingtontimes.com/news/2015/mar/2/judge-rules-epa-lied-about-transparency/>.

<sup>11</sup> Hsu, *supra* note 8.

Administrator Lisa Jackson did not search their e-mails until a court-ordered deadline, and other high-ranking agency officials never searched their e-mails.<sup>12</sup>

Given a federal court recently admonished the EPA's response to FOIA requests, it is imperative that the Committee ensure this is not typical agency practice. In light of these facts and in accordance with U.S. House of Representatives Rule X, please provide all documents and communications from senior EPA officials, including former Administrator Lisa Jackson and Administrator Gina McCarthy, referring or relating to FOIA requests from 2012 to 2015 by noon on March 20, 2015.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 394 of the Ford House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Sarah Grady of the 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

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<sup>12</sup> *Id.*