

ONE HUNDRED ELEVENTH 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) 225-5051
Minority (202) 225-5074

February 18, 2009

Mr. Gregory B. Craig
Counsel to the President
The White House
Washington, DC 20500

Dear Mr. Craig:

Last month, several media outlets reported the existence of Gmail accounts issued to incoming members of the White House staff.¹ According to *Politico*, Deputy Press Secretary Bill Burton was “rocking three BlackBerrys . . . one for his Gmail, one for the transition and one for the White House.”²

As you know, any e-mail sent or received by White House officials may be subject to retention under the Presidential Records Act (PRA).³ The use of personal e-mail accounts, such as Gmail, to conduct official business raises the prospect that presidential records will not be captured by the White House e-mail archiving system. Unless White House officials forward copies of their e-mails to their government e-mail account or maintain printed copies of the e-mail, there is a risk records subject to the PRA will not be retained as required by law. Moreover, what one official deems a presidential record under the Act, and what legally constitutes such a record may differ. Consequently, Gmail users on the President’s staff run the risk of incorrectly classifying their e-mails as non-records under the Act.

During the last Congress, this Committee, under the leadership of former Chairman Waxman, conducted vigorous oversight of the White House’s compliance with the PRA.⁴ Indeed the heading “White House E-mails” has long been listed along with the

¹ Brian X. Chen, *White House Tech More Tired Than Wired*, WIRED, Jan. 23, 2009; *Gmail Fills the Bill for Obama Staff*, PC WORLD Network World, Jan. 21, 2009; Anne E. Kornblut, *Staff Finds White House in the Technological Dark Ages*, WASH. POST, Jan. 22, 2009; Jon Ward, *Obama Staffers Turn to Gmail on Inauguration Day*, WASH. TIMES, Jan. 19, 2009

² Jonathan Martin, *Senior Staff*, POLITICO, Jan. 22, 2009, at 3.

³ 44 U.S.C. § 2201 *et seq.*

⁴ Letters from Rep. Henry A. Waxman, Chairman, H. Comm. on Oversight and Gov’t Reform (hereinafter OGR Comm.), to Fred F. Fielding, Counsel to the President March 29, 2007; Aug. 30, 2007; and January 17, 2008. Chairman Waxman wrote to Emmet T. Flood, Deputy Assistant to the President and Special

Environment and Iraq Reconstruction as one of the key issues on the Committee's internet home page.⁵ So active was Chairman Waxman that during 2008 he personally convened monthly meetings with White House Counsel Fred Fielding, the White House's Chief Information Officer, the Archivist of the United States, and the Ranking Republican Member. In light of Chairman Waxman's concerns, in July 2008 the House passed the Electronic Communications Preservation Act (H.R. 5811) which directs the Archivist of the United States to establish standards for the capture, management, and preservation of electronic messages that are presidential records.

The challenges posed by retaining e-mail as required under the PRA have proved vexing for the last two White Houses. You may recall the extraordinary problems the Clinton White House had with its e-mail archiving system.⁶ Such problems have led to costly expenditures of taxpayer dollars. For example, earlier this month it was disclosed that the Bush White House reportedly spent "more than \$10 million to locate 14 million e-mails reported missing."⁷ These e-mails were restored after a costly search of approximately 60,000 back-up server tapes.⁸ In order to prevent similar taxpayer-funded e-mail restoration projects, it is incumbent that the new White House implement policies and processes to minimize the risk of losing e-mail subject to the Presidential Records Act.

I ask that you answer the following questions for the Committee by March 4, 2009.

1. What is the White House's policy for ensuring that all messages sent or received by White House staff on private, non-governmental e-mail accounts are preserved according to law?
2. What procedure exists for ensuring that all messages sent or received by White House staff on private, non-governmental e-mail accounts are properly categorized as presidential records or non-presidential records?
3. Who makes the decision about whether an e-mail sent or received by a member of the White House staff is categorized as a presidential record?

Counsel to the President, regarding e-mails on October 9, 2007. The Committee Staff was briefed by Flood and other White House staff on at least 18 occasions during 2007 and 2008. The OGR Comm. staff conducted approximately 14 depositions or transcribed interviews related to e-mails. OGR Comm. staff was briefed by and/or reviewed documents of the National Archives regarding e-mails on two occasions.

⁵ OGR Comm. Website at <http://oversight.gov/> (last visited Jan. 27, 2009).

⁶ General Accounting Office (GAO), Clinton Administration's Management of Executive Office of the President's E-Mail System, GAO-01-446, April 2001 (GAO was renamed Government Accountability Office in 2004); R. Jeffrey Smith, *Missing White House E-Mails Trace, Justice Aide Says*, WASH. POST, Jan. 15, 2009, at A9 (hereinafter Smith, Jan. 15, 2009).

⁷ Smith, Jan. 15, 2009.

⁸ *Id.*

Mr. Gregory B. Craig
February 18, 2009
Page 3

4. Are these categorization decisions made in concert with the Counsel's office and with a representative of the National Archives?

5. What review process has been instituted to ensure that each e-mail is accurately categorized pursuant to law?

6. Last year at significant taxpayer expense the White House Chief Information Officer acquired an electronic archiving technology. As we understand it, the migration to this technology was ongoing during the last quarter of 2008. What is the status of the installation and migration to this new archiving system?

7. In 2008 National Archives General Counsel Gary Stern requested that the White House Counsel's office employ a lawyer full time to solely handle issues relating to the PRA. Do you foresee assigning the National Archives and PRA portfolio to one associate White House counsel on a full-time basis?

Thank you for your attention. I look forward to working with you to address record-keeping and technology related issues in the new Congress.

Sincerely,



Darrell Issa
Ranking Member

cc: Chairman Edolphus Towns