



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

February 11, 2016

**VIA CERTIFIED MAIL**

The Honorable Charles Grassley  
Chairman  
The U.S. Senate, Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510-6050

The Honorable Jason Chaffetz  
Chairman  
The U.S. House of Representatives, Committee on Oversight and Government Reform  
2157 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairmen Grassley and Chaffetz:

I write on behalf of Cause of Action Institute, a strategic oversight group committed to ensuring that government decision-making is open, honest, and fair. As you are aware, former Secretary of State Hillary Clinton used a private email system during her tenure to conduct official government business. That conduct violated federal recordkeeping guidelines and regulations established under the Federal Records Act, jeopardized the security of classified information, and obstructed citizen oversight by frustrating numerous Freedom of Information Act requests. Cause of Action Institute has been following and investigating this matter ever since it was first reported in the *New York Times* last year.<sup>1</sup>

A new development in this saga has recently come to our attention. We have learned that some of Mrs. Clinton's aides and ex-campaign staffers from her 2008 bid for the Democratic nomination for president, who followed her to the United States Department of State ("State Department"), continued to use communication devices and email accounts associated with Mrs. Clinton's presidential campaign committee during their subsequent employment at the State Department. Former campaign staff used these campaign devices and email accounts to communicate on official channels and co-mingle agency records with their personal communications.

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<sup>1</sup> See, e.g., Cause of Action Inst., *Legal Analysis of Former Secretary of State Hillary Clinton's Use of a Private Server to Store Email Records* (Aug. 24, 2015), available at <http://goo.gl/XgfLQh>.

Cause of Action Institute is representing *The Daily Caller*, an online news publication, in a Freedom of Information Act (“FOIA”) lawsuit against the State Department.<sup>2</sup> Documents recently produced in that lawsuit demonstrate that in March 2010, long after Mrs. Clinton ended her campaign for president, Cheryl Mills, Mrs. Clinton’s chief of staff at the State Department and her lawyer on the 2008 campaign, exchanged emails with State Department employee Bryan Pagliano using the address *bpagliano@hillaryclinton.com*.<sup>3</sup> *Hillaryclinton.com* is the web and email domain used by Friends of Hillary, the principal candidate campaign committee of Hillary Clinton during the 2008 campaign.<sup>4</sup> That is a different domain than the *clintonemail.com* domain used by Mrs. Clinton during her tenure as Secretary of State.<sup>5</sup>

In the email chain (attached as Ex. 1), Ms. Mills writes to Mr. Pagliano at his *hillaryclinton.com* address to discuss her having lost a personal Blackberry.<sup>6</sup> Ms. Mills reveals that the lost device is “[her] personal one [that she] used to use at [the] campaign.”<sup>7</sup> Nora Toiv, Ms. Mills’ assistant, participates in the email chain “copying Bryan’s [S]tate email.”<sup>8</sup> Mr. Pagliano responds from his State Department email address, explaining that he also “sent a reply from [his] [redacted] address, but delivery tends to be delayed to state.gov addresses.”<sup>9</sup>

A search of the State Department’s FOIA public reading room also reveals that the agency has produced ten records<sup>10</sup> showing that both Cheryl Mills and Huma Abedin, Mrs. Clinton’s deputy chief of staff throughout her time at the State Department, also maintained Clinton campaign email accounts during their tenure at the State Department.<sup>11</sup> The emails show that Mrs. Clinton, Ms. Mills, and Ms. Abedin freely comingled federal records between several

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<sup>2</sup> *Daily Caller v. U.S. Dep’t of State*, No. 15-1777 (D.D.C. 2015); see also Chuck Ross, *Clinton Chief Of Staff Lost Her Personal Blackberry, Which Contained Classified Emails*, THE DAILY CALLER (Jan. 26, 2016), <http://goo.gl/RnA70F>.

<sup>3</sup> Email chain between Cheryl D. Mills, Bryan M. Pagliano, & Nora F. Toiv (Mar. 20–21, 2010) (attached as Ex. 1). Mr. Pagliano was the IT director for Mrs. Clinton’s 2008 campaign and worked as an IT specialist at the State Department from May 2009 to February 2013. While at the State Department, Mr. Pagliano was secretly paid by Mrs. Clinton to maintain her private email server. See Reena Flores, *Clintons paid outside salary to State Dept. staffer for server work*, CBSNEWS.COM (Sept. 5, 2015), <http://goo.gl/U2sNIk>; Letter from Cause of Action Inst. to Steve A. Linick, Insp. Gen., U.S. Dep’t of State & Richard C. Visek, Designated Agency Ethics Official, U.S. Dep’t of State (Sept. 14, 2015), <http://goo.gl/kcQEeU>.

<sup>4</sup> See Archived webpage of *Hillaryclinton.com* from March 20, 2010 provided by Internet Archive Wayback Machine (showing page was “Paid for by Friends of Hillary”), <https://goo.gl/mc8WVR>; Fed. Election Comm’n, Details for Committee ID: C00358895, Friends of Hillary, <http://goo.gl/1j1gGb> (last visited Feb. 4, 2016).

<sup>5</sup> See, e.g., Email chain between Mrs. Clinton, *et al.* (Feb. 22, 2012) (attached as Ex. 2) (using the email address *HDR22@clintonemail.com*).

<sup>6</sup> News reports suggest that Ms. Mills used this personal Blackberry to send and receive official government emails, including some that the State Department later determined to contain classified information. See Chuck Ross, *Clinton Chief Of Staff Lost Her Personal Blackberry, Which Contained Classified Emails*, THE DAILY CALLER (Jan. 26, 2016), <http://goo.gl/RnA70F>.

<sup>7</sup> Ex. 1 at 1.

<sup>8</sup> *Id.*

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

<sup>10</sup> See Virtual Reading Room Documents Search, U.S. Dep’t of State (search term “hillaryclinton.com” produces ten records), <https://foia.state.gov/Search/Search.aspx> (last visited Feb. 8, 2016).

<sup>11</sup> As examples, see emails attached as Exhibits 2-3.

private and government email accounts, including: clintonemail.com, hillaryclinton.com, att.blackberry.net, and state.gov.

The use by federal government employees of email accounts hosted by a political campaign committee has been cause for investigation in the past. In 2007, Henry Waxman, the then Chairman of the U.S. House of Representatives, Committee on Oversight and Government Reform, released a report detailing the use of email accounts maintained by the Republican National Committee and the Bush Cheney '04 presidential campaign by White House officials during the administration of President George W. Bush.<sup>12</sup> Among other matters, the report found that White House officials had used these email accounts to circumvent the requirements of the Presidential Records Act and called for further investigation to determine the extent presidential records had been deleted, whether such records could be recovered from other government offices, and who in the administration should be held responsible.<sup>13</sup> A subsequent investigation by the U.S. Office of Special Counsel into political activities by government officials during the 2006 midterm elections also implicated the use of these campaign email accounts in certain Hatch Act violations.<sup>14</sup>

It is incumbent upon your committees to examine the similar issues that have arisen in the context of former Secretary of State Clinton and her closest advisors' activities in the State Department. The emails described above raise a host of unanswered questions only your committees have the proper jurisdiction to investigate:

1. Why were federal employees communicating over email accounts belonging to Mrs. Clinton's campaign committee long after the campaign had ended?
2. Why did Ms. Mills remain in possession and use of a campaign Blackberry during her employment at the State Department and who paid for that device?
3. Who continued to pay for the hillaryclinton.com email accounts being used by federal employees?
4. What other email communications, potentially implicating official government business, did federal employees have using Clinton campaign email accounts, and have such email communications been recovered and saved to official government recordkeeping systems?
5. What other ex-campaign staffers employed at the State Department or elsewhere in the government continued to use their Hillary Clinton campaign email accounts?
6. Does the email exchange between Mrs. Clinton and Ms. Mills with the subject line "My candidacy" (attached as Ex. 3) implicate a violation of the Hatch Act, which

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<sup>12</sup> See Majority Staff, U.S. H.R. Comm. on Oversight & Gov't Reform, *Interim Report, Investigation of Possible Presidential Records Act Violations* (2007), available at <https://goo.gl/8spbTy> (attached as Ex. 4).

<sup>13</sup> *Id.*

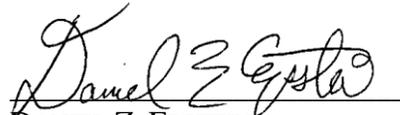
<sup>14</sup> See U.S. Office of Special Counsel, *Investigation of Political Activities by White House and Federal Agency Officials During the 2006 Midterm Elections* 2, 45, 47, 53, 73 (2011), available at <https://goo.gl/j3QaEI>.

prohibits government employees from using government time and resources to engage in political and campaign activities?

If Mr. Pagliano, Ms. Mills, Ms. Abedin, or any other State Department employee used a hillaryclinton.com email account for official government business, the resulting emails constitute federal records under the Federal Records Act and must be recovered and preserved by the State Department to fulfill its recordkeeping obligations.<sup>15</sup> If Ms. Mills' Blackberry, or any other communication devices purchased by the Friends of Hillary campaign committee, were transferred free-of-charge to ex-campaign staffers, that conduct would implicate a violation of the Federal Campaign Election Act. To date, the reporting and investigations into this matter have focused on the clintonemail.com emails stored on Mrs. Clinton's private server. The evidence now demonstrates that there exist an entirely separate domain and associated email accounts owned by The Friends of Hillary political campaign committee.

The continued use of the hillaryclinton.com domain long after Mrs. Clinton's campaign for president ended, and the use by federal employees of email accounts and communication devices associated with that domain, must be investigated to ensure a complete accounting of the illegal and improper email policies and practices implemented at the State Department during Mrs. Clinton's tenure as Secretary of State.

If you have further questions, please contact me by telephone at (202) 499-4232 or by email at [daniel.epstein@causeofaction.org](mailto:daniel.epstein@causeofaction.org). Thank you for your attention to this matter.

  
DANIEL Z. EPSTEIN  
EXECUTIVE DIRECTOR

cc:

The Honorable Patrick J. Leahy  
Ranking Member, The U.S. Senate, Committee on the Judiciary

The Honorable Elijah Cummings  
Ranking Member, The U.S. House of Representatives, Committee on Oversight and Government Reform

U.S. Office of Special Counsel

Committee Staff (by email)

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<sup>15</sup> To date, the federal records evidencing the use of the hillaryclinton.com email accounts have been recovered only because of the records voluntarily turned over by Mrs. Clinton in December 2014. We are unaware of any independent investigation into or attempt to recover records from federal employees using Hillary Clinton campaign email accounts.

# Exhibit 1

From: Pagliano, Bryan M  
To: Toiv, Nora F; Mills, Cheryl D  
Subject: Re: My lost personal bb  
Date: Sunday, March 21, 2010 7:58:13 PM

RELEASE IN PART  
B6

Sent a reply from my [redacted] address, but delivery tends to be delayed going to state.gov addresses.

here is a copy of the text you'll receive from it

Sorry to hear about your loss, in terms of att they really can only locate the region of where the device is, it is not terribly exact.

None of your contacts would be on your sim. I recall that the device has a password on it so if the password is entered 10 times incorrectly, the device will wipe all the data on it including your contacts.

In terms of a replacement device, I can't recall the sync configuration on your old device offhand.

Are all your contacts appearing in your [redacted] if you go into it via a web browser on your computer or laptop?

Transferring the phone number is easy and att can handle that. Getting it reassociated with your [redacted] and contacts falls a bit outside the scope of att's expertise. I am happy to help you get going on a new personal device when you are ready.

-Bryan

BTW - certainly a good idea to try to keep calling the device. An incoming phone call can be answered without having to unlock the device.

----- Original Message -----

From: Toiv, Nora F  
To: Mills, Cheryl D; 'bpagliano@hillaryclinton.com' <bpagliano@hillaryclinton.com>  
Cc: Pagliano, Bryan M  
Sent: Sat Mar 20 14:34:41 2010  
Subject: Re: My lost personal bb

Copying Bryan's state email.

----- Original Message -----

From: Mills, Cheryl D  
To: Toiv, Nora F; 'bpagliano@hillaryclinton.com' <bpagliano@hillaryclinton.com>  
Sent: Sat Mar 20 13:16:35 2010  
Subject: Re: My lost personal bb

No - its my personal one I used to use at campaign - and when I put in any new ones sense then, there was no back up of it

----- Original Message -----

From: Toiv, Nora F  
To: Mills, Cheryl D; 'bpagliano@hillaryclinton.com' <bpagliano@hillaryclinton.com>  
Sent: Sat Mar 20 12:53:23 2010  
Subject: Re: My lost personal bb

I think all your contacts on your outlook at work, so you should be ok on that front.

----- Original Message -----

From: Mills, Cheryl D

REVIEW  
AUTHORITY  
Barbara  
Nielsen,  
Senior  
Reviewer

E

B

To: 'bpagiano@hillaryclinton.com' <bpagiano@hillaryclinton.com>  
Cc: Toiv, Nora F; Mills, Cheryl D  
Sent: Sat Mar 20 12:45:32 2010  
Subject: My lost personal bb

Bryan

Somewhere b/w my house and the plane to nyc yesterday my personal bb got misplaced; no one is answering it though I have called.

B/f I turned it off, I had a quest - is it possible for att to trace the phone using gps?

If not, can someone take the sim card in it and put it in their phone and get access to all my contacts on it?

When I get a new bb, I assume they can transfer my old number; can I also make sure [redacted] goes there and does not go to the old device? If so - is that something I do or does att do that?

Thanks for your help - [redacted] and know I have lost all my many contacts which is the real drag.

Cdm

# Exhibit 2

RELEASE IN  
PART B6

**From:** Whitehouse, Sheldon (Whitehouse) <Sheldon\_Whitehouse2@whitehouse.senate.gov>  
**Sent:** Wednesday, February 22, 2012 8:43 PM  
**To:** H  
**Subject:** Re: Marie Colvin

Thanks so much.

----- Original Message -----

**From:** H [mailto:HDR22@clintonemail.com]  
**Sent:** Wednesday, February 22, 2012 08:38 PM  
**To:** Whitehouse, Sheldon (Whitehouse); H2 <hr15@att.blackberry.net>; 'HAbedin@hillaryclinton.com' <HAbedin@hillaryclinton.com>  
**Cc:** 'millsd@state.gov' <millsd@state.gov>; 'kennedypf@state.gov' <kennedypf@state.gov>  
**Subject:** Re: Marie Colvin

Dear Sheldon--

I am so sorry about the murder of your friend, the journalist, Marie Colvin, and the State Department will do everything we can to help bring her home. Since I am in London, I am copying Cheryl Mills and Pat Kennedy asking them to follow up w you and your Senate office to coordinate our efforts.

Please extend my condolences to her family and friends, H

----- Original Message -----

**From:** Whitehouse, Sheldon (Whitehouse) [mailto:Sheldon\_Whitehouse2@whitehouse.senate.gov]  
**Sent:** Wednesday, February 22, 2012 08:06 PM  
**To:** H2; 'HAbedin@hillaryclinton.com' <HAbedin@hillaryclinton.com>; H  
**Subject:** Marie Colvin

Marie Colvin, the American reporter who was killed in Syria today, was a close college friend.

[Redacted]

B6

Can you let

me know?

# Exhibit 3

RELEASE IN PART B6

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**From:** Mills, Cheryl D <MillsCD@state.gov>  
**Sent:** Monday, April 06, 2009 5:43 AM  
**To:** H  
**Subject:** FW: My candidacy

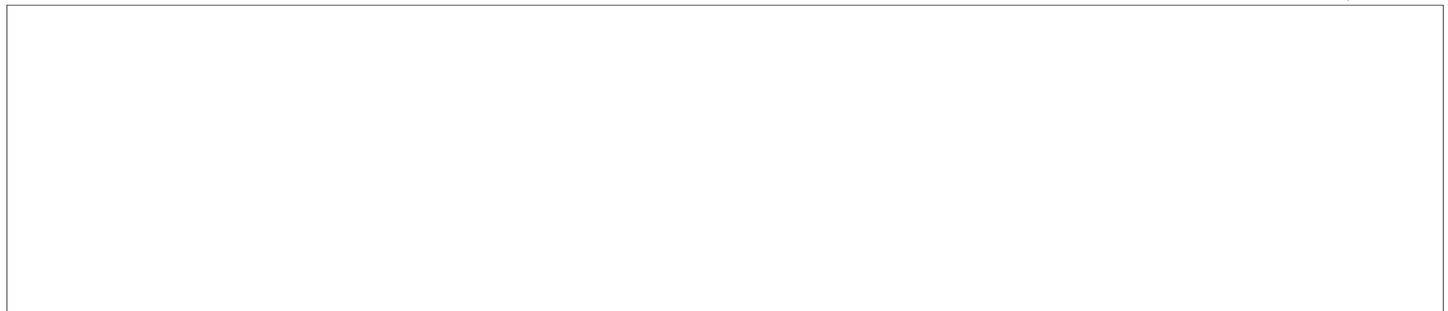
FYI

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**From:**   
**Sent:** Sunday, April 05, 2009 9:30 AM  
**To:** cmills@hillaryclinton.com; Mills, Cheryl D  
**Subject:** My candidacy

B6

Cheryl:



Many thanks and I hope you are doing well.



# Exhibit 4



UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
MAJORITY STAFF  
JUNE 2007

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Interim Report

**INVESTIGATION OF POSSIBLE  
PRESIDENTIAL RECORDS ACT VIOLATIONS**

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PREPARED FOR  
CHAIRMAN HENRY A. WAXMAN

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## EXECUTIVE SUMMARY

The Oversight Committee has been investigating whether White House officials violated the Presidential Records Act by using e-mail accounts maintained by the Republican National Committee and the Bush Cheney '04 campaign for official White House communications. This interim staff report provides a summary of the evidence the Committee has received to date, along with recommendations for next steps in the investigation.

The information the Committee has received in the investigation reveals:

- **The number of White House officials given RNC e-mail accounts is higher than previously disclosed.** In March 2007, White House spokesperson Dana Perino said that only a “handful of officials” had RNC e-mail accounts. In later statements, her estimate rose to “50 over the course of the administration.” In fact, the Committee has learned from the RNC that at least 88 White House officials had RNC e-mail accounts. The officials with RNC e-mail accounts include Karl Rove, the President’s senior advisor; Andrew Card, the former White House Chief of Staff; Ken Mehlman, the former White House Director of Political Affairs; and many other officials in the Office of Political Affairs, the Office of Communications, and the Office of the Vice President.
- **White House officials made extensive use of their RNC e-mail accounts.** The RNC has preserved 140,216 e-mails sent or received by Karl Rove. Over half of these e-mails (75,374) were sent to or received from individuals using official “.gov” e-mail accounts. Other heavy users of RNC e-mail accounts include former White House Director of Political Affairs Sara Taylor (66,018 e-mails) and Deputy Director of Political Affairs Scott Jennings (35,198 e-mails). These e-mail accounts were used by White House officials for official purposes, such as communicating with federal agencies about federal appointments and policies.
- **There has been extensive destruction of the e-mails of White House officials by the RNC.** Of the 88 White House officials who received RNC e-mail accounts, the RNC has preserved no e-mails for 51 officials. In a deposition, Susan Ralston, Mr. Rove’s former executive assistant, testified that many of the White House officials for whom the RNC has no e-mail records were regular users of their RNC e-mail accounts. Although the RNC has preserved no e-mail records for Ken Mehlman, the former Director of Political Affairs, Ms. Ralston testified that Mr. Mehlman used his account “frequently, daily.” In addition, there are major gaps in the e-mail records of the 37 White House officials for whom the RNC did preserve e-mails. The RNC has preserved only 130 e-mails sent to Mr. Rove during President Bush’s first term and no e-mails sent by Mr. Rove prior to November 2003. For many other White House officials, the RNC has no e-mails from before the fall of 2006.

- **There is evidence that the Office of White House Counsel under Alberto Gonzales may have known that White House officials were using RNC e-mail accounts for official business, but took no action to preserve these presidential records.** In her deposition, Ms. Ralston testified that she searched Mr. Rove's RNC e-mail account in response to an Enron-related investigation in 2001 and the investigation of Special Prosecutor Patrick Fitzgerald later in the Administration. According to Ms. Ralston, the White House Counsel's office knew about these e-mails because "all of the documents we collected were then turned over to the White House Counsel's office." There is no evidence, however, that White House Counsel Gonzales initiated any action to ensure the preservation of the e-mail records that were destroyed by the RNC.

The Presidential Records Act requires the President to "take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented ... and maintained as Presidential records." To implement this legal requirement, the White House Counsel issued clear written policies in February 2001 instructing White House staff to use only the official White House e-mail system for official communications and to retain any official e-mails they received on a nongovernmental account.

The evidence obtained by the Committee indicates that White House officials used their RNC e-mail accounts in a manner that circumvented these requirements. At this point in the investigation, it is not possible to determine precisely how many presidential records may have been destroyed by the RNC. Given the heavy reliance by White House officials on RNC e-mail accounts, the high rank of the White House officials involved, and the large quantity of missing e-mails, the potential violation of the Presidential Records Act may be extensive.

There are several next steps that should be pursued in the investigation into the use of RNC e-mail accounts by White House officials. First, the records of federal agencies should be examined to assess whether they may contain some of the White House e-mails that have been destroyed by the RNC. The Committee has already written to 25 federal agencies to inquire about the e-mail records they may have retained from White House officials who used RNC and Bush Cheney '04 e-mail accounts. Preliminary responses from the agencies indicate that they may have preserved official communications that were destroyed by the RNC.

Second, the Committee should investigate what former White House Counsel Alberto Gonzales knew about the use of political e-mail accounts by White House officials. If Susan Ralston's testimony to the Committee is accurate, there is evidence that Mr. Gonzales or counsels working in his office knew in 2001 that Karl Rove was using his RNC e-mail account to communicate about official business, but took no action to preserve Mr. Rove's official communications.

Third, the Committee may need to issue compulsory process to obtain the cooperation of the Bush Cheney '04 campaign. The campaign has informed the Committee that it provided e-mail accounts to 11 White House officials, but the campaign has unjustifiably refused to provide the Committee with basic information about these accounts, such as the identity of the White House officials and the number of e-mails that have been preserved.

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## I. BACKGROUND

The Oversight Committee first learned that White House officials might be using RNC e-mail accounts to avoid leaving a record of official communications during the Committee's investigation last year into White House contacts with convicted lobbyist Jack Abramoff. That investigation revealed that Susan Ralston regularly communicated with Mr. Abramoff regarding federal agency decisions, political appointments, and other official business on nongovernmental accounts. In one e-mail, Ms. Ralston wrote Mr. Abramoff's associate Todd Boulanger: "I now have an RNC blackberry which you can use to e-mail me at any time. No security issues like my WH e-mail."<sup>1</sup> In another e-mail, Mr. Abramoff was informed by an associate that a White House staff member advised the lobbyist not to send communications through the official White House e-mail system because "to put this stuff in writing in their e-mail system ... might actually limit what they can do to help us."<sup>2</sup>

Additional evidence that White House officials have used RNC e-mail accounts for official communications arose as part of two other investigations: (1) the investigation by the Senate and House Judiciary Committees into the firings of U.S. Attorneys and (2) the investigation by the Oversight Committee into White House political presentations to federal agencies. One e-mail sent through the RNC account of the assistant to Scott Jennings, Karl Rove's deputy, transmitted a political presentation to the General Services Administration, advising: "It is a close hold and we're not supposed to be emailing it around."<sup>3</sup>

On March 26, 2007, the Oversight Committee sent a letter to the RNC and the Bush Cheney '04 campaign asking both entities to preserve all records of e-mails sent to or from White House officials.<sup>4</sup> On April 4, 2007, the Committee wrote again to the RNC and the Bush Cheney '04 campaign requesting e-mails relating to political briefings provided to agency officials and the use of federal agencies and federal resources for partisan political purposes.<sup>5</sup> When the RNC failed to cooperate voluntarily, the Committee issued two subpoenas to the RNC on April 25, 2007. These subpoenas sought statistical information about White House officials' use of the accounts as well as the e-mails that had previously been requested.

In response to the Committee's first subpoena, the RNC has provided the Committee with a list of White House officials who held RNC accounts as well as information about the total number of e-mails preserved by the RNC for each of these officials, the number of e-mails preserved for each official on a daily basis, and the number of e-mails preserved that were sent to or from federal ".gov" e-mail accounts.

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<sup>1</sup> E-mail from Susan Ralston to Shawn Vasell and Todd Boulanger (July 11, 2001) (GTG-R001392).

<sup>2</sup> E-mail from Kevin Ring to Jack Abramoff (Feb. 7, 2003) (GTG-R002245).

<sup>3</sup> E-mail from Jocelyn Webster to Tessa Truesdell (Jan. 19, 2007) (W-02-0310).

<sup>4</sup> Letter from Rep. Henry A. Waxman to Mike Duncan, Chairman, Republican National Committee (Mar. 26, 2007); Letter from Rep. Henry A. Waxman to Marc Racicot, former Chairman, Bush Cheney '04 (Mar. 26, 2007).

<sup>5</sup> Letter from Rep. Henry A. Waxman to Mike Duncan, Chairman, Republican National Committee (Apr. 4, 2007); Letter from Rep. Henry A. Waxman to Marc Racicot, former Chairman, Bush Cheney '04 (Apr. 4, 2007).

The Committee obtained additional information about the use of RNC accounts by White House officials when the Committee deposed Susan Ralston on May 10, 2007. In addition, the White House has provided the Committee with redacted policies and memoranda relating to e-mail use and preservation. Several federal agencies have also provided the Committee with partial inventories of e-mail communications with White House officials who used RNC and Bush Cheney '04 e-mail accounts.

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## II. WHITE HOUSE OFFICIALS WITH RNC E-MAIL ACCOUNTS

The RNC has identified 88 current and former White House officials who held RNC e-mail accounts while on staff at the White House, as well as one account that was held by an unnamed intern or interns in the Office of Political Affairs. This is a larger number than previously acknowledged by the White House. On March 27, 2007, when White House spokesperson Dana Perino was first asked about the use of political e-mail accounts by White House officials, she stated that only a “handful of officials” had access to these accounts.<sup>6</sup> In later statements, Ms. Perino said that the total set of account holders was “50 over the course of the administration.”<sup>7</sup>

The list of White House officials who held these accounts include Karl Rove, the President’s senior advisor; Andrew Card, the former White House Chief of Staff; and Dan Bartlett, the Counselor to the President. The list also includes all four Directors of Political Affairs that have served in the Bush White House: Ken Mehlman (2001-2003), Matt Schlapp (2003-2005), Sara Taylor (2005-2007), and Jonathan Felts (2007), the newly named Director of Political Affairs who previously worked for Vice President Cheney. Many of the account holders worked under Karl Rove in the Office of Political Affairs or the Office of Strategic Initiatives. Others worked in the Office of Communications or the Office of the Vice President. Individuals from the Vice President’s office with RNC e-mail accounts include Mel Raines and Kara Ahern, both of whom served as Political Director for the Vice President. Appendix 1 contains the complete list of White House officials who were provided with RNC e-mail accounts.

The Bush Cheney '04 campaign has provided only limited information to the Committee about White House officials who held campaign e-mails accounts. According to the campaign, 11 officials were provided with Bush Cheney '04 campaign accounts. The campaign has identified only six of the account holders, including Dan Bartlett and Karl Rove, all of whom also held RNC accounts.<sup>8</sup>

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<sup>6</sup> The White House, *Press Briefing by Dana Perino* (Mar. 27, 2007).

<sup>7</sup> The White House, *Press Briefing by Dana Perino* (Apr. 12, 2007).

<sup>8</sup> Letter from Eric A. Kuwana, Katten Muchin Rosenman, to Rep. Henry A. Waxman (May 15, 2007).

### III. USE OF THE RNC ACCOUNTS BY WHITE HOUSE OFFICIALS

Although 88 White House officials received RNC e-mail accounts, the RNC says that it retains e-mail records for only 37 of these officials. For these 37 officials and the unnamed intern in the Office of Political Affairs, the RNC has preserved 674,367 e-mails sent to and from their RNC-maintained accounts. Usage patterns documented by the RNC show that these accounts were used by White House officials on a regular and consistent basis.<sup>9</sup> A list of the 37 officials for whom the RNC provided data, along with the number of e-mails sent and received by each of these officials, is contained in Appendix 2.

According to the data provided to the Committee, the RNC has preserved 140,216 e-mails sent to and from Mr. Rove's RNC e-mail account between January 2002 and April 2007, the most of any White House official. The second most prolific user of the RNC account was Sara Taylor, the former White House Director of Political Affairs. The RNC has preserved 66,018 of her e-mails. Ten other users have more than 20,000 e-mails preserved by the RNC. These include Jane Cherry (27,482), Raul Damas (38,034), Melissa Danforth (38,802), Paris Dennard (33,370), Michael Ellis (22,004), Jonathan Felts (29,011), Scott Jennings (35,198), Mindy McLaughlin (23,346), Susan Ralston (35,665), and Steven Soper (33,382).<sup>10</sup>

Some officials relied heavily on these accounts, sending and receiving many e-mails each day. According to the data provided to the Committee, two account holders averaged more than 200 e-mails each weekday. The RNC has e-mail records for Brad Smith, an executive assistant in the Office of Political Affairs, for the period between January 10, 2007, and April 27, 2007. During this period, Mr. Smith sent 6,954 e-mails and received 9,812 e-mails, for an average of 217 per weekday. Steven Soper, an associate director of the Office of Political Affairs, was another frequent user with 33,382 e-mails sent and received in the eight months between September 2006 and April 2007, an average of 202 per weekday.

Mr. Rove and six other White House officials — Mike Britt, Jonathan Felts, Korinne Kubenna, Mindy McLaughlin, Cliff Rosenberger, and Nick Sinatra — all averaged more than 100 e-mails sent or received each weekday that their accounts were active.<sup>11</sup> In 2007, Mr. Rove frequently sent more than 100 e-mails per day through his RNC e-mail account and received more than 200 per day.

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<sup>9</sup> The RNC provided the Committee with data on all e-mail preserved by the RNC for each account holder, but appears not to have limited this data to dates when these individuals were on the White House payroll. This may skew the results slightly for some individuals, as it appears that some White House officials continued to receive, and occasionally send, e-mails from these accounts after they left the White House.

<sup>10</sup> Jane Cherry is an associate director in the Office of Political Affairs; Raul Damas and Steven Soper both held this position in the past; Paris Dennard is an executive assistant in the Office of Political Affairs; Cliff Rosenberger was a staff assistant in the Office of Political Affairs; Melissa Danforth and Michael Ellis are former associate directors in the Office of Strategic Initiatives; and Mindy McLaughlin is the associate director of scheduling.

<sup>11</sup> Korinne Kubenna and Nick Sinatra are associate directors in the Office of Political Affairs.

The Committee asked the RNC to provide data on how many e-mails each White House official sent to or received from official “.gov” e-mail accounts. According to the information from the RNC, virtually all of the 37 White House officials used their RNC accounts to communicate with government officials with official “.gov” e-mail accounts. Of the 674,367 e-mails preserved by the RNC, 240,922 e-mails (36%) were sent to or received from government e-mail accounts. Four White House officials — Karl Rove, Jason Huntsberry, Melissa Danforth, and Emily Willeford — conducted more than half of their communications on their RNC accounts with government officials who were using official “.gov” accounts.<sup>12</sup> Mr. Rove alone sent or received 75,374 “.gov” e-mails using his RNC e-mail account.

In response to the request from the Committee, a few agencies have provided partial inventories of e-mails exchanged between agency officials and White House officials using RNC and Bush Cheney ’04 e-mail accounts. These limited inventories indicate that White House officials used their RNC e-mail accounts to conduct official business. For example, the inventories provided by the Environmental Protection Agency, the Department of Transportation, and the Federal Elections Commission all list numerous e-mails that involve official appointments and other personnel matters.<sup>13</sup> The EPA inventory includes several e-mail exchanges about “EPA Grants” and “grant announcements,” as well as e-mails about a “watershed project.”

The inventory the Committee received from the General Services Administration includes several e-mail exchanges between GSA officials and Jane Cherry in the White House Office of Political Affairs regarding an “African Burial Ground.” This e-mail exchange occurred in the weeks before the GSA held a ceremonial groundbreaking in September 2005 in New York City for a memorial at the African Burial Ground National Landmark Site. The GSA inventory also lists several e-mails in February 2007 between Scott Jennings in the Office of Political Affairs and a GSA official regarding a “San Francisco Fed Building Opening.”

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## IV. DESTRUCTION OF THE E-MAILS OF WHITE HOUSE OFFICIALS

Whether intentionally or inadvertently, it appears that the RNC has destroyed a large volume of the e-mails of White House officials who used RNC e-mail accounts. The RNC has told the Committee that it had a “document retention” policy under which e-mails that are more than 30 days old are deleted. In addition, the RNC has said that individual account holders had the ability to delete permanently e-mails less than 30 days

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<sup>12</sup> Jason Huntsberry is a former associate director in the Office of Political Affairs and Emily Willeford is the director of Karl Rove’s office.

<sup>13</sup> These include e-mails about “regional openings” at EPA, an “FEC job candidate,” and numerous e-mails that are listed as being “personnel related” at the Department of Transportation.

old. As a result of these policies, potentially hundreds of thousands of White House e-mails have been destroyed, many of which may be presidential records.

One indication of the scale of the loss of White House e-mail is the fact that the RNC has retained no e-mail messages whatsoever for 51 of the 88 White House officials with RNC e-mail accounts. It is possible that some of these individuals made minimal or no use of their accounts, but there is evidence that indicates that many of them used their accounts on a regular basis.

The Oversight Committee took the deposition of Susan Ralston, Karl Rove's former executive assistant, on May 10, 2007. At the time of the deposition, the Committee had been informed by the RNC of 36 White House officials who had RNC accounts but for whom the RNC had no e-mail records. Ms. Ralston testified that at least 20 of these officials used their RNC e-mail accounts, often regularly. Of the remaining 16 officials, Ms. Ralston testified that she did not know whether they used their accounts or not.<sup>14</sup>

During the deposition, Ms. Ralston was asked about the e-mail practices of Ken Mehlman, the former White House Political Director. Ms. Ralston testified that Mr. Mehlman used his e-mail account "frequently, daily."<sup>15</sup> The RNC, however, has not retained a single e-mail to or from Mr. Mehlman during his period as White House Political Director. Ms. Ralston testified that Israel Hernandez, a former assistant to Mr. Rove, used his RNC account "regularly," but the RNC has no record of any e-mails sent by Mr. Hernandez from his RNC account. Ms. Ralston stated that several officials who served in the White House Office of Political Affairs — among them Paul Dyck, Angela Flood, Leonard Rodriguez, Alicia Davis, and Mike Davis — all held RNC accounts that she believed were used "daily" or "regularly."<sup>16</sup> The RNC has not retained a single e-mail to or from any of these officials.

Moreover, even for White House officials for whom the RNC has e-mail records, these records appear to be incomplete. Of the 37 officials for whom the RNC has retained e-mails, only 15 have any e-mail records that date from before 2006. Of those, seven have virtually no e-mails dating to those earlier years. The RNC has reported that the first available e-mail for Scott Jennings is dated January 1, 2003. However, the RNC has only preserved four of Mr. Jennings's e-mails dated earlier than August 2006. In contrast, the RNC has over 35,000 e-mails sent and received by Mr. Jennings during the nine months between August 2006 and April 2007.

An analysis of Karl Rove's e-mail records shows major gaps in the preservation of his e-mails. According to Susan Ralston, who began working for Karl Rove in February 2001, Mr. Rove used his political e-mail account frequently during the entire period that she worked for him. She told the Committee that he used this account many times per day.<sup>17</sup> Yet the RNC has preserved only 130 e-mails sent to Mr. Rove during the entire first term

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<sup>14</sup> Deposition of Susan Ralston by the Committee on Oversight and Government Reform (May 10, 2007).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

of the Bush Administration. The first e-mail sent by Mr. Rove that the RNC has preserved is dated November 26, 2003.

Mr. Rove has frequently been described in the media as a constant Blackberry user whose “BlackBerry has every appearance of being surgically attached to his hand.”<sup>18</sup> A 2002 article about technology in the White House noted: “Even before the BlackBerry passed its recent technology review, Karl Rove, the president’s chief political strategist, was an early adopter at the White House.”<sup>19</sup> According to Ms. Ralston’s testimony, the only Blackberry Mr. Rove used was one issued to him by the RNC.<sup>20</sup> If this is true, few of Mr. Rove’s Blackberry e-mail communications from President Bush’s first term have been preserved by the White House or the RNC.

During her deposition, Ms. Ralston told the Committee that her “general understanding was that [Mr. Rove] thought that the e-mails were being preserved.”<sup>21</sup> She stated that “during the first four years or so,” when Mr. Rove’s computer equipment was upgraded or his Blackberry was replaced, RNC staff explained that “because they saved Karl’s e-mails, that it would take a long time to load up his e-mail file folders.”<sup>22</sup> The Committee has received no explanation for the discrepancy between Ms. Ralston’s belief that Mr. Rove’s e-mails were being preserved by the RNC and the RNC’s assertions to the Committee that the RNC has virtually no e-mails from Mr. Rove for the President’s first years in office.

The partial e-mail inventories provided to the Committee by federal agencies provide a further indication that official records may have been lost. As discussed in the previous section, the General Services Administration provided the Committee with a summary of September 2005 e-mails between Jane Cherry at the White House and a GSA official regarding an African Burial Ground. According to the RNC, however, the earliest e-mail preserved by the RNC on Ms. Cherry’s account is from December 2005.

Like the RNC, the Bush Cheney ’04 campaign has told the Committee that it had a 30-day deletion policy, which creates the possibility that the campaign also destroyed an extensive volume of White House e-mails. The extent to which the Bush Cheney ’04 campaign destroyed or preserved the e-mails cannot be assessed by the Committee, however, because the campaign has refused to provide the Committee with statistics about e-mail usage and retention.

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<sup>18</sup> *The Rove Warrior*, Time (Dec. 27, 2004).

<sup>19</sup> *He Used to be G94B*, Newsweek (Oct. 14, 2002).

<sup>20</sup> Deposition of Susan Ralston by the Committee on Oversight and Government Reform (May 10, 2007).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

## V. WHITE HOUSE COUNSEL POLICIES AND KNOWLEDGE REGARDING THE USE OF RNC E-MAIL ACCOUNTS

When concerns were first raised publicly about the use of RNC e-mail accounts by White House officials, the White House stated that the problems arose, in large part, from a lack of clear guidance from the White House regarding the handling of e-mail and the separation of official and political work.<sup>23</sup> According to White House spokesperson Dana Perino, the White House implemented a new e-mail policy this year because the existing “policy wasn’t very clear, and that people needed a clearer policy.”<sup>24</sup>

In fact, the White House policy from the first days of the Bush Administration has been clear: use only the official e-mail system for official communications and retain any official e-mails received on a nongovernmental account. A February 26, 2001, memorandum from Alberto Gonzales, Counsel to the President, to White House staff stated:

e-mail is no different from other kinds of documents. Any e-mail relating to official business therefore qualifies as a Presidential record. All e-mail to your official e-mail address is automatically archived as if it were a Presidential record, and all e-mail from your official e-mail address is treated as a Presidential record unless you designate otherwise. ... [I]f you happen to receive an e-mail on a personal e-mail account that otherwise qualifies as a Presidential record, it is your duty to ensure that it is preserved and filed as such by printing it out and saving it or by forwarding it to your White House e-mail account.<sup>25</sup>

The February 2001 White House Staff Manual similarly stated:

Federal law and EOP policy require the preservation of electronic communications that relate to official business and that are sent or received by EOP staff. As a result, you must only use the authorized e-mail system for all official electronic communications.<sup>26</sup>

Ms. Ralston’s deposition provides evidence that the White House Counsel’s office under Alberto Gonzales may have been aware as early as 2001 that White House officials were not complying with the policies regarding preservation of official e-mail. Ms. Ralston told the Committee that she and Mr. Rove twice searched for e-mails on his political accounts in response to investigative requests. Ms. Ralston stated that in 2001, Mr. Rove was asked to search his political computer in response to a request relating to an

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<sup>23</sup> See *Bush Aides’ Use of GOP Email Probed*, The Associated Press (Apr. 11, 2007).

<sup>24</sup> The White House, *Press Briefing by Dana Perino* (Apr. 13, 2007).

<sup>25</sup> Memorandum from Alberto Gonzales, Counsel to the President (Feb. 26, 2001) included within The White House, *White House Staff Manual* (Feb. 2001) (redacted copy provided to Committee on Oversight and Government Reform).

<sup>26</sup> The White House, *White House Staff Manual* (Feb. 2001) (redacted copy provided to Committee on Oversight and Government Reform).

investigation of Enron. She testified that the White House Counsel’s office would have known about these searches “because all of the documents that we collected were then turned over to the White House Counsel’s office.”<sup>27</sup> According to Ms. Ralston, this investigation was related to the Vice President’s energy task force and contacts with Enron.<sup>28</sup>

In addition, Ms. Ralston testified that Mr. Rove searched his RNC e-mail account in response to several subpoenas from Patrick Fitzgerald during the investigation of the leak of the identity of CIA officer Valerie Plame Wilson. She testified that the White House Counsel’s office also knew about these searches and received copies of the search results.<sup>29</sup>

Ms. Ralston’s testimony about these searches raises several questions. If her testimony is accurate, former White House Counsel Gonzales may have been aware in 2001 that Mr. Rove was using RNC e-mail accounts for official communications. Yet it was not until six years later that the White House wrote to the RNC instructing it to preserve any “emails or documents that may relate to the official business of the Executive Office of the President that may be in the possession of the RNC.”<sup>30</sup>

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## VI. CONCLUSION

The Presidential Records Act was enacted in 1978 to ensure that White House records are preserved and made available to the public and historians. The Act establishes that the records of a president, his immediate staff, and certain units of the Executive Office of the President belong to the United States, not to the individual president or his staff. The law provides:

the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as Presidential records pursuant to the requirements of this section and other provisions of law.<sup>31</sup>

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<sup>27</sup> Deposition of Susan Ralston by the Committee on Oversight and Government Reform (May 10, 2007).

<sup>28</sup> Phone call between Susan Ralston and Committee on Oversight and Government Reform Committee staff (May 18, 2007).

<sup>29</sup> Deposition of Susan Ralston by the Committee on Oversight and Government Reform (May 10, 2007).

<sup>30</sup> Letter from Emmet T. Flood, Special Counsel to the President, to Tom Josefiak, Republican National Committee (Mar. 14, 2007).

<sup>31</sup> 44 U.S.C. § 2203.

The Committee has obtained evidence of potentially extensive violations of the Presidential Records Act by senior White House officials. During President Bush's first term, momentous decisions were made, such as the decision to go to war in Iraq. Yet many e-mail communications during this period involving the President's most senior advisors, including Karl Rove, were destroyed by the RNC. These violations could be the most serious breach of the Presidential Records Act in the 30-year history of the law.

There are three next steps in the Committee's investigation. First, the Committee will continue its efforts to survey federal agencies for the missing presidential records. The Committee has written 25 agencies to request inventories of e-mails with White House officials using RNC and Bush Cheney '04 e-mail accounts that the agencies may retain. The data received from the RNC will allow the Committee and the agencies to target their efforts upon officials and periods of time for which the RNC appears to have destroyed its e-mail records.

Second, the Committee will seek additional information about the White House role in the failure to preserve these e-mails, especially the role of former White House Counsel Alberto Gonzales. Mr. Gonzales issued the right policies in February 2001, but failed to enforce them. Moreover, Ms. Ralston's testimony provides evidence that Mr. Gonzales or others in the White House Counsel's office may have failed to act even after receiving information about Mr. Rove's use of the RNC accounts for official communications.

Finally, the Committee may need to issue compulsory process to the Bush Cheney '04 campaign. The campaign acknowledges that at least 11 White House officials used campaign e-mails, but it refuses to identify the full list of officials or provide basic statistical information to the Committee. This recalcitrance is an unwarranted obstacle to the Committee's inquiry into potential violations of the Presidential Records Act.



## ATTACHMENT I: LIST OF WHITE HOUSE OFFICIALS WHO HELD RNC ACCOUNTS

Ahern, Kara	Fricks, Wesley	Marinis, Kate	Sforza, Scott
Bartlett, Dan	Garcia, Noe	Martin, Cathie	Shannon, Michael
Bearson, Darren	Goergen, BJ	Mayol, Annie	Simmons, Sarah
Becker, Glynda	Gray, Adrian	McBride, Anita	Sinatra, Nick
Best, Trey	Griffin, Tim	McBrien, Lauren	Smith, Brad
Britt, Mike	Henick, Chris	McCullough, Kelley	Soper, Steven
Card, Andrew	Hernandez, Israel	McLaughlin, Mindy	Swineheart, Jessica
Casale, Anthony AJ	Hester, Brad	McMahan, Thomas	Taylor, Sara
Cherry, Jane	Hoelscher, Doug	Mehlman, Ken	Terpeluk, Meredith
Clark, Alicia	Hollifields, Nathan	Napolitano, Michael	Thomas, Dave
Clyne, Megan	Hughes, Karen	Oschal, Jennifer	Thomas, Travis
Damas, Raul	Hughes, Taylor	Palasciano, Kristen	Thompson, Nicholas
Danforth, Melissa	Hunter, Matt	Pipes, Kasey	Wallace, Nicolle
Davis, Alicia	Huntsberry, Jason	Raad, Lori	Webster, Jocelyn
Davis, Mike	Jackson, Barry	Raines, Mel	Wehner, Peter
Dennard, Paris	Jennings, Scott	Ralston, Susan	Westine, Lezlee
Dyck, Paul	Johnson, Collister	Ritacco, Krista	Willeford, Emily
Elliott, Bridget	Jucas, Tracy	Rodriguez, Leonard	Wilson-Lawson, Lauren
Ellis, Michael	Kubena, Korinne	Rosenberger, Cliff	Zimmerman, Neil
Eskew, Carter	Lauckhardt, Shelby	Rove, Karl	OPA Intern
Felts, Jonathan	Levine, Adam	Schlapp, Matt	
Flood, Angela	MacIntyre, Henley	Schmidt, Steve	
Frans, Luke	Mamo, Jeanie	Seaton, Jon	

Source: Letter from Robert K. Kelner to Rep. Henry A. Waxman (Apr. 25, 2007); Letter from Robert K. Kelner to Rep. Henry A. Waxman (May 8, 2007); Letter from Robert K. Kelner to Rep. Henry A. Waxman (May 30, 2007).

## ATTACHMENT II: DATA REGARDING E-MAILS PRESERVED BY THE RNC

Name	E-mails sent	E-mails rcvd	Date of first avail. e-mail	Date of last avail. e-mail	E-mails sent to .gov	E-mails rcvd from .gov
Bartlett, Dan	0	2	4/1/2007	4/1/2007	0	0
Best, Trey	4,650	7,203	9/2/2002	4/27/2007	1,368	2,356
Britt, Mike	3,589	5,147	2/2/2007	4/27/2007	830	1,218
Cherry, Jane	10,789	16,693	12/7/2005	4/27/2007	3,654	6,376
Damas, Raul	7,842	30,192	8/22/2001	4/27/2007	2,068	14,184
Danforth, Melissa	13,887	24,915	9/20/2001	4/27/2007	8,189	16,529
Dennard, Paris	12,780	20,590	4/22/2004	4/27/2007	3,922	8,140
Ellis, Michael	7,326	14,678	4/5/2006	4/27/2007	1,061	1,048
Felts, Jonathan	12,008	17,003	6/30/2006	4/27/2007	4,167	7,213
Goergen, BJ	1,243	5,676	10/17/2003	4/27/2007	650	809
Hernandez, Israel	0	495	1/16/2006	4/27/2007	0	0
Hughes, Taylor	608	4,453	3/9/2005	4/27/2007	111	1,540
Huntsberry, Jason	5,681	8,535	2/20/2002	4/27/2007	1,475	6,955
Jackson, Barry	8,020	9,560	1/7/2004	4/27/2007	1,264	1,929
Jennings, Scott	15,909	19,289	1/1/2003	4/27/2007	3,315	5,138
Kubena, Korinne	3,708	5,193	1/22/2007	4/27/2007	1,204	1,880
Martin, Cathie	0	129	1/27/2006	4/26/2007	0	0
McBride, Anita	0	5	6/10/2005	9/5/2006	0	0
McBrien, Lauren	11	43	10/19/2006	4/4/2007	2	4
McLaughlin, Mindy	9,848	13,498	9/5/2006	4/27/2007	3,129	6,638
Raines, Mel	1,015	1,444	10/1/2006	4/27/2007	342	479
Ralston, Susan	18,452	17,213	12/17/2002	4/27/2007	3,188	1,832
Rosenberger, Cliff	3,635	5,290	2/15/2007	4/27/2007	896	1,672
Rove, Karl	46,801	93,415	1/2/2002	4/27/2007	24,073	51,301
Schlapp, Matt	1	120	2/21/2007	4/10/2007	0	2
Seaton, Jon	6,589	921	1/31/2006	4/27/2007	1,273	278
Sforza, Scott	70	73	10/31/2006	2/26/2007	29	22
Sinatra, Nick	974	1,302	4/1/2007	4/27/2007	206	375
Smith, Brad	6,954	9,812	1/10/2007	4/27/2007	964	2,653
Soper, Steven	13,096	20,286	9/7/2006	4/25/2007	3,141	4,279
Swineheart, Jessica	3,618	7,764	9/8/2006	4/26/2007	955	1,927
Taylor, Sara	31,061	34,957	11/5/2002	4/27/2007	3,699	8,032
Thomas, Travis	996	3,299	5/14/2003	4/27/2007	27	631
Thompson, Nicholas	1,336	1,813	3/1/2007	4/27/2007	145	234
Webster, Jocelyn	5,296	4,839	6/14/2006	4/26/2007	1,823	1,850
Wehner, Peter	273	775	10/8/2006	4/27/2007	111	80
Willeford, Emily	2,549	6,469	12/19/2006	4/26/2007	1,459	4,320
OPA Intern	317	344	2/21/2007	4/27/2007	110	148

Source: Letter from Robert K. Kelner to Rep. Henry A. Waxman (May 30, 2007).