

TOM DAVIS, VIRGINIA,
CHAIRMAN

DAN BURTON, INDIANA
CHRISTOPHER SHAYS, CONNECTICUT
ILEANA ROS-LEHTINEN, FLORIDA
JOHN M. MCHUGH, NEW YORK
JOHN L. MICA, FLORIDA
MARK E. SOUDER, INDIANA
STEVEN C. LATOURETTE, OHIO
DOUG OSE, CALIFORNIA
RON LEWIS, KENTUCKY
JO ANN DAVIS, VIRGINIA
TODD RUSSELL PLATTS, PENNSYLVANIA
CHRIS CANNON, UTAH
ADAM H. PUTNAM, FLORIDA
EDWARD L. SCHROCK, VIRGINIA
JOHN J. DUNCAN, JR., TENNESSEE
JOHN SULLIVAN, OKLAHOMA
NATHAN DEAL, GEORGIA
CANDICE MILLER, MICHIGAN
TIM MURPHY, PENNSYLVANIA
MICHAEL R. TURNER, OHIO
JOHN R. CARTER, TEXAS
WILLIAM J. JANKLOW, SOUTH DAKOTA
MARSHA BLACKBURN, TENNESSEE

ONE HUNDRED EIGHTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
TTY (202) 225-6852

www.house.gov/reform

June 4, 2003

HENRY A. WAXMAN, CALIFORNIA,
RANKING MINORITY MEMBER

TOM LANTOS, CALIFORNIA
MAJOR R. OWENS, NEW YORK
EDOLPHUS TOWNS, NEW YORK
PAUL E. KANJORSKI, PENNSYLVANIA
CAROLYN B. MALONEY, NEW YORK
ELIJAH E. CUMMINGS, MARYLAND
DENNIS J. KUCINICH, OHIO
DANNY K. DAVIS, ILLINOIS
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
DIANE E. WATSON, CALIFORNIA
STEPHEN F. LYNCH, MASSACHUSETTS
CHRIS VAN HOLLEN, MARYLAND
LINDA T. SANCHEZ, CALIFORNIA
C.A. DUTCH RUPPERSBERGER,
MARYLAND
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
JIM COOPER, TENNESSEE
CHRIS BELL, TEXAS

BERNARD SANDERS, VERMONT,
INDEPENDENT

The Honorable Tom Ridge
Secretary
Department of Homeland Security
Washington, DC 20528

Dear Mr. Secretary:

We write to request information under the “Seven Member Rule” (5 U.S.C. § 2954) about requests made to the Department of Homeland Security regarding the apprehension, location, or monitoring of members of the Texas legislature.

The Department of Homeland Security was established last year to coordinate the federal effort to protect the United States against terrorist attacks. At the time the Department was created, members of Congress expressed great concern that the extensive resources of the Department not be used to create an Orwellian surveillance state. Any intentional effort to use the Department to assist in a partisan political dispute would be a deviation from the Department’s mission and an abuse of its powers.

Recently, there have been serious allegations that government officials in Texas and others requested the assistance of the Department of Homeland Security in resolving a dispute among members of the Texas legislature. Moreover, it appears that the Department of Homeland Security responded to these requests and provided assistance in tracking down Democratic lawmakers from Texas, although it is still unclear whether the Department knew it was intervening in a state political dispute when it did so.

As members of the primary oversight committee in the House of Representatives, we are invoking our rights under the Seven Member Rule to obtain information about the requests made to the Department in this matter. This law requires you to “submit any information . . . relating to any matter within the jurisdiction of the committee” when requested by at least seven members of the Government Reform Committee.

Background

On May 11, as part of a dispute over a controversial state redistricting plan, more than 50 Democratic members of the Texas legislature refused to attend the legislative session, denying

the majority of the legislature a quorum to vote on the measure.¹ Using a Texas House Rule of Procedure, which authorizes the legislature to compel the attendance of absent members, the legislature directed the Texas Department of Public Safety to arrest the missing legislators and bring them to the chamber to satisfy the quorum requirement.² This dispute was entirely an internal state political matter. There were no allegations that any of the missing legislators committed any criminal violation under Texas or federal law when they boycotted the legislative session.

As part of their efforts to track down the missing legislators, Texas officials sought the aid of the Department of Homeland Security. The Homeland Security Department has released a statement acknowledging that Texas officials contacted the federal Air and Marine Interdiction Coordination Center, a branch of the Department, seeking information about the location of an airplane owned by Rep. Pete Laney, one of the missing legislators.³ The Homeland Security Department stated: "From all indications, this request from the Texas DPS was an urgent plea for assistance from a law enforcement agency trying to locate a missing, lost, or possibly crashed aircraft."⁴ The statement also included a partial quotation from the Texas official who made the request. The officer was quoted as saying, "We got a problem and I hope you can help me out. We had a plane that was supposed to be going from Ardmore, Okla., to Georgetown, Tex. It has state representatives in it and we cannot find this plane."⁵

The Department of Homeland Security also acknowledged that it used federal resources to respond to this request. The Department admitted that the Air and Marine Interdiction Coordination Center, which is an electronic tracking station in Riverside, California, contacted the Federal Aviation Administration and local aviation officials at three airports in Texas to locate the private aircraft.⁶ One airport manager reportedly recalled that the Homeland Security

¹*Agencies Review Roles in Hunt for Tex. Lawmakers in Walkout*, Washington Post (May 24, 2003).

²*Texas Democrats' Walkout Breaks Quorum, Not Law*, Fort Worth Star-Telegram (May 13, 2003); Texas House Rule of Procedure 10.

³ Department of Homeland Security, *Statement from the Bureau of Immigrations and Customs Enforcement (ICE)* (May 15, 2003); *Texas Legislative Dispute Goes National*, New York Times (May 16, 2003); *Democrats Return to Texas, Homeland Security Search for Laney's Airplane Creates Furor*, Fort Worth Star-Telegram (May 16, 2003); *see also Eyes of Texas, U.S. on Truant Legislators*, Fort Worth Star-Telegram (May 14, 2003).

⁴ *Id.*

⁵ Department of Homeland Security, *supra* note 3.

⁶ *Id.*

Department official who contacted him “made the comment that I think [these are] some kind of political people they’re looking for.”⁷

This was apparently not the only request received by federal agencies relating to the missing legislators. Rep. Tom DeLay, the House Majority Leader, said that “[b]ringing in either U.S. Marshals or FBI agents is justified because redistricting is a federal issue, involving congressional seats.”⁸ He later admitted that his office called the Federal Aviation Administration and the Justice Department to help track down the legislators.⁹

Shortly after newspapers reported on the efforts to enlist the help of federal agencies, Texas state law enforcement officials took the unusual step of ordering the destruction of all notes, correspondence, and other internal records related to the state efforts to locate and apprehend the legislators, including the state efforts to enlist the assistance of federal agencies.¹⁰ The order reportedly directed state officials to immediately destroy “any notes, correspondence, photos, etc. that were obtained pursuant to the absconded House of Representatives members.”¹¹ A grand jury in Texas is reportedly investigating the destruction of these documents.¹²

The Mission of the Department of Homeland Security

Any allegation that the resources of the Department of Homeland Security were used to intervene in an internal state political dispute is a serious matter.

The Department of Homeland Security was established after the events of September 11 to coordinate the federal effort to protect the United States against terrorist attack. It is the second-largest Department in the federal government and it consolidates in one Department several major law enforcement agencies, including the U.S. Secret Service, Customs Service, Border Patrol, Federal Protective Service, Coast Guard, and Transportation Security Administration. The Department has unique access to grand jury information, foreign intelligence surveillance, wiretaps, and other electronic surveillance, as well as information from the U.S. intelligence community, including the Central Intelligence Agency, National Security Agency, Defense Intelligence Agency, and FBI.

⁷ *Federal Agency Was Asked To Track Democrat’s Plane*, Fort Worth Star-Telegram (May 15, 2003).

⁸ *Lawmakers Bitter after Standoff*, Dallas Morning News (May 18, 2003).

⁹ *DeLay Helped GOP Track Missing Tex. Lawmakers*, Washington Post (May 23, 2003).

¹⁰ *DPS Ordered Search Records Destroyed*, Fort Worth Telegram (May 21, 2003).

¹¹ *Id.*

¹² *Agencies Review Roles in Hunt for Tex. Lawmakers in Walkout*, *supra* note 1.

Because of the vast law enforcement and intelligence powers vested in the Department, great concern was expressed during the debate over the creation of the Department about whether its resources could be used to conduct inappropriate surveillance of U.S. citizens. Indeed, this was a major focus of consideration when the bill to create the Department was before our Committee, which adopted an amendment authored by Rep. Henry A. Waxman to create an officer within the new Department who would assume primary responsibility for protecting the privacy of citizens.¹³ That provision was later enacted as part of the Homeland Security Act of 2002.¹⁴

Both Democratic and Republican members of Congress echoed these concerns during consideration of the proposed Department of Homeland Security. Rep. Dick Armey, then the House Majority Leader, opposed some of the proposed powers of the Department as “not consistent with a free society.”¹⁵ Rep. Ron Paul urged his colleagues to read words of warning from conservative columnist William Safire, who argued that certain provisions of the Homeland Security Act would create a “supersnoop’s dream.”¹⁶ Senator Charles Schumer said, “We need to employ the latest technological tools in the war on terrorism, especially on our home soil. . . . But in the process we should, we can, and we must protect privacy and liberty to the best extent possible. It is 2002, but if we’re not careful, it will feel like ‘1984.’”¹⁷

The allegations involving the missing Texas legislators directly implicate these concerns. Tracking down state legislators in an internal state political dispute is not a proper function of the Department. To the contrary, any intentional effort to use federal anti-terrorism resources to assist in a partisan political dispute would infringe on exactly those fundamental liberties that members of Congress sought to protect.

Information Request

As members of the primary oversight committee in the House of Representatives, we seek information about the requests made by Texas officials and others to the Department of Homeland in this matter. Specifically, we request:

¹³ Minority Staff Report, House Government Reform Committee, *Summary of Government Reform Committee Markup: H.R. 5005, the Homeland Security Act of 2002* (July 2002) (available online at http://reform.house.gov/min/homeland_security/markup.htm).

¹⁴ Pub. L. No. 107-296, § 222.

¹⁵ *Surveillance Rules Are Needed To Save Privacy, Senators Say*, New York Times (Aug. 2, 2002).

¹⁶ Extension of Remarks by Rep. Ron Paul, 148 Cong. Rec. E2066-67 (Nov. 15, 2002); see also William Safire, *You Are a Suspect*, New York Times (Nov. 14, 2002).

¹⁷ *Surveillance Rules Are Needed To Save Privacy, Senators Say*, *supra* note 15.

1. Copies of any communications (including transcripts, audio recordings, notes, or any other written or electronic records) between Texas officials and any person at the Department of Homeland Security concerning the missing Texas legislators.
2. Copies of any communications (including transcripts, audio recordings, notes, or any other written or electronic records) between other persons outside of the Department of Homeland Security and any person at the Department of Homeland Security concerning the missing Texas legislators.

On two separate occasions in May, members in the Texas delegation requested that you provide any audiotapes or transcripts of conversations pertaining to any aspect of efforts to track down members of the Texas legislature. After the Department of Homeland Security refused to respond, the Texas members sought this and other related information from Lisa Redman, the Assistant Inspector General for Investigations in the Department.¹⁸ In response, Richard Skinner, the Deputy Inspector General, acknowledged that no federal statute prohibited the Department from releasing the records. He asserted, however, that the Department could withhold records from the members under exemption 7 of the Freedom of Information Act (FOIA), which protects law enforcement records under certain circumstances.¹⁹ Specifically, exemption 7 provides that FOIA's mandatory disclosure requirement does not apply to matters that are:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source . . . (E) would disclose techniques and procedures for law enforcement investigations or prosecutions . . . or (F) could reasonably be expected to endanger the life or physical safety of any individual.²⁰

In this request, we are seeking records about agency contacts with outside parties, which the Supreme Court has held are subject to disclosure under FOIA.²¹ Moreover, these records are not legitimately subject to exemption 7 because there has been no showing that the Inspector

¹⁸ *Id.*

¹⁹ Letter from Richard L. Skinner, Deputy Inspector General, Department of Homeland Security, to Rep. Lloyd Doggett (May 23, 2003).

²⁰ 5 U.S.C. § 552(b)(7).

²¹ See *Department of Interior v. Klamath Water Users Protective Ass'n*, 121 S.Ct. 1060, 1065 (2001) (holding that to qualify under the exemption for intra-agency memoranda, the source of the record must be a government agency).

General's investigation is focusing on specific illegal acts that could result in civil or criminal sanctions and that the information would be unknown to the targets of the investigation.²² As the Court of Appeals for the D.C. Circuit explained:

[M]ost information sought by the Government about its own operations is for the purpose ultimately of determining whether such operations comport with applicable law, and thus is "for law enforcement purposes." Any internal ... monitoring conceivably could result in disciplinary action, in dismissal, or indeed in criminal charges against the employees. But if this broad interpretation is correct, then the exemption swallows up the Act ... [and] defeats one central purpose of the Act to provide public access to information concerning the Government's own activities.²³

Our request is made under the Seven Member Rule, which provides that "[a]n Executive agency, on request of the Committee on Government [Reform] of the House of Representatives, or of any seven members thereof . . . shall submit any information requested of it relating to any matter within the jurisdiction of the committee."²⁴ As a federal court recently held, "[r]eading the terms of Section 2954 in their ordinary and common meanings as this Court must . . . the Court finds that the 'Seven Member Rule' requires an executive agency to submit all information requested of it by the Committee relating to all matters within the Committee's jurisdiction upon the Committee's request."²⁵

In this case, there can be no question about our right to the information under the Seven Member Rule. As required by the rule, the information we seek is within the jurisdiction of the Committee on Government Reform. Under the rules of the House of Representatives, the Committee has jurisdiction over the "[r]elationship of the Federal Government to the States" and is specifically directed to study the "intergovernmental relationship between the United States and the States."²⁶ Moreover, as the principal investigative committee in the House, our

²² *Stern v. FBI*, 737 F.2d 84, 89 (D.C. Cir. 1984) (quoting *Rural Housing Alliance v. U.S. Dep't of Agriculture*, 498 F.2d 73 (D.C. Cir. 1974), *reh'g denied*, 502 F.2d 1179 (D.C. Cir. 1974)).

²³ *Id.* at 90.

²⁴ 5 U.S.C. § 2954. The statutory language refers to the "Committee on Government Operations." This Committee was renamed the Committee on Government Reform and Oversight in the 104th Congress and again renamed the Committee on Government Reform in the 106th Congress. References in law to the Committee on Government Operations are treated as referring to this Committee. *See References in Law to Committees and Officers of the House of Representatives*, Pub. L. No. 104-14, §1(6), 109 Stat. 186 (1995).

²⁵ *Waxman v. Evans*, 2002 U.S. Dist. LEXIS 25975 (C.D. Cal. 2002), *vacated as moot*, No. 02-55825, order at 1 (9th Cir. Jan. 9, 2003).

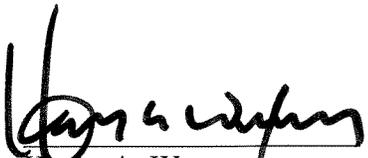
²⁶ Rule X, cl. 1(h)(11); Rule X, cl. 4(c)(1)(C).

The Honorable Tom Ridge
June 4, 2003
Page 7

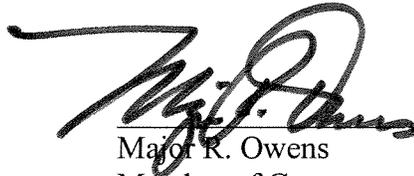
Committee's broad oversight jurisdiction encompasses authority to investigate "any matter" within the legislative jurisdiction of other committees so that we can make "findings and recommendations" that we report to "other standing committee[s] having jurisdiction over the matter involved."²⁷

We ask that the information described above be provided on or before June 18, 2003.

Sincerely,



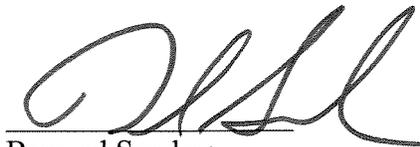
Henry A. Waxman
Ranking Minority Member



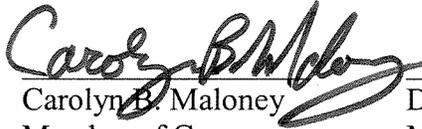
Major R. Owens
Member of Congress



Paul E. Kanjorski
Member of Congress



Bernard Sanders
Member of Congress



Carolyn B. Maloney
Member of Congress



Dennis J. Kucinich
Member of Congress



Danny K. Davis
Member of Congress



Chris Bell
Member of Congress



Wm. Lacy Clay
Member of Congress

²⁷ Rule X, cl. 4(c)(2).