

ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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## MEMORANDUM

February 26, 2008

**To: Members of the Committee on Oversight and Government Reform**

**Fr: Democratic Committee Staff**

**Re: Supplemental Information for Full Committee Hearing on White House E-mails**

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On Tuesday, February 26, 2008, at 10:00 a.m., in room 2154 of the Rayburn House Office Building, the full Committee will hold a hearing entitled "Electronic Records Preservation at the White House." This memo provides supplemental information for members regarding the status of the Committee's investigation into the loss of official e-mail.

### EXECUTIVE SUMMARY

The Committee has been investigating White House compliance with the Presidential Records Act. In preparation for this hearing, the Committee received more than 20,000 pages of internal e-mails and other documents from the White House and the National Archives and Records Administration. The Committee also interviewed or received written answers to questions from six current or former officials in the White House responsible for preserving White House records.

The documents and interviews raise serious questions about the White House's compliance with the Presidential Records Act, which requires the White House to preserve e-mails documenting the "activities, deliberations, decisions, and policies" of the President. The information the Committee has received shows:

- **The White House has not had a reliable system for preserving White House e-mails since 2002, when the White House made the decision to stop using the Automatic Records Management System (ARMS) used by the Clinton White House.** Steven McDevitt, an official in the White House Office of the Chief Information Officer from September 2002 through October 2006, informed the Committee that during his time at the White House, "the process by which email was being collected and retained was primitive and the risk that data would be lost was high." As early as January 2004, the

National Archives warned the White House that it was “operating at risk by not capturing and storing messages outside of the email system.” An internal White House “discussion document” from October 2005 states: “There is operational risk in current email storage management processes. Lost or misplaced archives may result in an inability to meet statutory deadlines.”

- **Until mid-2005, the system that the White House used for preserving e-mails had serious security flaws.** According to Mr. McDevitt, “In mid-2005 ... a critical security issue was identified and corrected. During this period it was discovered that the file servers and the file directories used to store the retained email ... were accessible by everyone on the EOP network.” Mr. McDevitt informed the Committee that the “potential impact” of this security flaw was that there was “[n]o verification that data retained has not been modified.”
- **The White House has refused to cooperate with efforts by the National Archives to ensure the preservation of White House e-mails.** On May 1, 2007, the Archivist of the United States, Allen Weinstein, wrote White House Counsel Fred Fielding that “it is essential that the White House move with the utmost dispatch both in assessing any problems that may exist with preserving emails ... and in taking whatever action may be necessary to restore any missing emails.” On May 6, 2007, a senior official in the National Archives wrote the Director of the White House Office of Administration to “request that you ... determine whether instances of alienation of Federal records actually occurred and then notify us of your findings.” These requests and multiple similar requests were ignored. According to a September 5, 2007, memorandum to Dr. Weinstein from the General Counsel of the Archives:

we still have made almost zero progress in actually moving ahead with the important and necessary work that is required for a successful transition. ... [O]ur repeated requests ... have gone unheeded. ... Of most importance, we still know virtually nothing about the status of the alleged missing White House e-mails.

- **The process of recovering missing e-mails from RNC servers and White House back-up tapes has not begun.** Beginning in April 2007, the Archives urged the White House to start recovering missing White House e-mails stored on back-up tapes maintained by the Republican National Committee (RNC) and the White House. In his May 1, 2007, letter, the Archivist advised Mr. Fielding that such “a ‘restoration’ project can easily take more than one year to complete.” Despite repeated requests from the Archives, these efforts have not yet begun. Moreover, the RNC has informed the Committee that it has no intention of trying to restore missing White House e-mails.

At this point, the full extent of the missing White House e-mails cannot be determined. There appear to be two main sources of missing e-mails. First, over 80 White House officials, including many of the most senior officials in the White House, regularly used RNC e-mail accounts. The RNC, however, has preserved no e-mails for over 50 of these officials and has saved few e-mails for the other officials from before fall 2006.

Second, an analysis of the White House e-mail system in 2005 identified over 700 days in which a component of the Executive Office of the President had an unusually low number of e-mails preserved on White House servers, including 473 days in which a component had no preserved e-mails. According to the analysis, there are 12 days of no e-mails for the President's immediate office and 16 days of no e-mails for the Vice President's office. The 2005 analysis was prepared by a team of 15 White House officials and contractor personnel supervised by Mr. McDevitt.

The White House is now disputing the accuracy of the 2005 analysis. In briefings with Committee staff, the White House has asserted that it has located at least some e-mails for each of the no-e-mail days for the White House Office as well as for five of the 16 no-e-mail days for the Office of the Vice President. The White House, however, has refused to share many other details with the Committee. At a meeting with the White House in October 2007, the Archives expressed doubts about the reliability of the new analysis being prepared by the White House. According to the notes of this meeting:

We expressed great concern that the process was moving so slowly, and that we were very skeptical that the report results from the new tool could completely eliminate the possibility of messages missing from the collections system. We pointed out that some type of restoration project would inevitably be necessary if significant doubt remained that messages had not been collected, and that they should begin planning for such a project by requesting funding for the current FY.

The difficulties the White House encountered in recovering e-mails for Special Counsel Patrick Fitzgerald also undermine its claim that the journaling system was adequate. According to documents provided and shown to the Committee, the journaling archive system contained no e-mails from the Office of the Vice President for important dates: September 30, 2003, to October 6, 2003. In an effort to recover the e-mails, the White House restored backup tapes for these days. These backup tapes also contained no journaled e-mails or .pst files for those dates for the Office of the Vice President. The only e-mails that could be recovered and provided to the Special Counsel were e-mails that the White House was able to restore from the personal e-mail accounts of officials in the Vice President's office.

The Committee's investigation into the extent of the missing White House e-mails has been complicated by a lack of cooperation from the White House. The Committee requested documents from the White House on December 20, 2007. Since that time, the White House has produced only a small number of documents, including no documents from either of the White House hearing witnesses, Theresa Payton, Chief Information Officer, and Alan Swendiman, Director of the Office of Administration. The White House also has withheld an unknown number of documents without any claim of executive privilege. In addition, the White House directed the National Archives to withhold various documents relating to White House actions, for which the Committee issued a subpoena.

## **I. REQUIREMENTS OF THE PRESIDENTIAL RECORDS ACT**

The Presidential Records Act was passed in 1978 in the aftermath of Watergate. The Act makes clear that the President's records belong to the American public, not to the President or his advisors. The 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 that such records are maintained as Presidential records.<sup>1</sup>

The Act also gives important powers and responsibilities to the National Archives and Records Administration, which is headed by the Archivist of the United States, Allen Weinstein. The Archivist's primary responsibility arises at the end of a president's term of office, when he is to "assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President."<sup>2</sup>

In addition, the Archivist has limited authority over the preservation of presidential records during a President's term. Although the Act gives the President full authority over the management of records during his term, the President is required to obtain the views of the Archivist prior to disposing of any "Presidential records that no longer have administrative, historical, or evidentiary value." The Archivist does not have the authority under the Act to prevent the disposal of these records. He may, however, consult with Congress and require the President to submit a disposal schedule to the appropriate congressional committees 60 days prior to the proposed disposal.<sup>3</sup>

## **II. THE INADEQUATE WHITE HOUSE E-MAIL ARCHIVING SYSTEM**

Interviews and documents reviewed by the Committee show that the White House abandoned its e-mail archiving system in 2002 and relied instead on a temporary, ad hoc, manual system. These interviews and documents also show that top White House officials were warned repeatedly by their own technical staff and by the National Archives that operating without an archiving system posed serious dangers, such as the risk of data loss, the risk of tampering, and the inability to verify that systems were working properly. Despite these warnings, the White House aborted efforts to put in place a new e-mail archiving system.

According to Theresa Payton, the White House's current Chief Information Officer, most White House employees used the Lotus Notes e-mail system when the Bush Administration took office in January 2001. E-mails from this system were archived through the Automatic Records Management System (ARMS), which had been in place since the previous administration. In 2002, however, the White House decided to switch (or "migrate") from the Lotus Notes e-mail

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<sup>1</sup> 44 U.S.C. § 2203.

<sup>2</sup> 44 U.S.C. § 2203.

<sup>3</sup> 44 U.S.C. § 2203.

system to the Microsoft Exchange e-mail system. This migration started in 2002 and was completed in 2004.<sup>4</sup>

According to Ms. Payton, when the White House migrated to its new e-mail system, it abandoned the ARMS archiving system. Instead, the White House began an ad hoc process called “journaling.” Under this process, a White House staffer or contractor would collect from a “journal” e-mail folder in the Microsoft Exchange system copies of e-mails sent and received by White House employees. After retrieving copies of these e-mails, the White House staffer or contractor would then manually name and save them as “.pst” files on various White House servers.<sup>5</sup>

The new system for preserving White House e-mails had serious flaws. In one e-mail, an Archives official wrote: “I refer to it as a ‘message collection system’ even though we all understand that it hardly qualifies as a ‘system’ by the usual IT definition.”<sup>6</sup> Carlos Solari, who was the Chief Information Officer for the White House at the time, described the journaling process as a “temporary” solution, and as a “short-term situation” that was not considered by the White House as a “a good long-term situation.”<sup>7</sup>

Steven McDevitt, a senior official in the White House Office of the Chief Information Officer from September 2002 through October 2006, provided the Committee an extensive description of the problems with the White House system:

There was a great deal of concern about proceeding with the migration to Outlook/Exchange without having an adequate email records management solution in place. ... There were four types of risk that were discussed on a number of occasions within management ranks ... :

Incomplete Data — The process by which email was being collected and retained was primitive and the risk that data would be lost was high. ...

Data Reconciliation — ... There is no way to guarantee that all records are retained in their complete and unmodified state. ...

Public Perception — Given the issues that occurred during the prior administration, it should warrant extra caution on the part of the EOP before making any changes to the email retention process. Additional system problems would create a public perception

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<sup>4</sup> Briefing from Theresa Payton to Staff, House Committee on Oversight and Government Reform (Oct. 10, 2007).

<sup>5</sup> *Id.*

<sup>6</sup> E-mail from Sam Watkins to Theresa Payton (Nov. 6, 2007) (NARA Bates No. 001634 to 001635).

<sup>7</sup> Interview of Carlos Solari by Staff, Committee on Oversight and Government Reform (Feb. 7, 2008).

that the EOP was unwilling or unable [to] retain records that were required under current law. ...

User Accountability — The approach of simply storing email message in .pst files provides no mechanism or audit trail that tracks changes to data files or the activities performed by users or system administrators.<sup>8</sup>

According to Mr. McDevitt, he brought his concerns to the attention of senior officials at the White House, including “White House Counsel Harriet Miers and members of her staff.”<sup>9</sup>

**A. Risk of Data Loss**

The documents received by the Committee show that the White House was repeatedly warned that its system for preserving e-mails was inadequate. An early warning occurred in January 2004 from the staff of the National Archives. According to a summary of a January 6, 2004, meeting between White House and Archives staff:

EOP has been converting from Lotus Notes to Microsoft Xchange over the past two years. ... **Messages in Xchange are NOT being captured in ARMS or any other system external to Xchange. ... The NARA team emphasized that EOP was operating at risk by not capturing and storing messages outside the email system.**<sup>10</sup>

These risks were reiterated in an internal White House “discussion document” from October 2005. According to this document:

There is operational risk in current email storage management processes. Lost or misplaced email archives may result in an inability to meet statutory requirements. ... Standard operating procedures for email management do not exist. Automated tools that support the email archive process are not robust. The current version ... is prone to failure. ... Searches of email in response to statutory requirements may not be complete, creating legal and political risk.<sup>11</sup>

A November 14, 2005, memorandum from Mr. McDevitt to John Straub, the Acting Chief Information Officer and the Director of the Office of Administration, similarly warned of

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<sup>8</sup> Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 1, at 7).

<sup>9</sup> *Id.* (Attachment 2, at 7).

<sup>10</sup> National Archives and Records Administration, *Summary of Jan. 6, 2004, meeting with EOP re ECRMS at Archives II* (undated) (NARA Bates No. 000643 to 000644) (emphasis in original).

<sup>11</sup> *Email Archive Process Risk Mitigations: Discussion Document* (Oct. 25, 2005). In his responses to the Committee, Mr. McDevitt stated that he believed he “was involved in the creation of this document but do not recall the specific purpose of the presentation.” Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 2, at 12).

the “potential loss of emails” and an “inability to meet statutory requirements.”<sup>12</sup> According to the memorandum:

The current email archive process depends on manual operations and monitoring, standard operating procedures do not exist, automated tools that support the email archive process are not robust, and there is no dedicated archive storage location.<sup>13</sup>

**B. Risk of Tampering**

White House officials were also warned that the ad hoc system they relied on in place of an archiving system subjected White House records to tampering. According to Mr. McDevitt, one of the risks he discussed with senior management within the Office of the Chief Information Office and the Office of Administration was “user accountability.” Mr. McDevitt wrote the Committee:

The integrity of the data could be called into question because it was not possible to ensure that inappropriate action, either intentional or unintentional, could not occur. ... The potential impact: No verification that data retained has not been modified or what activities have been performed by system users or administrators.<sup>14</sup>

In his answers to questions from the Committee, Mr. McDevitt also revealed that in 2005, “a critical security issue was identified and corrected.”<sup>15</sup> According to Mr. McDevitt: “the file servers and the file directories used to store the retained email .pst files were accessible by everyone on the EOP network.”<sup>16</sup> He explained that this security breach would have allowed any White House official to review the e-mails of any other White House official without being detected.<sup>17</sup>

**C. Inability to Verify System Functionality**

White House officials were also warned of a host of problems associated with the inability to verify that the e-mail system was working properly. For example, Mr. McDevitt explained that “files were scattered across various servers on the EOP network” and that “[t]here

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<sup>12</sup> Memorandum for John Straub from Steven McDevitt, MS Exchange Electronic Mail Archival Process Standard Operating Procedures (Nov. 14, 2005) (HOG60A-010532 to 010533).

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

<sup>14</sup> Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 1, at 7).

<sup>15</sup> *Id.* (Attachment 1, at 9).

<sup>16</sup> *Id.* (Attachment 1, at 9).

<sup>17</sup> Telephone conversation between Steven McDevitt and Staff, House Committee on Oversight and Government Reform (Feb. 24, 2008).

was no consistently applied naming convention for the component .pst files.”<sup>18</sup> Mr. McDevitt also warned that without a “mechanism to reconcile against what was originally retained by the system,” it was impossible to be sure “that all records are retained in their complete and unmodified state.”<sup>19</sup>

#### **D. Aborted Efforts at New Archiving System**

According to interviews and documents reviewed by the Committee, the White House has aborted efforts to put in place a new e-mail archiving system over the past six years.

In 2002 and 2003, White House officials tried to modify the previous e-mail archiving system, ARMS, to work with the new e-mail system, Microsoft Exchange. White House officials told Committee staff that they attempted to develop a program to “interface” between the two, but they ultimately determined it was not technically feasible.<sup>20</sup>

In 2003, the White House began working on a new e-mail archiving system called the Electronic Communications Records Management System (ECRMS). The White House awarded Booz Allen Hamilton a contract to begin designing a system in 2003 and awarded Unisys a task order under an existing contract to test and implement the system. During his interview with Committee staff, Carlos Solari, the Chief Information Officer during this time, stated that the ECRMS was of “high importance.”<sup>21</sup>

Mr. McDevitt, the program manager responsible for developing the system, described the extensive planning and testing that went into the project. He stated that the project started with an “initial draft of the Concept of Operations” in 2002, which was “reviewed and approved by OA Counsel, White House Office of Records Management and White House Counsel” early the next year.<sup>22</sup> Following that review, the White House developed a statement of work to “complete a detailed systems requirements specification, evaluate commercial off the shelf products and propose solutions that meet the government requirements.”<sup>23</sup> Booz Allen Hamilton was awarded this contract and began its work in late 2003. According to Mr. McDevitt, in the spring of 2004, the contractor completed its work and recommended a combination of two commercial off-the-shelf products to serve as the ECRMS system.

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<sup>18</sup> Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 2, at 1).

<sup>19</sup> *Id.* (Attachment 1, at 7).

<sup>20</sup> Briefing from Theresa Payton to Staff, House Committee on Oversight and Government Reform (Oct. 10, 2007).

<sup>21</sup> Interview of Carlos Solari by Staff, Committee on Oversight and Government Reform (Feb. 7, 2008).

<sup>22</sup> Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 2, at 10).

<sup>23</sup> *Id.*



According to Mr. McDevitt, this design was presented to the White House Counsel, the White House Office of Records Management, and counsel in the Office of Administration “for their concurrence” in the spring of 2004. With Unisys serving as the contractor for the implementation phase, the White House undertook “[s]ystem configuration, testing and tuning” through 2005. In early 2006, standard operating procedures were developed. In March 2006, the White House Counsel, the White House Office of Records Management, and OA counsel were briefed on the system, and in July of 2006, they were briefed “on the search and retrieval capabilities of the ECRMS solution.” Mr. McDevitt stated that the project was “ready to go live” on August 21, 2006.<sup>24</sup>

Despite this extensive testing and preparation, the White House never implemented ECRMS. According to documents obtained by the Committee, the current Chief Information Officer, Theresa Payton, aborted the project in the fall of 2006. The Committee has obtained notes from an October 11, 2007, meeting between Ms. Payton and officials from the National Archives stating that Ms. Payton rejected the system because “[t]he system would require 18 months to ingest the existing backlog of messages in the Microsoft Xchange system” and “[t]he system offered users no option to distinguish between Presidential records and political or personal materials.”<sup>25</sup>

Officials from the National Archives expressed concern with Ms. Payton’s decision to abort the ECRMS archiving system. According to notes from the meeting with Ms. Payton, the Archives staff “had participated in the development of requirements for ECRMS.”<sup>26</sup> The Archives staff observed that “the decision to drop the requirement to distinguish between Presidential and personal/political messages was made by OA counsel early in the development of ECRMS.”<sup>27</sup> With respect to Ms. Payton’s argument regarding the time required to ingest the existing backlog of messages, the National Archives staff responded that the process “would still have left time to complete before transition.”<sup>28</sup>

When told that ECRMS had never been implemented, Carlos Solari, Mr. Payton’s predecessor as Chief Information Officer, expressed surprise. Mr. Solari stated that he “absolutely” believed that the system would be implemented. He said he thought the “system got finished” and was “puzzled” as to why ECRMS had been rejected.<sup>29</sup>

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<sup>24</sup> *Id.* (Attachment 2, at 10-11).

<sup>25</sup> National Archives and Records Administration, *Record of Meeting: 10/11/2007, 2:00-3:30 p.m., OA Conference Room, G Street NE Offices* (Undated) (NARA Bates No. 001628 to 001631).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Interview of Carlos Solari by Staff, Committee on Oversight and Government Reform (Feb. 7, 2008).

Mr. McDevitt left the White House in October 2006.<sup>30</sup> He explained that one reason for his decision to leave the White House was the decision by Ms. Payton to abort the ECRMS system.<sup>31</sup>

Although this decision to abort the ECRMS e-mail archiving system was made in 2006, to date the White House has failed to put in place any other archiving system. According to Theresa Payton, the White House has under development a new system using a commercial off the shelf product.<sup>32</sup> As of the date of this memo, the Committee has not been informed that the system has been implemented.

### III. LACK OF COOPERATION WITH THE ARCHIVES

Documents obtained by the Committee show that despite multiple efforts by the National Archives to gather information about the loss of White House e-mails, White House officials denied that any problems existed, delayed providing requested information, and failed to respond to inquiries. One Archives official wrote in an October 2007 e-mail:

The Office of Administration, the component of EOP through whom we are attempting to gain detailed technical information, has been extremely guarded in their responses, and all communication has been conducted under a patina of legal caution. Whenever we solicit specific technical information, they reply for the most part that they are still in the process of conducting inventories.<sup>33</sup>

Over the course of the last two years, two distinct but related problems regarding White House e-mail became public. First, in February 2006, press accounts reported that the White House failed to properly archive e-mails to or from certain components in the White House. Second, in March 2007, the Oversight Committee revealed that White House officials used e-mail accounts controlled by the Republican National Committee, which had a policy of deleting e-mails after 30 days. In both cases, the National Archives sought information from the White House without success.

The following is a chronology of attempts by the Archives to understand the extent of the missing White House e-mails and related developments:

**February 2, 2006:** News accounts reported that the Special Counsel investigating the outing of CIA agent Valerie Plame Wilson discovered gaps in the process by which the

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<sup>30</sup> Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 1, at 1).

<sup>31</sup> Telephone conversation between Steven McDevitt and Staff, House Committee on Oversight and Government Reform (Feb. 24, 2008).

<sup>32</sup> Briefing from Theresa Payton to Staff, House Committee on Oversight and Government Reform (Oct. 10, 2007).

<sup>33</sup> E-mail from Robert Spangler to David Kepley (Oct. 1, 2007) (NARA Bates No. 001785).

White House archived its e-mails.<sup>34</sup> In response to these reports, two officials from the National Archives spoke to Jenny Brosnahan in White House Counsel's office. The Archives officials told Ms. Brosnahan that if presidential records were destroyed, "they should let the archivist know because under the PRA they are supposed to inform the Archivist before any disposal of record."<sup>35</sup>

**February 6, 2006:** Counsel for the White House Office of Administration spoke to the General Counsel of the National Archives. The OA Counsel told the Archives Counsel that the White House "believed that the emails existed and could be accounted for."<sup>36</sup> This does not appear to have been an accurate assertion. As discussed in part III, an internal White House analysis in 2005 had shown that there were hundreds of days in which e-mails appeared to be missing from components of the Executive Office of the President.

**February 6, 2007:** Officials from the National Archives met with officials from the White House's office of the Chief Information Officer to "discuss NARA's need for knowledge of OA electronic email and other electronic systems managed by OA."<sup>37</sup> According to the chronology of White House meetings developed by Archives staff, at this meeting, the White House officials gave "no indication that there is a problem with any missing emails."<sup>38</sup>

**March 26, 2007:** The Oversight Committee sent letters to the RNC and the Bush-Cheney '04 campaign requesting information about the use of political e-mail accounts by White House officials and directing these organizations to halt any deletions of these e-mails.<sup>39</sup> The next day, the General Counsel for the Archives informed Archives staff that the Archives "will contact the White House Counsel's Office to discuss further."<sup>40</sup>

**April 12, 2007:** The General Counsel of the National Archives wrote to Chris Oprison, a White House Associate Counsel:

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<sup>34</sup> See, e.g., *White House Fails To Archive E-Mail; Issue in CIA Leak Case*, New York Sun (Feb. 2, 2006).

<sup>35</sup> E-mail from Nancy Smith to Sharon Fawcett (Feb. 2, 2006) (NARA Bates No. 001507).

<sup>36</sup> National Archives and Records Administration, *Chronology of White House Meetings* (NARA Bates No. 01637 to 01641).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</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>40</sup> E-mail from Gary Stern to Jason Baron et al. (Mar. 27, 2007) (NARA Bates No. 001531 to 001532).

Chris, following up on our conversation several weeks ago about White House emails, we appreciate, as noted in the press, that your office is taking steps to investigate whether PRA records were created or received on non-White House email systems, and if so, to take all measures to recover and preserve them. As you know, under Section 2203 of the PRA, the President may not dispose of Presidential records without first obtaining the written views of the Archivist. It has also been normal practice for the White House to inform NARA of any unauthorized destruction of Presidential records.<sup>41</sup>

**April 13, 2007:** A nonprofit group called Citizens for Responsibility and Ethics in Washington (CREW) released a report alleging that after conducting an inventory in 2005, the White House found hundreds of days with no e-mail sent from or received by various White House components.<sup>42</sup> Asked about these allegations that day, White House Press Secretary Dana Perino stated that she “wouldn’t rule out that there were a potential 5 million emails lost.”<sup>43</sup> It was only after the release of the CREW report that the White House acknowledged to the Archives that e-mails could be missing from its servers.

**April 25, 2007:** The White House Counsel met with “key members of NARA’s senior staff” to update them on “current issues relating to White House emails.”<sup>44</sup> At the meeting, the National Archives requested a copy of the spreadsheet associated with the 2005 analysis of potential e-mail losses.<sup>45</sup> The Archives staff also advised the White House that “it is essential that you begin an email restoration project from the backup tapes as soon as possible.”<sup>46</sup>

**May 1, 2007:** The Archivist, Allen Weinstein, wrote a letter to the White House Counsel, Fred Fielding, about the missing White House e-mails. In the letter, Dr. Weinstein wrote:

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<sup>41</sup> E-mail from Gary Stern to Chris Oprison (Apr. 12, 2007) (NARA Bates No. 001540).

<sup>42</sup> Citizens for Responsibility and Ethics in Washington, *Without a Trace* (Apr. 2007); see also *White House: Millions of E-Mails May Be Missing*, CNN (Apr. 13, 2007).

<sup>43</sup> The White House, *Press Gaggle by Dana Perino and Dr. Ali Al-Dabbagh, Spokesman for the Government of Iraq* (Apr. 13, 2007).

<sup>44</sup> Letter from Allen Weinstein to Fred Fielding (May 1, 2007) (NARA Bates No. 001428 to 001429).

<sup>45</sup> Memorandum from Gary Stern to Allen Weinstein, Bush 43 Transition, et al. (Sept. 5, 2007) (NARA Bates No. 001626 to 001627). See also Letter from Allen Weinstein to Fred Fielding (May 1, 2007) (NARA Bates No. 001428 to 001429) (indicating that the Fred Fielding attended an April 25, 2007, meeting with Archives staff).

<sup>46</sup> E-mail from Gary Stern to Emmet Flood and Christopher Oprison (June 20, 2007) (NARA Bates No. 001624).

We believe it is essential that the White House move with the utmost dispatch both in assessing any problems that may exist with preserving emails on the Executive Office of the President email system, and in taking whatever action may be necessary to restore any missing emails. NARA has gone through three Presidential transitions involving the transfer of electronic records and, in each of these transitions, we experienced some problems with this issue. Based on this previous experience and similar problems experienced by prior Administrations, a 'restoration' project can easily take more than one year to complete.

... [I]t is extremely important that NARA staff begin meeting as soon as possible with relevant staff of the Office of Administration (OA). In order to ensure a successful migration of both presidential and federal electronic records to NARA, we need to acquire a clear knowledge of the current White House electronic systems and the current plans of OA for ... restoration of any non-archived emails.<sup>47</sup>

**May 6, 2007:** Paul Wester, the director of the Modern Records Programs at the National Archives, wrote to Alan Swendiman, the director of the White House Office of Administration, "concerning the possible loss of Federal records of the federal agency components of the EOP that are required to be maintained on the White House email system."<sup>48</sup> Mr. Wester wrote: "We request that you look into this matter to determine whether instances of alienation of Federal records actually occurred and then notify us of your findings."<sup>49</sup>

**May 21, 2007:** The General Counsel of the National Archives and other Archives officials met with Chris Oprison, an Associate White House Counsel, and several other senior White House officials to "get a briefing ... on the status of the problem relating to alleged missing White House emails."<sup>50</sup> According to notes summarizing the meeting:

Chris Oprison explained that they believe the problem relates to gaps in emails on the EOP system from late 2003 to late 2005, but they could not assure that the problem does not extend beyond that timeframe, and even into the present. They first became aware of the issue of gaps in emails, i.e., not being properly archived, in 2005. ...

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<sup>47</sup> Letter from Allen Weinstein to Fred Fielding (May 1, 2007) (NARA Bates No. 001429 to 001429).

<sup>48</sup> Letter from Paul M. Wester, Director, Modern Records Programs, National Archives and Records Administration, to Alan Swendiman, Director, Office of Administration, Executive Office of the President (May 6, 2007) (NARA Bates No. 000430).

<sup>49</sup> *Id.*

<sup>50</sup> E-mail from Gary Stern to Allen Weinstein (May 23, 2007) (NARA Bates No. 001620 to 001622).

Within the next month they are going to complete an audit of the PST files to determine the full extent of the problem. But they also stated that they expect to have an action plan ready by the end of the summer. We asked that they brief us when the audit is complete, and not wait for the action plan.

We asked if they could give us any more specifics on what they know so far: e.g., volume of missing email; whether it is particular to specific “buckets” representing particular EOP offices; does it involve both federal and presidential emails? They said they could not at this point answer any of these questions.<sup>51</sup>

The meeting also discussed the problem of the missing RNC e-mails. The White House officials assured the Archives staff that this problem was being addressed and the e-mails would be captured in a “separate restoration effort”:

We then asked about the RNC email issue. They are working with the RNC and looking at this issue. They stated that the RNC server is now fixed so that this will not happen again, and that the RNC has the old servers. They are exploring how they will capture the Presidential record emails. ... This will be a separate restoration effort from the EOP email restoration.<sup>52</sup>

**June 20, 2007:** The General Counsel for the Archives wrote to the White House Counsel’s office asking for an “email update.” In that e-mail, he wrote: “you have stated that emails appear to be missing from the White House from the time period of late 2003 through late 2005, although you have not been able to provide any estimate of how many emails are actually missing.” He reminded the Counsel’s office that “on May 21, we were informed that the OA CIO audit of the missing email situation should be completed in about 4 weeks.” He stated that it is “imperative” that the Archives be updated on the progress of the investigation into both these e-mail losses and White House progress into planning for a recovery of presidential records from the RNC.<sup>53</sup> The e-mail renewed the Archives’ request that the White House commence restoration of missing e-mails from the backup tapes.

**June 29, 2007:** In an e-mail summarizing a meeting with the new General and Deputy Counsel of the White House Office of Administration, the General Counsel of the Archives writes:

We did note that during the last two years NARA had experienced a notable drop off in open communication and interaction with OA. We also touched on the

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> E-mail from Gary Stern to Emmet Flood and Christopher Oprison (June 20, 2007) (NARA Bates No. 001624).

issue of the missing White House email. ... [T]hey still have not completed their review ... and therefore still had nothing concrete to report to us.<sup>54</sup>

**September 5, 2007:** The General Counsel of the National Archives sent a memorandum to the Archivist about the status of the missing White House e-mails and the “Bush 43 Transition.” According to the memorandum:

We ... had a further opportunity to discuss the email and transition related issues that we have discussed on numerous occasions, including when you, I, and others met with Fred Fielding in late April and in your letter to Fielding of May 1, 2007. Despite a number of very positive meetings and discussions since then, ... we still have made almost zero progress in actually moving ahead with the important and necessary work that is required for a successful transition. Even our simple and rather mundane request that the White House provide us with formal authorization to begin move planning ... has lain dormant for months.

More significantly, our repeated requests to begin office-by-office meetings to scope out and inventory the volume, formats, and sensitivities of the PRA records that will be transferred to the National Archives has gone unheeded. ...

Of most importance, we still know virtually nothing about the status of the alleged missing White House emails. We have not received a written response to our May 5, 2007, letter regarding alleged missing Federal record emails. And as we stressed to the White House last spring, it is vital that any needed backup restoration project begin as soon as possible, in order that it be completed before the end of the Administration.<sup>55</sup>

**October 10, 2007:** Michael Kurtz, the Assistant Archivist for Records Services, wrote to all White House offices that create federal records to request that they “look into whether any electronic mail records of your agency maintained on the White House email system were lost or alienated, as has been widely reported.”<sup>56</sup>

**October 11, 2007:** A meeting was held with staff from the National Archives and the White House Chief Information Officer, Theresa Payton. According to a record of this meeting prepared by the Archives, the White House informed the National Archives that its analysis of the missing e-mail problem had been delayed and there would be “no

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<sup>54</sup> E-mail from Gary Stern to Jason Baron et al. (June 29, 2007) (NARA Bates No. 001625)

<sup>55</sup> Memorandum from Gary Stern to Allen Weinstein, Bush 43 Transition, et al. (Sept. 5, 2007) (NARA Bates No. 001626 to 001627).

<sup>56</sup> Letter from Michael J. Kurtz, Assistant Archivist for Records Services, to John Walters, Director of National Drug Control Policy (Oct. 10, 2007) (NARA Bates No. 001807 to 001808).

results before the end of November at the earliest.” According to the Archives’ meeting record:

We expressed great concern that the process was moving so slowly, and that we were very skeptical that the report results from the new tool could completely eliminate the possibility of messages missing from the collections system. We pointed out that some type of restoration project would inevitably be necessary if significant doubt remained that messages had not been collected, and that they should begin planning for such a project by requesting funding for the current FY.<sup>57</sup>

**October 15, 2007:** The General Counsel for the Archives updated the Archivist on the unsuccessful attempts by the Archives to review the “2005 OA Report/Chart ... on problems with White House email system.”<sup>58</sup> According to the General Counsel:

We have repeatedly asked to see this report, and have been ignored, or, more recently, told it is hard to comprehend and of little value. White House has shown copies to House Oversight Committee and DOJ.<sup>59</sup>

**October 22, 2007:** Sam Watkins, a member of the Archives staff who attended the October 11, 2007, meeting with the White House wrote to Theresa Payton renewing his request for an opportunity to view the 2005 analysis:

We are certainly willing to participate in the analysis of the data related to the “missing emails,” but we are still trying to figure out how we can help without an understanding of what the “2005 report” says. Obviously, the report must give some indication that there was a problem, or we would not be in this situation.<sup>60</sup>

**October 31, 2007:** The National Archives staff were finally “afforded a brief opportunity to view a paper copy” of the spreadsheet prepared in 2005 listing hundreds of days of missing White House e-mail. They were not permitted to retain a copy.<sup>61</sup>

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<sup>57</sup> National Archives and Records Administration, Record of Meeting (Oct. 11, 2007) (NARA Bates No. 001628 to 001630).

<sup>58</sup> E-mail from Gary Stern to Donna Gold and Allen Weinstein (Oct. 15, 2007) (NARA Bates No. 001631 to 001633).

<sup>59</sup> *Id.*

<sup>60</sup> E-mail from Sam Watkins to Theresa Payton (Oct. 19, 2007) (NARA Bates No. 001795).

<sup>61</sup> E-mail from Sam Watkins, National Archives and Records Administration, to Theresa Payton (Nov. 6, 2007) (NARA Bates No. 001634 to 001635).



#### IV. EXTENT OF THE MISSING E-MAILS

At this point, it is not possible to quantify the extent of the missing White House e-mails, but it appears that the problem is significant and has two separate components: (1) White House e-mails sent using RNC e-mail accounts that were destroyed by the RNC, and (2) White House e-mails sent using official White House e-mail accounts that were not archived. The White House's own analysis from 2005 identified over 700 days when there were either no e-mails for a component of the Executive Office of the President or significantly fewer e-mails than predicted in the White House archive system.

In recent meetings, the White House has disputed the extent of the e-mails missing from the White House servers. However, documents that the White House provided and showed to Committee staff for review show that the archive system did not preserve e-mails from the Office of the Vice President that were sought by Special Counsel Patrick Fitzgerald.

##### A. White House E-mails Missing from RNC Accounts

In June 2007, the majority staff of the Oversight Committee issued an interim report of an investigation into the use of RNC e-mail accounts by White House officials.<sup>62</sup> This report found that more than 88 White House officials had e-mail accounts maintained by the RNC or the Bush Cheney '04 campaign, and many officials used these political accounts extensively. White House officials with RNC e-mail accounts included senior White House personnel, such as Karl Rove, the former Senior Advisor to the President; Andrew Card, the former White House Chief of Staff; and several directors of the White House Office of Political Affairs. In some cases, White House personnel used RNC accounts almost exclusively, thus circumventing the official government e-mail system.<sup>63</sup>

The RNC deleted most of these e-mails pursuant to a "document retention" policy under which e-mails more than 30 days old were deleted. 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 for 51 of the 88 White House officials with RNC e-mail accounts. 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.<sup>64</sup>

The case of Mr. Rove provides an example of the extent of the missing e-mail. The RNC preserved only 130 e-mails sent by Mr. Rove prior to November 2003, and it preserved no e-

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<sup>62</sup> More information regarding the Committee's investigation is available in a report prepared by Majority Staff, *Interim Report: Investigation of Possible Presidential Records Act Violations* (June 2007) (online at <http://oversight.house.gov/documents/20070618105243.pdf>).

<sup>63</sup> Interview of Scott Jennings by Staff, Committee on Oversight and Government Reform (Oct. 9, 2007).

<sup>64</sup> Majority Staff, Committee on Oversight and Government Reform, *Interim Report: Investigation of Possible Presidential Records Act Violations* (June 2007).

mails sent to Mr. Rove during President Bush's first term. For the period that the RNC does have records, however, Mr. Rove was a prolific user of his RNC e-mail account. In 2007, Mr. Rove frequently sent more than 100 e-mails per day and received over 200 e-mails.<sup>65</sup>

There is also evidence that many of the e-mails sent through RNC e-mail accounts involved official government business. In total, the RNC 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. Of the 674,367 White House e-mails preserved by the RNC, 240,922 (36%) were sent to or received from government e-mail accounts. In response to requests by the Committee, federal agencies provided partial inventories of White House e-mails sent to the agencies through RNC e-mail accounts. These e-mails involved official appointments, federal grants, and other official business.<sup>66</sup>

There does not appear to be any active process for recovering the deleted RNC e-mails. At a briefing in May 2007, the RNC provided Committee staff with an accounting of the various systems on which e-mail might be saved. In addition to e-mails saved on active RNC servers and individuals' computers and blackberry devices, the RNC has retained a number of back-up tapes. Several of these tapes contain data from early 2007, and an additional two boxes of back-up tapes contain data from earlier periods.<sup>67</sup> However, the RNC has not undertaken any effort to recover records from these tapes. The White House has also made no efforts to obtain the back-up tapes from the RNC or recover data from them.<sup>68</sup>

#### **B. White House E-mails Missing From White House Accounts**

Congress, the National Archives, and the public first learned about a potentially large loss of White House e-mails from White House servers in April 2007, when CREW released a report describing the potential e-mail loss.<sup>69</sup> The White House, however, had known about this problem for several years. Officials told Committee staff at an October 2007 briefing that the White House first discovered a problem in August or September of 2005. This discovery led to a broader analysis of the .pst file storage process led by Steven McDevitt, a senior official in the White House Office of the Chief Information Officer.<sup>70</sup>

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Briefing by Rob Kelner and Eric Friedberg for Staff, Committee on Oversight and Government Reform (May 11, 2007).

<sup>68</sup> Telephone conversation between Rob Kelner and Majority Staff, Committee on Oversight and Government Reform (Feb. 25, 2008).

<sup>69</sup> Citizens for Responsibility and Ethics in Washington, *Without a Trace* (Apr. 2007); see also *White House: Millions of E-Mails May Be Missing*, CNN (Apr. 14, 2007).

<sup>70</sup> Briefing by Theresa Payton for Staff, Committee on Oversight and Government Reform (Oct. 10, 2007).

According to Mr. McDevitt, he led a team in analyzing what he believes to have been “over 5,000 .pst files” to determine what data was preserved in each file and whether any data was missing.<sup>71</sup> This analysis found over 700 days with low or no e-mail for any one of 12 components of the White House between January 2003 and August 2005.

According to a copy of a spreadsheet provided to this Committee by the White House, there were 473 days during this period in which a component of the EOP had no e-mails preserved on the servers, as well as 229 in which a component had an unusually low number of e-mails preserved on the servers.<sup>72</sup> The spreadsheet shows 12 days of missing e-mail for the White House Office, 16 for the Office of the Vice President, and 103 days for the Council of Economic Advisers.<sup>73</sup>

According to Mr. McDevitt, more than a dozen people were involved with this analysis, and the results were independently validated.<sup>74</sup> John Straub, the Director of the Office of Administration at this time, told Committee staff that he oversaw the effort. Mr. Straub told Committee staff that he was “consumed by this” issue of what he called “misplaced files” and worked closely with Mr. McDevitt to locate the missing e-mails.<sup>75</sup> Documents that were shown to Committee staff yesterday indicate that the White House Counsel’s office was aware of these issues and met frequently with Mr. McDevitt’s team. For example, on November 21, 2005, Mr. McDevitt sent “the current version of the Exchange Message Analysis Spreadsheet” to Associate White House Counsel Bob Hoyt. On December 5, 2005, Mr. Straub met with the White House Counsel’s office and Joe Hagin, Deputy White House Chief of Staff, regarding “issues that have arisen with the e-mail system.” Both Mr. McDevitt and Mr. Straub told the Committee that they briefed White House Counsel Harriet Miers regarding their analysis.<sup>76</sup>

Since reports of the missing e-mails became public in April 2007, Committee staff have received several briefings from the White House. On May 29, 2007, Keith Roberts, the Deputy General Counsel of the Office of Administration, told Committee staff that the days of low and no e-mail found in the 2005 analysis were from the time period when .pst files were created manually. He stated that human error or generator or electrical problems could have led to these missing days. He said, however, that the 2005 analysis had been a quick examination of the

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<sup>71</sup> Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 2, page 3).

<sup>72</sup> *EOP Exchange Environment — All Components: Summary — Messages Per Day* (Feb. 6, 2006) (HOG6OA-000002-C to 000024-C).

<sup>73</sup> *Id.*

<sup>74</sup> Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 2, at 4 and 6).

<sup>75</sup> Interview of John Straub by Staff, Committee on Oversight and Government Reform (Feb. 15, 2008).

<sup>76</sup> Interview of John Straub by Staff, Committee on Oversight and Government Reform (Feb. 15, 2008); letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 2, at 7).

problem, and that the White House was conducting a more comprehensive analysis.<sup>77</sup> Around the same time, Mr. Roberts briefed officials at the National Archives and told them that the new analysis would be completed within the next month.<sup>78</sup>

In October 2007, Committee staff were briefed again by White House officials. At this briefing, staff were told that the Office of the Chief Information Officer had tried to recreate the findings from the 2005 analysis and was unable to do so.<sup>79</sup> Committee staff have been briefed twice since that time. In these briefings, current White House CIO Theresa Payton explained that the White House is using a new tool for conducting the analysis of e-mails and has found approximately 100 .pst files with names that do not match their contents.<sup>80</sup>

On February 22, 2008, Theresa Payton shared some preliminary findings from this new analysis. According to Ms. Payton, the new analysis had identified 23 million more e-mails for this period than the 2005 analysis. She also told Committee staff that her office had found e-mails for some of the days identified in the 2005 analysis as having no e-mails preserved. Although she could not quantify how many e-mails were found for these days, she said that some e-mails had been found for all of the missing days for the White House Office, the Office of Policy Development, and the Office of Management and Budget. Similarly, some e-mails had been found for five of the 16 missing days for the Office of the Vice President. However, she stressed that these findings are preliminary and that the analysis will not be completed until sometime in March.<sup>81</sup>

Although the current effort may uncover some e-mails that were not included in the 2006 analysis, other documents provided to the Committee by the White House indicate that there have been serious problems using the archiving system to recover White House e-mails. One of these documents, dated January 20, 2006, describes efforts by the Office of the Chief Information Officer to “recover Office of Vice President email from the target period of September 30, 2003 to October 6, 2003.”<sup>82</sup>

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<sup>77</sup> Briefing by Keith Roberts and Emmet Flood for Staff, Committee on Oversight and Government Reform (May 29, 2007).

<sup>78</sup> E-mail from Gary Stern to Allen Weinstein (May 23, 2007) (NARA Bates No. 001620 to 1622).

<sup>79</sup> Briefing by Theresa Payton, William Reynolds, Emmet Flood and Elizabeth Medaglia for Staff, Committee on Oversight and Government Reform (Oct. 17, 2007).

<sup>80</sup> Telephone briefing by Theresa Payton and Emmet Flood for Staff, Committee on Oversight and Government Reform (Feb. 14, 2008); Telephone briefing by Theresa Payton and Emmet Flood for Staff, Committee on Oversight and Government Reform (Feb. 22, 2008).

<sup>81</sup> Telephone briefing by Theresa Payton and Emmet Flood for Staff, Committee on Oversight and Government Reform (Feb. 22, 2008).

<sup>82</sup> E-mail from Susan Crippen to Steven McDevitt and Jaime Borrego (Jan. 23, 2006) (HOCR6OA-010581 to 010584).

According to this document, even after restoring backup tapes, the White House team was unable to find any journal files or .pst files for the Vice President's office during this period. The team's first effort involved restoring from the backup tape "the file servers that were used to store .pst files during the target period." This search uncovered "no messages ... that filled the gap." The team next restored from the backup tape the "server that contained the journal mailboxes for the target period." According to the document, the "journal mailboxes were examined and no messages for the target period were present in the journal mailbox."<sup>83</sup> The team then restored from the backup tape the personal mailboxes of officials in the Vice President's office and recovered messages from 70 individual users.<sup>84</sup>

According to a document dated just four days later that was shown to Committee staff, but not provided to them, the White House team recovered 17,956 e-mails from these individual mailboxes on the backup tape and used these as their basis to search for e-mails responsive to the Special Counsel's request. A restoration of personal mailboxes from a backup tape does not recover any e-mails deleted by the user before the backup tape was made. The fact that the White House could not find .pst files or journal files on backup tapes from this time period raises questions about the likelihood that these files will be found during the current search.

Although the Archives has repeatedly urged the White House to commence restoring e-mails from its backup tapes, the White House has refused to start this process. The only restoration of e-mails from backup tapes that has occurred is the restoration of the e-mails responsive to Mr. Fitzgerald's request.

## V. LACK OF COOPERATION WITH THE COMMITTEE

The Committee's investigation into the extent of the missing White House e-mails has been complicated by a lack of cooperation from the White House. On December 20, 2007, the Committee issued document requests to the National Archives and the White House Counsel on issues related to e-mail preservation, the development of e-mail archiving systems, and preparation for the 2009 transition.

More than two months after the Committee made its request, the White House appears to have produced only a small percentage of the documents that it believes to be responsive to the request. In addition, the White House is withholding, without an assertion of Executive Privilege, an unknown number of documents that are described as being deliberative. Just yesterday, the White House made accommodations for Committee staff to review some percentage of those withheld documents. However, there are more that have not been shown to Committee staff.

In addition, the White House directed the National Archives to withhold a range of documents that contained White House equities. The National Archives was unwilling to release these documents to the Committee without White House approval. As a result, the Committee was forced to issue a subpoena to the Archives on February 20, 2008, to obtain the documents.

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*