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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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December 20, 2007

Mr. Fred F. Fielding
Counsel to the President
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. Fielding:

In January 2009, the National Archives will take possession of the presidential records of the Bush Administration. I have concerns about whether the White House has prepared for this process and is preserving records according to its obligations under the Presidential Records Act.

Congress passed the Presidential Records Act in 1978, making clear that a president's records belong to the American public, not to the president or his advisors. The Act defines presidential records as:

documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President.¹

The Act requires each 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."²

Serious questions have been raised about whether the White House has sufficient systems in place to preserve presidential records and to prepare for the transition to the next President. In just over one year, the White House will be required to turn over all of its presidential records to

¹ 44 U.S.C. §2201.

² 44 U.S.C. §2203.

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the National Archives for storage, review, and eventual release to the public. According to information received by the Committee, the White House has not implemented a robust system for archiving e-mails and other electronic records despite several efforts to do so. In addition, in briefings with White House officials, Committee staff have been informed that during a 2005 review of White House servers, the White House found numerous days with few or no e-mails for certain White House components. Nevertheless, even today, more than two years after this problem was first discovered by White House staff, the White House still has not identified the cause of the problem, determined the volume of e-mails lost, or developed a plan for restoring those e-mails that were lost.

Moreover, the Committee learned earlier this year that a large number of White House officials, including some of the President's closest advisors, regularly used RNC e-mail accounts. As documented in a majority staff report, many of these e-mails have apparently been destroyed.³

The official records of this presidency belong to the American public. The public needs assurances that these records are being properly maintained and will be provided to the National Archives at the end of this administration. For these reasons, the Committee is considering holding hearings next year to examine the White House's past actions relating to compliance with the Presidential Records Act, as well as its plans for the handover in January 2009. In order to prepare for these hearings, I ask that you provide the Committee with the following documents:

1. Any documents relating to potential failures to archive or maintain Executive Office of the President e-mails during the Bush Administration, including documents discussing options for restoring or recovering lost e-mails;
2. Information about e-mail back-up tapes maintained by the White House, including the number of back-up tapes holding White House data, the content of those tapes, and a description of how these tapes are labeled, organized, and stored;
3. Any documents relating to the maintenance or development of existing or proposed electronic records management, e-mail archiving, or e-mail retrieval systems for the Executive Office of the President during the Bush Administration, including internal White House communications, requests for proposals, statements of work, task orders, and other contract documents; and
4. Any documents relating to the transfer of presidential records to the National Archives at the end of the Bush Administration, including communications with the National

³ Majority Staff, House Committee on Oversight and Government Reform, *Interim Report: Investigation of Possible Presidential Records Act Violations* (June 2007).

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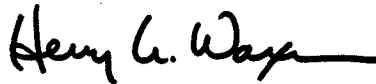
Archives on this issue, needs assessments, plans, contract documents, and internal White House communications, such as directives to White House staff regarding preservation of records and other preparation for the transition.

I request that you provide the documents requested above by February 1, 2008. In addition, I request that you provide my staff with a briefing by the same date from the official or officials in charge of preparation for the transition of presidential records from the White House to the National Archives.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. An attachment to this letter provides additional information about how to respond to the Committee's request.

If you have any questions about this request, please contact Michael Gordon or Anna Laitin with the Committee staff at (202) 225-5420.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman". The signature is written in a cursive style with a long horizontal stroke at the end.

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member