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House of Representatives

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April 12, 2007

The Honorable Carlos M. Gutierrez
Secretary
Department of Commerce
Fourteenth Street and Constitution Avenue, NW
Washington, DC 20230

Dear Mr. Secretary:

This week, the staff of the House Committee on Oversight and Government Reform received briefings from the office of the White House Counsel and the Republican National Committee regarding the preservation of White House e-mail records. These briefings revealed that an extensive volume of White House e-mails regarding official government actions may have been destroyed by the RNC and not preserved by the White House. For this reason, I request that you preserve any e-mail communications in the possession or control of your agency that were received from or sent to White House officials using RNC or other nongovernmental e-mail accounts.

According to the counsel for the RNC, Rob Kelner, "roughly 50" White House officials have had e-mail accounts on RNC servers during the Bush Administration. These e-mail accounts were controlled by the RNC. Mr. Kelner stated that to his knowledge, the earliest e-mail records of White House officials on RNC servers are from 2004. Although White House officials had used RNC e-mail accounts since 2001, the RNC has apparently destroyed all e-mail records from White House officials from 2001, 2002, and 2003.

In addition, according to Mr. Kelner, the RNC currently has e-mail records for approximately 35 of these 50 officials. This means that the RNC appears to have no e-mail records for approximately 15 White House officials who had RNC e-mail accounts.

The briefing from Mr. Kelner also raised questions about how complete the RNC record of e-mails is from 2004 to the present. Mr. Kelner told the Committee staff that White House officials retained the ability to delete e-mails from the RNC server until as recently as this month.

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According to Mr. Kelner, the RNC had a policy, which the RNC called a “document retention” policy, that purged all e-mails from RNC e-mail accounts and the RNC server that were more than 30 days old. Mr. Kelner said that as a result of unspecified legal inquiries, a “hold” was placed on this e-mail destruction policy for the accounts of White House officials in August 2004. Mr. Kelner was uncertain whether the hold was consistently maintained from August 2004 to the present, but he asserted that for this period, the RNC does have a large volume of White House e-mails. According to Mr. Kelner, the hold would not have prevented individual White House officials from deleting their e-mail from the RNC server after August 2004.

Mr. Kelner’s briefing raised particular concerns about Karl Rove, who according to press reports, used his RNC account for 95% of his communications. According to Mr. Kelner, although the hold started in August 2004, the RNC does not have any e-mails prior to 2005 for Mr. Rove. Mr. Kelner did not give any explanation for the e-mails missing from Mr. Rove’s account, but he did acknowledge that one possible explanation is that Mr. Rove personally deleted his e-mails from the RNC server.

Mr. Kelner also explained that starting in 2005, the RNC began to treat Mr. Rove’s e-mails in a special fashion. At some point in 2005, the RNC commenced an automatic archive policy for Mr. Rove, but not for any other White House officials. According to Mr. Kelner, this archive policy removed Mr. Rove’s ability to personally delete his e-mails from the RNC server. Mr. Kelner did not provide many details about why this special policy was adopted for Mr. Rove. But he did indicate that one factor was the presence of investigative or discovery requests or other legal concerns. It was unclear from Mr. Kelner’s briefing whether the special archiving policy for Mr. Rove was consistently in effect after 2005.

The briefings the Committee received raise serious concerns about the White House’s compliance with the Presidential Records Act. This 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.” Yet despite this requirement, it appears that neither the White House nor the RNC has preserved a large volume of e-mails that may have discussed official actions and fall within the requirements of the Presidential Records Act.

The Committee knows from its investigation that some federal agencies and departments received e-mails from White House officials using their RNC e-mail accounts. The only existing record of these e-mails may reside on servers or backup devices within the control of federal entities. For this reason, the Committee requests that you preserve all e-mails received from White House officials who used “gwb43.com,” “georgewbush.com,” “rnchq.org,” or other nongovernmental e-mail accounts. The Committee also asks you to preserve any e-mails sent to White House officials at any of these accounts.

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In addition, I request that you provide the Committee with an inventory of any e-mail communications in the agency's possession or control that meet the description in the preceding paragraph. This inventory should include the name and e-mail address of the sender, the name and e-mail address of the recipient, the date of the e-mail, and a brief description of the subject of the e-mail. This inventory should be provided to the Committee by May 3, 2007.

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 on how to respond to the Committee's request.

I appreciate your cooperation with the Committee's inquiry. If you have any questions about the Committee's request, your staff can contact David Rapallo or Anna Laitin of the Committee staff at (202) 225-5420.

Sincerely,



Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member