

U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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WASHINGTON, DC 20515-6301  
(202) 225-6371  
www.science.house.gov

November 15, 2012

The Honorable Todd Zinser  
U.S. Department of Commerce  
Office of Inspector General  
1401 Constitution Ave. NW  
Washington, DC 20230

Dear Mr. Zinser,

Upon taking office in January 2009, President Obama pledged to make his administration the most open and transparent in history, stating in an Executive Memorandum:

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government. ... Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use.<sup>1</sup>

Unfortunately, time and again, actions by the Administration on transparency have fallen far short of the President's rhetoric, in many instances trending *away* from transparency and toward greater secrecy.<sup>2</sup> I write you today regarding yet another troubling revelation – the use of private email and alias accounts to conduct official government business. I am concerned that this behavior appears to violate the Federal Records Act (FRA),<sup>3</sup> and perhaps the Presidential Records Act (PRA),<sup>4</sup> the Freedom of Information Act (FOIA), as well as many other statutes designed to facilitate transparency and oversight.<sup>5</sup>

Environmental Protection Agency (EPA)

On November 12, 2012, it was reported that EPA Administrator Lisa Jackson used alias email

<sup>1</sup> White House Memorandum, Subject: Transparency and Open Government, January 21, 2009

<sup>2</sup> Letter from Rep. Paul Broun, M.D., Chairman, Subcommittee on investigations and Oversight, Committee on Science, Space, and Technology to Dr. John Holdren, Director, Office of Science and Technology Policy, July 13, 2009. (See attachment A)

<sup>3</sup> 44 U.S.C. § 31

<sup>4</sup> 44 U.S.C. § 2201

<sup>5</sup> 18 U.S.C. § 2071; 5 U.S.C. § 552; 5 U.S.C. § 552a; and 18 U.S.C. § 1001a

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accounts, including one under the name of "Richard Windsor," to conduct official business.<sup>6</sup> Apparently, the process of using alias accounts was institutionalized under one of Administrator Jackson's predecessors, Carol Browner.<sup>7</sup> The use of these accounts could seriously impair records collection, preservation, and access, therefore compromising transparency and oversight. The FRA requires agency heads to "make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency..."<sup>8</sup> The use of alias accounts that are not known to staff responsible for retaining and providing access to records seriously causes me to question the fidelity of previous responses to not only the public through FOIA, but also to the Office of the Inspector General as well as Congress.

#### National Oceanic and Atmospheric Administration (NOAA)

For years, NOAA sought to hide official agency records from public view by asserting that a NOAA employee, Dr. Susan Solomon, was "detailed" to the IPCC, and therefore all of her records could be withheld from the public. In response to this assertion, the Department of Commerce (DOC) Office of the Inspector General (OIG) conducted a review which

"found no evidence that the Co-Chair [Dr. Solomon] was "detailed" as such via, for example, a Memorandum of Understanding or SF-52 Request for Detail. We also note that the WG1 Co-Chair [Dr. Solomon] performed much of her IPCC-related work at NOAA offices and/or using NOAA equipment, received her pay from NOAA, continued to work on other NOAA matters and remained under the supervision of the Director of the Chemical Sciences Division."

Because of this finding, the OIG concluded that "NOAA did not adequately process these FOIA requests."<sup>9</sup>

#### Department of Energy (DOE)

On August 14, 2012, the House Energy and Commerce Committee revealed that "at least fourteen DOE officials used non-government accounts to communicate about the loan guarantee program and other public business." In several instances, Jonathan Silver, the DOE Loan Program Office Director, explicitly directed others to keep loan guarantee communications secret by not linking public and private email accounts, and sent emails detailing official government

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<sup>6</sup> Micheal Bastasch, "EPA chief's secret 'alias' email account revealed," *The Daily Caller*, November 12, 2012. Accessed at <http://dailycaller.com/2012/11/12/epa-chiefs-secret-alias-email-account-revealed/>

<sup>7</sup> In 2001, Carol Browner was also admonished for deleting records in violation of a court order. See John Solomon, "EPA head Browner Asked for Computer Files to be Deleted," *Associated Press*, June 29, 2001. On July 24, 2003, EPA was found in contempt for violating the court order barring them from destroying agency records. See Memorandum Opinion, *Landmark Legal Foundation v. Environmental Protection Agency*, US District Court for the District of Columbia, Civil Action No. 00-2338 (RCL), July 24, 2003.

<sup>8</sup> 44 U.S.C. § 3101

<sup>9</sup> Letter from Todd Zinser, Inspector General, Department of Commerce to Senator James Inhofe (OK), February 18, 2011.

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business using his private email account. In an August 21, 2011 email to Morgan Wright, DOE's Director of Strategic Initiatives, Mr. Silver wrote, "Don't ever send an email on doe email with private addresses. That makes them subpoenaable." Mr. Silver also sent an email from his private Yahoo! account to DOE's Chief of Staff, Brandon Hurlbut on September 18, 2011 that asked, "Does [Deputy Chief of Staff Jeff] Nevin have a private email..." and then sent Mr. Silver an email from his private account to Mr. Nevin's private account which detailed official business.<sup>10</sup>

This behavior also extended to communication with the White House, which calls into question whether the PRA was violated. On June 18, 2011, Mr. Silver sent an email from his private account to the private email account of David Lane, the then-Assistant to the President and Counselor to Chief of Staff William Daley at the White House that detailed official business.<sup>11</sup> The PRA directs the President to "take all such steps as may be necessary to assure that the activities, deliberations, decisions, or other official or ceremonial duties are adequately documented and that such records are maintained as Presidential records..."<sup>12</sup>

#### White House Office of Science and Technology Policy (OSTP)

In May of 2010, it was revealed that Andrew McLaughlin, Deputy Chief Technology Officer at OSTP, conducted official business on a private account. In response to this finding, he was reprimanded by Dr. John Holdren, the Office's Director and Presidential Science Advisor. In a memo to all OSTP staff, Dr. Holdren reminded OSTP staff of the statutory requirements for official records, and indicated that all staff would undergo additional refresher training in the coming weeks.<sup>13</sup> Unfortunately, it seems as though this additional training did little to dissuade OSTP staff from using private email accounts to hide from transparency. On April 21, 2011, Jeff Smith, Senior Advisor to the Director of OSTP responded to a routine meeting request by writing the following from his personal email account:

"Jim – coffee at Caribou Coffee – across the corner from the WH – would work at 11:30 a.m. on Friday...plus getting through the new WH security rules these days almost takes an act of Congress (and you know how well that's going these days) plus you'd appear on an official WH Visitor List which is maybe not want [sic] you want at this stage."

While communicating official government business on a private email account not only undermines transparency by violating the FRA and possibly the PRA, this instance is even more egregious because it comes after a highly publicized admonition of another senior OSTP staffer a year earlier. Further, the subject of the communication seems to be an attempt to circumvent

<sup>10</sup> "Promises Made, Promises Broken: The Obama Administrations Disappointing Transparency Track Record," U.S. house of Representatives Committee on Energy and Commerce, Vol. 1, Issue 3, July 31, 2012.

<sup>11</sup> *Id*

<sup>12</sup> 44 U.S.C. § 2203

<sup>13</sup> Email from Dr. John Holdren, Director, OSTP, to All OSTP Staff, Subject: reminder: Compliance with the Federal Records Act and the President's Ethics Pledge, May 10, 2010. (See attachment B)

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another transparency mechanism – the White House official visitor log. This is a separate, but equally troubling charge that unfortunately is also not new.<sup>14,15</sup> A *New York Times* article from June 24, 2010 titled “Across from White House, Coffee with Lobbyists,” states official meetings are routinely scheduled at nearby coffee shops in order to evade disclosure on White House visitor logs, and that “[s]ome lobbyists say they routinely get e-mail messages from White House staff members’ personal accounts rather than from their official White House accounts, which can become subject to public view.”<sup>16</sup>

All of these incidents point to a pattern of behavior directed at subverting transparency. In order to better evaluate the impact of the use of personal email and aliases on the preservation of federal records, the ability of the public to access government information, and Congress’ ability to conduct oversight, please conduct a review of DOC’s compliance with the FRA and FOIA, specifically the agency’s use of private email accounts and/or aliases. In your review, please identify:

- 1) whether it is possible to determine the extent of private email use by federal employees to conduct official business;
- 2) whether DOC has appropriate procedures in place to collect, maintain, and access records created by personal email accounts or aliases;
- 3) whether DOC has provided appropriate training for staff related to the use of personal email accounts or aliases;
- 4) whether DOC has ever reprimanded, counseled, or taken administrative action against any employees for using personal email accounts or aliases;
- 5) whether DOC officials promoted or encouraged the use of private or alias email for conducting official government business;
- 6) what steps your office took to ascertain which officials use private email or alias accounts to conduct official business, what the content of those discussions were, and any recommendations your office may have to ensure the agency’s compliance with all relevant statutes, regulations, and directives.

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<sup>14</sup> White House Deputy Chief of Staff Jim Messina used his private email account to communicate official government business related to the Affordable Care Act with lobbyists. See “Promises Made, Promises Broken: The Obama Administrations Disappointing Transparency Track Record,” U.S. House of Representatives Committee on Energy and Commerce, Vol. 1, Issue 3, July 31, 2012.

<sup>15</sup> In response to SEC Inspector General investigations, “many in the agency” now “rely largely on private email accounts and cell phones, rather than their government-issued devices.” Because of this, “staff conduct is harder to monitor.” See Robert Schmidt and Joshua Gallu, “SEC Enforcers Frozen as Internal Watchdog Kotz Unleashes ‘Chilling’ Probes,” *Bloomberg*, October 28, 2011. Accessed at <http://www.bloomberg.com/news/2011-10-28/sec-enforcers-frozen-as-watchdog-unleashes-chilling-probes.html>

<sup>16</sup> Eric Lichtblau, “Across From the White House, Coffee With Lobbyists,” *The New York Times*, June 24, 2010. Accessed at <http://www.nytimes.com/2010/06/25/us/politics/25scaribou.html>

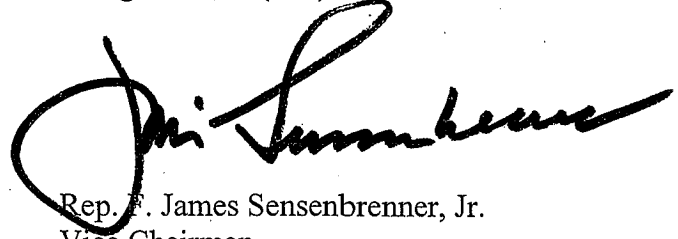
Mr. Zinser  
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Page five

Please provide two copies of all responsive documents to 2321 Rayburn House Office Building by November 30, 2012. If you have any questions related to this request, please contact, Mr. Tom Hammond, Staff Director, Subcommittee on Investigations, at (202) 225-6371.

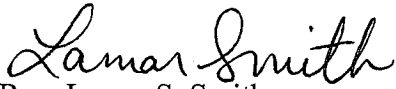
Sincerely,



Rep. Ralph Hall  
Chairman  
Committee on Science, Space,  
and Technology



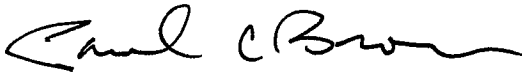
Rep. F. James Sensenbrenner, Jr.  
Vice Chairman  
Committee on Science, Space,  
and Technology



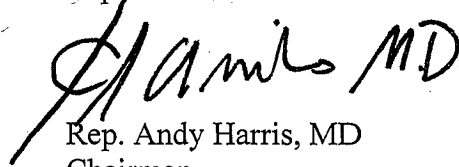
Rep. Lamar S. Smith



Rep. Dana Rohrabacher



Rep. Paul Broun, MD  
Chairman  
Subcommittee on Investigations  
and Oversight



Rep. Andy Harris, MD  
Chairman  
Subcommittee on Energy  
and Environment

cc: Rep. Eddie Bernice Johnson  
Ranking Member  
Committee on Science, Space,  
and Technology

Rep. Paul Tonko  
Ranking Member  
Subcommittee on Investigations  
and Oversight

Rep. Brad Miller  
Ranking Member  
Subcommittee on Energy  
and Environment

Enclosures

BART GORDON, TENNESSEE  
CHAIRMAN

RALPH M. HALL, TEXAS  
RANKING MEMBER

U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON SCIENCE AND TECHNOLOGY

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July 13, 2009

Dr. John Holdren  
Director  
Office of Science and Technology Policy  
725 17<sup>th</sup> St., NW, Room 5228  
Washington, DC 20502

Dear Dr. Holdren:

As you know, on March 9, 2009 the President issued an executive memorandum on scientific integrity that illustrated many of the same principles he espoused during his campaign. In this memorandum, the President tasked the Director of the Office of Science and Technology Policy (OSTP) to develop recommendations within 120 days to guarantee scientific integrity throughout the executive branch.<sup>1</sup> Similarly, in one of his first acts, President Obama on January 21, 2009 issued an executive memorandum outlining his principles to achieve "an unprecedented level of openness in government" and calling for recommendations for an Open Government Directive within 120 days.<sup>2</sup>

While I commend the President for taking proactive steps to ensure scientific integrity and transparency in the federal government, recent incidents at several agencies paint a different picture of how this Administration may view these issues. Viewed individually, each of these cases is cause enough for concern, but when viewed together, I fear they reveal a troubling pattern that warrants immediate attention. Accordingly, I ask that you review and respond to the following comments and questions by no later than July 17, 2009.

**The Environmental Protection Agency's (EPA) Greenhouse Gas Endangerment Finding**

Recent press reports revealed that important comments from career EPA analysts on the agency's greenhouse gas endangerment finding were suppressed by a senior agency official. These press reports include emails that indicated that the Director of the EPA's National Center for Environmental Economics (NCEE) refused to include the comments, not because of a lack of scientific merit, but according to the official, because "the

<sup>1</sup> White House Memorandum, Subject: Scientific Integrity, March 9, 2009

<sup>2</sup> White House Memorandum, Subject: Transparency and Open Government, January 21, 2009

administration [had] decided to move forward on endangerment," and the "comments [did] not help the legal or policy case for this decision." In seeking to have his report included in the proceeding, the analyst wrote, "They are significant because they present information critical to the justification (or lack thereof) for the proposed endangerment finding. They are valid because they explain much of the observational data that have been collected which cannot be explained by the [International Panel on Climate Change] models." After muzzling the report, the Director stated, "With the endangerment finding nearly final, you need to move on to other issues and subjects. I don't want you to spend any additional EPA time on climate change. No papers, no research etc."<sup>3</sup> I find it hard to reconcile these actions with the President's direction, or the EPA Administrators own word when she promised "Political appointees will not compromise the integrity of EPA's technical experts to advance particular regulatory outcomes," and "EPA's addressing of scientific decisions should reflect the expert judgment of the Agency's career scientists and independent advisers."<sup>4</sup>

1. Is the NCEE Director's exclusion of the staff report on the grounds that it did not advance the "policy case" for the endangerment finding consistent with President Obama's guidance that "facts drive scientific decisions—not the other way around?"<sup>5</sup> How will the Administration handle issues such as this going forward?

### **Interagency Deliberations on EPA's Greenhouse Gas Endangerment Finding**

These reports of questionable interference into science-related policymaking extend beyond EPA. An interagency report marked "Deliberative/Attorney-Client Privilege" leaked last month indicated that regulating greenhouse gases under the Clean Air Act "is likely to have serious economic consequences for regulated entities throughout the U.S. economy, including small businesses and small communities." The memo went on to state that:

"In the absence of a strong statement of the standards being applied in this decision, there is a concern that EPA is making a finding based on (1) 'harm' from substances that have no demonstrated direct health effects, such as respiratory or toxic effects, (2) available scientific data that purports to conclusively establish the nature and extent of the adverse public health and welfare impacts are almost exclusively from non-EPA sources, and (3) applying a dramatically expanded precautionary principle."<sup>6</sup>

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<sup>3</sup> Robin Bravender, "Two EPA Staffers Question Science Behind Climate 'Endangerment' Proposal," *The New York Times*, June 26, 2009, Business Section.

<sup>4</sup> Tom Avril and John Sullivan, "EPA Nominee Vows to Follow Science," *The Philadelphia Inquirer*, January 15, 2009.

<sup>5</sup> Remarks by the President at the National Academy of Sciences Annual Meeting, April 27, 2009.

<sup>6</sup> <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&c=0900006480965abd>

It seems as though one of the most important and far-reaching decisions made by the EPA was forced through the interagency review process with little regard for appropriate rules, procedures, scientific integrity, or transparency. This is particularly troubling given the recent direction in the President's March 9, 2009 memorandum that "each agency should make available to the public the scientific or technological findings or conclusions considered or relied on in policy decisions."<sup>7</sup> After this memo was revealed, an Administration official quickly attempted to publicly discredit and "out" a long-time civil servant as a "Bush Administration hold-over" – despite the fact that press reports indicated that employee entered government service during the Clinton Administration, and prior to that served on the staff of a Democratic Member of Congress.<sup>8</sup> Retaliation against employees because they provide findings that inconveniently contradict political goals is unacceptable.

2. Does the attempt to discredit a government employee and his or her associated comments in the interagency review process violate the letter or spirit of subsection (1)(f) of the President's memorandum on scientific integrity regarding whistleblower protections as they relate to agency decision-making processes? If not, why? If so, how is this being addressed?

### **The Climate Czar's "Vow of Silence"**

In developing new fuel economy standards for passenger vehicles and light trucks, it seems as though the Administration also practiced doublespeak. While the Administration promised unprecedented levels of transparency, Carol Browner, the President's "Climate Czar" actively engaged in limiting the public's access to these deliberations. On May 20, 2009 the *New York Times* reported that the White House held a series of secret meetings with select special interest groups as they were crafting the new standards. In that same report, Mary Nichols, the head of the California Air Resources Board (CARB) stated that "Browner quietly orchestrated private discussions from the White House with auto industry officials," and that "[we] put nothing in writing, ever."<sup>9</sup> Initial review of these directives point to a clear attempt to subvert the Presidential Records Act, which directs 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>10</sup> If these reports are true, it is hard to imagine how this would promote the President's pledge to "creat[e] an unprecedented level of openness in government."<sup>11</sup>

<sup>7</sup> White House Memorandum, Subject: Scientific Integrity, March 9, 2009

<sup>8</sup> Robin Bravender, "Murky Reg-Review Process Sets Stage for Frenzy Over OMB Climate Memo," *The New York Times*, May 14, 2009, Business Section.

<sup>9</sup> Colin Sullivan, "Vow of Silence Key to House-Calif. Fuel Economy Talks," *The New York Times*, May 20, 2009, Business Section.

<sup>10</sup> 44 U.S.C. § 2203

<sup>11</sup> White House Memorandum, Subject: Transparency and Open Government, January 21, 2009



## Secret White House Meetings

Following the same opaque and exclusive process that produced new fuel economy standards, the White House continues to block Freedom of Information Act (FOIA) requests and general inquiries into coal executives' and lobbyists' secret meetings with the White House regarding the development of the Administration's "clean coal" policies.<sup>12</sup> FOIA requests for White House visitor logs by MSNBC and the Citizens for Responsibility and Ethics in Washington (CREW) were rejected despite the President's declaration of transparency and openness.<sup>1314</sup> The Administration's refusal to work in the light of day is particularly perplexing given the President's admonishments as a candidate of the previous Administration's Energy Task Force meetings.<sup>15</sup>

3. Are the above actions consistent with the principle in the President's executive memorandum on transparency that the Administration "will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use." Further, are they consistent with section (1)(d) of the memorandum on scientific integrity stating that agencies "should make available to the public the scientific or technological findings or conclusions considered or relied upon in policy decisions?" Last, are they consistent with the letter and spirit of the Presidential Records Act? If not, why? If so, how is this issue being addressed?

## Climate Change Science Program

On June 16, 2009 the U.S. Global Change Research Program released a report titled "Global Climate Change Impacts in the United States." Following the report's release, you stated that it "integrates the most up-to-date scientific findings into a comprehensive picture."<sup>16</sup> Despite this declaration, several criticisms have been leveled against the report for systemically misrepresenting the best science on the issues of climate change and natural disasters. Specifically in question is the exclusion of a large body of recent peer-reviewed scientific literature on natural disasters in favor of inclusion of non-peer-reviewed scientific research that might strengthen the Administration's stated policy goal of greenhouse gas regulation.<sup>17</sup>

4. Was the decision to exclude peer-reviewed data in favor of non-peer reviewed information consistent with section (1)(c) of the President's memorandum on scientific integrity stating that "when scientific or technological information is

<sup>12</sup> Michael Isikoff, "Obama Closes Doors on Openness," *Newsweek*, June 29, 2009.

<sup>13</sup> Bill Dedman, "Obama Blocks List of Visitors to White House," MSNBC Online, June 16, 2009.

<sup>14</sup> CREW, "CREW v. U.S. Department of Homeland Security (White House Visitor Logs - Coal Execs)," Citizens for Responsibility and Ethics in Washington, <http://www.citizensforethics.org/node/40129>.

<sup>15</sup> Organizing for America, "Remarks of Senator Obama at the Lobbying Reform Summit," Barack Obama Online, [http://www.barackobama.com/2006/01/26/remarks\\_of\\_senator\\_barack\\_obam\\_6.php](http://www.barackobama.com/2006/01/26/remarks_of_senator_barack_obam_6.php)

<sup>16</sup> Office of Science and Technology Policy, "New Report Provides Authoritative Assessment of National, Regional Impacts of Global Climate Change," Press Release, 16 June 2009.

<sup>17</sup> John Tierney, "U.S. Climate Report Assailed," *The New York Times*, June 18, 2009, Science Section.

considered in policy decisions, the information should be subject to well-established scientific processes, including peer review where appropriate, and each agency should appropriately and accurately reflect that information in complying with and applying relevant statutory standards." If so, how is it consistent? If not, what is being done to address the issue?

Astute observers will recognize that the underlying issues relating to suppression, censoring, and retribution are not purely scientific in nature, and therefore are not germane to the President's memorandum on science integrity. Previous investigations into the censoring of scientists focused not on whether their research findings were suppressed, but on whether they were prevented from communicating their findings and opinions. A NASA Inspector General investigation found that the ability of Dr. James Hansen to communicate his findings was impaired despite giving over 1,400 on-the-job interviews.<sup>18</sup> More importantly, it also found "no evidence indicating that NASA blocked or interfered with the actual research."<sup>19</sup> Issues surrounding Dr. Hansen focused on his ability to communicate with the media regarding policy decisions. Unlike the Hansen incident, evidence in these cases clearly point to Administration officials directly impeding scientific work with unambiguous directives such as "No papers, no research etc."<sup>20</sup> Therefore, I find these new incidents even more troubling than previous events.

I am also concerned that these are not isolated instances. The importance of these underlying issues being addressed is far-reaching and will impact the lives of every American. Consequently, the public deserves more than rhetoric. Because of this apparent pattern of muzzling experts, limiting access, retaliating against dissent, and systematically misrepresenting science, we respectfully request that you respond with:

5. A plan to reconcile the above listed discrepancies with the Administration's principles of scientific integrity and transparency outlined in the President's January 21 and March 9, 2009 memoranda.
6. A description of the steps taken by your office to ensure that negative employment actions will not be taken against individuals who present information contrary to the Administration's policy goals.
7. A plan to ensure that employees' work and media access is not restricted by Administration or Agency officials because of policy goals.
8. An explanation of whether or not OSTP decided to maintain and advance the principles outlined by the previous Administration in Dr. Marburger's May

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<sup>18</sup> Investigative Summary: Regarding the Allegations that NASA Suppressed Climate Change Science and Denied Media Access to Dr. James E. Hansen, a NASA Scientist, NASA, Office of the Inspector General, June 2, 2008.

<sup>19</sup> *Id.*

<sup>20</sup> Robin Bravender, "Two EPA Staffers Question Science Behind Climate 'Endangerment' Proposal," *The New York Times*, June 26, 2009, Business Section.

28, 2008 memorandum on "Principles for the Release of Scientific Research Results."<sup>21</sup>

I look forward to working with you to ensure that scientific integrity and transparency are priorities in the new Administration. Please respond to these requests no later than July 24, 2009. If you have any questions, please contact Mr. Tom Hammond, professional staff member, Subcommittee on Investigations and Oversight, Committee on Science and Technology at 202-225-6371.

Sincerely,



REP. PAUL BROUN, M.D.  
Ranking Member  
Subcommittee on Investigations  
and Oversight

cc: REP. BRAD MILLER  
Chairman  
Subcommittee on Investigations & Oversight

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<sup>21</sup> Office of Science and Technology Policy Memorandum, Subject: Principles for Release of Scientific Research Results, May 28, 2008

From: Holdren, John P.  
Sent: Monday, May 10, 2010 4:40 PM  
To: DL-OSTP-ALL  
Subject: Reminder: Compliance with the Federal Records Act and the President's Ethics Pledge

Dear Colleagues - Please see the important memo below. Thank you. John

JOHN P. HOLDREN  
Assistant to the President for Science and Technology  
and Director, Office of Science and Technology Policy  
Executive Office of the President of the United States  
[jholdren@ostp.eop.gov](mailto:jholdren@ostp.eop.gov)  
Executive Assistant Karrie Pitzer

MEMORANDUM FOR ALL OSTP EMPLOYEES

FROM: JOHN P. HOLDREN  
SUBJECT: Reminder: Compliance with the Federal Records Act and the President's Ethics Pledge

OSTP has long had an excellent record of complying with legal and ethical standards. We should all be proud of that record, and we all need to be vigilant in maintaining it. This memo describes how one of our employees recently fell short in this regard, inadvertently implicating two important standards that govern our activities as Federal employees: the Federal Records Act and the President's Ethics Pledge. The information below serves as a reminder of what these standards require from all of us and what you must do to ensure compliance.

The Federal Records Act

OSTP is subject to the Federal Records Act (FRA). FRA guidance was provided to you at your in-briefing; more detailed information is available at <http://www.archives.gov/records-mgmt/publications/documenting-your-public-service.html>. In general, the FRA requires that OSTP employees preserve records of government business, including emails. See 44 U.S.C. § 3301. Our email system is designed to ensure that all emails sent to or from an OSTP account are automatically and properly preserved. To ensure that we comply with the FRA with respect to emails, all OSTP-related email communications should be conducted using your OSTP email accounts.

In the course of responding to the recent FOIA request, OSTP learned that an employee had, in a number of instances, inadvertently failed forward to his OSTP email account work-related emails received on his personal account. The employee has since taken corrective action by forwarding these additional emails from his personal account to his OSTP account so that all of the work-related emails are properly preserved in his OSTP account.

If you receive communications relating to your work at OSTP on any personal email account, you must promptly forward any such emails to your OSTP account, even if you do not reply to such email. Any replies should be made from your OSTP account. In

this way, all correspondence related to government business - both incoming and outgoing - will be captured automatically in compliance with the FRA. In order to minimize the need to forward emails from personal accounts, please advise email senders to correspond with you regarding OSTP-related business on your OSTP account only.

#### The President's Ethics Pledge

Paragraph Two of the Ethics Pledge that some OSTP employees have signed per Executive Order 13490 prohibits certain communications with former employers and clients on matters relating to the signer's official duties for two years from the date of appointment. See

[http://www.usoge.gov/ethics\\_guidance/daeograms/dqr\\_files/2009/do09003a.pdf](http://www.usoge.gov/ethics_guidance/daeograms/dqr_files/2009/do09003a.pdf). All Pledge signers received guidance on the requirements of the Pledge when they joined OSTP. Detailed guidance on the Pledge is available at:  
[http://www.usoge.gov/ethics\\_guidance/daeograms/09\\_daeograms.aspx](http://www.usoge.gov/ethics_guidance/daeograms/09_daeograms.aspx).

In connection with the above-mentioned FOIA request, OSTP learned there were several communications between the OSTP employee and his former employer involving matters within the scope of the employee's official duties at the OSTP. Most of these communications did not violate Paragraph Two of the Pledge, either because the OSTP employee did not reply or because the communications were to or from a person who works at the former employer in that person's official capacity as a member of a Federal Advisory Committee. However, there were several emails in which the OSTP employee discussed matters within the sphere of his official duties with representatives of his former employer who were acting in their capacity as employees of his former employer. These communications violated the employee's Ethics Pledge.

#### Remedial Actions

With regard to the Federal Records Act, the employee has since taken corrective action so that all work-related emails that he received at his personal email address are now properly preserved on his OSTP email account. With regard to the President's Ethics Pledge, the employee recognizes that those communications were inappropriate and violated Paragraph Two of the ethics pledge. The employee has been reprimanded on these issues and received additional individual training on his obligations under the FRA and the ethics pledge.

We will be conducting refresher training on ethics and FRA obligations in the coming weeks. If you have questions on either subject at any time, please contact Rachael Leonard, OSTP's General Counsel and DAEO, x66125. On FRA issues, you may also contact OSTP Records Officer, Miriam Eubanks, x67331.

It is very important that we all follow the rules and standards that govern our conduct as Federal employees, including the FRA and the President's Ethics Pledge.

The public has put its trust in us, and it is the responsibility of every OSTP employee to uphold that trust.