

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

2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
(202) 225-6371
www.science.house.gov

June 1, 2012

The Honorable John Bryson
Secretary
U.S. Department of Commerce
1401 Constitution Avenue N.W.
Washington, D.C. 20230

Dr. Jane Lubchenco
Under Secretary of Commerce for Oceans and Atmosphere
and NOAA Administrator
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230

Dear Secretary Bryson and Administrator Lubchenco:

In response to my May 17, 2012 letter, Committee staff received a briefing on Friday, May 25, 2012, from National Oceanic and Atmospheric Administration (NOAA) and Department of Commerce (DOC) staff on a recently concluded internal inquiry into allegations of mismanagement of funds at the National Weather Service (NWS). The senior-level joint NOAA/DOC investigation was led by Dr. Kathryn Sullivan, Deputy Assistant Secretary for Observation and Prediction (NOAA), and Hari Sastry, Deputy Assistant Secretary for Resource Management (DOC). I am writing to request a full and unredacted copy of the joint NOAA/DOC report, including all attachments. According to a Deputy Secretarial Decision Memorandum dated May 24, 2012, this "Investigative Report"¹ is comprised of "60 pages and over 88 exhibits."²

During the May 25 briefing, attended by both Dr. Sullivan and Mr. Sastry, Committee staff was informed that NOAA would at some point provide a redacted version of the Investigative Report but signaled a strong reluctance to provide an unredacted copy due to concerns involving the Privacy Act. The Privacy Act does not apply to Congress. Specifically, limitations of the Privacy Act relative to disclosure of records by the Administration do not apply to "either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee."³

¹ Deputy Secretary of Commerce, Deputy Secretarial Decision Memorandum, "*Decisions Regarding Recommendations Contained in Report Entitled 'Internal Inquiry into Alleged Mismanagement of Funds Within the National Weather Service,'*" May 24, 2012.

² Ibid.

³ 5 U.S.C. § 552a(b)(9). Also see e.g. *Watkins v. United States*, 354 U.S. 178, 200 n.33 (1957); *McGrain v. Daugherty*, 273 U.S. 135 (1927).

Further, a 2000 judicial ruling held that this provision “unambiguously permits federal agencies to disclose personal information about an individual without the individual’s consent to a Congressional subcommittee that has jurisdiction over the matter to which the information pertains.”⁴

Additionally, in a letter from the Office of Legal Counsel at the Department of Justice (DOJ) to the General Counsel at the Department of the Treasury, DOJ has agreed that the congressional exception identified above applies “where the Senate or House exercises its investigative and oversight authority directly, as is the case with a resolution of inquiry adopted by the Senate or House.”⁵ The exception also applies when “each House of Congress exercises its investigative authority through delegations of authority to its committees, which act either through requests by committee chairs, speaking on behalf of the committee, or through some other action by the committee itself.”⁶

The Rules of the U.S. House of Representatives for the 112th Congress assign the Committee on Science, Space, and Technology jurisdiction over the National Weather Service.⁷ House Rules also authorize the Committee “to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.”⁸

Should you have any questions about this request, please feel free to contact Mr. Tom Hammond, Staff Director, Subcommittee on Investigations and Oversight, at (202) 225-6371.

In the event of noncompliance to my request, please identify the reason for a redaction, or withholding of a document on the basis of an established and accepted privilege. As part of a redaction and/or withholding, please provide a log containing the following information for each instance:

- 1) the privilege asserted;
- 2) the type of document (if withholding a document as opposed to a redaction);
- 3) the general subject matter;
- 4) the date, author, and addressee, and
- 5) the relationship of the author and the addressee to each other.

Please provide the requested report by Monday, June 4, 2012.

Sincerely,



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

⁴ *Devine v. United States*, 202 F.3d 547, 551 (2d Cir. 2000).

⁵ Letter to David D. Aufenhauser, Esq., General Counsel, Department of the Treasury, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, Department of Justice, December 5, 2001.

⁶ *Ibid.*

⁷ Rules of the House of Representatives, One Hundred Twelfth Congress, January 5, 2011, X(1)(p).

⁸ *Ibid.*, XI(m)(1)(B).