

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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WASHINGTON, DC 20515-6301

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March 23, 2016

The Honorable Ernest Moniz
Secretary
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Dear Secretary Moniz,

The Committee on Science, Space, and Technology is continuing its oversight of U.S. Department of Energy (DOE) employees' use of personal e-mail to conduct official business.¹ According to media reports, senior DOE officials, including you, have apparently used their private e-mail accounts to conduct official government business.² Additionally, some of the same officials maintain two government e-mail accounts to also conduct work-related business.³ During a Committee hearing today, when asked about your use of personal e-mail to conduct official business, you confirmed that you receive work-related business e-mails on your personal account, but copy one of your government e-mail accounts on any correspondence.⁴ During your testimony, however, you stated that you were unaware that information has apparently been withheld in response to Freedom of Information Act (FOIA) requests where responsive information is housed on your personal e-mail account.⁵ The Committee is concerned that these e-mail practices, if true, raise significant information security concerns, leaving potentially sensitive material susceptible to compromise. To assist in the Committee's oversight of this matter, we are writing to request documents and information.

According to a February 29, 2016, media report, you, as well as other top Department officials use personal e-mail accounts for official work communication.⁶ Further, some top Department officials have two government e-mail accounts set-up for work communication.⁷ These questionable practices came to light only after FOIA requests and in response to media inquiries.⁸ Even more troublesome, the Department is withholding information responsive to FOIA requests in

¹ Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech, to Hon. Ernest Moniz, Sec'y, U.S. Dep't of Energy (May 14, 2015) [hereinafter Letter, May 14, 2015].

² See Corbin Hiar & Kevin Bogardus, *DOE, FERC Leaders Used Personal Emails for Business*, E&E NEWS, Feb. 29, 2016, available at <http://www.eenews.net/greenwire/2016/02/29/stories/1060033160> (last visited Mar. 23, 2016) [hereinafter Hiar & Bogardus, *DOE, FERC Leaders Used Personal Emails*].

³ *Id.*

⁴ H. Comm. on Science, Space, & Tech., *Hearing on An Overview of the Budget Proposal for Fiscal Year 2017* (Mar. 22, 2016) (question and answer by Rep. Gary Palmer) [hereinafter Hearing, Mar. 22, 2016].

⁵ *Id.*

⁶ Hiar & Bogardus, *DOE, FERC Leaders Used Personal Emails*, *supra* note 2.

⁷ *Id.*

⁸ *Id.*

which responsive information was transmitted using a personal e-mail account.⁹ For example, one media outlet did not receive a responsive document from the Department in response to its FOIA request because a responsive e-mail was sent by you on your personal e-mail account for work purposes.¹⁰ This raises serious questions about whether Department officials are using personal e-mail to circumvent transparency and federal records requirements.

Last year, the Committee wrote to you requesting documents and information related to Michael Goo, an employee with the Department's Office of Energy Policy and Systems Analysis, who used text messages and personal e-mail during a prior position with the Environmental Protection Agency to communicate with third party groups attempting to influence the Administration's agenda.¹¹ The Committee wrote to the Department to determine whether Mr. Goo used similar means of communication to converse with third party groups while working at the Department.¹² Likewise, in light of recent reports that you, as well as other top Department officials, have used private e-mail to conduct official work business, the Committee remains concerned that Department employees could be communicating with third party groups poised to influence Department policies.

In September 2015, the Department's Office of the Inspector General (OIG) released a report concerning the Department's practices relating to electronic records retention.¹³ The OIG conducted the review to follow up on weaknesses the OIG previously identified during similar reviews of the Department's electronic records retention. Despite making recommendations in earlier reviews aimed at improving and standardizing the Department's approach to electronic records keeping practices,¹⁴ the OIG found that the Department is still not effectively managing its e-mail records in accordance with federal requirements.¹⁵ Even more troublesome, the OIG report addressed the use of personal e-mail by Department employees for official business and found that the Department had not sufficiently addressed the issue of its employees' use of personal e-mail for government business.¹⁶ The OIG found that because the Department has not established guidelines addressing and/or prohibiting the use of personal e-mail to conduct government business, it was difficult or nearly impossible to archive or retrieve these records.¹⁷ Your testimony during the Committee's

⁹ *Id.*

¹⁰ *Id.*

¹¹ Letter, May 14, 2015, *supra* note 1.

¹² *Id.*

¹³ Dep't of Energy Inspector Gen., *The Dep't of Energy's Management of Electronic Mail Records* (Sept. 2015) (DOE/IG-0945), available at <http://energy.gov/sites/prod/files/2015/09/f26/DOE-IG-0945.pdf> (last visited Mar. 23, 2016) [hereinafter Sept. 2015 IG Report].

¹⁴ For example, a 2010 OIG report recommended that the Department use a central authority to help ensure a coordinated approach for records management activities across the Department. The Department concurred with the OIG's 2010 recommendations. The 2015 IG report, however, found that various program offices within the Department were still not sufficiently coordinating, managing, and addressing practices related to electronic records management. See Dep't of Energy Inspector Gen., *Follow-up Audit on Retention and Management of the Dep't of Energy's Electronic Records* (Sept. 2010) (DOE/IG-0838), available at <http://energy.gov/sites/prod/files/igprod/documents/IG-0838.pdf> (last visited Mar. 23, 2016).

¹⁵ Sept. 2015 IG Report, *supra* note 11, at 3.

¹⁶ *Id.* at 2.

¹⁷ *Id.*

hearing today confirmed that you are unsure as to how “explicit” of a policy the Department has with respect to receiving work-related business on personal e-mail accounts.¹⁸

The recent OIG report concerning Department employees’ use of personal e-mail and recent media reports indicate that the use of personal e-mail for official business within the Department is apparently widespread and continues to occur without guidelines in place addressing and/or prohibiting the use of personal e-mail. The practice of using personal e-mail accounts to conduct official business raises serious questions about the Department’s posture with respect to safeguarding government records and information. Given the Department’s work involving information that could be classified or otherwise sensitive, the potential exchange of such information through unsecured systems heightens the Committee’s concern that sensitive information could be subject to compromise or not captured in FOIA responses.

To assist in the Committee’s oversight of Department employees’ use of personal e-mail, I request the following documents and information as soon as possible, but by no later than noon on April 6, 2016. Please provide the requested information for the time frame from January 1, 2012 to the present:

1. All documents and communications withheld in response to FOIA requests due to personal e-mail use, including any communications about the Department’s withholding of responsive information.
 - a. Please produce the first e-mail sent by Secretary Moniz from his personal account for work purposes that was withheld in response to a FOIA request.
2. A list of all GS-15 and above employees who maintain two government e-mail accounts.
3. A list of all GS-15 and above employees known to the Department to use a private e-mail account, including the employee’s office and duty location.
 - a. Please produce all e-mails exchanged over personal e-mail accounts for work purposes, including but not limited to e-mails for employees located in the following offices:
 - i. Office of the Secretary;
 - ii. Office of the Under Secretary for Science and Energy;
 - iii. Office of Science;
 - iv. Office of Energy Policy and Systems Analysis; and
 - v. Loan Programs Office.
4. All documents and communications referring or relating to the Department’s policies and procedures with respect to using personal e-mail systems or government e-mail systems to conduct official business, including preserving personal e-mails as federal records.
5. All documents and communications referring or relating to the Department’s response to the September 2015 OIG report entitled “The Department of Energy’s Management of Electronic Mail Records,” including information concerning the Department’s progress on implementing the recommendations contained in the OIG report.

¹⁸ Hearing, Mar. 22, 2016, *supra* note 4.

The Honorable Ernest Moniz

March 23, 2016

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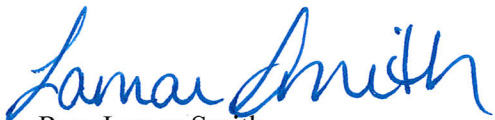
6. All documents and communications referring or relating to the Department's response and actions taken following the September 2010 OIG report entitled "Follow-up Audit on Retention and Management of the Department of Energy's Electronic Records."

The Committee on Science, Space, and Technology has jurisdiction over energy, environmental, and scientific programs and "shall review and study on a continuing basis laws, programs, and Government activities" as set forth in House Rule X.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 394 of the Ford House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment provides information regarding producing documents to the Committee.

If you have any questions about this request, please contact Lamar Echols or Caroline Ingram of the Committee Staff at 202-225-6371. Thank you for your attention to this matter.

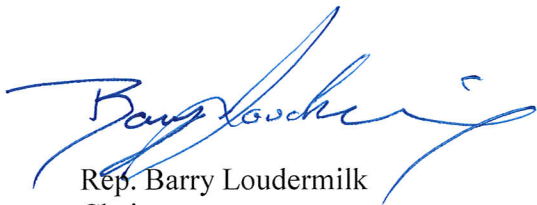
Sincerely,



Rep. Lamar Smith
Chairman



Rep. Randy Weber
Chairman
Subcommittee on Energy



Rep. Barry Loudermilk
Chairman
Subcommittee on Oversight



Rep. Gary Palmer
Member

cc: The Honorable Eddie Bernice Johnson, Ranking Member, Committee on Science, Space, and Technology
The Honorable Alan Grayson, Ranking Member, Subcommittee on Energy
The Honorable Don Beyer, Ranking Member, Subcommittee on Oversight

Enclosure

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents, in unredacted form, that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), or PDF files.
 - (b) Document numbers in the load file should match document Bates numbers and TIF or PDF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. In complying with this request, be apprised that the U.S. House of Representatives and the Committee on Science, Space, and Technology do not recognize: any of the purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.
14. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
15. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
16. Unless otherwise specified, the time period covered by this request is from January 1, 2012 to the present.
17. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
18. All documents shall be Bates-stamped sequentially and produced sequentially.
19. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 324 of the Ford House Office Building.
20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive

documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.