

JAMES M. INHOFE, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
ROGER WICKER, MISSISSIPPI
DEB FISCHER, NEBRASKA
JERRY MORAN, KANSAS
MIKE ROUNDS, SOUTH DAKOTA
JONI ERNST, IOWA
DAN SULLIVAN, ALASKA
RICHARD SHELBY, ALABAMA

THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY
EDWARD J. MARKEY, MASSACHUSETTS
TAMMY DUCKWORTH, ILLINOIS
KAMALA HARRIS, CALIFORNIA

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
GABRIELLE BATKIN, MINORITY STAFF DIRECTOR

March 17, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20004

Dear Administrator Pruitt:

Recent reporting and long-delayed disclosure of emails and documents from your time as the Oklahoma Attorney General show that you were not fully forthcoming and truthful with the Committee in advance of your confirmation. As members of the Environment and Public Works Committee, we respectfully request that you provide clarification by answering several questions and make specific commitments to promote transparency and accountability at the EPA as preceding Administrators have done before you. Our concerns and requests are described below, and we ask that you respond to us by April 7, 2017.

1. Correcting the Record Regarding Your Use of Personal Email Address to Conduct Official Business

In response to questions from Senator Whitehouse about your personal email address and use of it for official business, you stated three separate times that you only used your official Oklahoma Attorney General email address to conduct official business. Yet an examination of the documents the Oklahoma Attorney General's Office released to the *New York Times*, Fox 25 in Oklahoma, and the Center for Media and Democracy (CMD) reveal several instances in which your personal email address was used for official business. Fox 25 also received confirmation from the Oklahoma Attorney General's Office that you used your personal email address for official business and released a video showing documents proving you both received and sent official emails via your personal email address.

Request: Based on this new information, we request that you correct the record, and provide an answer to one of the email-related questions posed to you during your confirmation process: "Have you ever conducted business using your personal email accounts, non-official Oklahoma Attorney General email accounts, text messages, instant messenger, voicemails, or any other medium? If yes, please provide all business-related emails, texts, from those mediums and any others used you used to conduct official business while Attorney General of Oklahoma."

Additionally, upon review of the documents responsive to the previously mentioned Open Records Act requests, the extent of your personal email use and whether your personal email accounts were adequately searched to respond to those requests remains unclear.

Moreover, the use of a personal email address to conduct official business could violate the Presidential and Federal Records Act Amendments of 2014.

Request: Please respond to the following questions:

- Were your personal email accounts searched for emails and documents that were responsive to the recently-released partial production of documents related to CMD's Open Records Act request? If so, how many responsive documents were found and how many were released?
- Dozens of Oklahoma Open Records Act requests, including nine from CMD, are currently pending before the Oklahoma Attorney General's Office, including some for text messages. Do you commit to allowing the Oklahoma Attorney General's Office to search your personal email account(s) and phone(s) for responsive documents?
- Have you retained all official emails and texts you sent and received on your personal email accounts and phones while Attorney General of Oklahoma?
- Since January 20, 2017, have you or any political appointees at EPA used non-official electronic messaging accounts, including email addresses, personal phones, and any encrypted messaging applications (e.g., Confide, Signal, Whisper) to send or receive official messages? If so, have complete copies of those records been forwarded to the corresponding official accounts within the 20 days after the creation or transmission of the record, as required by the Presidential and Federal Records Act Amendments of 2014?
- What steps are you taking to ensure you and all political appointees at EPA comply with the Presidential and Federal Records Act Amendments of 2014?
- In a question for the record following your confirmation hearing, Senator Whitehouse asked you to notify the Committee of all of the email addresses you plan to use in your role as EPA Administrator, including aliases or pseudonyms, which you agreed to do. The Committee has not yet received this information, and we request that you promptly provide it.

2. **Affirm and Comply with the EPA Policy Regarding the Use of Personal Email Accounts**

As you may know, during the confirmation process of your predecessor, Regina A. McCarthy, then Ranking Member David Vitter requested that the agency "issue new guidance ... that outlines ... standards and procedures to ensure that all official business is conducted solely on official government email accounts ..." In response, then Acting Administrator Robert Perciasepe put into place CIO 2155.3, "Records Management Policy." The policy provides for full compliance by EPA and its personnel with records management and access requirements, and includes detailed implementation procedures and requirements for agency officials, management, staff and contractors.

Request: We ask that you commit to maintain the Records Management Policy and its rigorous implementation. We also ask that you direct staff to follow the spirit and intent of the policy as well as its express requirements, and that you ensure that devices, such as PIN-protected email or document transmission or other encryption applications not be

used by political appointees. In addition, in light of your own failure to respond truthfully to Senator Whitehouse's question, we ask that you affirm in writing your commitment to never use any personal email account to conduct professional business for the entirety of your tenure at EPA.

3. Release of Your Calendar

During your confirmation process, Senator Carper asked you to "list all public speeches or presentations you have made that included references to any issue related to energy or the environment since 1998, and please provide copies (written, audio, or video) of any such speeches or presentations." In your responses to the Committee¹, you provided a list of such events, but an examination of the documents the Oklahoma Attorney General released to the Center for Media and Democracy indicate that the material you provided the Committee was incomplete. For example, the list you provided does not include: a June 27, 2014 breakfast panel sponsored by the Americans for Prosperity; a July 15, 2014 Four Star Leadership event; an August 4, 2014 telephonic briefing entitled "States Push Back: Curbing EPA's Power Grab"; and a May 20, 2014 discussion entitled "Scott Pruitt Presents 'The Oklahoma Attorney General's Plan: The Clean Air Act Section 111(d) Framework that Preserves States' Rights'" that was sponsored by the Federalist Society and held at the National Press Club. The Oklahoma Attorney General has not yet agreed to release all of the documents requested by the Center for Media and Democracy and additional discrepancies between the events you told the Committee you participated in and what you appear to have actually done may yet be revealed.

Moreover, an examination of the documents that were released by the Oklahoma Attorney General demonstrate a disturbing pattern of coordination with the oil and gas sector as you planned your efforts to oppose EPA's regulations. For example, the American Fuel & Petrochemical Manufacturers, which opposed EPA's Renewable Fuel Standard (RFS) Program and ozone regulations, provided you with suggested language for an Oklahoma AG-authored petition, noting in 2013 that "this argument is more credible coming from a State." Later that year, you filed letters in opposition to both the RFS and ozone limits. In 2013, Devon Energy organized a meeting between your office, Leonard Leo of the Federalist Society and coal industry lawyer Paul Seby to plan the creation of a "clearinghouse" that would "assist AGs in addressing federalism issues." Melissa Houston, your then chief of staff, emailed Devon Energy saying "this will be an amazing resource for the AGs and for industry."

Request: The combination of your failure to disclose all of your speaking engagements to the Committee and your record of close coordination with the oil and gas sector raise concerns about whether such coordination will continue in your current role as EPA Administrator. So that we may better perform our oversight roles, we request that at the end of each month, you provide the Committee with a copy of your calendar that lists all meetings, calls, and events in which you participated, and the participants and subject of each such meeting, call, or event. We note that former Administrator McCarthy routinely released copies of her calendar under Freedom of Information Act requests,² and former

¹ https://www.epw.senate.gov/public/_cache/files/daf68bcb-f572-4a90-b0bb-6da7c4790603/scott-pruitt-qfr-supplemental-materials-01.18.2017.pdf

² <http://www.eenews.net/stories/1060022093>

Administrator Jackson made her own, and other EPA appointees' calendars, publicly available each day.³

4. Address Concerns about Secrecy Associated with Transition and Other Political Appointees

A February 24, 2017 article in E&E News titled "Trump team kept some transition members secret" described a "broader 'action team' responsible for producing an 'action plan' for the agency whose members were never publicly disclosed." One of these members was reportedly Steve Milloy, who lists himself as the author of "Scare Pollution: Why and How to Fix the EPA," as well as a member of the Trump EPA transition team on his twitter biography.⁴ According to the article, one of his lawsuits against the EPA "likened tests exposing people to diesel engine particulate emissions to medical experiments performed in Nazi concentration camps." His name does not appear on the official transition team list⁵ for the agency. Other reports of personnel working on the EPA transition team raise conflicts of interest questions. For example, David Schnare, who is listed on the official transition team, is still identified as the General Counsel on the website of the E&E Legal Institute, which has sued the agency on both the Clean Power Plan and Waters of the United States rule (which is currently being weakened at the recent direction of the President).

According to the Office of Government Ethics (OGE) regulations,⁶ there are several categories of employee who are subject to public financial disclosure requirements, including "Employees in positions which are excepted from the competitive service because of their confidential or policy-making character, unless the position has been excluded from the public financial disclosure requirements by the Director of the Office of Government Ethics."

Moreover, even if an employee is excluded from having to file public financial disclosures, OGE rules state that new entrant reports are required to be submitted by "An individual who has assumed the duties of a position for which public financial disclosure is required ("covered position"), unless the individual is expected to serve no more than 60 days in any single calendar year or unless the individual is transferring from one covered position to another without a break in service of more than 30 days." The Designated Agency Ethics Official (DAEO) would be expected to work to address any conflicts of interest that were revealed in those reports.

Request: We request that you provide the Committee with the following materials, along with monthly updates to these materials, until all political appointments to non-confirmed positions at EPA have been made:

³ https://www.epa.gov/sites/production/files/2014-02/documents/transparency_in_epas_operations.pdf

⁴ <https://twitter.com/JunkScience>

⁵ <https://greatagain.gov/agency-landing-teams-54916f71f462#.cjq5vn69r>

⁶ <https://www.oge.gov/Web/278eGuide.nsf/2cf9ac792bc0654a85257ea1005f838a/b03cd8fb3320588b85257f450074047f?OpenDocument> and <https://www.oge.gov/Web/278eGuide.nsf/Content/Definitions~Officers+and+Employees+Subject+to+Public+Financial+Disclosure>

- A list of all individuals who have at any time served on the Trump EPA transition and/or beach-head teams, including members of the “broader action team” referenced in the E&E News article, along with their affiliation(s) prior to their appointments.
- For each individual who has served or expects to serve as a member of the EPA transition and/or beach-head teams for longer than 60 days, including individuals who are serving as consultants, contractors or experts, a copy of the new entrant report that was filed with the DAEO, any conflicts analysis that was prepared for the individual, and documentation detailing any recusals or other measures designed to mitigate such conflicts. If no such report, analysis or documentation was prepared, please explain why not.
- A list of all individuals who are serving in, or plan to serve in, non-confirmed political appointments at the EPA, along with their affiliation(s) prior to their appointments.
- For each individual who is currently serving in a non-confirmed political appointment, please provide a copy of the new entrant report that was filed with the DAEO, any conflicts analysis that was prepared for the individual, and documentation detailing any recusals or other measures designed to mitigate such conflicts. If no such report, analysis or documentation was prepared, please explain why not.

5. Commit to Transparent and Timely Review of Freedom of Information Act (FOIA) Requests

While you were Attorney General of Oklahoma, your office accumulated a significant backlog of Open Records Act requests from the media and public, and in some cases it took your office over two years to produce responsive documents.

Request: To ensure the EPA is responding to FOIA requests in a transparent and timely manner, we ask that you provide the Committee with a list of open FOIA requests submitted to EPA (and the date on which each was submitted) at the end of each month.

We very much appreciate your prompt attention to this matter. Thank you for your consideration of our requests. If you have any questions about these requests, please feel free to contact Michal Freedhoff at the Committee on Environment and Public Works at 202 224 8832.

Sincerely,



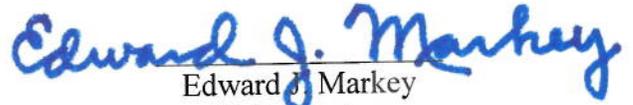
Tom Carper
U.S. Senator



Bernard Sanders
U.S. Senator



Sheldon Whitehouse
U.S. Senator



Edward J. Markey
U.S. Senator



Tammy Duckworth
U.S. Senator