

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

August 8, 2012

Mr. Jim Messina
Campaign Manager
Obama for America
Post Office Box 803638
Chicago, IL 60680

Dear Mr. Messina:

We are writing to you as a follow-up to our letter dated October 13, 2011, in which we requested documents in your possession related to your role in negotiating the Patient Protection and Affordable Care Act (PPACA) during your employment as White House Deputy Chief of Staff. As of today's date, we have not received any response from you.

On July 31, 2012, the Energy and Commerce Committee issued a report entitled "Promises Made, Promises Broken: The Obama Administration's Disappointing Transparency Record," which documented several instances in which you utilized a personal e-mail account to conduct official government business as part of the closed-door health care reform negotiations. The use of such an e-mail address to conduct official White House business appears to be a violation of the Presidential Records Act (44 U.S.C. §§ 2201 – 2207).

On August 1, 2012, White House Press Secretary Jay Carney for the first time acknowledged that you "had a longstanding personal email account in which [you] got traffic[]" and that "[i]n an effort to comply with all the regulations pertaining to emails, [you] would forward emails to [your] White House account or copy [your] White House account so that those emails would be part of [the] presidential record."¹ These new claims directly contradict Mr.

¹ Jennifer Epstein, *Cutter: Aides Forward Emails to W.H. System*, Politico (Aug. 1, 2012), available at <http://www.politico.com/politico44/2012/08/cutter-aides-forward-emails-to-wh-system-130815.html> (quoting White House Press Secretary Jay Carney).

Carney's earlier assertion that "all of our work is conducted on work emails accounts[.]"² Furthermore, the e-mails obtained by the Committee indicate that you did not copy your official White House account on several official work-related e-mails sent from your personal account.

For example, on October 7, 2009, Pharmaceutical and Research Manufacturers of America (PhRMA) lobbyist Jeffrey Forbes e-mailed you on your personal account and stated: "I think the ceo's are going to be ok with you going above 80 (like way above where I thought they would ever get) – anyway you can do a meeting with them sometime between final finance vote and the time it hits the floor?"³ The 80 number referenced in Mr. Forbes's e-mail presumably refers to the \$80 billion deal agreed to between the White House and PhRMA during the summer of 2009. You responded, without copying your official White House e-mail account: "Interesting. Yes."⁴

While the White House now claims, in contradiction to its earlier statements, that you did utilize a personal e-mail address to conduct official government business, a question remains as to whether you did, in fact, forward these work-related e-mails from your personal account to your official White House account as required by the PRA. A further and more important question also remains: how frequently did you use this or any other personal e-mail account to conduct your official White House duties?

Pursuant to Rules X and XI of the United States House of Representatives, the Committee respectfully requests that you provide documents and written answers to the following questions by August 16, 2012.

- Q1. Please provide copies of all e-mails you received or sent from any non-governmental e-mail accounts which related in any way to your official duties as White House Deputy Chief of Staff. For each e-mail in which it is not apparent from the face of the e-mail, please state whether you either copied your official e-mail account or forwarded your personal e-mail communications to your official White House account as required by the Presidential Records Act, and provide copies of any such forwarded e-mails.
- Q2. Attached to this letter is the aforementioned e-mail dated October 7, 2009, from you to Pharmaceutical Research and Manufacturers of America lobbyist Jeffrey Forbes. Please provide the e-mail, with a date and time stamp, showing that you forwarded your response to your official White House account so that it would be preserved in accordance with the Presidential Records Act. If such e-mail is not available, provide a description and supporting documents showing how the e-mail was preserved in accordance with the law.

² Jay Carney, Press Secretary, The White House, Press Briefing by Press Secretary Jay Carney (June 2, 2011), transcript available at <http://www.whitehouse.gov/the-press-office/2011/06/02/press-briefing-press-secretary-jay-carney-622011>.

³ Email from Jeffrey Forbes, Founding Partner, Cauthen Forbes & Williams, to Jim Messina, Deputy Chief of Staff, The White House (Oct. 7, 2009, 9:14 AM) [PhRMA Production at 0002112-0002113].

⁴ Email from Jim Messina to Jeffrey Forbes (Oct. 7, 2009, 10:07 AM) [PhRMA Production at 0002112].

- Q3. Attached to this letter is an e-mail dated March 18, 2010, from you to Pharmaceutical Research and Manufacturers of America lobbyist Jeffrey Forbes in which you write that you will “roll” then-Speaker of the House of Representatives Nancy Pelosi in order to obtain the necessary appropriations to fund the President’s health care law. Please provide the e-mail, with a date and time stamp, showing that you forwarded this e-mail to your official White House account so that it would be preserved in accordance with the Presidential Records Act. If such e-mail is not available, provide a description and supporting documents showing how the e-mail was preserved in accordance with the law.

Please contact Subcommittee on Oversight and Investigations staff at (202) 225-2927 to arrange for delivery of these materials.

Sincerely,



Fred Upton
Chairman



Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

Attachments

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

From: Bryant Hall [REDACTED]
Sent: Wednesday, October 07, 2009 10:24 AM
To: JForbes [REDACTED]
Subject: Re: Oh boys.....

Cool, but make sure they know what you are talking about:

- 1) Giving in on mutually agreed upon generics language
- 2) Scored savings on agreed upon 340B language
- 3) Long term care pharmacy
- 4) Relenting on dropping the Medicaid mandatory drug benefit which they counted as 9B.

----- Original Message -----

From: Jeffrey Forbes <[REDACTED]>
To: Bryant Hall
Sent: Wed Oct 07 10:14:40 2009
Subject: Fw: Oh boys.....

Jeff Forbes
CFW



----- Original Message -----

From: [REDACTED] REDACTED
To: 'jimmessina@[REDACTED]' <jimmessina@[REDACTED]> jeffrevforbes@[REDACTED] <jeffrevforbes@[REDACTED]>
Sent: Wed Oct 07 10:07:18 2009
Subject: RE: Oh boys.....

Absolutely. That's geat news

-----Original Message-----

From: jimmessina@[REDACTED] <mailto:jimmessina@[REDACTED]>
Sent: Wednesday, October 07, 2009 10:07 AM
To: jeffrevforbes@[REDACTED] <jeffrevforbes@[REDACTED]> REDACTED
Subject: Re: Oh boys.....

Interesting. Yes

----- Original Message -----

From: jeffrevforbes@[REDACTED]

To: [REDACTED]
To: Jim Messina
Reply To: jeffreyforbes [REDACTED]
Subject: Oh boys.....
Sent: Oct 7, 2009 9:14 AM

So - I think the ceo's are going to be ok with you going above 80 (like way above where I thought they would ever get) - anyway you can do a meeting with them sometime between final finance vote and the time it hits the floor?

Mtg with ceo's not knuckleheads me billy and bhall

Sent from my Verizon Wireless BlackBerry

Sent from my Verizon Wireless BlackBerry

From: Jeffrey Forbes [REDACTED]
Sent: Thursday, March 18, 2010 10:28 PM
To: Bryant Hall
Subject: Fw:

Jeffrey A. Forbes
CFW
[REDACTED]

----- Original Message -----

From: jimmessina [REDACTED] <jimmessina [REDACTED]>
To: Jeffrey Forbes
Sent: Thu Mar 18 22:17:07 2010
Subject: Re:

But worried about tomorrow. I will roll pelosi to get the 4 billion. But that guy who works for bryant is setting him up: smith. Cause there is no way the language we scored for them is anywhere near 4. But hopefully the other way will, or maybe they are right. As you may have heard I am literally rolling over the house. But there just isn't 8-10 billion for something they said 2-3 for last night

-----Original Message-----

From: Jeff Forbes
To: Jim Messina [REDACTED]
Subject: Re:
Sent: Mar 18, 2010 10:10 PM

I hope that is true - I am not blaming you - the language was diff - russ supposedly admitted it

Jeffrey A. Forbes
CFW
[REDACTED]

----- Original Message -----

From: jimmessina [REDACTED] <jimmessina [REDACTED]>
To: Jeffrey Forbes
Sent: Thu Mar 18 22:09:23 2010
Subject: Re:

The weird thing is the donut deal, and you know russ, russ showed him the language twice. They said yes. We weren't really involved. It was russ. And I trust russ.

Kindler told rahm and I that bryant was fine

-----Original Message-----

From: Jeff Forbes
To: Jim Messina [REDACTED]
Subject: Re:
Sent: Mar 18, 2010 10:04 PM