

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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November 13, 2015

The Honorable Penny Pritzker
Secretary
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, D.C. 20230

Dear Secretary Pritzker:

I write to notify you of our continued disappointment in the National Oceanic and Atmospheric Administration's (NOAA) response to oversight being conducted by the Committee on Science, Space, and Technology. NOAA's efforts to obstruct the Committee's work forced the Committee to issue a subpoena compelling the production of information with which the agency has thus far refused to comply. I request that you direct NOAA to cooperate fully and expediently with the Committee's requests and lawfully-issued subpoenas, or, alternatively, procure the requested and subpoenaed information and provide it directly to the Committee.

As one of his first acts in office, President Obama issued a Memorandum for the Heads of Executive Departments and Agencies¹ which stated:

The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve.²

NOAA's responses to a series of requests from the Committee have blatantly contradicted the President's directive. Instead of acting with "a presumption in favor of disclosure,"³ NOAA has devoted significant resources and time to obstruct and delay the Committee's efforts, and to cherry-pick portions of the Committee's requests to fit with public narratives the agency is developing and promoting about the goals and reasonableness of the Committee's oversight.

¹ Memorandum from The White House to Heads of Executive Departments & Agencies, *Freedom of Information Act* (Jan. 21, 2009), available at http://nsarchive.gwu.edu/news/20090121/2009_FOIA_memo.pdf (last visited Nov. 12, 2015).

² *Id.*

³ *Id.*

More than once, NOAA officials have attempted to shape and direct the Committee's oversight. For example, the agency has suggested that briefings provided by the agency are sufficient and should take the place of requested documents and communications; that some agency employees will be made available for interviews with Committee staff but not others; and, without any legal basis, that federal employee communications sent using government-owned systems will not be provided to the Committee because they are "confidential" and, in NOAA's opinion, are not relevant.⁴

Contrary to opinions expressed by some regarding the Committee's current requests of NOAA,⁵ Congressional oversight need not, indeed should not, begin only when evidence of waste, fraud, abuse, mismanagement, or other wrongdoing is unveiled. Rather, inherent in the Constitution is an implicit obligation to conduct rigorous and continuous oversight, a responsibility Congress itself has through the years codified. For example, the Legislative Reorganization Act of 1946 (P.L. 79-601) directed House and Senate Committees to "exercise continuous watchfulness" over Executive Branch programs under their jurisdiction, and the Legislative Reorganization Act of 1970 (P.L. 91-510) authorized committees to "review and study, on a continuing basis, the application, administration and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee."⁶ As the Congressional Research Service, Congress' nonpartisan research and analysis unit, has stated:

A fundamental objective of congressional oversight is to hold executive officials accountable for the implementation of delegated authority. This objective is especially important given the huge expansion of executive influence in the modern era Clearly, given the role and scope of the federal establishment, the importance of Congress's review function looms large in checking and monitoring the delegated authority that it grants to federal departments and agencies.⁷

Instead of assisting the Committee with its Constitutionally-obligated oversight responsibilities, NOAA has refused to voluntarily and under subpoena provide information crucial to the Committee's ongoing oversight. Moreover, instead of providing an explanation or proposing legal arguments to justify withholding federal employee communications, NOAA made no mention of communications in its response to the Committee's subpoena or in subsequent meetings with Committee staff but instead provided explanations (though not valid legal arguments) for its lack of compliance directly to the news media.

NOAA appears to be attempting to add to a narrative it knows to be false about the Committee's oversight. On October 28, 2015, NOAA spokeswoman Ciaran Clayton told a reporter that "[w]e stand behind our scientists who conduct their work in an objective manner. It is the end product of exchanges

⁴ Timothy Cama, *Agency Won't Give GOP Internal Docs on Climate Research*, THE HILL, Oct. 28, 2015, available at <http://thehill.com/policy/energy-environment/258375-agency-wont-give-gop-internal-docs-on-climate-research> (last visited Nov. 12, 2015) [hereinafter Cama, *Agency Won't Give GOP Internal Docs*].

⁵ See, e.g., Letter from Hon. Eddie Bernice Johnson, Ranking Member, H. Comm. on Science, Space, & Tech., to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (Oct. 23, 2015), available at <http://democrats.science.house.gov/sites/democrats.science.house.gov/files/Ranking%20Member%20Johnson%20Letter%20to%20Chairman%20Smith%20on%20NOAA%20Subpoena.pdf> (stating that "Moreover, in none of the letters to you allege any scientific misconduct, abuse of discretion, or fraud.").

⁶ Cong. Research Serv., *Congressional Oversight* (Jan. 2006) (CRS Report 97-936).

⁷ Cong. Research Serv., *Congressional Oversight: An Overview* (Feb. 2010) (CRS Report R41079).

between scientists — the detailed publication of scientific work and the data that underpins the authors' findings — that are key to understanding the conclusions reached.”⁸ However, NOAA employees are well aware and have acknowledged that the Committee’s request for information and communications includes not just NOAA scientists but also NOAA policy and political staff.

It appears, however, that inclusion of political and policy employees does not fit within NOAA’s preferred narrative, one being promoted by NOAA’s defenders, that the Committee is somehow solely interested in NOAA scientists’ communications and in chilling scientific debate.⁹ The agency seems to be purposefully avoiding all mention of this aspect of the Committee’s work when responding to the Committee and in its efforts to engage the media. Indeed, when in the absence of compliance by NOAA to its subpoena the Committee was forced to begin seeking transcribed interviews with NOAA officials,¹⁰ NOAA was able to quickly provide dates for the Committee to interview the two scientists requested, but has to date remained unwilling, without explanation, to provide dates for the other two NOAA officials who are not scientists.

NOAA’s response is particularly curious given that one of the scientists must travel to Washington, DC, from out of state while the two non-scientists work approximately one mile away from the U.S. Capitol. Again, rather than assisting the Committee with its oversight and providing full transparency, NOAA’s response appears to be targeted at manipulating the Committee’s requests to lend support to the false narrative being promoted by outside organizations that the Committee is attempting to target and intimidate scientists.

To be clear, the Committee’s oversight responsibilities are broad. NOAA appears to prefer narrowly interpreting and publicizing the Committee’s requests as pertaining exclusively to the documents and communications sent between the NOAA scientists who participated in the Karl study.¹¹ However, the Committee’s interest goes well beyond that narrow interpretation to include documents and communications sent and received by NOAA policy, political, communications, and leadership staff, both internally and with others in Executive Branch agencies and external organizations; these documents and communications are not limited to the conduct of the Karl study but instead encompass events and activities leading up to the study and the decisions made by NOAA on how to use its results once it was completed.

For example, the study conducted by Dr. Karl and his NOAA colleagues was not quietly published in a scientific journal so that other scientists could replicate or refute its findings through further investigation. Instead, NOAA heralded the study’s publication, stating in a widely-circulated press release with the title “Science publishes new NOAA analysis: Data show no recent slowdown in global warming,” that “[t]he study refutes the notion that there has been a slowdown or “hiatus” in the rate of global warming

⁸ Cama, *Agency Won’t Give GOP Internal Docs*, *supra* note 4.

⁹ Lisa Rein, *Congressman Demands Climate Study Documents as Scientists Warn of ‘Chilling Effect’*, Wash. Post, Nov. 6, 2015, available at <https://www.washingtonpost.com/news/federal-eye/wp/2015/11/06/as-scientists-warn-of-chilling-effect-on-research-congressman-doubles-down-on-noaa-to-release-deliberations-on-climate-study/> (last visited Nov. 13, 2015).

¹⁰ See Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., to Hon. Kathryn D. Sullivan, Administrator, Nat’l Oceanic & Atmospheric Admin. (Nov. 4, 2015).

¹¹ Thomas R. Karl, et al., *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus*, SCIENCE (Jun. 4, 2015).

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in recent years.”¹² NOAA also used Twitter to spread the news about the Karl study, tweeting “NOAA study refutes notion of ‘hiatus’ in rate of #globalwarming in recent yrs.”¹³ This type of public relations effort seems better suited to an advertising campaign than a federal agency’s sober report on the findings of a publicly-funded study.

NOAA has chosen to obstruct and delay the Committee’s legitimate oversight activities in direct contravention of the Committee’s subpoena and of the President’s memorandum directing agency heads to act with the presumption of disclosure. I ask that you immediately direct NOAA to comply fully and expediently with the Committee’s subpoena and other requests, or alternatively procure and provide responsive information directly. Please provide a response to the Committee by Friday, November 20, 2015, at 12:00 p.m.

The Committee on Science, Space, and Technology is the principal oversight committee of the National Oceanic and Atmospheric Administration 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.

If you have questions about this request, please contact Lamar Echols or Drew Colliatie of the Science, Space, and Technology Committee staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,



Rep. Lamar Smith
Chairman
Committee on Science, Space,
and Technology

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

The Honorable Kathryn D. Sullivan, Administrator, National Oceanic and Atmospheric Administration

¹² Nat’l Oceanic & Atmospheric Admin., Press Release, *Science Publishes New NOAA Analysis: Data Show No Recent Slowdown in Global Warming* (Jun. 4, 2015), available at <http://www.noaanews.noaa.gov/stories2015/noaa-analysis-journal-science-no-slowdown-in-global-warming-in-recent-years.html> (last visited Nov. 12, 2015).

¹³ See Nat’l Oceanic & Atmospheric Admin., Twitter (Jun. 4, 2014, 2:42 p.m.), available at <https://twitter.com/noaa/status/606576778862198784> (last visited Nov. 12, 2015).