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April 8, 2010

Mr. Andrew McLaughlin
Office of Science and Technology Policy
Executive Office of the President
725 17th Street Room 5228
Washington, DC 20502

Dear Mr. McLaughlin,

In your capacity as Deputy Chief Technology Officer with the Office of Science and Technology Policy (OSTP), your office is at the forefront of developing policy vital to innovation and advancements necessary to America's success in the 21st Century. In addition, your office is tasked with improving public access to the business of government. As Ranking Member of the Committee on Oversight and Government Reform, I believe that improving the public's ability to scrutinize the actions and decisions made by the government is an important step towards establishing open and transparent democracy our citizens deserve.

I am troubled by recent reports that an inadvertently publicized list of e-mail contacts from your Gmail account reveals that you have used this platform to communicate with more than 25 Google, Inc employees, including influential lobbyists and lawyers, as well as senior members of the Obama Administration

The list was made public by the recently released social networking platform, Google Buzz. As you candidly observed in one of your public posts, "by default, Buzz adds the people you email most as your 'followers,' and then lists them on your public Google Profile page. In other words, Google exposes the people you email most, by default, to the world."¹ It appears, by your own admission, that the people you e-mail most from your Gmail account include several senior colleagues within the Obama Administration, including Chief Technology Officer Aneesh Chopra and Director of Citizen Participation, and former Google coworker, Katie Jacobs Stanton. Additionally, your list of followers suggests that you remain actively engaged with more than two

¹ Capitol Confidential, Big Government "Google Buzz Privacy Flaw Snags Another Victim: White House Deputy CTO Andrew McLaughlin" (March 31, 2010) *available at* <http://biggovernment.com/author/capitolconfidential/>

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dozen individuals currently employed by Google, Inc, including a number of senior lobbyists and lawyers.

As you know, any e-mail sent or received by White House officials may be subject to retention under the Presidential Records Act (PRA).² The use of personal e-mail accounts, such as Gmail, to conduct official business raises the prospect that presidential records will not be captured by the White House e-mail archiving system. Unless White House officials forward copies of their e-mails to their government e-mail account or maintain printed copies of the e-mail, there is a risk records subject to the PRA will not be retained as required by law. Moreover, what one official deems a presidential record under the Act, and what legally constitutes such a record may differ. Consequently, Gmail users on the President's staff run the risk of incorrectly classifying their e-mails as non-records under the Act.

During the last Congress, this Committee, under the leadership of former Chairman Waxman, conducted vigorous oversight of the White House's compliance with the PRA.³ Indeed the heading "White House E-mails" was long listed, along with the Environment and Iraq Reconstruction, as one of the key issues on the Committee's internet home page.⁴ So active was Chairman Waxman that during 2008 he personally convened monthly meetings with White House Counsel Fred Fielding, the White House's Chief Information Officer, the Archivist of the United States, and the Ranking Republican Member. In light of Chairman Waxman's concerns, in July 2008 the House passed the Electronic Message Preservation Act (H.R. 5811) which directs the Archivist of the United States to establish standards for the capture, management, and preservation of electronic messages that are presidential records. In March of this year, the House again passed the Electronic Message Preservation Act (H.R. 1387).

The challenges posed by retaining e-mail as required under the PRA have proved vexing for the last two White Houses. You may recall the extraordinary problems the Clinton White House had with its e-mail archiving system.⁵ Such problems have led to costly expenditures of taxpayer dollars. For example, the Bush White House reportedly spent "more than \$10 million to locate 14 million e-mails reported missing."⁶ These e-

² 44 U.S.C. § 2201 *et seq.*

³ Letters from Rep. Henry A. Waxman, Chairman, H. Comm. on Oversight and Gov't Reform (hereinafter OGR Comm.), to Fred F. Fielding, Counsel to the President March 29, 2007; Aug. 30, 2007; and January 17, 2008. Chairman Waxman wrote to Emmet T. Flood, Deputy Assistant to the President and Special Counsel to the President, regarding e-mails on October 9, 2007. The Committee Staff was briefed by Flood and other White House staff on at least 18 occasions during 2007 and 2008. The OGR Comm. staff conducted approximately 14 depositions or transcribed interviews related to e-mails. OGR Comm. staff was briefed by and/or reviewed documents of the National Archives regarding e-mails on two occasions.

⁴ OGR Comm. Website at <http://oversight.gov/> (as of Jan. 27, 2009).

⁵ General Accounting Office (GAO), Clinton Administration's Management of Executive Office of the President's E-Mail System, GAO-01-446, April 2001 (GAO was renamed Government Accountability Office in 2004); R. Jeffrey Smith, *Missing White House E-Mails Trace, Justice Aide Says*, WASH. POST, Jan. 15, 2009, at A9 (hereinafter Smith, Jan. 15, 2009).

⁶ Smith, Jan. 15, 2009.

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mails were restored after a costly search of approximately 60,000 back-up server tapes.⁷ In order to prevent similar taxpayer-funded e-mail restoration projects, it is incumbent that the new White House implement policies and processes to minimize the risk of losing e-mail subject to the Presidential Records Act.

Social networking platforms, such as Google Buzz, present tremendous opportunity for increasing public outreach and openness in government. At the same time, these innovative platforms create new challenges for document retention and transparency. For example, it is clear that you personally sought to utilize the Buzz platform, "to control [your] list of followers and post only to that list (without posting on the public Profile page)."⁸ While I understand that you may have personal relationships with many of the individuals listed as contacts, I hope you can understand my concern that as a senior White House aide your official communications are required to be retained. The fact that you sought to communicate privately with a select group of individuals, many of whom possess significant influence in industry and government, with your Gmail account raises the specter that you were attempting to circumvent the laws associated with openness and transparency.

I ask that you answer the following questions for the Committee by April 22, 2010.

1. What is the Office of Science and Technology Policy's (OSTP) policy for ensuring that all messages sent or received by White House staff on private, non-governmental e-mail accounts are preserved according to law?
2. What is OSTP's policy for retention of information posted on social networking platforms such as Twitter, Google Buzz, or Facebook?
3. What procedure exists for ensuring that all messages sent or received by OSTP staff on private, non-governmental e-mail accounts or social networking platforms are properly categorized as presidential records or non-presidential records?
4. Who makes the decision about whether an e-mail sent or received by a member of OSTP staff is categorized as a presidential record?
5. Are these categorization decisions made in concert with the White House Counsel's office and with a representative of the National Archives?
6. What review process has been instituted to ensure that each e-mail is accurately categorized pursuant to law?

⁷ *Id.*

⁸ Capitol Confidential, Big Government "Google Buzz Privacy Flaw Snags Another Victim: White House Deputy CTO Andrew McLaughlin" (March 31, 2010) *available at* <http://biggovernment.com/author/capitolconfidential/>

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Thank you for your prompt attention and I look forward to working with you to ensure that we operate in an open and transparent democracy. If you have any questions about this request, please contact John Ohly or Steve Castor of the Committee Staff at 202-225-5074.

Sincerely,



Darrell Issa
Ranking Member

cc: The Honorable Edolphus Towns, Chairman