

United States Senate

WASHINGTON, DC 20510

August 31, 2017

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Pruitt,

We write today to express our serious concern that, at your direction, the political leadership of the U.S. Environmental Protection Agency (EPA) is taking deliberate steps to thwart transparency. It is essential to the functioning of our democracy that our government does its business in the open. Yet according to recent press reports, you are taking measures to conceal your official actions.

The Constitution gives Congress the authority to oversee the actions of the Executive Branch. As members of the Senate Committee on Environment and Public Works (EPW), we have a responsibility to conduct oversight to ensure that the EPA is following the law. On August 11, 2017, a *New York Times* report detailed the following disturbing allegations:^[1]

- You have ended the long-standing practice of posting public calendars for senior Agency officials. Given other reports about your meetings with regulated parties and actions on their behalf, this suggests that you are seeking to work in secret with the very entities you are charged with overseeing.
- You have prohibited EPA career staff from bringing cellular telephones to meetings with you and have forbidden staff from taking notes during meetings, so that they do not create records of your questions or directions.
- You avoid using both email and your own telephone line for official Agency business, so that neither your email account nor your telephone logs will contain information about the people with whom you are communicating or what is said.
- Your political appointees have provided substantive direction to each other and Agency staff via text message without demonstrating that they are properly documenting those messages, which is a violation of the EPA's Records Management Policy.
- You and your political appointees have provided verbal directions about major substantive matters, so that there is no decision-making paper trail.

^[1] Coral Davenport and Eric Lipton, "Scott Pruitt Is Carrying Out His E.P.A. Agenda in Secret, Critics Say," *The New York Times* (August 11, 2017) (online at <https://www.nytimes.com/2017/08/11/us/politics/scott-pruitt-epa.html>).

- Under your watch, the EPA has failed to respond in a timely way to FOIA requests. For example, the California Attorney General recently filed suit to compel you to respond to a request. When you were Attorney General of Oklahoma and filed a similar suit against the EPA over its slow response time to a FOIA request you submitted, you stated, "If the EPA is making backdoor deals with environmental groups to push their agenda on the American people while bypassing the states and Congress, we need to know."^[2]

These allegations suggest that you are violating the Federal Records Act, 44 U.S.C. § 3101 *et seq.* This law directs that "[t]he head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency." *Id.* § 3101. If you are taking deliberate steps to avoid making records that federal law requires you to preserve, that would contravene your legal duty.

These allegations are especially disturbing given your practices as Oklahoma Attorney General, which included appropriating and sending industry documents^[3] to the EPA on your official letterhead; evading the disclosure of records under the Oklahoma Open Records Act; refusing to disclose your extensive political and financial ties with companies regulated by the EPA (many via "dark money" organizations); and the Oklahoma Bar Association's investigation into the inconsistencies in your congressional testimony.

Together, your past practices as Oklahoma Attorney General and your current practices as EPA Administrator suggest a willing disregard for your legal obligations. So that the EPW Committee may perform its constitutional oversight duties, we request that no later than September 22, 2017 you take the following steps to promote transparency, and report to the EPW Committee about your compliance:

- 1) Resume posting public calendars for senior EPA officials.
- 2) Provide notice to all EPA employees that they may document all EPA actions, including meetings and conversations with you personally, consistent with legal protections for confidential business information, personally identifiable information, and national security information.
- 3) Direct a member of your staff to maintain, and provide to the public via appropriate request, a log of each of your telephone calls.
- 4) Provide direction to all EPA political appointees regarding the proper use of text messages, and provide to the EPW Committee a signed form from each such appointee that he or she understands and is complying with EPA's Records Management Policy.
- 5) Inform all EPA political appointees and senior officials that they should document in writing verbal conversations that result in significant EPA decisions or directions and conversations during which they instruct others to follow those decisions or directives.


^[2] "Attorney General Pruitt Leads Multi-State Lawsuit Demanding Transparency in EPA's Sweetheart Settlement," Oklahoma Office of the Attorney General (July 16, 2013) (online at https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=258&article_id=13146).

^[3] Eric Lipton, "Energy Firms in Secretive Alliance with Attorneys General," *The New York Times* (December 6, 2014) (online at <https://www.nytimes.com/2014/12/07/us/politics/energy-firms-in-secretive-alliance-with-attorneys-general.html>).

- 6) Describe the substance of any verbal directive that EPA staff produce a new study that eliminated the wetlands benefit in the cost-benefit analysis for the Waters of the United States Rule, and identify who devised it and when, and each person who communicated it.
- 7) Disclose whether you or any political appointees at EPA have 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 messages relevant to official business. To the extent to which this is occurring, please confirm that complete copies of those records have been forwarded to corresponding official accounts within 20 days after the creation or transmission of the record, as required by the Presidential and Federal Records Act Amendments of 2014, and that these records are being retained and searched for documents responsive to FOIA requests.
- 8) Explain all steps that you are taking to ensure you and all EPA political appointees are complying with the Presidential and Federal Records Act Amendments of 2014.
- 9) Detail the number of FOIA requests that have been submitted to EPA generally and pertaining to your office specifically; the number of each EPA has answered; and the average length it takes EPA to complete both types of requests. As several EPW members requested in March to ensure the EPA is responding to FOIA requests in a transparent and timely manner, please 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.
- 10) As requested of the Designated Agency Ethics Official in March,
 - a. Provide the names of all non-career Senior Executive Service, Schedule C, and Administratively-Determined appointees, noting for each the initial and subsequent appointment type(s), initial and subsequent job title(s), start date, date that they submitted their Office of Government Ethics (OGE) Form 278, date of their ethics briefing, and date that they signed President Trump's Ethics Pledge consistent with Executive Order 13,770.
 - b. For each employee who did not submit a Form 278 within 30 days of being appointed, confirm that an extension was granted and explain what good cause for the extension was shown pursuant to 5 U.S.C. app. 4 § 101(g)(1); 5 C.F.R. § 2634.201(f).
 - c. Excluding the Administrator's ethics agreement, which is publicly available, provide all recusals, waivers, and ethics agreements that have been finalized. Unless this is not possible, please update your response to this request on a monthly basis.
- 11) Disclose the members of the EPA transition team.
- 12) Clear the backlog of congressional inquiries that EPA has yet to respond to with complete and substantive responses.

The EPW Committee expects, and federal law requires, that you respond to the Committee completely and accurately. We look forward to your response and understanding how you will return transparency to the EPA as required by law and for the benefit of the American public.

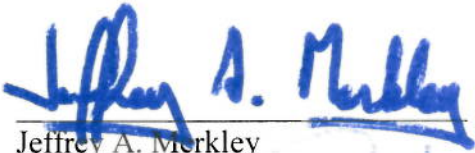
Sincerely,



Kamala D. Harris
United States Senator



Sheldon Whitehouse
United States Senator



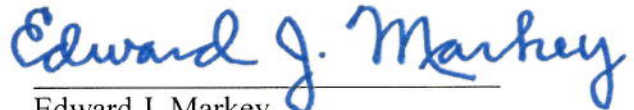
Jeffrey A. Merkley
United States Senator



Cory A. Booker
United States Senator



Kirsten Gillibrand
United States Senator



Edward J. Markey
United States Senator