

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

March 10, 2011

Robert F. Bauer, Esq.
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Bauer:

We are in receipt of your March 4, 2011, response to our February 18, 2011, letter to Deputy Chief of Staff Nancy-Ann DeParle. Our letter requested information regarding closed-door meetings between White House Office of Health Reform (WHOHR) personnel and various lobbying groups in relation to the Administration's effort to pass the health care legislation that became the Patient Protection and Affordable Care Act (PPACA).

We are both concerned and disappointed by your response, which states that it would be too "vast and expensive" to search for the information we requested and make it available to the American people. We are concerned because your letter suggests that there have been more secret meetings than we originally thought — otherwise a search for records would be neither "vast" or "expensive" — and because it appears from your letter that the White House believes it is not obligated to comply with legitimate Congressional requests whenever the White House regards such a request as onerous. We are disappointed because, when President Obama took office, he promised the American people his administration would be "the most open and transparent in history."¹

Our letter asked for some very basic information about the WHOHR—for example, a list of each employee, including job title, duties and salary. We also asked for a simple list of the meetings, briefings or phone calls between representatives of the WHOHR and outside entities, as well as summaries or notes of what was discussed. Finally, we asked for written communications between representatives of WHOHR and nongovernmental entities. The material you sent to us does not respond to any of these requests. Merely resending press

¹ Macon Phillips, *Change has come to Whitehouse.gov*, THE WHITE HOUSE BLOG, Jan. 20, 2009, http://www.whitehouse.gov/blog/change_has_come_to_whitehouse-gov/ ("President Obama has committed to making his administration the most open and transparent in history...")

releases and White House website postings is not genuinely responsive. Further, as you seem to be aware in your response, our letter did not request any purely internal communications, but rather only communications between WHOHR personnel and outside, non-governmental groups and individuals over a specific period of time.

Credible reports have surfaced that the Administration may have favored certain interest groups in drafting and negotiating the PPACA.² Our letter to you cited several news reports regarding agreements the White House allegedly made with special interest groups without input from, and out of sight of, the American public. These reports suggest that the White House spent months conducting secret meetings to build support from special interest groups for the health care law. The White House visitor logs that you provided to the Committee in the last Congress, and again in response to our letter, seem to support this conclusion. A cursory review of those logs reveals numerous meetings between WHOHR personnel and members or representatives from PhRMA, the American Medical Association, the American Hospital Association, America's Health Insurance Plans, the Service Employees International Union, AARP and many other special interest groups, such as labor unions.

The American public still knows nothing about the specifics of these White House meetings. To make matters even worse, recent revelations indicate that the White House logs may not even provide an accurate picture. On February 24, one news organization reported that aides often steer meetings with lobbyists to a complex off of the White House grounds because this "allows the Obama administration to keep these lobbyist meetings shielded from public view—and out of Secret Service logs kept on visitors to the White House and later released to the public."³ Another news organization reported last year that the Caribou Coffee establishment across the street from the White House had become a popular spot for such secret meetings because "they are not subject to disclosure on the visitors' log that the White House releases as part of its pledge to be the 'most transparent presidential administration in history.'"⁴

The American public deserves the information we have requested. The secret meetings conducted by the WHOHR are a perfect example of why transparency in government is so important. The PPACA is a massive expansion of the federal government's control over the health care system. The Congressional Budget Office has said the PPACA will cost more than \$1 trillion over the next decade.⁵ The American people want to know how legislation affecting nearly 20% of our economy came to pass.

As a coordinate branch of government, Congress has Constitutional authority to conduct investigations and gather information from the Executive Branch.⁶ That right to information is "as penetrating and far-reaching as the power to enact [legislation] and appropriate under the

² Ryan Grim, "Internal Memo Confirms Big Give Away in White House Deal with Big Pharma," *Huffington Post*, Aug. 13, 2009 (available at <http://www.huffingtonpost.com/2009/08/13/internal-memo-confirms-big-pharma>) (last visited March 8, 2011).

³ Chris Frates, *White House Meets Lobbyists Off Campus*, POLITICO, Feb. 24, 2011.

⁴ Eric Lichtblau, *Across From White House, Coffee With Lobbyists*, N.Y. TIMES, June 24, 2010.

⁵ Letter from Douglas W. Elmendorf, Director, Congressional Budget Office to The Hon. Jerry Lewis, May 11, 2010 (available at http://www.cbo.gov/ftpdocs/114xx/doc11490/LewisLtr_HR3590.pdf).

⁶ U.S. Const. Art. I; *See Barenblatt v. United States*, 360 U.S. 109, 111 (1959).

Constitution.”⁷ As the House committee with primary jurisdiction over federal health care policy and the implementation of that policy, pursuant to Rules X and XI of the United States House of Representatives, we reiterate the written requests in our letter of February 18, 2011, and we urge the White House to be forthcoming in providing the information we have requested.


To address the concerns referenced in your letter we would be happy to discuss with you the nature of the information requested and the manner of production. Attached please find an updated set of instructions for responding to our request.

Please contact us or have your staff contact Todd Harrison, Chief Counsel for the Subcommittee on Oversight and Investigations, at (202) 225-2927 to discuss this matter as soon as possible. If the Committee receives no response from you or Ms. DeParle by the close of business on March 18, 2011, we will consider your non-response to be a refusal of this second letter request.


Sincerely,




Fred Upton
Chairman



Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations



Joseph R. Pitts
Chairman
Subcommittee on Health



Michael C. Burgess
Vice Chairman
Subcommittee on Health

cc: Ms. Nancy-Ann DeParle, Deputy Chief of Staff, The White House

The Honorable Henry A. Waxman, Ranking Member

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

The Honorable Frank Pallone, Jr., Ranking Member
Subcommittee on Health

Attachment

⁷ Eastland v. United States Servicemen's Fund, 421 U.S. 491, 504, n. 15 (1975).

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

- a. how the document was disposed of;
- b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
- c. the date of disposition;
- d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each

other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a privilege log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" mean and refers to

For government recipients:

"You" or "your" means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.