



February 12, 2009

BY FACSIMILE – 202-456-7921

Office of Administration
The White House
725 17th Street, N.W.
Washington, DC 20503

Re: Transparency/Open Government Request

Dear Sir or Madam:

This letter constitutes a request submitted under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, or in the alternative, pursuant to the transparency policies announced by the President on January 21, 2009. The request is submitted on behalf of the Electronic Frontier Foundation (“EFF”), a non-profit public interest organization that examines cutting-edge technology issues and promotes government openness and accountability. We hereby request disclosure of information concerning White House policies governing the creation, retention and preservation of records generated through the use of electronic communications systems by the President, Vice President and White House staff. The new Administration’s policies and practices in this area have already been the subject of substantial public interest, much of it focused on the President’s use of a wireless handheld device.¹ Because the requested information bears directly upon the White House’s obligations under – and compliance with – the FOIA, the Federal Records Act and the Presidential Records Act, we believe the public interest would be served by its disclosure. Specifically, we request the following information:

- 1) All documents pertaining to or reflecting any requirements, policies, or practices that apply to electronic communications (including, but not limited to, e-mails, text messages, and instant messages) created on or received by wireless handheld devices used by the President, Vice President and/or White House staff, including any requirements that such communications be designed so they cannot be forwarded to anyone other than the intended recipient;
- 2) All documents pertaining to or reflecting the technical requirements and specifications of wireless handheld devices used by the President, Vice President and/or White House staff, to the extent that such requirements and specifications have been implemented for purposes of assuring compliance with applicable federal records statutes;
- 3) All documents pertaining to or reflecting retention policies regarding electronic communications (including, but not limited to, e-mails, text messages, and instant

¹ Most of the relevant news media coverage identifies the President’s device as a Blackberry, but other reports suggest it is produced by another manufacturer. To avoid any confusion, we use the term “wireless handheld device.”

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messages) created or received by the President, Vice President and/or White House staff; and

4) All documents pertaining to or reflecting policies regarding the use of non-governmental electronic services or networks by the President, Vice President and/or White House staff.

While we recognize that some information relating to White House communications systems must be withheld for security reasons, we believe that a substantial amount of responsive information can – and should – be disclosed as it relates to measures being taken to assure compliance with applicable legal requirements.

In making this request, we are cognizant that the Bush Administration took the position – for the first time since the statute was enacted – that the Office of Administration is not an “agency” covered by the disclosure requirements of the FOIA. We are also aware that the district court upheld that determination and that the issue is now pending before the U.S. Court of Appeals for the D.C. Circuit. Notwithstanding that recent departure from the policies and practices of several prior Administrations (both Democratic and Republican), we are, through the submission of this request, expressly requesting that the Obama Administration return to earlier practice and confirm that the Office of Administration is, indeed, an “agency” within the coverage of the FOIA. We believe that such a reversal of the Bush Administration’s policy would be in keeping with the President’s January 21 memoranda concerning transparency and open government. The President noted that “[a] democracy requires accountability, and accountability requires transparency,” and thus directed that a “presumption of disclosure should be applied to all decisions involving FOIA . . . to usher in a new era of open Government.” I hope you will agree that disclosure of the requested information would be consistent with the President’s assurance that his “Administration is committed to creating an unprecedented level of openness in Government.” Should you, however, disagree that a return to pre-Bush Administration practice would contribute to the President’s stated goals, we nonetheless ask that the requested information be disclosed as a matter of discretion, if not under the specific provisions of the FOIA.

I thank you in advance for your consideration of this request. Should your staff wish to discuss this matter in more detail, I can be reached at (202) 797-9009 or at sobel@eff.org.

Sincerely,



David L. Sobel
Senior Counsel