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"Rummaging in the government's attic"

Description of document: Record regarding Investigation into use of Republican

National Committee email addresses and other private email by White House personnel to avoid recordkeeping

systems, 2007

Appeal date: 22-October-2010

Released date: 16-February-2011

Posted date: 14-March-2011

Source of document: Federal Election Commission

Attn: FOIA Requester Service Center

Room 408

999 E Street, NW

Washington, DC 20463 Fax: (202) 219-1043 Email: FOIA@fec.gov

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February 16, 2011

Subject: FEC Freedom of Information Act (FOIA) Appeal, No. 2011-01

This responds to the Freedom of Information Act (FOIA) appeal that you filed on October 22, 2010, regarding the denial in part of records processed in response to FEC FOIA Request No. 2010-16. You limited your appeal to the "redactions taken under exemption b(6); i.e. the letter dated June, 6, 2007 to David Rapallo and Anna Laitin pertaining to use of email."

After review, the Commission decided on February 16, 2011, to grant in part your appeal of the FOIA Exemption 6 redactions made to the June 6, 2007 letter. (*See Attached*). Specifically, the Commission is hereby disclosing the "subject" portion of the previously redacted email entries and is continuing to withhold all other information. The Commission has determined that the subject column of the email inventories, absent other identifying information, is not entitled to FOIA Exemption 6 protection. The remaining withheld portions of the email inventories, however, do qualify for FOIA Exemption 6 protection. Below, we have outlined the reasons why this redacted information is appropriately withheld under FOIA Exemption 6.

With respect to your claim that the information redacted should not have been withheld under FOIA Exemption 6 because the withheld records are not about individuals in "personnel and medical files and similar files," we must disagree. In *United States Department of State v. Washington Post Co.*, the United States Supreme Court held, based upon a review of the legislative history of the FOIA, that Congress intended the term "similar files" to be interpreted broadly, rather than narrowly. *See Guide to Freedom of Information Act*, 2009 Edition, (citing 456 U.S. 595 (1981)). The Court stated that the protection of an individual's privacy "surely was not intended to turn upon the label of the file which contains the damaging information." *Id.* The Court emphasized that any information that "applies to a particular individual" meets the threshold requirement for FOIA Exemption 6 protection. *See Guide to Freedom of Information Act*, 2009 Edition, (citing 456 U.S. at 602). Because the information at issue in this case consists of email records applying to particular individuals, the email inventories meet the criteria of being "similar files" for FOIA Exemption 6 purposes.

With the exception of the subject column which we are releasing, we also disagree with your second claim that the disclosure of the redacted information does not trigger the "clearly unwarranted invasion of personal privacy" requirement under FOIA Exemption 6. Privacy interests under the FOIA are found to exist in such personally identifying information as a person's name, address, phone number, date of birth. criminal history, medical history, and social security number." See Guide to Freedom of Information Act, 2009 Edition, (citing 456 U.S. 595,600 (1981)). The redacted portions of the inventories document personal, social, and career-advice related emails sent and received by a former Commissioner and a former Commission employee. To whom and from whom an individual sends and receives personal email, and the dates the personal email was sent, is private information constituting a privacy interest on behalf of the individual(s) whose email information is subject to disclosure. The Supreme Court has emphasized that the privacy interest inherent in FOIA Exemption 6 "belongs to the individual, not the agency holding the information." With respect to the requirement that the invasion be "clearly unwarranted," the privacy interest in not having one's email activity disclosed qualifies as a substantial privacy interest, which is "anything greater than a de minimis privacy interest." Multi Ag Media LLC v. USDA, 151 F. 3d 1224, 1229 (D.C. Cir. 2008).

Furthermore, there is insufficient public interest to outweigh the privacy interests of the former Commission personnel and the people with whom they exchanged personal emails. The Supreme Court narrowed the concept of public interest in *Reporters Committee* to include only identified public interests that fall within the Act's "core purpose" of "shedding light on an agency's performance of its statutory duties." 489 U.S. 749, 773 (1989). The Court has repeatedly stressed that information that does not directly reveal the operations or activities of the federal government, "falls outside the ambit of the public interest that the FOIA was enacted to serve." DOJ Guide at 455 (citing 489 U.S. at 775). Knowing to whom a person sent a personal or social email, or one responding to a request for career advice or a personal recommendation, does not shed light on the agency's performance of its statutory duties, nor does it reveal the operations or activities of the federal government. Moreover, in this instance, the full inventory entries for any emails that touch on the operations or activities of the government were included in the initial release.

Lastly, our decision is in compliance with the President's and Attorney General's Memorandum on FOIA. In his memorandum, Attorney General Holder specifically references personal privacy, the interest at stake in this case, when he states, "at the same time, the disclosure obligation under the FOIA is not absolute. The Act provides exemptions to protect, for example, national security, personal privacy, privileged records, and law enforcement interests." Accordingly, we have followed this guidance in releasing a portion of the previously withheld information, while continuing to apply FOIA Exemption 6 to the remaining information to prevent clearly unwarranted invasions of personal privacy.

You are advised that you may bring civil action in U.S. District Court with respect to any adverse FOIA determination. If you have any questions, please contact the FOIA Requester Service Center at <u>FOIA@fec.gov</u>, or (202) 694-1650.

Sincerely,

Sally R. Bacon

FOIA Requester Service Center



June 6, 2007

BY HAND DELIVERY

Mr. David Rapallo, Esq. Chief Investigative Counsel Ms. Anna Laitin Professional Staff Member Committee on Oversight and Government Reform U.S. House of Representatives 2157 Rayburn House Office Building Washington, DC 20515

Re:

April 20, 2007 Committee Request

Dear Mr. Rapallo and Ms. Laitin:

As promised in our June 4 letter to you, enclosed are inventories of the documents we have located to date that are responsive to the Committee's April 20, 2007, document request pertaining to use of Republican National Committee or other nongovernmental email accounts by White House personnel. We have separated the inventories by individual, and then sorted the individual inventory by date. As requested, we are providing the inventories in a searchable, electronic format on the enclosed compact disc.

If you have any questions, please contact Lawrence L. Calvert, Acting Associate General Counsel, at (202) 694-1650.

Sincerely,

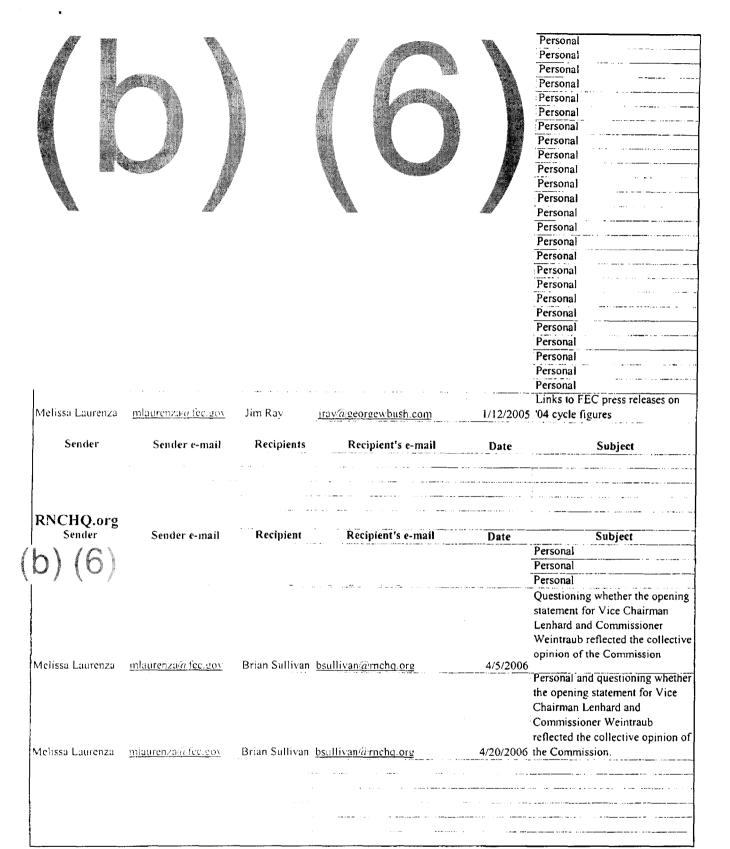
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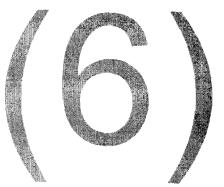
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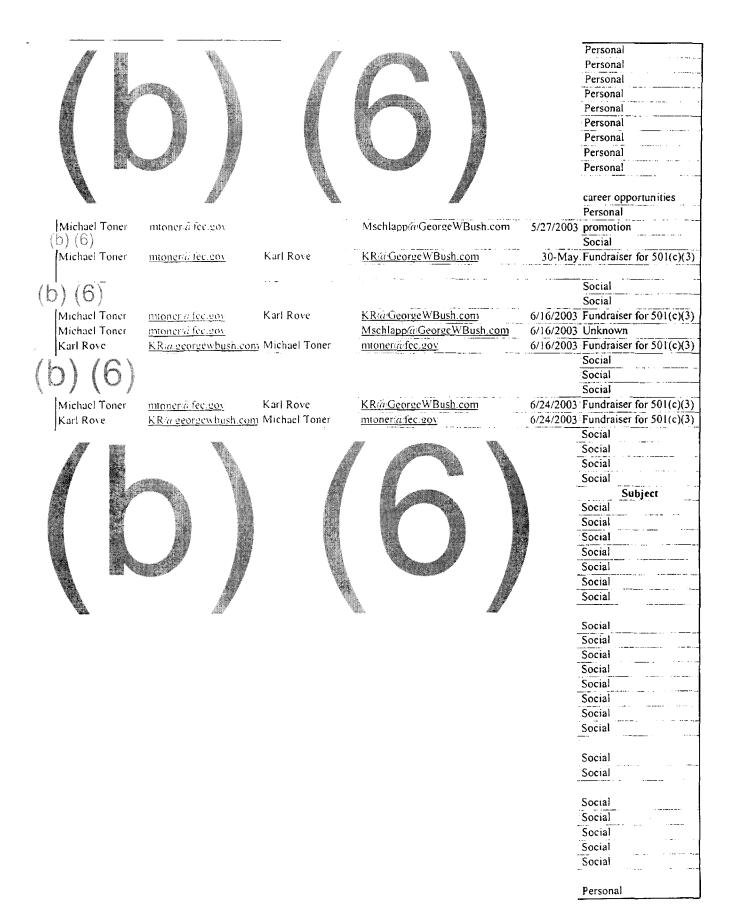
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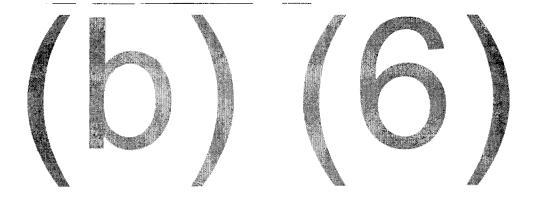
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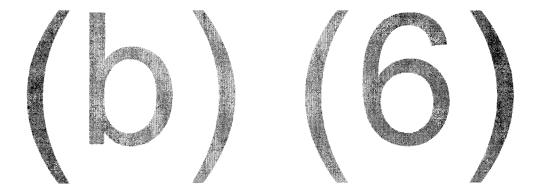
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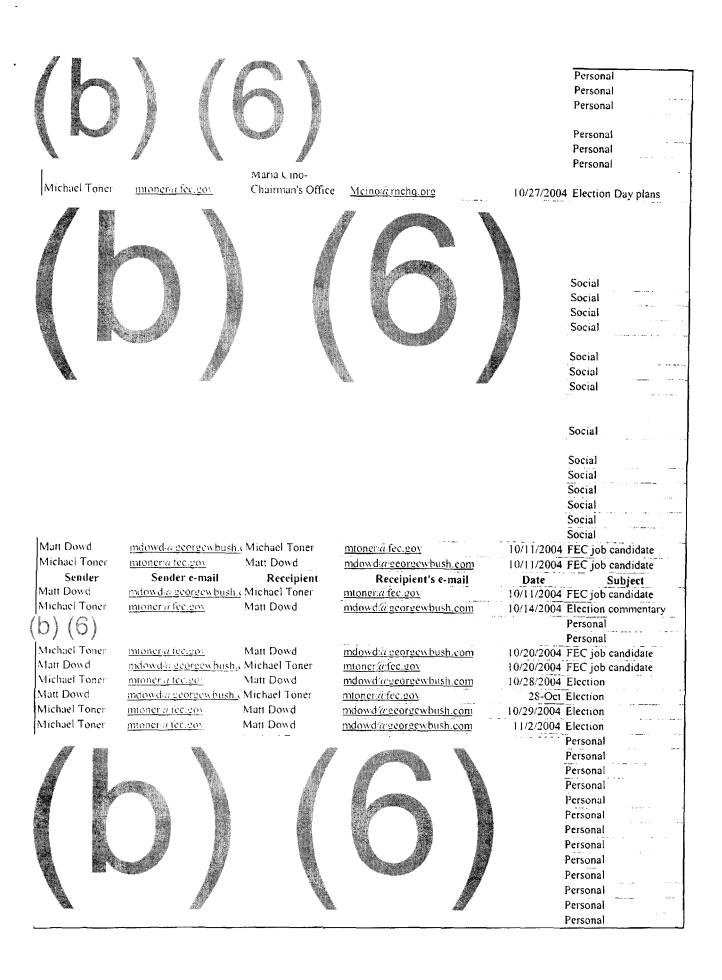
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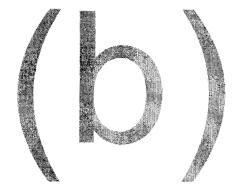
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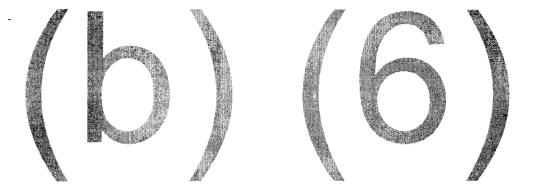
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Tim Griffin	<u>tg:a/gwb45.com</u>	recipients]		9/23/2005	Change of employment
Mike Davis	mdavis@gwb43.com	md@gwb43.com			Forwarded press article
Mike Davis	mdavis/a/gwb43.com	md/a/gwb43.com			Forwarded press article
Mike Davis	<u>mdavis/a ewb43.com</u>	md/a gwb43.com		10/6/2005	
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Michael Toner	mtoner a fee.gov	Jay Banning; et al.	ibanning@rnchq.org	3/14/2007 Contact Information

Victoria Wu					
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