

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

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www.science.house.gov

November 4, 2015

The Honorable Kathryn D. Sullivan
Administrator
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1401 Constitution Avenue N.W.
Washington, D.C. 20230

Dear Administrator Sullivan,

On October 13, 2015, the Committee issued a subpoena to you for documents and communications related to adjustments made to historical temperature data using new methods of data collection and analysis.¹ To date, you have neither produced all documents responsive to the subpoena, nor invoked a valid legal privilege to justify withholding them. Your failure to comply with the Committee's subpoena has delayed the Committee's investigation and thwarted the Committee's constitutional obligation to conduct oversight of the Executive Branch. Furthermore, your failure to comply with a duly issued subpoena may expose you to civil and/or criminal enforcement mechanisms.

NOAA responded to the Committee's subpoena on October 27, 2015, with a letter from Coby Dolan, the Director of the Office of Legislative and Intergovernmental Affairs, explaining that in the agency's opinion, NOAA has sufficiently responded to the Committee's subpoena by providing Committee staff with two briefings and information publicly available online.² The briefings provided to the Committee, while helpful and appreciated, did not answer all questions and do not excuse NOAA from providing the Committee with documents and communications. In fact, Mr. Dolan's letter fails to address any communications requested by the Committee's subpoena. According to media reports citing a NOAA spokeswoman, the agency's "internal communications are confidential and not related to what Smith is trying to find out."³ As such, NOAA reportedly does not intend to provide the Committee with communications.⁴ Contrary to

¹ H. Comm. on Science, Space, & Tech, Subpoena to Hon. Kathryn D. Sullivan, Admin., NOAA (October 13, 2015).

² Letter from Coby Dolan, Director, Office of Legislative & Intergovernmental Affairs, NOAA, to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech (Oct. 27, 2015).

³ Timothy Cama, *Agency Won't Give GOP Internal Docs on Climate Research*, THE HILL, Oct. 28, 2015, available at <http://thehill.com/policy/energy-environment/258375-agency-wont-give-gop-internal-docs-on-climate-research>.

⁴ *Id.*

NOAA's public comments, it is not the position of NOAA to determine what is, or is not, responsive to the Committee's investigation or whether certain communications are confidential.

Through letters and briefings, NOAA has failed to fully explain the conditions surrounding its process and procedures for adjusting upward temperature readings that eliminated the "pause" in global warming. Deficiencies in NOAA's response to the Committee's request raises serious concerns about what role officials at NOAA, including political appointees, had in the decision to adjust the temperature data and widely publicize conclusions based on those adjustments. Yesterday, November 3, 2015, your staff was unable to confirm or provide any assurances that a good faith effort will be made to provide communications related to the Committee's request, including communications of non-scientists at the agency involved in the decision making process of the data change or communications related to the agency's public statements about the change. The "confidentiality interest" cited by NOAA is not recognized by the Committee as a legitimate privilege and does not prevent the Committee from receiving agency communications in the pursuit of its oversight function.

In order for the Committee's investigation to proceed despite your unwillingness to comply in a timely manner with the subpoena you received, I request that NOAA provide the Committee with the documents requested by the subpoena no later than Friday, November 6, 2015. In addition, please make Chief of Staff Renee Stone, Communications Director Ciaran Clayton, Chief Scientist Dr. Richard Spinrad, and Director of National Centers for Environmental Information Dr. Thomas R. Karl available for transcribed interviews with the Committee as soon as possible, but no later than November 13, 2015, to address questions that might otherwise be answered by the documents and communications that are being withheld. Please confirm the date for the transcribed interviews by noon on November 9, 2015.

In addition, please provide the following basic information about NOAA's document production process:

1. A list of the custodians of responsive documents.
2. The total number of documents and communications identified as potentially responsive to date.
3. The total number of documents and communications reviewed by any branch of the Department of Commerce other than NOAA.
4. The total number of documents and communications reviewed by the Office of Management and Budget (OMB).
5. The total number of documents and communications sent to the Executive Office of the President for review.
6. The total number of documents and communications withheld by OMB, in whole or in part.

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7. The total number of documents and communications withheld by the Executive Office of the President, in whole or in part.
8. The reasons why each document or portion of a document has been withheld, including a description of any redactions applied to the document, and whether the Department of Commerce, OMB, the Executive Office of the President, or another federal agency applied the redactions.
9. An estimated date by which NOAA's production of unredacted, responsive documents to the Committee will be complete.

Please provide the information about NOAA's document production process by November 13, 2015.

The Committee on Science, Space, and Technology is the principal oversight committee of the National Oceanic and Atmospheric Administration as set forth in House Rule X.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 394 of the Ford House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Lamar Echols or Drew Colliatie of the Science, Space, and Technology Committee staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,



Lamar Smith
Chairman

cc: The Honorable Eddie Bernice Johnson, Ranking Minority Member, House Committee on Science, Space and Technology