

THE WHITE HOUSE

WASHINGTON

September 16, 2014

The Honorable Paul Broun
Chairman
Subcommittee on Oversight of the
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Broun:

I understand that last Friday the Committee on Science, Space, and Technology's Subcommittee on Oversight (the Subcommittee) noticed a September 17, 2014, business meeting to consider issuing two subpoenas. As described in the notice, the Subcommittee will consider whether to issue a subpoena for Todd Park to appear at a hearing before the Subcommittee, and whether to issue a subpoena for the production of some of Mr. Park's records, during his former tenure in the Office of Science and Technology Policy (OSTP) as United States Chief Technology Officer (CTO), relating to the healthcare.gov website.

I write in advance of the Subcommittee's meeting to ensure you understand that the issuance of these subpoenas is unnecessary. Mr. Park will appear voluntarily for a hearing before the Subcommittee on a mutually convenient date in November to discuss your expressed interest in the healthcare.gov website. OSTP is willing to produce additional documents—including the 102 pages proactively provided with this letter—to further accommodate your “efforts to examine the safety, security and privacy of Americans' personal data through the Obamacare website.”¹ The remainder of this letter discusses OSTP's efforts to cooperate with your oversight interests thus far, and OSTP's continued willingness to do so without any need for subpoenas.

I understand that both the full Committee and the Oversight Subcommittee have articulated their interest in the security of healthcare.gov as a desire for information about the measures in place to defend the healthcare.gov website against malicious cyber attacks and to safeguard the personal data of Americans. When Chairman Smith initially wrote to Mr. Park to express interest in healthcare.gov, the letter asked Mr. Park to address “what specific security standards and technical measures are in place to protect Americans' privacy and personal information that passes through the Healthcare.gov website, and what specific steps are in place to mitigate scenarios in which the system is hacked, or personal information is compromised or

¹ Letter from the Hon. Lamar Smith, Paul Broun, M.D., and Larry Bucshon, M.D., to the Hon. John P. Holdren, Director, Office of Science and Technology Policy (December 20, 2013) [hereinafter “December 20 Letter”], at 3.

leaked.”² An email from Committee staff to OSTP at about the same time expressed interest in cybersecurity issues more generally, including a cybersecurity policy report that OSTP Associate Director Patricia Falcone helped prepare.³ In the same vein, your December 20, 2013, letter to OSTP referenced a hearing the Committee held in November of that year to examine the risks that online criminals and identity thieves might pose if they gained access to customers’ personal information.⁴ And more recently in January of this year, the Committee continued its focus on the standards and technical protocols in place to defend against malicious cyber attacks in a second hearing convened on the same topic with “white hat” hackers as witnesses.⁵

From the outset, OSTP has been clear about the limitations both it and Mr. Park face in attempting to respond to the requests for information and testimony concerning these issues involving the development of security standards and the design of scenarios to respond to malicious intrusion attempts. As noted several times in prior correspondence, primary responsibility for those tasks lies elsewhere—with the Centers for Medicare and Medicaid Services (CMS)—and it is CMS that is in the best position to provide complete, current, and accurate information regarding the security protocols in place to protect the website. Nevertheless, the record reflects that OSTP has made substantial efforts to try to accommodate the Committee’s interest in security and to clarify Mr. Park’s role.

OSTP has produced more than one thousand pages of documents; offered on multiple occasions to have Associate Director Falcone testify at a Committee hearing on cybersecurity policy issues; made Mr. Park available for a meeting with you and Chairman Smith in your office, where Mr. Park was willing to address any questions put to him; and offered to have Mr. Park brief all Subcommittee members. Through these substantial efforts at accommodation, OSTP has attempted to help the Committee better understand Mr. Park’s actual duties as the United States CTO and his role with respect to healthcare.gov.

In particular, regarding the documents you have received, your letter of December 20 asked OSTP to produce a very broad set of materials, including all OSTP records concerning the Affordable Care Act and healthcare.gov, scheduling information, records concerning internal White House briefings, and even documents that had not been created but might conceivably be provided to Congress in the future.⁶ Confronted with this broad request and a short deadline in the December 20 letter for responding, OSTP focused its efforts to provide information on the issue that was plainly of particular interest to the Committee, namely, Mr. Park’s participation as one of three co-chairs on the healthcare.gov Interagency Steering Committee. Your December

² Letter from the Hon. Lamar Smith, Chairman, Committee on Science, Space, and Technology, to Todd Park, Assistant to the President and United States CTO (October 31, 2013), at 1.

³ Email from H. Comm. on Science, Space, & Technology Majority Staff to OSTP staff (Oct. 28, 2013, 5:42 p.m.) (“I suspect we would touch on related issues raised and addressed in the ‘Cyberspace Policy Review’ and the Dec 2011 report ‘Trustworthy Cyberspace: Strategic Plan for the Federal Cybersecurity Research and Development Program,’ both of which were referred to in Dr. Holdren’s testimony before the Committee in a full committee oversight hearing on June 20, 2012.”)

⁴ December 20 Letter, at 1 (“The expert witnesses at our hearing outlined the significant risk of identity theft to Americans if hackers gained access to their personal information.”).

⁵ *Hearing Before the H. Comm. on Science, Space, & Tech.*, 113th Cong. (January 16, 2014) [hereinafter, January 16 Hearing].

⁶ December 20 Letter at 3.

20 letter focused on this Steering Committee and its security and privacy subgroup—even going so far as to attach a draft charter for the Steering Committee.⁷

Accordingly, in its January 15, 2014, response, OSTP described the documents it was producing: those concerning the Steering Committee and other interagency meetings that made reference to security, which appeared to be of special interest to the Committee.⁸ OSTP's January 15 letter also explained the interagency coordination function the Steering Committee served, Mr. Park's role in it, and why his participation was not an indication that he had substantial knowledge or expertise concerning the standards or technical protocols for dealing with malicious intrusions that are the focus of the Subcommittee's oversight inquiry. In the eight months following OSTP's production of these documents, the Subcommittee expressed no continued interest in receiving additional documents, nor did it raise any questions concerning the Steering Committee materials provided. Thus, you can understand why the abrupt notice of a business meeting to consider a subpoena for documents came as a surprise.

Despite OSTP's efforts at accommodation, it seems that the push to issue subpoenas this fall may unfortunately reflect a continued misunderstanding of Mr. Park's involvement in the security of the healthcare.gov website. This letter therefore provides additional information, namely, additional OSTP documents beyond those already provided concerning the Interagency Steering Committee, concerning Mr. Park's limited involvement in the security aspects of the website, which are primarily handled by CMS. The enclosed documents can be grouped into three categories.

First, in an extension of his role with the Steering Committee, Mr. Park, and his other co-Chairs were occasionally asked to assist in instances when White House personnel made requests to officials at HHS and CMS. One instance when such assistance was sought involved a request for a meeting on user credentialing and identity-proofing from National Security Staff and Office of Management and Budget officials. The documents themselves make clear that although the particular request for assistance was made from CMS officials to Mr. Park, it was another co-Chair who provided assistance in addressing that request.⁹

Second, Mr. Park was asked on a small number of occasions to assist in obtaining information from CMS and HHS personnel responsible for security of the website. In that role, Mr. Park asked HHS and CMS officials to develop background points describing the cybersecurity protections and helped coordinate follow-up conversations between the HHS and CMS officials and cybersecurity experts both inside and outside the government. Again, the emails themselves show that Mr. Park was not directly familiar with the development of

⁷ See also *January 16 Hearing* (statement of Rep. Paul Broun, M.D.) (“It’s probably [sic] the oversight committee of—subcommittee of this committee’s attention that there is—or at least was [an] Affordable Care Act information technology exchanges steering committee [chaired] by senior White House officials established back in May 2012, almost a year and a half before the roll out of Healthcare.gov.”).

⁸ Letter from the Donna Pignatelli, Director, OSTP Legislative Affairs, to the Hon. Lamar Smith, Chairman, Committee on Science, Space, and Technology (January 15, 2014) [hereinafter *January 15 Letter*], at 3. At Chairman Smith’s request, OSTP also produced all documents that it had at that point provided to the Committee on Oversight and Government Reform.

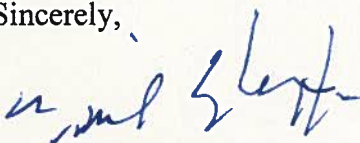
⁹ Email from Steven VanRoekel to J. Michael Daniel, et al. (Apr. 12, 2013, 3:25 p.m.), enclosed.

cybersecurity defenses in place, but instead served as an intermediary and relied on the HHS and CMS officials to provide the substance of the information he then passed on to others.¹⁰

Third, shortly before the first open enrollment period, Mr. Park also served as a liaison with cybersecurity officials at HHS and CMS in connection with efforts to explain publicly the cybersecurity protections for the health insurance marketplaces. This “spokesman” function is one Mr. Park performed from time to time as CTO with respect to technology issues generally. Importantly, the enclosed emails again confirm that Mr. Park was not speaking from direct personal knowledge or experience on cybersecurity—before participating in a press call, he solicited the relevant information from CMS cybersecurity personnel and sought to have them participate in the call given his relative lack of familiarity with cybersecurity issues.¹¹

The information provided in and with this letter is consistent with what OSTP has previously explained: that CMS is best positioned to address the Subcommittee’s questions regarding the security of the website and that Mr. Park has not been substantially involved in developing or managing the “specific security standards and technical measures . . . in place to protect Americans’ privacy and personal information that passes through the Healthcare.gov website” More importantly, if the Subcommittee desires additional information, there is no need to resort to subpoenas. Mr. Park will be pleased to testify at a Subcommittee hearing in November. OSTP is also actively searching for additional records that may further illuminate Mr. Park’s relatively minor role on cybersecurity issues and is willing to voluntarily produce additional documents to aid the Subcommittee’s inquiry. Please simply have your staff communicate the Subcommittee’s priorities in that regard to OSTP.

Sincerely,



W. Neil Eggleston
Counsel to the President

¹⁰ Email from Todd Park to Tony Trenkle, et al. (Sept. 2, 2013, 1:14 p.m.), enclosed (“Hi Tony, many apologies for interrupting your Labor Day, but can you help Chris with his follow-up question below (reference to ‘current federal standards and how they exceed private sector as well as track record of protection from attacks’).”).

¹¹ Email from Todd Park to Tony Trenkle, et al. (Sept. 17, 2013, 9:54 p.m.), enclosed (“I’ve let Jessica know that you guys are the font of detailed knowledge on CMS/HHS cyber and that I can talk to it at a general level only -- she thinks that will be OK on the call tomorrow, with detailed questions to be referred to agencies.”).

cc: The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology

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

The Honorable Dan Maffei
Ranking Minority Member
Subcommittee on Oversight