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DEPARTMENT OF JUSTICE



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May 27, 2016

The Honorable Lamar Smith  
Chairman, Committee on Science, Space and Technology  
2321 Rayburn House Office Building  
Washington, DC 20515-6301

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COMMITTEE ON SCIENCE  
& TECHNOLOGY

Dear Chairman Smith:

This responds to the May 18, 2016 letter to Attorney General Kamala D. Harris from you and certain other Majority members of the Committee on Science, Space and Technology. The accusations in your letter regarding the California Attorney General are inaccurate and unfortunate. Based on these accusations, you request records pertaining to the California Attorney General's "investigations or potential prosecutions" related to the issue of climate change.

Your request is for the following records, for the time frame from January 1, 2012 to the present, to be produced by no later than noon on May 30, 2016:

1. All documents and communications between or among employees of the Office of the Attorney General of California and any officer or employee of the Climate Accountability Institute, the Union of Concerned Scientists, Greenpeace, 350.org, the Rockefeller Brothers Fund, the Rockefeller Family Fund, the Global Warming Legal Action Project, the Pawa Law Group, or the Climate Reality Project, referring or relating to your office's investigation or potential prosecution of companies, nonprofit organizations, scientists, or other individuals related to the issue of climate change.
2. All documents and communications between or among employees of the Office of the Attorney General of California and any other state attorney general office referring or relating to your office's investigation or potential prosecution of companies, nonprofit organizations, scientists, or other individuals related to the issue of climate change.

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3. All documents and communications between or among employees of the Office of the Attorney General of California and any official or employee of the U.S. Department of Justice, U.S. Environmental Protection Agency, or the Executive Office of the U.S. President referring or relating to your office's investigation or potential prosecution of companies, nonprofit organizations, scientists, or other individuals related to the issue of climate change.

The California Attorney General objects to this request on multiple grounds, even apart from its basis in misstatement and conjecture. First and foremost, we do not believe it is within the jurisdiction of Congress to demand documents from a state law enforcement official such as the California Attorney General. Although Congress' investigative jurisdiction is broad, that is because it tracks Congress' power to legislate and appropriate concerning federal matters. But the power to investigate does not extend beyond those matters. (See, e.g., *Barenblatt v. U.S.* (1959) 360 U.S. 109, 111 ["Congress may only investigate into those areas in which it may potentially legislate or appropriate"].) Investigations and prosecutions of state law enforcement actions by state attorneys general are not federal matters. To the contrary, under the Constitution and laws of the United States, such activities partake of police powers reserved to the states, and are not subject to federal interference. (See, e.g., *New York v. U.S.* (1992) 505 U.S. 144, 162 ["the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions"].)

The limits of the Congressional power to investigate are also clear from the House of Representatives' own publication, *House Practice, A Guide to the Rules, Precedents and Procedures of the House*, authored by the Parliamentarians of the House: "The investigative power [of the House] cannot be used to expose merely for the sake of exposure or to inquire into matters which are... reserved to the States."<sup>1</sup> Not surprisingly, we have found no precedent to support an attempt by Congress to assert its investigative powers over a state attorney general in the manner sought here.

Aside from Congress' lack of jurisdiction and improper intrusion into state authority, the document request also seeks a range of materials which, under well-established doctrines and for many good reasons, are privileged and confidential. These include records of investigations or potential prosecutions (Cal. Evidence Code §1040; Cal. Government Code §§11183), attorney work product and records subject to attorney-client and deliberative process privileges (Cal. Code of Civil Procedure §2018.030, Cal. Evidence Code §§954, 1040), and communications subject to the common interest doctrine. (*OXY Resources California LLC v. Sup. Ct.* (2004) 115 Cal.App.4th 874, 887-91.)

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<sup>1</sup> Brown, Johnson, Sullivan, *House Practice, A Guide to the Rules, Precedents and Procedures of the House*, USGPO 2011, p. 249.

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In any event, regardless of whether members of the Committee Majority agree with her, the California Attorney General was elected by the people of the State of California as its chief law enforcement official and as such, has the discretion, unfettered by Congress, to investigate, and if she determines appropriate, prosecute violations of law. She also has every right to work, unhindered, with other law enforcement officials and other organizations to protect the people of California.

For all of these reasons, the California Attorney General respectfully declines to produce documents.

If you have any questions regarding this matter, please feel free to contact the undersigned.

Sincerely,



MARTIN GOYETTE  
Senior Assistant Attorney General

For KAMALA D. HARRIS  
Attorney General

cc: The Honorable Eddie Bernice Johnson, Ranking Member

**KAMALA D. HARRIS**  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



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