

# ATI APPEALS DoE STONEWALL OF FOIA'd EMAILS

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## PRESS RELEASE:

### ATI APPEALS DoE STONEWALL OF FOIA'd EMAILS SHOWING SUBVERSION OF GOVERNMENTAL TRANSPARENCY, REQUESTS DOE COMPLY WITH ITS OWN RULES



Washington, D.C.

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Today the American Tradition Institute's Environmental Law Center expanded its Transparency Initiative by filing an Appeal under the federal Freedom of Information Act (FOIA) seeking agreement by the Department of Energy (DoE) to produce its long-withheld evidence of DoE officials subverting transparency laws. As [revealed](#) by Bloomberg, and now even the subject of a [request for Inspector General investigation](#) by liberal group Citizens for Responsibility and Ethics in Washington (CREW), yet another Obama appointee is revealed to have used a private email account to conduct official business, presumably to avoid creating the required records subject to federal transparency laws (Federal Records Act and FOIA).

In June, ATI Law filed a request with DoE seeking certain described work-related emails from the private account of Jonathan Silver, former head of the controversial Loan Guarantee Program, which had been exposed as a corner to which he turned when engaging in particularly controversial discussions.

In this request ATI asked DoE to fulfill its obligations under federal law and regulation and obtain copies of the described work-related emails sent to or from Silver's personal account, as is required by law and regulation, and provide them to ATI. Unfortunately, revelations over the past two years and other information obtained by ATI attorneys show that Obama administration officials regularly use private accounts to hide their conduct of public business. Now, DoE is patently stonewalling ATI's request.

Chris Horner, Director of Litigation for ATI Law, offered historical perspective to this FOIA request, stating, "ATI Law joins a host of others concerned about governmental transparency, a demand of Progressives since Woodrow Wilson and Louis Brandeis that apparently many Progressives, once inside the institutions they demanded be subject to transparency, no longer embrace."

Horner continued, "Mr. Silver appears to have joined an epidemic-scale practice among federal employees of hiding their use of public positions from the public. We wish to break through that subterfuge, and affirm what is as plain in U.S. law and regulation as it was recently affirmed by the United Kingdom's Information Commissioner to the Cameron government: **conducting public business on private resources does not succeed in making that business any less the public's.** 'Private' emails like those we seek must be produced, because they are in fact the public's."

Jonathan Silver was the director of the Energy Department's loan office from November 2009 until the program was closed in October 2011. This program funded over \$80 billion in loans to promote "renewable" energy, including the now infamous \$535 million loan to the defunct solar panel company Solyndra, among other near-immediate failures. Today's revelations indicate further scandal to come.

ATI Law seeks the remaining evidence of how widely and to what ends Mr. Silver used his private email accounts to conduct particularly controversial, and costly, government business. DoE has a continuing obligation to obtain all such records, particularly now that they are the subject of an FOIA request. ATI Law is also working to establish, with a separate request, to what extent if any DoE went to comply with this obligation before these revelations. The public record, affirmed by recent developments ATI cites in its Appeal, indicates the answer is "little, if at all".

When these rules are not followed, the same parties who decided to hide their emails also have sole control over whether to provide the required paper trail, or destroy it.

ATI Law is exploring this new frontier in transparency, and how quickly the law can firmly catch up to technology and efforts to evade plain and direct legal requirements of public servants, amid growing evidence of just how widespread subversion of transparency laws has now become. ATI lawyers have obtained voluminous evidence not yet in the public domain of these activities, which will be released later this year. Already, even the *New York Times* has acknowledged that White House officials have used private emails regularly to contact lobbyists, and arranged meetings outside government offices so that the meetings would be hidden from public knowledge. ATI welcomes CREW's concerns.

However, this is not only a federal issue. Officials at the University of Virginia admitted to an ATI attorney that they fully expected professors would move their work emails from the University's email system to private email servers in an attempt to avoid complying with the Virginia Freedom of Information Act. There is evidence of this practice at other universities, and federal agencies including even in the Obama White House when negotiating the special deals with industry to support "Obamacare", as ATI also notes in its Appeal.

ATI Law is prepared to use the power of the federal and state freedom of information acts, and other existing federal and state policies to determine the extent of these efforts to subvert transparency and blind the public to governmental operations. We will keep the public apprised of how their dollars are being spent, and how their laws are being violated.

If you wish further information or an interview Mr. Horner, please contact ATI at [info@atinstitute.org](mailto:info@atinstitute.org).