



United States Government Accountability Office
Washington, DC 20548

B-330107

October 3, 2019

The Honorable Tom Udall
Ranking Member
Subcommittee on the Department of the Interior,
Environment, and Related Agencies
Committee on Appropriations
United States Senate

Subject: *U.S. Environmental Protection Agency—Application of a Publicity or Propaganda Provision to an EPA Tweet*

This responds to your request for our opinion concerning the U.S. Environmental Protection Agency's (EPA's) tweet about the Senate confirmation of an official to the position of Deputy Administrator. The tweet identified a particular political party by name and stated that Senators of that party were unable to block the confirmation. Letter from Senator Tom Udall, Ranking Member of the Senate Committee on Appropriations, Subcommittee on the Department of the Interior, Environment, and Related Agencies, to Comptroller General (May 15, 2018) (Request Letter). Your request noted that EPA may not use its appropriations for unauthorized publicity or propaganda purposes.¹ *Id.*; Financial Services and General Government Appropriations Act, 2018, Pub. L. No. 115-141, div. E, title VII, § 718, 132 Stat. 348, 591 (Mar. 23, 2018). You asked whether EPA violated this prohibition. Request Letter.

As explained below, we conclude that EPA's tweet did not violate the publicity or propaganda prohibition. This provision prohibits the use of appropriated funds for self-aggrandizing communications, covert propaganda, and purely partisan communications. The tweet was not self-aggrandizing because it did not emphasize

¹ In addition to referencing section 718, your request letter cites section 715, which is a restriction on grassroots lobbying. Section 715 prohibits the use of appropriations to make a clear appeal to the public to contact Members of Congress in support of or in opposition to pending legislation. B-329373, July 26, 2018. The tweet at issue here does not appeal to the public to contact Members of Congress. Accordingly, in this opinion we consider the applicability of section 718 to the tweet at issue.

the importance of the agency or a particular person or program. The tweet was not covert propaganda as EPA's role as the source of the tweet was obvious. And, while EPA's tweet included political content, this communication was not purely partisan in nature as it retained a connection to EPA's official business.

In accordance with our regular practice, we contacted EPA to seek factual information and its legal views on this matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/GAO-06-1064SP; Letter from Assistant General Counsel for Appropriations Law, GAO, to General Counsel, EPA (Oct. 19, 2018). We requested that EPA provide its explanation of the pertinent facts and its legal views by November 16, 2018. Notwithstanding numerous emails and telephone conversations, EPA did not respond.

An agency's failure to respond will not preclude our issuance of an opinion. GAO-06-1064SP, at 7. We take our responsibility to Congress seriously, and an agency's lack of cooperation interferes with our responsiveness to the needs of congressional oversight of executive spending. In this case, we reviewed publicly available documents, such as the tweet at issue and EPA's news release. These documents provided sufficient information to issue a legal opinion on EPA's actions. Accordingly, we issue our opinion in this matter notwithstanding EPA's failure to timely respond to our request for information.

BACKGROUND

On April 13, 2018, EPA's official Twitter account, @EPA, tweeted the following statement:

"The Senate does its duty: Andrew Wheeler confirmed by Senate as deputy administrator of @EPA. The Democrats couldn't block the confirmation of environmental policy expert and former EPA staffer under both a Republican and a Democrat president."

@EPA, Twitter, (Apr. 13, 2018, 6:00 AM), available at <https://twitter.com/EPA/status/984778229356605443>. The tweet included a link to EPA's news release announcing the official's confirmation. See Press Release, EPA, *U.S. Senate Confirms Andrew Wheeler to Serve as Deputy EPA Administrator* (Apr. 12, 2018), available at <https://www.epa.gov/newsreleases/us-senate-confirms-andrew-wheeler-serve-deputy-epa-administrator> (last visited Sept. 10, 2019).

DISCUSSION

An agency's appropriations are generally available for communicating with the public about both agency activities and the policy views that underlie those activities, unless another provision of law prohibits the use of appropriations for such expenses. See B-329504, Aug. 22, 2018. In the tweet at issue here, EPA disseminated information about the agency's operations and management by announcing the official's confirmation. Therefore, EPA's appropriations were available for this communication, unless another provision of law prohibited the use of appropriated funds for these particular expenses.

There is one statutory prohibition relevant here. Section 718 of the Financial Services and General Government Appropriations Act, 2018 provides:

“No part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by Congress.”

Pub. L. No. 115-141, 132 Stat. at 591. This prohibition restricts three categories of agency communications: (1) self-aggrandizement, (2) covert communications or propaganda, and (3) purely partisan activities. B-329504, Aug. 22, 2018; B-302504, Mar. 10, 2004. The prohibition is not applicable to the dissemination to the general public, or to particular inquirers, of information reasonably necessary to the proper administration of the laws for which an agency is responsible. 31 Comp. Gen. 311 (1952); B-212069, Oct. 6, 1983.

We can readily conclude that EPA's actions here do not fall within the first two restricted categories. EPA's actions do not constitute self-aggrandizement because the tweet does not emphasize the importance of the agency or a particular person or program. See B-302504, Mar. 10, 2004; *see also* B-303495, Jan. 4, 2005 (concluding that the use of the term “Drug Czar” to describe an agency official was not self-aggrandizing as it was not used to persuade the public about the importance of the official, the agency, or its programs). In addition, EPA's tweet was not covert propaganda as it was sent from the agency's official Twitter account, making EPA's role as the source of the information obvious. See B-329504, Aug. 22, 2018; B-320482, Oct. 19, 2010. Accordingly, at issue here is whether EPA's actions constituted purely partisan activities.

Communications are considered purely partisan in nature if they are entirely political and are completely devoid of any connection to the official business of the agency. See B-329199, Sept. 25, 2018; B-322882, Nov. 8, 2012; B-319834, Sept. 9, 2010; B-304228, Sept. 30, 2005. Agency communications that are designed to aid a political party or candidate are prohibited. B-329373, Jul. 26, 2018; B-302992, Sept. 10, 2004. The prohibition does not bar materials that may have some political content, nor does it require agencies to provide a balanced view of a particular

activity or policy. B-322882, Nov. 8, 2012; B-302992, Sept. 10, 2004. To prohibit agencies from engaging in all political activity would curtail the legitimate exercise of an agency's authority to inform the public of its policies, to justify its policies, and to rebut attacks on its policies. B-304228, Sept. 30, 2005; B-212069, Oct. 6, 1983. Therefore, in order to balance the legitimate informational needs of agencies with the protection of public funds, the publicity or propaganda prohibition bars only those communications that are completely political in nature and lack a connection to the agency's official business. See B-319834, Sept. 9, 2010.

In 2005, we concluded that the Department of Education conducted purely partisan activities when it engaged a contractor to conduct media analyses evaluating whether news articles reported, among other things, that "the 'Bush Administration/the GOP [was] committed to education.'" B-304228, Sept. 30, 2005. The contractor assessed the media's perception of a particular political party, rather than providing information about the Department's policies to the public. We explained that appropriations are available for official government functions, not for political activities. However, there, we could find no purpose for the Department of Education's activities other than partisan, political purposes. *Id.* Therefore, we concluded that engaging in such purely partisan activity was not a proper use of appropriated funds. *Id.*

By contrast, where agencies have provided the public with information related to their official business, we have not found violations of the publicity or propaganda prohibition despite the existence of some political content. In 2012, we concluded that the Consumer Product Safety Commission (CPSC) did not violate the publicity or propaganda prohibition when an employee emailed a pool and spa industry participant encouraging him to contact certain members of Congress. B-322882, Nov. 8, 2012. The email referred to the "Commission Majority" and encouraged the recipient to contact nine members of Congress, all of them members of a particular political party. *Id.* We noted that these references may have imbued the email with a "subtle political tone," but explained that agencies are not required to refrain from all political speech, nor must they provide a balanced view of a particular activity. *Id.* We concluded that because the email appeared to "facilitate an exchange of information regarding . . . safety considerations," it remained connected to CPSC official functions and therefore did not violate the publicity or propaganda prohibition. *Id.*

Similarly, in 1983, we found that an Office of Personnel Management (OPM) press release did not violate the publicity or propaganda prohibition even though it identified a particular political party by name and referred to members of that party who sat on the House Appropriations Committee. B-212069, Oct. 6, 1983. OPM issued the press release after a subcommittee of the House Appropriations Committee voted to delay implementation of proposed OPM regulations. *Id.* The press release stated that "[f]our Democratic members . . . have separated themselves from the President and the American people" in voting to delay implementation, while "[a]ll three Republican subcommittee members" opposed the

delay. *Id.* We determined that by issuing the press release, OPM was informing the public about its position on legislation pending before Congress and about the importance of the proposed regulations. *Id.* Therefore, we concluded that OPM did not violate the publicity or propaganda prohibition. *Id.*

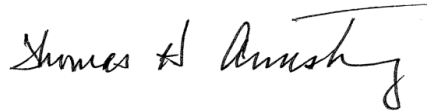
In this case, EPA's April 13 tweet is not purely partisan, even though it included some political content. First, EPA's tweet provided information to the public about agency activities. It informed the public of the confirmation of an official to the position of Deputy Administrator. Unlike when the Department of Education's contractor assessed the media's perception of a particular political party, EPA's tweet furthered the agency's legitimate interest in disseminating information to the public about the management of the agency. Second, the information contained in the tweet was not completely political, but rather maintained a connection to EPA's official business. The tweet announced the Senate confirmation of a high-ranking agency official, which directly impacts the direction and management of the agency. Unlike the Department of Education's partisan questioning, for which we could find no purpose other than partisan political purposes, EPA's tweet had an official purpose—to communicate with the public about the management of the agency. EPA's actions were similar to CPSC's email and OPM's press release, which did not violate the prohibition as they were directly related to the business of the agency, even though both communications included political content. Here, EPA's tweet was related to the business of the agency, even though it identified a particular political party by name and refers to Senators who are members of that party. Therefore, the tweet did not violate the publicity or propaganda prohibition.

CONCLUSION

EPA did not violate the publicity or propaganda prohibition when it tweeted about an official's Senate confirmation as Deputy Administrator. EPA's tweet was not a purely partisan communication because, while it included political content, it provided information about the management of the agency to the public. It therefore maintained a connection to EPA's official business.

We draw no conclusions concerning whether it was necessary or prudent for EPA to name a particular political party in the tweet. It may have been possible for EPA to convey its message in the tweet without referring to a particular political party by name. Circumstances and desired objectives often frame for agencies a range of legally permissible actions. Our task, however, is not to determine whether the tweet was a wise or prudent way for EPA to communicate with the public. See B-223608, Dec. 19, 1988. Instead, we apply the law to the facts at issue to conclude whether EPA's communication was legally permissible. Section 718 expects that all federal agencies exercise diligence to ensure that communications with the public are free from explicit partisan content.

If you have any questions, please contact Shirley A. Jones, Managing Associate General Counsel, at (202) 512-8156, or Omari Norman, Assistant General Counsel for Appropriations Law, at (202) 512-8272.

A handwritten signature in black ink that reads "Thomas H. Armstrong". The signature is written in a cursive style with a prominent horizontal line above the "A" and "M".

Thomas H. Armstrong
General Counsel