

**Barbara Clark
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January 17, 2008

President George W. Bush, c/o
Executive Office of the President
Attn: FOIA Officer (Barbara Ann Ferguson)
Old Executive Office Building, Room 431
Washington, DC 20502
Fax: (202) 456-6022

REF: Pre-litigation spoliation letter, duty to preserve
Freedom of Information Act request

At the outset I call attention to the following:

- **Executive Order 13335**, dated 4/27/2004, which had the practical effects of creating a “nationwide interoperable health information technology infrastructure”.
- **Steve Poizner**, White House fellow assigned to the Director of Critical Infrastructure Protection within the National Security Council.

The purpose of this letter is two-fold: (1) it serves as a Freedom of Information Act (FOIA) letter sent to your offices pursuant 5 U.S.C. 552a and your agency implementing regulations, and (2) to serve as a pre-litigation spoliation letter directing to preserve, archive and safely store records that are responsive to this FOIA request as FOIA litigation is forthcoming.

I have reason to believe that Steve Poizner (presently the Insurance Commissioner of the State of California) significantly assisted in the development of Executive Order 13335 while he was assigned to the N.S.C. staff. Further, that the present “*National Health Information Network*” initiative is an artifact of E.O. 13335 and is considered “*critical national infrastructure*”.

I request copies of all releasable records concerning Steve Poizner; including: resume or background statements, financial disclosure statements, records of meetings attended, trip reports, expense reports, summary documents, monthly progress reports, etc. In essence, all documents created by Mr. Poizner while assigned to the National Security Council.

I request copies of all planning documents associated with the creation of E.O. 13335; including: records of meetings, policy statements, research on health information technology, weekly planning meetings, visitor logs, etc.

I direct your staff to Fed. R. Civ. Proc. Rules 26(b)(1) and 34(a) for guidance, should you need any, on the legal duty to preserve evidence. All e-mails, letters, electronic documents and files associated with E.O. 13335 and Mr. Poizner's work with the N.S.C. should be placed on litigation "hold". See Zubulake v. USB Warburg, LLC, 220 F.R. D. 212, 218 (S.D.N.Y. 2003). As a courtesy to you I shall place a copy of this letter on my public interest web-site.

Sincerely,

Barbara Clark

Copies provided:

500 news media outlets.

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