

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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November 10, 2014

The Honorable Arthur A. Elkins, Jr.
Inspector General
Environmental Protection Agency
Office of Inspector General
1200 Pennsylvania Avenue, N.W. (2410T)
Washington, DC 20460

Dear Mr. Elkins,

According to news stories from last month, the Environmental Protection Agency (EPA) appears to have deleted thousands of text messages, including those that would qualify as federal records, from EPA Administrator Gina McCarthy's agency phone.

As reported in *The Hill*, "Justice Department lawyers representing the EPA said the agency will soon file a notice that it may have misplaced records that it was legally required to retain,"¹ and that the "Defendant has decided to formally notify the National Archives and Records Administration (NARA) about the potential loss of federal records relating to text messages."²

However, EPA spokeswoman Liz Purchia was quoted as saying that, "Despite the filing...the agency maintains that the text messages neither had to be preserved nor were subject to disclosure. Text messages can legally be deleted."³

The statement by Ms. Purchia seems even more puzzling given EPA's Interim Records Management Policy, CIO 2155.2, which states that each office within EPA is required to establish and maintain a records management program with a number of minimum requirements, including:

"Manage records, in any format (e.g., paper, email, IMs, electronic documents, spreadsheets, presentations, images, maps, video, blogs, and other social media

¹ Timothy Cama, "EPA tells court it may have lost text messages," *The Hill* (October 8, 2014), available at: <http://thehill.com/policy/energy-environment/220162-epa-may-have-lost-text-messages>.

² *Ibid.*

³ *Ibid.*

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tools that generate communications), in accordance with applicable statutes, regulations, and EPA policy and guidance.”⁴

In addition, regarding electronic records, EPA is required to:

“Maintain electronic records, (e.g., email, IMs, electronic documents, spreadsheets, presentations, images, video, blogs, and other social media tools that generate communications), in an approved electronic records management system.”⁵

Finally, beyond the general guidance, EPA provides specific direction relative to the protection of text messages.⁶ According to discussions with your staff, EPA’s internal guidance documents state:

“It is the responsibility of the employee to preserve any records from their device that needs to be saved as EPA records. This is in accordance with established EPA Policies regarding retention of EPA records.”

This is not the first time that the EPA appears to have experienced problems with missing records. Just this summer, Members of the Committee on Oversight and Government Reform questioned EPA Administrator McCarthy “about missing information related to the committee’s investigation into the potential environmental impact of a proposed gold and copper mine in the Bristol Bay watershed in Alaska.”⁷ In a remarkably similar turn of events, the agency back then, just as it has done with the deleted text messages, notified “the National Archives...that there may be some unrecoverable emails that should have been preserved under federal law.”⁸

My concerns over the potential loss of federal records is compounded by the fact that Administrator McCarthy is not the first senior-level administration employee to face questions about lost or deleted federal records. She is accompanied by Centers for Medicare and Medicaid Services Administrator Marilyn Tavenner, and Lois Lerner, former Internal Revenue Service Director of Exempt Organizations, to name two others.⁹

⁴ EPA Information Policy, “Interim Records Management Policy,” CIO Approval Date June 28, 2013, available at: <http://www.epa.gov/records/policy/2155/CIO-2155.2.pdf>

⁵ Ibid.

⁶ EPA website, “Frequent Questions about Mobile and Portable Devices, and Records,” available at: <http://www.epa.gov/records/faqs/pda.htm>.

⁷ Erica Martinson, “EPA joins IRS lost emails club,” Politico (June 25, 2014), available at: <http://www.politico.com/story/2014/06/missing-government-emails-epa-108306.html>

⁸ Ibid.

⁹ Jillian Kay Melchior, “The EPA Chief’s Text Messages Go Missing,” *National Review Online*, October 9, 2014, available at: <http://www.nationalreview.com/article/389914/epa-chiefs-text-messages-go-missing-jillian-kay-melchior>.

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These actions point to an apparent pattern of behavior directed at subverting transparency and accountability. In order to better evaluate the impact of EPA's deleted text messages on the preservation of federal records, the ability of the public to access government information and Congress' ability to conduct proper oversight, please conduct a review of EPA's compliance with its records management policies. Specifically, in your review, please explain EPA's policies relative to the preservation of text messages as federal records, and then identify:

1. EPA's process to respond to Congressional as well as Freedom of Information Act requests involving agency employees' text messages;
2. Whether Administrator Gina McCarthy, and/or any other senior staff use text messages (on work or personal handheld devices) for official business. If so, please identify how those text messages are being preserved for federal record keeping;
3. Whether Administrator McCarthy, and/or any other senior staff have deleted, lost or misplaced any text messages that were legally required to be maintained. If so, why were these records destroyed, and what, if any, disciplinary actions were taken as a result?
4. The number of times EPA has notified the National Archives and Records Administration about the potential loss of any and all federal records since Ms. McCarthy became Administrator. Please provide copies of all such notices; and
5. The use of internal guidance in determining which texts are saved and which are deleted. Please provide a copy of any and all internal guidance documents regarding the retention of official records, and information about the extent to which EPA staff understand this guidance.

I would appreciate your response to my inquiry no later than December 1, 2014. If you have any questions about this request, please contact Mr. Raj Bharwani with the Committee on Science, Space, and Technology at (202) 225-6371.

Sincerely,



Rep. Lamar Smith
Chairman

cc: Rep. Eddie Bernice Johnson
Ranking Member