

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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January 27, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

It was brought to my attention last fall that you, and potentially others at the Environmental Protection Agency (EPA), may have deleted thousands of text messages, including those that would qualify as federal records, from government-issued electronic devices.

In order to ensure complete transparency and accountability at the EPA, such news prompted me to request the EPA Office of Inspector General (OIG) to conduct a review of EPA's compliance with its records management policies¹. While I am happy to hear that the OIG review, encompassing EPA headquarters, regional, and program offices, has officially begun, I am interested in continuing Congressional oversight of this important matter while we wait for the final OIG report to be issued later this year.

As you should know, according to EPA's Interim Records Management Policy, CIO 2155.2, each office within the 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 tools that generate communications), in accordance with applicable statutes, regulations, and EPA policy and guidance.”²

¹ Letter from Chairman Lamar Smith to The Honorable Arthur A. Elkins, Jr., November 10, 2014, available at: <http://science.house.gov/sites/republicans.science.house.gov/files/documents/Letters/Smith%20Letter%20to%20EPA%20IG%20re%20records%20management.pdf>

² 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>

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.”³

Finally, beyond the general guidance, EPA provides specific direction relative to the protection of text messages.⁴ According to discussions with the OIG 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.”

However, in reporting on the formal EPA notification to the National Archives and Records Administration (NARA) about the potential loss of federal records through deleted text messages, *The Hill* quoted an EPA spokeswoman as saying, “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.”⁵ Both EPA’s actions, which required NARA notification, and its official quote in response, indicate a troubling disregard by EPA of its own guidelines.

As the head of a United States agency under an Administration that promises an “unprecedented level of openness in government,” it is imperative to know that you follow your agency’s policies and procedures, that you encourage your colleagues to follow your agency’s policies and procedures, and that existing policies and procedures are adequate for proper accountability.

In order to better evaluate this situation as a Congressional Committee with jurisdiction over the EPA, please provide responses to the following:

1. What is the EPA’s process to respond to Congressional, as well as Freedom of Information Act (FOIA), requests involving agency employees’ text messages?
2. Have you and/or any other senior staff with whom you frequently work with ever used 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. Have you and/or any other senior staff with whom you frequently work with ever deleted, lost or misplaced any text messages that were legally required to be maintained? If so, why and how were these records destroyed, and what, if any, disciplinary actions were taken as a result?

³ Ibid.

⁴ EPA website, “Frequent Questions about Mobile and Portable Devices, and Records,” available at: <http://www.epa.gov/records/faqs/pda.htm>.

⁵ 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>.

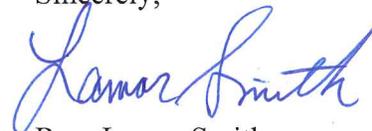
4. How many times has the EPA notified the NARA about the potential loss of any and all federal records since you became Administrator? Please provide copies of all such notices.
5. What is the EPA's internal guidance in determining which texts are saved and which are deleted? Please provide a copy of any and all internal guidance documents regarding the retention of official records, and information about the extent to which EPA staff understand this guidance.
6. How many FOIA requests has the EPA received regarding text messages since 2009?
7. Has the EPA ever turned over a text message in response to a FOIA or Congressional request? If so, please indicate when and provide a copy of the request and text message in response to the request.
8. Have text messages or documents ever been destroyed after a request has been submitted?

In addition, please provide the following documents:

1. A copy of any emails that you have sent or received from 2009-2014 regarding communication about official EPA business over text message.
2. A copy of your maintained text messages that have been saved as EPA records from 2009-2014.
3. A copy of any internal EPA SharePoint documents regarding communication about official EPA business over text message.

I would appreciate your response to my inquiry no later than February 13, 2015. If you have any questions about this request, please contact Mr. Tim Doyle with the Committee on Science, Space, and Technology at (202) 225-6371.

Sincerely,



Rep. Lamar Smith
Chairman
Committee on Science,
Space, and Technology

cc: Rep. Eddie Bernice Johnson
Ranking Member