

COMMITTEE ON
**SCIENCE, SPACE, AND
TECHNOLOGY**
CHAIRMAN LAMAR SMITH



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Statement of Oversight Subcommittee Chairman Barry Loudermilk (R-Ga.)
Destruction of Records at EPA – When Records Must Be Kept

Chairman Loudermilk: Good morning everyone. I want to welcome and thank all of our witnesses for being here today.

As you might know, it was brought to this Committee’s attention last fall that the Environmental Protection Agency (EPA) deleted thousands of text messages that it may have needed to preserve as federal records. At that time, EPA spokeswoman Liz Purchia was quoted as saying that,

“...the agency maintains that the text messages neither had to be preserved nor were subject to disclosure. Text messages can legally be deleted.”

It is stated in the Federal Records Act that, “The head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.”

The Federal Records Act was updated this past September to further clarify that it is the information that is important to preserve and not the medium in which that information was created or received. This amendment was put in place to ensure that no matter how the information is transmitted in this digital age, if the information qualifies as a federal record, it must be preserved as a federal record.

Further, the EPA’s records management policy approved in 2009 seems to contradict Ms. Purchia’s statement by noting that,

“Each office within EPA is required to establish and maintain a records management program with the following minimum requirements: Create, receive, and maintain official records providing adequate and proper documentation and evidence of EPA’s activities; manage records, in any format, in accordance with applicable statutes, regulations, and EPA policy and guidance; and maintain electronic records...”

Considering that “approximately 5,000 of EPA’s personnel are issued a mobile device by the Agency,” we must be certain that the policies and procedures in place are strong enough to protect and safeguard text messages that qualify as federal record that may be purposefully or even mistakenly deleted.

This Committee began its investigation into the preservation of text messages as federal records last November when it asked the EPA Inspector General to look into the matter. Since then, the Committee

has continued its Congressional oversight of this important matter by trying to work with the EPA to learn more about this situation. From the information that the Committee has obtained thus far, it appears that although EPA employees are allowed to use their work phones for text messaging, there are virtually no text messages preserved as federal records. I find this extremely hard to believe.

What is disappointing to me is that it has been fairly difficult to obtain helpful documents from the EPA in order to conduct our investigation since the first letter sent to the Administrator in January. This slow-rolling and lack of a complete response is unfortunately not something new to the Committee in its interactions with this Administration. It has the unfortunate resemblance to the Committee's obstructed investigation of the role of the U.S. Chief Technology Officer with the development and roll-out of HealthCare.gov.

As the Chairman of this Committee's Oversight Subcommittee, I want to ensure that we restore transparency and accountability across the government and this Administration, with today's focus being on the EPA.

With that, I look forward to today's hearing where I hope to learn from our witnesses more about the policies and procedures that have been in place to ensure valuable federal records are preserved. In the end, I would like to know what is being done or what can be done to protect the inadvertent or intentional destruction of federal records to ensure the highest level of transparency that is owed to the American people.

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