

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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February 14, 2017

The Honorable Arthur A. Elkins, Jr.
Inspector General
U.S. Environmental Protection Agency
Office of Inspector General
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Inspector General Elkins,

The Committee on Science, Space, and Technology is conducting oversight of U.S. Environmental Protection Agency (EPA) employees' use of encrypted messaging applications to conduct official business. According to media reports, a group of approximately a dozen career EPA officials are using an encrypted messaging application, Signal, to discuss potential strategies against any attempts by newly-appointed political officials to redirect the EPA's priorities in ways that depart from initiatives spearheaded by Obama Administration appointees.¹ Reportedly, this group of career officials at the EPA are aiming to spread their goals covertly to avoid federal records requirements, while also aiming to circumvent the government's ability to monitor their communications.² This latest report is not signaling a new trend. Over the past few years, we have seen several examples of federal officials' circumventing Federal Records Act requirements and transparency generally.³ In this instance, the Committee is concerned that these encrypted and off-the-record communication practices, if true, run afoul of federal record-keeping requirements, leaving information that could be responsive to future Freedom of Information Act (FOIA) and congressional requests unattainable. To assist the Committee's oversight, we are writing to request that your office conduct a review.

¹ Andrew Restuccia, Marianne Levine, & Nahal Toosi, *Federal Workers Turn to Encryption to Thwart Trump*, POLITICO, Feb. 2, 2017, available at <http://www.politico.com/story/2017/02/federal-workers-signal-app-234510> (last visited Feb. 14, 2017) [hereinafter POLITICO, *Federal Workers Turn to Encryption*]; *Federal Workers Turn to Secret Messaging to Oppose Trump Policies, Nominees*, FOX NEWS, Feb. 9, 2017, available at <http://www.foxnews.com/politics/2017/02/06/federal-workers-turn-to-secret-messaging-to-oppose-trump-policies-nominees.html> (last visited Feb. 14, 2017).

² POLITICO, *Federal Workers Turn to Encryption*, *supra* note 1.

³ Timothy Cama, *EPA Reveals More Than 1,000 Pages of Texts, Phone Records from Chief*, THE HILL, April 23, 2015 available at <http://thehill.com/policy/energy-environment/239937-epa-reveals-more-than-1000-pages-of-texts-phone-records-from-chief> (last visited Feb. 14, 2017); Michael Bastach, *Top EPA Official Admitted His Yahoo Email Was A 'Channel' For 'Offline Chats' With Environmentalists*, DAILY CALLER, Sept. 20, 2016, available at <http://dailycaller.com/2016/09/20/top-epa-official-admitted-his-yahoo-email-was-a-channel-for-offline-chats-with-environmentalists/#ixzz4Y181gx89> (last visited Feb. 14, 2017).

FOIA endows a right upon American taxpayers to request records created by Executive Branch departments and agencies. This right of openness and transparency, guaranteed by FOIA, allows the American public to understand how their government is operating. FOIA, therefore, is a critical tool available to the American public to learn and understand how their government is acting on their behalf, as well as to hold the government accountable for its actions. Because FOIA is vital to furthering transparency within government programs and operations, the Committee is concerned that EPA career officials' decision to utilize encrypted messaging tools in fact circumvents federal record-keeping requirements and is an attempt to shield communications from production in response to FOIA or congressional requests.

Unfortunately, this latest report about EPA officials' efforts to conceal official business from coming to light is just another example in a long history of attempts by the Executive Branch and agency officials to circumvent federal record-keeping requirements. This behavior spans government including the EPA and the Department of Energy (DOE). During the Obama Administration, the Committee became aware of efforts by Jonathan Silver, the former DOE Loan Program Office Director to circumvent federal records requirements and potentially subpoenaed materials by communicating over personal e-mail accounts to conduct official government business.⁴ Last year, the Committee wrote to former DOE Secretary Moniz, requesting documents and information related to Michael Goo, an employee with the Department's Office of Energy Policy and Systems Analysis, who used text messages and personal e-mail during a prior position with the EPA to communicate with third party groups attempting to influence the Administration's agenda.⁵ The Committee wrote to the DOE to determine whether Mr. Goo used similar means of communication to converse with third party groups while working at the Department.⁶ Likewise, in light of recent reports that career officials at the EPA have used and continued to utilize an encrypted messaging app to conduct official business, the Committee remains concerned that the ever-evolving pattern of career federal employees' use of unofficial means to conduct official business will continue.

In light of concerns raised by the Committee of EPA employees' use of text messages to conduct official business, your office issued a report in December 2016, concerning the EPA's need to improve its internal processes related to ensuring employees' use of text messages are captured and preserved in accordance with federal records requirements.⁷ In that report, your office found that although employees were not intentionally attempting to circumvent federal records requirements, EPA officials have in fact used text messages to conduct official business

⁴ See, e.g., Letter from Hon. Darrell Issa, Hon. Jim Jordan, & Hon. Trey Gowdy, H. Comm. on Oversight & Gov't Reform, to Hon. Steven Chu, Sec'y, U.S. Dep't of Energy (Aug. 14, 2012), *available at* <http://oversight.house.gov/wp-content/uploads/2012/08/2012-08-14-DEI-Gowdy-Jordan-to-Chu-re-loan-program-emails.pdf> (last visited Feb. 14, 2017).

⁵ Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech, to Hon. Ernest Moniz, Sec'y, U.S. Dep't of Energy (May 14, 2015).

⁶ *Id.*

⁷ Environmental Protection Agency Inspector Gen., *Congressionally Requested Audit: EPA Needs to Improve Processes for Preserving Text Messages as Federal Records* (Dec. 2016) (17-P-0062), *available at* https://www.epa.gov/sites/production/files/2016-12/documents/_epaog_20161221-17-p-0062.pdf (last visited Feb. 14, 2017) [hereinafter EPA OIG Rpt.].

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and recognize the preservation issues presented with doing so.⁸ As part of your office's report, your office analyzed 3.1 million text messages sent or received on government-issued devices from July 1, 2014, to June 30, 2015, yet found that only 86 of the messages were preserved and archived as a federal record.⁹ Your office also voiced concern that "the EPA cannot be assured that those text messages that qualified as federal records were appropriately captured and preserved, or made available in response to external party inquiries."¹⁰ Not only does this demonstrate the vast issues presented with using text messages to conduct official business, but raises additional concerns about using encrypted messaging applications to conduct official business, which make it virtually impossible for the EPA to preserve and retain the records created in this manner to abide by federal record-keeping requirements.

In furtherance of the Committee's work in this area, we request that your office analyze the recent allegations in the media to determine whether it is appropriate to launch a full scale review of the situation. Please contact Committee Staff at 202-225-6371 to provide an update no later than February 28, 2017.

The Committee on Science, Space, and Technology has jurisdiction over energy, environmental, and scientific programs and "shall review and study on a continuing basis laws, programs, and Government activities" as set forth in House Rule X. This request and any documents created as a result of this request will be deemed congressional documents and property of the House Science Committee.

Thank you for your attention. We look forward to hearing from you.

Sincerely,



Rep. Lamar Smith
Chairman



Rep. Darin LaHood
Chairman
Subcommittee on Oversight

cc: The Honorable Eddie Bernice Johnson, Ranking Member, Committee on Science, Space, and Technology
The Honorable Don Beyer, Ranking Member, Subcommittee on Oversight

⁸ *Id.*

⁹ *Id.*; Phone Call with Science Committee Staff & EPA Office of Inspector Gen. Staff (Dec. 21, 2016).

¹⁰ EPA OIG Rpt., *supra* note 7, at 16.