



One Hundred Eighteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

June 8, 2023

The Honorable Joseph V. Cuffari
Inspector General
Department of Homeland Security
245 Murray Lane, SW
Washington, DC, 20528-0305

Dear Inspector General Cuffari:

We write to you today calling on you to immediately resign from your position as Inspector General. Because of your admission to your “normal practice” of deleting “business” text messages from your government-issued phone¹ – willful and intentional acts that may constitute criminal violations of the Federal Records Act (FRA) – you are unfit to lead an agency responsible for preventing and detecting fraud and abuse in government programs and operations.

Deletion of ‘Business’ Text Messages on Government-Issued Phone

Federal records include “all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them.”² National Archives and Records Administration (NARA) regulations also state that agencies must develop recordkeeping requirements that include policies and procedures for maintaining the documentation of phone calls, instant messages, and electronic mail exchanges. Furthermore, under the FRA, only NARA can determine “whether recorded information, regardless of whether it exists in physical, digital, or electronic form, is a record.”³ In other words, it is not an assessment to be made by the person creating or receiving the recorded information.

¹ *Help Wanted: Law Enforcement Staffing Challenges at the Border*, Hearing of the U.S. House Committee on Oversight and Accountability’s National Security, the Border, and Foreign Affairs Subcommittee, Jun. 6, 2023.

² 44 U.S.C. §3301. The only listed exceptions to a “record” include “library and museum material made or acquired and preserved solely for reference or exhibition purposes” and “duplicate copies of records preserved only for convenience.”

³ *Id.*

In addition, Department of Homeland Security (DHS) Directive 141-01 states that all DHS employees must “ensure all records are properly maintained.”⁴ Your agency’s own policy is that “[s]taff are still responsible for manually capturing, retaining, and preserving any messages that meet the definition of a federal record, even when SMS/MMS [text] messages are automatically archived.”⁵

At Tuesday’s hearing before a Committee on Oversight and Accountability subcommittee, you admitted to deleting text messages from your official government phone on an ongoing basis and as a “normal practice.”⁶ Moreover, you admitted that the messages you deleted were “business,” not personal, and that you “did not consider those to be Federal records.”⁷ As the FRA and DHS directive make clear, that was not your call to make.

Such a deletion “of records in the custody of the agency” requires immediate notification to the U.S. Attorney General to initiate an investigation,⁸ and anyone found guilty of “willfully and unlawfully” destroying a Federal record faces up to three years in prison.⁹

It is troubling, to say the least, that you have been routinely destroying or deleting official government records in violation of a law that your office is supposed to enforce. Because you apparently admitted to multiple violations of Federal criminal law, you should resign immediately.

Mishandling of the Investigation into Secret Service Deleted Text Messages

This is not your first time being associated with the improper deletion of Federal records. You are investigating the U.S. Secret Service for deleting text messages related to the January 6th attack on the U.S. Capitol, but you have mishandled that investigation in several ways. First, you failed to notify Congress as required by law – by as much as 14 months but admittedly by at least five months – of the Secret Service’s erasure of those text messages.¹⁰ During Tuesday’s hearing, you testified that you found out about the erasure of Secret Service’s text messages in February 2022, but you did not notify Congress until July 2022. Internal documents indicate you were aware that the text messages were missing as early as 14 months prior to your notification to Congress.¹¹ In any event, even a five-month delay was inexcusable, especially given the grave nature of the attack on the Congress.

⁴ *Records and Information Management Directive 141-01*, DEPARTMENT OF HOMELAND SECURITY, Aug. 11, 2014, https://www.dhs.gov/sites/default/files/publications/mgmt/information-and-technology-management/mgmt-dir_141-01-records-and-information-management_revision-01.pdf.

⁵ *DHS Watchdog Regularly Purges Texts on Gov’t Phone Despite Ongoing Investigation*, POGO, Jun. 6, 2023, <https://www.pogo.org/investigation/2023/06/dhs-watchdog-regularly-purges-texts-on-govt-phone-despite-ongoing-investigation>.

⁶ *Supra* n. 1.

⁷ *Id.*

⁸ 44 U.S.C. § 3106.

⁹ 18 U.S.C. § 2071.

¹⁰ *Letter from Chairman Bennie G. Thompson, House Committee on Homeland Security, and Chairwoman Carolyn B. Maloney, House Committee on Oversight and Reform, to Inspector General Joseph V. Cuffari*, Aug. 1, 2022 (attached).

¹¹ *Id.*

Second, your office may have secretly abandoned efforts to collect text messages from the Secret Service. An August 1, 2022, letter sent to you by then-Chairman of the Homeland Security Committee Bennie G. Thompson and then-Chairwoman of the Oversight and Reform Committee Carolyn Maloney, reveals that just six weeks after you initially requested text messages of Secret Service personnel, senior officials in your office instructed DHS that the Office of Inspector General (OIG) no longer needed Secret Service text messages as part of its investigation related to the January 6th attack.”¹²

Third, you stonewalled Congress in obtaining information related to the investigation. The August 1 letter requested that you produce all documents and communications related to the deletion, erasure, or unavailability of text messages; the decision by any OIG personnel not to collect or recover those text messages; and the delay in notifying Congress about the loss of those text messages. You refused – and continue to refuse – to produce all requested documents and blocked OIG employees from appearing for transcribed interviews an “unacceptable” “refu[sal] to comply with” Committee requests and outright “obstruct[ion].”¹³

Allegations of Censoring and Delaying Reports on Domestic Violence and Sexual Harassment

In addition, you neglected to thoroughly investigate sexual harassment claims and issued reports with significant delays and quality issues. For example, you allegedly sought to censor and delay two OIG reports detailing troubling findings of domestic abuse and sexual harassment by DHS employees.¹⁴ Specifically, you fundamentally altered a report by narrowing its scope and removing alarming evidence that DHS had failed to adequately address instances of domestic violence by its employees.¹⁵ Additionally, a separate DHS OIG report on sexual misconduct and harassment remains unpublished even though audit work began in 2018. Notably, the discovery of your history of deleting texts came after the Project On Government Oversight filed a lawsuit seeking text messages related to your alleged suppression of the report on sexual misconduct and harassment.¹⁶

An Inspector General is charged with conducting independent and objective audits and investigations and preventing and detecting waste, fraud, and abuse. Your apparent violations of Federal criminal laws and your mishandling of key investigations within DHS have undermined any confidence in your ability to carry out your duties. We must restore credibility to the OIG in order to have independent oversight and accountability within DHS. Your resignation is the necessary first step.

¹²*Id.*

¹³ *Letter from Chairman Bennie G. Thompson, House Committee on Homeland Security, and Chairwoman Carolyn B. Maloney, House Committee on Oversight and Reform, to Inspector General Joseph V. Cuffari, Aug. 16, 2022 (attached).*

¹⁴ *Letter from Chairman Bennie G. Thompson, House Committee on Homeland Security, and Chairwoman Carolyn B. Maloney, House Committee on Oversight and Reform, to Inspector General Joseph V. Cuffari, May. 10, 2022 (attached).*

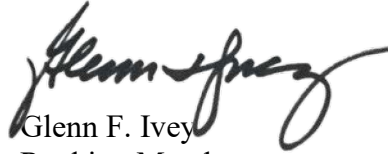
¹⁵ *Id.*

¹⁶ *Supra* n. 5.

Sincerely,



Bennie G. Thompson
Ranking Member



Glenn F. Ivey
Ranking Member
Subcommittee on Oversight, Investigations, and
Accountability

Enclosures

cc: The Honorable Mark E. Green, M.D., Chairman
Committee on Homeland Security

The Honorable James Comer, Chairman
Oversight and Accountability Committee

The Honorable Jamie Raskin, Ranking Member
Oversight and Accountability Committee

The Honorable Jim Jordan, Chairman
Committee on the Judiciary

The Honorable Jerrold Nadler, Ranking Member
Committee on the Judiciary

The Honorable Dan Bishop, Chairman
Subcommittee on Oversight, Investigations, and Accountability
Committee on Homeland Security

The Honorable Merrick B. Garland, Attorney General
U.S. Department of Justice

The Honorable Colleen Joy Shogan, Archivist of the United States
National Archives and Records Administration