



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

July 24, 2023

The Honorable Dr. Colleen Shogan
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Avenue, N.W.
Washington, D.C. 20408

Dear Dr. Shogan:

We write to you today to provide evidence that Joseph V. Cuffari, Department of Homeland Security (DHS) Inspector General, may have violated Federal law by willfully destroying Federal records and not reporting the destruction to the National Archives and Records Administration (NARA).¹ At a June 6 hearing before a Committee on Oversight and Accountability subcommittee, Inspector General Cuffari admitted to deleting text messages from his official government phone on an ongoing basis and as a “normal practice.”² Moreover, he admitted that the messages he deleted were “business,” not personal, and that he “did not consider those to be Federal records.”³ That same day, the Project On Government Oversight (POGO) reported that on December 22, 2022, an email was circulated within the DHS OIG (Office of Inspector General) stating that “a custodian indicated the text messages were deleted, in their entirety, from their government issued iPhone, and that the relevant policy for capturing such messages was not followed.”⁴ According to the article, sources confirmed that the “custodian” referenced in the email is Inspector General Cuffari.

In response to Inspector General Cuffari’s testimony and POGO’s reporting, NARA opened a case on June 15 to review the Inspector General’s handling of Federal records.⁵ To assist NARA with

¹ 44 U.S.C. § 310; 18 U.S.C. § 2071.

² Committee on Oversight and Accountability, Subcommittee on National Security, the Border, and Foreign Affairs, *Hearing on Help Wanted: Law Enforcement Staffing Challenges at the Border*, Jun. 6, 2023, <https://oversight.house.gov/hearing/help-wanted-law-enforcement-staffing-challenges-at-the-border/>.

³ *Ibid.*

⁴ Nick Schwellenbach, *DHS Watchdog Regularly Purges Texts on Gov’t Phone Despite Ongoing Investigation*, PROJECT ON GOVERNMENT OVERSIGHT, Jun. 6, 2023, <https://www.pogo.org/investigation/2023/06/dhs-watchdog-regularly-purges-texts-on-govt-phone-despite-ongoing-investigation>.

⁵ *Letter from Chief Records Office for the U.S. Government to the Chief information office of the Department of Homeland Security*, NARA, Jun. 15, 2023, <https://www.archives.gov/files/records-mgmt/resources/ud-2023-0052-dhs-open-letter.pdf>.

its review, we are enclosing the December 22 email referenced by POGO as well as a January 2023 “Plan of Action” put forward by the OIG’s Records and Information Management Officer to assess whether the Inspector General deleted text messages that were Federal records. These two documents are described in further details below:


December 22, 2022, Email: An attorney in the DHS OIG Information Law and Disclosure Division emails the OIG’s Records and Information Management Officer notifying him that in response to a Freedom of Information Act (FOIA) request in litigation, a custodian (i.e., OIG employee whose records were searched) indicated that their text messages were deleted, in their entirety, from their government issued iPhone and agency policy for capturing such messages was not followed. Further, the email reveals that comparing text messages from other custodians indicates that the deleted messages “likely contained federal records” and “may have violated the Federal Records Act and DHS policy.” The attorney defers to the Records and Information Management Officer for next steps and cites NARA reporting requirements.

January 2023⁶, Plan of Action: The OIG Records and Information Management Officer develops a “Plan of Action” to determine whether Inspector General Cuffari deleted text messages that were Federal records. The “Background” section of the Plan notes that during the records search of the Inspector General’s front office in response to POGO’s FOIA request, an IT technician notifies a FOIA attorney that the IG deleted his text messages and provides the attorney with a photo of the Inspector General’s iPhone text message screen indicating no messages were available.

We ask that after reviewing these documents, and other relevant information that NARA obtains, NARA consult with the Department of Justice if the evidence confirms that Inspector General Cuffari failed to notify NARA about unlawful destruction of Federal records, in violation of the law. We look forward to the conclusion of your review and ask that you promptly notify us of the results.

Sincerely,


Bennie G. Thompson
Ranking Member


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

Enclosures

⁶ The date on the Plan of Action says “2022”, but as noted in the Plan, it was developed in 2023 after the Records and Information Management Officer receives notification in December 2022 from the FOIA attorney about the possible destruction of Federal records.

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

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

The Honorable Joseph V. Cuffari, Inspector General
U.S. Department of Homeland Security

From: [REDACTED]
Sent: Thursday, December 22, 2022 8:25 PM
To: [REDACTED]
Subject: Suspected Deletion of Federal Records

Hi, [REDACTED]



In response to a FOIA request, which is now in litigation, our office tasked searches for the following sub-request to the named custodians:

- a. Records requested: (1) All records sent to and/or in the possession of Inspector General Joseph Cuffari, Deputy Inspector General and Chief of Staff Kristen Fredricks, Principal Deputy Inspector General Glenn Sklar, and/or DHS official Ellen McSweeney about the Office of Inspector General project titled "CBP, ICE, TSA, and USSS Handling of Employee Allegations of Sexual Harassment and Workplace Sexual Misconduct" between July 26, 2019 and December 3, 2020. The records do not have to mention the project by its exact name. The records sought include but are not limited to emails and calendar invites or appointments related to briefings. We also seek any attachments to relevant emails or calendar entries. Search date range: July 26, 2019 through December 3, 2020; (2) Emails and text messages (including messages in apps such as Signal) to and from and/or in the possession of DHS Inspector General Joseph Cuffari, Deputy IG and Chief of Staff Kristen Fredricks, Principal Deputy IG Glenn Sklar, and DHS official Ellen McSweeney mentioning "sexual harassment", "sexual misconduct," "Lafayette Square", "POGO", "Project On Government Oversight", "Schwellenbach", "Zagorin", "Washington Post", "New York Times", "CNN", "Durbin", "Grassley." Search date range: July 26, 2019 until date of search; (3) Emails to and from Joseph Cuffari, Kristen Fredricks, and Glenn Sklar with email addresses that include "mail.house.gov" and "senate.gov" mentioning "sexual harassment", "sexual misconduct", and "domestic violence" since April 6, 2022. Search date range: April 6, 2022 until the date of search; (4) Calendars, including but not limited to those created using Microsoft Outlook and Microsoft Teams, for Joseph Cuffari, Kristen Fredricks, and Glenn Sklar since July 26, 2019. Search date range: July 26, 2019 until the date of search; and, (5) (a) Travel voucher forms and receipts/supporting documentation submitted in conjunction with the travel voucher form for Joseph Cuffari since July 26, 2019, (b) Any emails from IG Cuffari regarding his travel, including transportation, hotel, and restaurant bookings since July 26, 2019, and (c) any correspondence between Congress and IG Cuffari, Principal Deputy IG Sklar, Counsel James Read, and/or Chief of Staff Kristen Fredricks regarding IG Cuffari's travel since July 26, 2019.

Please see the attached complaint. One of the responses from a custodian indicated that text messages were deleted, in their entirety, from their government-issued iPhone and that DHS OIG policy for capturing such messages was not followed. Comparing text messages from other custodians indicated that the deleted text messages likely contained federal records. If confirmed, the deletion of these text messages may have violated the Federal Records Act and DHS

policy for retention of electronic messages. As the agency's Records Officer, I wanted to advise you of this information and defer to you on the agency's response and next steps (see reporting requirements to NARA under 36 CFR 1230). If you have any questions or need additional information, please do not hesitate to contact me directly.

Thank you,


 Information Law and Disclosure Division
Office of Inspector General | U.S. Department of Homeland Security

*****Warning***Attorney-Client Privilege***Attorney Work Product*****

This communication and any attachments may contain confidential and/or sensitive attorney/client privileged information or attorney work product and/or law enforcement sensitive information. It is not for release, review, retransmission, dissemination, or use by anyone other than the intended recipient. This document is for INTERNAL GOVERNMENT USE ONLY and may be exempt from disclosure under the Freedom of Information Act, 5 USC 552(b)(5), (b)(7).

Plan of Action

Topic: Determine whether the IG (1) deleted text messages that were Federal records or (2) implemented procedures to ensure his Federal records were properly preserved.

Recommended Actions:

The Deputy Inspector General for the Office Management (DIGOM) is asked to:

1. Assign the OIG Records and Information Management (RIM) Officer and Strategy, Records and Coordination (SRC) Director to conduct a review to determine if the IG inappropriately destroyed Federal records.
2. Review and approve the Review Plan, indicated below.

Justification: As the OIG RIM Officer and Records Program Manager, [REDACTED] is the OIG's records subject matter expert (SME) and is best prepared to evaluate the record keeping practices of OIG offices and individuals. [REDACTED] is available to expedite a review to determine whether the IG's text message were handled properly. He can recommend corrective actions and advise, assist, and train employees on records requirements and best practices. He will report his findings to the SRC Director, AIGOM, and DIGOM, who is the delegated authority for records management as outlined in [OIG-140-00, Records and Information Management Program](#), paragraph V. A.

Background: The Office of Counsel (OC) received a FOIA request that is now in litigation because the OIG has not responded. When OC received the lawsuit, their FOIA team issued the search request to several records custodians in the IG's Front Office (FO). The FOIA requester asked for all records¹ sent to and/or in the possession of Inspector General Joseph Cuffari, DIG and COS Kristen Fredricks, PDIG Glenn Sklar, and/or DHS official Ellen McSweeney related to the OIG project titled "CBP, ICE, TSA, and USSS Handling of Employee Allegations of Sexual Harassment and Workplace Sexual Misconduct" between July 26, 2019 and December 3, 2020.

During the FO records custodians' search for records responsive to the FOIA request, one of the custodians, the IG, stated to an OIG IT technician, who was assisting the custodians download their OIG iPhone text messages, that his text messages were deleted, in their entirety, and that DHS OIG policy was not followed for capturing such messages.

¹ Records include: (1) Emails and text messages (including messages in apps such as Signal) to and from and/or in the possession of DHS Inspector General Joseph Cuffari, Deputy IG and Chief of Staff Kristen Fredricks, Principal Deputy IG Glenn Sklar, and DHS official Ellen McSweeney mentioning "sexual harassment", "sexual misconduct", "Lafayette Square", "POGO", "Project On Government Oversight", "Schwellenbach", "Zagorin", "Washington Post", "New York Times", "CNN", "Durbin", "Grassley." Search date range: July 26, 2019 until date of search.

(2) Emails to and from Joseph Cuffari, Kristen Fredricks, and Glenn Sklar with email addresses that include "mail.house.gov" and "senate.gov" mentioning "sexual harassment", "sexual misconduct", and "domestic violence" since April 6, 2022. Search date range: April 6, 2022 until the date of search.

(3) Calendars, including but not limited to those created using Microsoft Outlook and Microsoft Teams, for Joseph Cuffari, Kristen Fredricks, and Glenn Sklar since July 26, 2019. Search date range: July 26, 2019 until the date of search.

(4) (a) Travel voucher forms and receipts/supporting documentation submitted in conjunction with the travel voucher form for Joseph Cuffari since July 26, 2019. (b) Any emails from IG Cuffari regarding his travel, including transportation, hotel, and restaurant bookings since July 26, 2019, and (c) any correspondence between Congress and IG Cuffari, Principal Deputy IG Sklar, Counsel James Read, and/or Chief of Staff Kristen Fredricks regarding IG Cuffari's travel since July 26, 2019.

The IT technician notified [REDACTED] OC Supervisory FOIA Attorney, about the IG deleting his text message and provided [REDACTED] with a photo taken of the IG's iPhone's text message screen with a message indicating no message were available. In addition, [REDACTED] stated that he reviewed the downloaded text messages from the other FO custodians and determined that the deleted text messages on the IG's iPhone likely contained Federal records because the other FO custodian's sent text messages to the IG's OIG iPhone that appeared to be Federal records.

On Friday, December 23, 2022, [REDACTED] notified [REDACTED] OIG RIM Officer, about the possible inappropriate destruction of Federal records by the IG. On Tuesday, December 27, 2022, the OIG RIM Officer and his supervisor [REDACTED] SRC Director, met with [REDACTED] to discuss the possible destruction. The same day, the OIG RIM Officer and [REDACTED] met with their leadership, DIGOM and Assistant IG for OM (AIGOM), to inform them about the possible inappropriate destruction of Federal records, and the related reporting requirement. Under 36 CFR 1230, *Unlawful or Accidental Removal, Defacing, Alteration, or Destruction of Records*, Federal agencies must report promptly any unlawful or accidental removal, defacing, alteration, or destruction of records in the custody of that agency to the National Archives and Records Administration (NARA).

Impact: If confirmed, the deletion of the IG's text messages may have violated the *Federal Records Act*, and DHS and OIG policy for the retention and preservation of electronic messages and must be reported to NARA.

Review Plan:

Steps	Date Completed
1. Identify records review and reporting guidance from NARA, DHS, other agencies; develop a Review Plan, and submit the plan for DIGOM approval.	
2. DIGOM discuss the issue with Jim Read, Counsel to the IG.	
3. OIG RIM Officer obtains statements and evidence (iPhone text messages belonging to FO custodians) from OCIO.	
4. SRC Director and RIM Officer will work OC's Attorney Jean Kilker on legal questions (independence issues) and reporting requirements.	
5. RIM Officer determines if the text messages sent to the IG by FO custodians were Federal records and who was responsible for maintaining the records. (This may involve interviewing or questioning the PDIG, COS, Ellen McSweeney, and others such as the FO Executive Assistants.)	

Prepared by: [REDACTED]

Date submitted: January 4, 2022

Proposed/actual meeting date: TBD

<i>6. OIG RIM Officer and SRC Director discuss the matter with the IG to confirm he deleted the messages and did not ask others to preserve the messages.</i>	
<i>7. RIM Officer and SRC Director keep the DIGOM and AIGOM informed of their progress at least weekly.</i>	
<i>8. OIG RIM Officer determines the scope of the loss, if any, and addresses the other reporting requirements such as OIG/FO adherence to proper text message and device handling.</i>	
<i>9. If Federal records were destroyed without proper disposition authority, OM will work with OC to determine whether OIG RIM or DHS RIM should report the incident to NARA and prepare a report for DIGOM approval.</i>	
If a loss is confirmed, the report to NARA must include:	
<i>a. A complete description of the records affected,</i>	
<i>b. A statement of circumstances surrounding the deletion of messages,</i>	
<i>c. A statement of the safeguards established to prevent further loss of documentation, and</i>	
<i>d. details of all agency actions taken to salvage, retrieve, or reconstruct the records</i>	

Option:

Another OIG office (e.g., the Office of Integrity) could conduct the review. However, Integrity staff may lack records management expertise and would need to involve the OIG RIM Officer. This could delay the review and involve additional staff unnecessarily.
