

**New Report: Federal Agencies Violating Federal Law, Not Preserving Instant Messaging Records**

**Arlington, VA (March 16, 2020)**—Cause of Action Institute (“CoA Institute”) and Americans for Prosperity Foundation (“AFPF”) today released an investigative report, [\*Gone in an Instant: How Instant Messaging Threatens the Freedom of Information Act\*](#). The report reveals how numerous federal agencies are violating federal records law and guidance from the National Archives by not preserving instant messaging (“IM”) records. Like email in the 1990s, IM’s increasing integration into the workplace is changing the way people do business. In 2014, Congress amended the Federal Records Act to specifically require that electronic messages be retained. Agencies’ failure to preserve records created on IM platforms (Slack, Teams, Hangouts, etc.), which are prevalent in the workplace, threatens to undermine the Freedom of Information Act (“FOIA”) and put much of the federal government in the dark.

The report scored IM-records-management practices of more than two dozen agencies and only four received passing scores: Federal Communications Commission, Council of the Inspectors General on Integrity and Efficiency, Department of Agriculture, and National Aeronautics and Space Administration. Nine agencies received a middling grade of “needs improvement” and thirteen agencies received a “poor” grade. Fourteen agencies did not produce records in response to the investigation and were not graded.

**AFPF Chief Policy Counsel and CoA Institute Executive Director James Valvo issued the following statement:**

“Retaining government records in a searchable system is fundamental to transparency, allowing journalists, citizen watchdogs, and the general public to oversee what their government is doing. With the use of instant-messaging platforms in the workplace, it is troubling that only four agencies have acceptable policies to preserve records, as required by the Federal Records Act. This report should serve as a wakeup call for Congress and federal agencies to take decisive action to ensure agencies are complying with federal law.”

**Key Findings from the Report:**

<b>100</b>	
<b>90</b>	• FCC
<b>80</b>	• CIGIE • USDA
<b>70</b>	• NASA
<b>60</b>	• CFPB • DOI • VA • EPA • FERC
<b>50</b>	• ED • NLRB
<b>40</b>	• DHS • IRS
<b>30</b>	• GSA
<b>20</b>	• DOD • DOL • EXIM • FBI • FEC • FTC • NOAA • SEC • USAID
<b>10</b>	• DOE
<b>0</b>	• HHS • SBA
Did not respond to FOIA request	• CIA • DOC • HUD • DOJ • DOS • USDT • DOT • ICE • NARA • NSA • OMB • OSTP • OSC • USCIS

- Thirteen of the sixteen agencies that produced their IM policies do not preserve instant messages as a matter of policy—a violation of federal law and NARA guidance. For example:
  - The General Services Agency declared in a memo that the instant messaging platform it uses, Google Hangouts, “would not be considered a system of record. Therefore, GSA-IT should set the History feature to off for the GSA.gov domain.”
  - The Department of Labor’s records management program, dated 2017, contains a single sentence regarding IM policy: “**NOTE:** At this time DOL has determined Instant Messaging will not be used to create records.”
- Only three agencies produced records reflecting policies to automatically preserve IMs, a commonly available feature on most instant-messaging platforms.
- Of the twenty agencies that produced their policies for employee use of IM, thirteen allow its use but prohibit employees from creating or sending an official “record” through IM and three ban IM use altogether. Prohibiting IM use to conduct business is unrealistic and contrary to NARA guidance.
- Many agencies have not incorporated the 2014 Presidential and Federal Records Act Amendments and subsequent NARA guidance into their records management policies.
- Agencies are shirking their responsibility to manage IM records by prohibiting the use of instant messaging or erroneously claiming instant messages are insignificant and do not need be saved.
- Only ten of the twenty-five agencies that responded to our FOIA requests could produce records of instant messages.

Read the full report [HERE](#).

###

Media Contact: [briggs@standtogether.org](mailto:briggs@standtogether.org)

#### **About Americans for Prosperity Foundation**

*Americans for Prosperity Foundation is a 501(c)(3) nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society.*

#### **About Cause of Action Institute**

*Cause of Action Institute is a 501(c)(3) nonprofit, nonpartisan government oversight organization that uses investigative, legal, and communications tools to educate the public on how government accountability, transparency, the rule of law, and principled enforcement of the separation of powers protects liberty and economic opportunity.*