

Table 5: Agencies Included in Investigation

Produced Records in Response to FOIA		Did Not Respond to FOIA
Consumer Financial Protection Bureau	Federal Bureau of Investigation	Central Intelligence Agency
Council of Inspectors General on Integrity and Efficiency	Federal Communications Commission	Department of Commerce
Department of Agriculture	Federal Election Commission	Department of Housing and Urban Development
Department of Defense	Federal Energy Regulatory Commission	Department of Justice
Department of Education	Federal Trade Commission	Department of State
Department of Energy	General Services Administration	Department of the Treasury
Department of Health and Human Services	Internal Revenue Service	Department of Transportation
Department of Homeland Security	National Aeronautics and Space Administration	Immigration and Customs Enforcement
Department of Labor	National Labor Relations Board	National Archives and Records Administration
Department of the Interior	National Oceanic and Atmospheric Administration*	National Security Agency
Department of Veterans Affairs	Securities and Exchange Commission	Office of Management and Budget
Environmental Protection Agency	Small Business Administration	Office of Science and Technology Policy
Export-Import Bank	U.S. Agency for International Development	Office of Special Counsel
		U.S. Citizenship and Immigration Services

* NOAA records were obtained through separate FOIA requests submitted prior to the FOIA request sent to the other agencies included in the study

Table 6: Summary of Agency Policies on Use and Retention of IM

Agency	Official IM Application	Latest Policy Update	Policy to Allow IM Use	Policy to Preserve IM	IM Archive Enabled	Produced IM on Request	Grade
Federal Communications Commission	Jabber	Mar-18 (20)	10	20	20	20	90
Council for Inspectors General on Integrity and Efficiency	Skype for Business	Jun-19 (20)	20	20	20	0	80
Department of Agriculture	Skype for Business	Aug-16 (20)	20	10	10	20	80
National Aeronautics and Space Administration	Skype, Jabber	Jan-15 (20)	10	10	10	20	70
Consumer Financial Protection Bureau	Unknown	Jul-15 (20)	10	-	10	20	60
Department of the Interior	Google Hangouts	Aug-14 (0)	20	10	10	20	60
Department of Veterans Affairs	Skype for Business, Slack	Nov-18 (20)	20	0	0	20	60
Environmental Protection Agency	Skype for Business	Feb-15 (20)	20	10	10	0	60
Federal Energy Regulatory Commission	Skype for Business	Dec-16 (20)	10	10	0	20	60
Department of Education	Skype for Business	Apr-17 (20)	10	20	-	0	50
National Labor Relations Board	Skype for Business	Apr-17 (20)	10	0	0	20	50
Department of Homeland Security	Unknown	Feb-18 (20)	10	10	0	0	40
Internal Revenue Service	Lync	Nov-16 (20)	10	10	0	0	40
General Services Administration	Slack, Google Hangouts	Jun-15 (20)	10	0	0	0	30
Department of Defense	Defense Collaboration Services	Aug-17 (20)	-	-	-	0	20
Department of Labor	Unknown	May-17 (20)	-	0	0	0	20
Export-Import Bank of the U.S.	Skype for Business	Nov-17 (20)	-	-	-	0	20

Agency	Official IM Application	Latest Policy Update	Policy to Allow IM Use	Policy to Preserve IM	IM Archive Enabled	Produced IM on Request	Grade
Federal Bureau of Investigation	Unknown	Dec-17 (20)	0	-	-	0	20
Federal Election Commission	Skype for Business	Jan-07 (0)	-	-	-	20	20
Federal Trade Commission	Unknown	Mar-15 (0)	0	-	0	0	20
National Oceanic and Atmospheric Administration	Google Hangouts	Mar-12 (0)	20	0	0	0	20
Securities and Exchange Commission	Unknown	Unknown (0)	-	-	-	20	20
U.S. Agency for Foreign Development	Unknown	Jul-16 (20)	0	-	-	0	20
Department of Energy	Skype for Business	Mar-13 (0)	10	0	0	0	10
Department of Health and Human Services	Unknown	Unknown (0)	-	-	-	0	0
Small Business Administration	Skype for Business	Dec-98 (0)	-	-	-	0	0

Policy to Allow IM Use		Policy allows IM Use
		IM use permitted but not to create a record
		IM use prohibited
Policy to Preserve IM		IM retained automatically
		IM retained manually
		IM not retained
IM Archive Enabled		Central IM archiving
		IM records to be saved by end users
		IM not saved
Produced IM on Request		Produced IM
		Did not produce IM

CAUSE of ACTION

INSTITUTE

Pursuing Freedom & Opportunity through Justice & AccountabilitySM

April 2, 2018

Via Certified Mail

CFPB, Attn: Chief FOIA Officer
1700 G Street NW
Washington, D.C. 20552

Re: Freedom of Information Act Request

Dear CFPB FOIA Officer:

I write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.¹ In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

The Federal Records Act (“FRA”) was amended to codify a definition of electronic messages that includes “electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.” 44 U.S.C. § 2911. Thus, electronic communications sent or received in the course of agency business, regardless of the method of message delivery, are federal records that should be properly captured, retained, and stored in a manner such that they can be searched and reproduced upon request. National Archives and Records Administration (“NARA”) Bulletin 2015-02, “Guidance on Managing Electronic Messages,” makes this clear. However, recent events call into question whether and how agencies are properly capturing, retaining, and storing electronic messages.

Therefore, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, CoA Institute hereby requests access to the following records:

1. All records regarding Consumer Financial Protection Bureau policies on the retention, management, and/or administration of electronic (*i.e.*, instant) messages, including but not limited to protocols such as SMS, MMS, Skype, Windows Messenger Service, XMPP, iMessage, Signal, BBM, *etc.*
2. All records regarding Consumer Financial Protection Bureau policies on employee use of electronic (*i.e.*, instant) messaging.

¹ See CAUSE OF ACTION INSTITUTE, *About*, www.causeofaction.org/about/.

3. All records related to receipt, implementation, or compliance with NARA Bulletin 2015-02.
4. All records reflecting the electronic messaging systems installed on Consumer Financial Protection Bureau devices, including desktops, laptops, tablets, phones, and other mobile devices. Installed messaging systems include, but are not limited to, Google Hangouts, iMessage, Android Messages, Skype, Wickr Me, What's App, GroupMe, Allo, BlackBerry Messenger, Signal, Snapchat, Facebook Messenger, *etc.*
5. All records reflecting whether Consumer Financial Protection Bureau has enabled automatic electronic message archiving, indexing, and eDiscovery features on instant messaging platforms in use. For example, "History On/Off" in Google Hangouts or "Incognito Mode" in Allo.

The time period for all above items is July 29, 2015, the date of issuance of NARA Bulletin 2015-02, to present.² This request only seeks access to records related to electronic (*i.e.*, instant) messaging, using protocols such as those listed in Item #1, and does not seek records related to traditional, standalone email systems, unless those systems have built-in instant messaging capability or if electronic records are being managed together under a "Capstone" approach. The term "all records" includes, but is not limited to, policy memoranda, guidelines, handbooks, contracts, agreements/memoranda of understanding, or correspondence.

6. In addition, (i) the ten most-recently generated electronic (*i.e.*, instant) messages prior to the date of this request and, (ii) the first ten electronic (*i.e.*, instant) messages generated on or after July 29, 2015, from each of the following components:
 - Communications
 - Legislative Affairs
 - Technology and Innovation
 - Human Capital
 - Supervision, Enforcement, & Fair Lending Enforcement Office

² For purposes of this request, the term "present" should be construed as the date on which the agency begins its search for responsive records. *See Pub. Citizen v. Dep't of State*, 276 F.3d 634 (D.C. Cir. 2002). The term "record" means the entirety of the record any portion of which contains responsive information. *See Am. Immigration Lawyers Ass'n v. Exec. Office for Immigration Review*, 830 F.3d 667, 677 (D.C. Cir. 2016) (admonishing agency for withholding information as "non-responsive" because "nothing in the statute suggests that the agency may parse a responsive record to redact specific information within it even if none of the statutory exemptions shields that information from disclosure").

To the extent that you have any questions about the scope of this request, CoA Institute is happy to discuss the matter with the FOIA officer processing this request and encourages you to contact us.

Request for a Public Interest Fee Waiver

CoA Institute requests a waiver of any and all applicable fees. FOIA and applicable regulations provide that the agency shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”³ In this case, the requested records will shed light on the “operations or activities of the government” by educating the public about the agency’s compliance with FRA obligations to preserve electronic messages. Because communication technology continues to evolve, the public has little knowledge on this topic and thus the records requested will contribute significantly to its understanding. The public deserves to know about the agency’s efforts to utilize technologies in a manner compliant with the FRA and FOIA and leverage technologies to enhance such compliance.

CoA Institute has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Its staff has significant experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through the Institute’s regularly published online newsletter, memoranda, reports, or press releases.⁴ In addition, as CoA Institute is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, it has no commercial interest in making this request.

Request To Be Classified as a Representative of the News Media

For fee status purposes, CoA Institute also qualifies as a “representative of the news media” under FOIA.⁵ As the D.C. Circuit recently held, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.⁶ CoA Institute satisfies this test because it gathers

³ 5 U.S.C. § 552(a)(4)(A)(iii); *see also Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

⁴ *See also Cause of Action*, 799 F.3d at 1125-26 (holding that public interest advocacy organizations may partner with others to disseminate their work).

⁵ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

⁶ *See Cause of Action*, 799 F.3d at 1121.

information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. Although it is not required by the statute, CoA Institute gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. It does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record.⁷ These distinct works are distributed to the public through various media, including the Institute's website, Twitter, and Facebook. CoA Institute also provides news updates to subscribers via e-mail.

The statutory definition of a "representative of the news media" contemplates that organizations such as CoA Institute, which electronically disseminate

⁷ COA INSTITUTE, *EVADING OVERSIGHT: THE ORIGINS AND IMPLICATIONS OF THE IRM CLAIM THAT ITS RULES DO NOT HAVE AN ECONOMIC IMPACT* (Jan. 2018), <http://coainst.org/2mgpYAu>; CoA Institute, *Documents Reveal Special Interest Groups Lobbied HUD for Mortgage Settlement Funds* (Aug. 8, 2017), <http://coainst.org/2yLaTyF>; CoA Institute, *The GSA Has No Records on its New Policy for Congressional Oversight Requests* (July 26, 2017), <http://coainst.org/2eHooVq>; COA INSTITUTE, *SENSITIVE CASE REPORTS: A HIDDEN CAUSE OF THE IRS TARGETING SCANDAL* (Mar. 2017), <http://coainst.org/2y0fbOH>; CoA Institute, *Sec. Vilsack followed ethics guidelines when negotiating his future employment*, (Feb. 3, 2017), <http://coainst.org/2mJljJe>; COA INSTITUTE, *INVESTIGATIVE REPORT: PRESIDENTIAL ACCESS TO TAXPAYER INFORMATION* (Oct. 2016), <http://coainst.org/2d7qTRY>; James Valvo, *There is No Tenth Exemption* (Aug. 17, 2016), <http://coainst.org/2doJhBt>; COA INSTITUTE, *MEMORANDUM: LEGAL ANALYSIS OF FORMER SECRETARY OF STATE HILLARY CLINTON'S USE OF A PRIVATE SERVER TO STORE EMAIL RECORDS* (Aug. 24, 2015), <http://coainst.org/2eXhXe1>; CoA Institute, *CIA too busy for transparency* (Aug. 11, 2016), <http://coainst.org/2mtzhhP>; *Hearing on Revisiting IRS Targeting: Progress of Agency Reforms and Congressional Options Before the Subcomm. on Oversight, Agency Action, Fed. Rights & Fed. Courts of the S. Comm. on the Judiciary*, 114th Cong. (Aug. 5, 2015) (statement of Erica L. Marshall, Counsel, CoA Inst.), <http://coainst.org/2mJC8DH>; *Hearing on Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years Before the S. Comm. on Homeland Sec. & Gov't Affairs*, 114th Cong. (June 3, 2015) (statement of Daniel Z. Epstein, Exec. Dir., CoA Inst.), <http://coainst.org/2mrwHr1>; *Hearing on Ongoing Oversight: Monitoring the Activities of the Justice Department's Civil, Tax and Environmental and Natural Resources Divisions and the U.S. Trustee Program Before the H. Comm. on the Judiciary*, 114th Cong. (May 19, 2015) (statement of Daniel Z. Epstein, Exec. Dir., CoA Inst.), <http://coainst.org/2n7LxWG>; COA INSTITUTE, *2015 GRADING THE GOVERNMENT REPORT CARD* (Mar. 16, 2015), <http://coainst.org/2as088a>; *Hearing on Potential Reforms to the Freedom of Information Act (FOIA) Before the H. Comm. on Oversight & Gov't Reform*, 114th Cong. (Feb. 27, 2015) (statement of Daniel Z. Epstein, Exec. Dir., CoA Inst.), <http://coainst.org/2lLsph8>; *Hearing on IRS: TIGTA Update Before the H. Comm. on Oversight & Gov't Reform*, 114th Cong. (Feb. 26, 2015) (statement of Prashant K. Khetan, Chief Counsel, CoA Inst.), <http://coainst.org/2nn5iFJ>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com* (Sept. 8, 2014), <http://coainst.org/2aJ8sm5>; COA INSTITUTE, *GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS* (Mar. 18, 2014), <http://coainst.org/2aFWxUZ>; COA INSTITUTE, *GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM* (Sept. 23, 2013), <http://coainst.org/2apTwqP>; COA INSTITUTE, *POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I* (Aug. 2, 2013), <http://coainst.org/2aJh901>; see also CoA Institute, *Newsletters*, <http://causeofaction.org/media/news/newsletter/>.

information and publications via “alternative media[,] shall be considered to be news-media entities.”⁸ In light of the foregoing, numerous federal agencies have appropriately recognized CoA Institute’s news media status.⁹

Record Preservation Requirement

CoA Institute requests that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.¹⁰

Record Production and Contact Information

In an effort to facilitate document review, please provide responsive documents in electronic form in lieu of a paper production. If some responsive records can be produced more readily, CoA Institute requests that they be produced first and the remaining records be produced on a rolling basis.

⁸ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

⁹ See, e.g., ⁹ See, e.g., FOIA Request 2016-11-008, Dep’t of the Treasury (Nov. 7, 2016); FOIA Requests OS-2017-00057 & OS-2017-00060, Dep’t of Interior (Oct. 31, 2016); FOIA Request 2017-00497, Office of Personnel Management (Oct. 21, 2016); FOIA Request 092320167031, Centers for Medicare & Medicaid Services (Oct. 17, 2016); FOIA Request 17-00054-F, Dep’t of Educ. (Oct. 6, 2016); FOIA Request DOC-OS-2016-001753, Dept. of Commerce (Sept. 27, 2016); FOIA Request 2016-366-F, Consumer Fin. Prot. Bureau (Aug. 11, 2016); FOIA Request F-2016-09406, Dept. of State (Aug. 11, 2016); FOIA Request 2016-00896, Bureau of Land Mgmt., Dep’t of the Interior (Aug. 10, 2016); FOIA Request 1355038-000, Fed. Bureau of Investigation, Dep’t of Justice (Aug. 2, 2016); FOIA Request 796939, Dep’t of Labor (Mar. 7, 2016); FOIA Request 2015-HQFO-00691, Dep’t of Homeland Sec. (Sept. 22, 2015); FOIA Request F-2015-12930, Dept. of State (Sept. 2, 2015); FOIA Request HQ-2015-01689-F, Dep’t of Energy (Aug. 7, 2015); FOIA Request 2015-OSEC-04996-F, Dep’t of Agric. (Aug. 6, 2015); FOIA Request 15-05002, Sec. & Exch. Comm’n (July 23, 2015); FOIA Request 145-FOI-13785, Dep’t of Justice (Jun. 16, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm’n (Feb. 13, 2015); FOIA Request HQ-2015-00248, Dep’t of Energy (Nat’l Headquarters) (Dec. 15, 2014); FOIA Request F-2015-106, Fed. Commc’n Comm’n (Dec. 12, 2014); FOIA Request HQ-2015-00245-F, Dep’t of Energy (Dec. 4, 2014); FOIA Request LR-2015-0115, Nat’l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request GO-14-307, Dep’t of Energy (Nat’l Renewable Energy Lab.) (Aug. 28, 2014); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013).

¹⁰ See 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); *Chambers v. Dep’t of the Interior*, 568 F.3d 998, 1004-05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep’t of Commerce*, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).

CFPB FOIA Officer

April 2, 2018

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If you have any questions, please contact me at (202) 499-4232 or james.valvo@causeofaction.org. Thank you for your attention to this matter.



R. JAMES VALVO, III
COUNSEL & SENIOR POLICY ADVISOR

Pat.Erdenberger@noaa.gov

From: Pat.Erdenberger@noaa.gov
Sent: Saturday, November 12, 2011 12:14 PM
To: Katherine.Pease@noaa.gov
Cc: Samuel Chi; 'Marguerite Matera'; 'Chauncey Kelly'
Subject: Re: RE: UMS Policy IPT follow up meeting with GC / RM - CHAT policy decision

Hi Katherine,

If the chats are saved, they are likely to be at most preserved as Federal records, and at least, hold controlled electronically stored information (ESI). Saved chats would be subject to hold, preservation, collection, search, indexing, review and production; and the Federal Records Act.

If they are not saved, they are considered transient electrons, inaccessible, like our phone calls and voicemail and are not subject to discovery in DWH litigation nor the Federal Records Act.

A cut and paste, or a typed copy of, or a voice recording of a saved chat would be subject to hold, collection, search, indexing, review and production and the Federal records act as a "separate" and unique record. The chat and the cut and paste would constitute two unique records instead of one.

A cut and paste, or a typed copy of, or a voice recording of a transient chat would be subject to hold, collection, search, indexing, review and production and fall under the Federal records Act as a "separate" and unique record. The transient chat would not be recorded, therefore not constitute a Federal record.

The nightmare scenario of NOAA email would pale by comparison. A policy that disallows the use of chat in decision making and deliberation would be a good idea for NOAA management to consider. Email can be used as it is now to "confirm our discussion."

My thoughts, cheers, Pat

----- Original Message -----

From: Katherine.Pease@noaa.gov
Date: Monday, November 7, 2011 3:46 pm
Subject: Re: RE: UMS Policy IPT follow up meeting with GC / RM - CHAT policy decision
To: Samuel Chi <Samuel.Chi@noaa.gov>
Cc: 'Marguerite Matera' <Marguerite.Matera@noaa.gov>, 'Chauncey Kelly' <Chauncey.Kelly@noaa.gov>, 'Pat Erdenberger' <Pat.Erdenberger@noaa.gov>

> Would a "cut and paste" be changing the original metadata (I don't know > if "chats" have metadata like email). If yes, then cutting and pasting > is not a solution if we have lit holds, etc.

>

> ----- Original Message -----

> From: Samuel Chi <Samuel.Chi@noaa.gov>

> Date: Monday, November 7, 2011 1:23 pm
> Subject: RE: UMS Policy IPT follow up meeting with GC / RM - CHAT policy
> decision
>
>> Hi Marguerite,
>>
>> I agree that chats should not be captured as a default and it
>> sounds like we
>> have consensus that participants shouldn't be able to turn on
>> automatic chat
>> recording mid-way through. However, in a rulemaking context a chat
>
>> might have a substantive discussion of the salient issues. So it
>> might be useful
>> to "record" it. I recommend that we take a tack consistent with
>> NOAA GC's
>> administrative record guidance, as issued on January 16, 2009. We
>> ought to
>> allow participants to be able to cut and paste chat conversations
>> and place
>> them in to a memorandum that's a part of the action's "decision
>> file," ultimately intended for an administrative record. The way I
>> see it playing
>> out is that the chat would stay open in the browser window until
>> the user
>> closed it, giving the opportunity for a cut and paste. I suggest
>> that we
>> make sure we account for this "exception."
>>
>>
>>
>> Sam
>>
>>
>>
>> From: Stefan Leeb (Federal) [
>> Sent: Monday, November 07, 2011 3:56 PM
>> To: Marguerite Matera
>> Cc: Joseph Klimavicz; Chauncey Kelly; Marie Marks; Samuel Chi;
>> Andre.Sivels@noaa.gov; jdellanno@tempusnova.com; Kevin Donnelly;
>> JeremyWarren; Pat Erdenberger; Benjamin Friedman;
>> Katherine.Pease@noaa.gov Subject: Re: UMS Policy IPT follow up
>> meeting with GC / RM - CHAT policy
>> decision
>>
>>
>>
>> Thanks. I think we all agree on that. When you get back, we can
>> start discussing the ediscovery process, roles and responsibilities.
>

>>
>>
>>
>> Cheers.
>>
>> On Mon, Nov 7, 2011 at 3:50 PM, Marguerite Matera >> <Marguerite.Matera@noaa.gov> wrote:
>>
>> Stefan,
>> My recommendation is that NOAA follow GSA's lead, so that users are
>
>> NOTallowed the option of having a chat >> on the record. I believe that Pat Erdenberger said,
when we were
>> talkingabout this last week, that NARA >> also recommends against chats being on the record.
The NARA
>> recommendations should be dispositive for us.
>> As you suggested, the group can talk about this further when we
>> next meet.
>> --Marguerite
>>
>>
>>
>> Stefan Leeb (Federal) wrote:
>>
>> Marguerite,
>>
>>
>>
>> Since this does not contradict what the CIO council has previously
>> voted on,
>> I believe we do have consensus. We do need to make another related
>
>> decisionwhether or not to allow users to have the option to have a
>> chat be "on the
>> record" (GSA does not allow users to select this option). We can
>> discuss this in the meeting I have set up for next Wednesday. We
>> can also use this
>> time to discuss the eDiscovery process under UMS.
>>
>>
>>
>> Thanks for your time and consideration on this matter.
>>
>>
>>
>> Sincerely,
>>
>>
>>
>> Stefan
>>

>>
>>
>> On Fri, Nov 4, 2011 at 11:54 AM, <Marguerite.Matera@noaa.gov> wrote:
>>
>> Joe and Stefan,
>>
>> NOAA GC recommends this default setting: NOAA chats are not
>> recorded or
>> preserved.
>>
>> As you know there are many factors that lead GC to make this
>> recommendation.
>> If it turns out that there is not concensus with this
>> recommendation, I have
>> been asked by GC management to be sure that NOAA GC participates in
>
>> alldiscussions of the pros and cons with the decision maker(s). We
>> need to be
>> sure that individual or group understands the reason for GC's advice.
>>
>> Thanks.
>>
>> --Marguerite
>>
>>
>>
>> ----- Original Message -----
>> From: "Stefan Leeb (Federal)" <Stefan.Leeb@noaa.gov>
>> Date: Friday, November 4, 2011 10:46 am
>> Subject: UMS Policy IPT follow up meeting with GC / RM - CHAT policy
>> decision
>> To: Chauncey Kelly <Chauncey.Kelly@noaa.gov>, Marie Marks
>> <Marie.H.Marks@noaa.gov>, Marguerite Matera
>> <Marguerite.Matera@noaa.gov>, Samuel Chi <Samuel.Chi@noaa.gov>,
>> Andre.Sivels@noaa.gov,jdellanno@tempusnova.com, Kevin Donnelly
>> <Kevin.Donnelly@ertcorp.com>, Jeremy Warren
>> <Jeremy.Warren@noaa.gov>, Pat Erdenberger
>> <Pat.Erdenberger@noaa.gov>
>>
>>
>>
>>> Team,
>>>
>>> I would like to set up a 1 hour meeting for this coming week to >>> discuss the >>> chat policy.
>>>
>>> During our last meeting GC agreed to "discuss amongst
>> themselves" the
>>> chat
>>> policy question, and reach out to GSA to find out what they did
>> and why.

>>>
>>
>>> *I have set up a meeting on November 9th from 4-5pm in SSMC3
>> room 9622.
>>
>>> Please confirm that this will work for you. If not, please
>> propose
>>> alternate timeframes.*
>>
>>>
>>> The objective of this meeting is to look at the alternatives and
>>
>>> *make a
>>> decision.*
>>
>>>
>>> Thanks.
>>>
>>> On Thu, Oct 20, 2011 at 12:22 PM, Stefan Leeb (Government) <>>> stefan.leeb@noaa.gov>
wrote:
>>>
>>>> Meeting notes and action items are herein. These are DRAFT
>> meeting> notes,
>>>> I need to get them validated. Please let me know if anything
>> here> is
>>>> wrong, or if I missed any action items.
>>>>
>>>> Thanks!
>>>>
>>>> Date and Time: 10/20/2011 Notes Prepared By: Stefan Leeb
>>>>
>>>> Attendees NOAA: Stefan Leeb, Jeremy Warren, Andre Sivals
>> (Records),>> Marie Watts (Records), Marguerite Matera (GC),
>> Chauney Kelley (GC),
>>> Samuel
>>>> Chi (GC), ERT: Kevin Donnelly Unisys: Bob Brofft, Mary Carver >>> Tempus Nova: Joseph >>>
> Delanno Google: Other:
>>>>
>>>>
>>>> Purpose of Meeting Special meeting with NOAA General Counsel and >> Records >>>>
Management representatives to discuss specific policy issues.
>>>>
>>>> Agenda
>>>>
>>>>
>>
>>>> - Roll Call
>>>> - Text Chat - on or off the record by default >>>> - Retention settings for pail and Google
Message Discovery >>>> - Litigation hold processes and policies >>>> Notes
>>>>

>>>> - Special meeting with General Counsel and Records Manager >>>> - Meeting objective will cover Chat defaults, retention

>> settings

>>>> for mail/GMD, Litigation hold processes and policies

>>

>>>> - CIO council voted on chat policy - Off the record

>> (same as

>>

>>> GSA).

>>>> The current setting in CPANEL is that the default is >>> currently ON the >>>> record.

>>>> - Stefan suggests keeping CIO council policy, default

>

>> off> the

>>>> record, establishing a policy which states that users >>> shall not use chats >>>> which would violate records management policy. There

> is

>>> no way to enforce

>>>> chats staying on the record, but you CAN enforce that

>

>> all> chats must be off

>>>> the record (verify).

>>

>>>> - 2 default settings: Domain level (for everyone) either

>>

>>>> on or

>>>> off the record, and user level, but in either case

>> can be

>>> overridden by

>>>> user for individual chat sessions.

>>

>>>> - "On the record" chats are saved in email, but NOT

>>

>>>> currently in

>>>> GMD, though Google is saying that chats will

>> eventually be

>>>> captured in GMD.

>>

>>>> - Forcing everyone to have chats on the record will most >> likely

>>

>>>> encourage users to either not use it, or worse, use >>> another text messaging >>>> service.

>>>> - IF policy is to require chat for everyone, anything

>

>> captured>> by chat is FOIAble, and given the

>> conversational nature of

>>> chat, many could

>>>> be taken out of context, or may include information we >>> probably do not want >>>> captured.

>>

>>>> - Google information on Chat History (global setting):

>>>>

>>>> - AI - GC / UMS team to review Google documentation
>> on chat
>>
>>>> usage/options and will have internal discussions. We
>
>> will> have a follow up
>>>> meeting to discuss in a few weeks.
>>
>>>> - AI - ERT to find out additional technical
>> information on
>>
>>>> how
>>>> individual chat sessions are stored with the various >>> states (on/off the >>> record) for
each chat participant.
>>
>>>> - Postini/GMD and Gmail retention periods- GSA is
>> currently 6
>>
>>>> months (decided email is not a long term system of record).
>>>> Per Pat
>>>> Erdenberger, since there is no records schedule for >>> electronic records at >>>> NOAA, all
email must be kept indefinitely. Once NOAA
>> has an
>>>> ERMS, we can
>>>> revisit this.
>>
>>>> - eDiscovery - Will need to spend more time discussing this
>>
>>>> as we
>>>> ran out of time.
>>
>>>> - GMD gives us greater power for eDiscovery -
>> simple/fast
>>>> searches with fast results. Whoever has access to
>> GMD may
>>>> have access to
>>>> all mail in system.
>>
>>>> - We can continue to use our existing processes, but
>> will> have
>>>> more options.
>>>> - AI - GC to develop use cases which UMS/MOC team can
>
>> develop
>>>> processes for.
>>>> -
>>>>
>>>>
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>>>>

>>>> Stefan Leeb
>>>>
>>>> Program Manager, NOAA OCIO
>>>>
>>>> Silver Spring, MD
>>>>
>>>> 301-628-5709 ofc
>>>>
>>>> 240-429-0619 cell
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>>> Stefan Leeb
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>>> Program Manager, NOAA OCIO
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>> the named recipients. It contains information that may be
>> confidential, privileged, attorney work product, or otherwise
>> exempt from
>> disclosure under applicable law. If you have received this message >> in error, are not a named
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>>
>> --
>> Marguerite Matera
>> Senior Attorney
>> GCNR
>> Phone: 978 281 9231 <tel:978%20281%209231>
>> Fax: 978 281 9111 <tel:978%20281%209111>
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>> Stefan Leeb
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----- Forwarded message -----

From: **Travis Lewis - H1F** <travis.lewis@gsa.gov>

Date: Mon, Mar 5, 2018 at 11:01 AM

Subject: Re: Conversation Summary

To: Bob Stafford - H1 <bob.stafford@gsa.gov>

Cc: Chris McFerren - IAG <chris.mcferren@gsa.gov>, Elizabeth DelNegro <elizabeth.delnegro@gsa.gov>, Mike Seckar - IA <mike.seckar@gsa.gov>, Derrick Rogers <derrick.rogers@gsa.gov>

Good morning,

Yes, this is an accurate summary. The other take-away from this meeting was that when OAS-FOIA needs to pull from Slack we are to stipulate this specifically in the e-discovery pull request to OCIO to search Slack.

Thanks for the summary Chris.

Travis Lewis

Director

GSA, OAS, Office of Freedom of Information Act and Records Management

O: 202-219-3078 C: (b) (6)

"GSA's mission is to deliver the best value in real estate, acquisition, and technology services to government and the American people."

On Mon, Mar 5, 2018 at 10:52 AM, Bob Stafford - H1 <bob.stafford@gsa.gov> wrote:

Hi Chris -

that matches my recollection of the meeting. I think OAS' take away was that we needed to update our records management guidance to inform GSA personnel about the process you mention regarding capturing any records that may be created in Google Hangouts. Travis, does that match up with your understanding?

Bob

On Mon, Mar 5, 2018 at 9:53 AM, Chris McFerren - IAG <chris.mcferren@gsa.gov> wrote:

Bob and Travis,

Good morning.

I am looking to document the outcome of our recent conversation on the subject of eDiscovery and Google Hangouts. I would appreciate the benefit of your review and input to confirm I have accurately captured the key components of our conversation.

Thank you.

Meeting

Date: February 15, 2018

Time: 8:00 - 8:30AM ET

Topic: Guidance re:Capturing Google Chat/Slack Records

Attendees:

Robert Stafford, Associate Administrator, Office of Administrative Services (Acting)

Travis Lewis, Director, Freedom of Information Act and Records Management Division

Elizabeth DelNegro, Associate CIO, Office of Corporate IT Services

Mike Seckar, Deputy Associate CIO, Office of Corporate IT Services
Chris McFerren, Director Enterprise Systems Support Division
Derrick Rogers, Google Subject Matter Expert

Background:

OGC inquired about GSA-IT processing eDiscovery search requests against content stored in Slack. GSA-IT stated that while it has the capability to process eDiscovery search requests it does not process as a matter of course those searches against Slack as part of a search for email. OGC misinterpreted that response as GSA-IT does not have eDiscovery search capability for Slack. That triggered a discussion within GSA-IT about other systems/services/solutions for which we do/do not have eDiscovery search capability. Google Hangouts is one of those services.

Liz DeINegro requested this meeting to discuss GSA-IT's obligations to perform eDiscovery searches against Google Hangouts and indirectly the need to activate the History feature for the GSA.gov domain.

Outcome:

It was decided that, due to the temporary/transient nature of typical conversations, 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 result would not produce any discoverable content. If in the unlikely event someone feels a conversation conducted via Hangouts is a record, that person should take appropriate measures to preserve that content in accordance with their personal records management plan.

Regards,

Chris McFerren
Director, Enterprise Systems Support Division (ICE)
Office of Corporate IT Services
GSA IT
O: [202-273-3591](tel:202-273-3591) | C: (b) (6)
chris.mcferren@gsa.gov



U.S. General Services Administration
Office of Inspector General

MAY 16 2018

R. James Valvo III
1875 Eye Street NW, Suite 800
Washington, DC 20006
james.valvo@causeofaction.org

Re: Freedom of Information Act Request (OIG Tracking Number 18-056)

Dear Mr. Valvo:

This is in response to your Freedom of Information Act (FOIA) request to the General Services Administration (GSA), dated April 2, 2018. On April 13, 2018, the GSA FOIA office forwarded your request to the GSA Office of the Inspector General's (GSA OIG) FOIA office to search the GSA OIG records for responsive documents and directly respond to your request. Your request stated:

"... CoA Institute hereby requests access to the following records:

1. All records regarding General Services Administration policies on the retention, management, and/or administration of electronic (i.e., instant) messages, including but not limited to protocols such as SMS, MMS, Skype, Windows Messenger Service, XMPP, iMessage, Signal, BBM, etc.
2. All records regarding General Services Administration policies on employee use of electronic (i.e., instant) messaging.
3. All records related to receipt, implementation, or compliance with NARA Bulletin 2015-02.
4. All records reflecting the electronic messaging systems installed on General Services Administration devices, including desktops, laptops, tablets, phones, and other mobile devices. Installed messaging systems include, but are not limited to, Google Hangouts, iMessage, Android Messages, Skype, Wickr Me, What's App, GroupMe, Allo, BlackBerry Messenger, Signal, Snapchat, Facebook Messenger, etc.
5. All records reflecting whether General Services Administration has enabled automatic electronic message archiving, indexing, and

eDiscovery features on instant messaging platforms in use. For example, "History On/Off" in Google Hangouts or "Incognito Mode" in Allo.

The time period for all above items is July 29, 2015, the date of issuance of NARA Bulletin 2015-02, to present).¹ This request only seeks access to records related to electronic (i.e., instant) messaging, using protocols such as those listed in Item #1, and does not seek records related to traditional, standalone email systems, unless those systems have built-in instant messaging capability or if electronic records are being managed together under a "Capstone" approach. The term "all records" includes, but is not limited to, policy memoranda, guidelines, handbooks, contracts, agreements/memoranda of understanding, or correspondence.

6. In addition, (i) the ten most-recently generated electronic (i.e., instant) messages prior to the date of this request and, (ii) the first ten electronic (i.e., instant) messages generated on or after July 29, 2015, from each of the following components:

- Office of Strategic Communication
- Office of Congressional and Intergovernmental Affairs
- Office of Corporate IT Services
- Office of Public Buildings Service
- Office of Human Resources Management"

Upon review of the responsive material, I determined you are entitled to portions of the requested material under the FOIA. The bases for any redacted or withheld information is Exemption 7(E) of the FOIA.

Exemption 7(E) protects law enforcement records if their release would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law.

Please note OIG Policy Manual Section 805.03 references the reader to "Section XXX". "Section XXX" is OIG Policy Manual Section 407.06 which we have provided you.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirement of the FOIA. See 5 U.S.C. §552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirement of the FOIA. This is a standard notification that this office provides to all our requesters. You should not take it as an indication that excluded records do, or do not exist.

¹ Footnote omitted.

You have the right to file an administrative appeal within 120 days of the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. The appeal must be in writing, include the GSA OIG FOIA Case Number (18-056), and contain a statement of reasons for the appeal. In addition, please enclose a copy of the initial request. The envelope and letter should be clearly marked as a "Freedom of Information Act Appeal" and addressed as follows:

Freedom of Information Act Officer
 Office of the Inspector General, General Services Administration
 1800 F Street, NW, Room 5332
 Washington, D.C. 20405

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you can contact our FOIA Public Liaison Kenneth Sharrett for assistance at:

Office of the Inspector General, General Services Administration
 1800 F Street, NW, Room 5332
 Washington, D.C. 20405
 (202) 501-1932
oigfoia-privacyact@gsaig.gov

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
 National Archives and Records Administration
 8601 Adelphi Road--OGIS
 College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
 202-741-5770
 877-684-6448

Sincerely,



Edward J. Martin
 Counsel to the Inspector General
 (FOIA Officer)

Enclosures

407.05 Approved Storage Systems

OIG components must designate the official file system (storage location) for every record that the component creates or receives. Key OIG approved file systems include the following:

- IBM Notes mailbox and Archive/Capstone Vault
- E-IDEAS;
- TeamMate;
- Counsel Information System (CIS);
- Local shared drives (if approved by an OIG office head as an official repository for records);
- Individual network drives, as approved by supervisors in those instances in which sensitive materials must not be accessible by other members of an office (e.g., a supervisor's materials regarding employee performance or discipline, or electronic leave submissions);
- Certain GSA-operated systems, such as Pegasys (financial records) and ConcurGov (travel records);
- Portable media (CDs, DVDs and flash drives) if approved by a component head; and
- File cabinets for paper files.

The following media do not constitute approved file systems and cannot be used to store records:

- Voicemail inboxes; and
- Portable electronic communications devices (i.e., text or SMS messages).

407.06 Transfer of Records to Official File Systems

If an employee receives or creates a record using a non-approved file system, the employee must transfer the record to an approved system. The preserved record must contain all pertinent information, including metadata, needed to meet agency business needs, such as the names of the sender and all participants, the date, and any attachments that are an integral part of the record. These documents (when they are official records) should be transferred as follows:

- Email: employees should save emails (or printed or PDF copies of emails) in an official file system.
- Instant messaging: employees should save the conversation into an official file system by selecting "Save Chat As..." from the IM window's "File" menu as soon as they have completed the conversation. (This method preserves more metadata than saving the text of the conversation in a Word document.)
- Text messaging, BlackBerry and iPad documents: employees should email copies of conversations to themselves as soon as the conversation or document is finished, and save the email in an official file system.
- Digital photography: employees should send photographs to themselves via email, and save the email in an official file system.
- Video chatting and Video Conferencing (VTC): at this time, these materials are not preserved, with the exception of employee training presentations. JPM assistance is necessary to record training presentations.
- Voicemail messages: employees should save digital voicemail messages that constitute official agency records as digital recordings in an official file system, with the assistance of JPM. If the message is in an analog voicemail system (i.e., on a phone that does not have VOIP), the employee should transcribe the content of the message and save the transcription in an official file.
- Portable media and items on network and hard drives: except where these media are part of an office's approved method of maintaining official files, employees should transfer records stored on these media into an official file system.
- Other platforms, including web-based: employees should save these materials in the format best suited to preserve the entire content (i.e., pasting text into a document; making a screen capture; saving a webpage using the "Convert Web Page to PDF" tool; etc.), and save the material in an official file system.

Because many electronic media are transient, and because employees may not remember to transfer records if they delay in doing so, employees who use portable electronic devices to conduct substantive agency business should preserve them as soon as possible or at the latest within five workdays of creation or receipt.

Effective Date 5/3/2017

502.00 USE OF AGENCY OFFICE EQUIPMENT

Pursuant to a GSA Order, ADM 7800.11, (link made) GSA employees are authorized to use agency office equipment for personal use under certain conditions. Specifically, an employee can use office equipment on an occasional basis if the use involves minimal additional expense to the Government (for example, small amounts of paper) and does not interfere with official business. The personal use of agency equipment should occur during personal time and not during official time. An employee who exceeds the limits for personal use of agency equipment as set out in the Order may violate the government-wide standard of conduct relating to misuse of position. Employees should also understand that, notwithstanding the policy allowing some personal use of office equipment, there is no expectation of privacy with regard to any electronic message sent through Government-provided messaging services.

805.03 Instant Messaging

Instant Messaging shall not be used to conduct official business. Further, instant messages shall not be maintained in our official system of records. Instant messages and instant messaging histories should be deleted (see Section XXX).

901.06 Policy Regarding Maintenance of Investigation Records in Anticipation of Litigation and Potential Discovery

The OIG follows the guidance issued by the Department of Justice on discovery, including the January 4, 2010, Guidance for Prosecutors Regarding Criminal Discovery, set forth at [Figure 901-09](#), and the March 30, 2011, Guidance on the Use, Preservation, and Disclosure of Electronic Communications in Federal Criminal Cases, set forth at [Figure 901-10](#). Essentially, SAs should think about the content of any form of e-communication before sending it; use appropriate language; think about whether e-communication is appropriate to the circumstances, or whether an alternative form of communication is more appropriate; and determine in advance how to preserve potentially discoverable information. (“E-communication” as used herein includes emails, text messages, instant messages, voice mail, blogs, social networking sites, and other means of electronic communication.) Some of the main points concerning discovery and the requirement to preserve documents, in both civil and criminal cases, are outlined below.

901.06B Policy

It is not always possible for SAs to know in advance whether an investigation will lead to civil or criminal action, who the defendant will be, or what information will appear exculpatory at the time of trial. Therefore, SAs should treat all information as though it may be subject to production in criminal or civil discovery, including weekly, significant item, and semiannual reports.

SAs should preserve all copies of statements made by any person (witness, subject, or SA) relating to the matter under investigation. This includes SAs' notes of witness statements, MOIs, email messages, audio or video recordings in original format, and all other material conveying any person's statements.

Communications over email regarding the matter under investigation should be saved in (b) (7)(E) or otherwise made part of the SA's permanent file. Retaining emails in the SA's inbox is not sufficient.

Substantive communications using a transitory medium (instant messaging, voicemail, text message) should be permanently saved to the case file. Instant messages can be copied and saved in a Word document; text messages can be emailed and the emails saved; and voicemail messages can be saved as digital audio files. Alternatively, SAs may write down the statements made over these media, in which case the date and speakers should be included.

SAs also should preserve all e-communications sent to or received from potential witnesses who are not law enforcement personnel, regardless of content.

SAs should write down the substance of all oral conversations or statements regarding the subject matter of the investigation (for example, a phone call with a witness) as soon after the statements were made as possible, noting the date, time, and speaker. All potentially discoverable information must be preserved, regardless of whether the communication is written or oral.

When discussing investigations in any medium, and especially any written medium, SAs should express their thoughts with the expectation that a complete copy of what they say or write will eventually be provided to the defendant. Therefore, editorial comments, exaggerations, comments suggesting personal hostility, or other excessive or unprofessional content are not acceptable.

SAs should avoid making predictions about the outcome of a case or speculating about evidence when discussing the case with any witness, or over any written medium.

National Aeronautics and Space Administration



Headquarters

Washington, DC 20546-0001

August 21, 2018

Office of Communications

James Valvo, III
1875 Eye Street, NW
Suite 800
Washington, DC 20006
James.valvo@causeofaction.org

FOIA: 18-HQ-F-00487

Dear Mr. Valvo:

This letter shall serve as NASA's final response to your Freedom of Information Act (FOIA) request dated April 2, 2018, and received April 10, 2018, at the NASA Headquarters FOIA Office. Your request was assigned FOIA Case Number 18-HQ-F-00487 and was for:

1. All records regarding National Aeronautics and Space Administration policies on the retention, management, and/or administration of electronic (i.e., instant) message, including but not limited to protocols such as SMS, MMS, Skype, Windows Messenger Service, XMPP, iMessage, Signal, BBM, etc.
2. All records regarding National Aeronautics and Space Administration policies on employee use of electronic (i.e., instant) messaging.
3. All records related to receipt, implementation, or compliance with NARA Bulletin 2015-02.
4. All records reflecting the electronic messaging systems installed on National Aeronautics and Space Administration devices, including desktops, laptops, tablets, phones, and other mobile devices. Installed messaging systems include, but are not limited to, Google Hangouts, iMessage, Android Message, Skype, Wickr Me, What's App, GroupMe, Allo, Blackberry Messenger, Signal, Snapchat, Facebook Messenger, etc.
5. All records reflecting whether National Aeronautics and Space Administration has enabled automatic electronic message archiving, indexing, and eDiscovery features on instant messaging platforms in use. For example, "History On/Off" in Google Hangouts or "Incognito Mode" in Allo. The time period for all above items is July 29, 2015, the date of issuance of NARA Bulletin 2015-02, to present. This request only seeks access to records related to electronic (i.e., instant) messaging, using protocols such as those listed Item #1, and does not seek records related to traditional, standalone email systems, unless those systems have built-in instant messaging capability or if electronic records are being

managed together under a "Capstone" approach. The term "all records" includes, but is not limited to, policy memoranda, guidelines, handbooks, contracts, agreements/memoranda of understanding, or correspondences.

6. In addition, (1) the ten most-recently generated electronic (i.e., instant) Message prior to the date of this request and, (ii) the first ten electronic (i.e., instant) message generated on or after July 29, 2015, from each of the following components:

- Office of Communications
- Office of Legislative Liaison
- Office of Chief Information Officer
- Office of Chief Scientist
- NASA Management Office

To the extent that you have any questions about the scope of this request, CoA Institute is happy to discuss the matter with the FOIA officer processing this request and encourages you to contact us.

On May 3, 2018 we provided our first interim response for items 1 – 3 of your request. Per your agreement and your email correspondence of May 14, 2018 wherein you provided 20 names of instant messaging platforms, a second interim response was issued on June 28, 2018, by releasing a table which provided the number of times the named instant messaging platforms were downloaded on desktop and laptop computers.

With this letter, we are also providing you a no records response to item 5 of your FOIA request, wherein you sought records that reflect whether or not NASA has enabled automatic electronic message archiving, indexing, and eDiscovery features on any instant messaging platforms that may be in use. The staff member at the program office (OCIO) knowledgeable about this information explained that our current enterprise IM platform, Skype for Business, has the functionality for archiving instant messages, however, it is a user selected option and is not turned on by default.

Additionally, we are providing a full response to item 6 of your FOIA request. Per our telephone conversation of July 10, 2018, and subsequent emails, you agreed to have members of the Senior Executive Service and the Division Heads of the Offices you named for item 6 and dates you identified in your original request to search for responsive records. We have received the search results from these offices and are providing their responses in tabular form:

Staff Name and Title	Office	Mobile Application Installed? (Y or N)	Responsive Records? (Y or N)
Rebecca Lee, Acting Associate Administrator	Legislative and Intergovernmental Affairs	YES – Imessage pre-installed on Iphones, MS Office with Skype pre-installed on laptop, Cisco Jabber pre-installed on laptop	YES
Maureen Muncy, Director, LRAD	Legislative and Intergovernmental Affairs	YES, MS Office with Skype pre-installed on laptop, Cisco Jabber pre-installed on laptop	NO
Chris Flahery, Director, Legislative Liaison	Legislative and Intergovernmental Affairs	YES, MS Office with Skype pre-installed, Cisco Jabber pre-installed on laptop	NO
Brandon Eden, Director, Outreach,	Legislative and Intergovernmental Affairs	YES, Imessage pre-installed on Iphones, MS Office with Skype pre-installed on laptop, Cisco Jabber pre-installed on laptop	YES
Keith A Bluestein, Associate CIO Enterprise Services and Integration	Office of Chief Information Officer	YES, Imessage pre-installed on Iphones and also downloaded on laptop, MS Office with Skype pre-installed on laptop, Skype for Business , Cisco Jabber, pre-installed on laptop	YES
Leigh Anne Girdali, Associate CIO. Business Management Division, NASA's OCIO	Office of Chief Information Officer	YES, Skype for Business, Cisco Jabber pre-installed on laptop,	YES
Terry Jackson, ACIO, Technology, Data, and Innovation	Office of Chief Information Officer	YES, Imessage pre-installed on Iphones, Skype for Business, MS Office with Skype pre-installed on laptop, Cisco	NO

		Jabber pre-installed on laptop	
Renee P. Wynn, NASA Chief Information Officer,	Office of Chief Information Officer	YES, Skype for Business	YES
Allard Beutel, News Chief	Office of Communications	YES, Imessage pre- installed on Iphones, Skype for Business, Cisco Jabber pre- installed on laptop	YES
Bill Barry, Chief Historian	Office of Communications	YES, Imessage pre- installed on Iphones, Skype for Business, Cisco Jabber pre- installed on laptop	NO
Bob Jacobs, Deputy Associate Administrator	Office of Communications	YES, Skype for Business, Cisco Jabber pre-installed on laptop, SnapChat	NO
Cheryl Hurst, Director, Communication and Public Engagement Directorate	Office of Communications	YES, Skype for Business, Cisco Jabber pre-installed on laptop	NO
Cindy Steele, NASA Public and Stakeholder Engagement Division Chief	Office of Communications	YES, Skype for Business	YES
John Yembrick, Director of Digital Communications & Strategy	Office of Communications	YES, Imessage pre- installed on Iphones, Skype for Business, SnapChat	YES
Nikki Gramian, Principal Agency FOIA Officer	Office of Communications	YES, Imessage pre- installed on Iphones, Skype for Business, Cisco Jabber pre- installed on laptop	NO
Marcus A. Watkins, Director, NASA Management Office	NASA Management Office	YES, Imessage pre- installed on Iphones	YES
Jen-Chow Duh, Deputy Director, NASA Management Office	NASA Management Office	YES, Imessage pre- installed on Iphones, Skype for Business	YES

James Green, Chief Scientist	Office of the Chief Scientist	YES, Imessage pre-installed on Iphones, Skype for Business	YES
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The search of the officials within these offices located 93 pages of records. We are releasing 83 pages to you in full and 10 pages in part. Information withheld from these pages consist of personal conversations with family members or non-government officials. NASA considers these withheld text messages non-records and/or exempt under FOIA Exemption 6. The messages withheld are of a private nature that do not relate to or have an effect upon the conduct of NASA business.

Exemption 6, 5 U.S.C. § 552(b)(6)

Exemption 6 allows withholding of “personnel and medical files and *similar files* the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” See 5 U.S.C. § 552(b)(6)(emphasis added). NASA is invoking Exemption 6 to protect conversations between family, friends and acquaintances; a phone number not listed in the NASA directory; the identity of a job candidate; and a discussion regarding options for performance awards, and has determined the privacy interest is greater than the interest in disclosure. After consultation with the Office of the General Counsel, I am the official responsible for the information withheld in this request.

Appeal Rights

You have the right to appeal this response. If you choose to exercise your appeal rights, please submit your appeal within 90 days from the date of this letter. Your appeal must be in writing and should be addressed to:

Administrator
NASA Headquarters
Executive Secretariat
MS 9R17
Washington, DC 20546
ATTN: FOIA Appeals

Your appeal should be marked “Appeal under the Freedom of Information Act” both on the envelope and the face of the letter. A copy of your initial request along with a copy of this correspondence and any other correspondence with the FOIA office must be enclosed. In order to expedite the appellate process and ensure full consideration of your appeal, your appeal should also contain a brief statement of the reasons you believe this response to be in error.

Prior to filing an appeal, you may contact NASA’s Principal FOIA Officer/Chief FOIA Public Liaison, Nikki Gramian, via telephone at 202-358-0625 or via e-mail at Nikki.N.Gramian@NASA.gov to obtain further assistance or seek dispute resolution services for

any aspect of your request. You may also send correspondence to Ms. Gramian at the following address:

National Aeronautics and Space Administration (NASA)
Freedom of Information Act Unit
NASA Headquarters
Attn: Nikki Gramian
Principal Agency FOIA Officer
300 E Street, S.W., 5P32
Washington D.C. 20546
(Fax) 202- 358-4332

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
[Telephone: \(202\) 741-5770](tel:(202)741-5770)
[Toll free: 1-877-684-6448](tel:1-877-684-6448)
[Fax: \(202\) 741-5769](tel:(202)741-5769)

Important: Please note that contacting any agency official including the undersigned or NASA's Principal FOIA Officer and/or OGIS referenced above is not an alternative to filing an administrative appeal and does not stop the 90 day appeal clock.

This concludes our response to this request. If you have any questions, please feel free to contact us at hq-foia@nasa.gov or (202) 358-1030, or you may contact Nikki Gramian, Principal Agency FOIA Officer and Chief FOIA Public Liaison at nikki.n.gramian@nasa.gov or (202) 358-0625.

Sincerely,



Robert Young
FOIA Officer
Headquarters, Office of Communications



United States Department of Agriculture

United States
Department of
Agriculture

Office of the Chief
Information Officer

1400 Independence
Avenue SW
Washington, DC
20250

July 27, 2018

Delivered via Electronic Mail

R. James Valvo, III
Cause of Action Institute
1875 Eye Street, NW, Suite 800
Washington, DC 20006
james.valvo@causeofaction.org

Re: Interim Response for Freedom of Information Act (FOIA) Request No. 2018-DA-03876-F

Dear Mr. Valvo:

This is a Departmental FOIA Office's (DFO) interim response to the above-referenced FOIA request, seeking the following records:

1. All records regarding Department of Agriculture policies on the retention, management, and/or administration of electronic (i.e., instant) messages, including but not limited to protocols such as SMS, MMS, Skype, Windows Messenger Service, XMPP, iMessage, Signal, BBM, etc.
2. All records regarding Department of Agriculture policies on employee use of electronic (i.e., instant) messaging.
3. All records related to receipt, implementation, or compliance with NARA Bulletin 2015-02.
4. All records reflecting the electronic messaging systems installed on Department of Agriculture devices, including desktops, laptops, tablets, phones, and other mobile devices. Installed messaging systems include, but are not limited to, Google Hangouts, iMessage, Android Messages, Skype, Wickr Me, What's App, GroupMe, Allo, BlackBerry Messenger, Signal, Snapchat, Facebook Messenger, etc.
5. All records reflecting whether Department of Agriculture has enabled automatic electronic message archiving, indexing, and eDiscovery features on instant messaging platforms in use. For example, "History On/Off" in Google Hangouts or "Incognito Mode" in Allo.
6. In addition, (i) the ten most-recently generated electronic (i.e., instant) messages prior to the date of this request and, (ii) the first ten electronic (i.e., instant) messages generated on or after July 29, 2015, from each of the following components:
 - Office of Communications
 - Office of Congressional Relations
 - Office of the Chief Information Officer

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- Office of Human Resource Management
- Office of the Chief Scientist

On May 4, 2018, you provided clarification regarding item 6 of your request. You advised DFO that you are seeking records of “electronic (i.e., instant) messages” from a person at each of the components identified, who uses some type of instant messaging. You expressed no preference as to whom those people might be and were flexible regarding the time frame originally indicated in the request, agreeing to accept a total of 20 messages from an individual within each of the components.

Your request is being processed under the FOIA, 5 U.S.C. § 552.

OSEC’s Departmental Policy Office has conducted a search for records responsive to items 1 and 2 of the request. The Policy Office develops and manages the Departmental Directives System, serving as the central control point for: ensuring compliance with regulatory agency policies; reducing overlapping and redundant policy creation efforts; and promoting compatibility and policy gap elimination between USDA agencies. This office maintains a system to provide nationwide access to all Departmental directives and provides training, consultation, and assistance to agencies in the development, clearance, and publishing of Department-level directives. Records totaling thirty-nine (39) pages have been identified as responsive to items 1 and 2 of the request. Of these, a record totaling three (3) pages has been sent for consultation to the Office of the General Counsel (OGC), as it is a record that originated with that component. OGC’s consultation response is pending. The remainder of the records are being released to you in their entirety, with no FOIA exemptions applied.

The Departmental Records Management Officer has also conducted a search for records responsive to item 3 of the request. USDA’s Record Management Program falls under the purview of the Office of the Chief Information Officer (OCIO), and the Departmental Records Management Officer carries out this role for USDA’s Departmental Administration (DA), which is the central administrative management organization. USDA Agency Records Officers create policies and procedures for managing agency records. They control, organize, direct, and train records management staff to achieve agency information resources goals and objectives. Agency Records Officers coordinate and promote records management programs with program officials, information resource managers, and senior agency management. Records totaling thirty (30) pages were identified as responsive to item 3 of the request. Twenty-eight (28) pages are duplicates of the records identified by the Departmental Policy Office, including the 3-page record that is pending consultation with OGC. The additional two (2) pages of responsive records are being released to you in their entirety, with no FOIA exemptions applied.

Inquiries were made to OCIO regarding items 4 and 5. OCIO is responsible for assuring that USDA information management is consistent with the principles of the Paperwork Reduction Act and with information security and privacy requirements. In this role, the OCIO manages: the official online repository of all USDA Departmental Regulations, Notices, Manuals, and Secretary Memoranda; the USDA Records Management Program; the USDA Forms Management Program; USDA Information Collection; USDA Policy and Directives Privacy Office; Information Quality Activities; and Section 508 compliance for electronic or information technology. DFO was advised that there are no records responsive to items 4 and 5. With regard to item 4, OCIO indicated that the only messaging system that CEC supports is Skype For

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Business. With regard to item 5, OCIO explained that because Skype is a peer-to-peer system, CEC does not have a system that preserves all messages. **But when the auto-save function is enabled in Skype, the conversation histories would be saved in a database that CEC is able to search, or in another location designated by the users.**

The DFO continues to process your FOIA request and will issue a final response. The final response letter will advise you of your right to appeal the DFO's final determinations.

If you have any questions regarding the processing of this request, please contact Ms. Camille Aponte at (202) 694-5960, or electronically at Camille.Aponte@ocio.usda.gov or USDAFOIA@ocio.usda.gov. For additional information regarding USDA FOIA regulations and processes, please refer to the information available online at www.dm.usda.gov/foia.

The DFO appreciates your patience as we continue processing the remainder of your FOIA request.

Sincerely,



Alexis R. Graves
Departmental FOIA Officer
Office of the Chief Information Officer

Enclosure: Interim Response Records (41 pages)