UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

DATE: OCTOBER 2, 2020 **PREPARED BY:** SA (b) (6), (b) (7)(C)

CASE #: OI-HQ-2020-ADM-0026 **CROSS REFERENCE #:**

TITLE: (b) (6), (b) (7)(C) SES (b) (6), (b) (7)(C), EPA

CASE CLOSING REPORT

Subject(s)	Location	Other Data
(b) (6), (b) (7)(C)	WASHINGTON, DC	N/A

VIOLATIONS/ALEGATIONS:

1. (b) (6), (b) (7)(C) directed EPA employees to delete official government records (emails);

2. (b) (6), (b) (7)(C) personally deleted official records (emails) in violation of 18 U.S. Code § 2071: Concealment, removal, or mutilation generally

FINDINGS:

(b) (6), (b) (7)(C) Office of Professional Responsibility received information from (b) (6), (b) (7)(C), Environmental Protection Agency (EPA), alleging (b) (6), (b) (7)(C), EPA, purposefully deleted (b) (6), (b) official EPA emails (epa.gov) and recommended that (b) (6), (b) (7)(C) also delete (b) (6), (b) office EPA emails. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) also told other EPA employees ((b) (6), (b) (7)(C), EPA; (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C), EPA) to delete their EPA emails. (b) (6), (b) (7)(C)

FINDINGs: An examination of (b) (6), (b) (7)(C) email account revealed numerous emails which appeared to be deleted from (b) (6), (b) EPA email account. (b) (7)(E)

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The deleted emails were examined by (b) (6), (b) (7)(C), Office of Counsel, EPA OIG who opined:

(b) (5) - ACP/DP

As a result, the deleted emails were forwarded to (b) (6), (b) (7)(C), the EPA's agency records officer. (b) (6), (b) (7 wrote in part:

> *"With respect to these records, which are email records, they would be covered under EPA's NARA-approved Capstone records schedule. On March 1, 2019, EPA launched Capstone for managing email records. Under Capstone, all employees,* (b) (6), (b) (7)(C) *, have 90 days from the date of the email to delete personal email, junk mail, and transitory records that are no longer needed for business use. After the 90 days, the remaining emails are kept for 10 years for most employees, or permanently for Capstone Officials….*
>
> *Transitory or non-substantive records are those of short-term (generally less than 180 days) interest, including in electronic form (e.g., e-mail messages), and that are not required to meet legal or fiscal obligations, or to initiate, sustain, evaluate, or provide evidence of decision-making. Transitory or non-substantive records are destroyed when no longer needed for business use, or according to agency predetermined time period or business rule. Examples of transitory or non-substantive records include, but are not limited to, messages coordinating schedules, appointments, and events; transmittal documents such as e-mail, letters, cover memos, and facsimile cover sheets that do not provide evidence of approval, concurrence, or decision-making, or include substantive comments;*

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received copies of circulated internal information such as agency instructions, notifications, circulars, newsletters, and email blasts to employees; messages received from agency distribution lists or listservs; and "to-do" or task lists and assignments.

Applying the definition of a "record," there were eight emails that would not be considered a record: numbers (b) (6), (b) (7)(C) [redacted]

Approximately 16 emails appear to be transitory records (short term records of 180 days or less which can be discarded when no longer needed for business use). The 16 transitory records are: (b) (6), (b) (7)(C) [redacted]. *The remaining emails would likely be considered records under the Capstone approach to email records management. I have limited my response to your question, which was to provide an opinion as to whether the documents are records. In your last email you asked about a course of action – to the extent you are asking whether a deletion of any particular record was authorized or not, such a determination would ordinarily require additional information and research in conjunction with the appropriate Records Liaison Officer. That determination would include, among other things, an assessment of whether any of these emails were in fact transitory or non-records, based on outside context not available to me."*

(b) (6), (b) (7)(C) [redacted] is no longer an EPA employee. Information and facts developed regarding this allegation were inconclusive as to whether the emails deleted by (b) (6), (b) (7)(C) [redacted] were official records.

Ultimately, based on the guidance provided by OIG counsel, the deleted emails were forwarded to the agency for consideration and appropriate action.

With the exception of the complainant, no current/former EPA employees contacted recall being directed by (b) (6), (b) (7)(C) [redacted] to delete emails. This allegation was not supported.

DISPOSITION:

The allegation (b) (6), (b) (7)(C) [redacted] may have directed other employees to delete emails was not supported by the facts gathered in this investigation.

This investigation was unable to definitively determine if (b) (6), (b) (7)(C) [redacted] deletion of emails within (b) (6), (b) [redacted] official email account constituted deletion of an official federal record. Therefore, the investigation to prove/disprove this allegation is considered inconclusive. The matter was referred to agency management for appropriate action, if any and is considered closed.

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