UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

DATE: February 11, 2022 **PREPARED BY:** (b) (6), (b) (7)(C)

CASE #: OI-HQ-2021-CCR-0075 **CROSS REFERENCE #:** COMP-2021-80

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

CASE CLOSING REPORT

Subject	Location	Other Data
(b) (6), (b) (7)(C) EPA (b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	Phone: (b) (6), (b) (7)(C) Email: (b) (6), (b) (7)(C)

VIOLATIONS:

1. 18 U.S. Code § 2071 – Concealment, removal , or mutilation generally
2. EPA Chief Information Officer (CIO) Directive 2155.4 – Interim Records Management Policy
3. EPA CIO Directive 2155.5 – Records Management Policy
4. Capstone Records Management System

ALLEGATION:

(b) (6), (b) (7)(C) EPA, (b) (6), (b) (7)(C) wrongfully deleted two (2) EPA official emails at the direction and request of a (b) (6), (b) (7)(C) representative, as well as acted as a "spy" on behalf of the chemical company ((b) (6), (b) (7)(C)

FINDINGS:

OI obtained and reviewed emails from (b) (6), (b) (7)(C) official EPA email account. A review of the emails did not yield the emails that were allegedly deleted. OI interviewed personnel from EPA's Office of Mission Support (OMS), Office of Information Technology Operations (OITO) to gain a better understanding of EPA's email retention policies and procedures. Due to (b) (6), (b) position in EPA, (b) (6), (b) (7)(C) emails are/were subject to permanent retention. OI was informed when an individual leaves the Agency, they (user) remain in the applicable policy and are moved to an inactive state; however, the emails are still maintained in accordance with the applicable policy. With respect to the two emails deleted by (b) (6), (b) (7)(C) it is possible those emails were maintained on the "back end". The emails would be stored in hidden (from the user) recoverable folders and could be retrieved in an eDiscovery search. However, this is dependent upon how the emails were deleted. If (b) (6), (b) (7) deleted those emails and selected "This will be permanently deleted", these items would not be retrievable.

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OI interviewed [redacted] who confirmed [redacted] deleted the emails as requested. [redacted] added there was a settlement meeting coming up (b) (6), (b) (7)(C) was the only EPA person on the emails. [redacted] stated they ([redacted] accidentally sent the emails to [redacted] instead of the lawyers as they were intended solely for inside their ([redacted] organization. (b) (6), (b) (7)(C) consulted with [redacted] Counsel, specifically [redacted] about what to do (b) (6), (b) (7)(C), (b) (5) [redacted] claimed no recollection of the contents of the two emails and didn't recall opening any of the attachments. [redacted] relayed [redacted] didn't recall ever, in [redacted] career, of being asked to delete emails other than the two previously referenced. [redacted] informed the conversation [redacted] had with [redacted] was over the phone and [redacted] didn't believe there was any email communication relative to same. [redacted] stated [redacted] may have something in [redacted] own records.

OI interviewed [redacted] who informed normally if [redacted] first response to an issue is oral, [redacted] usually confirms same with a written response (b) (6), (b) (7)(C) [redacted] stated [redacted] did not remember following up on this issue with others in the (b) (6), (b) (7)(C) due to the litigation hold involving [redacted] informed [redacted] had a vague recollection of having a 5-10 second discussion with [redacted] relative to the [redacted] email matter before dealing with another matter. [redacted] searched [redacted] emails and found nothing relative to this topic. [redacted] explained attorneys involved in litigation can lose their law license if they don't delete something like that, i.e., an email sent in error allegedly involving attorney/client privileged information. [redacted] informed it would fall under professional conduct obligations and an obligation to delete in such a circumstance. (b) (6), (b) (7)(C) However, [redacted] added [redacted] discussed this matter with (b) (6), (b) (7)(C) [redacted] (b) (6), (b) (7)(C), (b) (5) [redacted]

OI reviewed information provided by EPA's National Records Management Program (NRMP) and focused on a section entitled "Frequently Asked Questions About Email and Records". It was explained an email message is a record if it meets the definition of a federal record. An email record decision tree was included to assist employees in determining how to decide if an email is a record. Based on the information developed during the investigation and the utilization of the email record decision tree, the emails deleted by [redacted] would not meet the definition of a federal record for retention purposes and would be designated as "Nonrecord".

(b) (6), (b) (7)(C) [redacted]

DISPOSITION: Not Supported; Closed

As OI was unable to substantiate a crime had occurred, the matter was not presented for criminal or civil consideration. Based on interviews and record reviews, the allegation was deemed as not supported. No further action will be taken at this time. This investigation is closed in this office.

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