



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE CHIEF INFORMATION OFFICER

March 22, 2019

THE CHIEF INFORMATION OFFICER

Honorable Elijah Cummings
Chairman
Committee on Oversight and
Government Reform
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter regarding the U.S. Department of Education's (Department's or ED's) compliance with records management statutes and policies, including the Freedom of Information Act (FOIA) and the Federal Records Act (FRA). I am pleased to respond on behalf of Secretary Betsy DeVos, and am sending an identical response to Ranking Member Jordan.

As conveyed in the Department's response to the Committee's previous inquiry on September 25, 2017, the Department prioritizes transparency and records preservation. The Department remains strongly committed to these measures to ensure accountability to taxpayers.

Department records management policies prohibit the use of non-official email accounts to conduct government business.¹ All employees, both career and non-career, are required to abide by statutes and Department policy, and have been repeatedly instructed not to use personal email accounts for the conduct of government business.

As the Chief Information Officer and Senior Agency Official for Records Management at the Department, I supervise the extensive training and educational efforts that are provided to all Department staff, including non-career officials. As part of that training, all Department staff are instructed to use only their official email account to conduct governmental business. In addition, the Department has expressly briefed all incoming non-career employees on records management, including on this requirement. The mandatory online records training provided to all employees clearly and unambiguously states that official email must be used to conduct government business, and this instruction is prominently displayed on our internal website. We also inform departing employees about their responsibilities to ensure all Federal records are in the Department's possession prior to their exit.

While Department policy prohibits the use of personal email accounts to conduct government business, in the event that a Department employee creates or receives a Federal record in their personal email account, Department policy requires the employee to forward the record to the ED email system or print the record to paper for recordkeeping within 20 days (with the exception of Saturdays, Sundays,

¹ "Personal email accounts shall not be used for the conduct of government business." U.S. Department of Education, Administrative Communications System, Departmental Directive OM: 6-103, "Records and Information Management Program," Section II.A. (April 14, 2017) (hereinafter, "OM: 6-103").

and legal public holidays).² Additionally, if a record is created or received as an electronic message, it must either be forwarded to the ED email system by the individual user or captured as part of the ED network operations.³ Therefore, while Department policy prohibits the use of personal email accounts to conduct government business, the Department has established internal procedures for the preservation of any Federal records created or received using such personal email accounts.

The Department has only one alias email account, and it is used by the Secretary. Also, occasionally, staff members who identify by a name other than their full legal name such as by their middle name or a derivative of their first name may have an account set up to receive email under that name, so as not to confuse addressing. To illustrate by using a hypothetical, an employee whose legal name is Johnathan Richard Doe may receive email at an email address of "John.Doe@ED.gov" or "Richard.Doe@ED.gov." The Department manages Federal records created by use of these email accounts in accordance with its records management policies referenced above.

Additionally, the Department has instructed staff that they should not use instant messaging and text messaging communications tools on Department-owned technology or a Department-provided account to conduct official Department business.⁴ In instances where a text message may qualify as a record, the individual responsible must take steps to preserve the communication by forwarding it to the Department's email system for recordkeeping purposes.⁵ The Department offers technical support in the event an employee needs assistance in capturing and preserving a text message in the Department's email system.⁶ After ensuring the record's initial preservation, the Department would manage these records for the duration of their lifecycle based on its records management policies referenced above.

The Department prohibits the use on Department-issued smartphones of any applications that allow for the encryption or automatic deletion of messages. This prohibition was reaffirmed in a July 21, 2017, communication to all Department staff from the Department's Chief Information Officer.⁷ The Department's mobile device management software is designed not to allow for the download and use of these applications. The Department's Outlook email system offers an option of encrypting email, and Departmental policy requires that emails including sensitive information (such as social security numbers or information about data security of Department systems) be encrypted.

The Department has not made any substantive changes to the policies or directives referenced in your question since January 1, 2017 and therefore the policies referenced here and in the September 25, 2017 letter are consistent. However, our policies are under continual review and will be updated as necessary to reflect best practices of compliance.

I have enclosed a copy of the documents referenced herein as well as examples of training materials used to educate Department staff in the event you wish to read more about the Department's policies

² See *Id.*

³ *Id.*

⁴ "Users should not use [instant messages] or [text messages] to conduct official Department business." U.S. Department of Education, Offices of the Chief Information Officer, the General Counsel, and the Chief Privacy Officer, Joint Guidance on Instant Messaging and Text Messaging Pilot Program, Section III.

⁵ OM: 6-103, Section II.A.

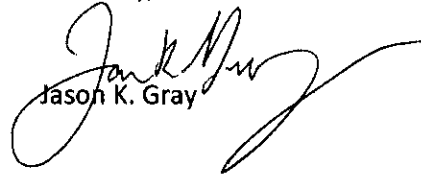
⁶ *Id.*

⁷ Memorandum from Jason K. Gray, Chief Information Officer, U.S. Department of Education on Prohibited Smartphone Applications to All ED Employees (July 21, 2017).

and efforts in this area. The Department remains strongly committed to ensuring it adheres to the FRA, FOIA, and sound records management policies and procedures.

The Department appreciates the opportunity to address your questions and to clarify any areas of concern. If you have any additional questions, please do not hesitate to contact me.

Sincerely,



Jason K. Gray





UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF LEGISLATION AND CONGRESSIONAL AFFAIRS

March 25, 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Government
Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Cummings:

The U.S. Department of Education (Department) has received your letter dated February 19, 2019, regarding the appointment of Philip Rosenfelt as the Acting Inspector General. I write to respond on behalf of Secretary Betsy DeVos. This letter supplements our response to your correspondence dated February 1, 2019, and I have sent identical responses to the cosigners of your letter. To assist with your review of this matter, the Department also encloses documents with pages marked "000001" to "000007."

The contention that this Department in any way has attempted to influence the work of its Office of Inspector General (OIG) in its review of the reinstatement of the Accrediting Council for Independent Colleges and Schools (ACICS) is not accurate. As the enclosed documents demonstrate, the Department considered and recommended the appointment of Philip Rosenfelt as Acting Inspector General well before Congress requested the Acting Inspector General to review the ACICS reinstatement in correspondence dated December 17, 2019 (December 17 Letter).

As you know, former Inspector General Kathleen Tighe announced her retirement on October 3, 2018. In accordance with the Federal Vacancies Reform Act of 1998, if a President-appointed, Senate-confirmed Inspector General retires, either the official previously serving as first assistant to that position or, at the direction of the President, an officer or employee of such Executive agency "shall perform the functions and duties of the vacant office temporarily in an acting capacity." To that end, the Department—specifically the former Chief of Staff and the former General Counsel—discussed options to fill the Inspector General position on an interim basis until the vacancy was permanently filled. The purpose was to ensure that the OIG benefited from stable, experienced leadership during that time of transition. Those discussions commenced in October 2018, with the Department deciding to recommend Mr. Rosenfelt to serve in this important role on an Acting basis well before the issuance of the December 17 Letter recommending a review of the Department's decision regarding reinstatement of ACICS.

The Department's decision arose entirely from Mr. Rosenfelt's distinguished public service career, his character and integrity, and his steady and experienced leadership. The Department did not consult with the Council of Inspectors General on Integrity and Efficiency (CIGIE) on the plan to designate Mr. Rosenfelt as the Acting Inspector General.

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www.ed.gov

It is not uncommon for the Department to communicate, including in writing, with the Office of the Inspector General. Written as a request, the January 3, 2019 letter deferred to the Acting Inspector General. It stated that if the Acting Inspector General determined a review of ACICS was warranted, the review should be balanced and thus examine the previous Administration's decision-making as well, given a federal judge found the previous Administration's denial of the ACICS petition to have been illegal. It also restated the position that the Department fully cooperates with OIG reviews. The letter concluded by acknowledging the decision of whether to do the additional review was the Inspector General's.

Simply put, the discussions regarding the Inspector General vacancy and the appointment of Mr. Rosenfelt as Acting Inspector General occurred months before Congress wrote the Department's Acting Inspector General about the decision to reinstate ACICS. The intent was to ensure stable leadership in the OIG until the nomination, confirmation, and appointment of a permanent Inspector General. The contention that the Department sought to influence the OIG in this instance through the recommended appointment of Mr. Rosenfelt is categorically incorrect.

The Department would be pleased to meet with you to discuss any additional questions that you may have. We appreciate the opportunity to respond.

Sincerely,



Peter L. Oppenheim
Assistant Secretary for
Legislation and Congressional Affairs

From: Simmons, Lee (Dougie) <LeeD.Simmons@ed.gov>
Sent: Wednesday, October 24, 2018 6:00 PM
To: Bailey, Nathan
Subject: FW: Political Staffing update

From: Venable, Joshua
Sent: Wednesday, October 24, 2018 6:00 PM
To: Ventimiglia, Eric; Simmons, Lee (Dougie)
Subject: Re: Political Staffing update

(b)(5); (b)(6)

From: Eric Ventimiglia
Date: Wednesday, October 24, 2018 at 5:56 PM
To: Joshua Venable , Dougie Simmons
Subject: Political Staffing update

Josh,

I have the following updates for you:

(b)(5); (b)(6)

Eric

Eric Ventimiglia
United States Department of Education
400 Maryland Avenue, SW | 7C111 | Washington, DC 20202
O: 202.453.6918.
E:

From: Venable, Joshua <Joshua.Venable@ed.gov>
Sent: Thursday, October 18, 2018 8:50 AM
To: Muniz, Carlos
Subject: Re: Vacancy

(b)(5)

On 10/17/18, 8:58 PM, "Muniz, Carlos" <Carlos.Muniz@ed.gov> wrote:

(b)(5)

Carlos

Sent from my iPhone.

From: Muniz, Carlos <Carlos.Muniz@ed.gov>
Sent: Thursday, October 18, 2018 12:02 PM
To: Venable, Joshua
Subject: RE: Vacancy

Yes

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

From: Venable, Joshua
Sent: Thursday, October 18, 2018 8:50 AM
To: Muniz, Carlos
Subject: Re: Vacancy

(b)(5)

On 10/17/18, 8:58 PM, "Muniz, Carlos" <Carlos.Muniz@ed.gov> wrote:

(b)(5)

Carlos

Sent from my iPhone

Ventimiglia, Eric

From: Rosenfelt, Phil
Sent: Wednesday, December 19, 2018 9:48 PM
To: Ventimiglia, Eric
Subject: RE: Follow up

Eric: Good evening. As promised, I have completed and sent to the White House, the documents I was asked to fill out. Please let me know if you have any questions. Thanks.

Phil

From: Ventimiglia, Eric
Sent: Friday, December 14, 2018 11:44 AM
To: Rosenfelt, Phil
Subject: RE: Follow up

Phil, you should be contacted soon (if you haven't been already) by the White House with a number of forms for you to fill out. Once they contact you, please try and complete these as soon as possible.

Thanks!
Eric

From: Rosenfelt, Phil
Sent: Tuesday, December 11, 2018 9:12 AM
To: Ventimiglia, Eric
Subject: RE: Follow up

Eric: Good morning. I appreciate the update. Please keep me posted. Thanks again and have a good day.

Phil

From: Ventimiglia, Eric
Sent: Monday, December 10, 2018 6:22 PM
To: Rosenfelt, Phil
Subject: RE: Follow up

Awesome, thank you Phil. I don't have any questions at this time – but please let me know if you have any questions as the week goes by. It is likely that we will still NOT be in a position to announce this Friday, but I'll keep you posted on that timing.

Eric

From: Rosenfelt, Phil
Sent: Monday, December 10, 2018 5:45 PM
To: Ventimiglia, Eric
Subject: Follow up

Eric: Good evening. I hope you had a good weekend.

I want to update you on my progress on EQIP and related security matters. I finished and submitted my EQIP information over the weekend—last night to be more precise. I also completed my fingerprinting on Friday, so all of my security information is in (including the blood test taken last Wednesday). Please let me if you have questions or need further information. Thanks.

Phil

From: Ventimiglia, Eric
Sent: Thursday, December 06, 2018 6:32 PM
To: Rosenfelt, Phil
Subject: RE: Follow up to my visit

No worries Phil I think there is agreement with your view on this – there'd be no reason to rush if a one week delay settles any outstanding concerns.

From: Rosenfelt, Phil
Sent: Thursday, December 06, 2018 6:30 PM
To: Ventimiglia, Eric
Subject: RE: Follow up to my visit

Eric: I appreciate your response, and your cooperation and assistance. If you hear about problems or receive pushback, please let me know. I do not want this to cause any difficulty. Thanks and have a good night.

Phil

From: Ventimiglia, Eric
Sent: Thursday, December 06, 2018 5:16 PM
To: Rosenfelt, Phil
Subject: RE: Follow up to my visit

Great! Glad to hear that. I received no pushback on the delay, so we are pulling from tomorrow's book. I am also confirming that the next book will indeed be next Friday, but I was told to operate on the assumption that it will be..

From: Rosenfelt, Phil
Sent: Thursday, December 06, 2018 5:12 PM
To: Ventimiglia, Eric
Subject: Follow up to my visit

Eric: I appreciated our discussion. I was able to download an archival copy of the previous investigation information; I found the right place to find it, and I apologize for not seeing it earlier. This will greatly help me complete the current e-QIP.

Please let me know if you have any questions. Thanks for your help on all of the matters we discussed.

Phil

From: Ventimiglia, Eric
Sent: Thursday, December 06, 2018 3:51 PM
To: Rosenfelt, Phil
Subject: Re: Call

I will be back in my office around 415, does that work for you?

Sent from my iPhone

On Dec 6, 2018, at 3:50 PM, Rosenfelt, Phil <Phil.Rosenfelt@ed.gov> wrote:

Eric: Good afternoon. I hope you are doing well. I had a couple of questions and wanted to give you a status on a couple of things we had been discussing. Can I call or stop by for a few minutes? Thanks.

Phil

Ventimiglia, Eric

From: Brinton, Jed
Sent: Tuesday, October 30, 2018 5:39 PM
To: Ventimiglia, Eric
Subject: Prior service of Acting IGs
Attachments: Past ED Acting IG prior service.docx

(b)(5)



Best,

Jed Brinton
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Washington, DC 20202
(w) 202-453-7004
jed.brinton@ed.gov