



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, DC 20202

October 24, 2017

Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform
House of Representatives
Washington, DC 20515

Dear Ranking Member Cummings:

Thank you for your letter to Secretary Betsy DeVos regarding the U.S. Department of Education's (Department's or ED's) records management policies and compliance with the Freedom of Information Act (FOIA) and the Federal Records Act (FRA). I am pleased to respond on behalf of the Secretary, and I am sending an identical response to Chairman Gowdy. As conveyed in the Department's response to the Committee's March 8, 2017, letter, the Department prioritizes transparency and preserving official records, and I am happy to provide you with additional information about ED's compliance with these requirements.

In response to question (1), Department records management policies prohibit the use of non-official email to conduct official business.¹ All employees, both career and non-career, have been instructed not to use personal email accounts for official business, and all Department staff members are expected to abide by this directive.

As the Acting Assistant Secretary for Management, 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 expressly 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 ED's possession prior to their exit.

While the direction is not to use personal email, ED's records management policies do provide instruction on how to preserve the email when an employee may inadvertently send or receive a communication through a non-official email account that would constitute a Federal record:

[I]f a Federal record is created or received in a personal email account, it shall be forwarded to the ED email system or printed to paper for recordkeeping within 20

¹ "Personal email accounts shall not be used for the conduct of government business." Departmental Directive OM: 6-103, "Records and Information Management Program" 4 (April 14, 2017).

days (with the exception of Saturdays, Sundays, and legal public holidays). If a Federal record is created or received as an electronic message, it shall either be forwarded to the ED email system by the individual user or captured centrally as part of network operations related to the ED network.²

The email would then be in ED's system and preserved and eventually disposed of in compliance with the Department's policies.³

In response to question (2), currently, the Department has only one alias email account, and it is used by the Secretary. Management of the Secretary's alias email account is consistent with the FRA and Department records management and retention regulations. 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 Jonathan 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.

In response to question (3), the Department has instructed staff that they should not use non-email electronic messaging technologies such as text messages and phone-based messaging to create and send official records.⁴ Employees are told to use email or written memoranda should they need to memorialize a Departmental record. Nonetheless, in instances where an instant message or text message may qualify as a record, the individual responsible must take steps to preserve the communication by forwarding it to ED's email system for recordkeeping purposes.⁵ ED offers technical support in the event an employee needs assistance in capturing and preserving a text message.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.

Question (3) also asks about encryption. The Department prohibits the use or download on Department-issued smartphones of any applications that allow for the encryption or automatic deletion of messages. This prohibition was recently 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.

² *Id.*

³ The Department's Records Management Disposition Schedule is available at: <https://www2.ed.gov/notices/records-management/index.html>

⁴ "Users should not use [instant messages] or [text messages] to conduct official Department Business." Joint Guidance on Instant Messaging and Text Messaging Pilot Program issued by the Office of the Chief Information Officer, the Office of the General Counsel, and the Office of the Chief Privacy Officer.

⁵ OM: 6-103 at 4-5.

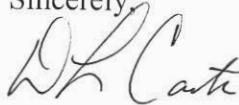
⁶ *Id.* at 5.

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).

In response to question (4), the Department has not made any changes to the policies or directives referenced in your question since January 1, 2017.

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 ED's policies and efforts in this area. I stress for you that the Department is strongly committed to ensuring it adheres to the FRA, FOIA, and sound records management policies and procedures. If you have any additional questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "DL Carter".

Denise L. Carter
Acting Assistant Secretary
for Management

Enclosures