

## BACKGROUND ON LOIS LERNER EMAILS

### Multiple Attempts to Recover Lost Emails

The IRS has provided Congress with contemporaneous emails from Lois Lerner showing that she reached out to IRS IT staff for help at the time and that they tried to recover her hard drive, but were unsuccessful. There is no evidence that this was a “nefarious” conspiracy, as Republicans have suggested.

- On July 19, 2011, Lerner emailed a career IT employee seeking help in recovering her emails: “I’m taking advantage of your offer to [try and recapture my lost personal files](#). My computer skills are pretty basic, so nothing fancy – but there were some documents in the files that are irreplaceable. Whatever you can do to help, is greatly appreciated.”
- The same day, the IT employee asked his staff to get help from the Field Director for the IT Division’s Customer Service Support, writing: “[If she can’t fix it nobody can.](#)”
- The Field Director explained in an email to Lerner: “I checked with the technician and he still has your drive. He wanted to [exhaust all avenues to recover the data](#) before sending it to the ‘hard drive cemetery.’ Unfortunately, after receiving assistance from several highly skilled technicians including HP experts, he still cannot recover the data.”
- On August 1, 2011, the Field Director tried one “last resort” to recover the data, sending the hard drive to the IRS’s Criminal Investigator’s forensics lab, which operates like an FBI forensics lab to recover data in criminal cases, writing: “As a [last resort](#), we sent your hard drive to CI’s forensics lab to attempt data recovery.”
- On August 5, 2011, the [Criminal Investigations forensics lab technicians](#) were also unable to recover the data. The Field Director explained: “Unfortunately, the news is not good. The sectors on the hard drive were bad which made your data unrecoverable. I am very sorry. Everyone involved tried their best.”

### Emails Routinely Lost in Bush Administration

Bush Administration officials lost millions of emails—including significant numbers of White House emails relevant to Congressional and criminal investigations:

- **House Oversight Committee Investigation of White House Records Retention:** Between [January 2003 and August 2005](#), there were 473 days in which a component of the Executive Office of the President had no e-mails preserved, and 229 days in which a component had an unusually low number of e-mails preserved on the server.
- **U.S. Attorney Firings:** In 2007, the White House [admitted](#) that it lost nearly 5 million emails between March 2003 and October 2005 related to allegations of the politically motivated dismissal of U.S. Attorneys. White House spokeswoman Dana Perino stated: “We screwed up, and we’re trying to fix it.” She also acknowledged that there were “a potential 5 million e-mails lost.”

- **Valerie Plame Leak Investigation:** In January 2006, special prosecutor Patrick Fitzgerald sought White House documents that had not been properly preserved related to the Valerie Plame CIA leak. In a [letter](#) on January 23, 2006, Fitzgerald wrote: “we have learned that not all e-mail of the Office of the Vice President and the Executive Office of the President for certain time periods in 2003 was preserved through the normal archiving process on the White House computer system.”
- **Torture Memo Documents:** In a [2009 report](#), the Department of Justice Office of Professional Responsibility found that email records had been deleted from two Bush Administration officials who prepared memoranda evaluating the legality of the use of torture. The Office of Legal Counsel stated that all of one official’s emails during the period when the classified “Bybee Memo” was completed had “been deleted and were reportedly not recoverable.”

In response to the loss of Lerner’s emails, Oversight Committee Chairman Darrell Issa accused the IRS of “[nefarious](#)” activity and [subpoenaed](#) the IRS Commissioner to a hearing with no notice. In contrast, during the [Oversight Committee’s investigation](#) in 2007, then-Chairman Waxman worked with the Bush Administration to improve its practices for preserving electronic records by holding bipartisan, monthly meetings throughout 2008 with the White House Counsel, the White House Chief Information Officer, and the Archivist of the United States.

### **Challenges with Government Email Preservation Are Not New**

- In 2008, the nonpartisan Government Accountability Office issued a [report](#) finding that the National Archives and federal agencies needed to strengthen their e-mail management systems. GAO found that senior officials at DHS, EPA, and HUD “did not consistently conform to key requirements” for email recordkeeping practices, and that there was “limited assurance that agencies are appropriately managing the records in their custody and that important records are not lost.”
- In 2010, Anne Weismann of Citizens for Responsibility and Ethics in Washington [testified before the Oversight Committee](#) that “examples abound of the widespread problems within the federal government in managing and preserving its electronic records.” Her organization revealed a “systemic failure of the Bush White House to preserve and manage its electronic records” and discovered that several agencies simply “have no way” of finding emails responsive to FOIA requests.
- On March 18, 2013, Oversight Committee Ranking Member Elijah Cummings introduced the [Electronic Message Preservation Act \(H.R. 1234\)](#) to require federal agencies to preserve email records electronically, improve the federal government’s ability to capture and archive electronic records created or sent by personal email accounts of federal employees, and require standards for the preservation and management of electronic messages that are presidential records. On June 25, 2013, the bill was reported out of the Committee on Oversight and Government Reform on a bipartisan basis, but the House has not taken up this legislation on the floor.