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# United States Senate

COMMITTEE ON  
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August 10, 2022

The Honorable Alejandro Mayorkas  
Secretary  
Department of Homeland Security  
3801 Nebraska Ave NW  
Washington, DC 20016

Dear Secretary Mayorkas:

I am writing to inquire about troubling reporting that the text messages of current and former senior officials at the Department of Homeland Security (DHS) have been deleted, as well as what appear to be irresponsible records management practices at the department that may violate the Federal Records Act (FRA). According to recent reporting, the DHS management division alerted DHS Inspector General (IG) Cuffari in February 2022 that text messages of former DHS Acting Secretary Chad Wolf and Acting Deputy Secretary Ken Cuccinelli, as well as current Deputy Under Secretary for Management, Randolph D. "Tex" Alles, had been erased.<sup>1</sup> I was encouraged to see that you have ordered the creation of a working group to address records management concerns in the wake of these deletions, and the complete preservation of data before resetting or replacing the mobile devices of senior officials and political appointees.<sup>2</sup> Still, the potential importance of the deleted messages to ongoing investigations of the January 6, 2021 attack on the U.S. Capitol, as well as their having been deleted during a presidential transition, makes their loss all the more concerning. While I recognize that you may not yet have been serving in your position at the time some of these deletions occurred, I appreciate you answering my questions on behalf of the department to the best of your ability.

The preservation of these text messages had been requested by Congress, and they were likely required to be preserved under the FRA.<sup>3</sup> National Archives and Records Administration

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<sup>1</sup> *Missing: More January 6 Texts Sought by Congress*, Project On Government Oversight (July 28, 2022) (<https://www.pogo.org/investigation/2022/07/missing-more-january-6-texts-sought-by-congress>).

<sup>2</sup> Memorandum from Eric Hysen, Chief Information Officer, to DHS Agency and Office Leaders (Aug. 4, 2022).

<sup>3</sup> *See*, Letter from Representatives Schiff, Thompson, Maloney, and Nadler, to Christopher Wray, Steve Vanech, Joseph Maher, and John Ratcliffe (Jan. 16, 2021); Letter from Sen. Gary C. Peters, et al, to Ms. Jennifer A. Hemingway, et al (Feb. 8, 2021); and Letter from Representatives Maloney, Schiff, Thompson, Nadler, Lofgren, and Smith, to Alejandro Mayorkas, Department of Homeland Security (March 25, 2021).

(NARA) guidance clearly states that “electronic messages created or received in the course of agency business are Federal records.” Text messages are included in this description.<sup>4</sup> Still, Mr. Wolf and Mr. Cuccinelli’s government phones were apparently reset, erasing all data, when they left the agency as the Trump Administration ended in January 2021, and Mr. Alles’ phone was wiped as part of a previously-planned cell phone reset. As has been widely reported, the United States Secret Service (USSS) also carried out a cell phone migration that was responsible for the deletion of USSS personnel text messages. Additionally, a letter sent to IG Cuffari by House Oversight Committee Chair Carolyn Maloney and House Homeland Security Committee Chair Bennie Thompson reveals that Mr. Cuccinelli used his personal mobile phone to conduct official business.<sup>5</sup>

To better understand the decisions to erase these messages, the department’s policies on retaining federal records, and decisions on preservation of records requested by Congress and Inspectors General, I am writing to request additional information and documents related to this incident. I respectfully request that you provide the following documents and information as soon as possible and no later than August 31, 2022:

1. When did the department first learn that Mr. Wolf’s text messages had been deleted?
  - a. When did the department first learn that Mr. Cuccinelli’s text messages had been deleted?
  - b. When did the department first learn that Mr. Alles’ text messages had been deleted?
  - c. When did the department first learn of the USSS text message deletions?
  - d. What did you or DHS leadership do when the department learned of each of these incidents?
2. Is it regular department procedure to reset official government devices when an employee leaves office? Prior to the release of the August 4, 2022 memorandum, did the department have a regular policy to back up the contents of these phones prior to their reset? Please provide any department-wide policy, procedures, or guidance related to resetting devices for departing personnel prior to August 4, 2022.
3. Were other DHS employees’ government devices wiped? Are there other deleted text messages? If so, please identify the names and positions of the other employees’

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<sup>4</sup> Bulletin 2015-02, National Archives and Records Administration (July 29, 2015) (<https://www.archives.gov/records-mgmt/bulletins/2015/2015-02.html>).

<sup>5</sup> Letter from Rep. Carolyn Maloney, Committee on Oversight and Reform, and Rep. Bennie G. Thompson, Committee on Homeland Security, to Inspector General Joseph Cuffari, Department of Homeland Security (Aug. 1, 2022).

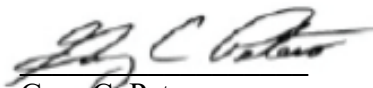
government devices that were wiped. Or, did this just occur for Mr. Wolf, Mr. Cuccinelli and Mr. Alles? If so, why?

- a. What office within DHS headquarters is responsible for determining how and when government devices are wiped for the department and has this process been modified at all prior to the release of the August 4, 2022 memorandum? If so, when did it change and how?
4. Did the department notify the Archivist of the United States of these deletions, as required by the FRA (44 U.S.C. § 3106)? If so, please provide a record of this notification. If not, why not?
5. When did the department first learn that Mr. Cuccinelli used his personal phone to conduct official business? Did the department attempt to reach out to Mr. Cuccinelli to ensure any relevant records on his personal phone were preserved pursuant to Congressional and OIG requests for information?
6. Please provide any relevant department-wide policy, guidance, or training prior to the August 4, 2022 memorandum, including any records management policies or guidance relevant to electronic message preservation, about preserving texts and other electronic messages, including SMS, iMessages, and other mobile application messages, pursuant to the Federal Records Act and NARA guidance.
  - a. Prior to the August 4, 2022 memorandum, did the department have policy, plans, procedures, guidance, or training on employee use and preservation of mobile messaging in their official capacity, including SMS, iMessage, or other mobile messaging applications? If so, please provide such policy, guidance, or training.
  - b. Does DHS headquarters know the extent to which DHS employees use mobile messaging applications? If so, please provide details of this use.
  - c. Please provide the department's plans, policies, procedures, guidance, or training prior to the August 4, 2022 memorandum to ensure that mobile messages, including SMS, iMessages, or other mobile application messages, were automatically backed up.
7. Please provide a timeline detailing DHS headquarters' receipt of requests for information and documents related to the January 6, 2021 attack on the Capitol issued by the DHS Office of Inspector General (OIG) and Congressional committees to the agency and any of its law enforcement components and the responses to such requests.
8. When the department received document preservation requests from Congress and the OIG related to investigations into the events of January 6, 2021, what steps did the department take to ensure relevant electronic messages were preserved?

- a. Did the department alert personnel that text messages could be among the documents that should be preserved pursuant to these requests? Please provide any messages sent from DHS headquarters to personnel related to compliance with document preservation requests.
9. What attempts has the department made to recover the deleted text messages, and are these efforts ongoing?
  - a. Were any devices using Apple's iCloud for backups, and if so, what steps has DHS taken to fully explore options with Apple to recover backups?
  - b. Were any messages preserved in another cloud system, and if so, what efforts have been made to recover data from that cloud system?
10. Does DHS disable employees from utilizing iMessages? Is DHS considering, or has DHS previously considered, disabling iMessage? If so, please provide any documents or communications pertaining to this consideration.
11. Does DHS use, or has DHS considered using, any service to back up text messages through the telecommunications carrier, such as Verizon's Message Archive? If so, please provide any communications or documents pertaining to the use or consideration of these services.
12. Does the department have a policy of requiring an internal review before responding to oversight requests from the OIG? Does the department advise components to seek such a review before responding to OIG requests?

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate and Section 12(e) of S. Res. 70 (117<sup>th</sup> Congress) to investigate the "efficiency, economy, and effectiveness of all agencies and departments of the Government" and "processes as tested against the requirements imposed by the rapidly mounting complexity of national security problems... [and] legislative and other proposals to improve these methods, processes, and relationships."<sup>6</sup>

Sincerely,



Gary C. Peters  
Chairman

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<sup>6</sup>S. Rule XXV, S. Res. 70 (117<sup>th</sup> Congress).