### Table 5: Agencies Included in Investigation

<table>
<thead>
<tr>
<th>Produced Records in Response to FOIA</th>
<th>Did Not Respond to FOIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumer Financial Protection Bureau</td>
<td>Federal Bureau of Investigation</td>
</tr>
<tr>
<td>Council of Inspectors General on Integrity and Efficiency</td>
<td>Federal Communications Commission</td>
</tr>
<tr>
<td>Department of Agriculture</td>
<td>Federal Election Commission</td>
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<tr>
<td>Department of Defense</td>
<td>Federal Energy Regulatory Commission</td>
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<td>Department of Education</td>
<td>Federal Trade Commission</td>
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<td>Department of Energy</td>
<td>General Services Administration</td>
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<td>Internal Revenue Service</td>
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<td>Department of Homeland Security</td>
<td>National Aeronautics and Space Administration</td>
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<tr>
<td>Department of Labor</td>
<td>National Labor Relations Board</td>
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<td>Department of the Interior</td>
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<td>Department of Veterans Affairs</td>
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<td>Environmental Protection Agency</td>
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<td>Export-Import Bank</td>
<td>U.S. Agency for International Development</td>
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</table>

* NOAA records were obtained through separate FOIA requests submitted prior to the FOIA request sent to the other agencies included in the study
<table>
<thead>
<tr>
<th>Agency</th>
<th>Official IM Application</th>
<th>Latest Policy Update</th>
<th>Policy to Allow IM Use</th>
<th>Policy to Preserve IM</th>
<th>IM Archive Enabled</th>
<th>Produced IM on Request</th>
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</tbody>
</table>

**Policy to Allow IM Use**
- Policy allows IM Use
- IM use permitted but not to create a record
- IM use prohibited

**Policy to Preserve IM**
- IM retained automatically
- IM retained manually
- IM not retained

**IM Archive Enabled**
- Central IM archiving
- IM records to be saved by end users
- IM not saved

**Produced IM on Request**
- Produced IM
- Did not produce IM
Via Certified Mail

CFPB, Attn: Chief FOIA Officer
1700 G Street NW
Washington, D.C. 20552

Re: Freedom of Information Act Request

Dear CFPB FOIA Officer:

I write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair. In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

The Federal Records Act (“FRA”) was amended to codify a definition of electronic messages that includes “electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.” 44 U.S.C. § 2911. Thus, electronic communications sent or received in the course of agency business, regardless of the method of message delivery, are federal records that should be properly captured, retained, and stored in a manner such that they can be searched and reproduced upon request. National Archives and Records Administration (“NARA”) Bulletin 2015-02, “Guidance on Managing Electronic Messages,” makes this clear. However, recent events call into question whether and how agencies are properly capturing, retaining, and storing electronic messages.

Therefore, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, CoA Institute hereby requests access to the following records:

1. All records regarding Consumer Financial Protection Bureau policies on the retention, management, and/or administration of electronic (i.e., instant) messages, including but not limited to protocols such as SMS, MMS, Skype, Windows Messenger Service, XMPP, iMessage, Signal, BBM, etc.

2. All records regarding Consumer Financial Protection Bureau policies on employee use of electronic (i.e., instant) messaging.

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1 See CAUSE OF ACTION INSTITUTE, About, www.causeofaction.org/about/.
3. All records related to receipt, implementation, or compliance with NARA Bulletin 2015-02.

4. All records reflecting the electronic messaging systems installed on Consumer Financial Protection Bureau devices, including desktops, laptops, tablets, phones, and other mobile devices. Installed messaging systems include, but are not limited to, Google Hangouts, iMessage, Android Messages, Skype, Wickr Me, What’s App, GroupMe, Allo, BlackBerry Messenger, Signal, Snapchat, Facebook Messenger, etc.

5. All records reflecting whether Consumer Financial Protection Bureau has enabled automatic electronic message archiving, indexing, and eDiscovery features on instant messaging platforms in use. For example, “History On/Off” in Google Hangouts or “Incognito Mode” in Allo.

The time period for all above items is July 29, 2015, the date of issuance of NARA Bulletin 2015-02, to present. This request only seeks access to records related to electronic (i.e., instant) messaging, using protocols such as those listed in Item #1, and does not seek records related to traditional, standalone email systems, unless those systems have built-in instant messaging capability or if electronic records are being managed together under a “Capstone” approach. The term “all records” includes, but is not limited to, policy memoranda, guidelines, handbooks, contracts, agreements/memoranda of understanding, or correspondence.

6. In addition, (i) the ten most-recently generated electronic (i.e., instant) messages prior to the date of this request and, (ii) the first ten electronic (i.e., instant) messages generated on or after July 29, 2015, from each of the following components:

- Communications
- Legislative Affairs
- Technology and Innovation
- Human Capital
- Supervision, Enforcement, & Fair Lending Enforcement Office

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2 For purposes of this request, the term “present” should be construed as the date on which the agency begins its search for responsive records. See Pub. Citizen v. Dep’t of State, 276 F.3d 634 (D.C. Cir. 2002). The term “record” means the entirety of the record any portion of which contains responsive information. See Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review, 830 F.3d 667, 677 (D.C. Cir. 2016) (admonishing agency for withholding information as “non-responsive” because “nothing in the statute suggests that the agency may parse a responsive record to redact specific information within it even if none of the statutory exemptions shields that information from disclosure”).
To the extent that you have any questions about the scope of this request, CoA Institute is happy to discuss the matter with the FOIA officer processing this request and encourages you to contact us.

**Request for a Public Interest Fee Waiver**

CoA Institute requests a waiver of any and all applicable fees. FOIA and applicable regulations provide that the agency shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”\(^3\) In this case, the requested records will shed light on the “operations or activities of the government” by educating the public about the agency’s compliance with FRA obligations to preserve electronic messages. Because communication technology continues to evolve, the public has little knowledge on this topic and thus the records requested with contribute significantly to its understanding. The public deserves to know about the agency’s efforts to utilize technologies in a manner compliant with the FRA and FOIA and leverage technologies to enhance such compliance.

CoA Institute has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Its staff has significant experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through the Institute’s regularly published online newsletter, memoranda, reports, or press releases.\(^4\) In addition, as CoA Institute is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, it has no commercial interest in making this request.

**Request To Be Classified as a Representative of the News Media**

For fee status purposes, CoA Institute also qualifies as a “representative of the news media” under FOIA.\(^5\) As the D.C. Circuit recently held, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.\(^6\) CoA Institute satisfies this test because it gathers


\(^4\) See also Cause of Action, 799 F.3d at 1125-26 (holding that public interest advocacy organizations may partner with others to disseminate their work).


\(^6\) See Cause of Action, 799 F.3d at 1121.
information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. Although it is not required by the statute, CoA Institute gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. It does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record. These distinct works are distributed to the public through various media, including the Institute’s website, Twitter, and Facebook. CoA Institute also provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” contemplates that organizations such as CoA Institute, which electronically disseminate

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information and publications via “alternative media[,] shall be considered to be news-media entities.”8 In light of the foregoing, numerous federal agencies have appropriately recognized CoA Institute’s news media status.9

**Record Preservation Requirement**

CoA Institute requests that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.10

**Record Production and Contact Information**

In an effort to facilitate document review, please provide responsive documents in electronic form in lieu of a paper production. If some responsive records can be produced more readily, CoA Institute requests that they be produced first and the remaining records be produced on a rolling basis.

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10 See 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); Chambers v. Dep’t of the Interior, 568 F.3d 998, 1004-05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); Judicial Watch, Inc. v. Dep’t of Commerce, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).
If you have any questions, please contact me at (202) 499-4232 or james.valvo@causeofaction.org. Thank you for your attention to this matter.

R. JAMES VALVO, III
COUNSEL & SENIOR POLICY ADVISOR
Hi Katherine,

If the chats are saved, they are likely to be at most preserved as Federal records, and at least, hold controlled electronically stored information (ESI). Saved chats would be subject to hold, preservation, collection, search, indexing, review and production; and the Federal Records Act.

If they are not saved, they are considered transient electrons, inaccessible, like our phone calls and voicemail and are not subject to discovery in DWH litigation nor the Federal Records Act.

A cut and paste, or a typed copy of, or a voice recording of a saved chat would be subject to hold, collection, search, indexing, review and production and the Federal records act as a "separate" and unique record. The chat and the cut and paste would constitute two unique records instead of one.

A cut and paste, or a typed copy of, or a voice recording of a transient chat would be subject to hold, collection, search, indexing, review and production and fall under the Federal records Act as a "separate" and unique record. The transient chat would not be recorded, therefore not constitute a Federal record.

The nightmare scenario of NOAA email would pale by comparison. A policy that disallows the use of chat in decision making and deliberation would be a good idea for NOAA management to consider. Email can be used as it is now to "confirm our discussion."

My thoughts, cheers, Pat

----- Original Message ----- 
From: Katherine.Pease@noaa.gov
Date: Monday, November 7, 2011 3:46 pm
Subject: Re: RE: UMS Policy IPT follow up meeting with GC / RM - CHAT policy decision
To: Samuel Chi <Samuel.Chi@noaa.gov>
Cc: 'Marguerite Matera' <Marguerite.Matera@noaa.gov>, 'Chauncey Kelly' <Chauncey.Kelly@noaa.gov>, 'Pat Erdenberger' <Pat.Erdenberger@noaa.gov>

> Would a "cut and paste" be changing the original metadata (I don't know > if "chats" have metadata like email). If yes, then cutting and pasting > is not a solution if we have lit holds, etc.
> 
> ----- Original Message ----- 
> From: Samuel Chi <Samuel.Chi@noaa.gov>
I agree that chats should not be captured as a default and it sounds like we have consensus that participants shouldn’t be able to turn on automatic chat recording mid-way through. However, in a rulemaking context a chat might have a substantive discussion of the salient issues. So it might be useful to "record" it. I recommend that we take a tack consistent with NOAA GC's administrative record guidance, as issued on January 16, 2009. We ought to allow participants to be able to cut and paste chat conversations and place them in to a memorandum that's a part of the action's "decision file," ultimately intended for an administrative record. The way I see it playing out is that the chat would stay open in the browser window until the user closed it, giving the opportunity for a cut and paste. I suggest that we make sure we account for this "exception."

> > > From: Stefan Leeb (Federal) [ ]
> > > Sent: Monday, November 07, 2011 3:56 PM
> > > To: Marguerite Matera
> > > Cc: Joseph Klimavicz; Chauncey Kelly; Marie Marks; Samuel Chi;
> > > Andre.Sivels@noaa.gov; jdellanno@tempusnova.com; Kevin Donnelly;
> > > JeremyWarren; Pat Erdenberger; Benjamin Friedman;
> > > Katherine.Pease@noaa.gov
> > > Subject: Re: UMS Policy IPT follow up meeting with GC / RM - CHAT policy
> > > decision
> > >
> > > Thanks. I think we all agree on that. When you get back, we can start discussing the ediscovery process, roles and responsibilities.
Cheers.

On Mon, Nov 7, 2011 at 3:50 PM, Marguerite Matera > > <Marguerite.Matera@noaa.gov> wrote:

Stefan,

My recommendation is that NOAA follow GSA's lead, so that users are

NOTallowed the option of having a chat on the record. I believe that Pat Erdenberger said, when we were talking about this last week, that NARA also recommends against chats being on the record. The NARA recommendations should be dispositive for us.

As you suggested, the group can talk about this further when we next meet.

-- Marguerite

Stefan Leeb (Federal) wrote:

Marguerite,

Since this does not contradict what the CIO council has previously voted on, I believe we do have consensus. We do need to make another related decision whether or not to allow users to have the option to have a chat be "on the record" (GSA does not allow users to select this option). We can discuss this in the meeting I have set up for next Wednesday. We can also use this time to discuss the eDiscovery process under UMS.

Thanks for your time and consideration on this matter.

Sincerely,

Stefan
On Fri, Nov 4, 2011 at 11:54 AM, <Marguerite.Matera@noaa.gov> wrote:

Joe and Stefan,

NOAA GC recommends this default setting: NOAA chats are not recorded or preserved.

As you know there are many factors that lead GC to make this recommendation.

If it turns out that there is not consensus with this recommendation, I have been asked by GC management to be sure that NOAA GC participates in all discussions of the pros and cons with the decision maker(s). We need to be sure that individual or group understands the reason for GC's advice.

Thanks.

--Marguerite

----- Original Message ----- 
 From: "Stefan Leeb (Federal)" <Stefan.Leeb@noaa.gov>
 Date: Friday, November 4, 2011 10:46 am
 Subject: UMS Policy IPT follow up meeting with GC / RM - CHAT policy
decision
To: Chauncey Kelly <Chauncey.Kelly@noaa.gov>, Marie Marks
 <Marie.H.Marks@noaa.gov>, Marguerite Matera
 <Marguerite.Matera@noaa.gov>, Samuel Chi <Samuel.Chi@noaa.gov>,
 Andre.Sivels@noaa.gov,jdellanno@tempusnova.com, Kevin Donnelly
 <Kevin.Donnelly@ercorp.com>,Jeremy Warren
 <Jeremy.Warren@noaa.gov>, Pat Erdenberger
 <Pat.Erdenberger@noaa.gov>

Team,

I would like to set up a 1 hour meeting for this coming week to discuss the chat policy.

During our last meeting GC agreed to "discuss amongst themselves" the chat policy question, and reach out to GSA to find out what they did and why.
I have set up a meeting on November 9th from 4-5pm in SSMC3 room 9622.

Please confirm that this will work for you. If not, please propose alternate timeframes.

The objective of this meeting is to look at the alternatives and make a decision.

Thanks.

On Thu, Oct 20, 2011 at 12:22 PM, Stefan Leeb (Government) wrote:

Meeting notes and action items are herein. These are DRAFT meeting notes, I need to get them validated. Please let me know if anything here is wrong, or if I missed any action items.

Thanks!

Date and Time: 10/20/2011 Notes Prepared By: Stefan Leeb

Attendees NOAA: Stefan Leeb, Jeremy Warren, Andre Sivels (Records), Marie Watts (Records), Marguerite Matera (GC), Chauney Kelley (GC), Samuel Chi (GC), ERT: Kevin Donnelly Unisys: Bob Brofft, Mary Carver Tempus Nova: Joseph Delanno Google: Other:

Purpose of Meeting Special meeting with NOAA General Counsel and Records Management representatives to discuss specific policy issues.

Agenda

- Roll Call
- Text Chat - on or off the record by default - Retention settings for pail and Google Message Discovery - Litigation hold processes and policies Notes
Special meeting with General Counsel and Records Manager

Meeting objective will cover Chat defaults, retention

for mail/GMD, Litigation hold processes and policies

CIO council voted on chat policy - Off the record

(same as

GSA).

The current setting in CPANEL is that the default is currently ON the record.

Stefan suggests keeping CIO council policy, default

off the record, establishing a policy which states that users shall not use chats which would violate records management policy. There

is no way to enforce

chats staying on the record, but you CAN enforce that

all chats must be off

the record (verify).

2 default settings: Domain level (for everyone) either

on or

off the record, and user level, but in either case

can be

overridden by

user for individual chat sessions.

"On the record" chats are saved in email, but NOT

currently in

GMD, though Google is saying that chats will eventually be

captured in GMD.

Forcing everyone to have chats on the record will most likely

encourage users to either not use it, or worse, use another text messaging service.

IF policy is to require chat for everyone, anything

captured by chat is FOIable, and given the

conversational nature of

chat, many could

be taken out of context, or may include information we probably do not want captured.

Google information on Chat History (global setting):
- AI - GC / UMS team to review Google documentation on chat

- > > > > usage/options and will have internal discussions. We will have a follow up meeting to discuss in a few weeks.

- > > > > - AI - ERT to find out additional techical information on how individual chat sessions are stored with the various states (on/off the record) for each chat participant.

- > > > > - Postini/GMD and Gmail retention periods- GSA is currently 6 months (decided email is not a long term system of record).

- > > > Per Pat

- > > > > Erdenberger, since there is no records schedule for electronic records at NOAA, all email must be kept indefinitely. Once NOAA has an ERMS, we can revisit this.

- > > > > - eDiscovery - Will need to spend more time discussing this as we ran out of time.

- > > > > - GMD gives us greater power for eDiscovery - simple/fast searches with fast results. Whoever has access to GMD may have access to all mail in system.

- > > > > - We can continue to use our existing processes, but will have more options.

- > > > > - AI - GC to develop use cases which UMS/MOC team can develop processes for.
Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

--
Marguerite Matera
Senior Attorney
GCNR
Phone: 978 281 9231 <tel:978%20281%209231>
Fax: 978 281 9111 <tel:978%20281%209111>

--
Stefan Leeb
Program Manager, NOAA OCIO
Silver Spring, MD
301-628-5709 ofc
240-429-0619 cell
Good morning,

Yes, this is an accurate summary. The other take-away from this meeting was that when OAS-FOIA needs to pull from Slack we are to stipulate this specifically in the e-discovery pull request to OCIO to search Slack.

Thanks for the summary Chris.

---

On Mon, Mar 5, 2018 at 10:52 AM, Bob Stafford - H1 <bob.stafford@gsa.gov> wrote:

Hi Chris -

that matches my recollection of the meeting. I think OAS' take away was that we needed to update our records management guidance to inform GSA personnel about the process you mention regarding capturing any records that may be created in Google Hangouts. Travis, does that match up with your understanding?

Bob

On Mon, Mar 5, 2018 at 9:53 AM, Chris McFerren - IAG <chris.mcferrren@gsa.gov> wrote:

Bob and Travis,

Good morning.

I am looking to document the outcome of our recent conversation on the subject of eDiscovery and Google Hangouts. I would appreciate the benefit of your review and input to confirm I have accurately captured the key components of our conversation.

Thank you.

---

Meeting
Date: February 15, 2018
Time: 8:00 - 8:30AM ET
Topic: Guidance re:Capturing Google Chat/Slack Records

Attendees:
Robert Stafford, Associate Administrator, Office of Administrative Services (Acting)
Travis Lewis, Director, Freedom of Information Act and Records Management Division
Elizabeth DelNegro, Associate CIO, Office of Corporate IT Services
Background:
OGC inquired about GSA-IT processing eDiscovery search requests against content stored in Slack. GSA-IT stated that while it has the capability to process eDiscovery search requests it does not process as a matter of course those searches against Slack as part of a search for email. OGC misinterpreted that response as GSA-IT does not have eDiscovery search capability for Slack. That triggered a discussion within GSA-IT about other systems/services/solutions for which we do/do not have eDiscovery search capability. Google Hangouts is one of those services.

Liz DelNegro requested this meeting to discuss GSA-IT’s obligations to perform eDiscovery searches against Google Hangouts and indirectly the need to activate the History feature for the GSA.gov domain.

Outcome:
It was decided that, due to the temporary/transient nature of typical conversations, Google Hangouts would not be considered a system of record. Therefore, GSA-IT should set the History feature to off for the GSA.gov domain. The result would not produce any discoverable content. If in the unlikely event someone feels a conversation conducted via Hangouts is a record, that person should take appropriate measures to preserve that content in accordance with their personal records management plan.

Regards,

Chris McFerren
Director, Enterprise Systems Support Division (ICE)
Office of Corporate IT Services
GSA IT
O: 202-273-3591 | C: (b) (6)
chris.mcferren@gsa.gov
R. James Valvo III  
1875 Eye Street NW, Suite 800  
Washington, DC 20006  
james.valvo@causeofaction.org

Re: Freedom of Information Act Request (OIG Tracking Number 18-056)

Dear Mr. Valvo:

This is in response to your Freedom of Information Act (FOIA) request to the General Services Administration (GSA), dated April 2, 2018. On April 13, 2018, the GSA FOIA office forwarded your request to the GSA Office of the Inspector General’s (GSA OIG) FOIA office to search the GSA OIG records for responsive documents and directly respond to your request. Your request stated:

"... CoA Institute hereby requests access to the following records:

1. All records regarding General Services Administration policies on the retention, management, and/or administration of electronic (i.e., instant) messages, including but not limited to protocols such as SMS, MMS, Skype, Windows Messenger Service, XMPP, iMessage, Signal, BBM, etc.

2. All records regarding General Services Administration policies on employee use of electronic (i.e., instant) messaging.

3. All records related to receipt, implementation, or compliance with NARA Bulletin 2015-02.

4. All records reflecting the electronic messaging systems installed on General Services Administration devices, including desktops, laptops, tablets, phones, and other mobile devices. Installed messaging systems include, but are not limited to, Google Hangouts, iMessage, Android Messages, Skype, Wickr Me, What’s App, GroupMe, Allo, BlackBerry Messenger, Signal, Snapchat, Facebook Messenger, etc.

5. All records reflecting whether General Services Administration has enabled automatic electronic message archiving, indexing, and
eDiscovery features on instant messaging platforms in use. For example, "History On/Off" in Google Hangouts or "Incognito Mode" in Allo.

The time period for all above items is July 29, 2015, the date of issuance of NARA Bulletin 2015-02, to present.¹ This request only seeks access to records related to electronic (i.e., instant) messaging, using protocols such as those listed in Item #1, and does not seek records related to traditional, standalone email systems, unless those systems have built-in instant messaging capability or if electronic records are being managed together under a "Capstone" approach. The term "all records" includes, but is not limited to, policy memoranda, guidelines, handbooks, contracts, agreements/memoranda of understanding, or correspondence.

6. In addition, (i) the ten most-recently generated electronic (i.e., instant) messages prior to the date of this request and, (ii) the first ten electronic (i.e., instant) messages generated on or after July 29, 2015, from each of the following components:

- Office of Strategic Communication
- Office of Congressional and Intergovernmental Affairs
- Office of Corporate IT Services
- Office of Public Buildings Service
- Office of Human Resources Management

Upon review of the responsive material, I determined you are entitled to portions of the requested material under the FOIA. The bases for any redacted or withheld information is Exemption 7(E) of the FOIA.

Exemption 7(E) protects law enforcement records if their release would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law.

Please note OIG Policy Manual Section 805.03 references the reader to "Section XXX". "Section XXX" is OIG Policy Manual Section 407.06 which we have provided you.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirement of the FOIA. See 5 U.S.C. §552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirement of the FOIA. This is a standard notification that this office provides to all our requesters. You should not take it as an indication that excluded records do, or do not exist.

¹ Footnote omitted.
You have the right to file an administrative appeal within 120 days of the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. The appeal must be in writing, include the GSA OIG FOIA Case Number (18-056), and contain a statement of reasons for the appeal. In addition, please enclose a copy of the initial request. The envelope and letter should be clearly marked as a "Freedom of Information Act Appeal" and addressed as follows:

Freedom of Information Act Officer  
Office of the Inspector General, General Services Administration  
1800 F Street, NW, Room 5332  
Washington, D.C. 20405

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you can contact our FOIA Public Liaison Kenneth Sharrett for assistance at:

Office of the Inspector General, General Services Administration  
1800 F Street, NW, Room 5332  
Washington, D.C. 20405  
(202) 501-1932  
oigfoia-privacyact@gsaig.gov

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road—OGIS  
College Park, MD 20740-6001  
ogis@nara.gov  
ogis.archives.gov  
202-741-5770  
877-684-6448

Sincerely,

Edward J. Martin  
Counsel to the Inspector General  
(FOIA Officer)

Enclosures
407.05 Approved Storage Systems

OIG components must designate the official file system (storage location) for every record that the component creates or receives. Key OIG approved file systems include the following:

- IBM Notes mailbox and Archive/Capstone Vault
- E-IDEAS;
- TeamMate;
- Counsel Information System (CIS);
- Local shared drives (if approved by an OIG office head as an official repository for records);
- Individual network drives, as approved by supervisors in those instances in which sensitive materials must not be accessible by other members of an office (e.g., a supervisor's materials regarding employee performance or discipline, or electronic leave submissions);
- Certain GSA-operated systems, such as Pegasys (financial records) and ConcurGov (travel records);
- Portable media (CDs, DVDs and flash drives) if approved by a component head; and
- File cabinets for paper files.

The following media do not constitute approved file systems and cannot be used to store records:

- Voicemail inboxes; and
- Portable electronic communications devices (i.e., text or SMS messages).
407.06 Transfer of Records to Official File Systems

If an employee receives or creates a record using a non-approved file system, the employee must transfer the record to an approved system. The preserved record must contain all pertinent information, including metadata, needed to meet agency business needs, such as the names of the sender and all participants, the date, and any attachments that are an integral part of the record. These documents (when they are official records) should be transferred as follows:

- Email: employees should save emails (or printed or PDF copies of emails) in an official file system.
- Instant messaging: employees should save the conversation into an official file system by selecting "Save Chat As..." from the IM window's "File" menu as soon as they have completed the conversation. (This method preserves more metadata than saving the text of the conversation in a Word document.)
- Text messaging, BlackBerry and iPad documents: employees should email copies of conversations to themselves as soon as the conversation or document is finished, and save the email in an official file system.
- Digital photography: employees should send photographs to themselves via email, and save the email in an official file system.
- Video chatting and Video Teleconferencing (VTC): at this time, these materials are not preserved, with the exception of employee training presentations. JPM assistance is necessary to record training presentations.
- Voicemail messages: employees should save digital voicemail messages that constitute official agency records as digital recordings in an official file system, with the assistance of JPM. If the message is in an analog voicemail system (i.e., on a phone that does not have VOIP), the employee should transcribe the content of the message and save the transcription in an official file.
- Portable media and items on network and hard drives: except where these media are part of an office's approved method of maintaining official files, employees should transfer records stored on these media into an official file system.
- Other platforms, including web-based: employees should save these materials in the format best suited to preserve the entire content (i.e., pasting text into a document; making a screen capture; saving a webpage using the "Convert Web Page to PDF" tool; etc.), and save the material in an official file system.

Because many electronic media are transient, and because employees may not remember to transfer records if they delay in doing so, employees who use portable electronic devices to conduct substantive agency business should preserve them as soon as possible or at the latest within five workdays of creation or receipt.
Effective Date 5/3/2017

502.00 USE OF AGENCY OFFICE EQUIPMENT

Pursuant to a GSA Order, ADM 7800.11, GSA employees are authorized to use agency office equipment for personal use under certain conditions. Specifically, an employee can use office equipment on an occasional basis if the use involves minimal additional expense to the Government (for example, small amounts of paper) and does not interfere with official business. The personal use of agency equipment should occur during personal time and not during official time. An employee who exceeds the limits for personal use of agency equipment as set out in the Order may violate the government-wide standard of conduct relating to misuse of position. Employees should also understand that, notwithstanding the policy allowing some personal use of office equipment, there is no expectation of privacy with regard to any electronic message sent through Government-provided messaging services.
Instant Messaging shall not be used to conduct official business. Further, instant messages shall not be maintained in our official system of records. Instant messages and instant messaging histories should be deleted (see Section XXX).
901.06 Policy Regarding Maintenance of Investigation Records in Anticipation of Litigation and Potential Discovery

The OIG follows the guidance issued by the Department of Justice on discovery, including the January 4, 2010, Guidance for Prosecutors Regarding Criminal Discovery, set forth at Figure 901-09, and the March 30, 2011, Guidance on the Use, Preservation, and Disclosure of Electronic Communications in Federal Criminal Cases, set forth at Figure 901-10. Essentially, SAs should think about the content of any form of e-communication before sending it; use appropriate language; think about whether e-communication is appropriate to the circumstances, or whether an alternative form of communication is more appropriate; and determine in advance how to preserve potentially discoverable information. ("E-communication" as used herein includes emails, text messages, instant messages, voice mail, blogs, social networking sites, and other means of electronic communication.) Some of the main points concerning discovery and the requirement to preserve documents, in both civil and criminal cases, are outlined below.
901.068 Policy

It is not always possible for SAs to know in advance whether an investigation will lead to civil or criminal action, who the defendant will be, or what information will appear exculpatory at the time of trial. Therefore, SAs should treat all information as though it may be subject to production in criminal or civil discovery, including weekly, significant item, and semiannual reports.

SAs should preserve all copies of statements made by any person (witness, subject, or SA) relating to the matter under investigation. This includes SAs' notes of witness statements, MOIs, email messages, audio or video recordings in original format, and all other material conveying any person's statements. Communications over email regarding the matter under investigation should be saved in or otherwise made part of the SA's permanent file. Retaining emails in the SA's inbox is not sufficient.

Substantive communications using a transitory medium (instant messaging, voicemail, text message) should be permanently saved to the case file. Instant messages can be copied and saved in a Word document; text messages can be emailed and the emails saved; and voicemail messages can be saved as digital audio files. Alternatively, SAs may write down the statements made over these media, in which case the date and speakers should be included.

SAs also should preserve all e-communications sent to or received from potential witnesses who are not law enforcement personnel, regardless of content. SAs should write down the substance of all oral conversations or statements regarding the subject matter of the investigation (for example, a phone call with a witness) as soon after the statements were made as possible, noting the date, time, and speaker. All potentially discoverable information must be preserved, regardless of whether the communication is written or oral.

When discussing investigations in any medium, and especially any written medium, SAs should express their thoughts with the expectation that a complete copy of what they say or write will eventually be provided to the defendant. Therefore, editorial comments, exaggerations, comments suggesting personal hostility, or other excessive or unprofessional content are not acceptable.

SAs should avoid making predictions about the outcome of a case or speculating about evidence when discussing the case with any witness, or over any written medium.
Dear Mr. Valvo:

This letter shall serve as NASA’s final response to your Freedom of Information Act (FOIA) request dated April 2, 2018, and received April 10, 2018, at the NASA Headquarters FOIA Office. Your request was assigned FOIA Case Number 18-HQ-F-00487 and was for:

1. All records regarding National Aeronautics and Space Administration policies on the retention, management, and/or administration of electronic (i.e., instant) message, including but not limited to protocols such as SMS, MMS, Skype, Windows Messenger Service, XMPP, iMessage, Signal, BBM, etc.

2. All records regarding National Aeronautics and Space Administration policies on employee use of electronic (i.e., instant) messaging.

3. All records related to receipt, implementation, or compliance with NARA Bulletin 2015-02.

4. All records reflecting the electronic messaging systems installed on National Aeronautics and Space Administration devices, including desktops, laptops, tablets, phones, and other mobile devices. Installed messaging system include, but are not limited to, Google Hangouts, iMessage, Android Message, Skype, Wickr Me, What's App, GroupMe, Allo, Blackberry Messenger, Signal, Snapchat, Facebook Messenger, etc.

5. All records reflecting whether National Aeronautics and Space Administration has enabled automatic electronic message archiving, indexing, and eDiscovery features on instant messaging platforms in use. For example, "History On/Off" in Google Hangouts or "Incognito Mode" in Allo. The time period for all above items is July 29, 2015, the date of issuance of NARA Bulletin 2015-02, to present. This request only seeks access to records related to electronic (i.e., instant) messaging, using protocols such as those listed Item #1, and does not seek records related to traditional, standalone email systems, unless those systems have built-in instant messaging capability or if electronic records are being
managed together under a "Capstone" approach. The term "all records" includes, but is not limited to, policy memoranda, guidelines, handbooks, contracts, agreements/memoranda of understanding, or correspondences.

6. In addition, (1) the ten most-recently generated electronic (i.e., instant) Message prior to the date of this request and, (ii) the first ten electronic (i.e., instant) message generated on or after July 29, 2015, from each of the following components:

• Office of Communications
• Office of Legislative Liaison
• Office of Chief Information Officer
• Office of Chief Scientist
• NASA Management Office

To the extent that you have any questions about the scope of this request, CoA Institute is happy to discuss the matter with the FOIA officer processing this request and encourages you to contact us.

On May 3, 2018 we provided our first interim response for items 1 – 3 of your request. Per your agreement and your email correspondence of May 14, 2018 wherein you provided 20 names of instant messaging platforms, a second interim response was issued on June 28, 2018, by releasing a table which provided the number of times the named instant messaging platforms were downloaded on desktop and laptop computers.

With this letter, we are also providing you a no records response to item 5 of your FOIA request, wherein your sought records that reflect whether or not NASA has enabled automatic electronic message archiving, indexing, and eDiscovery features on any instant messaging platforms that may be in use. The staff member at the program office (OCIO) knowledgeable about this information explained that our current enterprise IM platform, Skype for Business, has the functionality for archiving instant messages, however, it is a user selected option and is not turned on by default.

Additionally, we are providing a full response to item 6 of your FOIA request. Per our telephone conversation of July 10, 2018, and subsequent emails, you agreed to have members of the Senior Executive Service and the Division Heads of the Offices you named for item 6 and dates you identified in your original request to search for responsive records. We have received the search results from these offices and are providing their responses in tabular form:
<table>
<thead>
<tr>
<th>Staff Name and Title</th>
<th>Office</th>
<th>Mobile Application Installed? (Y or N)</th>
<th>Responsive Records? (Y or N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rebecca Lee, Acting Associate Administrator</td>
<td>Legislative and Intergovernmental Affairs</td>
<td>YES – Imessage pre-installed on Iphones, MS Office with Skype pre-installed on laptop, Cisco Jabber pre-installed on laptop</td>
<td>YES</td>
</tr>
<tr>
<td>Maureen Muncy, Director, LRAD</td>
<td>Legislative and Intergovernmental Affairs</td>
<td>YES, MS Office with Skype pre-installed on laptop, Cisco Jabber pre-installed on laptop</td>
<td>NO</td>
</tr>
<tr>
<td>Chris Flahery, Director, Legislative Liaison</td>
<td>Legislative and Intergovernmental Affairs</td>
<td>YES, MS Office with Skype pre-installed, Cisco Jabber pre-installed on laptop</td>
<td>NO</td>
</tr>
<tr>
<td>Brandon Eden, Director, Outreach,</td>
<td>Legislative and Intergovernmental Affairs</td>
<td>YES, Imessage pre-installed on Iphones, MS Office with Skype pre-installed on laptop, Cisco Jabber pre-installed on laptop</td>
<td>YES</td>
</tr>
<tr>
<td>Keith A Bluestein, Associate CIO Enterprise Services and Integration</td>
<td>Office of Chief Information Officer</td>
<td>YES, Imessage pre-installed on Iphones and also downloaded on laptop, MS Office with Skype pre-installed on laptop, Skype for Business, Cisco Jabber, pre-installed on laptop</td>
<td>YES</td>
</tr>
<tr>
<td>Leigh Anne Giraldi, Associate CIO Business Management Division, NASA's OCIO</td>
<td>Office of Chief Information Officer</td>
<td>YES, Skype for Business, Cisco Jabber pre-installed on laptop, MS Office with Skype pre-installed on laptop</td>
<td>YES</td>
</tr>
<tr>
<td>Terry Jackson, ACIO, Technology, Data, and Innovation</td>
<td>Office of Chief Information Officer</td>
<td>YES, Imessage pre-installed on Iphones, Skype for Business, MS Office with Skype pre-installed on laptop</td>
<td>NO</td>
</tr>
<tr>
<td>Name</td>
<td>Department</td>
<td>Jabber</td>
<td>Skype for Business</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>----------------------------------------------</td>
<td>--------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>Renee P. Wynn, NASA Chief Information Officer</td>
<td>Office of Chief Information Officer</td>
<td>YES, Skype for Business</td>
<td>YES</td>
</tr>
<tr>
<td>Allard Beutel, News Chief</td>
<td>Office of Communications</td>
<td>YES, Imessage pre-installed on Iphones, Skype for Business, Cisco Jabber pre-installed on laptop</td>
<td>YES</td>
</tr>
<tr>
<td>Bill Barry, Chief Historian</td>
<td>Office of Communications</td>
<td>YES, Imessage pre-installed on Iphones, Skype for Business, Cisco Jabber pre-installed on laptop</td>
<td>NO</td>
</tr>
<tr>
<td>Bob Jacobs, Deputy Associate Administrator</td>
<td>Office of Communications</td>
<td>YES, Skype for Business, Cisco Jabber pre-installed on laptop</td>
<td>NO</td>
</tr>
<tr>
<td>Cheryl Hurst, Director, Communication and Public Engagement Directorate</td>
<td>Office of Communications</td>
<td>YES, Skype for Business, Cisco Jabber pre-installed on laptop</td>
<td>NO</td>
</tr>
<tr>
<td>Cindy Steele, NASA Public and Stakeholder Engagement Division Chief</td>
<td>Office of Communications</td>
<td>YES, Skype for Business</td>
<td>YES</td>
</tr>
<tr>
<td>John Yembrick, Director of Digital Communications &amp; Strategy</td>
<td>Office of Communications</td>
<td>YES, Imessage pre-installed on Iphones, Skype for Business, Snapchat</td>
<td>YES</td>
</tr>
<tr>
<td>Nikki Gramian, Principal Agency FOIA Officer</td>
<td>Office of Communications</td>
<td>YES, Imessage pre-installed on Iphones, Skype for Business, Cisco Jabber pre-installed on laptop</td>
<td>NO</td>
</tr>
<tr>
<td>Marcus A. Watkins, Director, NASA Management Office</td>
<td>NASA Management Office</td>
<td>YES, Imessage pre-installed on Iphones</td>
<td>YES</td>
</tr>
<tr>
<td>Jen-Chow Duh, Deputy Director, NASA Management Office</td>
<td>NASA Management Office</td>
<td>YES, Imessage pre-installed on Iphones, Skype for Business</td>
<td>YES</td>
</tr>
</tbody>
</table>
James Green, Chief Scientist  
Office of the Chief Scientist  
YES, Imessage pre-installed on Iphones, Skype for Business  
YES

The search of the officials within these offices located 93 pages of records. We are releasing 83 pages to you in full and 10 pages in part. Information withheld from these pages consist of personal conversations with family members or non-government officials. NASA considers these withheld text messages non-records and/or exempt under FOIA Exemption 6. The messages withheld are of a private nature that do not relate to or have an effect upon the conduct of NASA business.

Exemption 6, 5 U.S.C. § 552(b)(6)

Exemption 6 allows withholding of “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” See 5 U.S.C. § 552(b)(6)(emphasis added). NASA is invoking Exemption 6 to protect conversations between family, friends and acquaintances; a phone number not listed in the NASA directory; the identity of a job candidate; and a discussion regarding options for performance awards, and has determined the privacy interest is greater than the interest in disclosure. After consultation with the Office of the General Counsel, I am the official responsible for the information withheld in this request.

Appeal Rights

You have the right to appeal this response. If you choose to exercise your appeal rights, please submit your appeal within 90 days from the date of this letter. Your appeal must be in writing and should be addressed to:

Administrator  
NASA Headquarters  
Executive Secretariat  
MS 9R17  
Washington, DC 20546  
ATTN: FOIA Appeals

Your appeal should be marked “Appeal under the Freedom of Information Act” both on the envelope and the face of the letter. A copy of your initial request along with a copy of this correspondence and any other correspondence with the FOIA office must be enclosed. In order to expedite the appellate process and ensure full consideration of your appeal, your appeal should also contain a brief statement of the reasons you believe this response to be in error.

Prior to filing an appeal, you may contact NASA’s Principal FOIA Officer/Chief FOIA Public Liaison, Nikki Gramian, via telephone at 202-358-0625 or via e-mail at Nikki.N.Gramian@NASA.gov to obtain further assistance or seek dispute resolution services for
any aspect of your request. You may also send correspondence to Ms. Gramian at the following address:

National Aeronautics and Space Administration (NASA)
Freedom of Information Act Unit
NASA Headquarters
Attn: Nikki Gramian
Principal Agency FOIA Officer
300 E Street, S.W., 5P32
Washington D.C. 20546
(Fax) 202-358-4332

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: 1-877-684-6448
Fax: (202) 741-5769

Important: Please note that contacting any agency official including the undersigned or NASA’s Principal FOIA Officer and/or OGIS referenced above is not an alternative to filing an administrative appeal and does not stop the 90 day appeal clock.

This concludes our response to this request. If you have any questions, please feel free to contact us at hq-foia@nasa.gov or (202) 358-1030, or you may contact Nikki Gramian, Principal Agency FOIA Officer and Chief FOIA Public Liaison at nikki.n.gramian@nasa.gov or (202) 358-0625.

Sincerely,

Robert Young
FOIA Officer
Headquarters, Office of Communications
Delivered via Electronic Mail
R. James Valvo, III
Cause of Action Institute
1875 Eye Street, NW, Suite 800
Washington, DC 20006
james.valvo@causeofaction.org


Dear Mr. Valvo:

This is a Departmental FOIA Office’s (DFO) interim response to the above-referenced FOIA request, seeking the following records:

1. All records regarding Department of Agriculture policies on the retention, management, and/or administration of electronic (i.e., instant) messages, including but not limited to protocols such as SMS, MMS, Skype, Windows Messenger Service, XMPP, iMessage, Signal, BBM, etc.

2. All records regarding Department of Agriculture policies on employee use of electronic (i.e., instant) messaging.

3. All records related to receipt, implementation, or compliance with NARA Bulletin 2015-02.

4. All records reflecting the electronic messaging systems installed on Department of Agriculture devices, including desktops, laptops, tablets, phones, and other mobile devices. Installed messaging systems include, but are not limited to, Google Hangouts, iMessage, Android Messages, Skype, Wickr Me, What's App, GroupMe, Allo, BlackBerry Messenger, Signal, Snapchat, Facebook Messenger, etc.

5. All records reflecting whether Department of Agriculture has enabled automatic electronic message archiving, indexing, and eDiscovery features on instant messaging platforms in use. For example, "History On/Off" in Google Hangouts or "Incognito Mode" in Allo.

6. In addition, (i) the ten most-recently generated electronic (i.e., instant) messages prior to the date of this request and, (ii) the first ten electronic (i.e., instant) messages generated on or after July 29, 2015, from each of the following components:
   • Office of Communications
   • Office of Congressional Relations
   • Office of the Chief Information Officer
On May 4, 2018, you provided clarification regarding item 6 of your request. You advised DFO that you are seeking records of “electronic (i.e., instant) messages” from a person at each of the components identified, who uses some type of instant messaging. You expressed no preference as to whom those people might be and were flexible regarding the time frame originally indicated in the request, agreeing to accept a total of 20 messages from an individual within each of the components.

Your request is being processed under the FOIA, 5 U.S.C. § 552.

OSEC’s Departmental Policy Office has conducted a search for records responsive to items 1 and 2 of the request. The Policy Office develops and manages the Departmental Directives System, serving as the central control point for: ensuring compliance with regulatory agency policies; reducing overlapping and redundant policy creation efforts; and promoting compatibility and policy gap elimination between USDA agencies. This office maintains a system to provide nationwide access to all Departmental directives and provides training, consultation, and assistance to agencies in the development, clearance, and publishing of Department-level directives. Records totaling thirty-nine (39) pages have been identified as responsive to items 1 and 2 of the request. Of these, a record totaling three (3) pages has been sent for consultation to the Office of the General Counsel (OGC), as it is a record that originated with that component. OGC’s consultation response is pending. The remainder of the records are being released to you in their entirety, with no FOIA exemptions applied.

The Departmental Records Management Officer has also conducted a search for records responsive to item 3 of the request. USDA’s Record Management Program falls under the purview of the Office of the Chief Information Officer (OCIO), and the Departmental Records Management Officer carries out this role for USDA’s Departmental Administration (DA), which is the central administrative management organization. USDA Agency Records Officers create policies and procedures for managing agency records. They control, organize, direct, and train records management staff to achieve agency information resources goals and objectives. Agency Records Officers coordinate and promote records management programs with program officials, information resource managers, and senior agency management. Records totaling thirty (30) pages were identified as responsive to item 3 of the request. Twenty-eight (28) pages are duplicates of the records identified by the Departmental Policy Office, including the 3-page record that is pending consultation with OGC. The additional two (2) pages of responsive records are being released to you in their entirety, with no FOIA exemptions applied.

Inquiries were made to OCIO regarding items 4 and 5. OCIO is responsible for assuring that USDA information management is consistent with the principles of the Paperwork Reduction Act and with information security and privacy requirements. In this role, the OCIO manages: the official online repository of all USDA Departmental Regulations, Notices, Manuals, and Secretary Memoranda; the USDA Records Management Program; the USDA Forms Management Program; USDA Information Collection; USDA Policy and Directives Privacy Office; Information Quality Activities; and Section 508 compliance for electronic or information technology. DFO was advised that there are no records responsive to items 4 and 5. With regard to item 4, OCIO indicated that the only messaging system that CEC supports is Skype For Business.
Business. With regard to item 5, OCIO explained that because Skype is a peer-to-peer system, CEC does not have a system that preserves all messages. But when the auto-save function is enabled in Skype, the conversation histories would be saved in a database that CEC is able to search, or in another location designated by the users.

The DFO continues to process your FOIA request and will issue a final response. The final response letter will advise you of your right to appeal the DFO’s final determinations.

If you have any questions regarding the processing of this request, please contact Ms. Camille Aponte at (202) 694-5960, or electronically at Camille.Aponte@ocio.usda.gov or USDAFOIA@ocio.usda.gov. For additional information regarding USDA FOIA regulations and processes, please refer to the information available online at www.dm.usda.gov/foia.

The DFO appreciates your patience as we continue processing the remainder of your FOIA request.

Sincerely,

Alexis R. Graves
Departmental FOIA Officer
Office of the Chief Information Officer

Enclosure: Interim Response Records (41 pages)