

December 22, 2020

David S. Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Avenue, N.W.
Washington, D.C. 20408

Laurence Brewer
Chief Records Officer
National Archives and Records Administration
700 Pennsylvania Avenue, N.W.
Washington, D.C. 20408

Re: Notice of Unauthorized Loss, Removal, or Destruction of Federal Records Stored in Former Secretary of the Interior Ryan Zinke's Official Government Phones

Dear Messrs. Ferriero and Brewer:

Citizens for Responsibility and Ethics in Washington (“CREW”) and the Center for Biological Diversity (“the Center”) write to notify you of the unauthorized loss, removal, or destruction of Federal records stored in former Secretary of the Interior Ryan Zinke’s government-issued mobile phones. Because it appears that the Department of the Interior (“Interior”) has failed to report this matter to the National Archives and Records Administration (“NARA”) as required by the Federal Records Act (“FRA”), and because the records at issue include highly-valuable communications of a former cabinet secretary, we are reporting it to you now and request that you take appropriate corrective action.

In a sworn declaration filed on October 26, 2020 in a Freedom of Information Act case brought by the Center, David Alspach, the Departmental Records Officer in Interior’s Office of the Chief Information Officer (“OCIO”), revealed that Federal records from former Secretary Zinke’s government-issued mobile phones had been destroyed or deemed irretrievable.¹ Specifically, the Alspach declaration identified three government phones issued to former Secretary Zinke during his tenure at Interior: his “Original Phone” (which he temporarily lost), his “Replacement Phone,” and his “International Phone.”² When Mr. Zinke “lost his Original Phone” in November 2018, the OCIO attempted to remotely ‘wipe’ its contents” because the phone “contained sensitive government information.”³ The Alspach declaration explains, however, that “unintentionally, during this security wipe,” the “contents of the Secretary’s International Phone were wiped instead of the contents of his Original

¹ See Declaration of David D. Alspach, *Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt.*, No. 17-cv-1208, ECF No. 29-3 (D.D.C. filed Oct. 26, 2020), <https://bit.ly/36XCnrY>.

² *Id.* ¶¶ 2-4.

³ *Id.* ¶ 5.

Phone.”⁴ The declaration states that “[t]here is no way to restore the data on the International Phone following the wipe.”⁵

The Alspach declaration adds that Mr. Zinke “found his Original Phone on or about December 14, 2018.”⁶ He then resigned from his office in January 2019, during a government shutdown.⁷ After Mr. Zinke’s departure, the OCIO tried to access the Original Phone with a passcode provided by Mr. Zinke, “but the passcode did not work.”⁸ Mr. Alspach states that “[w]ithout the passcode the Department has no technological means, and knows of no means, to access the Replacement Phone [sic]⁹ without the passcode. It is my understanding that the Department cannot force – even if the Secretary could remember the passcode – the Secretary to provide the passcode as he is no longer an employee of the Department.”¹⁰

Under the FRA, the “head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency.”¹¹ Thereafter, the agency “with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency, or from another Federal agency whose records have been transferred to the legal custody of that Federal agency.”¹² Implementing this requirement, NARA regulations provide that an “agency *must report promptly* any unlawful or accidental removal, defacing, alteration, or destruction of records in the custody of that agency to NARA.”¹³ The regulations also specify certain details the agency “must include” in its report to NARA.¹⁴

Despite acknowledging the destruction of Federal records from Mr. Zinke’s International Phone, and the apparent irretrievability of records from his Original Phone, it does not appear that Interior has reported this matter to NARA. Indeed, it is not included in the list of open “unauthorized disposition cases” on NARA’s website,¹⁵ and Interior has not responded to media inquiries asking whether it has reported the matter.¹⁶ This is despite the fact that the Federal records at issue include highly-valuable communications of a former cabinet secretary, some of which appear to have been destroyed due to sheer incompetence,

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* ¶ 6.

⁷ *Id.* ¶ 8.

⁸ *Id.* ¶ 11.

⁹ The reference to the “Replacement Phone” in paragraph 11 of the Alspach declaration appears to be an error; read in context of the rest of the paragraph, it seems Mr. Alspach meant to refer to the “Original Phone.” *See id.*

¹⁰ *Id.*

¹¹ 44 U.S.C. § 3106(a).

¹² *Id.*

¹³ 36 C.F.R. § 1230.14 (emphasis added).

¹⁴ *See id.* § 1230.14(a)(1)-(5).

¹⁵ *See* NARA, Unauthorized Disposition of Federal Records, Dep’t of Interior, <https://bit.ly/3gNUXj2>.

¹⁶ *See* Jeremy P. Jacobs and James Marshall, Ryan Zinke’s phones: ‘A comedy of errors.’ *E&E News*, Dec. 4, 2020, <https://bit.ly/2WgjK5X>.

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and others that are inaccessible due to Mr. Zinke's failure to provide agency officials with a correct phone passcode.

Given Interior's apparent failure to report this matter to NARA as required by law, we are doing so now and request that NARA take appropriate action, including instructing Interior to issue a report in accordance with 36 C.F.R. § 1230.14 and § 1230.16, and to take all steps necessary to recover any Federal records from Mr. Zinke's official phones.

Please direct any communications about this matter to Nikhel Sus at nsus@citizensforethics.org.

Sincerely,

Citizens for Responsibility and Ethics in
Washington

Center for Biological Diversity