



September 12, 2025

The Honorable Marco Rubio
Acting Archivist of the United States
National Archives and Records Administration
Washington, DC 20408

Will Brown
Acting Inspector General
National Archives and Records Administration
8601 Adelephi Road, Room 2800
College Park, MD 20740

Re: Notice of Potential Failure to Preserve Federal Records by DHS

Dear Messrs. Rubio and Brown:

We write to alert you of the potential failure to preserve federal records by the United States Department of Homeland Security ("DHS") and its staff. As detailed below, we request the National Archives and Records Administration ("NARA") immediately investigate and take appropriate remedial action in response to any failure by DHS or its staff to preserve federal records.¹

In communications dated July 23, 2025 and August 5, 2025, the DHS Privacy Office stated that "text message data" generated after April 9, 2025 "is no longer maintained."² In an August 21, 2025 email, the DHS Privacy Office further stated that "DHS no longer has the capability to conduct a search of text messages" in response to a Freedom of Information Act ("FOIA") request.³ While an unnamed DHS official reportedly stated that DHS continues to

¹ See 44 U.S.C. § 3101 (requiring Federal agency heads to make and preserve records); 44 U.S.C. § 3106 (requiring Federal agency heads to notify Archivist of threatened unlawful removal or other destruction of agency records).

² Email from Gregory Bridges, Dir., Disclosure, Dep't of Homeland Sec., Priv. Off., to Am. Oversight (July 23, 2025), <https://www.documentcloud.org/documents/26071792-no-records-response-from-dhs-concerning-textcommunications/>; American Oversight, *Demand Letters to NARA and DHS Regarding DHS Text Message Prevention*, Exhibit B (August 5, 2025), available at <https://americanoversight.org/featured-document/demand-letters-to-nara-and-dhs-regarding-dhs-text-message-preservation/>.

³ American Oversight, *Demand Letters to NARA and DHS Regarding DHS Text Message Prevention*, Exhibit F (August 21, 2025), available at <https://americanoversight.org/featured-document/demand-letters-to-nara-and-dhs-regarding-dhs-text-message-preservation/>.

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preserve such text messages, the anonymous official provided no explanation as to why DHS could not produce these records in response to FOIA requests.⁴

Congress enacted the Federal Records Act (“FRA”) to ensure “[a]ccurate and complete documentation of the policies and transactions of the Federal Government.” 44 U.S.C. § 2902(1). Toward that end, the FRA imposes on DHS the obligation to “make and preserve records containing adequate and proper documentation of [its] organization, functions, policies, decisions, procedures, and essential transactions.” 44 U.S.C. § 3101. Electronic messages, including text messages and messages sent through other electronic messaging systems, must be captured and preserved under federal law.⁵

The FRA further imposes on DHS’s Secretary the obligation to “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” and “with the assistance of the Archivist” to “initiate action through the Attorney General for the recovery of [those] records.” 44 U.S.C. § 3106(a). Absent such action by the secretary, the FRA requires NARA itself to “request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.” *Id.* at § 3106(b). Any removal, alteration or deletion of electronic messages by DHS or its staff is subject to the notice requirements set forth in 44 U.S.C. § 3106.

Despite the agency’s obligation to preserve text messages and other federal records, the above-referenced communications indicate a potential failure to do so. We therefore request that NARA take appropriate action, including investigating the issue, instructing DHS to manage and preserve any federal records, and to report any unlawful removal, alteration, or destruction of records to NARA.

Please promptly confirm in writing that the agencies have commenced the requested actions. Please direct any communications about this matter to Kayvan Farchadi at kfarchadi@citizensforethics.org.

Sincerely,

Kayvan Farchadi
Senior Counsel

cc: The Honorable Kristi Noem, Secretary of Homeland Security; Joseph V. Cuffari,
Inspector General, Department of Homeland Security

⁴ Minh Kim, *Homeland Security Tells Watchdog It Hasn’t Kept Text Message Data Since April*, New York Times (Aug. 22, 2025), <https://www.nytimes.com/2025/08/22/us/politics/homeland-security-foia-text-messages.html>.

⁵ See 44 U.S.C. § 2912; 36 C.F.R. § 1220.18 (2025).