



February 1, 2017


Mr. Steven Coney
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Mr. Coney:

The National Archives and Records Administration (NARA) has become aware of a possible unauthorized removal of Consumer Financial Protection Bureau (CFPB) records based on public inquiries citing The Daily Caller news article "[EXCLUSIVE: CFPB Head Cordray Used Private Device. Didn't Create Records of Messages](#)," 23 January 2017.

In accordance with 36 CFR 1230.16(b), NARA is requesting that CFPB provide us with a response within 30 calendar days identifying the specific actions CFPB has taken to investigate these allegations, and the steps CFPB will take to mitigate future risk. If CFPB determines that an unauthorized removal has occurred, then CFPB must submit a report to NARA as described in 36 CFR 1230.14. In your report, please indicate if the specific records cited in the allegation can be obtained from the non-governmental device, recreated, or duplicated from other sources.

Thank you for your cooperation in this matter. If you have further questions, please contact Dawn Sherman-Fells, Archivist & Senior Records Analyst, at 301.837.2083 or by email to dawn.sherman@nara.gov.


LAURENCE BREWER
Chief Records Officer
for the U.S. Government



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April 13, 2017

Mr. Steven Coney
Supervisory Records Officer
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Mr. Coney:

The National Archives and Records Administration (NARA) reviewed your letter dated March 3, 2017, addressing allegations concerning the unauthorized removal of Consumer Financial Protection Bureau (CFPB) records based on public inquiries citing *The Daily Caller* news article “EXCLUSIVE: CFPB Head Cordray Used Private Device, Didn’t Create Records of Messages,” January 23, 2017.

In your letter, you cite that in response to the August 2016 FOIA request, CFPB conducted a search of Director Cordray’s personal device and provided all responsive, non-exempt records dating from January 1, 2015. Based upon the successful search and retrieval of records from Director Cordray’s device, NARA will not require further action from CFPB, and as a result, we will close our file on this case. However, we have concerns about the CFPB’s interpretation of what is non-record material and the capture and preservation of electronic messages sent or received by the head of an agency.

In your letter, you state that “text messages [from Director Cordray’s personal device] are non-records because they are duplicate copies of the records maintained on the Bureau device of the individual with whom Director Cordray was communicating and contain no unique information.” This assertion runs counter to requirements in the Federal Records Act, in particular those at 44 U.S.C. 2911:

(a) IN GENERAL.—An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee—

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(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or

(2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.

Text messages created or received by the head of an agency in connection with the transaction of public business are presumed to be Federal records and must be managed in accordance with existing records management regulations and other requirements. NARA has issued further guidance on the management of electronic records in NARA Bulletin 2015-02.

Heads of agencies cannot assume, merely because they are communicating with other agency employees on those employees' official accounts, that the messages are being appropriately captured and managed. The statute cited above makes clear that the electronic message must be copied or forwarded to the official's own account. This is necessary, because Director Cordray's copy of an email or text message may have a different disposition than the copy held by the individual with whom the Director was communicating -- i.e., the Director's copy may be a permanent record, and the other copy temporary. See also our regulations at 36 C.F.R. 1222.12(d), which state that "multiple copies of the same document and documents containing duplicative information may each have record status depending on how they are used in conducting agency business."

In addition to the risk mitigation steps you describe in your letter, we advise you to incorporate the relevant requirements into your records management program policies and procedures to ensure the effective capture of electronic messages, including text messages, documenting official agency business. If you have any questions, please contact Dawn Sherman-Fells, Archivist & Senior Records Analyst, at 301.837.2083 or by email at Dawn.Sherman@nara.gov.

Sincerely,

A handwritten signature in blue ink that reads "Laurence v. Brewer". The signature is fluid and cursive, with a large initial "L" and "B".

LAURENCE BREWER
Chief Records Officer
for the U.S. Government