

News Release



U.S. Environmental Protection Agency
Office of Inspector General
Washington, D.C.

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EPA IG responds to Sen. Vitter's letter about audit report on agency's use of private and alias email accounts to conduct official business

WASHINGTON – Arthur A. Elkins Jr., Inspector General for the U.S. Environmental Protection Agency (EPA), has replied to a letter signed and released to the public February 20 by U.S. Sen. David Vitter, Ranking Member of the Senate Committee on Environment and Public Works, about an audit report addressing whether the EPA followed applicable laws and regulations when using private and alias email accounts to conduct official business.

The Inspector General's correspondence, which accompanies this news release, responds to seven specific claims in the Senator's letter.

To read the EPA Office of Inspector General's (OIG's) September 2013 report titled *Congressionally Requested Inquiry Into the EPA's Use of Private and Alias Email Accounts*, visit <http://go.usa.gov/DAYA>.

The OIG is an independent office within the EPA that performs audits, program evaluations and investigations of the EPA and its contractors, and prevents and detects fraud, waste, and abuse. By helping the agency operate more economically, effectively and efficiently, the OIG contributes to improved environmental quality and human health. The OIG strives to provide solutions to problems that ultimately result in making America a cleaner and healthier place. For more information, visit <http://www.epa.gov/oig> and follow the OIG on Twitter at [@EPAoig](https://twitter.com/EPAoig) (<https://twitter.com/EPAoig>).

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR - 7 2014

THE INSPECTOR GENERAL

The Honorable David Vitter
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20515

Dear Senator Vitter:

This letter responds to your February 20, 2014, letter regarding a U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) audit report, *Congressionally Requested Inquiry Into the EPA's Use of Private and Alias Email Accounts* (Report No. 13-P-0433), issued September 26, 2013. The audit was the result of a congressional request made by the U.S. House of Representatives Committee on Science, Space, and Technology to the EPA OIG on November 15, 2012.

We sought to determine whether the EPA followed applicable laws and regulations when using private and alias email accounts to conduct official business. Specifically, we sought to determine whether the EPA:

- Promoted or encouraged the use of private or alias email accounts to conduct official government business.
- Reprimanded, counseled or took administrative actions against any employees using private or alias email accounts.
- Established and implemented email records management policies and procedures for collecting, maintaining and accessing records created from any private or alias email accounts.
- Provided adequate training to employees concerning the use of private or alias email accounts to conduct official government business.
- Established and implemented oversight processes to ensure employees comply with federal records management requirements pertaining to electronic records from private or alias email accounts.

To achieve these objectives, the audit team: reviewed federal regulations and agency policies and procedures related to email usage and records management; interviewed more than 140 senior officials and employees across the agency; and visited five EPA regional offices to determine whether alias and/or private email was being used within the agency.

The following are the OIG's responses to specific claims in your letter:

1. **"The OIG inappropriately concluded that the use of alias email accounts was acceptable."**

Response: The OIG **did not** conclude that the use of alias email accounts was acceptable. Federal regulations pertaining to email and records management responsibilities do not prohibit the use of alias email accounts. We found that EPA personnel have access to multiple EPA email accounts and noted that improvements were needed for the internal controls surrounding alias or secondary email accounts to ensure that such accounts are able to be searched in order to meet federal records requirements.

2. **"Additionally, EPW revealed that use of another individual's identity (e.g. Richard Windsor) for the alias email account had never been done before, primarily because such [a] practice violated several internal policies, including EPA's policy requiring an email adequately identify the sender. However, instead of conducting a thorough review of the practice, which would have included a comparative examination of the practice over time, your investigators simply relied on EPA's word that past administrators had used similar alias accounts to conclude that there was not improper[sic]."**

Response: The agency does not have a policy that codifies how alias accounts are to be named. However, agency records management procedures do reference the Code of Federal Regulations in 36 CFR Chapter XII, Subpart C, Section 1236.22, which stipulates that if the email system uses codes, nicknames or aliases to identify senders or recipients, a record of their real names is kept for as long as any record containing only the codes or aliases. This administrative regulation is applicable to email records and does not specify alias email naming requirements. As such, a comparative analysis was not warranted in this case. Additionally, in our May 19, 2010, memorandum with the subject *EPA's Records Management System and Processes* that we provided to the committee, we recommended that the EPA update its records management procedures to include a directory or distribution list with the full names of codes and nicknames used to identify electronic mail system users. Our report highlights that the EPA still faces challenges in this area.

3. **"Moreover, the report's conclusion that EPA officials did not use personal email accounts to conduct agency business is false."**

Response: Our report **did not** conclude that EPA officials did not use personal email accounts to conduct agency business. Further, we found no evidence to support that the EPA used, promoted or encouraged the use of private email accounts to circumvent federal records management requirements. However, we identified and made recommendations to the EPA regarding:

- Lack of policies and procedures regarding private email account usage.
- Lack of records management training for private and alias email usage.
- Weaknesses in collecting and preserving records for separating employees.
- Deployment of the EPA's new email system without the ability to capture email records.

4. **"In addition to ignoring these facts, the OIG's narrow scope of review contributed to the inadequacy of the report. For example, the OIG relied on voluntary staff interviews, rather than compelling interviews with EPA officials already known to use personal email. Investigators never actually spoke to Administrator Jackson or Scott Fulton, two senior level officials who played central roles in the "Richard Windsor" controversy. While your office claimed that Jackson and Fulton refused to cooperate after they departed the Agency, the OIG failed to mention that both Jackson and Fulton were at the Agency at the time the OIG**

received the request for an investigation. Accordingly, both Jackson and Fulton were within your office's jurisdiction in the beginning of your investigation and could have been interviewed by your office."

Response: Both former Administrator Jackson and former General Counsel Fulton were still EPA employees when we received the congressional request, but we are bound to conduct our audits in accordance with generally accepted government auditing standards. Those standards require that we plan and perform audits to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on audit objectives. We could not immediately engage in discussions with these officials without first conducting required planning, scoping and notification processes. After completing these processes, we sought to contact Mr. Fulton and Ms. Jackson. However, Mr. Fulton left the EPA in December 2012 while the audit was still being planned, and Ms. Jackson left the EPA shortly after we started the audit.

Throughout the audit, we made several attempts to speak with Ms. Jackson and Mr. Fulton but received no response. However, the auditors met with the Deputy Administrator (then the acting Administrator), the former Administrator's Chief of Staff, administrative assistants who managed the former Administrator's email accounts, and the Director of the Office of the Executive Secretariat who was responsible for managing the former Administrator's records and responding to Freedom of Information Act (FOIA) requests on the Administrator's behalf. In the EPA's Office of General Counsel, we met with the then acting Principal Deputy General Counsel and other lawyers responsible for providing advice to the agency on records management and FOIA requests.

5. **"Not only did the OIG fail to interview certain officials, the decision to rely solely on interviews reveals additional weaknesses. In fact, the Committee has evidence that at least one current EPA employee, Region 9 Administrator Jared Blumenfeld outright lied to your investigators. As you are aware, he has since admitted to the Committee that he did in fact use his private email account to conduct agency business. Moreover, he has turned close to 1,500 pages of emails sent or received on his private account pursuant to a FOIA, obtained from his private account. It does not appear that there were any consequences for his attempt to mislead and obstruct your investigation."**

Response: During the audit, Mr. Blumenfeld said he did not use private and/or alias email to circumvent records management responsibilities. He also said that he had forwarded emails initiated from and received by his private email account to his government email account. After the OIG issued its draft report and received the agency's response, the EPA's Office of General Counsel provided the OIG the emails in question in September 2013. The OIG reviewed the emails and found that they were consistent with what Mr. Blumenfeld had told OIG auditors. Emails from his private email account had an "epa.gov" email address carbon copied or listed as the recipient/sender, thereby creating a record trail in the EPA email system. Federal regulations permit this practice, records of the emails were captured in the EPA's email system, and Mr. Blumenfeld's statement to the OIG was corroborated by the emails obtained by the OIG. Thus, the OIG is not aware of any information that materially affected the draft report findings and concluded that no additional audit work was necessary prior to publishing the final report.

6. **"Moreover, the OIG never examined in any way, actual staff emails. Even when the OIG had notice that an EPA employee had used his personal account, OIG investigators did not seek to review their private email accounts to verify their claims. Rather, the OIG claimed to have no authority to review EPA officials' private email accounts. Such a conclusion ignores court holdings that recognize records contained on a private email account, are in fact agency records. As such, it would seem reasonable that the IG should have access to EPA records,**

regardless of where those records originated. By limiting its authority, the IG limited the scope of the investigation and was left to rely on the representation of EPA employees.”

Response: When the OIG briefed the House of Representatives Committee on Science, Space, and Technology on our scope and methodology, we stated that we would not subpoena personnel to gain access to their personal email accounts. We also stated that we would not deploy network monitoring tools on the agency’s network in order to determine whether agency personnel were using EPA resources to access their personal email accounts. These actions were not taken as the OIG did not have that technology at its disposal, and the time needed to subpoena the private email accounts for all EPA senior officials would have exceeded the deadline requested by the committee to report our findings.

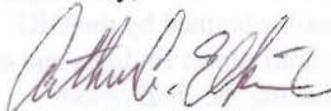
7. **“Finally, your office made no attempt to obtain outside information to determine if EPA officials had used private email to conduct Agency business. While your office claimed it did not have the authority to look at officials’ private email accounts, your investigators could have reviewed documents produced in response to FOIA requests, which could have captured the use of private email. In fact, the existence of the Richard Windsor email account was uncovered through emails produced in response to a FOIA request. In addition, several emails between EPA officials using their personal email accounts to communicate with environmental groups have also been exposed through FOIA responses. However, your investigators did not seek to review FOIA productions to pressure test the assertions of conflicted EPA employees.”**

Response: The OIG reviewed federal regulations regarding records management, agency policies and procedures related to email usage and records management, and FOIA productions related to the Region 9 Administrator’s use of private email as provided by the EPA’s Office of General Counsel to the OIG in September 2013. Our review of these materials, along with the interviews of more than 140 agency officials and staff, were the basis for our conclusions and recommendations.

The OIG’s authorities include requesting and reviewing private email accounts as needed. This audit sought to determine what management controls the EPA implemented over its records management email usage practices, and we did not conduct an investigation into the private email practices of any EPA official. Additionally, due to technology limitations and House Committee on Science, Space, and Technology timeframes requested for our audit results, we did not implement procedures to subpoena private email accounts or put in place electronic surveillance measures to track EPA officials’ network usage.

I appreciate your interest in the work of the OIG. If you should have any additional questions about this or other matters, please contact Alan Larsen, Counsel to the Inspector General, at (202) 566-2391.

Sincerely,



Arthur A. Elkins Jr.