



Office of the Chief
Records Officer for the
U.S. Government

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October 26, 2021

Mr. Eric Hysen
Chief Information Officer
Senior Agency Official for Records Management
Customs and Border Protection
301 7th Street, SW
Washington, DC 20024

Dear Mr. Hysen,

The National Archives and Records Administration (NARA) has become aware, through multiple media reports and the recent Office of Inspector General (OIG) report, “CBP Targeted Americans with the 2018-2019 Migrant Caravan,” that the Customs and Border Protection (CBP) has been using the messaging software *WhatsApp* and is deploying the encrypted messaging application *Wickr* across all components of the agency. Accordingly, I wanted to reach out to ensure that records management regulations are being adhered to and to ensure that the CBP is regulating the use of these messaging applications consistent with NARA’s and the Department’s records management policies. I also wanted to ensure that CBP is communicating to all employees that they cannot use these applications to circumvent their records management responsibilities and that all employees are aware that they must be retaining all messages that are federal records in accordance with agency policy and all applicable NARA-approved records schedules.

With respect to *WhatsApp*, the OIG report notes that their ability to determine whether proper processes and procedures were followed was hampered by a failure to retain communication records, including records in *WhatsApp* (page 4). Further, the OIG report states that there are “instances of CBP officers not documenting information they obtained during caravan-related inspections” (page 12); that CBP officials did not retain communication records (page 17); and that “the CBP officials failure to retain *WhatsApp* messages likely violated DHS and CBP records retention policies because the messages were information that CBP created or received in carrying out its mission and contained substantive information that was necessary to adequately and properly document the activities and functions of the CBP officials” (page 28).

Additionally, the OIG report found that during this operation, it is not even clear if CBP policies permit the use of *WhatsApp*.

With respect to *Wickr*, NARA is concerned about the use of this messaging application as it has the capability to auto-delete messages after a specified period of time has passed. In light of the information in the OIG report, NARA is concerned about agency-wide deployment of a messaging application that has this functionality without appropriate policies and procedures governing its use.

DHS employees using these applications without complying with established recordkeeping requirements expose the Department to the risk of potential unauthorized destruction of records. As a reminder, all actual or impending instances of unauthorized disposition must be reported to NARA per the requirements in 36 CFR Part 1230.

In accordance with 36 CFR Part 1230.14, CBP must respond to this letter with a report documenting the unauthorized disposition of the federal records that were identified in the OIG report. At a minimum, this report must include a complete description of the records with volume and dates if known; description of the office maintaining the records; a statement of the exact circumstances surrounding the removal, defacing, alteration, or destruction of records; a statement of the safeguards established to prevent further loss of documentation; and details of the actions taken to salvage, retrieve, or reconstruct the records. This report must also include any records management corrective actions that CBP will be required to implement as a result of the OIG investigation.

Additionally, please include in your report any documentation in the form of policies, training, approved records schedules or other resources CBP has established to mitigate the records management risk associated with the improper use of *Wickr*, *WhatsApp*, or similar messaging applications.

Please provide your report within 30 days of the date of this letter. I appreciate your attention to this important matter. If you have any questions or wish to discuss further, please contact me at laurence.brewer@nara.gov.

Sincerely,

A handwritten signature in blue ink that reads "Laurence M. Brewer". The signature is written in a cursive style with a large initial 'L'.

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

cc. Michelle Thomas, Department Records Officer, Department of Homeland Security
Dawn Watts, Agency Records Officer, Customs and Border Protection