



Dawn Sherman-Fells <dawn.sherman@nara.gov>

Closure of Unauthorized Disposition Case

2 messages

Dawn Sherman-Fells <dawn.sherman@nara.gov>

Thu, Apr 13, 2017 at 1:06 PM

To: steven.coney@cfpb.gov

Cc: Sartaj.Alag@cfpb.gov

Mr. Coney:

The National Archives and Records Administration has closed the Unauthorized Disposition case--UD-2017-0015. Please review the attached letter acknowledging closure but also outlining NARA's concerns with CFPB RM practices regarding messages using personal accounts/devices.

Please let me know if you have questions or concerns or wish to discuss.

Many thanks for your attention to this matter.

Best,
Dawn

Dawn M. Sherman-Fells
Records Management Oversight & Reporting Division
National Archives & Records Administration
College Park, MD
[301.837.2083](tel:301.837.2083) (office)
[301.741.5336](tel:301.741.5336) (work cell)

**2017-04-13_UD-2017-0015_CFPB_Close Out Letter.pdf**

723K

Coney, Steven (CFPB) <Steven.Coney@cfpb.gov>

Mon, Apr 17, 2017 at 9:01 AM

To: Dawn Sherman-Fells <dawn.sherman@nara.gov>

Cc: "Alag, Sartaj (CFPB)" <Sartaj.Alag@cfpb.gov>

Good morning Ms. Sherman-Fells,

I have received and read NARA Unauthorized Disposition case --UD-2017-0015 letter, and will comply with your direction.

r/Steven

Steven L. Coney

CUI Manager & Records Officer

Consumer Financial Protection Bureau

Office: 1700 G St. Office 6011-W

Tel: [202-435-7495](tel:202-435-7495)

Steven.coney@cfpb.gov

From: Dawn Sherman-Fells [mailto:dawn.sherman@nara.gov]

Sent: Thursday, April 13, 2017 1:07 PM

To: Coney, Steven (CFPB)

Cc: Alag, Sartaj (CFPB)

Subject: Closure of Unauthorized Disposition Case

[Quoted text hidden]



NATIONAL
ARCHIVES

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—

NATIONAL ARCHIVES *and*
RECORDS ADMINISTRATION

8601 ADELPHI ROAD
COLLEGE PARK, MD 20740-6001

www.archives.gov

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

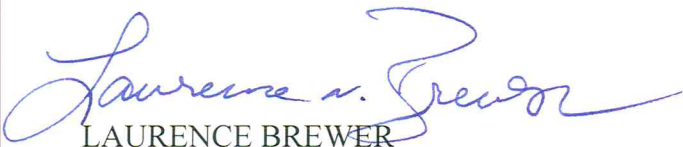
(2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.

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,



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