

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ENERGY POLICY ADVOCATES,

*Plaintiff,*

v.

U.S. DEPARTMENT OF THE INTERIOR,

*Defendant.*

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Civil Action No. 21-1411 (JDB)

**MEMORANDUM OF LAW IN OPPOSITION TO  
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

NOW COMES Energy Policy Advocates, pursuant to this Court’s Order of June 23, 2022 (ECF No 24). and opposes the Defendant’s Motion for Summary Judgment filed on August 26, 2022 (ECF No. 25).

**INTRODUCTION**

This is a matter seeking certain calendars and Microsoft Teams invitations of Senior Counselor to the Secretary of the Interior Elizabeth Klein and certain correspondence of Senior Counselor Klein with Special Assistant to the President for Climate Policy David Hayes. The requests were prompted by real and/or potential conflicts reflected in public records related to Ms. Klein’s prior employment with the New York University School of Law’s State Energy and Environmental Impact Center, where Ms. Klein was an attorney representing at least seventeen states and the District of Columbia (including on “particular matters” adverse to the Department), and Mr. Hayes served as Executive Director. Both the adequacy of Defendant Interior’s search, and the propriety of its redactions and other withholdings are at issue in this case.

## STANDARD OF REVIEW

The Freedom of Information Act (“FOIA”) requires “disclosure of documents held by a federal agency unless the documents fall within one of nine enumerated exemptions, which are listed at 5 U.S.C. § 552(b).” *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 141 S. Ct. 777, 785, 209 L. Ed. 2d 78 (2021). Although the “vast majority” of FOIA cases can be resolved on summary judgment, *Brayton v. Office of the U.S. Trade Representative*, 641 F.3d 521, 527, 395 U.S. App. D.C. 155 (D.C. Cir. 2011), a court may grant summary judgment only if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). *See also Coffey v. BLM*, 277 F. Supp. 3d 1, 6 (D.D.C. 2017)

In this case, there are two related but separate issues: First, the Court must decide whether the agency has met its burden to demonstrate that its search for the records Plaintiff requested was adequate and lawful. Second, the Court must decide whether redactions and withholdings in the records which the agency located and produced are lawful. The standards of review for these two issues are distinct, but the agency carries the burden of proof at every stage.

### **a) Standard of Review for Adequacy of a Search**

Before it can make any judgment on whether records which the agency located are properly exempt from production under FOIA, this Court must first assess whether the agency’s search for records was calculated to locate all responsive records.

The D.C. Circuit has specifically held that agency affidavits should address which files were searched, and by whom they were searched. *Weisberg v. United States Dep’t of Justice*, 200 U.S. App. D.C. 312, 627 F.2d 365, 371 (1980). The affidavits should further reflect “a systematic approach to document location,” and should provide information specific enough to enable a FOIA claimant to challenge the procedures the agency utilized. *Id.*

**b) Standard of Review for Withholdings**

To obtain summary judgment, the agency bears the burden to show the applicability of the claimed exemptions. See *ACLU v. DOD*, 628 F.3d 612, 619, 393 U.S. App. D.C. 384 (D.C. Cir. 2011). This burden does not shift. See *Hardy v. Bureau of Alcohol*, 243 F. Supp. 3d 155, 162 (D.D.C. 2017). FOIA's "limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act." *Dept. of the Air Force v. Rose*, 425 U.S. 352, 361 (1976). The exemptions are "narrowly construed." *FBI v. Abramson*, 456 U.S. 615, 630, 102 S. Ct. 2054, 72 L. Ed. 2d 376 (1982), cf. *Milner v. Dep't of the Navy*, 562 U.S. 562, 565, 131 S. Ct. 1259, 179 L. Ed. 2d 268 (2011). And the government bears the burden to show that any records it withholds fit neatly within a statutory exemption. *Reporters Committee for Freedom of the Press v. FBI*, 3 F.4th 350, 357, 361 (D.C. Cir. 2021).

This Court reviews the applicability of exemptions claimed by the agency *de novo*, without deference to the agency or its declarants. 5 U.S.C. § 552(a)(4)(B), cf. *King v. United States Dep't of Justice*, 830 F.2d 210, 217, 265 U.S. App. D.C. 62 (D.C. Cir. 1987).

To meet its burden, an agency may rely on declarations describing the applicability of a FOIA exemption to information that the agency has withheld. See *Shapiro v. DOJ*, 893 F.3d 796, 799, 436 U.S. App. D.C. 295 (D.C. Cir. 2018). Although those declarations receive "a presumption of good faith," *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200, 288 U.S. App. D.C. 324 (D.C. Cir. 1991), the declarations are not conclusive and must be examined carefully in light of the entire record of the case. The Court may grant summary judgment based solely on the agency's declarations *only* if they fully carry the agency's burden of proof and are unimpeached by contrary record evidence or by evidence of the agency's bad faith. See *Aguilar v. DEA*, 865 F.3d 730, 734-35, 431 U.S. App. D.C. 383 (D.C. Cir. 2017).

## ARGUMENT

Defendant Interior fails to carry its burden on summary judgment in this case at virtually every stage. First, despite challenges raising specific concerns about the search in light of facts on the record, the Department has failed to prove that its searches for records were adequate or reasonably calculated to locate all responsive records. In fact, Defendant has proved the searches were the opposite of “systemic”, but were instead haphazard in their choice of locations. *Weisberg*, 627 F.2d at 371). Second, the agency fails to show it has applied Exemption 6 in a way that protects only “personnel” information, but has applied redactions in a way that shields distribution information which would allow Plaintiff to assess whether the requisite information was ever shared outside the government or whether any ostensible legal protections for such information have been waived.<sup>1</sup> Third, the agency interpreted and applied Exemption 5 in a way that shields far more than truly “deliberative” information relating to agency decisions and shared between covered individuals from view. Finally, the agency has attempted to shoehorn the Presidential Communications Privilege into this case which does not involve presidential records or presidential communications. The Court should reject the agency’s invitation to grant summary judgment on a threadbare record and based on such fanciful interpretations of the relevant statute.

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<sup>1</sup> Plaintiff has endeavored to submit exemplars of such redactions in its exhibits. Plaintiff notes, however, that Interior has not filed its own productions with its motion for summary judgment, which would illustrate the extensive nature of the redactions. Nor did Interior illustrate in its Vaughn log the exact field(s) on produced documents which were redacted. As such, it may be difficult for this Court to assess the redactions without the underlying documents to compare to Interior’s Vaughn log (in either their as-produced and redacted form, or in unredacted form). Plaintiff believes that to the extent Interior’s Vaughn log cannot be understood without reference to documents outside the record, such ambiguity further illustrates why Interior’s motion should be denied.

**I. The Department has Failed to Prove its Search for Records was Adequate.**

The agency relies on a declaration from Leah Fairman in support of its assertion that it adequately searched for records responsive to the Plaintiff's two FOIA requests at issue.

Unfortunately, the declaration is conclusory in nature and the other evidence in the record suggests the bare assertions of adequacy contained in the declaration are erroneous.

The adequacy of a search depends on more than mere speculation regarding "whether there might be" more uncovered documents. *Kowalczyk v. DOJ*, 73 F.3d 386, 388, 315 U.S. App. D.C. 286 (D.C. Cir. 1996). However, search is only "adequate" if the agency shows that its search method "was reasonably calculated to uncover *all* relevant documents." *Oglesby v. Dep't of Army*, 920 F.2d 57, 68, 287 U.S. App. D.C. 126 (D.C. Cir. 1990) (*emphasis added*). The agency is permitted to carry its burden through affidavits *only* if such affidavits set "forth the search terms and the type of search performed[ ] and aver[ ] that all files likely to contain responsive materials ... were searched[.]" *Id.* And an agency cannot prevail by submitting a vague or conclusory affidavit in place of one containing such detailed information: the required details regarding the agency's search must be "specific enough to enable [plaintiffs] to challenge the procedures utilized." *Weisberg v. DOJ*, 627 F.2d 365, 371, 200 U.S. App. D.C. 312 (D.C. Cir. 1980).

Once the agency has provided the necessary detail, the plaintiff must produce "countervailing evidence" showing a genuine dispute of material fact about the search's adequacy. *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 314-16, 354 U.S. App. D.C. 230 (D.C. Cir. 2003) (internal citations omitted). Above all, "[i]f the record leaves substantial doubt as to the sufficiency of the search, summary judgment for the agency is not proper." *Kowalczyk*, 73 F.3d at 388 (internal citations omitted).

Here, the agency’s declaration is 33 numbered paragraphs in length. See ECF No. 25-4. However, the word “search” appears only 9 times scattered across two of the numbered paragraphs. See ¶¶ 8-9. Those paragraphs, in turn, are conclusory in nature and do not provide the level of detail required by the D.C. Circuit in *Weisberg*. Two of the 9 references to the search are entirely conclusory in nature and verbatim: the declarant states with reference to each numbered FOIA request at issue in this case that “[t]he agency conducted a manual and electronic search reasonably calculated to lead to discovery of responsive records to this request.” ¶8, ¶9. These statements provide no information, although it does foreshadow the coming acknowledgement that the declaration offers hearsay evidence and otherwise fails to address key factors of an adequate search. The remaining 7 mentions of how the search was conducted provide little additional detail and are similarly insufficient when stacked against the sort of information required by binding precedent in the D.C. Circuit.

With reference to OS-2021-003617, seeking “all calendar and/or meeting invitations sent to or from (including copying) Elizabeth Klein,” the declarant provides hearsay<sup>2</sup> testimony that “At the request of OS FOIA, Gareth Rees, Executive Assistant to the Secretary, searched Ms. Klein’s Microsoft Outlook and Calendar for all calendar and Microsoft Teams invitations.” ¶8. The declarant goes on to state (emphasis added) that “*the Department of the Interior* uses Microsoft Outlook for both its email system and as its electronic calendar”, *Id.*, appearing to have assumed but purely unilaterally that Ms. Klein used Microsoft Outlook *exclusively*, since Plaintiff’s request

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<sup>2</sup> “[I]t is ‘well-settled that only admissible evidence may be considered by the trial court in ruling on a motion for summary judgment.’ *Bortell v. Eli Lilly & Co.*, 406 F. Supp. 2d 1, 11 (D.D.C. 2005) (internal citations omitted). Hearsay evidence generally is inadmissible. Fed. R. Evid. 802, cf. *Humane Soc’y of the United States v. Animal & Plant Health Inspection Serv.*, 386 F. Supp. 3d 34, 44 (D.D.C. 2019). To the extent that the agency’s affidavit relies upon hearsay statements, Plaintiff respectfully submits that it should not be considered or given any probative weight.

did not limit itself to Microsoft Outlook (or Interior) platforms, nor did Plaintiff's request otherwise further narrow its scope beyond work-related calendar entries or meeting invitations for Ms. Klein however sent or received (email, Gmail, iPhone, telephone, etc.). The declaration is silent on what type of "manual" searches the agency conducted other than to acknowledge this did not extend beyond Ms. Klein's DoI Outlook calendar. The declaration fails to mention iPhone (whether the Interior-issued phone or other), other email (including, e.g., meeting or calendar invitations sent by other than Interior's Outlook platform, including invitations extended in the body of a message rather than in the form of a Google invitation, Zoom invitation, an "e-vite"), Google/Gmail or any other calendar invitations (all of which the request covered). Nor does the declaration mention other mechanisms of common calendar control, to include handwritten calendars, meeting invitations issued by other email platforms or phone, etc. The search expressly acknowledges that it only searched Interior's Outlook platform, to the exclusion of, e.g., Ms. Klein's Interior-issued (or other) phone calendars, despite no such limitation in the request. And the Department fails to explain why it failed even to examine even her Department mobile phone platform or to ask Ms. Klein what type of other calendar control she utilizes before assuming that a search of Microsoft Outlook would result in a complete and adequate search for records. This stands in contrast to the Fairman Declaration ¶ 9, which states that both Ms. Klein's personal and work cell phones were searched (if, Fairman states, by Ms. Klein) for any texts or SMS between her and Mr. Hayes.

This distinction between the methodologies for Interior's searches with respect to each request affirms that Interior's unilateral limitation of the search in one instance is not inherently reasonable, nor is it made any less unreasonable by Interior's failure to explain (let alone *justify*) the decision. Further, the haphazardness thereby also affirms the lack of the required "systemic"

approach. *Weisberg*, 627 F.2d at 371. It does not resolve Interior's search obligation, but instead openly confesses it was unilaterally and grossly truncated and severely inadequate.

With reference to OS-2021-003627, the agency's declaration fails in even more respects. These failures are particularly fatal to Interior's Motion here given the request at issue sought "copies of all electronic correspondence," adding examples of non-email communications further making clear this was not limited to electronic mail and inarguably contemplating, e.g., Microsoft Teams or Zoom "chats." These chats physically resemble e-mail communications except for lacking a "Subject:" field. Teams and Zoom chats have been revealed in other matters (e.g., EPA-2022-001422, EPA-2022-001510, EPA-2021-003391, Securities & Exchange Commission Request 22-01719-FOIA, Federal Energy Regulatory Commission Request FOIA-2022-44 (in suit before this Court in *Institute for Energy Research v. Federal Energy Regulatory Commission*, 22-cv-01624 (APM))) to be a tool promiscuously used by administration appointees as an alternative to .gov email accounts given not only the convenience of using the respective platform during a meeting on the platform, *but also because the chat function does not require an ongoing meeting in order to use it for inter-agency correspondence*. Federal agencies use Teams, for example, as a platform "for meetings, chat and calling". See, e.g., Plaintiff's Response to Statement of Material Facts, Ex. C, and documents referenced therein. In a March 30, 2021 document in Defendant's December 7, 2021 production in 21-003627 (page 121 of 292, Ex. EXHIBIT "21-003627\_Production\_Redacted.pdf"), Ms. Klein writes, inter alia, "I tried sending a msg through teams but not sure it worked", suggesting one way the platform is used for messaging with no ongoing "meeting" underway, but as an alternative to .gov email.

The records produced in this matter leave no doubt that Interior employed both Teams and Zoom prolifically during COVID to host meetings. Chats are not only referenced in records in this

matter,<sup>3</sup> but Plaintiff has reminded Defendant through counsel since as early as February 8, 2022, that the request covered “chats.” Rather than claim an exemption for these records, or make the audacious claim outright that such correspondence are not records for purposes of FOIA (or the Federal Records Act<sup>4</sup>), Interior offers a rhetorical sleight of hand.

Specifically, in its Memorandum of Law in Support of Summary Judgment, Interior informs this Court:

“The Department searched all systems within its control that would reasonably be expected to contain communications between Ms. Klein and Mr. Hayes. The Department is unable to search for potential communications that are not within the Department’s control such as chats that could have been sent on Zoom during a zoom call hosted by the White House. *See Aguiar v. DEA*, 865 F.3d 730, 735 (D.C. Cir. 2017) (agency records are those “documents that an agency both (1) ‘create[s] or obtain[s]’, and (2) control[s]’... at the time the FOIA request [was] made.”)(internal citation omitted). The Department never created or obtained any potential chats sent via a Zoom meeting hosted by the White House nor does the Department control those potential chats. Additionally, based on the Department not locating in its search any Teams chats there is no reason to believe that there would be any chats from the Zoom meetings that would be responsive. See Fairman Decl. ¶ 9.”

ECF 25-1 at 7-8, fn. 5.

First, this ignores the fact that Interior possessed the chat correspondence when received (and/or created) by Interior officials, as well as other jurisprudence such as *Chicago Tribune v.*

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<sup>3</sup> See, e.g., p. 434 of 444, January 7, 2022, production and p. 121 of 292 in Defendant’s December 7, 2021 production in 21-003627 (also referenced in statement of material facts and accompanying declaration of counsel).

<sup>4</sup> Although Interior muses that these records weren’t stored on *its* servers, the policy requiring the search for governmental records even when such records have not been properly preserved even on governmental servers or accounts at all is also reflected in U.S. federal statute (Federal Records Act of 1950, 44 U.S.C. 3101 *et seq.*, the E-Government Act of 2002 and other legislation) and regulation (36 C.F.R. Subchapter B, Records Management, and all applicable National Archives and Records Administration (NARA) mandated guidance), and reflected in United States Government Accountability Office, “Report to the Ranking Member, Committee on Finance, U.S. Senate: NATIONAL ARCHIVES AND RECORDS ADMINISTRATION. Oversight and Management Improvements Initiated, but More Action Needed,” GAO-11-15, October 2010, <http://www.gao.gov/assets/320/310933.pdf>.

*U.S. Dept. of Health & Human Services*, 1997 WL 1137641, \*5 (N.D.Ill.1997). *Judicial Watch, Inc. v. U.S. Dept. of Energy*, 310 F.Supp.2d 271, 297 (D.D.C. 2004), *aff'd in part, rev'd in part*, 412 F.3d 125, 133 (D.C. Cir. 2005) (citing *Burka*, 87 F.3d at 515 (HHS had “constructive control” of data tapes in research firm’s possession) and *Ryan*, 617 F.2d at 785 (FOIA can reach “operations” of “outside contractors”). Further, of course, although Interior claims it never created or obtained any potential chats sent via a Zoom meeting hosted by the White House, Interior’s own pleadings and declaration make clear that Interior would have no way to know any of this. The declaration uses the words “created” and “obtained” colloquially here, not as FOIA and the Federal Records Act (44 U.S.C. § 3301) use the words. This masks Interior’s true claim, which appears to be that messages received (and possibly sent) by Interior appointees, on Interior time and equipment in pursuit of Interior-related work are not records because neither Interior nor its appointees ever captured the records. It seeks to invent a loophole to FOIA that Congress never sought to codify and which would run counter to the entire body of jurisprudence developing around the use of non-.gov email platforms to create written, work-related communications.

The Department of Justice notes that “‘Records’ is not a statutorily defined term in FOIA. In fact, it appears that the only definition of this term in the U.S. Code is that in the Federal Records Act. 44 U.S.C. § 3301. “What is an “Agency Record?”, U.S. Department of Justice FOIA Update Vol. II, No. 1, 1980, [http://www.justice.gov/oip/foia\\_updates/Vol\\_II\\_1/page3.htm](http://www.justice.gov/oip/foia_updates/Vol_II_1/page3.htm).

“The definition of a record under the Freedom of Information Act (FOIA) is broader than the definition under the Federal Records Act.” *See e.g.*, Environmental Protection Agency, “What Is a Federal Record?,” <http://www.epa.gov/records/tools/toolkits/procedures/part2.htm>. The Federal Records Act requires a record somehow reflect the operations of government at

some substantive level while FOIA covers far more, including phone logs, annotations and the most seemingly inconsequential piece of paper or electronic record in an agency's possession. At bottom "the question is whether the employee's creation of the documents can be attributed to the agency for the purposes of FOIA." *Consumer Fed'n of America v. Dep't of Agriculture*, 455 F.3d 283, 287 (D.C. Cir. 2006).

A record's status is not dictated by the account on which it is created or received. This has been most often affirmed in, but is by no means exclusive to, the context of private email accounts (see, e.g., "Agencies are also required to address the use of external e-mail systems that are not controlled by the agency (such as private e-mail accounts on commercial systems such as Gmail, Hotmail, .Mac, etc.)", and when used during working hours or for work-related purposes "agencies must ensure that federal records sent or received on such systems are preserved in the appropriate recordkeeping system and that reasonable steps are taken to capture available transmission and receipt data needed by the agency for recordkeeping purposes." Government Accountability Office, *Federal Records: National Archives and Selected Agencies Need to Strengthen E-Mail Management*, GAO-08-742, June 2008, <http://www.gao.gov/assets/280/276561.pdf>, p. 37.

When federal employees find themselves having received or created information on work-related issues on non-official accounts, they are required to copy their office, because all such correspondence are possibly "agency records" under the Federal Records Act and more likely are covered by FOIA.<sup>5</sup> Similarly, when agencies learn of such correspondence or the use

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<sup>5</sup> See also e.g., Government Accountability Office, "Federal Records: National Archives and Selected Agencies Need to Strengthen E-Mail Management," GAO-08-742, June 2008, <http://www.gao.gov/assets/280/276561.pdf>, at p. 37; *Frequent Questions about E-Mail and Records*, United States Environmental Protection Agency.

of such accounts for work-related correspondence, they must obtain copies. Regardless of an official's original intent, this practice violates also results in the frustration of federal record-keeping and disclosure laws. See *Landmark Legal Foundation v. E.P.A.*, 2013 WL 4083285, \*6 (D.D.C. Aug. 14, 2013).

Agencies are clear about this in policy.<sup>6</sup> During a recent-prior administration, the White House Office of Science and Technology Policy (OSTP) then-Director John Holdren's memo affirmed the law and policy in equally clear terms. FOIA asserts the broadest view of "records" among the relevant federal statutes. It covers correspondence sent or received on any account if their subject relates to official business. See e.g., Senate Committee on Environment and Public Works, Minority Report, A Call for Sunshine: EPA's FOIA and Federal Records Failures Uncovered (Sept. 9, 2013) at 8.

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<sup>6</sup> See also, e.g., the Department of Energy acknowledges that fulfillment of these requirements, which originate in the Federal Records Act of 1950 44 U.S.C. 3101 *et seq.*, the E-Government Act of 2002 and other legislation means that DOE must "Capture and manage records created or received via social media platforms, including websites and portals, or from personal email used for Department business", and "Ensure that departing Federal employees identify and transfer any records in their custody to an appropriate custodian, or the person assuming responsibility for the work." See "Your Records Management Responsibilities", U.S. Department of Energy, Office of IT Planning, Architecture, and E-Government, Office of the Chief Information Officer, July 2010, available at [http://energy.gov/sites/prod/files/cioprod/documents/Your\\_Records\\_Management\\_Resposiiblities\\_2\\_.pdf](http://energy.gov/sites/prod/files/cioprod/documents/Your_Records_Management_Resposiiblities_2_.pdf). See also, DOE Order 243.1A, Records Management Program, [http://energy.gov/sites/prod/files/o243%201a\\_Final\\_11-7-11.pdf](http://energy.gov/sites/prod/files/o243%201a_Final_11-7-11.pdf), replacing similar requirements found in DOE Order 243.1, Records Management Program, 2-3-06. See also, e.g., September 11, 2012 Letter from Morgan Wright, U.S. Department of Energy, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, and September 11, 2012 Letter from Eric J. Fygi, Deputy General Counsel, U.S. Department of Energy, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, affirming that DoE officials' work-related emails conducted on non-official accounts potential status as agency records and which therefore must be produced by the employee to the employee's agency.

Mr. Holdren properly asserted employee and agency responsibilities when, after one OSTP employee was exposed to be engaging in a practice of using a non-.gov email account to create/receive correspondence, Holdren reaffirmed that agency preservation of its own copies is mandatory. His May 2010 memo to all staff stated in pertinent part:

If you receive communications relating to your work at OSTP on any personal email account, you must promptly forward any such emails to your OSTP account, even if you do not reply to such email... In this way, all correspondence related to government business—both incoming and outgoing—will be captured automatically in compliance with the [Federal Records Act].<sup>7</sup>

The short version of the applicable legal principles is that using a non-traditional platform or asset to perform public business, while impermissible, does not alter the work- and record-related character of the information or record; not immediately preserving the (in that case) emails, in further violation of the law, does not exempt records from the law and therefore is not a useful means of evading or exempting records from transparency laws. Like the Teams, Zoom, etc., Chats at issue here, records created or maintained on non-Interior servers are still subject to reasonable efforts by Interior to satisfy its FOIA obligation, which obligation is a continuing one. If in fact Interior has not contemporaneously obtained copies of all of requested work-related Chat records reflecting Interior-related Teams, etc. meetings and Chats, then similar “corrective action” as Interior took in the above-referenced instance, is again in order to satisfy this request under FOIA, beginning with Interior’s response to this request. Interior will have to document reasonable

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<sup>7</sup> Memo from OSTP Director John Holdren to all OSTP staff, Subject: Reminder: Compliance with the Federal Records Act and the President’s Ethics Pledge, May 10, 2010, available at <http://webcache.googleusercontent.com/search?q=cache:TzJWubvjomYJ:assets.fiercemarkets.net/public/sites/govit/ostp-employees.pdf&cd=1&hl=en&ct=clnk&gl=us&client=safari> (herein, “Holdren memo”).

efforts to retrieve the requested records, including documenting the denial by the host organization of Interior's request.

Further, ¶ 9 of the Fairman Declaration pertaining to this request begins with the same hearsay statement as ¶ 8 regarding a search conducted by an employee other than the declarant. But the agency declarant then states it searched only "SharePoint, Desktop Outlook, Calendar, and Desktop OneDrive for potentially responsive records using the search term David Hayes." Yet the declaration manages to get worse, when it states that Ms. Klein, the most conflicted employee, was assigned to decide what to search and then to search her own device(s) for text messages to and from David Hayes. And the agency goes yet further, by claiming it does not retain custody and control of records received from third parties over Zoom, in apparent defiance of its recordkeeping obligations (this is an incomprehensible position given, as detailed *supra*, any and all Zoom, Teams, Skype or other chat logs reflecting information received, and possibly sent, by employees are records under both the Federal Records Act and FOIA, regardless of who "hosts" the meeting).

## **II. Redactions Pursuant to Exemption 6 Were Unlawful as Applied to the Records at Issue.**

The agency relies upon the declaration of Leah Fairman and an accompanying Vaughn log to support the proposition that certain information, specifically non-governmental email addresses used by Interior appointees for government work, and cell phone numbers used for the same purpose, was properly withheld under Exemption 6. Unfortunately for the agency, however, Ms. Fairman's declaration and the accompanying Vaughn log entirely fail to establish that the information withheld or redacted is the "personnel" type information protected by Exemption 6 or

support the claims that there is no public interest in such information and that its release would constitute a clear and palpable threat to personal privacy.

As this Court recently held in *Humane Soc'y of the United States v. Animal & Plant Health Inspection Serv.*, 386 F. Supp. 3d 34, 42-43 (D.D.C. 2019):

Exemption 6 permits the withholding of “personnel and medical files and similar files” when the disclosure of that information “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). “Similar files” is broadly construed to include “[g]overnment records on an individual which can be identified as applying to that individual.” *U.S. Dep't of State v. Wash. Post Co.*, 456 U.S. 595, 602, 102 S. Ct. 1957, 72 L. Ed. 2d 358 (1982). In assessing the applicability of Exemption 6, courts “must weigh th[e] privacy interest in non-disclosure against the public interest in the release of the records in order to determine whether, on balance, the disclosure would work a clearly unwarranted invasion of personal privacy.” *Nat'l Ass'n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 874, 279 U.S. App. D.C. 27 (D.C. Cir. 1989) (“*NARFE*”). When an agency invokes Exemption 6, FOIA's strong presumption in favor of disclosure is at its zenith. *Jurewicz v. U.S. Dep't of Agric.*, 741 F.3d 1326, 1332, 408 U.S. App. D.C. 271 (D.C. Cir. 2014).

In this case, the agency is attempting to turn FOIA’s “strong presumption in favor of disclosure” into a strong presumption in favor of withholding. The agency cites only to its own conclusory affidavit for the proposition that “Public disclosure of individual employees’ work telephone numbers, work e-mail addresses, and personal e-mail addresses would constitute an unwarranted invasion of those employees’ personal privacy.” ECF No. 25-1 at p. 10. But *work* email addresses and *work* telephone numbers are inherently work-related as is, by an employee’s choice, any non-.gov account used for work or used by others to communicate with them for work after the employee shared the address. These methods of contact are widely distributed within the office and outside the office to any individual or entity inside or outside an agency which might have a reason to contact a federal employee in an official capacity. This type of information reveals nothing about the employee’s personal life or personal status. Indeed, it is

often inherently shared any time an employee communicates outside his or her own office (or even within it) by placing a telephone call or sending an email as a result of job duties.

What this information does do, however, is allow the public to learn if senior government appointees are using, e.g., a communications app such as “Signal”<sup>8</sup> whether on their government-assigned phone or merely using their longstanding non-governmental cell phone that has followed them from job to job for calls or texting (or Signal, WhatsApp, Telegram, etc.), in lieu of their agency-provided cell phone (an example of which, according to public records, is FERC Chairman Richard Glick). As documented in the attached declaration, Plaintiff knows the importance of identifying work phone numbers thanks to public records which have shown how the numbers are used. For example, if the Chairman of the SEC uses his @Hotmail.com account (or when a recent-past Environmental Protection Agency Administrator used her Verizon account, which FOIA productions in showed she had provided to certain activists and lobbyists for work-related correspondence),<sup>9</sup> he may or may not copy his office as legally required and the public/congressional oversight/targets of SEC actions may pursue that. However, any appointee choosing to use cell phone apps that are inherently off the agency’s ‘grid,’ so to speak, such as Signal and WhatsApp or Telegram, plainly cannot copy their agency as required by federal law, as that would thoroughly undermine the entire point of moving communications to those platforms.

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<sup>8</sup> Examples of senior administration appointees who have been revealed to use “Signal” include White House climate advisor Ali Zaidi, the same David Hayes whose correspondence with Ms. Klein is at issue in this matter (at least associated with one cell number, which may or may not be the number DoI hides in this matter), recent-former Securities and Exchange Commissioner Allison Herren Lee and many senior SEC appointees, as well as FERC General Counsel Matthew Christiansen. Signal and WhatsApp are prolifically used by federal employees, and the use of Signal is revealed by use of the phone number used to sign up for a signal account. See attached Declaration of Counsel.

<sup>9</sup> See attached Declaration of counsel.

The public has an intense right to know how broadly this practice has spread, and to press for such records in those instances where government employees make that choice. Interior does not state otherwise. It simply does not mention the issue.

### **III. Redactions Pursuant to Exemption 5 are Improper or Overbroad.**

The agency relies upon the declaration of Leah Fairman and an accompanying Vaughn log to support the proposition that certain information was properly withheld under Exemption 5's "deliberative process privilege." Unfortunately for the agency, however, Ms. Fairman's declaration and the accompanying Vaughn log entirely fail to establish that the information withheld or redacted is properly covered by Exemption 5, or that the redactions have been narrowly tailored to cover *only* properly exempt information.

This case involves Exemption 5, which protects "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). Exemption 5 is commonly known as the "deliberative-process privilege," and covers records "reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." *NLRB. v. Sears, Roebuck & Co.*, 421 U.S. 132, 150, 95 S. Ct. 1504, 44 L. Ed. 2d 29 (1975) (citation omitted), *cf. Citizens for Responsibility & Ethics in Wash. v. United States DOJ*, No. 21-5113, 2022 U.S. App. LEXIS 23202, at \*5 (D.C. Cir. Aug. 19, 2022). "[R]ecommendations from subordinates to superiors lie at the core of the deliberative-process privilege." *Amadis v. United States Dep't of State*, 449 U.S. App. D.C. 233, 239, 971 F.3d 364, 370 (2020)

As the D.C. Circuit recently held in *Citizens for Responsibility & Ethics in Wash. v. United States DOJ*, No. 21-5113, 2022 U.S. App. LEXIS 23202, at \*17-18 (D.C. Cir. Aug. 19, 2022), citing numerous binding precedents:

To properly invoke the privilege, an agency must show that the records at issue are both pre-decisional and deliberative. *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 141 S. Ct. 777, 785-86, 209 L. Ed. 2d 78 (2021). A record is pre-decisional if it was “prepared in order to assist an agency decisionmaker in arriving at his decision, rather than to support a decision already made.” *Petroleum Info. Corp. v. U.S. Dep’t of the Interior*, 976 F.2d 1429, 1434, 298 U.S. App. D.C. 125 (D.C. Cir. 1992) (internal quotation marks and citations omitted). And a record is deliberative if it “reflects the give-and-take of the consultative process.” *Jud. Watch, Inc. v. FDA*, 449 F.3d 141, 151 (D.C. Cir. 2006) (quotation marks omitted) (quoting *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866, 199 U.S. App. D.C. 272 (D.C. Cir. 1980)).

Assessing whether a record is pre-decisional or deliberative necessarily requires identifying the decision (and the associated decisional process) to which the record pertains. An agency invoking the deliberative-process privilege thus must “establish what deliberative process is involved, and the role played by the documents in issue in the course of that process.” *Senate of the Commonwealth of Puerto Rico ex rel. Judiciary Comm. v. DOJ*, 823 F.2d 574, 585-86, 262 U.S. App. D.C. 166 (D.C. Cir. 1987) (internal quotation marks and citation omitted). The agency, that is, “bears the burden of establishing the character of the decision, the deliberative process involved, and the role played by the documents in the course of that process.” *Paisley v. CIA*, 712 F.2d 686, 698, 229 U.S. App. D.C. 372 (D.C. Cir. 1983), vacated in part on other grounds, 724 F.2d 201, 233 U.S. App. D.C. 69 (D.C. Cir. 1984).

To be sure, the deliberative-process privilege may apply even when the agency never reaches a final decision. That could happen, for instance, if an idea “dies on the vine” or meets a “dead-end.” *Sierra Club*, 141 S. Ct. at 786. But to carry its burden in such a situation, the agency still must tie the withheld records to a decision-making process, even if that process did not ultimately result in a decision. *Coastal States*, 617 F.2d at 868.

In this case, the agency has entirely failed to show that the deliberative process privilege applies to the records at issue. The agency has not pointed to any agency “decision” that was being contemplated or that was thereafter made, and it appears that no “superior and subordinate” relationship existed between the parties to the underlying correspondence or with whom the underlying records were shared. And even assuming *arguendo* that the privilege somehow attached

in the first place, the agency has further failed to establish that the privilege was not waived by sharing the relevant information outside the government.

For example, Plaintiff has challenged Defendant's claims that the subject of Teams and Zooms calls, or other meetings (pages 234, 254, 255 of 444, January 7, 2022, production), and even the locations of Teams and Zooms calls, or other meetings (e.g., pp. 234, 254, 255, 257, 300 of 444, January 7, 2022, production), is properly withheld as exempt deliberative information. In addition to common sense context suggests otherwise, but that it is instead purely factual information, and reveals none of the sort of insights that b5 was enacted to shield from scrutiny. The subject of a deliberation cannot itself be deliberative, or the agency would never need to adduce any information or evidence to support its claims of exemption. The location of a meeting similarly is often purely factual in nature, to include whether that location is a physical address (such as The White House) or is instead a "platform" such as Zoom, Teams, or even Signal.

#### **IV. Reliance on the Presidential Communications Privilege is Improper.**

The agency relies upon the declaration of Leah Fairman, on the accompanying Vaughn log, and on inapposite caselaw from starkly different contexts to support the proposition that certain information was properly withheld pursuant to the Presidential Communications Privilege. Unfortunately for the agency, however, this is a FOIA case, governed by FOIA and its exemptions, and the agency's attempt to invent a "presidential" privilege for non-presidential agency records is fundamentally flawed.

This Court and others have repeatedly ruled that the Freedom of Information Act does not apply to the president. For example, in *Tripp v. Exec. Office of the President*, 200 F.R.D. 140, 143 (D.D.C. 2001), this Court held that the plain language of FOIA suggests the act might apply to the White House, but that "Despite the plain language of the statute, the FOIA's legislative

history directs that [it is] ‘not to be interpreted as including the President's immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President.’” Not surprisingly, FOIA’s plain text requires the production of “agency records” rather than presidential records. Plaintiff expressly sought agency records — described information created, received, possessed (at at least one time) by the agency. And Presidential Records are governed by an entirely separate statute and released or withheld based on entirely different considerations: the Presidential Records Act of 1978, codified at 44 U.S.C. § 2201-2209.

Assuming, *arguendo*, that the Presidential Communications Privilege has any role to play in a suit involving *the Department of the Interior* (as opposed to the President himself or even a White House office or department), the agency nevertheless entirely fails to make a credible showing that the privilege applies to the records at issue in this case. “The privilege protects only ‘communications directly involving and documents actually viewed by the President,’ and ‘documents solicited and received by the President or his immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given to the President.’” *Prop. of the People, Inc. v. OMB*, 330 F. Supp. 3d 373, 387 (D.D.C. 2018) (internal citations omitted). Indeed, this Court has previously faulted OMB for claiming the presidential communications privilege in circumstances in which “it is not at all clear . . . whether the disputed calendar entries catalog meetings with individuals who qualify as ‘immediate White House advisers’.” *Id.* And this Court has also noted that expanding the number of advisors or “delegates” of the president or heads of agencies who are covered by the privilege renders meaningless the privileges foundational premise: that it protects “the president” rather than the entire executive branch. *Id.*

Here, the agency lists in its declaration nine separate individuals it believes qualify as advisors to the president for purposes of invoking the presidential communications privilege. ¶26. Those individuals carry job titles including the “Director” of the Council on Environmental Quality and the “Senior Associate Communications Director”. But the declaration does not explain the duties of each of those individuals, let alone how those duties relate to the records at issue or the advice the president solicits or receives. To the extent that the White House Council on Environmental Quality is a FOIA-covered “agency” and frequent FOIA litigant<sup>10</sup> which, as far as undersigned counsel can discern, has never itself invoked the presidential communications privilege to protect its own records, it appears odd to see the *Department of the Interior* invoke the privilege for mere communications *with* the Council.

Here, Plaintiff seeks all records responsive to its requests for described *Interior* information/records. Those missing to date glaringly include all non-Outlook calendar entries and invitations to meetings responsive to OS-2021-003617, for which there is no claim of presidential communications privilege whatsoever. Plaintiff also seeks all Teams, Zoom and other “Chats” responsive to OS-2021-003627, which Interior elides in its Memorandum and Declaration with colloquial references to “created or obtained” rather than by reference to the words’ applicable legal meanings. Plaintiff seeks non-hearsay declarations clearly articulating each search’s limitations, why they are not conflicted, why those conflicts do not undermine the declarations’ persuasiveness, a proper search of all calendars (OS-2021-003617) and Teams, Zoom etc. chats and declaratory demonstration thereof, and why requester and this Court should be persuaded they did not ever exist, i.e., reasonably demonstrably never were created and/or

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<sup>10</sup> See, e.g., *Pac. Legal Found. v. Council on Env'tl. Quality*, 205 U.S. App. D.C. 131, 636 F.2d 1259 (D.C. Cir. 1980), *S. Env'tl. Law Ctr. v. Council on Env'tl. Quality*, 507 F. Supp. 3d 694 (W.D. Va. 2020).

cannot be obtained despite Interior's ongoing obligation (triggered at the time of the "Chats" and again at the time Interior received OS-2021-003627. Of course, this also implicates Interior's ability to continue using such platforms in the face of a claim that Interior has invented a Get Out of FRA/FOIA-free card and whether, therefore, these claims are consistent with and satisfy Interior's FOIA obligations including in this matter.

### CONCLUSION

This Court should deny Interior's Motion for Summary Judgment. To the extent that the Court has any doubts arising out of the agency's search, the Court should order further briefing on what the proper remedy is relating to the improper search.<sup>11</sup> To the extent that the Court concludes that the agency's Vaughn log does not provide sufficient information to assess the application of any exemption to any particular record or portion of a record, the Court should order the records to be submitted in camera and either order the records released following such review or give the parties a further opportunity to address any questions that arise in the context of in camera review.<sup>12</sup>

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<sup>11</sup> Remedies appear to vary based on the circumstances. See, e.g., *Cole v. Richford*, 285 F. Supp. 3d 73, 76 (D.D.C. 2018); *Thomas v. FDA*, 587 F. Supp. 2d 114, 115 n.2 (D.D.C. 2008) (*Landmark Legal Found. v. EPA*, 959 F. Supp. 2d 175, 183 (D.D.C. 2013), *Wolf v. CIA*, 569 F. Supp. 2d 1, 10 (D.D.C. 2008)). *Citizens for Responsibility and Ethics in Wash. v. DOJ*, No. Civ. 05-2078 (EGS), 2006 U.S. Dist. LEXIS 34857, 2006 WL 1518964, at \*3 (D.D.C. June 1, 2006), and *Cole v. Copan*, No. 15-1991 (EGS/GMH), 2021 U.S. Dist. LEXIS 243333, at \*19-20 (D.D.C. Dec. 21, 2021). At this time, Plaintiff takes the position that it is premature to address remedies prior to the Court addressing the fundamental issue of whether the search was deficient in the first instance and before the parties can address the issue informally in light of any ruling the court makes.

<sup>12</sup> Plaintiff notes that its complaint seeks an award of attorney's fees. Insofar as Interior has not addressed the fees issue and it appears premature to do so prior to a judicial determination that this case is at its end, Plaintiff merely notes here that it anticipates seeking fees at the appropriate juncture.

Respectfully submitted this the 26<sup>th</sup> day of September, 2022,

/s/ Matthew D. Hardin  
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D.C. Bar No. 1032711  
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1725 I Street NW, Suite 300  
Washington, DC 20006  
(202) 802-1948  
MatthewDHardin@protonmail.com

*Counsel for Plaintiff*



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ENERGY POLICY ADVOCATES,

*Plaintiff,*

v.

U.S. DEPARTMENT OF THE INTERIOR,

*Defendant.*

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Civil Action No. 21-1411 (JDB)

**DECLARATION OF COUNSEL**

I, Christopher C. Horner, state as follows:

1. I am counsel to the Plaintiff in the above-captioned matter.
2. I was at all relevant times and remain counsel to the Plaintiff with respect to the following numbered FOIA requests: EPA-2022-001422, EPA-2022-001510, EPA-2021-003391, Securities & Exchange Commission Request 22-01719-FOIA, and the plaintiff in Federal Energy Regulatory Commission Request FOIA-2022-44 presently in suit before this Court in *Institute for Energy Research v. Federal Energy Regulatory Commission*, 22-cv-01624 (APM).
3. In the above-referenced requests, I have seen that messaging “apps” are a tool promiscuously used by administration appointees as an alternative to .gov email accounts, and “us[ed] for meetings, chat and calling”. This knowledge has been revealed in document productions, and is exemplified in the attached exhibits.
4. Zoom, Teams and possibly other “chats” are referenced in productions of documents in the instant request at issue in the above-captioned matter, OS-2021-003627, but the

underlying chats were not produced. I know this based on document productions I have carefully reviewed in this suit, and I am attaching to this declaration an example of such a document in which Ms. Klein references her use of Teams chats that was produced in OS-2021-003627. I am also attaching an email to counsel for the Defendant in which Plaintiff made clear its position with respect to such “chats.”

5. Also attached hereto is an example of a federal agency description of the Teams platform functions, specifically circulated by the United States Environmental Protection Agency in response to FOIA request EPA-2022-001510.
6. Also attached hereto are examples of documents produced by the defendant under Exemption 5 and/or Exemption 6, which documents are detailed in the Vaughn log but which the Defendant has not submitted to the Court. The application of the redactions to these documents is illustrative of the practices detailed in Plaintiff’s accompanying memorandum of law.
7. Further, in the course of representation in the above-cited matters as well as others I have personally learned of the use of Signal and WhatsApp on phones associated with numerous senior federal government appointees, as noted in the Plaintiff’s Memorandum in Opposition to Summary Judgment at p. 16.

DATED: September 26, 2022

/s/ Christopher C. Horner

CHRISTOPHER C. HORNER  
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1725 I Street NW, Suite 300  
Washington, DC 20006  
(202) 262-4458  
[Chris@CHornerLaw.com](mailto:Chris@CHornerLaw.com)

*Counsel for Plaintiff*



**From:** [Rees, Gareth C](#)  
**To:** [Johnson, Liza M](#); [Klein, Elizabeth A](#)  
**Cc:** [Haines, John W](#)  
**Subject:** Re: [EXTERNAL] Coastal resilience  
**Date:** Tuesday, March 30, 2021 12:13:30 PM

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Let me know if we need to find some more time

Gareth C. Rees  
Office to the Deputy Secretary  
U.S. Department of the Interior  
Tel: 202-227-9181

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**From:** Johnson, Liza M <Liza\_M\_Johnson@ios.doi.gov>  
**Sent:** Tuesday, March 30, 2021 11:45 AM  
**To:** Klein, Elizabeth A <Elizabeth\_Klein@ios.doi.gov>  
**Cc:** Rees, Gareth C <Gareth\_Rees@ios.doi.gov>; Haines, John W <jhaines@usgs.gov>  
**Subject:** Re: [EXTERNAL] Coastal resilience  
No problem. We are on the line chatting and can wait as long as you need.

*Liza M. Johnson  
Ocean, Great Lakes, and Coastal Program Coordinator  
Office of the Assistant Secretary, Insular and International Affairs  
1849 C Street, NW MS 3117  
Washington, DC 20240  
Phone: 202-208-1378*

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**From:** Klein, Elizabeth A <Elizabeth\_Klein@ios.doi.gov>  
**Sent:** Tuesday, March 30, 2021 11:44 AM  
**To:** Johnson, Liza M <Liza\_M\_Johnson@ios.doi.gov>  
**Cc:** Rees, Gareth C <Gareth\_Rees@ios.doi.gov>; Haines, John W <jhaines@usgs.gov>  
**Subject:** Re: [EXTERNAL] Coastal resilience  
Hi! I tried [sending a msg through teams](#) but not sure it worked. My whole internet situation crashed and I'm on the phone with tech support.

Get [Outlook for iOS](#)

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**From:** Klein, Elizabeth A  
**Sent:** Monday, March 29, 2021 4:30:11 PM  
**To:** Johnson, Liza M <Liza\_M\_Johnson@ios.doi.gov>  
**Cc:** Rees, Gareth C <Gareth\_Rees@ios.doi.gov>; Haines, John W <jhaines@usgs.gov>  
**Subject:** RE: [EXTERNAL] Coastal resilience  
Great, thanks very much for your help!

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**From:** Johnson, Liza M <Liza\_M\_Johnson@ios.doi.gov>  
**Sent:** Monday, March 29, 2021 2:36 PM

## Message

**From:** eBusiness\_support@epa.gov [eBusiness\_support@epa.gov]  
**Sent:** 1/23/2021 11:30:05 PM  
**To:** Goffman, Joseph [Goffman.Joseph@epa.gov]  
**CC:** eBusiness\_Support [eBusiness\_Support@epa.gov]  
**Subject:** ACTION REQUIRED: Review and certify your EPA person profile information - Past Due (WCF reference #150d)

## eBusiness

The EPA requires all employees and contractors to regularly certify their work location and work-related phone numbers in eBusiness.

You can quickly review this information on the [Certify Person Profile](#) page in eBusiness, or by going to <https://ebusiness.epa.gov> and clicking the "Person Profile Certification is Required." link in the pending actions section of the home page.

**Remote Access Users:** You must be connected to the EPA VPN to access eBusiness. EPA's remote access solution allows users to connect to the EPA's network from a remote location using a laptop or desktop computer connected to the internet. The Agency uses a Virtual Private Network (VPN) to securely authenticate the connection.

If you have recently changed your LAN password, you may be prompted to provide your network credentials to access eBusiness. If this occurs please enter your user name as aa\`<login UserID>` and enter your LAN password to access eBusiness. For example, John Smith with login id jsmith would enter aa\`jsmith` as his user name.

Accurate Profile information is critical because certified information is used in various EPA systems including:

- EPA's Outlook Global Address Listing (GAL)
- EPA Emergency Contact System (Everbridge)
- Skype for Business Contact Card
- MS Teams Contact Card

If you have any questions, view the [Person Profile Certification Training Video](#) and/or contact User Profile Administrator in your organization: [Nicole V. Smoot](#).

## Current EPA Profile Information

<b>First Name:</b> Joseph	<b>Preferred Name:</b>
<b>Last Name:</b> Goffman	<b>Middle Initial:</b> M
<b>Email:</b> goffman.joseph@epa.gov	
<b>Organization:</b> (11) AO	<b>Sponsor Organization</b>
	<b>Office:</b>
<b>Affiliation:</b> Political Appointee	<b>Workforce ID:</b> <span style="border: 1px dashed black; padding: 2px;">Ex. 6 Personal Privacy (PP)</span>
<b>Office Location:</b>	
<b>Building:</b> WJC Building North	<b>Room:</b> TBD
<b>Address:</b> 1200 Pennsylvania Ave NW	

City: Washington

State, ZIP: DC, 20460

No telephone numbers

Message

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**From:** Vizian, Donna [Vizian.Donna@epa.gov]  
**Sent:** 2/26/2021 8:16:06 PM  
**Subject:** February Administrative Update for Supervisors  
**Attachments:** February 2021 Administrative Update for Supervisors V2 DV.docx

Colleagues,

OCFO and OMS are pleased to provide the Administrative Update for Supervisors. We encourage you to use this information as a guide for sharing updates on administrative activities with your staff.

If you have any comments, questions or requests for information on other topics not included in the update, please contact [Shakeba Carter-Jenkins](#) (202-564-6385).

Please stay safe and be well.

Best,  
Donna

## Administrative Update for Supervisors February 2021

### COVID-19 Updates

- Employees can read about EPA's Workplace Safety Plan on [ HYPERLINK "<https://workplace.epa.gov/covid19/index.html>" \l "button" ]. \*
- Please read the FAQs for [ HYPERLINK "<https://www.usa.gov/safer-federal-workforce>" ] (leave, facilities, mask-wearing and other related topics) on [ HYPERLINK "<https://www.usa.gov/safer-federal-workforce>" ].

### Mass Mailers:

- 2020 [ HYPERLINK "[https://usepa.sharepoint.com/sites/OA\\_Work/epanews/newsitems/Lists/Posts/Post.aspx?ID=1621](https://usepa.sharepoint.com/sites/OA_Work/epanews/newsitems/Lists/Posts/Post.aspx?ID=1621)" ] Scores.
- Dan Utech's, EPA's Chief of Staff, [ HYPERLINK "[https://usepa.sharepoint.com/sites/OA\\_Work/epanews/newsitems/Lists/Posts/Post.aspx?ID=1613](https://usepa.sharepoint.com/sites/OA_Work/epanews/newsitems/Lists/Posts/Post.aspx?ID=1613)" ] to employees about EPA's Workplace Safety Plan.
- Donna J. Vizian, Acting Assistant Administrator, [ HYPERLINK "[https://usepa.sharepoint.com/sites/OA\\_Work/epanews/newsitems/Lists/Posts/Post.aspx?ID=1607](https://usepa.sharepoint.com/sites/OA_Work/epanews/newsitems/Lists/Posts/Post.aspx?ID=1607)" ] on the National Defense Authorization Act to ensure leave to impacted employees is appropriately restored.
- Jane Nishida, Acting Administrator and Dan Utech, Chief of Staff announce the addition [ HYPERLINK "[https://usepa.sharepoint.com/sites/OA\\_Work/epanews/newsitems/Lists/Posts/Post.aspx?ID=1614](https://usepa.sharepoint.com/sites/OA_Work/epanews/newsitems/Lists/Posts/Post.aspx?ID=1614)" ] to the EPA Library Desktop.
- Dan Utech's, [ HYPERLINK "[https://usepa.sharepoint.com/sites/OA\\_Work/epanews/newsitems/Lists/Posts/Post.aspx?ID=1602](https://usepa.sharepoint.com/sites/OA_Work/epanews/newsitems/Lists/Posts/Post.aspx?ID=1602)" ] about his commitment to a safe and healthy EPA workforce.

### Employee Assistance Program

- EAP provided by ESPYR may be accessed 24/7 by calling (888) 635-3202. Services and information are also available at [ HYPERLINK "<http://www.espyr.com>" ]. EAP services are available to all EPA employees, including you as a supervisor. For login information, see the [ HYPERLINK "<https://intranet.epa.gov/ohr/benefits/eap/index-content.html>" ].

### Join the 2021 Step It Up Challenge

- Make your health a priority in 2021 and enjoy the [ HYPERLINK "<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdc.gov%2Fphysicalactivity%2Fbasics%2Fpa-health%2Findex.htm&data=04%7C01%7CCarter-Jenkins.Shakeba%40epa.gov%7Cf1223b93d4db4e6bb96e08d8d461b10e%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637492863325289454%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=KNM1kIsfLcF2FTt3fpKeVT5VOXxfuZTTb%2FsHLUBpr08%3D&reserved=0>" ] by participating in the agencywide [ HYPERLINK "<https://intranet.epa.gov/ssd/fitness/challenges/index.htm>" ].

\* Connect to the VPN before clicking on links to the EPA intranet.

- From March 1, 2021, to May 31, 2021, participants will log their steps and exercise in a mobile-friendly [ [HYPERLINK "https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fprojects.erg.com%2Fconferences%2Ffitnesschallenge%2Fregisterlogin-new.htm&data=04%7C01%7CCarter-Jenkins.Shakeba%40epa.gov%7Cf1223b93d4db4e6bb96e08d8d461b10e%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637492863325289454%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Iik1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=xMRp2PgZqlep7YAKXN%2FcNfVHJdR52fxETHhYch1SEGS%3D&reserved=0"](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fprojects.erg.com%2Fconferences%2Ffitnesschallenge%2Fregisterlogin-new.htm&data=04%7C01%7CCarter-Jenkins.Shakeba%40epa.gov%7Cf1223b93d4db4e6bb96e08d8d461b10e%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637492863325289454%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Iik1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=xMRp2PgZqlep7YAKXN%2FcNfVHJdR52fxETHhYch1SEGS%3D&reserved=0) ] to earn points for their location's team.
- Participants should follow COVID-19 guidance from the [ [HYPERLINK "https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Findex.html&data=04%7C01%7CCarter-Jenkins.Shakeba%40epa.gov%7Cf1223b93d4db4e6bb96e08d8d461b10e%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637492863325299412%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Iik1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=gHbe8TL%2BnU9vIQrv7WiVF2u5VjWkV45jq%2FOEfsIkro%3D&reserved=0"](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Findex.html&data=04%7C01%7CCarter-Jenkins.Shakeba%40epa.gov%7Cf1223b93d4db4e6bb96e08d8d461b10e%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637492863325299412%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Iik1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=gHbe8TL%2BnU9vIQrv7WiVF2u5VjWkV45jq%2FOEfsIkro%3D&reserved=0) ] and local health departments when engaging in any fitness activity.

This year's challenge includes the following features:

- Participants can join two-to-five-person groups at locations agencywide – not just at their location.
  - Earn extra points by participating in the new [ [HYPERLINK "https://intranet.epa.gov/ssd/fitness/challenges/index.htm"](https://intranet.epa.gov/ssd/fitness/challenges/index.htm) ] "clean" in April.
  - If you have previously signed up for the challenge, you do not need to register again.
  - Winners will be announced at the end of the three-month competition period.
- View success stories and tips from previous challenges on the [ [HYPERLINK "https://intranet.epa.gov/ssd/fitness/challenges/testimonials.htm"](https://intranet.epa.gov/ssd/fitness/challenges/testimonials.htm) ]. For more information or to sign up, visit the [ [HYPERLINK "https://intranet.epa.gov/ssd/fitness/challenges/index.htm"](https://intranet.epa.gov/ssd/fitness/challenges/index.htm) ].

### **FY 2022 Budget**

- The Agency expects the Office of Management and Budget to send EPA instructions to begin working on developing a high-level Fiscal Year 2022 budget proposal in a document called "Passback" within the next few days.
- As in many transition years the new Administration is planning to release a high-level Budget Blueprint in the early Spring with general descriptions of the Administration's budget proposals. This will be followed by the submission of a detailed budget proposal known as the Congressional Justifications in late Spring.

### **Advice of Allowance**

- Each year, OCFO, OGC and OMS work together to consolidate appropriations guidance into one document called the Advice of Allowance (AOA), which should be issued in early March. Resource managers should read the AOA carefully, and all managers can use it as a reference.
- The AOA contains administrative, budget, contracts, finance, and grants information for FY 2021 resource operations and management. It includes directives from the “FY 2021 Consolidated Appropriations Act” and any other funding EPA received. Resource managers should read the AOA carefully, and all managers can use it as a reference. There are several attachments to the AOA, including:
  - 1) FY 2021 Appropriations Fund Codes and Treasury Symbols
  - 2) Carryover Plans and Fund Codes
  - 3) FY 2021 Program Project Reprogramming Request Form
  - 4) FY 2021 RPIO Budget Contacts, and
  - 5) FY 2021 Prohibited Activities and Congressional Directives.

### ADA/Transition Reminders

- As we transition to new senior leadership, we ask everyone to remember some important Federal budget rules, particularly since we are welcoming new employees and managers and some of the Federal rules are complicated and differ from private sector or non-profit rules.

**1) The Anti-deficiency Act (ADA) does not have de minimus nor materiality exceptions and applies both to dollars and employee time.** Any violation regardless of dollar value or time, must be reported to the President and Congress. Specifically, the Act prohibits:

- Making a legally binding promise to spend or spending **more funds than are legally available** for a particular purpose.
- Making a legally binding promise to spend or spending funds **before they become legally available**.
- **Accepting voluntary services** except where authorized by law.
- Making a legally binding promise to spend or spending funds **before they have been apportioned by OMB**.
- **Using funds for a different purpose** for which they were provided (appropriated).

**2) Some types of transactions warrant special attention** due to various legal restrictions, including:

- Vehicles and transportation-related expenses
- Clothing
- Food
- Awards for Non-Federal Employees
- Novelty / Promotional Items
- Memberships in Societies or Associations

- Any expense that might be viewed as a “personal expense” of an employee rather than a “necessary expense” of an authorized EPA program

**3) Transitions are a good time to address maintenance issues in Presidential appointees’ office space**, since work can be done before new appointees and staff arrive. Consider whether there are any maintenance issues that need to be addressed prior to the assignment of space and arrival of presidential appointees.

a. Once appointees are confirmed, under an annual government-wide appropriations rider (Section 710), agencies must notify congressional appropriations committees prior to obligating more than \$5,000 cumulatively to “furnish,” “redecorate,” “purchase furniture,” or “make improvements” for the entire suite of offices assigned to any presidential appointee (even if the appointee is not subject to Senate confirmation), including any space under their control or used primarily by the individual, such as a conference room. This can include some expenditures that are utilitarian / not necessarily to accommodate the personal preferences of the appointee. Contact the Office of General Counsel, Civil Rights and Finance Law Office, for more information or if you have questions.

**4) Per Agency policy (RMDS-2520) each NPM and Regional Senior Resource Official (SRO) is responsible for ensuring that Agency funds are spent in a legal, appropriate, and efficient manner – and the resource community is responsible for helping SROs carry out this role.**

a. Since Federal administrative rules can differ from the private sector, non-profit, or even state and local spending and administrative rules, the resource community should be ready to work with SROs and new arrivals to ensure that they can efficiently comply with Federal rules such as the ones highlighted above.

### **Skype to Teams Transition Update**

- [ [HYPERLINK "https://forms.office.com/Pages/DesignPage.aspx"](https://forms.office.com/Pages/DesignPage.aspx) ] provides a user-friendly method for collecting data, such as surveys, polls, and quizzes. You can share your forms with everyone, including external users. By expanding the outreach of your audience, you can gather deeper insights for your projects.

### *How to Share with External Users*

- In the **Settings** pane, select “**Anyone with the link can respond**”

## Settings

### Who can fill out this form

Anyone with the link can respond

Only people in my organization can respond

Record name

One response per person

- While you share your Forms with external users, take note:
  - External user responses are recorded as anonymous.
  - When the Forms link is shared with an external user, **anyone** with the link can respond.
  - Please review the EPA's [ [HYPERLINK "https://www.epa.gov/laws-regulations/summary-paperwork-reduction-act"](https://www.epa.gov/laws-regulations/summary-paperwork-reduction-act) ] as it applies to all surveys **including Forms**.

### Resources

- Review EPA guidance on the [ [HYPERLINK "https://www.epa.gov/laws-regulations/summary-paperwork-reduction-act"](https://www.epa.gov/laws-regulations/summary-paperwork-reduction-act) ]
- To learn more about how to get started with sharing your forms to external users, [ [HYPERLINK "https://support.microsoft.com/en-us/office/adjust-your-form-or-quiz-settings-in-microsoft-forms-f255a4ba-e03c-4e12-b880-f7e8b62e0665"](https://support.microsoft.com/en-us/office/adjust-your-form-or-quiz-settings-in-microsoft-forms-f255a4ba-e03c-4e12-b880-f7e8b62e0665) ].
- For technical issues, please contact the Enterprise IT Service Desk (EISD) at [ [HYPERLINK "mailto:EISD@epa.gov"](mailto:EISD@epa.gov) ] or 1-866-411-4372.
- (For additional information, please contact [ [HYPERLINK "mailto:Holland.Ramona@epa.gov"](mailto:Holland.Ramona@epa.gov) ].

Message

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**From:** EISD [eisd@epa.gov]  
**Sent:** 1/29/2021 5:20:51 PM  
**To:** Goffman, Joseph [Goffman.Joseph@epa.gov]  
**Subject:** Your incident INC0518411 has been resolved

## INC0518411 - Call in numbers for TEAMS

Your incident has been resolved

### Summary details

IT support has taken action to fix the reported issue and set this incident record to resolved.

Resolved by: Brian Piccolo

Resolution notes: Thank you for contacting the Office of Mission Support Web Conferencing Team. We have enabled an O365 conferencing license for your account for use with Teams and Skype. Please allow 60 minutes for the Activation email with Conf ID and PIN to be delivered.

If you plan to schedule meetings in Teams with the conference number, it will take up to 24 hours for Microsoft to configure the conference information to display in Teams. If you plan to use the conference information with Skype, please allow up to 60 minutes for the conference information to populate in a new Skype meeting.

The Office of Mission Support performs periodic monitoring of the O365 Dial-In audio conference utilization. If there is no usage for at least three months the account is disabled. For questions about how to use Skype for Business or Teams, you can call the How-to Help Center at 1-866-411-4372, option 6 or use the attached documentation on Using Microsoft Teams for Meetings.

Office of Mission Support Web Conferencing Team

Please click on the **green** button below to complete a survey about this Incident.

If you feel this issue has not been fully resolved, please use the **blue** button below to visit your personalized portal page, or call your local help desk to reopen the incident.

Visit the [End User Portal](#) for additional services, or call the Enterprise Help Desk at 1-866-411-4372 for assistance

Ref:MSG6994487\_NxYU6fN3bsuv3743hWft

Message

**From:** Microsoft Audio Conferencing [maccount@microsoft.com]  
**Sent:** 1/27/2021 8:09:40 PM  
**To:** Goffman, Joseph [Goffman.Joseph@epa.gov]  
**Subject:** You now have Audio Conferencing for Microsoft Teams or Skype for Business Online – Here is your dial-in information and PIN

You now have Audio Conferencing for Microsoft Teams or Skype for Business Online – Here is your dial-in information and PIN

Office 365 Audio Conferencing has been turned on for your account. With Audio Conferencing, you and your meeting participants can join by phone.

**Name:** Goffman, Joseph  
**Account:** Goffman.Joseph@epa.gov

### Your Audio Conferencing information

Here are the credentials that you and your meeting participants can use to join by phone. This information will be added to any Skype for Business or Microsoft Teams meetings you create. To join a meeting by phone, dial the conference phone number and enter the conference ID.

**Conference phone number:** Ex. 6 Personal Privacy (PP)  
**Conference ID:** Ex. 6 Personal Privacy (PP)

Note: You can get additional phone numbers by clicking the "Find a local number" link in your meeting invites.

### Your Audio Conferencing PIN

As the meeting organizer, you'll need to enter your PIN to start your meeting when you're the first person to join and you join by phone. As with any PIN, keep it confidential. You can reset your PIN via the reset PIN link that is included in your meeting invites or by contacting your Office 365 admin.

**Audio Conferencing PIN:** Ex. 8 Personal Privacy (PP)

This is an automatically generated service communication. For more information, please contact your administrator.

## Message

**From:** Dudek, Caitlin [Dudek.Caitlin@epa.gov]  
on behalf of O365 Training Program [O365TrainingProgram@epa.gov]  
**Sent:** 2/1/2021 8:29:11 PM  
**CC:** McFarland, Tisha [McFarland.Tisha@epa.gov]  
**Subject:** Welcome to the EPA from the Office 365 Training Team

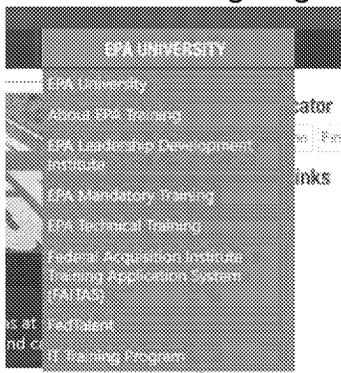
Hello new employees and welcome to EPA!



EPA's Office of Mission Support (OMS) offers live and recorded training on a variety of Office 365 tools. The Office 365 Training Program offers professional, live training on standard EPA software to all employees. Courses are 1-2 hours long and are taught via Teams. See the information below for how to join the live sessions or view the recorded training classes.

### Live Trainings

Live webinars are posted monthly on [FedTalent](#) and are available to all employees for no cost. To view the Office 365 Training Program classes:



- Go to <http://intranet.epa.gov/>
- Hover over EPA University
- Select FedTalent and sign in
- Click on EPA Office 365 Training

### Recorded Trainings

Can't make it to a live class? Recorded trainings are available to view any time on the [Training on Demand page](#) of the [O365 Training SharePoint site](#).

### How-to Help Center

You can call EPA's "how-to" help center to ask a how-to question about any Microsoft tool, including Skype, SharePoint, or Outlook. Questions can be simple or advanced. This service is available at no extra cost to all employees.



1-866-411-4EPA (4372), select option 6  
Hours 7am - 9pm ET, Monday-Friday.

Check us out!

From,  
EPA's Office 365 Training Team

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EPA's Office 365 Training Team

Message

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**From:** Vizian, Donna [Vizian.Donna@epa.gov]  
**Sent:** 1/29/2021 11:40:20 PM  
**Subject:** January Administrative Update for Supervisors  
**Attachments:** January 2021 Administrative Update for Supervisors VS 2.docx

Colleagues,

OCFO and OMS are pleased to provide the Administrative Update for Supervisors. We encourage you to use this information as a guide for sharing updates on administrative activities with your staff. If you have any comments, questions or requests for information on other topics not included in the update, please contact [Shakeba Carter-Jenkins](#) (202-564-6385).

Please stay safe and be well.

Best,  
Donna

## Administrative Update for Supervisors January 2021

### COVID-19 Updates

- To halt the spread of COVID-19 and protect the federal workforce and people interacting with them, President Biden signed on January 20 an executive order that [ HYPERLINK "<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-the-federal-workforce-and-requiring-mask-wearing/>" ]. This order also provides other information regarding protecting the federal workforce.
- Employees can read about the COVID-19 Vaccine in the Related Information section on [ HYPERLINK "<https://workplace.epa.gov/covid19/index.html>" \I "button" ]. \*

### Additional Executive Orders Signed by President Biden

- Read the January 20, [ HYPERLINK "<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>" ] which includes in Section 10 the revocation of the September 22, 2020 Executive Order 13950 Combatting Race and Sex Stereotyping.
- Read the January 22, [ HYPERLINK "<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/22/executive-order-protecting-the-federal-workforce/>" ] which also includes the revocation of Schedule F.

### Reminder Mass Mailer:

- In his first agency message to federal employees, Dan Utech, EPA's Chief of Staff, shares President Biden's new Executive Orders and staff updates in his [ HYPERLINK "[https://usepa.sharepoint.com/sites/OA\\_Work/epanews/newsitems/Lists/Posts/Post.aspx?ID=1588](https://usepa.sharepoint.com/sites/OA_Work/epanews/newsitems/Lists/Posts/Post.aspx?ID=1588)" ].

### Employee Assistance Program

- EAP provided by ESPYR may be accessed 24/7 by calling (888) 635-3202. Services and information are also available at [ HYPERLINK "<http://www.espyr.com>" ]. EAP services are available to all EPA employees, including you as a supervisor. For login information, see the [ HYPERLINK "<https://intranet.epa.gov/ohr/benefits/eap/index-content.html>" ].

### Employee Engagement Guide - please share with your teams

- EPA's [ HYPERLINK "[https://usepa.sharepoint.com/:b:/s/OARM\\_Community/EVS/community%20of%20practice/EV4xow\\_kE\\_5PoiQDclbJ2WQBbQQj-ge0OfgkAsZisYIA1A](https://usepa.sharepoint.com/:b:/s/OARM_Community/EVS/community%20of%20practice/EV4xow_kE_5PoiQDclbJ2WQBbQQj-ge0OfgkAsZisYIA1A)" \h ] is now available. The guide presents research-based leading practices in the following areas:

- 1) Employee Recognition
- 2) Work/Life/Wellness Balance
- 3) Team Building
- 4) Professional Development

\* Connect to the VPN before clicking on links to the EPA intranet.

## 5) Communication

6) Engagement Networks (*Best Places to Work* Groups)

- The Employee Engagement Guide caters to engagement communities, practitioners, supervisors, and employees interested in management. To learn more, visit the [ HYPERLINK "https://usepa.sharepoint.com/sites/OARM\_Community/EVS/community%20of%20practice/SitePages/Community%20Home.aspx" \h ] or contact [ HYPERLINK "mailto:Engagement@epa.gov" \h ].

### **Federal Employee Paid Leave Act (FEPLA) and Temporary Time Reporting Codes**

Effective immediately, employees who are currently eligible to use paid parental leave must now use the time reporting code(s) below and discontinue using the interim code NEWCD. The temporary codes may be used retroactively starting October 1, 2020.

- PDPLA – Adoption
- PDPLB – Birth
- PDPLF – Foster
- Employees are also required to submit absence requests for the paid parental leave using the corresponding Absence Type(s) located under the *ADMIN Leave Type* Leave Category on the leave request.
- Employees who used the interim code NEWCD for paid parental leave are required to attest and submit corrected timecards and their supervisors must approve leave requests and the corrected timecards by **February 27, 2021**.
  - If an employee submitted a leave request using the interim code NEWCD, the supervisor will need to cancel the leave request so the employee may submit another leave request using one of the temporary codes above.
- Specific instructions on correcting timecards and leave requests will be provided during FEPLA Office Hour Webinar from 1 pm – 2 pm on February 4.
- Employees or supervisors must [ HYPERLINK "https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fforms.office.com%2FPages%2FResponsePage.aspx%3Fid%3Ds3iziEhnZ0is-Xaqy-ymp2PAm-2X4HtBkcJfkNA89q5UOE1HWU9QWlpQNIIaOUcQVFPNVdFSE5MRS4u&data=04%7C01%7CCarter-Jenkins.Shakeba%40epa.gov%7Cc65879b836a14cd03a3a08d8c13f3d51%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637471824646065011%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=UEZIDuHExxz19ccl0IjBcVvO7qspzLCtRGfgHWNDq4s%3D&reserved=0" ] or view recorded webinar sessions on the [ HYPERLINK "https://usepa.sharepoint.com/sites/OCFO/ots/Pages/Federal-Employee-Paid-Leave-Act.aspx" ].
- For additional information on paid parental leave usage and procedures, please refer to the January 19, 2021, [ HYPERLINK "https://usepa.sharepoint.com/sites/OA\_Work/epanews/newsitems/Lists/Posts/Post.aspx?List=6be73931-80a3-4fdf-b8d4-54026cfa77ae&ID=1585&Web=cf735250-9e8f-4a4e-b1e0-ef91785e4b1e" ] on the topic.

### **Diversity Outreach Webinar Series (February 10<sup>th</sup>-25<sup>th</sup>)**

- To help increase diversity of the EPA applicant pool, the Shared Service Centers will host five webinars, each targeting a specific audience from HBCUs/PBIs, Hispanic/Latinx Serving





Work/Liaisons/SitePages/VRA%20Appointment.aspx?csf=1&e=qJMhtC&cid=3618e0b6-0f99-4d42-8775-24424dfb3598" ], [ HYPERLINK  
"https://usepa.sharepoint.com/sites/oarm\_Work/OARM-RTP-Work/HRMD-Work/Liaisons/SitePages/Schedule%20A%20(Disability)%20Appointment.aspx?csf=1&e=NoSdK8&cid=688ef5dc-51b3-4eda-8d51-f82475aada45" ], [ HYPERLINK  
"https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.opm.gov%2Fpolicy-data-oversight%2Fhiring-information%2Fdirect-hire-authority%2F%23url%3DFact-Sheet&data=04%7C01%7CCarter-Jenkins.Shakeba%40epa.gov%7Ce6cfa175a0f149a795f108d8bed6558b%7C88b378b367484867acf976aacbeca6a7%7C0%7C637469175055079612%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=b7Y6OckJc%2F7R42hj1AQ%2B12Zkdk0aybuOSbrCm9nPVzA%3D&reserved=0" ]

### **Budget and Operating Plan Update**

- Congress passed the Consolidated Appropriations Act, 2021 on December 27, 2020 funding the government for FY 2021.
- Under the direction of the new Administration, OCFO is working with the NPMs and Regions to prepare a FY 2021 operating plan, to submit to Congress in mid-February as required by the Congressional Joint Explanatory Statement.
- OCFO provided FY 2021 funding through February 27 to agency programs and will be able to provide the full fiscal year funding once the agency operating plan is submitted to Congress.

### **Travel Card Training**

- The new FY 2021 Environmental Protection Agency's Travel Training is now available in [ HYPERLINK "https://epafedtalent.ibc.doi.gov/" ] and travel cardholders are required to take the training by September 20, 2021.
- This training includes a separate Updates & Highlights section, which specifically references recent changes in travel policy related to Covid-19, actual expense reimbursement, high dollar travel, travel accommodations, cost comparisons and Uber & Lyft, which were recently deemed as authorized and reimbursable modes of transport.
- Travel cardholders must remember to use their travel cards for official authorized purposes only. For example, Travelers need to be mindful to switch their Uber/Lyft accounts to charge the proper credit card for personal verses official travel expenses.
- The Travel Training is required every year only for EPA employees who have been issued a travel card. FedTalent will track completion and travel cardholders who do not take the course in time will have their travel accounts suspended.
- To access the training, employees must first click on the eLearning button located on the One EPA Workplace intranet page, before logging on with either your Username and Password or PIV card.
- Should you have any questions, please email [ HYPERLINK "mailto:FedTalent\_Resource\_Desk@epa.gov" ] or [ HYPERLINK "mailto:Virgille.Joanne@epa.gov" ].

### **Skype to Teams Transition Update**

- **Reminder: Skype will be discontinued on January 31.**

- On Monday, February 1, Microsoft Teams will be the only collaboration tool for meetings and chat conversations for EPA.
- All EPA employees have been assigned an Office 365 audio conference line linked to their Teams meetings. Here are a few things to know:
  - When you host a Teams meeting, you and those invited to attend will have the option to join the meeting using a phone.
  - The dial-in number and conference ID for the meeting will be automatically populated in your invitations.
  - For increased security, the conference ID will automatically change for each meeting you schedule.

#### *What the Transition Means for You*

- Once Skype is removed, you won't be able to chat or schedule meetings in Skype.
- You will have access to previous Skype chats and conversations in your Outlook Conversation History folders.
- You will still be able to attend Skype meetings hosted by external partners.
- All the actions you could previously do in Skype, you will continue to be able to do in Teams.
- Please encourage your employees to start familiarizing themselves with Teams and using it for meetings, chat and calling, if they are not already.

#### *Learn More*

- OMS is providing training to all employees; you can sign up via the [ HYPERLINK "[https://usepa.sharepoint.com/sites/oei\\_Community/ittraining/SitePages/Home.aspx](https://usepa.sharepoint.com/sites/oei_Community/ittraining/SitePages/Home.aspx)" \t "\_blank" ].
- We recommend employees join [ HYPERLINK "[- In addition to the resources already listed, you can contact the \[ HYPERLINK "\[https://intranet.epa.gov/ittraining/howtohelpcenter/?utm\\\_campaign=IT&utm\\\_medium=AgencyMassMailers&utm\\\_source=VaughnNoga&utm\\\_content=201029\]\(https://intranet.epa.gov/ittraining/howtohelpcenter/?utm\_campaign=IT&utm\_medium=AgencyMassMailers&utm\_source=VaughnNoga&utm\_content=201029\)" \] at \(866\) 411-4372, Option 6 for one-on-one assistance with Teams or any O365 application.
- If you encounter any issues during this transition, please submit a ticket through Enterprise Information Technology Service Desk \(EISD\) by calling 1 \(866\) 411-4EPA \(4372\) and Press Option 3 or emailing \[ HYPERLINK "<mailto:EISD@epa.gov>" \]. You can also contact your \[ HYPERLINK "\[http://workplace.epa.gov/itsupport.html?utm\\\_campaign=IT&utm\\\_medium=AgencyMassMailers&utm\\\_source=VaughnNoga&utm\\\_content=201029\]\(http://workplace.epa.gov/itsupport.html?utm\_campaign=IT&utm\_medium=AgencyMassMailers&utm\_source=VaughnNoga&utm\_content=201029\)" \].
- For more information, contact \[ HYPERLINK "<mailto:Kefle.Fisseha@epa.gov>" \], 202-566-1459.](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fteams.microsoft.com%2F%2Fteam%2F19%253a1f6226032573403f936f95e1a603b49a%2540thread.skype%2Fconversations%3FgroupId%3D8559d3c6-d2e9-4c00-bed9-46e8cfed45ab%26tenantId%3D88b378b3-6748-4867-acf9-76aacbeca6a7&data=04%7C01%7CBruecker.Corey%40epa.gov%7Cf06e6f178b91418c7e6408d8bc82430e%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637466614938047419%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLjBjIiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&sd ata=xXsnOg03zGcZs7D0OPSWo4c509LA17QDgw1dPL397Jo%3D&reserved=0)

### **Loss of Functionality of SharePoint 2010 Workflows in Office 365**

- Microsoft will remove the ability to run, create or execute SharePoint 2010 workflows in Office 365 beginning March 1.
- Regional and Office O365 [ [HYPERLINK](#) "[\t \"\\_blank\"](https://usepa.sharepoint.com/sites/oei_Work/SharePointPM/SCA/Lists/SCA%20List/AllItems.aspx?viewpath=%2Fsites%2Foei_Work%2FSharePointPM%2FSCA%2FLists%2FSCA%20List%2FAllItems.aspx) ] (SCAs) and site owners are converting critical SharePoint 2010 workflows into Power Automate.
  - After March 1, SharePoint 2010 workflows will no longer work.
  - SCAs are focusing primarily on converting workflows they have designated as critical to their Office/Region; they expect other workflows to stop working without impact to their office's projects.
  - OMS has asked all SCAs to update a [ [HYPERLINK](#) "[\t \"\\_blank\"](https://usepa.sharepoint.com/:x:/r/sites/oei_Work/SharePointPM/SCA/_layouts/15/Doc.aspx?sourcedoc=%7B59D8E63A-1A1A-4467-9F7B-282CC29EC5AB%7D&file=Status%20of%202010%20Workflow%20Conversion%20by%20Office.xlsx&action=default&mobileredirect=true) ] to identify and track the status of their critical workflows.
  - Please contact your [ [HYPERLINK](#) "[\t \"\\_blank\"](https://usepa.sharepoint.com/sites/oei_Work/SharePointPM/SCA/Lists/SCA%20List/AllItems.aspx?viewpath=%2Fsites%2Foei_Work%2FSharePointPM%2FSCA%2FLists%2FSCA%20List%2FAllItems.aspx) ] for specific information about your office's workflows.
- For more information, contact [ [HYPERLINK "mailto:Martiny.Sally@epa.gov"](mailto:Martiny.Sally@epa.gov) ], 202-564-6067.

### **Moving Away from Personal Desktop Tandberg Units**

- With the transition to [ [HYPERLINK "https://intranet.epa.gov/myworkplaceinfo/teams.html"](https://intranet.epa.gov/myworkplaceinfo/teams.html) ] on February 1, OMS plans to move away from the use of personal desktop Tandberg units located in personal offices.
- Teams is now the Agency unified communication tool so OMS strongly encourages employees to transition from using their personal Tandberg units for video conferencing and to surplus the units upon returning to the office.
- In addition, the new Agency video conferencing equipment standard is Microsoft Meeting Room Systems (MMRS).
  - MMRS enables EPA to replace its Cisco Tandberg video conferencing units located in conference rooms with a cost effective O365-integrated solution. MMRS provides the following benefits:
    - Brings video conferencing to any size conference room
    - Works seamlessly with Teams
    - Significantly reduces the cost of adding or replacing video conferencing equipment
- MMRS equipment can be ordered via [ [HYPERLINK](#) "[\t \"\\_blank\"](https://ebusiness.epa.gov/ebusiness/index.cfm?event=catalog.extendedinfo&oidCatalog=484) ] under

the NB product code. For more information about MMRS capabilities, please see the [ HYPERLINK "<https://cfint.rtpnc.epa.gov/oito/video/mmrs.cfm>" ]

- For more information, contact: [ HYPERLINK "<mailto:keels.dwane@epa.gov>" ], 202-566-2684.

Message

**From:** Mobile Device Notice [Mobile\_Device\_Notice@epa.gov]  
**Sent:** 1/29/2021 4:17:51 PM  
**To:** EPA-MobileDevice-Notifications [EPA-MobileDevice-Notifications@epa.gov]  
**Subject:** Farewell Skype - Hello Teams!  
**Attachments:** Skype.jpeg

Good Morning Mobile User Community.

Beginning February 1<sup>st</sup>, you'll begin to see the attached message when trying to access Skype from your EPA issued mobile device.

**Thanks,**  
**Mobile Team**

Office of Mission Support

[Visit the Mobile Device Website](#)  
Check out our [Mobile Device SharePoint Site](#)

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**From:** OMS-MassMailer-Mailbox <OMS-MassMailer-Mailbox@epa.gov>  
**Sent:** Thursday, January 28, 2021 12:54 PM  
**To:** EPA-DynamicMassMailer <EPA-DynamicMassMailer@epa.gov>  
**Subject:** Farewell Skype - Hello Teams!



It was a great run, but it's time to say goodbye to Skype. Starting February 1, Microsoft Teams will be EPA's primary tool for virtual meetings and chat. Here on the "Teams" team, we use it daily to get our work done. We are excited about the improved, streamlined experience that transitioning to Teams will provide EPA employees. One of the best places to learn more about Teams is the [Teams Users Community](#). The "Teams" team will be there to answer your questions.

Here's the plan. (*Note: Please connect to the VPN to access links in this email.*)

**What to know on February 1**

- Teams will be EPA's enterprise tool for meetings and chat conversations. Teams can do everything Skype does (and more!), but it works a little differently. Check out these [Teams Tips](#) to get started.
- You will no longer be able to use Skype for chatting or meeting.
- You will retain access to previous Skype chats and conversations in your Outlook Conversation History folder.
- You can attend Skype meetings hosted by people external to EPA.

- All employees now have [Office 365 Audio Conferencing accounts](#), which populate in your Teams meeting invitations.
  - For increased security, the conference ID changes for each meeting. (The phone number and PIN remain the same). See the [O365 Audio Conferencing guide](#) for more information.
- All your meetings currently scheduled in Skype will be converted into Teams meetings automatically. Please double check that your meeting information transitioned correctly; [more details here](#).

#### **Resources to get you started**

- We recommend you attend the 1-hour Skype to Teams transition training provided by OMS or our biweekly Teams Office Hours. Find upcoming dates and sign up on the [O365 Training Calendar](#).
  - View the [recorded Intro training](#) or the [PowerPoint presentation](#).
  - [Work is Better with Microsoft Teams \(4 min video\)](#)
  - [Top Teams Tips \(pdf\)](#)



Figure 1: Employees meeting in Teams. "It's going to be a great day!"

- Join EPA's [Teams Users Community](#), where you'll find [Teams Resources](#) and can connect with people across EPA who can answer your questions.
- Call the [How-to Help Center for Microsoft Applications](#) at (866) 411-4372, Option 6 for one-on-one assistance with Teams (or any O365 tool).

We know that often, change is hard, and that is why we are here to help! One of the best ways to get in touch with us is to join the [Teams Users Community](#). We'll be there to answer your questions.

For technical support, contact the [Enterprise Information Technology Service Desk \(EISD\)](#) by calling 1 (866) 411-4372, Option 3, or emailing [EISD@epa.gov](mailto:EISD@epa.gov). You can also contact your [local IT Help Desk Support](#).

#### **Previous Communications**

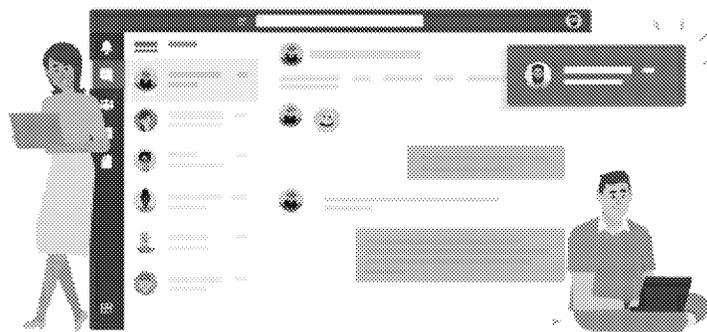
[CIO Announcement \(10/29/20\)](#)

[Skype to Teams Transition: How to Prepare \(1/11/21\)](#)

Good luck, and we'll see you in Teams!

From,  
The "Teams" Team

## Your organization is now using Microsoft Teams!



We'll help you find your contacts, chats,  
and more once you go to Teams.

If you need to join a Skype for Business  
meeting or see past conversations, go ahead  
and start Skype for Business.

[Learn More](#)

[Go To Teams](#)

[Start Skype for Business](#)

Appointment

---

**From:** Ellis, John [Ellis.john@epa.gov]  
**Sent:** 1/26/2021 5:45:54 PM  
**To:** Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]; Fox, Radhika [Fox.Radhika@epa.gov]; Mayock, Andrew [Mayock.Andrew@epa.gov]; Freedhoff, Michal [Freedhoff.Michal@epa.gov]; Murray, Paulette [Murray.Paulette@epa.gov]  
**CC:** Ramsey, Jody [Ramsey.Jody@epa.gov]; Hauser, Mitchell [hauser.mitchell@epa.gov]; Williams, LaShawn [williams.lashawn@epa.gov]; Stingel, Shawn [Stingel.Shawn@epa.gov]; Adams, Denise [Adams.Denise@epa.gov]  
**Subject:** Records Management Briefing for Senior officials and Political Appointees  
**Attachments:** Michal\_Freedhoff\_Records Mgmt Brfg for Sr Officials - fillable-font.pdf; Andrew\_Mayock\_Records Mgmt Brfg for Sr Officials - fillable-font.pdf; Radhika\_Fox\_Records Mgmt Brfg for Sr Officials - fillable-font.pdf; Dimple\_Chaudhary\_Records Mgmt Brfg for Sr Officials - fillable-font.pdf; Melissa\_Hoffer\_Records Mgmt Brfg for Sr Officials - fillable-font.pdf; Tomas\_Carbonell\_Records Mgmt Brfg for Sr Officials - fillable-font.pdf; Joseph\_Goffman\_Records Mgmt Brfg for Sr Officials - fillable-font.pdf  
**Location:** Microsot Teams Meeting  
**Start:** 1/28/2021 2:00:00 PM  
**End:** 1/28/2021 3:00:00 PM  
**Show Time As:** Tentative

**Required Attendees:** Goffman, Joseph; Carbonell, Tomas; Chaudhary, Dimple; Fox, Radhika; Mayock, Andrew; Freedhoff, Michal; Murray, Paulette  
**Optional Attendees:** Ramsey, Jody; Hauser, Mitchell; Williams, LaShawn; Stingel, Shawn; Adams, Denise

Greetings, All new Senior Officials and Political Appointees are required to attend a Records Management Briefing. I am sending this invite for 9:00am tomorrow and another for 9:00am Thursday, 1/28/2021. Please accept one or the other. The briefing will take approximately 45 minutes, depending on the number of questions.

I have attached individual slide decks for your convenience and to provide you with an acknowledgement page for your digital signature and response after taking the briefing.

Thank-you.  
 John Ellis, Agency Records Officer

## Microsoft Teams meeting

**Join on your computer or mobile app**  
[Click here to join the meeting](#)

**Or call in (audio only)**

**Ex. 6 Personal Privacy (PP)** United States, Washington DC

Phone Conference ID: **Ex. 6 Personal Privacy (PP)**

[Find a local number](#) | [Reset PIN](#)

By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.

[Learn More](#) | [Meeting options](#)

---



# Records Management Briefing for Senior Officials and Political Appointees

Joseph Goffman  
Principal Deputy Assistant Administrator for Air  
and Radiation  
Office of Air and Radiation (OAR)

Provided by the Office of Mission Support



# Records Management Briefing

## Statutes, Regulations & Policy

- The Federal Records Act and related National Archives and Records Administration (NARA) regulations govern federal agencies' creation and preservation of records that document their organization, functions, policies, decisions, procedures and essential transactions (44 U.S.C. 31; 36 CFR Chapter XII, Subchapter B)
- A document is a record if it is:
  - *created or received by a federal agency* under “federal law or in connection with the transaction of public business” *and*
  - “*preserved or appropriate for preservation by that agency. . . as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them*” (44 U.S.C. 3301, Definition of Records)
- Records may be in *any* physical or electronic format, including paper, emails, instant messages, text messages, telephone messages, social media, Word documents, spreadsheets, and information systems



# Records Management Briefing

## Statutes, Regulations & Policy

- The EPA Chief Information Officer (CIO) is responsible for establishing policies/procedures and establishing and maintaining a continuing program to manage and secure records (EPA Delegation 1-84, Information Resources Management)
- EPA's **Interim Records Management Policy** (CIO 2155.4) outlines the records management responsibilities of all EPA employees, including:
  - Creating records that document their activities
  - Filing records for safe storage and efficient retrieval
  - Disposing of records according to Agency records schedules
  - Safeguarding records against removal or loss
- A **records schedule** is an EPA document approved by NARA that provides specific, mandatory instructions for managing records, including when the records must be closed, how long the records must be maintained and the final disposition of the records (i.e., destruction or transfer to NARA)



# Records Management Briefing

## Types of Records

- **Permanent Records** – Records that have sufficient historical or other value to be preserved permanently by NARA, beyond the time the records are needed for administrative, legal or fiscal purposes
- **Temporary Records** – Records that have temporary value and can be destroyed either immediately or after a specified retention period, based on NARA-approved records schedules. There are two categories of temporary records:
  - **Transitory** – Records of short-term interest (90 days or less) that have minimal or no documentary or evidentiary value
  - **Substantive or Non-transitory** – Records with temporary value that must be preserved based on approved records schedules



# Records Management Briefing

## Non-Records and Personal Papers

- **Non-Records** – documents with no real evidentiary value, including extra copies of documents maintained solely for reference/convenience and printed materials maintained for reference purposes
- **Personal Papers** – documents belonging to an individual that are *not* used to conduct agency business and that relate only to the individual's own affairs and are used just for the individual's convenience. Examples include:
  - Leave and Earnings statements
  - Tax documents (W-2 forms)
  - Documents for professional, political or civic activities that are not used to conduct Agency business
  - Materials brought to the workplace from home or a previous job
  - Personal papers should be maintained separately from federal records



# Records Management Briefing

## Senior Officials' Records

- Records of EPA's Senior Officials are especially important because they document significant Agency decisions and commitments
- Many records of Senior Officials are considered to be permanent and are transferred to NARA after 15 years
- Examples of Senior Officials' records include:
  - Calendars, schedules, daily activity logs
  - Emails/attachments and other electronic documents that are federal records
  - Directives, policies, and guidance
  - Program development files
  - Verbal decisions and instructions
  - Controlled and major correspondence
  - Speeches and testimony
  - Files of meetings with the Administrator
  - Reports to the President or Congress



# Records Management Briefing

## Records Management Responsibilities

It is your responsibility to:

- Manage your records yourself or designate an individual who will manage them for you
- Ensure that your records are placed in an approved Agency recordkeeping system
- Complete *EPA Form 3110-49 – EPA Records Management Checklist for Separating/Transferring or Separated Personnel* and identify and transfer records *prior to* departing the Agency or moving to a different position within EPA



# Records Management Briefing

## Records Management Guidance

- Records you create or receive in the conduct of Agency business during your tenure belong exclusively to EPA.
- Document, in an approved Agency records management system, the substance of meetings and conversations where decisions are made, issues are resolved, or policy is established
- In general, do *not* use a non-EPA messaging system (e.g., personal email or personal mobile device) to conduct Agency business
- In rare situations when a non-EPA messaging system must be used and a federal record is created or received, you must
  - copy your EPA email account when initially creating or transmitting the record *or*
  - forward a complete copy of the record to your EPA email account within 20 days of the original creation or transmission of the record; and



# Records Management Briefing

## Records Management Guidance

- EPA strongly discourages the use of text messages to transmit Agency records. If a text message is a record, then the message and related contextual information (e.g., to, from, date, time and subject) must be forwarded to the EPA email system
- Do not download any unapproved software or applications to EPA computers or mobile devices
- Documents you create or receive may also need to be maintained pursuant to the Freedom of Information Act (FOIA), litigation or other legal requirements. Both records and non-records may be subject to FOIA or litigation requests
- There may be criminal penalties for unauthorized removal or destruction of records. Departing officials and employees may not remove extra copies of records or other work material without prior approval



# Records Management Briefing

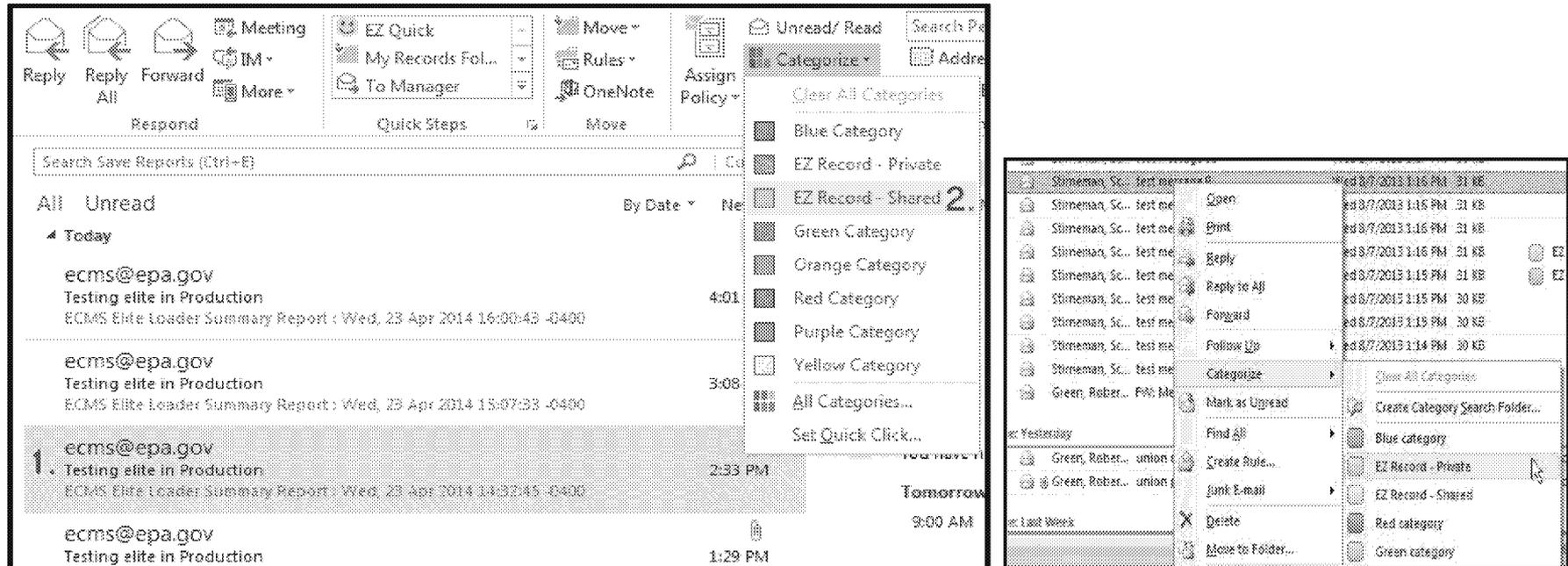
## What is the Enterprise Content Management System (ECMS)?

- ECMS is EPA's recordkeeping system. It provides a set of applications which employees use to:
  - capture and save electronic records in a secure repository
  - search for records
  - share records with appropriate users
  - control user access to records
  - provide a records audit trail
- The EZ Email Records Application: enables you to save emails as records. It is integrated directly into Outlook Desktop Client and the Outlook Web Application (OWA)
- The EZ Desktop Records Application: enables you to save your records from local storage (computer hard drives, network shared drives) to EPA's records repository in one step. It is integrated directly into your Windows desktop.
- ECMS also supports system-to-system records transfer, supporting some Agency systems (e.g., CMS) in managing the retention and final disposition of their records
- Further information about the ECMS tool is available at <http://intranet.epa.gov/ecms>



# Records Management Briefing

## Saving Emails Using the EZ Email Records Tool



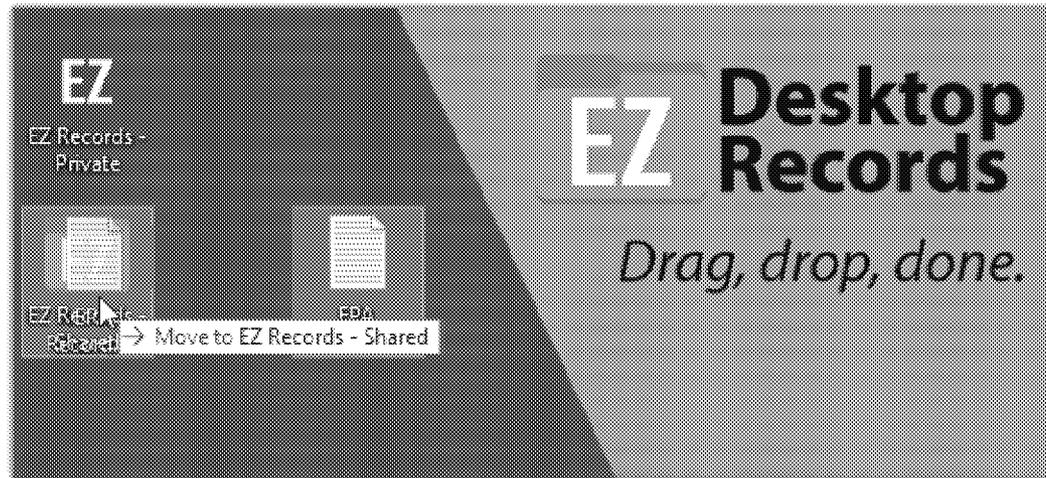
In both Outlook Desktop and OWA, click on the email you want to save as a record. Then click on “Categorize” on the Ribbon. Alternatively, right-click the message you want to save as a record and hover over the “Categorize” choice. You will then choose whether to save it as “EZ Record - Private” or “EZ Record - Shared” record. It is recommended that you select “Shared,” since Shared records are automatically viewable by other personnel in your business unit.

Further information: <http://intranet.epa.gov/ecms/emailrecords>



# Records Management Briefing

## Saving Desktop Records Using the EZ Desktop Tool



Determine if the electronic file is a record. Determine if the record requires restricted access. Drag-and-drop the record to the appropriate EZ Desktop Records icon (Shared or Private) on your Desktop. Alternatively, Right-click on the file, then Select "Send to" and select the appropriate EZ Desktop Records option. On a regular cycle, the records will be saved automatically.

When you categorize a record as "Private," it will not be viewable to others. Please note that your Records Liaison Officer and Records Administrators with ECMS administrative privileges have the ability to change the categorization from "Private" to "Shared," at which point the record would then be viewable to other personnel within your office.



# Records Management Briefing

## Capstone Approach for Email Records Management

- Under the *Managing Government Records Directive (M-12-18)*, issued by the Office of Management and Budget (OMB) and NARA, federal agencies must manage both permanent and temporary email records in an accessible electronic format
- Capstone is an automated email records management approach that retains employees' emails, calendars and Skype messages for a specified period of time based on the position they hold within the Agency



# Records Management Briefing

## Capstone Approach to Email Records Management

- EPA's initial Capstone approach includes the following retention categories for email records:
  - **Permanent Retention:** The email records of designated Capstone Officials are considered to be permanent and will be transferred to NARA after 15 years. These individuals are generally responsible for EPA policy- and mission-related actions and send and receive emails of permanent value
  - **Temporary retention:** The email records of non-Capstone employees are considered temporary and will be saved in the EPA email system for 10 years, before being deleted
- **Exceptions:** Non-Capstone employees who have email records that are subject to retention periods longer than 10 years, based on EPA records schedules, must save those records into ECMS using the EZ Email Records tool



# Records Management Briefing

## Contacts

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202-564-1503

<http://intranet.epa.gov/privacy>  
<http://intranet.epa.gov/foia>

1-866-411-4372



# Records Management Briefing for Senior Officials and Political Appointees

## Recipient of Briefing

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature Confirming Receipt of Briefing: \_\_\_\_\_

(signature)

Date: \_\_\_\_\_

## Briefing Presenter

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature Confirming Delivery of Briefing: \_\_\_\_\_

(signature)

Date: \_\_\_\_\_

Appointment

**From:** Katims, Casey [Katims.Casey@epa.gov]  
**Sent:** 4/16/2021 1:34:38 AM  
**To:** Katims, Casey [Katims.Casey@epa.gov]; Utech, Dan [Utech.Dan@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Nunez, Alejandra [Nunez.Alejandra@epa.gov]; Bowles, Jack [Bowles.Jack@epa.gov]; Fericelli, Paul [fericelli.paul@epa.gov]; Arroyo, Victoria [Arroyo.Victoria@epa.gov]  
**CC:** Kim, Eun [Kim.Eun@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Gunning, Paul [Gunning.Paul@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]  
**Subject:** U.S. Climate Alliance-EPA Intro Meeting  
**Attachments:** 210416\_EPA&USCA\_Agenda.docx; 210416\_EPA&USCA\_Participant List.docx  
**Location:** Zoom  
**Start:** 4/16/2021 7:00:00 PM  
**End:** 4/16/2021 8:00:00 PM  
**Show Time As:** Busy

**Required Attendees:** Utech, Dan; Goffman, Joseph; Carbonell, Tomas; Nunez, Alejandra; Bowles, Jack; Fericelli, Paul; Vicki Arroyo  
**Optional Attendees:** Kim, Eun; Dunham, Sarah; Grundler, Christopher; Gunning, Paul; Tsirigotis, Peter

**UPDATE: Final agenda and participant list attached. Please note CARB Chair Liane Randolph will open the meeting for U.S. Climate Alliance.**

Join Zoom Meeting

One tap US:

mobile:

Meeting

URL: Meeting

ID:

Passcode:

**Join by Telephone**

For higher quality, dial a number based on your current location.

Dial:

Meeting

ID:

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International numbers

### Join from an H.323/SIP room system

H.323:

[Redacted]

- US West)
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- India Mumbai)
- India Hyderabad)
- (Amsterdam Netherlands)
- (Germany)
- (Australia Sydney)
- (Australia Melbourne)
- (Singapore)
- (Brazil)
- Canada Toronto)
- Canada Vancouver)
- (Japan Tokyo)
- (Japan Osaka)

Ex. 6 Personal Privacy (PP)

Meeting ID:

[Redacted]

Passcode:

[Redacted]

SIP:

Ex. 6 Personal Privacy (PP)

Passcode:

[Redacted]

### Skype for Business (Lync)

Ex. 6 Personal Privacy (PP)



[EXTERNAL] (b) (5)

Wed 3/31/2021 12:30 PM - 1:00 PM

**Location:** (b)(5)

**Organizer:** Hayes, David J. EOP/WHO

**Required Attendees:** Hayes, David J. EOP/WHO (b)(6); Pidot, Justin R. EOP/CEQ (b)(6); Kelly, Katherine P <Kate\_Kelly@ios.doi.gov>; Anderson, Robert T <Robert.Anderson@sol.doi.gov>; Klein, Elizabeth A <Elizabeth\_Klein@ios.doi.gov>;

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 <https://www.zoomgov.com/join/94158>

Hi there,

David Hayes is inviting you to a scheduled ZoomGov meeting.

## [Join Zoom Meeting](#)

Phone one-tap: US: (b)(5) or (b)(5)

Meeting URL: (b)(5)  
(b)(5)

Meeting ID: (b)(5)  
Passcode: (b)(5)

**Join by Telephone**

□ (b)(6)

Mon 4/5/2021 4:00 PM - 5:00 PM

[EXTERNAL] (b)(5) prep

Mon 4/5/2021 6:00 PM - 6:30 PM

**Location:** (b)(5)

**Organizer:** Hayes, David J. EOP/WHO

**Required Attendees:** Hayes, David J. EOP/WHO (b)(6) Klein, Elizabeth A <Elizabeth\_Klein@ios.doi.gov>; Kelly, Katherine P <Kate\_Kelly@ios.doi.gov>; Anderson, Robert T <Robert.Anderson@sol.doi.gov>; Newland, Bryan <bryan\_newland@ios.doi.gov>; Pidot, Justin R. EOP/CEQ (b)(6); Washburn, Libby R. EOP/WHO (b)(6)

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Hi there,

David Hayes is inviting you to a scheduled ZoomGov meeting.

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(b)(5)

Meeting URL: (b)(5)

(b)(5)

Meeting ID: (b)(5)

Passcode: (b)(5)

Tuesday, April 6, 2021

[EXTERNAL] Meeting on (b) (5)

Tue 4/6/2021 9:30 AM - 10:15 AM

**Location:** (b)(5)

**Organizer:** McCarthy, Gina A. EOP/WHO

**Required Attendees:** McCarthy, Gina A. EOP/WHO (b)(6); Zaidi, Ali A. EOP/WHO

(b)(6); Hayes, David J. EOP/WHO (b)(6); Klein, Elizabeth A

<Elizabeth.Klein@ios.doi.gov>; Kelly, Katherine P <Kate\_Kelly@ios.doi.gov>; Pidot, Justin R. EOP/CEQ

(b)(6); Anderson, Robert T <Robert.Anderson@sol.doi.gov>; Washburn, Libby R.

EOP/WHO (b)(6); Newland, Bryan <bryan\_newland@ios.doi.gov>;

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**Purpose:** This meeting is an opportunity to discuss how the Administration might demonstrate its appreciation for tribal concerns regarding (b)(6) - Annual issues, despite the court's decision not to enjoin construction.

**Manifest:**

Climate Policy Office:

- Gina McCarthy
- Ali Zaidi
- David Hayes

Council on Environmental Quality:

- Justin Pidot

Domes c Policy Council:

- Libby Washburn

Department of Interior:

- Liz Klein
- Kate Kelly
- Bryan Newland
- Robert Anderson

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# [EXTERNAL] Alaska lands briefing

Tue 4/6/2021 12:30 PM - 1:00 PM

**Location:** [REDACTED] (b)(5)

**Organizer:** Lee-Ashley, Matthew G. EOP/CEQ

**Required Attendees:** Lee-Ashley, Matthew G. EOP/CEQ [REDACTED] (b)(6); McCarthy, Gina A. EOP/WHO [REDACTED] (b)(6); Zaidi, Ali A. EOP/WHO [REDACTED] (b)(6); Haves, David J. EOP/WHO [REDACTED] (b)(6); Pidot, Justin R. EOP/CEQ [REDACTED] (b)(6); Van Der Heide Escobar, Jennifer <jennifer\_vanderheideescobar@ios.doi.gov>; Kelly, Katherine P <Kate\_Kelly@ios.doi.gov>; Daniel-Davis, Laura E <laura\_daniel-davis@ios.doi.gov>; Klein, Elizabeth A <Elizabeth\_Klein@ios.doi.gov>;

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Holding this [REDACTED] for a briefing about a [REDACTED]-sensitive land management issue in Alaska.

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Hi there,

Matt Lee-Ashley (he/him) is inviting you to a scheduled ZoomGov meeting.

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Phone one-tap: US: [REDACTED] (b)(5) or [REDACTED] (b)(5)  
Meeting URL: [REDACTED] (b)(5)  
Meeting ID: [REDACTED] (b)(5)  
Passcode: [REDACTED] (b)(5)

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For higher quality, dial a number based on your current location.

Dial: US: + [REDACTED] (b)(5) or [REDACTED] (b)(5) or [REDACTED] (b)(5) or +1 [REDACTED] (b)(5)



## [EXTERNAL] DOI briefing to CPO

Wed 4/14/2021 4:00 PM - 4:30 PM

**Location:**

(b)(5)

**Organizer:** McCarthy, Gina A. EOP/WHO

**Required Attendees:** McCarthy, Gina A. EOP/WHO (b)(6); Hayes, David J. EOP/WHO (b)(6); Kelly, Katherine P <Kate\_Kelly@ios.doi.gov>; Klein, Elizabeth A <Elizabeth\_Klein@ios.doi.gov>; Daniel-Davis, Laura E <laura\_daniel-davis@ios.doi.gov>;

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**PURPOSE:** DOI staff will brief Gina McCarthy on the two Secretarial Orders forthcoming from Sec. Haaland.

**BACKGROUND:** During the week of April 12, 2021, Sec. Haaland is prepared to issue two Secretary's Orders to facilitate implementation of the Biden-Harris' administration's climate change priorities. The orders will acknowledge the profound climate crisis facing our nation and direct the Department to take a holistic approach to this crisis by honoring the Nation's trust responsibilities; advancing environmental justice; using the best available science; and building a clean energy future that creates good-paying jobs and powers our nation.

**AGENDA:** Upcoming Secretarial Orders at Dept of Interior; presentation by Liz Klein, Senior Counselor to Sec. Haaland

**ATTENDEES:**

- Gina McCarthy
- David Hayes
- Liz Klein, Senior Counselor to Secretary Haaland
- Laura Davis, Acting Ass't Secretary for Land & Minerals

**ATTACHMENTS.**

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Hi there,

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Phone one-tap: US: (b)(5) or

# [EXTERNAL] Alaska lands briefing

Tue 4/6/2021 12:30 PM - 1:00 PM

**Location:** [REDACTED] (b)(5)

**Organizer:** Lee-Ashley, Matthew G. EOP/CEQ

**Required Attendees:** Lee-Ashley, Matthew G. EOP/CEQ [REDACTED] (b)(6); McCarthy, Gina A. EOP/WHO [REDACTED] (b)(6); Zaidi, Ali A. EOP/WHO [REDACTED] (b)(6); Haves, David J. EOP/WHO [REDACTED] (b)(6); Pidot, Justin R. EOP/CEQ [REDACTED] (b)(6); Van Der Heide Escobar, Jennifer <jennifer\_vanderheideescobar@ios.doi.gov>; Kelly, Katherine P <Kate\_Kelly@ios.doi.gov>; Daniel-Davis, Laura E <laura\_daniel-davis@ios.doi.gov>; Klein, Elizabeth A <Elizabeth\_Klein@ios.doi.gov>;

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Holding this [REDACTED] for a briefing about a [REDACTED]-sensitive land management issue in Alaska.

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Hi there,

Matt Lee-Ashley (he/him) is inviting you to a scheduled ZoomGov meeting.

## [Join Zoom Meeting](#)

Phone one-tap: US: [REDACTED] (b)(5) or

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Meeting ID: [REDACTED] (b)(5)

Passcode: [REDACTED] (b)(5)

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Dial:

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## [EXTERNAL] DOI briefing to CPO

Wed 4/14/2021 4:00 PM - 4:30 PM

**Location:**

(b)(5)

**Organizer:** McCarthy, Gina A. EOP/WHO**Required Attendees:** McCarthy, Gina A. EOP/WHO (b)(6); Hayes, David J. EOP/WHO (b)(6); Kelly, Katherine P <Kate\_Kelly@ios.doi.gov>; Klein, Elizabeth A <Elizabeth\_Klein@ios.doi.gov>; Daniel-Davis, Laura E <laura\_daniel-davis@ios.doi.gov>;

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

**PURPOSE:** DOI staff will brief Gina McCarthy on the two Secretarial Orders forthcoming from Sec. Haaland.

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**AGENDA:** Upcoming Secretarial Orders at Dept of Interior; presentation by Liz Klein, Senior Counselor to Sec. Haaland

**ATTENDEES:**

- Gina McCarthy
- David Hayes
- Liz Klein, Senior Counselor to Secretary Haaland
- Laura Davis, Acting Ass't Secretary for Land & Minerals

**ATTACHMENTS.**

 <https://www.zoomgov.com/join/94158>

Hi there,

Matthew Sidler is inviting you to a scheduled ZoomGov meeting.

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Phone one-tap: US: (b)(5) or

**Required Attendees:** de la Vega, Scott A <scott.delavega@sol.doi.gov>; Anderson, Robert T <robert\_anderson@ios.doi.gov>; Limon, Raymond A <raymond\_limon@ios.doi.gov>; Murphy, Timothy E <Timothy.Murphy@sol.doi.gov>; Kelly, Katherine P <Kate\_Kelly@ios.doi.gov>;  
**Optional Attendees:** Klein, Elizabeth A <Elizabeth\_Klein@ios.doi.gov>; Ackerman, Jennifer A <jennifer\_ackerman@ios.doi.gov>; Taylor, Rachael S <rachael\_taylor@ios.doi.gov>; Thompson, Margrette (Maggie) K <margrette\_thompson@ios.doi.gov>; (b)(6) - Klein <(b)(6) - Klein

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**From:** de la Vega, Scott A <scott.delavega@sol.doi.gov>  
**Sent:** Thursday, January 21, 2021 4:46 PM  
**To:** Anderson, Robert T <robert\_anderson@ios.doi.gov>; Limon, Raymond A <raymond\_limon@ios.doi.gov>; Murphy, Timothy E <Timothy.Murphy@sol.doi.gov>; Kelly, Katherine P <Kate\_Kelly@ios.doi.gov>  
**Subject:** SO Section F Discussion  
**When:** Friday, January 22, 2021 9:30 AM-10:00 AM.  
**Where:**

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## Pre-Meet SES/SL/ST Leadership Briefing

Fri 1/22/2021 3:30 PM - 4:30 PM 📅

**Location:** TEAMS Meeting

**Organizer:** Limon, Raymond A

**Required Attendees:** Limon, Raymond A <raymond\_limon@ios.doi.gov>; Van Der Heide Escobar, Jennifer <jennifer\_vanderheideescobar@ios.doi.gov>; Taylor, Rachael S <rachael\_taylor@ios.doi.gov>; Klein, Elizabeth A <Elizabeth\_Klein@ios.doi.gov>; Kelly, Katherine P <Kate\_Kelly@ios.doi.gov>; Thompson, Margrette K <margrette\_thompson@ios.doi.gov>; Ackerman, Jennifer A <jennifer\_ackerman@ios.doi.gov>; Mack, Jonathan J <Jonathan\_Mack@ios.doi.gov>;

**Optional Attendees:** Jennifer Van der Heide <(b)(6) - Van Der Heide> Mcsheffrey, Kathleen C <kathleen\_mcsheffrey@ios.doi.gov>;

Greetings all,

The purpose of this meeting is to finalize key speakers/takeaways for the Monday, January 25, 2021 @ 1pm (EST) Meet&Greet with DOI's



1



125%



**From:** [Hayes, David J. EOP/WHO](#)  
**To:** [Klein, Elizabeth A](#)  
**Subject:** [EXTERNAL]  
**Date:** Wednesday, April 7, 2021 2:33:37 PM

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Liz:

Give me a call when you can.

Thanks.

David

**David J. Hayes**

Special Assistant to the President for Climate Policy

White House Climate Policy Office

Cell: (b)(6)