

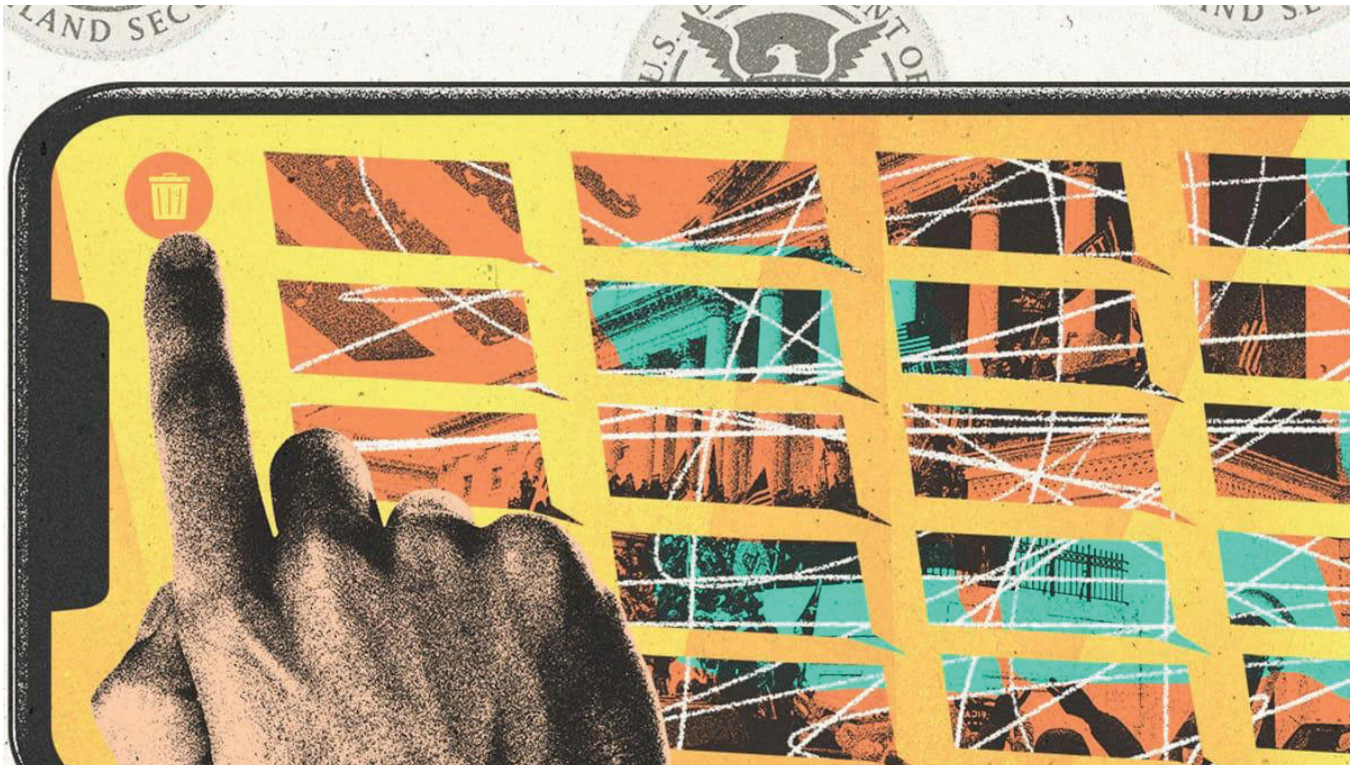
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# DHS Watchdog Regularly Purges Texts on Gov't Phone Despite Ongoing Investigation

Inspector General Joseph Cuffari Has Been Under Fire for Belated Notification of Secret Service Text Deletions and for Concealing Sexual Misconduct Findings

Jun 06, 2023

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(Illustration: Renzo Velez / POGO; Photos: Getty Images)

The Department of Homeland Security's (DHS) embattled top watchdog, Inspector General Joseph Cuffari, regularly deletes text messages from his government phone, according to statements he made under questioning during a congressional [hearing](#) today. "It's my normal practice to delete text messages," Cuffari said. "I did not consider those to be federal records and therefore I deleted them."

When asked by Representative Glenn Ivey (D-MD) what he uses his government phone to text about, Cuffari said he uses the device "to conduct business," but "not federal business." Cuffari also said he was "not sure" if these texts were backed up anywhere. The inspector general's unilateral decision to delete texts from his government phone because he does not view them as federal records legally required to be preserved is at odds with the views of experts inside his office, according to two federal sources not authorized to speak to the press.

This new revelation comes nearly a year after the Project On Government Oversight (POGO) broke a string of stories on Cuffari's months-long delay in informing Congress about the Secret Service's own mass deletion of texts, including those from around January 6, 2021. That delay itself was the focus of several questions during the hearing.

# Alerts & Updates

While Cuffari’s admission that he regularly deletes text messages elicited concern from at least one member of Congress today, staff within his office have known of the practice for months. One of the internal records POGO’s sources cite is a December 22, 2022, email by a DHS IG employee. The email states that “a custodian indicated the text messages were deleted, in their entirety, from their government issued iPhone, and that the relevant policy for capturing such messages was not followed.” Two sources who have seen the email relayed its contents verbatim to POGO. The sources confirmed that the “custodian” referenced in the email is Cuffari.

The initial discovery of Cuffari’s mass deletion of texts came in late 2022, after POGO filed a Freedom of Information Act lawsuit seeking his and other officials’ text messages related to their alleged suppression of a [report on workplace sexual misconduct](#) inside DHS. That report remains unpublished.

“It is simply implausible that he could claim ignorance of his records responsibilities.”

— *Federal whistleblower*

POGO’s request sought records from four DHS Office of Inspector General officials, including Cuffari. According to two sources, Cuffari informed personnel that he had deleted texts from his government phone as they were attempting to collect copies of records

responsive to POGO's Freedom of Information Act lawsuit.

"Given the national-level attention Mr. Cuffari experienced just months earlier due to his widely publicized mishandling of a review of the Secret Service and its missing text messages during the January 6 insurrection, it is simply implausible that he could claim ignorance of his records responsibilities," a whistleblower told POGO. They requested their name be withheld out of fear of reprisal.

POGO's sources said Cuffari's deletion of texts was not reported to the National Archives and Records Administration, as legally required, despite a written recommendation by a federal attorney to report the matter. Finally, the sources said, an internal plan within the Office of Inspector General to investigate his deletion of texts was not carried out.

Ivey is the ranking member of the House Homeland Security Committee's oversight and investigations panel. He participated in today's hearing by the House Oversight, Investigations, and Accountability Committee's panel on national security, the border, and foreign affairs, where Cuffari appeared as the sole witness.

Cuffari's mass deletion may have destroyed records responsive not only to POGO's request, but to a congressional inquiry as well. A [May 2022 request](#) from the chairs of two House committees sought "all communications" related to that still-unpublished workplace sexual misconduct report. And since May 2021, Cuffari has been facing an ongoing federal investigation into allegations of reprisal that has expanded into other matters. Cuffari's mass deletion of texts on his government-issued phone could affect the ability of those investigators to fully probe those matters if any relevant records were erased.

Cuffari occupies one of the most important watchdog posts in the federal government, overseeing a cabinet department with sprawling, high-profile missions ranging from border security to immigration enforcement to disaster response to protecting the president, among other sensitive responsibilities. Experts say the credibility of inspectors general is vital to whether or not they can act as effective watchdogs.

The information revealed in today's hearing, along with other information POGO has learned, may trigger Justice Department scrutiny of the inspector general.

"If we are guilty of the actions that we criticize others for in our reports, then our credibility will be severely damaged," [wrote](#) then-Acting Pentagon Inspector General Glenn Fine in 2017. "We cannot be hypocritical. We need to make sure our own office is in order when we go out and evaluate others."

## **Deletions May Have Violated the Law**

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POGO's Freedom of Information Act request sought records that could shed light on the long-standing delay in publishing the findings of the IG's investigation of sexual misconduct at DHS, which included survey results showing over 10,000 employees in DHS law enforcement agencies — about one in three of the roughly 28,000 who responded — said they experienced workplace sexual harassment or misconduct, and that many experienced reprisal for reporting it. Cuffari learned of these results in December 2020, but he did not inform DHS leadership or Congress about them until more than a year later, when POGO revealed the findings in an [April 2022 story](#).

It is unknown when Cuffari began deleting his texts, and whether he did so before or after POGO's Freedom of Information Act request was filed on July 5, 2022. But Cuffari's deletions are a likely violation of DHS policy, according to two sources, and they are also potentially a violation of federal records law.

Cuffari and the DHS IG Office of Public Affairs did not respond to a request for comment by the time of publication. A Justice Department attorney representing DHS IG in POGO's Freedom of Information Act lawsuit referred POGO to the IG's office.

DHS policy dating from 2014 makes it clear that employees are responsible for ensuring they preserve any texts on their government phones that may be federal records. "All DHS employees," [DHS Management Directive 141-01](#) states, must "ensure all records are properly maintained."

That policy seeks to ensure DHS personnel comply with the decades-old Federal Records Act, which governs how the government handles official records. In 2015, the National Archives issued [guidance](#) stating that text messages can be federal records that must be preserved.

Within federal agencies, employees are [required](#) to be trained in records management. The DHS Office of Inspector General is no exception. "Department of Homeland Security (DHS) Office of Inspector General (OIG) staff must retain and preserve all Federal records in accordance with the Federal Records Act and DHS Management Directive 141-01," states a [January 2023 user guide](#) obtained by POGO. "Staff are *still responsible* for manually capturing, retaining, and preserving any messages that meet the definition of a federal record, even when SMS/MMS [text] messages are automatically archived." (Italics POGO's)

During today's hearing, when Ivey asked Cuffari whether the deleted texts were "stored anywhere," the inspector general said he was "not sure." But a second email obtained by POGO, this one from February 2023, shows that the DHS Office of Inspector General has not been automatically archiving all text messages from its government phones. According to that [February 2023 email](#), DHS IG's Office of the Chief Information Officer "will begin

automatically archiving all SMS/MMS messages sent or received from OIG iPhones, similar to how email is already treated. This will not change your responsibility to manually retain any messages that meet the definition of a federal record.”

Despite Cuffari’s testimony today stating that any deleted messages were not federal records, according to two sources, some of the text messages Cuffari deleted very likely met the legal definition of federal records. The heads of agencies — unlike rank-and-file staff — presumptively create records that are officially deemed “federal records” because of their central role in agency decision-making. The law requires that the deletion of federal records needs to be reported to the National Archives and Records Administration. Federal agencies “must report promptly any unlawful or accidental removal, defacing, alteration, or destruction of records in the custody of that agency” to the National Archives, government regulations [state](#). The National Archives’ [online listing](#) of deleted record allegations does not list any cases of deletions at DHS’s Office of Inspector General.

“When Ivey asked Cuffari today if he deletes [text messages] on an ongoing basis, he responded, That’s correct.”

If intentional rather than a mistake, the deletion of federal records is a [criminal violation](#), although prosecutions are rare. A failure to inform the National Archives could trigger Justice Department involvement on its own. Citing the Federal Records Act (FRA), a Congressional Research Service [memo](#) states, “If any agency head does not notify the Archivist of an allegation or instance of unlawful removal, the FRA authorizes the Archivist to initiate action with the Attorney General for the possible recovery of such records.” The law itself [states](#) that when the head of an agency “is participating in, or believed to be participating in any such unlawful action” involving destruction of records, the National Archives shall request Justice Department action.

While the sources say nothing has been done to specifically address Cuffari’s deletion of texts, they did tell POGO that a few months after that discovery, the DHS IG cautioned all of its staff against creating federal records through their text messages, and to preserve them if they do.

A February 2023 DHS IG office [email](#) warns all staff, “Do not use SMS/MMS electronic messaging to conduct federal government business/activities.” However, the email goes on to say, “If SMS/MMS is inadvertently used to create or receive a federal record, or to conduct government business, those electronic messages must be captured.” The email says this needs to be done for several reasons, including to comply “with any applicable legal or

litigation hold.” Freedom of Information Act lawsuits, such as POGO’s against the DHS IG office, often lead to litigation holds that direct agency personnel not to destroy relevant records.

Even so, when Ivey asked Cuffari today if he “deletes [text messages] on an ongoing basis,” the IG responded, “That’s correct.”

In his closing remarks, Representative Robert Garcia (D-CA), the ranking member of the subcommittee, flagged this practice as problematic. “I am extremely concerned that today, in front of our committee, that by the way, that oversees the Federal Records Act,” he said, “that you admitted to deleting federal records based on your own determination.”

## **Deleted Secret Service Texts and Other Problems at the DHS IG**

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Cuffari became embroiled in national controversy last year. In addition to revelations that he has concealed the sexual misconduct report’s findings, POGO reported that his office removed important information from a report on domestic violence in DHS ranks.

Significantly, the inspector general was also faulted for failing to tell Congress for months about the Secret Service’s own mass deletion of text messages, including texts from around January 6, 2021. Those texts could shed light on claims by Cassidy Hutchison, a former aide to President Donald Trump, about actions Trump allegedly took on and around January 6, as well as deepen understanding of the Secret Service’s January 6-related preparation and response. The Secret Service has maintained that it lost the text messages as part of a mishandled, agency-wide technology update.

For months before July 2022, attorneys, investigators, and other staff within Cuffari’s office [recommended in writing](#) that he inform Congress about the Secret Service’s deletion of texts in order to fulfill his legal obligation under the Inspector General Act. Cuffari finally told Congress on July 13, 2022.

Hours after [POGO](#) and the [Washington Post](#) first asked questions about why Cuffari delayed notifying Congress, his office told the Secret Service that it was launching a criminal probe into the matter.

Cuffari’s office has used that open criminal investigation as a basis for [refusing to answer questions](#) about his delayed notification and other related matters, such as a directive to his staff not to assist DHS components in recovering text messages related to January 6. The investigation by Cuffari’s office has, to date, not led to any public criminal charges.

Beyond congressional and press scrutiny, there’s also a long-standing executive branch probe of Cuffari’s conduct. The Council of the Inspectors General on Integrity and Efficiency’s Integrity Committee, an independent entity tasked with oversight of inspectors

general, has been investigating Cuffari for two years [for alleged whistleblower retaliation](#). That probe has [expanded](#) to include his and his chief of staff Kristen Fredricks' handling of the Secret Service text message matter, among other issues.

This April, a day after the committee sought information from Fredricks about the Secret Service texts, Cuffari, Fredricks, and the IG counsel James Read [sued](#) the Integrity Committee (a fourth plaintiff is a former employee at the Social Security Administration Office of Inspector General). They claim in the lawsuit that the Integrity Committee lacks authority, despite the fact that it was established by the Inspector General Act, because it has agency-appointed officials overseeing presidentially appointed watchdogs like Cuffari, among other reasons.

Sources close to the federal watchdog community have told POGO this lawsuit threatens to weaken oversight of inspectors general and could make it even more challenging to hold them accountable when they engage in misconduct.

Cuffari has faced a slew of allegations from inside his own staff beyond today's revelations, the Secret Service text affair, and last year's articles showing he suppressed sexual misconduct and domestic violence findings involving DHS law enforcement personnel.

Whistleblowers have also sounded the alarm on [Cuffari's rejection](#) of a staff proposal to examine the use of force at Lafayette Square in June 2020, on the restrictions he and his close aides put on a [high-profile whistleblower investigation](#), and for his [alleged attempt](#) to remove a reference to the Trump White House from a report related to family separation. The growing list of claims against Cuffari, many of them confirmed, led POGO's executive director in April 2022 to call on President Joe Biden to fire him. At today's hearing, Representative Stephen Lynch (D-MA) asked that letter be entered into the record.