



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

Sent via email
October 31, 2019

Mr. Laurence Brewer
Chief Records Officer
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

Dear Mr. Brewer:

I have been asked to respond to your October 9, 2019 letter expressing interest in the disposition of Commerce Secretary Wilbur Ross's emails, as referenced in the Style section of the *Washington Post* on September 30, 2019.

Under 36 C.F.R. § 1230.16, the National Archives and Records Administration (NARA) is authorized to contact a Federal agency by phone after obtaining "credible information that records are at risk of actual, impending, or threatened damage, alienation, or unauthorized destruction." NARA may then follow the phone call in writing within five business days. I understand that only upon receipt of credible information that "records have allegedly been damaged, removed, or destroyed" is NARA authorized to notify the agency in writing and request a response within 30 days.

The Commerce Department does not believe that the reference in the September 30, 2019 story in the Style section to instances where Secretary Ross used his personal email to send agency business to government inboxes rises to the level of "credible information" of destruction or removal of records. The emails referenced in the article show that Secretary Ross was copying government accounts, not destroying emails or removing emails from his government account, thereby requiring recreation of "lost" emails. As explained below from our recent court filing in the Democracy Forward Foundation (DFF) Freedom of Information Act (FOIA) lawsuit, the source of the comment in the *Washington Post* article, the underlying allegations lack merit.

The Department of Commerce's Motion for Summary Judgment and the enclosed supporting documentation show that Secretary Ross did not extensively utilize his personal email accounts to conduct agency business. Of the 280 email chains that the Department produced to DFF, most of these email chains (235) were initiated by a third party, usually an invitation or an email regarding travel reservations, and not Secretary Ross. These 235 emails also copied agency personnel for calendaring. The remaining 45 of the 280 email chains that did not originate from third parties involved communications between Secretary Ross and Department of Commerce

employees, and thus also involved Commerce email servers *ab initio*. Therefore, because all of the emails in question where Secretary Ross sent or received agency-related emails using a personal email address also included other Department of Commerce emails, the Department of Commerce determined that there is no evidence of destruction or removal of agency records.

Additionally, even if the *Washington Post* article was to be considered credible information, it contained no allegations that any records were damaged, removed, or destroyed. As such, pursuant to 36 C.F.R. § 1230.16(a), you should have initially called the Department of Commerce and then followed up in writing within five business days. If you had called, I could have explained the issue and resolved your concern.

Based on the Department of Commerce's assessment of the situation, the Department does not believe there was any unauthorized disposition of agency records. We consider this matter closed.

Please feel free to contact me at any time via email at bdigiaco@doc.gov or 202-482-5393.

Sincerely,

Brian DiGiacomo
Assistant General Counsel for
Employment, Litigation, and Information

Enclosure

cc: Michael J. Walsh, Jr., Chief of Staff
Richard A. Dubik, Director of Administration, Office of Executive Secretariat
Andre Mendes, Acting Senior Agency Official for Records Management and Acting
Chief Information Officer
Jennifer Jessup, Director, Office of Policy and Governance, OCIO