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Subcommittee on Oversight  
Committee on Science, Space & Technology

Joint Subcommittee on Oversight and Subcommittee on Environment hearing on  
*“Destruction of Records at EPA – When Records Must Be Kept,”*  
Thursday, March 26, 2015, 10:00 a.m.  
Room 2318 Rayburn

Good morning!

I want to make three points this morning in my opening remarks.

First: I think we can all agree that federal recordkeeping is important AND requires some modifications as our modes of communication change.

Second: Many people misunderstand or intentionally mischaracterize what constitutes federal recordkeeping.

And third: We should stick to the facts in the Science Committee of all places, and we should not let intentional mischaracterizations color our process or our handling of an allegation.

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So first: We can all be in consensus that it is important to properly preserve government records. We can also agree that we should continue to improve the system that allows federal employees to identify and maintain records, in accordance with the Federal Records Act.

If there is a problem, we must correct it. If an agency or individual is not properly preserving records, we must acknowledge that and take proper next steps. If federal records have been intentionally deleted or destroyed, then individuals should be held to account. But just because a record is deleted does not mean that a Federal Record has been destroyed.

My second point is that many people, including perhaps Members of Congress, misunderstand what is and is not a Federal Record. This understanding extends to “non-transitory” records that must be collected and preserved, and what constitutes a “transitory” record that does not require preservation. Living in the digital age we all know that we generate far more written communications in more forms than ever before. Identifying, collecting and storing ALL the data generated in a Federal agency is neither necessary, realistic nor economical. On average, only about 10 percent of a federal agency’s data constitutes a Federal Record. In addition, despite some misperceptions, personal e-mails may be used for official government business provided the record is preserved by cc’ing it to your agency email address.

Now to the third point: We should not engage in mischaracterizations. And if others do, we should not encourage or celebrate these mischaracterizations.

In September 2013 the EPA IG's office released a report titled: Congressionally Requested Inquiry Into the EPA's Use of Private and Alias Email Accounts. Chairman Smith and others requested that investigation. But some Members of Congress publicly mischaracterized the findings of the IG, making false accusations as a result. In one instance, some claimed that a specific EPA Regional Administrator lied to OIG investigators and used his private email to conduct agency business. What was not realized, or was not acknowledged, was that this practice is permitted under the Federal Records Act. In fact, in the OIG's lengthy public response to set the record straight they noted that the EPA official had cc'd all of their work related records from their private email to their government "epa.gov" account and that rather than lying to the OIG investigators that the individual's "statement to the OIG was corroborated by the emails obtained by the OIG."

These sorts of sweeping and false characterizations are troubling and I point to them because I am deeply concerned by the written testimony submitted by Dr. David Schnare for this hearing today. His testimony alleges that senior EPA officials, including Administrator Gina McCarthy, "have blatantly violated the Federal Records Act," intentionally not followed the law and kept Agency records "secret" in order to conceal contacts with individuals or groups outside the Agency. Dr. Schnare has made unsupported and sweeping allegations against the EPA in the past too. I am attaching to my statement four documents related to a 2012 lawsuit filed by Dr. Schnare against the EPA accusing the Agency, and its then-Administrator Lisa Jackson, of participating in human experiments he likened to horrific experiments conducted by Nazi doctors on prisoners in concentration camps during World War II and claimed the EPA was using "secret gas chambers" to conduct these studies on airborne particulate matter. The case was dismissed after Dr. Schnare's lawsuit resulted in multiple newspaper headlines, such as these: "EPA's secret gas chamber experiments: A deceitful failure," and "EPA Charged With Lethal Experiments on Hundreds of Unsuspecting Subjects."

If there are indeed legitimate issues with EPA record keeping or the processing of FOIA requests, then let us look into those issues and address them. I am happy to work with my colleagues in a productive way to do so. However, I do not believe it is productive to allow someone who shows such disregard for the facts to testify. It does not lend to the credibility of this hearing or this

In contrast, I look forward to the reasoned and careful testimony of the EPA Inspector General's office and the National Archives. There is little there to turn into sensational headlines, but I commend those testimonies to my colleagues' attention as being educational and fact-based.

I yield back.