

Widespread use of personal e-mail for official business led to tighter rules

BY LISA REIN

Hillary Rodham Clinton was not the first senior government leader to conduct official business on personal e-mail, a practice that — while discouraged — apparently became widespread enough that Congress tightened rules on its use late last year.

The Federal Records Act prohibits official business on private e-mail accounts unless the communications are copied and turned over to the National Archives within 20 days.

The new oversight is part of the government's evolving policy on how to archive the massive volume of electronic communications created in a digital age of e-mail, tweets and Instagram. It follows a flurry of disclosures that several Cabinet-level officials — including former Environmental Protection Agency administrator Lisa Jackson and former health and human services secretary Kathleen Sebelius — used private or secondary government e-mail accounts.

The continuing use of non-official accounts for official business has attracted congressional inquiries amid questions about transparency. On Wednesday, the head of the small EPA office that investigates chemical accidents is scheduled to testify at a House committee hearing on an inspector general's report that he and two deputies discussed internal disputes about agency operations on private e-mail accounts and did not preserve them.

Several large agencies, including the EPA and the Defense, State, Treasury, Interior and Homeland Security departments, said their senior leaders restrict all government business to government e-mail accounts. John F. Kerry is the first secretary of state to rely on a government e-mail account, officials said.

The EPA "discourages the use of private e-mails," an agency spokesman said. "Our policy is to forward e-mails initiated from and received by private e-mail accounts to government e-mail accounts to create a record in the EPA e-mail system within 20 days."

A Treasury Department spokesman said Secretary Jack Lew conducts official department business on government e-mail.

"Treasury policy is that em-

ployees should conduct official business through their official treasury e-mail accounts. The policy recognizes that there are situations in which an employee must use a personal e-mail account for work purposes. In those circumstances, the employee must ensure that all federal records are preserved," the spokesman said.

At the Department of Veterans Affairs, benefits chief Allison Hickey is known to hand out her "work e-mail" and said she answers veterans' inquiries in the middle of the night. But while she encourages veterans to e-mail her directly, she does not use a personal e-mail account for anything work-related, even though she sometimes receives hundreds of e-mails a week.

Under federal law, the communications of Cabinet secretaries and their deputies are government records that must be preserved so that Congress, historians, the news media and the public can see them, with exceptions for classified and sensitive materials.

But policies on managing these records in an electronic age are evolving slowly. The Archives has been debating new policies and building new computer systems to preserve the documents.

Agencies in the past sent official documents to the Archives in paper boxes. Now, the task of saving ephemeral communications and complying with transparency requirements at the same time is the subject of heated debate.

"It is perfectly understandable why someone who is secretary of state is using a private e-mail system," said Jason Baron, a former director of litigation at the Archives, referring to Clinton. "It's easier than logging in from an airplane to a Citrix connection. But for four years, it was used as the sole system, and no one seemed to notice."

At the time, Clinton's aides did not take actions to have her personal e-mails preserved on agency computer servers, as the records act requires. But in seeking to comply with new record-keeping requirements from the Archives, she turned over thousands of pages of her personal e-mails to the State Department, officials said.

"The department is in the process of updating our records-preservation policies to bring

them in line with recent 2013 [Archives] guidance," spokeswoman Marie Harf said. "These steps include regularly archiving all of Secretary Kerry's e-mails to ensure that we are capturing all federal records."

E-mails have been considered official government records since the late 1980s. The White House set up an archiving system for presidential electronic records in the mid-1990s, when Bill Clinton was president.

It wasn't until 2011, amid pressure from advocates, that President Obama required a "modernized records management" system for federal agencies. All e-mail records must be archived by 2016. Agencies can decide which to save for the public and for how many years.

Until then, the Archives offered only vague guidance on the use of official e-mail. The agency issued regulations in 2009 requiring e-mails sent on nongovernment accounts to be preserved "in the appropriate agency record-keeping system."

Jackson, the former EPA chief, drew criticism for using a secondary e-mail account to communicate with staff and other government officials. The EPA inspector general found no evidence that e-mail was used in a way that circumvented federal requirements.

Sebelius also used a separate e-mail account for agency business.

If the use of personal e-mail is not a violation, as long as communications are forwarded and stored, they are officially subject to the Freedom of Information Act. But this raises red flags for open-government advocates, who say there is no way to monitor whether a government official picks and chooses which communications to save.

Tom Blanton, director of the National Security Archive at George Washington University, said: "The policy really should say no private e-mail accounts. Leaving to the government official who wrote the e-mail to decide what's public is not adequate."

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