

Experts Say the Use of Private Email by Trump's Voter Fraud Commission Isn't Legal

Instructions have been lacking, says one commissioner — a sharp contrast with similar groups in the past.

by **Jessica Huseman**, Sept. 15, 6:21 p.m. EDT



President Donald Trump, accompanied by Vice President Mike Pence and Kansas Secretary of State Kris Kobach, speaks at the first meeting of the Presidential Advisory Commission on Election Integrity at the White House on Wednesday, July 19. (Jabin Botsford/The Washington Post via Getty Images)

President Donald Trump's voter fraud commission came under fire earlier this month when a lawsuit and media reports revealed that the commissioners were using private emails to conduct public business. Commission co-chair Kris Kobach confirmed this week that most of them continue to do so.

Experts say the commission's email practices do not appear to comport with federal law. "The statute here is clear," said Jason R. Baron, a lawyer at Drinker Biddle and former director of litigation at the National Archives and Records Administration.

Essentially, Baron said, the commissioners have [three options](#): 1. They can use a government email address; 2. They can use a private email address but copy every message to a government account; or 3. They can use a private email address and forward each message to a government account within 20 days. According to Baron, those are the requirements of the Presidential Records Act of 1978, which the commission must comply with [under its charter](#).

"All written communications between or among its members involving commission business are permanent records destined to be preserved at the National Archives," said Baron. "Without specific guidance, commission members may not realize that their email communications about commission business constitute White House records."

ProPublica reviewed dozens of emails to and from members of the commission as well as written directives on records retention. The commissioners appear to have been given no instructions to use government email or copy or forward messages to a government account.

Commissioner Matthew Dunlap, the secretary of state for Maine, confirmed that he'd received no such directives. "That's news to me," he said, when read the PRA provision governing emails. "I think it would be a little cleaner if I had a us.gov email account."

Dunlap's account is disputed by Andrew Kossack, the executive director of the commission. Kossack said attorneys from the Government Services Administration provided training on the PRA before the commission's first meeting on July 19. Kossack provided [a copy of the PowerPoint](#) presentation. However, the word "email" appears in only a single slide — with no mention of anything relating to the use of government email.

Notably, the commission did not receive any training in records retention until the July 19 meeting, even though the commission was formed in May and had been actively engaged in commission business.

Indeed, the commission had kicked into high gear on June 28, when it sent a letter to all 50 secretaries of state requesting publicly available voter rolls. The response was swift and negative, and commissioners began receiving a wave of messages from election officials and the public.

Despite this, the commissioners were offered no instructions then on how to preserve

communications. Baron said such messages would presumptively be considered presidential records, and “the obligation to preserve such records would have arisen on day one.”

In a statement, Kossack denied there is an obligation to provide commissioners with government email addresses. He maintained that the commission is required only to “preserve emails and other records related to work on commission matters, regardless of the forum on which the records are created or sent, which the commission and its members are doing.”

After the commission’s most recent meeting, on Tuesday, Kobach confirmed that he plans to continue to use his personal gmail account to conduct commission business. Using his Kansas secretary of state email address, he said, would be a “waste of state resources” as he’s acting as a private citizen on the commission and not in his role as secretary of state.

Dunlap has interpreted the requirements differently. He’s trying to ensure his state email account is used so that emails can be made available to constituents under Maine state law. Even this is a struggle, he said, asserting that commissioners continue to email him at his personal account despite multiple requests that they send email to his government account.

“I really don’t understand why they keep using my personal Gmail account instead of my official state email. But I’m saving everything!” Dunlap wrote to himself on August 7, when he forwarded a communication from the commission to his government address. He has, it appears, continued to immediately forward all emails sent to his personal address by the commission to his state address.

At ProPublica’s request, Dunlap shared every email he has received or sent relating to the commission. The majority went to personal email accounts.

At their recent meeting in New Hampshire, Kossack provided commissioners printed instructions on how to retain their own emails related to a lawsuit filed against the commission by the Lawyers Committee for Civil Rights Under Law.

Dunlap said these instructions are the only written set of instructions on records retention he recalls receiving. (The instructions leave records retention entirely to the discretion of each member of the commission, which Dunlap said concerns him.)

Past commissions with similar missions were not allowed such wide discretion. The Presidential Commission on Election Administration, formed by the Obama administration in March 2013, provided ethics and records retention training days after commissioners were nominated. Each commissioner was provided with a federal email address that automatically archived all messages. PCEA documents show extensive, specific instructions on records retention and compliance with FACA.

Richard Painter, who served as the George W. Bush administration’s chief ethics lawyer from

2005 to 2007, expressed shock that the current commission is being allowed to rely on personal email accounts (which are to be forwarded to Kossack at their discretion). “This is just sloppy,” he said, adding that waiting more than two months to offer ethics training was just another sign that the Trump administration “doesn’t take ethics training seriously.”

One footnote: Among the emails provided by Dunlap was [a message from Carter Page](#), a former policy adviser to the Trump campaign who has reportedly attracted the attention of investigators probing the Russia imbroglio. Page sent an email on July 5 to three accounts associated with Kobach and cc’d Dunlap, New Hampshire Secretary of State Bill Gardner and Indiana Secretary of State Connie Lawson. In it, he implored the commission to investigate “the Obama administration’s misuse of federal resources of the Intelligence Community in their unjustified attacks on myself and other volunteers who peacefully supported [Trump’s] campaign as private citizens.”

“The work of your commission offers an essential opportunity to take further steps toward helping to further restore the integrity of the American democracy following their abuses of last year,” he wrote.

There is no evidence this email was forwarded to a federal email account. Page, Kossack and Kobach did not respond to requests for comment about the email.

Filed under: [The Trump Administration](#)

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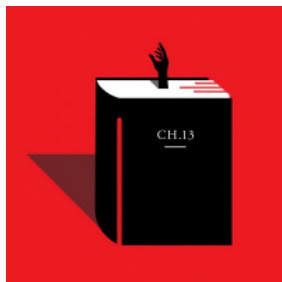


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It is painfully obvious this administration is about "do as I say not as I do".

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Joy • a month ago

This is BS hypocrisy by the Commission. Kobach is *not* acting as a private citizen. He's chairman of a Presidential Commission, which is a government role. His emails in relation to Commission business in any way have to be forwarded for archiving. Look for the archiving rule to get killed by Trump.

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Thomas Moore • 22 days ago

I think they need to turn over all their private email accounts to the FBI for analysis. Isn't that how it's done? That's what Hillary had to do. Oh, tell me there isn't a double standard here!

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I do not understand the issue. If you are conducting official government business, why not use

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