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DOGE

DOGE Employees Ordered to Stop Using Slack While Agency Transitions to Records System That Is Not Subject to FOIA

JASON KOEBLER,

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Employees at Elon Musk's agency have been told: "OMB is asking us to stop generating new slack messages starting now."




IMAGE: MARCEL GRABOWSKI / UK GOVERNMENT/IDENTITY

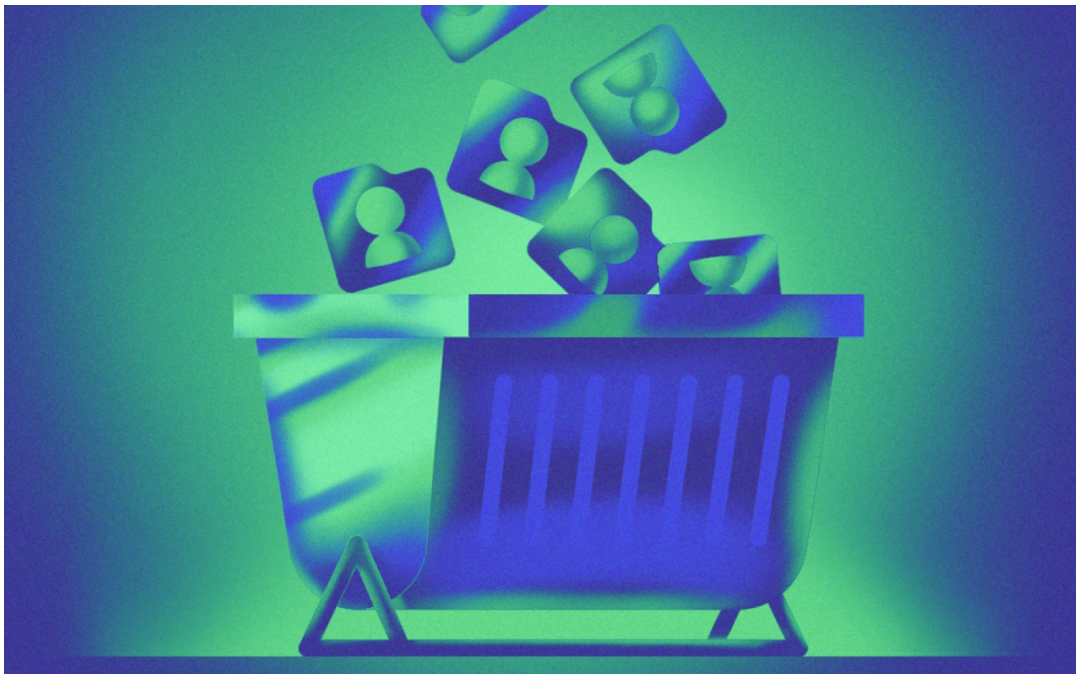
Employees working for the agency now known as DOGE have been ordered to stop using Slack while government lawyers attempt to transition the agency to one that is not subject to the Freedom of Information Act, 404 Media has learned.

"Good morning, everyone! As a reminder, please refrain from using Slack at the moment while our various general counsels figure out the best way to handle the records migration to our new EOP [Executive Office of the President] component," a message seen by 404 Media reads. "Will update as soon as we have more information!"

Another message seen by 404 Media provides an update and asserts that the US Digital Service (which is now DOGE) will "split" from the Office of Management and Budget (OMB).

"I spoke to the DOGE team about Slack. Because of the USDS split from OMB, OMB is asking us to stop generating new slack messages **starting now**," the message says. "We expect this to be a temporary pause, and we expect to continue having access to historical Slack material. We may have intermittent access as we go through this system transition so continue to use good data hygiene and backup any critical material. We will keep you updated."

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The messages indicate that, under Elon Musk's leadership, DOGE is actively taking steps to make sure its communications and records are not subject to the Freedom of Information Act, a records transparency law commonly used by journalists and lawyers to hold government accountable. Instead, DOGE is asserting that rather than reporting up through the Office of Management and Budget as the United States Digital Service did for years, it is reporting through the Executive Office of the President and to White House Chief of Staff Susie Wiles. Under OMB, it was generally subject to FOIA. Under the White House Chief of Staff, records it creates are generally not subject to FOIA.

This would make DOGE a Presidential Records Act entity, meaning records it creates are not FOIAble until years after a president leaves office rather than a Federal Records Act entity, which would make its records FOIAble now. This is a very notable, but unsurprising move that federal records experts have been worried about since the issuance of Donald Trump's executive order renaming the United States Digital Service—an agency of federal tech workers that was formed under the Obama administration—to the United States DOGE Service. That executive order specifically states that the renamed entity "shall be established in the Executive Office of the President," and that the USDS administrator (Elon Musk) "shall report to the White House Chief of Staff." The Dispatch, for example, wrote a very informative article about this could limit public scrutiny of DOGE and the "clever" executive order

that did this.



Do you know more about DOGE or USDS? We would love to hear from you. Using a non-work device, you can contact Jason on Signal at +1 202 505 1702. You can contact Joseph on Signal at +44 20 8133 5190.

Government experts 404 Media spoke to said the directive to not use Slack and the assertion that DOGE is now under the Executive Office of the President rather than OMB is not surprising but that it is very concerning, and that this assertion can be, will be, and is being legally challenged.

"Just changing the name alone under the Executive Order doesn't affect DOGE's recordkeeping status," Jason R. Baron, professor at the University of Maryland and former director of litigation at the National Archives and Records Administration told 404 Media in a phone call. "The administration apparently has made a determination that DOGE will be a presidential component subject to the Presidential Records Act. However, that will surely be challenged in the courts in connection with FOIA lawsuits. Under FOIA, it will be for the courts to decide whether under existing DOGE is acting more like a federal oversight agency or as a presidential component that solely advises the President."

The Presidential Records Act was created in part to make it so that the president does not need to publish records about their decisions, advice, and considerations while they are president. But Barron said that the way DOGE is currently acting—going into agencies across the federal government and gutting or threatening to gut them—is not a presidential advice function, it is a cross-agency function. He suggested that a court will have to consider this in any lawsuit about DOGE's status. "DOGE staff certainly do not appear to be solely advising and assisting the President," Baron said. "They appear to have taken actions in the real world that affect Treasury Department and USAID operations involving electronic systems. Whether those activities are deemed illegal or not under other laws, they are certainly actions beyond what a group of people who are solely advising and the president would do."

Lauren Harper, the Freedom of the Press Foundation's Daniel Ellsberg Chair on Government Secrecy, [wrote a blog post](#) explaining that DOGE's move to EOP was almost definitely an attempt to hide records, but that journalists should challenge this. "Does Musk think that placing DOGE within the government will make it easier to hide its records? If so, let's prove that troubling assumption wrong."

Harper told 404 Media that beyond not being governed by FOIA, in the Presidential Records Act, "there is a carveout for personal records that doesn't exist in the Federal Records Act."

"This means that the president and their staff get to decide if records are personal, which means, they can do whatever they want with them without consulting anybody," she said.

Both Harper and Baron stressed that any distinction over DOGE's status matters only to records they themselves are creating, and that many of DOGE's actions will remain

FOIAble via other agencies. For example when DOGE employees email people at the Treasury Department, those records should be able to be obtained directly via the Treasury Department even if they are not available from DOGE.

Already, DOGE has been subject to several lawsuits about its status within the government and what transparency laws it must abide by. The Congressional Research Service, a segment of the Library of Congress that analyzes changes to government, meanwhile published a paper about DOGE's "early implementation," which raised the question about what types of records would be available to the public: "Certain transparency statutes might apply to USDS, depending on its membership and implementation," the paper says. "These statutes include the Freedom of Information Act, where members of the public can request agency information, and the Federal Advisory Committee Act, which requires public reporting and meetings for advisory committees where at least one nonfederal member is providing advice to the federal government. Will USDS and the DOGE effort involve nonfederal persons in advisory roles? What level of public and congressional information access is anticipated?"

ABOUT THE AUTHOR

Jason is a cofounder of 404 Media. He was previously the editor-in-chief of Motherboard. He loves the Freedom of Information Act and surfing.

[MORE FROM JASON KOEBLER](#)

ABOUT THE AUTHOR

Joseph is an award-winning investigative journalist focused on generating impact. His work has triggered hundreds of millions of dollars worth of fines, shut down tech companies, and much more.

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