



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Office of Federal Operations**  
**P. O. Box 19848**  
**Washington, D.C. 20036**

February 14, 2007

Mr. Jeremy Wright  
Kator, Parks & Weiser, P.L.L.C.  
812 San Antonio Street, Suite 100  
Austin, Texas 78701

Dear Mr. Wright:

Thank you for your letter dated January 12, 2007, to Chair Naomi C. Earp. In your letter you alert the Equal Employment Opportunity Commission (EEOC) to changes in the United States Postal Service's (USPS) data retention policy, effective January 15, 2007, which results in the purging of USPS's emails in most cases within thirty days and in some cases as little as seven days. You contend the USPS's new policy will adversely impact USPS's employees' ability to pursue claims of discrimination, and the EEOC's responsibility to eradicate workplace discrimination, because evidence will be lost. The Chair has asked this office to respond directly to you.

In order to better respond to your concerns, our office contacted the USPS, National EEO Compliance & Appeals Programs for an explanation. Their response was that they are aware of their obligations under the law to preserve evidence in a discrimination case. They also indicated that even though emails may be purged from Inboxes, it may still be recoverable.

You should also be aware that if an agency fails to retain evidence necessary for the investigation of allegations of discrimination, the agency at hearing, on appeal, or in civil court may be subject to the imposition of an adverse inference that the lost or deleted information was negative to the agency's position. This in some cases may lead to a finding of discrimination and an award to the complainant based upon this adverse inference.

We hope this information is helpful to you.

Sincerely,

A handwritten signature in black ink that reads "Robert D. Barnhart".

Robert Barnhart, Director  
Compliance and Control Division

cc: Patricia M. Richter, Manager  
National EEO Compliance & Appeals Programs  
475 L'Enfant Plaza, S.W., Suite 9431  
Washington, D.C. 20260-4135