

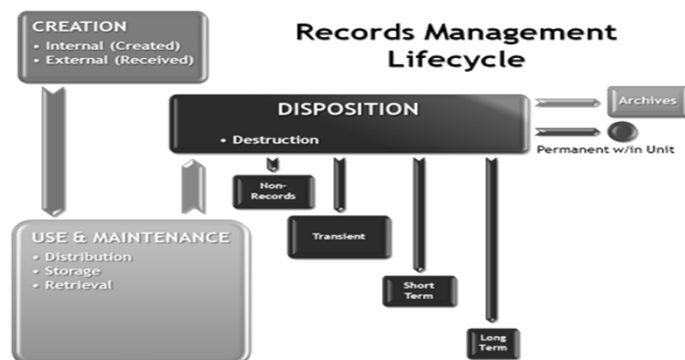
What is Records Management?



44 U.S.C. § 2901(1)

the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations

Records Management - Life Cycle Concept



Mandates on Records Management



- ☞ **The Federal Records Act** - 44 U.S.C. § 31
- ☞ **Oversight by Archivist/NARA** - 44 U.S.C. § 29
- ☞ **Disposal of Federal Records** - 44 U.S.C. § 33
- ☞ **Criminal Sanctions** - 18 U.S.C. § 2071
- ☞ **NARA Regulations** - 36 C.F.R. §§ 1220 - 1238
- ☞ **M-12-18** - Managing Government Records Directive
- ☞ **OMB Circular A-123** - Management Accountability and Control

Each Agency Is Responsible for Records Management



- ☞ Creating and preserving records that contain adequate and proper documentation of the organization.
- ☞ Establishing and maintaining an active, continuing program for the economical and efficient management of the records of the agency.
- ☞ Establishing safeguards against the removal or loss of records and making requirements and penalties known to agency officials and employees.
- ☞ Notifying the Archivist of any actual, impending, or threatened unlawful destruction of records and assisting in their recovery.

What Does this Mean to You?



- ☞ Create records needed to do agency business.
- ☞ Safeguard the records so that they can be found when needed.
- ☞ Implement disposition instructions in accordance with agency records schedules and Federal regulations.

Why Is Records Management Important?



- ☞ It's the law!
- ☞ Contributes to organizational efficiency.
- ☞ Protects rights.
- ☞ Basis for continuity of operations.
- ☞ Gives guidance on records safeguards.
- ☞ Documents decision making.
- ☞ Supports and documents historical and other types of research.

Identifying Federal Records



- ☞ Was it created in the course of business?
 - ☞ Ex. correspondence, studies, agreements
- ☞ Was it received for action?
 - ☞ Ex. controlled correspondence, FOIA requests
- ☞ Does it document activities and actions?
 - ☞ Ex. calendars, meeting minutes, project reports
- ☞ Does it support financial obligations or legal claims?
 - ☞ Ex. grants, contracts
- ☞ Does it communicate requirements?
 - ☞ Ex. guidance documents, policies, procedures
- ☞ Are you or your unit responsible for keeping it?
- ☞ Is it required by Agency disposition schedule?

What does the Guidance Say About Drafts?



- ☞ 36 C.F.R. § 1222.12 - Working files, such as preliminary **drafts** and rough notes, and other similar materials, are records that must be maintained to ensure adequate and proper documentation if:
 - ☞ They were circulated or made available to employees, other than the creator, for official purposes such as approval, comment, action, recommendation, follow-up, or to communicate with agency staff about agency business; and
 - ☞ They contain unique information, such as substantive annotations or comments that adds to a proper understanding of the agency's formulation and execution of basic policies, decisions, actions, or responsibilities.

Treating Drafts as Records



- ☞ What does your approved records schedule say?
- ☞ Examples of drafts that should be treated as records:
 - ☞ Drafts that are “officially” circulated to your supervisor, colleagues or people outside of your office or agency for comment, approval, or recommendation;
 - ☞ Drafts that contain substantive comments; and/or,
 - ☞ Drafts that are specifically referenced on an approved disposition schedule.
 - ☞ In agency possession upon the receipt of a FOIA request.

Treating E-mail as Records



- ☞ The same rules apply to email as any other type of records that document agency business.
- ☞ Some are transitory and can be deleted immediately or when no longer needed for agency business.
- ☞ Others are retained permanently consistent with an approved disposition schedule.
- ☞ Email policy varies from agency to agency.
 - ☞ Print and file
 - ☞ Electronic Records Management Application (RMA)
 - ☞ Archived using e-mail folders in approved email system
 - ☞ The FRA specifically prohibits the use of non-official email accounts for transacting agency business unless they forward a copy to an official email within 20 days!!!! (44 U.S.C § 2911)
 - ☞ CAPSTONE or similar technology
 - ☞ See the policy on “Email Management” issued by your agency for governing guidance.

How are Personal Papers Treated?



- ☞ They do not relate to or have any effect on the conduct of agency business.
- ☞ Documents created before entering Federal service.
- ☞ Purely personal materials, maintained in the office, that are not used in transacting government business.
- ☞ Documents not circulated within the office or relied on for decision making purposes.
- ☞ Many “personal records” appear in the GRS

Records in the Cloud



- ☞ Agencies’ obligations to follow the Federal Records Act and FOIA do not change as its IT systems move to a cloud environment.
- ☞ It is critical to manage and schedule electronic records.
- ☞ Agency is responsible for explaining record keeping obligations to a vendor that hosts its data or IT system in its own environment.
 - ☞ OMB Memoranda M-12-18 requires each agency to report on new cloud initiatives and how they meet Federal Records Act obligations.
 - ☞ OMB Circular A-130 revised to reflect this new requirement.
- ☞ Use a team approach (FOIA, IT, RM) to records management at procurement stage.

The Web & Social Media



- ☞ Federal Records
 - ☞ Federal Websites
 - ☞ Twitter, External Blogs, YouTube

- ☞ Personal Papers
 - ☞ Chatting, Internal Blogs

- ☞ May be a combination of both!
 - ☞ NARA's Internal Collaboration Network

Intersection Between Records Management and E-Discovery



- ☞ As a baseline, the FRA already requires appropriate preservation of all electronically stored information which falls within the federal record definition (44 U.S.C. § 3301)

- ☞ Agencies must anticipate demands for preservation of evidence in litigation and compliance/oversight settings that go beyond baseline record retention requirements
 - ☞ Electronically Stored Information (ESI)
 - ☞ Availability of native formats
 - ☞ Metadata

Records Management Issues Litigation Holds/Records Freezes



- ☞ Litigation hold (also known as "preservation orders" or "hold orders") is a stipulation requiring an agency to preserve all data that may relate to a legal action under Federal jurisdiction. This requirement ensures that the data in question will be available for the discovery process prior to litigation.
 - ☞ Most typically are agency specific and end when the litigation is complete
- ☞ Records Freeze – allows agencies to request an extension/freeze of the retention period for records stored in a Federal Records Center(FRC). This happens when:
 - ☞ The agency has requested a change in the retention period for the records in accordance with 36 C.F.R. § 1228.5;
 - ☞ The agency notifies the FRC holding the records that the records are needed for up to one year beyond the date that the records would be eligible for disposal (36 C.F.R. 1228.54(a)(2));
 - ☞ NARA approves an agency's written request to extend the retention period for a series of records in accordance with 44 U.S.C. § 2909

Records Disposition Schedules



- ☞ Official policy for records and information retention and disposal
 - ☞ Identify and describe all records
 - ☞ Identify owners for some record types
 - ☞ Provide retention periods for records disposal
 - ☞ Records schedules must be approved by NARA before they become affective.
 - ☞ No disposition is authorized absent an approved schedule
 - ☞ Agency specific records schedules
 - ☞ General Records Schedules (GRS)

Disposition Instructions



- ☞ **Temporary records** are disposed of either immediately or after a specified time.
- ☞ **Permanent records** have sufficient value to warrant continued preservation.
- ☞ **Unscheduled records** are records created and maintained by the agency but the final disposition has not been approved by NARA.
 - ☞ Destroy records in accordance with approved schedule
 - ☞ Records Storage
 - ☞ Temporary...Federal Records Center or commercial vendor
 - ☞ Permanent...National Archives and Records Administration

What are Records Under FOIA?



- ☞ Created or maintained by an agency **and**
- ☞ Under agency control at the time the FOIA request is received.
 - ☞ No requirement to create records or compile information in order to respond to a request.
 - ☞ No need to add explanatory materials to any records disclosed.
 - ☞ Records only - not information about records or three dimensional objects.
 - ☞ Format choice - must provide records in any format requested, if they are "readily reproducible."

What are Records Under the Privacy Act?



- ☞ Records maintained on an individual in a “system of records”
- ☞ System of Records is a grouping of any records from which information is retrieved by the name of the individual or some unique identifying particular assigned to that individual.
 - ☞ Must both identify an individual **and** be retrieved by a personal identifier (actual retrieval is required).

Personal Papers Are they Subject to FOIA/Privacy Act?



- ☞ They do not relate to or have any effect on the conduct of agency business.
- ☞ Documents created before entering Federal service.
- ☞ Purely personal materials, maintained in the office, but are not used in transacting government business.
- ☞ Documents have not been circulated within the office or relied on for decision making purposes.

Where Must I Search to Find Records Responsive to a Pending Request?



- œ A reasonable search is required in response to each FOIA received.
 - œ This includes files of all media types.
 - œ As appropriate, records maintained in Privacy Act Systems of Records.
- œ Records maintained by a NARA administered Federal Records Center or an approved commercial storage facility.
- œ **Exclusion** – records transferred to NARA for permanent retention.

FOIA Case Files as Records



- œ Records documenting all action taken while responding to a FOIA request:
 - œ Initial request
 - œ Correspondence, including acknowledgments, tolling for clarification or fees, documenting a narrowing of scope or related matters.
 - œ Internal documents discussing disclosure determinations
 - œ Working papers
 - œ Final response letters
- œ Your agency FOIA tracking system is not automatically the default.

Why is Records Management Important to FOIA Processing?



- œ Ensures that your agency can find what it needs to respond to requesters.
- œ Ensures a sound administrative record.
- œ Assists in the “de novo” review required during the administrative appeal process.
- œ Vital in documenting the agency’s actions in FOIA litigation.
- œ Amended statute requires that agencies establish "procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting such records in a publicly accessible electronic format."

Disposition of Access Case Files



- œ Governed in accordance with GRS - 4.2, Information Access & Protection Records, Transmittal 27, January 2017
 - œ Item 020, Access Disclosure Case Files
 - œ Destroy 6 years after final agency action or
 - œ 3 years after final adjudication by the courts, whichever is later, but longer retention is authorized if required for business use.
- œ Exclusion
 - œ Record copies of requested records are not covered by this item. They remain covered by their original disposal authority.

Agency Contacts



- œ Effective records management is a collaborative effort.
- œ It is the law **and** it ensures FOIA/Privacy Act professionals can provide access to agency records in compliance with the law.
- œ Look to your agency resources for guidance:
 - œ Agency/component Records Officer
 - œ Agency Records Management Handbook
 - œ Existing Approved Records Schedules
 - œ Applicable General Records Schedules
 - œ NARA's Web based resources and training
www.archives.gov