



Understanding Federal Records and the Federal Records Act

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Topics

Federal Records Act
Federal Records and Working Files
Personal Materials
Licenses, Data, and Retention of Control
Contractor Records
Records Scheduling
“I sent it to NARA”

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Why should I care about the Federal Records Act (FRA)?



Photograph of Processing of Navy Records
National Archives Identifier 3493249

Understanding the FRA helps you understand how agencies create, manage and dispose of federal records. Knowing how the FRA works helps FOIA officers identify records, request access to records, and conduct searches of records.



Are the FRA and FOIA laws about records the same?

Sometimes yes!
Sometimes no!!
We'll get to this.



Repaired Documents from the Chicago Fire
National Archives Identifier 7868641



The Federal Records Act

- Enacted in 1950, updated in 2014 and 2020
- Reflects modern recordkeeping and archival practices
- Legislates responsibilities for federal agencies and for NARA
- 4 sections of United States Code:
 - [NARA \(44 U.S.C. Chapter 21\)](#)
 - [Records Management NARA \(44 U.S.C. Chapter 29\)](#)
 - [Records Management/Federal Agencies \(44 U.S.C. Chapter 31\)](#)
 - [Disposal of Records \(44 U.S.C. Chapter 33\)](#)



National Archives, Constitution Avenue Entrance
National Archives Identifier 3493226



Agency obligations under the FRA

The head of each Federal agency shall **make and preserve** records containing **adequate and proper documentation** of the organization, functions, policies, decisions, procedures, and essential transactions **of the agency and** designed to furnish the information necessary to **protect the legal and financial rights** of the Government and of persons **directly affected by the agency's activities.** (44 U.S.C. §3101)




Definition of a federal record

all recorded information, regardless of form or characteristics, **made or received** by a federal agency under federal law or in connection with the **transaction of public business** and preserved or **appropriate for preservation** by that agency or its legitimate successor **as evidence** of the organization, functions, policies, decisions, procedures, operations, or other **activities** of the United States Government **or** because of **the informational value of data in them** (44 U.S.C. §3301)

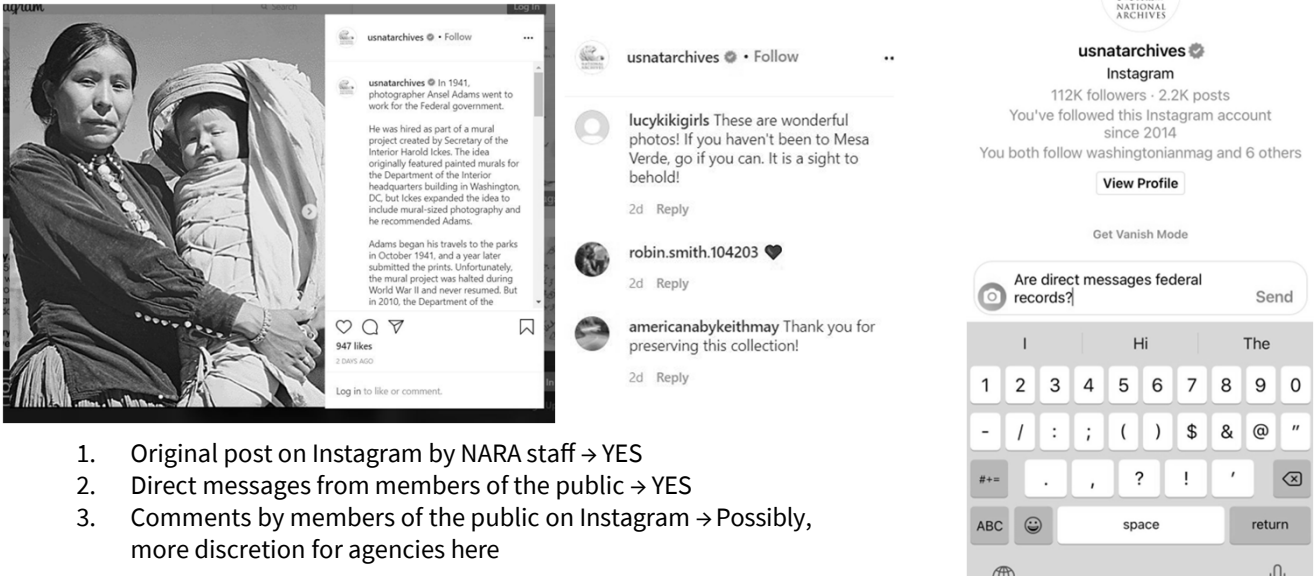


Definition of "recorded information"

"recorded information" includes **all traditional forms** of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in **digital or electronic form**. (44 U.S.C. §3301)



Example



1. Original post on Instagram by NARA staff → YES
2. Direct messages from members of the public → YES
3. Comments by members of the public on Instagram → Possibly, more discretion for agencies here

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But is everything a record?

We recommend agencies treat just about everything that documents government activities as a federal record

- E-messages including chats, texts, emails
- Textual, audiovisual, cartographic, geospatial records
- Documents, scanned images, photographs
- Webpages, social media, collaboration files
- Licensed information, data sets, case files
- Contract deliverables, R&D materials

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Really, everything? Almost

Exclusions by law (44 U.S.C. § 3301):

- Library and museum material made or acquired and preserved solely for reference or exhibition purposes; or
- Duplicate copies of records preserved only for convenience

Exclusions by regulation (36 C.F.R. § 1222.12):

- Working files (sometimes!)



Working Files

36 C.F.R. § 1222.12(c)

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:

- (1) 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
- (2) 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.

Examples of non-record working files include draft emails never sent or draft project proposals not submitted



FRA: personal materials

Have nothing to do with agency business

Examples

- text message from a spouse to government phone with a reminder to pick up children early or get groceries
- mail from home brought into the office to as a reminder to follow up on a personal issue during break



Phone stalls at Broadway and 34th street
National Archives Identifier 548269



FRA: personal materials

Commingling of personal materials and federal records makes all information a federal record (36 C.F.R. § 1222.20)

Example

Email from a friend, “Hi, can we grab lunch and talk the kids summer camp plans and how we will organize carpool? Also, I saw the proposed rule on digitization of records in the Federal Register. Here are a list of concerns I have with the rule on behalf of the university historians I represent....”



Licenses, data sets, and retention of control

Federal record definition “**made or received**”

Agencies receive information from outside sources including:

- private companies,
- state and local governments,
- other federal agencies, and
- other branches of the federal government



[One of] SLAC Computer Building interior shots, 04/21/1976, National Archives Identifier 221970430



Licenses, data sets, and retention of control

Agencies may enter into agreements with other parties related to information received or purchased

Examples:

- licensing agreement
- data transfer agreement
- retention of control agreement
- confidentiality agreement



Signing of contract between SLAC and Stanford, 05/1962, National Archives Identifier 221970444



Licenses, data sets, and retention of control

When you encounter these agreements consider:

- Is the agency free to do what it wants with the information?
- Has the information been integrated into the agency's systems?
- Is the agency continuing to pay a regular fee to access the information?
- Will the agency be returning the information?

Each of these things can affect whether the information is a record under the FRA or FOIA.

Seek out your agency counsel for advice in these situations.



Contractor Records

Records created or received by contractors can be federal records (36 C.F.R. § 1222.32)

Contracts should address:

- the status of the records
- the ability of the agency to access the records
- the obligations of each party to manage them

NARA has sample language for contracts at
<https://www.archives.gov/records-mgmt/policy/records-mgmt-language>



Coosa Valley, Alabama. Employment line outside contractor's office. National Archives Identifier 522615



Contractor Records - Examples

- An agency's acquisition office is staffed by support contractors. They work alongside federal employees to develop solicitations and award contracts. Are they creating federal records? **Yes.**
- A federal contractor asks their supervisor for the day off using their company email address and is granted leave. Is this a Federal record? **No.**
- A federal contractor works on a research project on U.S. air quality. Every month they provide a report on the status of the research to the agency lead managing the work. Is that report a federal record? **Yes**
- A federal contractor monitors the audit logs on a federal supercomputer. Are those audit logs a federal record? **Yes**
- A federal contractor receives a written performance review from the company supervisor. Is that federal record? **No**



Reminder - different definitions of records!

When someone asks, "Is that a record?" always consider the context of the question.

- FOIA agency records test
- Federal Records Act
- Privacy Act
 - Systems of Records Notice (SORN)
 - focused on systems that contains records about a person



Understanding Records Schedules

Got it!

I know what federal records are.
Now what? How long do I keep them?



Enumeration. Approximately 120,000 Enumerators were Employed. [NARA ID 6200775](#)



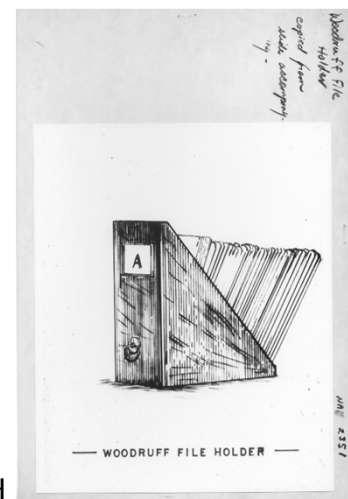
What is a Records Schedule?

A records schedule is a legal document with **mandatory disposition authority**.

- Identifies federal records created or maintained by agencies
- Identifies if the records are **temporary** and how long to retain before destruction
- Identifies if the records are **permanent** and when to transfer them to the National Archives

Records schedules may apply to existing records as well as those created in the future.

If no schedule covers the records, then they are **unscheduled** and treated as permanent





Types of Records Schedules

Agency specific records schedules

Typically cover records related to agency mission and the unique functions for which the agency has been established

<https://www.archives.gov/records-mgmt/rcs>

General Records Schedules (GRS)

- Records common to all agencies
- Apply unless your agency has an exception
- Examples include financial management, employee management, technology, security, administration, and FOIA! (GRS 4.2)

<https://www.archives.gov/records-mgmt/grs>



Scheduling Process

- For agency records schedules, records officers conduct inventories, identify records, and submit proposed schedules to NARA
- NARA appraisal archivists review and determine the value of the records using NARA's appraisal policy
- For general records schedules, NARA staff develop after research and consultation with subject matter experts
- All records schedules are published in the Federal Register for public comment
- All records schedules are approved by the Archivist of the United States



Disposition of Records

Analog records may be stored in

- on-site storage (agency office space)
- agency operated records centers
- commercial records storage facilities
- NARA-run Federal Records Centers

Digital records may be stored in

- agency owned devices (laptops, phones)
- on-site data centers
- cloud servers

When the retention period has been met, records must be destroyed if temporary or transferred if permanent. If a freeze or legal hold is placed on the records due to court order or pending litigation, the disposition can be deferred.



Unauthorized Disposition of Records

Federal agencies are required to "notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency" (36 C.F.R. Part § 1230).

NARA also receives notifications from other sources such as the news media and private citizens. NARA establishes unauthorized disposition case files to track each allegation and any communications with the agency until the issue is resolved.



“I sent it to NARA”

Records in Federal Records Centers

- Agency pays NARA to warehouse the records
- Agency has legal custody
- Agency makes release decisions
- When access is needed NARA sends records to the agency

Records in the National Archives of the United States

- NARA has legal custody
- NARA makes release decisions
- NARA provides access
- You visit NARA to see these records



“I sent it to NARA”

Records in Federal Records Centers

- May be temporary or permanent records
- Analog, not electronic
- Agency owns and authorizes searches, including FOIA requests
- Agency records officers manage services for records

Records in the National Archives of the United States

- Searchable at catalog.archives.gov
- Some online, most not
- *Generally* more than 25 years old
- Agencies must keep a copy of electronic records until NARA informs them legal custody has transferred



Questions?



Seventh and eighth grade class in Westley, CA school after lesson in geography. National Archives Identifier: 148741583.

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CONNECT WITH US!



Office of the Chief
Records Officer for the
U.S. Government

CONNECT WITH ME!

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- Visit our website Federal Records Management
- Subscribe to Records Express - The Federal Records Management Blog
- Sign up for Federal Records Management Emails - AC Memos
- Attend BRIDG - Bi-monthly Records and Information Discussion Group
- Follow Federal Records Management Training on Facebook and Twitter
- Send us an email at rm.communications@nara.gov

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