

December 11, 2023

**Subject: NARA Unauthorized Disposition (UD) Complaint ICO June 8, 2023 FOIA
Advisory Committee Meeting**

I. ALLEGATION.

“A member of the public (Robert Hammond) alleges that the Archivist of the United States and the NARA Director of Government Information Services may have destroyed FOIA Advisory Committee records of a June 8, 2023 FOIA Advisory Committee meeting, which it is mandated to have preserved under the Federal Advisory Committee Act and other laws regulations and policies :

“all panelist” chat comments as well as any direct comments to any member participating in the meeting, including OGIS support personnel and the conference moderator. This includes Committee members present at the virtual meeting. Others present or participating in the virtual meeting, including all registered participants”

Else records are at risk of actual, impending, or threatened damage, alienation, or unauthorized destruction.”

I sought the above records via FOIA to NARA (NCG23- 504) on the third day following the meeting. In its FOIA response two months later, NARA admits that they destroyed the records:

“No records were found responsive to part 1 of your request.”

See Attachment A and Attachment B

II. ACTION SOUGHT.

1. Notify NARA within 5 business days as required by 36 CFR 1230.16.a.
2. Provide me with a point of contact by return email to discuss this matter.
3. Permit me to discuss the Agency’s reply prior to deciding on this complaint to preclude the likely provision of misinformation, as has been done in the past.
4. If the records have not been destroyed, seek that the Agency provide them to you as individual records.
5. Immediately post this UD complaint to the NARA website. In violation of law NARA has refused to post UD complaints against NARA. See Attachment E.

III. UD COMPLAINT IN PUBLIC DOMAIN.

In violation of 36 CFR 1230 and the Administrative Procedures Act, NARA refuses to post and properly investigate prior complaints relating to NARA including an October 7, 2022 allegation that NARA destroyed records related to potential Hatch Act violations by the then Acting Archivist of the United States (**Debra Wall**) sought under FOIA (and others). NARA must demand the production to NARA of any records the agency claims it did not destroy.

This uneven application of law is particularly important given that NARA’s Unauthorized Records Disposition Unit is at the center of two criminal investigations regarding unauthorized removal/retention of Presidential records by our current and former presidents.

Therefore, I will be distributing this UD complaint widely. I may address past UD complaints where NARA has utterly failed in its responsibilities. NARA’s unauthorized records dispositions are overseen by Chief Records Officer **Laurence Brewer**
 laurence.brewer@nara.gov

IV. NARA GRS 4.2 Item 20

020	Access and disclosure request files. Case files created in response to requests for information under the Freedom of Information Act (FOIA), Mandatory Declassification Review (MDR) process, Privacy Act (PA), Classification Challenge, and similar access programs, and completed by: <ul style="list-style-type: none"> • granting the request in full • granting the request in part • denying the request for any reason including: <ul style="list-style-type: none"> o inability to fulfill request because records do not exist o inability to fulfill request because request inadequately describes records o inability to fulfill request because search or reproduction fees are not paid 	Temporary. Destroy 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later, but longer retention is authorized if required for business use.	DAA-GRS-2016-0002-0001
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V. 32 CFR PART 286—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

32 CFR §286.6 Preservation of records.

Each DoD Component shall preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration (NARA). Records shall not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

VI. 36 CFR § 1230. UNLAWFUL OR ACCIDENTAL REMOVAL, DEFACING, ALTERATION, OR DESTRUCTION OF RECORDS

§1230.3

Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the [NARA](#)-approved retention period of a temporary record (other than court-ordered disposal under [§ 1226.14\(d\)](#) of this subchapter); and disposal of a record subject to a **FOIA request**, litigation hold, or any other hold requirement to retain the records.

VII. 44 U.S. CODE § 3106 - UNLAWFUL REMOVAL, DESTRUCTION OF RECORDS

(a) FEDERAL AGENCY NOTIFICATION.—

The head of each Federal agency shall 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, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency, or from another Federal agency whose records have been transferred to the legal custody of that Federal agency.

(b) ARCHIVIST NOTIFICATION.—

In any case in which the head of a Federal agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action described in subsection (a), or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

([Pub. L. 90–620](#), Oct. 22, 1968, [82 Stat. 1298](#); [Pub. L. 98–497, title I, § 107\(b\)\(21\)](#), title II, § 203(b), Oct. 19, 1984, [98 Stat. 2290](#), 2294; [Pub. L. 113–187, § 4](#), Nov. 26, 2014, [128 Stat. 2009](#).)

VIII. 18 U.S. Code § 1519 - Destruction, alteration, or falsification of records. (Added Pub. L. 107–204, title VIII, §802(a), July 30, 2002, 116 Stat. 800.)

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

IX. 18 U.S.C. 641 and 2071. The penalties for the unlawful or accidental removal, defacing, alteration, or destruction of Federal records or the attempt to do so, include a fine, imprisonment, or both (18 U.S.C. 641 and 2071).

This is submitted upon information, belief, and records available to me.

With my respect,

/s/

Robert Hammond
Whistleblower

Attachments

- A. NARA FOIA Response to NGC23-540
- B. Hammond FOIA Request NGC23-540
- C. October 7, 2022 UD Complaint ICO Acting Archivist of the US. Hatch Act Violation Records

- D. NARA UD Complaint ICO NARA's OGIS Unlawful Deletion, Destruction of Chief FOIA Council Records
- E. Unauthorized Dispositions of Federal Records _National Archives – NARA TAB

ATTACHMENT A to UD COMPLAINT

NARA FOIA Response to NGC23-540



NATIONAL
ARCHIVES

Sent via Email <149148-89298514@requests.muckrock.com>

September 1, 2023

Robert Hammond
MuckRock News
DEPT MR 149148
263 Huntington Ave
Boston, MA 02115

RE: Freedom of Information Act Request NGC23-504

Dear Mr. Hammond:

This is in response to your request for expedited processing of Freedom of Information Act (FOIA) request assigned internal tracking number NGC23-504. Your duplicate requests, dated July 12, 2023 and July 13, 2023, were received by the Office of General Counsel (NGC) on the same dates, via foia@nara.gov. In your FOIA request you stated you are seeking:

... I am respectfully seeking:

- 1. Records of all persons who registered via Eventbrite to attend the meeting.*
- 2. All records of the June 8, 2023 Webex Chat comments which the Meeting Minutes certified by Alina states: Ms. Mitchell stated that Committee chat comments have been read into the record and reiterated the comment from the Nuclear Regulatory Commission FOIA professional about the Exemption 5 privilege issue that a global policy of citing the specific privilege would create efficiencies across government. Mr. Levenson confirmed that there were no additional chat comments.*
- 3. Records include but are not limited to "all panelist" chat comments as well as any direct comments to any member participating in the meeting, including OGIS support personnel and the conference moderator. Ms. Semo's certified meeting minutes cite the following persons participating in the virtual meeting: ...*

You also asked for a fee waiver and expedited processing.

After conducting a search, we located one document responsive to part 1 of your request. We are releasing the document in part with redactions pursuant to Freedom of Information Act, 5 U.S.C. §552(b)(6). Exemption (b)(6) protects the release of information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

NATIONAL ARCHIVES *and*
RECORDS ADMINISTRATION

8601 ADELPHI ROAD
COLLEGE PARK, MD 20740-6001

www.archives.gov

We conducted a search for records responsive to part 2 of your request asking for the June 8, 2023 Webex Chat comments. However, we were unable to locate records responsive to your request. Your request for expedited processing was responded to on July 31, 2023. Your request for a fee waiver is considered non-billable.

This completes the processing of your FOIA request.

If you are not satisfied with our action on this request, you have the right to file an administrative appeal within ninety (90) calendar days from the date of this letter via regular U.S. mail or email. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. If you submit your appeal in writing, please address it to the Deputy Archivist of the United States (ND), National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." If you submit your appeal by email, please send it to FOIA@nara.gov, also addressed to the Deputy Archivist of the United States. Please be sure to explain why you believe this response does not meet the requirements of the FOIA. All correspondence should reference your case tracking number **NGC23-504**.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison Gary M. Stern for assistance at:

National Archives and Records Administration
8601 Adelphi Road, Room 3110
College Park, MD 20740-6001
301-837-1750
garym.stern@nara.gov

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is noted below:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
202-741-5770 or toll free 1-877-684-6448

Thank you for contacting the National Archives and Records Administration.

Sincerely,

Jodi Foor
Deputy FOIA Officer/Archivist
National Archives and Records Administration
Jodi.Foor@nara.gov

ATTACHMENT B
to UD COMPLAINT

Hammond FOIA Request NGC23-540

July 12, 2023

FOIA Officer
National Archives and Records Administration 8601 Adelphi Road, Room 3110
College Park, MD 20740 By Fax: (301) 837-0293
By E-mail: foia@nara.gov
Via Muckrock.com

Copy to Debra Wall, AOTUS

**Subject: Expedited FOIA Request NARA 23 -F. Muckrock. FOIA Advisory Committee
June 8, 2023 Chat Comments**

*****This Request will be timely for Judicial Review in twenty working days*****

I am submitting this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., as amended. If you deny all or any part of this request, please cite each specific exemption you think justifies your decision not to release the information and notify me of appeal procedures available under the law. References cited below apply.

RECORDS SOUGHT VIA FOIA.

Expedited FOIA Request NARA 23 -F. Muckrock. FOIA Advisory Committee June 8, 2023 Chat Comments. See PDF.

1. All records of the June 8, 2023 Webex Chat comments which the Meeting Minutes certified by Alina states:

Ms. Mitchell stated that Committee chat comments have been read into the record and reiterated the comment from the Nuclear Regulatory Commission FOIA professional about the Exemption 5 privilege issue that a global policy of citing the specific privilege would create efficiencies across government.

Mr. Levenson confirmed that there were no additional chat comments.

2. Records would include “all panelist” chat comments as well as any direct comments to any member participating in the meeting, including OGIS support personnel and the conference moderator. Ms. Semo’s certified meeting minutes cite the following persons participating in the virtual meeting:

Committee members present at the virtual meeting:

- Alina M. Semo, Director, Office of Government Information Services (OGIS), National Archives and Records Administration (NARA) (Committee Chairperson)
- Carmen A. Collins, U.S. Department of Defense
- David Cuillier, University of Arizona
- Allyson Deitrick, U.S. Department of Commerce
- Gorka Garcia-Malene, U.S. Department of Health and Human Services
- Lauren Harper, National Security Archive
- Michael Heise, U.S. Equal Employment Opportunity Commission
- Alexander Howard, Digital Democracy Project
- Gbemende Johnson, University of Georgia
- Jason R. Baron, University of Maryland
- Luke Nichter, Chapman University
- Eira Tansey, Memory Rising
- Catrina Pavlik-Keenan, U.S. Department of Homeland Security
- Thomas Susman, American Bar Association
- Bobak Talebian, U.S. Department of Justice, Office of Information Policy
- Patricia Weth, U.S. Environmental Protection Agency
- Committee members absent from the meeting:
- Paul Chalmers, Pension Benefit Guaranty Corporation
- Stefanie Jewett, U.S. Department of the Interior Office of Inspector General
- Adam Marshall, Reporters Committee for Freedom of the Press
- Benjamin Tingo, OPEXUS (formerly AINS)

Others present or participating in the virtual meeting:

- Dr. Colleen Shogan, Archivist of the United States, NARA
- Kirsten B. Mitchell, Committee's Designated Federal Officer, NARA
- Daniel Levenson, Committee's Alternate Designated Federal Officer, NARA
- David Bloom, MITRE Corporation
- Dr. Eliot G. Wilczek, MITRE Corporation
- Gretchen Gehrke, public commenter
- Michelle Ridley, Webex event producer

3. Records of all persons who registered via Eventbrite to attend the meeting.

4. The Agency copy of this FOIA Request this FOIA request itself is an agency record, "received by an agency of the United States Government under Federal law or in connection with the transaction of public

business” 44 U.S.C. § 3301 (emphasis supplied).

The definition of “records” includes:

“[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government 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 Government or because of the informational value of data in them.” 44 U.S.C. § 3301 (emphasis supplied).

REQUESTED FORMAT.

I am also seeking records in their native format (MS. Outlook, PowerPoint, Excel, ADA accessible PDF files by return email with: (1) a signed and dated cover letter (citing my personally assigned requester control number); (2) with record page count for all records released records (3) a copy of this request in your reply. I seek records via email in PDF format with an imbedded copy of my requests to (1) impede the agency from not addressing the FOIA Request; (2) impede the Agency from not providing the documents stated in the Agency’s letter reply, and (3) make it obvious in any subsequent review what the Agency has or has not done.

Further, I request that these records be sent in any digital format in which they exist (such as PDF and Excel). Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in electronic format, it must be released in that format upon request.

Each record must be provided as a distinct record in their native format. Emails should be provided as MS Outlook files, if not encrypted or otherwise unable to be opened by me. Only if this is not possible, emails should be produced with their embedded hyperlinked attachments by using the “File => Save as Adobe PDF” command within Outlook or by other software that produces the same result.

This request is distinctly separate from any other. Please do not combine this request with any other request in your reply. I am requesting that each element of the records sought be specifically addressed in the reply.

In all correspondence, return a copy of my FOIA request, cite my personal request number and cite records sought.

FEE WAIVER/ PUBLIC INTEREST/PUBLIC RELEASE.

Notwithstanding my agreement to pay fees below if my fee waiver is denied, I am seeking a fee waiver due to significant public interest in this information. The subject of the requested records concerns "the operations or activities of the government." The disclosure is "likely to contribute" to an understanding of government operations or activities. There is no commercial interest. There is significant public interest.

AGREEMENT TO PAY FEES.

I agree to pay fees for searching or copying the records up to \$25. If the fees exceed this amount, please advise me of the cost before proceeding. I do not believe that there should be any charge for providing these records, as there is public interest in government operations. I am a private individual not seeking documents for commercial use, such that the following applies: "No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge." I would note that because I am requesting an electronic file, there should not be a per page copy fee.

The OMB Guidelines direct that searches for responsive records should be done in the "most efficient and least expensive manner." See OMB Fee Guidelines, 52 Fed. Reg. at 10,017. As an "all others" requester, I may only be assessed search and duplication fees and not fees for review. See 32 CFR 286.12 - Schedule of fees. Also, please note that, should payment become necessary, the Coinage Act of 1965, specifically Section 31 U.S.C. 5103, entitled "Legal tender," states: " United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.

([Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 980](#); [Pub. L. 97-452, §1\(19\), Jan. 12, 1983, 96 Stat. 2477](#).)

EXPEDITED PROCESSING.

I certify to the best of my knowledge and belief that a compelling need exists for expedited processing as discussed below:

1. Records are the subject of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity that affect public confidence.
 - a. FOIA Advisory Committee certified meeting minutes must be accurate. If they are not, it is explosive.

2. Additionally, (although a private requester) I am an individual/organization primarily engaged in the dissemination of information who can prove the information is urgently needed to inform the public concerning some actual or alleged government activity. My primary activity is informing the public, which I do through a variety of means, such as open meeting public comments, blogs, etc., and I may from time to time collaborate on articles. There is extraordinary, off the charts interest in this matter and NARA's execution. I make oral public comments at every open FOAI meeting. I have an active email distribution list of Chief FOIA Officers, FOIA professionals, FOIA advocacy groups media and interested parties. I also communicate regularly with members of Congress.

- See examples below.

- **Public Comments Submitted to the Chief FOIA Officers Council**
<https://www.archives.gov/ogis/about-ogis/chief-foia-officers-council>

- **Public Comments Submitted to the FOIA Advisory Committee | National Archives**
<https://www.archives.gov/ogis/foia-advisory-committee/public-comments>

- **OGIS Annual Open Meeting Public comments**
<https://www.archives.gov/ogis/outreach-events/annual-open-meeting>

- **Document Cloud. Org**
<https://www.documentcloud.org/app?q=%2Buser%3Arobert-hammond-106693%20> (e.g., "[Sample FOIA Template With Recent Developments to Combat Agency Misconduct.](#)")

NARA must evaluate all my public comments (which NARA has) along with my methods of dissemination and state that it has done so in any denial of expedited processing.

- The subject of the requested records concerns government operations and activities.
- Government misconduct is appa The definition of "records" includes:
- "[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government 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 Government or because of the informational value of data in them.” 44 U.S.C. § 3301 (emphasis supplied).

- rant.
- The disclosure is likely to contribute to understanding of these operations or activities.
- Disclosure will likely result in public understanding of the subject.
- The contribution to public understanding of government operations or activities will be significant.
- The requester has no commercial interest.
- The public interest in disclosure is great.
- I use “editorial skills to turn the raw materials into a distinct work.”

- My work is distributed by email to an audience of FOIA professionals, media, and interested parties with frequent active distribution.
3. The FOIA Advisory Committee meeting is December 1, 2022, where this will be a topic.
 4. I am seeking expedited processing due to eminent substantial loss of due process rights in connection with mediation and potential litigation of requests and appeals within FOIAonline and others.

DOD POLICY – PUBLIC TRUST.

Reference (c) states, “DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.”

ESTIMATED COMPLETION DATES

Provide me with the initial estimated completion date (ESD) for this matter along with contemporaneous adjusted ESDs as they change. See [Office of Government Information Services Advisory Opinion No. 2020-01: Agencies Must Provide Estimated Dates of Completion Upon Request](https://www.archives.gov/ogis/advisory-opinions/2020-01-agencies-must-provide-edcs) <https://www.archives.gov/ogis/advisory-opinions/2020-01-agencies-must-provide-edcs>.

STILL-INTERESTED PREEMPTIVE REPLY. This is a preemptive reply to the Justice Department guidelines the procedure known as a “still interested” inquiry, through which a FOIA officer can confirm that the requester has not lost interest in obtaining the documents.

My interest in all FOIA requests and appeals submitted to your office is enduring, meaning that my interest in seeking replies to all past and future FOIA request remains in effect until each request has been answered fully and the time for judicial review has passed. Please do not initiate any “still interested” inquiries. This serves as my notice of enduring interest and automatic reply to any future questions of interest by your office. There are no reasonable grounds to ever conclude in the future that I am not interested in this request.

Implementation Checklist for DOJ OIP Guidance on “Still-Interested” Inquiries

1. Ensure there are reasonable grounds to make a “still-interested” inquiry in first instance.
2. Absent good cause, do not make multiple “still-interested” inquiries.
3. Use requester’s preferred method of communication and in the absence of a preference,

communicate by telephone or email as the default.

4. Memorialize any decision by a requester to withdraw a request that is conveyed by telephone by sending the requester a brief email or letter noting the withdrawal.
5. Provide requesters no less than thirty (30) working days to respond to the “still-interested” inquiry and ensure that there is a simple way to do so.
6. Advise the requester that if they elect not to respond to the inquiry, the request will be administratively closed at the conclusion of the designated time period (which must be at least 30 working days).
7. Prior to administratively closing a request based upon the lack of a response by the requester, make good faith efforts to reach out to the requester using multiple methods of communication.
8. In the event a requester responds to the “still- interested” inquiry within a reasonable time after the deadline has passed, reopen the request and place it back into the processing queue where it would have been.

PRESERVE RECORDS AND SEARCHES FOR JUDICIAL REVIEW.

Please search for, locate and preserve all responsive or potentially responsive records and records of your searches in your FOIA case file until the statutory date for judicial review has passed (should that be necessary) or in accordance with a NARA approved records schedule, if longer. NARA GRS 4.2 requires that FOIA and Privacy Act case files be retained for 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later. Records of responsive searches would include but not be limited to: searches conducted for each specific record sought and all other records known to the Agency, including dates, manner of searching, responsible agent or employee conducting each search and the results thereof. Such persons determining the locations of responsive records must be inclusive of persons who would know such locations and their identities and manner of determining search locations must be preserved.

In any subsequent proceedings, I may seek sworn declarations and a court order appointing a special counsel, as appropriate. Similarly, I may pursue additional venues.

Any deletion of potentially responsive records by any party having knowledge of this Request may be a violation of law. In as much as applicable staff and leadership have knowledge of my subject request, the Agency must search for, locate and preserve all responsive or potentially responsive records and records of searches in their FOIA case file, and leadership must ensure that this is done. Failing to do so and allowing records to be deleted IAW any other records management schedule may be a violation of law.

ELECTRONIC RECORDS PRESERVATION.

The Agency must preserve all electronically stored information, copies and backup, as defined by Rule 34 of the Federal Rules of Civil Procedure, along with any paper files which the Agency maintains, relevant to this action I am seeking electronic data in the Agency’s custody

and control that is relevant to this action, including without limitation emails, along with metadata, and other information contained on Agency computer systems and any electronic storage systems. I consider this electronic data and paper files to be valuable and irreplaceable sources of discoverable information in this matter. No procedures should have been implemented to alter any active, deleted or fragmented data. Moreover, no electronic data should have been disposed of or destroyed. (ETL Institute for Advancement of America’s Legal System).

Further, to properly fulfill your preservation obligation, stop all scheduled data destruction, electronic shredding, rotation of backup tapes, and the sale, gift or destruction of hardware. Notify all individuals of the need and duty to take the necessary affirmatives steps to comply with the duty to preserve evidence. (2008 Thomson Delmar Learning).

The Agency’s Director of Information Operations or similar organization must initiate procedures to preserve electronic records.

APPLICABLE RETENTION SCHEDULE, NARA GRS 4.2 Item 20

020	<p>Access and disclosure request files. Case files created in response to requests for information under the Freedom of Information Act (FOIA), Mandatory Declassification Review (MDR) process, Privacy Act (PA), Classification Challenge, and similar access programs, and completed by: • granting the request in full • granting the request in part • denying the request for any reason including: o inability to fulfill request because records do not exist o inability to fulfill request because request inadequately describes records o inability to fulfill request because search or reproduction fees are not paid</p>	<p>Temporary. Destroy 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later, but longer retention is authorized if required for business use.</p>	<p>DAA-GRS-2016-0002-0001</p>
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ALTERATION/DESTRUCTION OF RECORDS

18 U.S. CODE § 1519 - DESTRUCTION, ALTERATION, OR FALSIFICATION OF RECORDS.

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more

than 20 years, or both. 18 U.S. Code § 1519 - Destruction, alteration, or falsification of records. (Added Pub. L. 107–204, title VIII, §802(a), July 30, 2002, 116 Stat. 800.).

18 U.S.C. 641 and 2071. The penalties for the unlawful or accidental removal, defacing, alteration, or destruction of Federal records or the attempt to do so, include a fine, imprisonment, or both (18 U.S.C. 641 and 2071).

36 CFR § 1230 UNLAWFUL OR ACCIDENTAL REMOVAL, DEFACING, ALTERATION, OR DESTRUCTION OF RECORDS

§1230.3

Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record (other than court-ordered disposal under §1226.14(d) of this subchapter); and disposal of a record subject to a **FOIA request**, litigation hold, or any other hold requirement to retain the records.

32 CFR PART 286—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

32 CFR §286.6 Preservation of records.

Each DoD Component shall preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration (NARA). Records shall not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

36 CFR § 1230.3

Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record (other than court-ordered disposal under § [1226.14\(d\)](#) of this subchapter); and disposal of a record subject to a **FOIA request**, litigation hold, or any other hold requirement to retain the records.

RECORDS

(a) FEDERAL AGENCY NOTIFICATION.—

The head of each Federal agency shall 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, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the

head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency, or from another Federal agency whose records have been transferred to the legal custody of that Federal agency.

(b) ARCHIVIST NOTIFICATION.—

In any case in which the head of a Federal agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action described in subsection (a), or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

(Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1298; Pub. L. 98–497, title I, § 107(b)(21), title II, § 203(b), Oct. 19, 1984, 98 Stat. 2290, 2294; Pub. L. 113–187, § 4, Nov. 26, 2014, 128 Stat. 2009

IMPROPERLY WITHHOLDING RECORDS

Pursuant to FOIA:

“Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.” 5 U.S.C. § 552(a)(4)(F)(i).

PERJURY

Whoever-

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under [section 1746 of title 28, United States Code](#), willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

18 U.S. C. § 1621 - Perjury generally (June 25, 1948, ch. 645, 62 Stat. 773; Pub. L. 88-619, §1, Oct. 3, 1964, 78 Stat. 995 ; Pub. L. 94-550, §2, Oct. 18, 1976, 90 Stat. 2534 ; Pub. L. 103-322, title XXXIII, §330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.

SUBORDINATION OF PERJURY

The term *subornation of perjury* further describes the circumstance wherein an [attorney at law](#) causes a client to lie under oath or allows another party to lie under oath

Title [18 U.S.C. § 1622](#) provides:

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both.

FALSE OFFICIAL STATEMENTS.

18 U.S.C. § 1001. Statements or entries generally:

- a. Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully --
 1. falsifies, **conceals**, or covers up by any trick, scheme, or device a **material fact**;
 2. makes any materially false, fictitious, or fraudulent statement or representation;or
 3. makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.

10 U.S. Code § 907. Art. 107. False official statements; false swearing:

- (a) FALSE OFFICIAL STATEMENTS. Any person subject to this chapter who, with intent to deceive—
 - (1) signs any false [record](#), return, regulation, order, or other official document, knowing it to be false; or
 - (2) makes any other false official statement knowing it to be false;

shall be punished as a [court](#)-martial may direct.”

LEGAL FRAMEWORK OF FOIA

1. The definition of “records” includes:

“[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made *or received* by an agency of the United States Government 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 Government or because of the informational value of data in them.” 44 U.S.C. § 3301 (emphasis supplied).

2. FOIA requires that “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person” 5 U.S.C. § 552(a)(3)(A).

3. FOIA requires that “each agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request” 5 U.S.C. § 522(a)(7)(A).

4. FOIA requires that each agency shall “establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including the date on which the agency originally received the request; and an estimated date on which the agency will complete action on the request. 5 U.S.C. § 522(a)(7)(B).

5. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

6. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). *See also* 5 U.S.C. § 552(a)(6)(C).

7. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

8. Regarding the names of the FOIA requesters, the courts have held that under the FOIA requesters do not have an expectation of privacy. *Stauss v. IRS*, 516 F. Supp. 1218, 1223 (D.D.C. 1981),

9. Under FOIA, the federal agency has the burden of sustaining its actions. 5 U.S.C. § 552(a)(4)(B).

10. Pursuant to FOIA, a Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in an action thereunder. 5 U.S.C. § 552(a)(4)(E).

11. Department of Justice (DOJ) has issued a handbook addressing FOIA Annual Reports. See DOJ, *Handbook for Agency Annual Freedom of Information Act Reports*, “Disposition of FOIA Requests,” (available at http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/department_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf) (“DOJ Handbook”).

12. Among other things, the DOJ Handbook states, “All requests (perfected and non-perfected), appeals, and consultations that were pending at any time during the relevant fiscal year [October 1st through September 30th] will be captured.”

13. The DOJ Handbook also states:
“[E]ach agency is ultimately responsible for the accuracy and completeness of its Annual FOIA Report. It is therefore essential for agencies to take steps that will ensure that they are adequately tracking all of the information necessary to complete the Annual FOIA Report sections detailed below. Agencies that utilize a tracking or case management system for this purpose are responsible for ensuring that the system they are using can produce an accurate Annual FOIA Report that is in compliance with the law and Department of Justice guidance.”
DOJ Handbook, at 3.

I believe that I have adequately described the records that I am seeking. If you believe that my request is unclear, if you have any questions, or if there is anything else that you need from me to complete this request in a timely manner, please contact me in writing, so that I may perfect my request. If you deem that any portion of my request is unclear, answer the remaining portions and I will perfect a request for additional material as needed.

Thank you very much in advance.

With respect,

/s/

Robert Hammond
Requester
Whistleblower

References:

- (a) The Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended,
- (b) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011, “Your Right to Federal Records”

- (c) The Privacy Act (“PA”) of 1974, 5 U.S.C. § 552a, *et seq., as amended*
- (d) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program
- (e) DoD 5400.7-R, September 1998, DoD Freedom of Information Act (FOIA) Program
- (f) DoD 6025.18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation
- (g) GAO Report GAO-12-828 of July 2012, subject Freedom of Information Act
- (h) Department of Justice Handbook for Agency Annual Freedom of Information Act Reports
- (i) (b) Administrative Instruction 106, “Alternative Dispute Resolution (ADR) Program,” January 30, 2014
- (j) DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),” December 2, 2013, as amended
- (k) DoD Directive 5145.04, “Defense Legal Services Agency (DLSA),” April 16, 2012
- (l) (f) DoD Directive 5400.11, “DoD Privacy Program,” October 29, 2014
- (m) DoD Manual 8910.01, Volume 1, “DoD Information Collections Manual: Procedures for DoD Internal Information Collections,” June 30, 2014
- (n) Executive Order 12988, “Civil Justice Reform,” February 5, 1996
- (o) Public Law 101-552, “Administrative Dispute Resolution Act,” November 15, 1990
- (p) Public Law 104–320, “Administrative Dispute Resolution Act of 1996,” October 19, 1996
- (q) Presidential Memorandum for Heads of Executive Departments and Agencies, “Designation of Interagency Committees to Facilitate and Encourage Agency Use of Alternate Means of Dispute Resolution and Negotiated Rulemaking,” May 1, 1998
- (r) United States Code, Title 5
- (s) DoD Instruction 5145.05, “Alternative Dispute Resolution (ADR) and Conflict Management”
- (t) Alternate Dispute Resolution Handbook (opm.gov/policy-data-oversight/employee-relations/employee-rights-appeals/alternative-dispute-resolution/handbook.pdf)
- (u) President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines (justice.gov/sites/default/files/oip/legacy/2014/07/23/foia-memorandum.pdf)

ENCLOSURE C

Sample Hammond Public Comments

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UD Complaint Attachment D

NARA UD ICO NARA OGIS Unlawful Deletion Destruction of
Chief FOIA Council Records

October 7, 2022

**Subject: NARA Unauthorized Disposition (UD) Complaint ICO Acting Archivist of the US.
Hatch Act Violation Records**

I. ALLEGATION.

“A member of the public (Robert Hammond) alleges that the Acting Archivist of the United States may have destroyed email and text FOIA records related to her involvement in potential Hatch Act violations in the 2020 federal election. Else records are at risk of actual, impending, or threatened damage, alienation, or unauthorized destruction.”

II. ACTION SOUGHT.

1. Notify NARA within 5 business days as required by 36 CFR 1230.16.a.
2. Provide me a point of contact by return email to discuss this matter.
3. Permit me to discuss the Agency’s reply prior to deciding on this complaint to preclude the likely provision of misinformation, as has been done in the past.
4. If the records have not been destroyed, seek that the Agency provide them to you as individual records.
5. A consolidated PDF file will not distinguish the individual moot determination letters and may again contain irrelevant material.
6. Should NARA fail to timely and accurately post this complaint and promptly, properly adjudicate it I may place records into the public domain.

III. IDENTIFICATION OF RECORDS.

1. Records responsive to FOIA requests NGC22-105 (my NARA 22-P.I), NGC22-106 (my NARA 22-Q.I.) and NGC22-235 (my NARA 22-P.I.A) pertain directly to Ms. Wall and she received copies of these FOIA requests.

IV. APPLICABLE RETENTION SCHEDULE, NARA GRS 4.2 Item 20

020	Access and disclosure request files. Case files created in response to requests for information under the Freedom of Information Act (FOIA), Mandatory Declassification Review (MDR) process, Privacy Act (PA), Classification Challenge, and similar access programs, and completed by: • granting the request in full • granting the request in part • denying the request for any reason including: o inability to fulfill request because records do not exist o inability to fulfill request because request inadequately describes records o inability to fulfill request because search or reproduction fees are not paid	Temporary. Destroy 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later, but longer retention is authorized if required for business use.	DAA-GRS-2016-0002-0001
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V. 32 CFR PART 286—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

32 CFR §286.6 Preservation of records.

Each DoD Component shall preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration (NARA). Records shall not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

VI. 36 CFR § 1230. UNLAWFUL OR ACCIDENTAL REMOVAL, DEFACING, ALTERATION, OR DESTRUCTION OF RECORDS

§1230.3

Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the [NARA](#)-approved retention period of a temporary record (other than court-ordered disposal under [§ 1226.14\(d\)](#) of this subchapter); and disposal of a record subject to a **FOIA request**, litigation hold, or any other hold requirement to retain the records.

VII. 44 U.S. CODE § 3106 - UNLAWFUL REMOVAL, DESTRUCTION OF RECORDS

(a)FEDERAL AGENCY NOTIFICATION.—

The head of each Federal agency shall 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, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency, or from another Federal agency whose records have been transferred to the legal custody of that Federal agency.

(b)ARCHIVIST NOTIFICATION.—

In any case in which the head of a Federal agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action described in subsection (a), or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

([Pub. L. 90–620](#), Oct. 22, 1968, [82 Stat. 1298](#); [Pub. L. 98–497](#), title I, [§ 107\(b\)\(21\)](#), title II, [§ 203\(b\)](#), Oct. 19, 1984, [98 Stat. 2290](#), 2294; [Pub. L. 113–187](#), [§ 4](#), Nov. 26, 2014, [128 Stat. 2009](#).)

VIII. 18 U.S. Code § 1519 - Destruction, alteration, or falsification of records. (Added Pub. L. 107–204, title VIII, §802(a), July 30, 2002, 116 Stat. 800.)

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation

of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

IX. 18 U.S.C. 641 and 2071. The penalties for the unlawful or accidental removal, defacing, alteration, or destruction of Federal records or the attempt to do so, include a fine, imprisonment, or both (18 U.S.C. 641 and 2071).

This is submitted upon information, belief, and records available to me.

With my respect,

/s/

Robert Hammond
Whistleblower

UD Complaint Attachment D

Chief FOIA Officers Council Records

From: perseverance2013@aol.com
To: "UnauthorizedDisposition@nara.gov"
Bcc: perseverance2013@aol.com
Subject: NARA Unauthorized Disposition Complaint ICO NARA OGIS Unlawful Deletion/Destruction of Chief FOIA Council Records
Date: Wednesday, December 1, 2021 5:32:00 PM
Attachments: [Mr. Ferriero, NARA OIG, OGIS Unlawful Chief FOIA Officers Council Meetings, Destruction of Records, Censorship.pdf](#)
[NARA 22-S, 11.17.2021 CFO Council Chat Comments.pdf](#)
[NARA OGIS Unlawful Destruction of Chief FOIA Council Records.pdf](#)

December 1, 2021

NARA Unauthorized Disposition Complaint ICO NARA OGIS Unlawful Deletion/Destruction of Chief FOIA Council Records

I. ALLEGATIONS.

I am alleging that National Archives Administration's (NARA's) Office of Government Services (OGIS) unlawfully and intentionally destroyed Chief FOIA Officers Council records subject to preservation in their own right.

OGIS is required to have preserved pursuant to NARA's GRS 4.2 Item 20 and **Public Law No: 114-185, The FOIA Improvement Act of 2016.**

Records are also related to my November 17, 2021 FOIA Request **NARA 22-S. 11.17.2021 CFO Council Chat Comments. Unlawful Meeting.**

Any potentially recoverable records are in imminent danger of DHA destroying them.

II. ACTION SOUGHT.

1. Notify Defense Health Agency within 5 working days.
2. Provide me a point of contact by return email to discuss this matter.
3. Permit me to discuss the Agency's reply prior to deciding on this complaint to preclude the likely provision of misinformation, as has been done in the past.
4. If records have not been destroyed, seek that the Agency provide them to you as individual PDF files aligned with the record names aligned with Attachment A (133 records) and C (185 records), and the results of searches of DHA's backup email servers using the search criteria in my FOIA request. DHA must include the search criteria of its electronic backup email servers. Note that all records sought in my FOIA request are FOIA case processing records that are required to be retained for 6+ years after the final action.

III. IDENTIFICATION OF RECORDS.

DOJ OIP & OGIS unlawfully deleted/destroyed portions of my public comments from YouTube Top Chat if the November 17, 2021 Chief FOIA Officers Council meeting while keeping only my positive comments. There is no legal distinction between the comments that DOJ OIP & OGIS retained praising leadership and those capriciously and arbitrarily deleted (e.g., comments that the meeting was unlawfully held.

In an annual meeting specifically mandated by statute for oral and written public comments (Public Law No: 114-185), NARA only allowed three minutes total for oral comments from members of the public (me).

Therefore, I copied and pasted my oral public comments into the You Tube video Top Chat (as Leona Hammond, Robert Hammond Sends) in increments of approximately 200 characters and notified DOJ OIP & OGIS and all Chief FOIA Officers and others that I had done so. At the start of the meeting OGS director called attention to the You Tube live feed.

My You Tube chat comments therefore qualify as records or other documents **“that were made available to or prepared for or by the Council** shall be made publicly available.” Any deletion/destruction or removal from the public domain is therefore improper and potentially unlawful. In any case the decision to keep only those glowing comments about the Council’s leadership while deleting other comments is capricious, arbitrary, and inconvertibly unlawful. The retained You Tube chat comments are at ATTACHMENT B.

Public Law No: 114-185 excerpts:

B) In performing the duties described in subparagraph (A), the Council shall consult on a regular basis with members of the public who make requests under this section. “(6)

(A) The Council shall meet regularly and such meetings shall be open to the public unless the Council determines to close the meeting for reasons of national security or to discuss information exempt under subsection (b).

“(B) Not less frequently than annually, the Council shall hold a meeting that shall be open to the public and permit interested persons to appear and present oral and written statements to the Council.

“(C) Not later than 10 business days before a meeting of the Council, notice of such meeting shall be published in the Federal Register. ‘

‘(D) Except as provided in subsection (b), **the records**, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or **other documents that were made available to or prepared for or by the Council shall be made publicly available**.

“(E) Detailed minutes of each meeting of the Council shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the Council.

RECORDS SOUGHT VIA FOIA Request NARA 22-S. 11.17.2021 CFO Council Chat Comments. Unlawful Meeting.

I am respectfully seeking:

For the Chief FOIA Officers Council of November 17, 2021, I am respectfully seeking

:

1. An unredacted copy of all chat comments to and from the Panelists.
2. An unredacted copy of all chat comments in the You Tube Top Chat/and or Live Chat.
 - a. Note that in addition to providing chat transcripts, I am seeking that the video owner de-select the setting to "Disable comments," or any other impediment to allowing full public access by anyone viewing the You Tube Video
3. An unredacted copy of all chat comments to and from any other chat window that may have been used during this meeting (e.g., chat comments not visible to members of the

public via WEVEX)

4. I am also seeking a copy of this FOIA Request, which is an Agency record subject to FOIA that exists and is in the Agency's possession at the time of my FOIA request. This record is a responsive record integral to my Request. Release of the Agency's copy is not optional.

BACKGROUND. I notified The Honorable David S. Ferriero (Archivist of the United States of this matter by email of Wednesday, December 1, 2021 10:43:00 AM.

V. APPLICABLE RETENTION SCHEDULE, NARA GRS 4.2 Item 20

020	Access and disclosure request files. Case files created in response to requests for information under the Freedom of Information Act (FOIA), Mandatory Declassification Review (MDR) process, Privacy Act (PA), Classification Challenge, and similar access programs, and completed by: • granting the request in full • granting the request in part • denying the request for any reason including: o inability to fulfill request because records do not exist o inability to fulfill request because request inadequately describes records o inability to fulfill request because search or reproduction fees are not paid	Temporary. Destroy 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later, but longer retention is authorized if required for business use.	DAA-GRS2016-00020001
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VI. 32 CFR PART 286—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

32 CFR §286.6 Preservation of records.

Each DoD Component shall preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration (NARA). Records shall not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

VII. 36 CFR § 1230.3

Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the [NARA](#)-approved retention period of a temporary record (other than court-ordered disposal under [§ 1226.14\(d\)](#) of this subchapter); and disposal of a record subject to a **FOIA request**, litigation hold, or any other hold requirement to retain the records.

VIII. 44 U.S. CODE § 3106 - UNLAWFUL REMOVAL, DESTRUCTION OF RECORDS

a. FEDERAL AGENCY NOTIFICATION.—

The head of each Federal agency shall 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, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency, or from another Federal agency whose records have been transferred to the legal custody of that Federal agency.

b. **ARCHIVIST NOTIFICATION.**—

In any case in which the head of a Federal agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action described in subsection (a), or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

([Pub. L. 90–620](#), Oct. 22, 1968, [82 Stat. 1298](#); [Pub. L. 98–497](#), title I, § 107(b)(21), title II, § 203(b), Oct. 19, 1984, [98 Stat. 2290](#), 2294; [Pub. L. 113–187](#), § 4, Nov. 26, 2014, [128 Stat. 2009](#).)

IX. Public Law No: 114-185

B) In performing the duties described in subparagraph (A), the Council shall consult on a regular basis with members of the public who make requests under this section. “(6)

(A) The Council shall meet regularly and such meetings shall be open to the public unless the Council determines to close the meeting for reasons of national security or to discuss information exempt under subsection (b).

“(B) Not less frequently than annually, the Council shall hold a meeting that shall be open to the public and permit interested persons to appear and present oral and written statements to the Council.

“(C) Not later than 10 business days before a meeting of the Council, notice of such meeting shall be published in the Federal Register. ‘

“(D) Except as provided in subsection (b), **the records**, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or **other documents that were made available to or prepared for or by the Council shall be made publicly available**.

“(E) Detailed minutes of each meeting of the Council shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the Council.

This is submitted upon information, belief and records available to me.

With my respect,

/s/

Robert Hammond

Whistleblower

Attachments:

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- Mr. Ferriero. NARA OIG. OGIS Unlawful Chief FOIA Officers Council Meetings Destruction of Records Censorship_.pdf

- NARA 22-S. 11.17.2021 CFO Council Chat Comments

From: perseverance2013@aol.com
To: "david.ferriero@nara.gov"; "debra.wall@nara.gov"; "Brett Baker"
Bcc: perseverance2013@aol.com
Subject: Mr. Ferriero. NARA OIG. OGIS Unlawful Chief FOIA Officers Council Meetings, Destruction of Records, Censorship.
Date: Wednesday, December 1, 2021 10:43:00 AM
Attachments: [Mr. Ferriero NARA OIG w. attach.pdf](#)
Importance: High
Sensitivity: Confidential

Mr. Ferriero. NARA OIG. OGIS Unlawful Chief FOIA Officers Council Meetings, Destruction of Records, Censorship.

Dear Mr. Ferriero (Archivist of U.S.), Dr. Brett Baker (NARA OIG):

Please initiate OIG investigations into the following:

1. **Unlawful Meetings.** OGIS has conducted multiple Chief FOIA Officers Meetings that were not properly advertised in Federal Register in violation of law, including the November 17, 2021 meeting and others.
2. **Deletion/Destruction of Records.** OGIS unlawfully deleted/destroyed portions of my public comments from You Tube Top Chat if the November 17, 2021 Chief FOIA Officers Council meeting while keeping only my positive comments. There is no legal distinction between the comments that OGIS retained praising leadership and those capriciously and arbitrarily deleted (e.g., comments that the meeting was unlawfully held).
3. **Censoring Oral Comments.** After allocating only 15 minutes for oral public comments, OGIS attempted to not call on me at all when I was the only caller in the queue, then limited total oral comments to 3 minutes (mine) despite there being no other members from the public in the queue and then failed to call on me again with time left.
4. **Censoring Written Comments.** OGIS capriciously and arbitrarily refused to post three of my written public comments, which meet the OGIS Policy for Posting Public Comments and are legally indistinguishable from other comments posted (except for the OGIS Director's personal bias).

UNLAWFUL MEETINGS.

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As stated in my November 17, 2021 prepared oral public comments at ATTACHMENT A, OGIS has conducted multiple public meetings:

Public Law No: 114-185, **The FOIA Improvement Act of 2016. It is on mot everyone's FOIA websites: OGIS, DOJ OIP, many of your websites.**

"There is established in the executive branch the Chief FOIA Officers Council (referred to in this subsection as the 'Council').

"(B) Not less frequently than annually, the Council shall hold a meeting that shall be open to the public and permit interested persons to appear and present oral and written statements to the Council.

"(C) <<NOTE: Deadline.>> Not later than **10 business days** before a

meeting of the Council, notice of such meeting shall be published in the Federal Register.”

Ladies and gentlemen, that 10 business day notice in the Federal Register did not happen. This is an illegal, unlawful meeting and this is not the first time this has happened.

- For the October 4, 2018 meeting the notice was published on September 25, 2018. That is not 10 business days.
- Then, many of you participated in an OGIS/DOJ OIP co-sponsored closed November 5, 2020 meeting with over 400 Government personnel and contractors, according the OGIS FOIA Ombudsman Blog and the OGIS website. You are allowed to hold closed meetings, which is what I believe this was, but you still have to announce a closed meeting in the Federal Register and state why it is closed. Of concern, whatever you call that meeting/webinar/whatever, when I submitted a FOIA request to OGIS seeking records, OGIS stated it was purely an OIP meeting and (I quote) “Therefore we do not have records responsive to this request.”
 - So, the OGIS FOIA Ombudsman & OGIS website, boast that it is OGIS & OIP co-hosted, but according to OGIS: not our meeting; no records. Let that sink in for a moment. Many of you were there.
- For today’s November 17 2021 meeting, the Federal Register announcement was not published until November 9th; the same day I complained to NARA who manages the Federal Register. Forget about Veterans Day and weekends for 10 business days’ notice, November 9th is not even 10 calendar days.

So, I am asking here today of the Archivist of the United States, The Honorable David. S. Ferriero, and the Associate Attorney General, The Honorable Vanita Gupta, “What are the consequences for repeatedly breaking the law? If the underlying issue is inadequate resources and beleaguered staffs stretched too thin, what are you doing today to fix that by reallocating resources now and budgeting adequate funding going forward? What are you doing to allow members of the Public ample time to make and present substantive oral comments and to have substantive written public comments publicly posted, as I believe is mandated by law?”

The sole responsibility of OIG is to affirm that the meetings were unlawfully held.

DELETION/DESTRUCTION OF RECORDS.

In an annual meeting specifically mandated by statute for oral and written public comments (Public Law No: 114-185), NARA only allowed three minutes total for oral comments from members of the public (me).

Therefore, I copied and pasted my oral public comments into the You Tube video Top Chat (as Leona Hammond, Robert Hammond Sends) in increments of approximately 200 characters and notified OGIS and all Chief FOIA Officers and others that I had done so. At the start of the meeting OGS director called attention to the You Tube live feed.

My You Tube chat comments therefore qualify as records or other documents **“that were**

made available to or prepared for or by the Council shall be made publicly available.” Any deletion/destruction or removal from the public domain is therefore improper and potentially unlawful. In any case the decision to keep only those glowing comments about the Council’s leadership while deleting other comments is capricious, arbitrary, and inconvertibly unlawful. The retained You Tube chat comments are at ATTACHMENT B.

Public Law No: 114-185 excerpts:

B) In performing the duties described in subparagraph (A), the Council shall consult on a regular basis with members of the public who make requests under this section. “(6)

(A) The Council shall meet regularly and such meetings shall be open to the public unless the Council determines to close the meeting for reasons of national security or to discuss information exempt under subsection (b).

“(B) Not less frequently than annually, the Council shall hold a meeting that shall be open to the public and permit interested persons to appear and present oral and written statements to the Council.

“(C) Not later than 10 business days before a meeting of the Council, notice of such meeting shall be published in the Federal Register. ‘

‘(D) Except as provided in subsection (b), **the records**, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or **other documents that were made available to or prepared for or by the Council shall be made publicly available**.

“(E) Detailed minutes of each meeting of the Council shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the Council.

CENSORING ORAL COMMENTS.

After allocating only 15 minutes for oral public comments, OGIS attempted to not call on me at all when I was the only caller in the queue, then limited total oral comments to 3 minutes (mine) despite there being no other members from the public in the queue and then failed to call on me again with time left. A review of the meeting transcripts (Attachment C) and panelist chat window comments will document that I was seeking to be called upon by entering #2 on my phone as directed. Note that the moderator, Michelle Ridley, incorrectly stated that because I joined by Webex, I was required to raise my hand within Webex, which is not the case. Webex offers the choice for audio of joining by phone, which I did.

See above excerpts from **Public Law No: 114-185, The FOIA Improvement Act of 2016.**

Please include in your OIG investigations review of the panelist chat comments and others, as well as all communications between OGIS and moderator, Michelle Ridley prior to, during and after the meeting.

CENSORING WRITTEN COMMENTS.

OGIS capriciously and arbitrarily refused to post three of my written public comments, which meet the OGIS Policy for Posting Public Comments and are legally indistinguishable from other comments posted (except for the OGIS Director’s personal bias).

See above excerpts from **Public Law No: 114-185, The FOIA Improvement Act of 2016.**

Up to and through the November 17, 2021 meeting, OGIS had refused to post or provide any basis for not posting the following public comments.

PUBLIC COMMENTS SUBMITTED BUT NOT POSTED

A. DESTRUCTION AND ALTERATION OF FOIA RECORDS – DOD, ARCHIVIST OF U.S. OVERSIGHT

- a. In lieu of formal FOIA mediation, Ms. Semo directed me to the NARA unauthorized disposition website, which I had already been using. NARA's Chief Records Officer oversees unauthorized disposition, destruction or alienation of federal records complaints or voluntary agency reports, and posts case numbers and summary correspondence to the NARA website. NARA requires Agencies to investigate allegations and provide a response within 30 days in accordance with 36 CFR 1230.16. However, NARA has been remiss in not closing cases, including eight of my meticulously documented cases involving FOIA records dating back to more than a year ago.
- b. My Public Comment Presentation simply adds the full records for seven of my **open complaints (dating back more than a year) regarding destruction of alteration of records sought via FOIA**, along with my correspondence to the Archivist of the United States.
- c. It is not clear why NARA refused to post this presentation. From NARA's website (<https://www.archives.gov/records-mgmt/resources/unauthorizeddispositionoffederalrecords>) those open cases are:
 - **UD-2021-0004. Navy destruction of financial, contracting records**
 - **UD-2021-0033. Navy destruction of moot appellate determination records**
 - **UD-2021-0017. Navy destruction of Walter Reed's FY 2013 FOIA Report records**
 - **UD-2021-0018. Defense Health Agency (DHA) destruction of Walter Reed's FY13 & FY 14 FOIA/Privacy reporting chain of command records**
 - **UD-2021-0019. Defense Health Agency. Walter Reed's destruction of certified mail records [sought under FOIA]**
 - **UD-2021-0020. Defense Health Agency. Alteration and unlawful destruction of Walter Reed's FY 2013 FOIA processing logs (FOIA Report Raw Data)**
 - **??? 4/17/2021 3:47 PM DHA/Walter Reed during litigation destroyed original records related to my FOIA Request WRNMC #14-R of April 28, 2014 or they are in danger of imminent destruction.**
 - Despite being submitted on April 17, 2021 (seven months ago), with multiple follow-ups and NARA being required to notify the agency within 5 days in cases of alleged imminent destruction, NARA opened a case for these allegations just over two weeks ago on October 29, 2021 after I sent my first draft of this presentation to

NARA's OGIS. Any destruction of records after April 17, 2021 falls on NARA, in my view. I add this for context as a possible reason for NARA not posting this presentation (along with egregious error in a General Records Schedule for FOIA records).

- **UD-2022-0006.** Allegation that records subject to an April 2014 FOIA request were unlawfully destroyed and/or are in imminent danger of early destruction.
- d. There is one new complaint. [**UD-2022-0008**]. **Unlawful destruction or imminent danger wrt October 7, 2018 FOIA Request (DHA 19-D, Records of Hammond Communications 2015.**

B. Mandatory Right to OGIS Dispute Resolution

- a. The content of this briefing is largely replicated in other posted comments, which begs the question as to why this briefing as not been posted.

C. OGIS response Hammond public comments 9 July 2021

- a. In this correspondence, the OGIS Director states her position as to what OGIS will and will not post to the FOIA Advisory Committee, Chief FOIA Officers Council and NARA Open Public meetings, as well as denying me the opportunity to participate with the Technology Committee apparently without consulting that Committee.
- b. If the Director, wishes to amend those comments, lets post them both, learn from the exercise, and move on.

For the December 9, 2021 FOIA Advisory Committee meeting, OGIS has refused to post the following Public Comments or to provide any statutory basis for not doing so:

- **SUBPOENA THREAT AND CONGRESSIONAL DEMAND FOR OGIS TO RELEASE RECORDS
OMB KILLS RECOMMENDATIONS
What has Changed?**
- **Failure - FOIA Compliance Oversight Funding, DOJ OIP NARA OGIS (Advisory Comm.)**
- **Comments to Chief FOIA Officers Meeting of November 17, 2021. Great Leadership Team.**

With my deep respect,

Robert Hammond

Attachments:

- A. Comments to Chief FOIA Officers Meeting of November 17, 2021. Great Leadership Team
- B. You Tube Chat Comments as of December 1, 2021. Unlawful, capricious, and arbitrary deletions

November 17, 2021

Subject: FOIA Request NARA 22-S. 11.17.2021 CFO Council Chat Comments. Unlawful Meeting.

I am submitting this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., as amended. If you deny all or any part of this request, please cite each specific exemption you think justifies your decision not to release the information and notify me of appeal procedures available under the law. References cited below apply.

*****This Request will be timely for Judicial Review in twenty working days*****

RECORDS SOUGHT VIA FOIA.

NARA 22-S. 11.17.2021 CFO Council Chat Comments. Unlawful Meeting.

See PDF.

See Requested Format.

For the Chief FOIA Officers Council of November 17, 2021 I am respectfully seeking

:

1. An unredacted copy of all chat comments to and from the Panelists.
2. An unredacted copy of all chat comments in the You Tube Top Chat/and or Live Chat.
 - a. Note that in addition to providing chat transcripts, I am seeking that the video owner de-select the setting to "Disable comments," or any other impediment to allowing full public access by anyone viewing the You Tube Video
3. An unredacted copy of all chat comments to and from any other chat window that may have been used during this meeting (e.g., chat comments not visible to members of the public via WEVEX)
4. I am also seeking a copy of this FOIA Request, which is an Agency record subject to FOIA that exists and is in the Agency's possession at the time of my FOIA request. This record is a responsive record integral to my Request. Release of the Agency's copy is not optional.

REQUESTED FORMAT.

I am seeking an ADA accessible PDF file by return email with: (1) a signed and dated cover letter (citing my personally assigned requester control number); (2) with record page count for all records released records (3) a copy of this request in your reply. I seek records via email in PDF format with an imbedded copy of my requests to (1) impede the agency from not addressing the FOIA Request; (2) impede the Agency from not providing the documents stated

in the Agency's letter reply, and (3) make it obvious in any subsequent review what the Agency has or has not done.

Note that in addition to providing chat transcripts, I am seeking that the video owner de-select the setting to "Disable comments," or any other impediment to allowing full public access by anyone viewing the You Tube Video.

Further, I request that these records be sent in any digital formats in which they exist (such as PDF and Excel). Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in electronic format, it must be released in that format upon request.

Each record must be provided as a distinct record in their native format.

I am also seeking the "**Description Available to the Public**" field I FOIAonline be set to yes and that all records be released to and viewable in the application by the general Public. The release type must be set to "**Unredacted – Releasable to the General Public: Will be available to the general public,**" or to "**Redacted – Releasable to the General Public: Will be available to the general public.**"

This request is distinctly separate from any other. Please do not combine this request with any other request in your reply. I am requesting that each element of the records sought be specifically addressed in the reply.

FEE WAIVER/ PUBLIC INTEREST/PUBLIC RELEASE. Notwithstanding my agreement to pay fees below if my fee waiver is denied, I am seeking a fee waiver due to significant public interest in this information. The subject of the requested records concerns "the operations or activities of the government." The disclosure is "likely to contribute" to an understanding of government operations or activities. There is no commercial interest. There is significant public interest.

AGREEMENT TO PAY FEES.

I agree to pay fees for searching or copying the records up to \$25. If the fees exceed this amount please advise me of the cost before proceeding. I do not believe that there should be any charge for providing these records, as there is public interest in government operations. I am a private individual not seeking documents for commercial use, such that the following applies: "No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge." I would note that because I am requesting an electronic file, there should not be a per page copy fee. The OMB Guidelines direct that searches for responsive records should be done in the "most efficient and least expensive manner." See OMB Fee Guidelines, 52 Fed. Reg. at 10,017. As an "all others" requester, I may only be assessed search and duplication fees and not fees for

review. See 32 CFR 286.12 - Schedule of fees. Also, please note that, should payment become necessary, the Coinage Act of 1965, specifically Section 31 U.S.C. 5103, entitled "Legal tender," states: " United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts. ([Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 980](#) ; [Pub. L. 97-452, §1\(19\), Jan. 12, 1983, 96 Stat. 2477.](#))

EXPEDITED PROCESSING.

I am seeking expedited processing. The subject is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity that affect public confidence.

Additionally, I am an individual/organization primarily engaged in the dissemination of information who can prove the information is urgently needed to inform the public concerning some actual or alleged government activity. My primary activity is informing the public, which I do through a variety of means, such as open meeting public comments, blogs, etc., and I may from time to time collaborate on articles. There is extraordinary, off the charts interest in the subject matter of this meeting and NARA's execution. As noted in my chat comments both via You Tube and in Webex, this was an illegal, unlawful meeting of the Chief FOIA Officers Council, and it is not the first time.

There can be no more "evidence that there is an urgent need to inform the public of a government activity, or widespread and exceptional media interest involving questions affecting public confidence in the Government's integrity," than the Agency conducting a live Webex and You Tube live stream as an unlawful meeting, which will be viewed by thousands. This is particularly true, since the Agency continued the meeting after I notified the Agency, all panelists and all viewers of the You Tube live stream early in the meeting, but the Agency nevertheless continued to break the law. See below.

UNLAWFUL CHIEF FOIA OFFICERS MEETINGS.

The headline of this meeting, and it must be the first statement of the meeting minutes, because it is the most important thing here today. Let me read this.

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So, I am asking here today of the Archivist of the United States, The Honorable David. S. Ferriero, and the Associate Attorney General, The Honorable Vanita Gupta, “What are the consequences for repeatedly breaking the law? If the underlying issue is inadequate resources and beleaguered staffs stretched too thin, what are you doing today to fix that by reallocating resources now and budgeting adequate funding going forward? What are you doing to allow members of the Public ample time to make and present substantive oral comments and to have substantive written public comments publicly posted, as I believe is mandated by law?”

In any denial of my request for expedited processing, I am seeking that the Agency identify who, by name and email was consulted and that the Agency provide specific justification as to how my request stated herein does not qualify.

DOD POLICY – PUBLIC TRUST.

Reference (c) states, “DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide

uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.”

STILL-INTERESTED PREEMPTIVE REPLY. This is a preemptive reply to the Justice Department guidelines the procedure known as a “still interested” inquiry, through which a FOIA officer can confirm that the requester has not lost interest in obtaining the documents.

My interest in all FOIA requests submitted to your office is enduring, meaning that my interest in seeking replies to all past and future FOIA request remains in effect until each request has been answered fully and the time for judicial review has passed. Please do not initiate any “still interested” inquiries. This serves as my notice of enduring interest and automatic reply to any future questions of interest by your office. There are no reasonable grounds to ever conclude in the future that I am not interested in this request.

Implementation Checklist for DOJ OIP Guidance on “Still-Interested” Inquiries

1. Ensure there are reasonable grounds to make a “still-interested” inquiry in first instance.
2. Absent good cause, do not make multiple “still-interested” inquiries.
3. Use requester’s preferred method of communication and in the absence of a preference, communicate by telephone or email as the default.
4. Memorialize any decision by a requester to withdraw a request that is conveyed by telephone by sending the requester a brief email or letter noting the withdrawal.
5. Provide requesters no less than thirty (30) working days to respond to the “still-interested” inquiry and ensure that there is a simple way to do so.
6. Advise the requester that if they elect not to respond to the inquiry, the request will be administratively closed at the conclusion of the designated time period (which must be at least 30 working days).
7. Prior to administratively closing a request based upon the lack of a response by the requester, make good faith efforts to reach out to the requester using multiple methods of communication.
8. In the event a requester responds to the “still- interested” inquiry within a reasonable time after the deadline has passed, reopen the request and place it back into the processing queue where it would have been.

PRESERVE RECORDS AND SEARCHES FOR JUDICIAL REVIEW.

Please search for, locate, and preserve all responsive or potentially responsive records and records of your searches in your FOIA case file until the statutory date for judicial review has passed (should that be necessary) or in accordance with a NARA approved records schedule, if longer. NARA GRS 4.2 requires that FOIA and Privacy Act case files be retained for 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later.

Records of responsive searches would include but not be limited to: searches conducted for each specific record sought and all other records known to the Agency, including dates, manner of searching, responsible agent or employee conducting each search and the results thereof. Such persons determining the locations of responsive records must be inclusive of persons who would know such locations and their identities and manner of determining search locations must be preserved.

In any subsequent proceedings, I may seek sworn declarations and a court order appointing a special counsel, as appropriate. Similarly, I may pursue additional venues.

Any deletion of potentially responsive records by any party having knowledge of this Request may be a violation of law. In as much as applicable staff and leadership have knowledge of my subject request, the Agency must search for, locate, and preserve all responsive or potentially responsive records and records of searches in their FOIA case file, and leadership must ensure that this is done. Failing to do so and allowing records to be deleted IAW any other records management schedule may be a violation of law.

ELECTRONIC RECORDS PRESERVATION.

The Agency must preserve all electronically stored information, copies and backup, as defined by Rule 34 of the Federal Rules of Civil Procedure, along with any paper files which the Agency maintains, relevant to this action I am seeking electronic data in the Agency's custody and control that is relevant to this action, including without limitation emails, along with metadata, and other information contained on Agency computer systems and any electronic storage systems. I consider this electronic data and paper files to be valuable and irreplaceable sources of discoverable information in this matter. No procedures should have been implemented to alter any active, deleted or fragmented data. Moreover, no electronic data should have been disposed of or destroyed. (ETL Institute for Advancement of America's Legal System).

Further, to properly fulfill your preservation obligation, stop all scheduled data destruction, electronic shredding, rotation of backup tapes, and the sale, gift or destruction of hardware. Notify all individuals and of the need and duty to take the necessary affirmatives steps to comply with the duty to preserve evidence. (2008 Thomson Delmar Learning).

The Agency's Director of Information Operations or similar organization must initiate procedures to preserve electronic records.

ALTERATION/DESTRUCTION OF RECORDS

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any

department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both. 18 U.S. Code § 1519 - Destruction, alteration, or falsification of records. (Added Pub. L. 107–204, title VIII, §802(a), July 30, 2002, 116 Stat. 800.).

18 U.S.C. 641 and 2071. The penalties for the unlawful or accidental removal, defacing, alteration, or destruction of Federal records or the attempt to do so, include a fine, imprisonment, or both (18 U.S.C. 641 and 2071).

36 CFR § 1230 UNLAWFUL OR ACCIDENTAL REMOVAL, DEFACING, ALTERATION, OR DESTRUCTION OF RECORDS

§1230.3

Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record (other than court-ordered disposal under §1226.14(d) of this subchapter); and disposal of a record subject to a **FOIA request**, litigation hold, or any other hold requirement to retain the records.

IMPROPERLY WITHHOLDING RECORDS

Pursuant to FOIA:

“Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.” 5 U.S.C. § 552(a)(4)(F)(i).

LEGAL FRAMEWORK OF FOIA

1. The definition of “records” includes:
“[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made *or received* by an agency of the United States Government 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 Government or because of the informational value of data in them.” 44 U.S.C. § 3301 (emphasis supplied).

2. FOIA requires that “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person” 5 U.S.C. § 552(a)(3)(A).

3. FOIA requires that “each agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request” 5 U.S.C. § 522(a)(7)(A).

4. FOIA requires that each agency shall “establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including the date on which the agency originally received the request; and an estimated date on which the agency will complete action on the request. 5 U.S.C. § 522(a)(7)(B).

5. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

6. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). *See also* 5 U.S.C. § 552(a)(6)(C).

7. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

8. Regarding the names of the FOIA requesters, the courts have held that under the FOIA requesters do not have an expectation of privacy. *Stauss v. IRS*, 516 F. Supp. 1218, 1223 (D.D.C. 1981),

9. Under FOIA, the federal agency has the burden of sustaining its actions. 5 U.S.C. § 552(a)(4)(B).

10. Pursuant to FOIA, a Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in an action thereunder. 5 U.S.C. § 552(a)(4)(E).

11. Department of Justice (DOJ) has issued a handbook addressing FOIA Annual Reports. *See DOJ, Handbook for Agency Annual Freedom of Information Act Reports*, “Disposition of FOIA Requests,” (available at

http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/department_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf) (“DOJ Handbook”).

12. Among other things, the DOJ Handbook states, “All requests (perfected and non-perfected), appeals, and consultations that were pending at any time during the relevant fiscal year [October 1st through September 30th] will be captured.”

13. The DOJ Handbook also states:

“[E]ach agency is ultimately responsible for the accuracy and completeness of its Annual FOIA Report. It is therefore essential for agencies to take steps that will ensure that they are adequately tracking all of the information necessary to complete the Annual FOIA Report sections detailed below. Agencies that utilize a tracking or case management system for this purpose are responsible for ensuring that the system they are using can produce an accurate Annual FOIA Report that is in compliance with the law and Department of Justice guidance.” DOJ Handbook, at 3.

I believe that I have adequately described the records that I am seeking. If you believe that my request is unclear, if you have any questions, or if there is anything else that you need from me to complete this request in a timely manner, please contact me in writing, so that I may perfect my request. If you deem that any portion of my request is unclear, answer the remaining portions and I will perfect a request for additional material as needed.

Thank you very much in advance.

With my respect,

/s/

Robert Hammond

Requester

Whistleblower

References:

- (a) The Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended,
- (b) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011, “Your Right to Federal Records”
- (c) The Privacy Act (“PA”) of 1974, 5 U.S.C. § 552a, *et seq.*, as amended
- (d) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program
- (e) DoD 5400.7-R, September 1998, DoD Freedom of Information Act (FOIA) Program
- (f) DoD 6025.18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation
- (g) GAO Report GAO-12-828 of July 2012, subject Freedom of Information Act

- (h) Department of Justice Handbook for Agency Annual Freedom of Information Act Reports
- (i) (b) Administrative Instruction 106, “Alternative Dispute Resolution (ADR) Program,” January 30, 2014
- (j) DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),” December 2, 2013, as amended
- (k) DoD Directive 5145.04, “Defense Legal Services Agency (DLSA),” April 16, 2012
- (l) (f) DoD Directive 5400.11, “DoD Privacy Program,” October 29, 2014
- (m) DoD Manual 8910.01, Volume 1, “DoD Information Collections Manual: Procedures for DoD Internal Information Collections,” June 30, 2014
- (n) Executive Order 12988, “Civil Justice Reform,” February 5, 1996
- (o) Public Law 101-552, “Administrative Dispute Resolution Act,” November 15, 1990
- (p) Public Law 104-320, “Administrative Dispute Resolution Act of 1996,” October 19, 1996
- (q) Presidential Memorandum for Heads of Executive Departments and Agencies, “Designation of Interagency Committees to Facilitate and Encourage Agency Use of Alternate Means of Dispute Resolution and Negotiated Rulemaking,” May 1, 1998
- (r) United States Code, Title 5
- (s) DoD Instruction 5145.05, “Alternative Dispute Resolution (ADR) and Conflict f
- (t) Alternate Dispute Resolution Handbook (opm.gov/policy-data-oversight/employee-relations/employee-rights-appeals/alternative-dispute-resolution/handbook.pdf)
- (u) President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines (justice.gov/sites/default/files/oip/legacy/2014/07/23/foia-memorandum.pdf)

ATTACHMENT E
to UD COMPLAINT

Unauthorized Dispositions of Federal Records _
National Archives – NARA TAB

Top



Unauthorized Disposition of Federal 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 CFR Part 1230). The Records Management Oversight and Reporting Program is responsible for handling all unauthorized disposition cases. Oversight and Reporting 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.

The unauthorized disposition case file contains more information including the communications between NARA and the agency. If you would like more information on a case, please contact the NARA Freedom of Information Act (FOIA) Office to file a FOIA request for the case information. Please use the Case ID indicated on the below table in your FOIA request. You can also see some previously requested records in the FOIA Electronic Reading Room. For additional information on older cases, you can review this spreadsheet of all cases that were closed prior to October 1, 2016.

Listed below are unauthorized disposition cases from October 1, 2016 to present and includes pdf files of open and close letters (when available or permissible) for each case from NARA to the agency.

For more information, please review this document To report a case of unauthorized disposition, please contact us via email at UnauthorizedDisposition@nara.gov.

Departments








- Agriculture
- Commerce
- Defense
- Education
- Energy
- Health and Human Services
- Homeland Security
- Housing and Urban Development
- Interior
- Justice
- Labor
- State
- Transportation
- Treasury
- Veterans Affairs








Independent Agencies

Agriculture

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Search

Agency 	Open Case Date 	Close Case Date 	Case ID 	Records 	Status 	Case Letters 
Agriculture	4/19/2021	4/19/2021	UD-2021-0026	Records destroyed because off black mold	Founded	UD-2021-0026 Open/Close
Agriculture	5/21/2021	3/29/2022	UD-2021-0031	Allegation stated that on January 19 and 20, 2021, USDA Acting State Director unlawfully destroyed federal government records in the form of tweets from the Rural Development Puerto Rico Twitter account.	Founded	UD-2021-0031 Open/Close
Agriculture	9/27/2021	9/27/2021	UD-2021-0048	A potential loss of records from mobile device end users in staff offices, business centers, and agencies across the Department	Founded	UD-2021-0048 Open/Close
Agriculture	7/6/2023	11/15/2023	UD-2023-0074	Potential loss of records from the mobile device of a departed political appointee in the Office of Communications.	Founded	UD-2023-0074 Open/Close
Agriculture	8/22/2023	8/22/2023	UD-2023-0088	During the migration of the USDA Contact Center from the existing platform to the new platform, the Search Activity object, also referenced as Knowledge Search Activity, which stores search metadata for the Salesforce Knowledge base was affected, causing the loss of all data captured on the 'SearchActivity' object prior to May 1, 2022.	Founded	UD-2023-0088 Open/Close
Agriculture Research Service	2/18/2022	2/18/2022	UD-2022-0025	Financial records went missing after an employee retired.	Founded	UD-2022-0025 Open/Close

Agency 	Open Case Date 	Close Case Date 	Case ID 	Records 	Status 	Case Letters 
Agriculture Research Service	4/20/2022	4/20/2022	UD-2022-0037	ARS employee lost 6 electronic receipts for purchases made in 2021.	Founded	UD-2022-0037 Open/Close
Agriculture Research Service	7/6/2022	7/6/2022	UD-2022-0049	ARS employee's government furnished cell phone stopped receiving emails, and while troubleshooting to resolve this issue the cellphone was unintentionally restored to factory settings, deleting all text messages and photos associated with the phone.	Founded	UD-2022-0049 Open/Close
Agriculture Research Service	1/30/2023	8/22/2023	UD-2023-0022	Loss of credit card transaction records for 19 credit card transactions	Founded	UD-2023-0022 Open/Close
Economic Research Service	11/17/2021	2/18/2022	UD-2021-0012	Missing financial records from the Economic Research Service (ERS)	Founded	UD-2021-0012 Open/Close

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Commerce

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Search

Agency ⬆️ ⬆️	Case Open Date ⬆️ ⬆️	Case Close Date ⬆️ ⬆️	Case ID ⬆️ ⬆️	Records ⬆️ ⬆️	Status ⬆️ ⬆️	Case Letters ⬆️ ⬆️
Commerce	10/01/2019		UD-2020-0001	The Washington Post published an article on September 30, 2019, alleging that Commerce Secretary, Wilbur Ross, used personal email for official business and did not consistently preserve his government-related email messages properly.	Pending review/follow-up	UD-2020-0001 Open
National Institute of Standards and Technology	4/15/2021	9/30/2021	UD-2021-0024	Early destruction of email recNIST disposed of about 83 boxes of records in May due to a flood that affected our Records Holding Area in late December.	Founded	UD-2021-0024 Open/Close
National Institute of Standards and Technology	9/19/2023	9/19/2023	UD-2023-0096	NIST disposed of about 83 boxes of records in May due to a flood that affected our Records Holding Area in late December.	Founded	UD-2023-0096 Open/Close

Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
National Oceanic and Atmospheric Administration	07/10/2017	10/19/2018	UD-2017-0023	NOAA might illegally be destroying records (electronic messages through Skype and Google Chat) of a recent meeting discussing new regulations against the fishing industry.	Unfounded	UD-2017-0023 Open/Close
National Oceanic and Atmospheric Administration	4/20/2022	4/20/2022	UD-2022-0033	Agency self-reported the unauthorized disposition of archived email records.	Founded	UD-2022-0033 Open/Close
National Oceanic and Atmospheric Administration	8/5/2022	8/5/2022	UD-2022-0057	Emergency destruction of nitrate film records, spanning from 1891-1951, from the National Environmental Satellite Data and Information Service (NESDIS) and National Centers for Environmental Information (NCEI).	Founded	UD-2022-0057 Open/Close
U.S. Patent and Trademark Office	02/10/2016	02/12/2019	UD-2016-0005	The potential unauthorized disposition of records related to the sale of patent documents to the owner of Riverby Books in Washington, DC.	Unfounded	UD-2016-0005 Open/Close

Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
U.S. Patent and Trademark Office	07/26/2018	09/27/2018	UD-2018-0021	Utility patent drawings for sale on eBay.	Unfounded	UD-2018-0021 Open/Close
U.S. Patent and Trademark Office	4/15/2021		UD-2021-0022	Destruction of permanent hard-copy trademarks after digitization.	Pending review/follow-up	UD-2021-0022 Open








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Defense

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Search

Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
Air Force	5/18/2016	7/11/2017	UD-2016-0013	Loss of personnel records (DD-214's and Special Orders) at Malmstrom AFB, Montana that may have occurred during input of hardcopy records into Automated Records Management System (ARMS) administered by Air Force Personnel Center.	Founded	UD-2016-0013 Open/Close

Agency ↑↓	Case Open Date ↑↓	Case Close Date ↑↓	Case ID ↑↓	Records ↑↓	Status ↑↓	Case Letters ↑↓
Air Force	10/22/2018	10/22/2018	UD-2019-0003	Alleged alteration of an individual's Certificate of Release or Discharge from Active Duty (DD-214) from the Air Force	Unfounded	No letters available
Air Force	6/12/2019	7/11/2019	UD-2019-0029	One permanent record copy of the G-series special orders and movement orders from April 2-8, 2008	Founded	UD-2019-0029 Open/Close
Air Force	6/12/2019		UD-2019-0030	Permanent Court-Martial Order records dated between 1994-2005	Pending review/follow-up	UD-2019-0030 Open
Air Force	6/12/2019	9/10/2019	UD-2019-0031	214 boxes of various temporary and permanent records. Permanent records that were lost include aircrew and mission flight files, G-series special orders and movement orders, and military justice files. Temporary records include tactical evaluations, foreign military sales records, decorations, and other project and administrative files.	Founded	UD-2019-0031 Open/Close
Air Force	6/12/2019	7/12/2019	UD-2019-0033	One box of permanent G-series special orders and movement orders dating January 1983 and six boxes of temporary Decorations to Individuals (Military and Civilian) Disapproved U.S. Military records (1991, 1994, 1999-2002)	Founded	UD-2019-0033 Open/Close

Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
Air Force	6/12/2019	7/23/2019	UD-2019-0034	Five boxes of records. Temporary records included motor vehicle operations and accident files and travel records. Permanent records included G-series special orders and movement orders.	Founded	UD-2019-0034 Open/Close
Air Force	6/18/2019	9/23/2022	UD-2019-0035	On May 21, 2019, the loss of one retired active duty member's outpatient medical record was declared. Record not recovered.	Founded	UD-2019-0035 Open/Close
Air Force	6/18/2019	7/12/2019	UD-2019-0036	One implant device and medical equipment log.	Founded	UD-2019-0036 Open/Close
Air Force	6/18/2019	7/11/2019	UD-2019-0037	500 decorations citations	Founded	UD-2019-0037 Open/Close

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Education

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Agency ↑↓	Case Open Date ↑↓	Case Close Date ↑↓	Case ID ↑↓	Records ↑↓	Status ↑↓	Case Letters ↑↓
Education	5/21/2019	10/18/2019	UD-2019-0027	Secretary's use of personal email. Messages involving the Secretary's personal email accounts were preserved in the accounts of other Department political employees included on the messages. But there were instances where the Secretary did not forward emails from her personal accounts to her Department email accounts.	Unfounded	UD-2019-0027 Open/Close
Education	9/11/2019	12/11/2019	UD-2019-0053	A member of the public is alleging that the agency is deleting emails without reading them.	Unfounded	UD-2019-0053 Open/Close
Federal Student Aid	7/27/2021	10/18/2021	UD-2021-0037	Allegation of unauthorized disposition of Federal Student Aid (FSA) records.	Unfounded	UD-2021-0037 Open/Close

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Energy

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Agency ↑↓	Case Open Date ↑↓	Case Close Date ↑↓	Case ID ↑↓	Records ↑↓	Status ↑↓	Case Letters ↑↓
Energy	12/21/2010	8/28/2017	UD-2011-0001	Federal records turned over to the Colorado School of Mines by current and former Department of Energy employees between 1989 and 1994.	Founded	UD-2011-0001 Close Letter Only
Energy	1/13/2020	4/14/2020	UD-2020-0022	Allegation of unauthorized destruction of DOE's records at WIPP facility.	Founded	UD-2020-0022 Open/Close
Energy	9/8/2020	9/8/2020	UD-2020-0040	Department of Energy's Office of Counsel discovered that ½ cubic foot of temporary OGE-450 form records were damaged due to a water leak caused by a pipe burst in an administrative file room.	Founded	UD-2020-0040 Open/Close
Energy	1/11/2021	1/11/2021	UD-2021-0012	The Department of Energy's (DOE) discovery of the unauthorized disposition of 11 pages of environmental records.	Founded	UD-2021-0012 Open/Close
Energy	3/22/2023	3/22/2023	UD-2023-0038	The agency reported the lost of one (1) box of Workers Compensation Records at the Paducah Gaseous Diffusion Plant (PGDP), West Paducah, Kentucky. The records were lost due to a termite infestation.	Founded	UD-2023-0038 Open/Close

Agency ⬆️⬆️	Case Open Date ⬆️⬆️	Case Close Date ⬆️⬆️	Case ID ⬆️⬆️	Records ⬆️⬆️	Status ⬆️⬆️	Case Letters ⬆️⬆️
Energy	6/20/2023	6/20/2023	UD-2023-0071	Agency reported that email from twenty-eight (28) Office of Science (SC) employees accounts were lost due to mail box limits and failure to appropriately manage the accounts. The employees had Google G suite email accounts in addition to their federally managed DOE email accounts.	Founded	UD-2023-0071 Open/Close
National Nuclear Security Administration	11/21/2016	11/28/2016	UD-2017-0009	Accidental destruction of thirty personnel training folders by the Naval Nuclear Laboratory (NNL) Security Department that occurred between 2005 to 2014 at the Bettis Atomic Power Laboratory, West Mifflin, PA.	Founded	UD-2017-0009 Open/Close
National Nuclear Security Administration	9/27/2021	9/27/2021	UD-2021-0044	The first week in January 2021 950 records were inadvertently destroyed. The records consisted of electronic files, in various formats, of test data from tests conducted at SNL's environmental test facilities.	Founded	UD-2021-0044 Open/Close

Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
Office of Science	5/23/2019	6/19/2019	UD-2019-0026	-Contractor personnel records maintained by the Department of Energy (DOE), Office of Science (SC), Oak Ridge Associated Universities (ORAU) located in Oak Ridge, Tennessee dating from fiscal years 1994 through 1997.	Founded	UD-2019-0026 Open/Close
Western Area Power Administration	10/8/2019	10/21/2019	UD-2020-0005	29 feet of records created by WAPA's Audit and Compliance, (date range approximately 1964 – 2008).	Founded	UD-2020-0005 Open/Close








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Health and Human Services

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Search

Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
Health and Human Services	3/30/2020	2/18/2022	UD-2020-0033	Premature deletion of email accounts of departed employees.	Founded	UD-2020-0033 Open/Close








Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
Agency for Healthcare Research and Quality	2/12/2020	5/6/2020	UD-2020-0029	Emails from their non-capstone officials are being deleted by their ITIO staff after 60 days.	Founded	UD-2020-0029 Open/Close
Centers for Disease Control	9/11/2019	11/26/2019	UD-2019-0054	A member of the public is alleging that the agency is deleting emails without reading them.	Unfounded	UD-2019-0054 Open/Close
Centers for Disease Control	12/16/2020	1/28/2021	UD-2021-0008	Allegation of attempts to conceal and destroy evidence that senior political appointees interfered with career officials response to the coronavirus crisis at HHS and the CDC	Unfounded	UD-2021-0008 Open/Close
Centers for Disease Control	4/10/2023		UD-2023-003	BSPB staff placed several boxes (15-20) that contained SBRL lab data in a smartcard locked hallway. After staff had left the office for the day, two cleaning contractors removed and placed all the boxes into a compactor dumpster, without authorization from BSPB staff.	Pending review/follow-up	UD-2023-0039 Open

Agency ↑↓	Case Open Date ↑↓	Case Close Date ↑↓	Case ID ↑↓	Records ↑↓	Status ↑↓	Case Letters ↑↓
Centers for Disease Control	4/7/2023		UD-2023-0043	Allegation received from the public that the CDC deleted emails of non-Capstone officials within 30 days after they leave the agency.	Pending review/follow-up	UD-2023-0043 Open
Centers for Medicare & Medicaid Services	6/7/2016	1/10/2017	UD-2016-0015	Email records created or received by CMS - OEDA Office. Anonymous allegation that Niall Brennan, Chief Data Officer and Director of OEDA directed his staff "to establish personal email accounts on non-government systems."	Unfounded	UD-2016-0015 Open/Close
Centers for Medicare and Medicaid	10/2/2018	11/9/2018	UD-2019-0001	Documents submitted via Healthcare.gov pertaining to income of healthcare applicants	Unfounded	UD-2019-0001 Open/Close
Food and Drug Administration	2/12/2020	5/16/2022	UD-2020-0028	Former FDA Commissioner Scott Gotlieb's twitter account was deleted	Founded	UD-2020-0028 Open/Close
Food and Drug Administration	7/11/2022	11/21/2022	UD-2022-0052	An information technology (IT) system does not retain records documenting a full audit trail.	Unfounded	UD-2022-0052 Open/Close

Homeland Security

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Search

Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
Customs and Border Protection	11/13/2017	4/24/2018	UD-2018-0001	Several boxes of paper records were destroyed due to Hurricane Harvey	Founded	UD-2018-0001 Open/Close
Customs and Border Protection	7/11/2018	12/14/2020	UD-2018-0019	Media reported that Customs and Border Protection officials were altering or deleting records of families crossing the border between Mexico and the United States.	Unfounded	UD-2018-0019 Open/Close
Customs and Border Protection	10/4/2018	12/2/2020	UD-2019-0002	Border Surveillance Systems Records (BSS).	Founded	UD-2019-0002 Open/Close
Customs and Border Protection	10/26/2021		UD-2022-0001	OIG report, "CBP Targeted Americans with the 2018-2019 Migrant Caravan," alleges that the CBP has been using the messaging software WhatsApp and is deploying the encrypted messaging application Wickr across all components of the agency.	Pending review/follow-up	UD-2022-0001 Open

Agency ↑↓	Case Open Date ↓↑	Case Close Date ↓↑	Case ID ↓↑	Records ↓↑	Status ↓↑	Case Letters ↓↑
Customs and Border Protection	10/31/2023		UD-2024-0002	During a routine call between NARA appraisal staff and the CBP records team, it was learned that the CBP Office of Trade has been digitizing and destroying records proposed for disposition in job DAA-0568-2019-0004, Trade Allegation Records, which is pending. The original records that were reported as having been destroyed are identified as appropriate for permanent retention.	Pending review/follow-up	UD-2024-0002 Open
Federal Emergency Management Agency	10/31/2012	11/22/2016	UD-2013-0002	Email records related to the management of grant funds awarded by FEMA to DVIC.	Unfounded	UD-2013-0002 Open/Close
Federal Emergency Management Agency	2/18/2022	10/27/2023	UD-2022-0023	Allegation from a member of the public that the FEMA was destroying records that were subject to a FOIA request and litigation and were related to ongoing EEO cases.	Unfounded	UD-2022-0023 Open/Close
Federal Emergency Management Agency	10/31/2023		UD-2024-0006	Disaster files were destroyed before the end of their retention period.	Pending review/follow-up	UD-2024-0006 Open

Agency <small>↕</small>	Case Open Date <small>↕</small>	Case Close Date <small>↕</small>	Case ID <small>↕</small>	Records <small>↕</small>	Status <small>↕</small>	Case Letters <small>↕</small>
Homeland Security	2/21/2017	8/12/2022	UD-2017-0018	Email using private (non-.gov) account for Secretary Jeh Johnson, Deputy Secretary Alejandro Mayorkas, Chief of Staff Christian Marrone, & General Counsel Steven Bunnell. All emails dating from December 23, 2013 through the present.	Founded	UD-2017-0018 Open/Close
Homeland Security	8/1/2022		UD-2022-0055	Loss of DHS text messages due to failed migration during a device upgrade	Pending review/follow-up	UD-2022-0055 Open

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Housing and Urban Development








Agency	Case Open Date	Case Close Date	Case ID	Records	Status	Case Letters
Housing and Urban Development	11/8/2022	3/29/2023	UD-2022-0064	As a result of HUD OIG investigation into potential ethics violations of a now former executive, it was determined that the former executive used her personal device to send and receive phone calls and text messages. After she left the agency in 2021, she did not turn over the information on her cell phone.	Unfounded	UD-2022-0064 Open/Close








Interior

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Search

Agency ↑↓	Case Open Date ↑↓	Case Close Date ↑↓	Case ID ↑↓	Records ↑↓	Status ↑↓	Case Letters ↑↓
Bureau of Indian Affairs	5/31/2018	6/1/2018	UD-2018-0016	One FRC box of 3401-P5 Housing Improvement (HIP) Applicant Case Files, FY 1960 - 2006.	Founded	UD-2018-0016 Open/Close
Bureau of Indian Affairs	1/31/2019	4/25/2019	UD-2019-0010	Bureau of Indian Affairs (BIA) reports and information pertaining to Irrigation and Power Investments	Unfounded	UD-2019-0010 Open/Close
Bureau of Indian Affairs	2/3/2020	4/13/2020	UD-2020-0023	Private citizen alleges that BIA has destroyed records related to " All correspondence and related records from the Pacific Regional Office and the Southern California Agency of the BIA, regarding the incorrect degree of Indian blood certification."	Founded	UD-2020-0023 Open/Close
Bureau of Indian Affairs	8/5/2020		UD-2020-0036	Potential loss of a file packet of an individual	Pending review/follow-up	UD-2020-0036 Open
Bureau of Indian Affairs	11/22/2021	2/8/2022	UD-2021-0014	BIA misplaced a probate case file	Founded	UD-2021-0014 Open/Close
Bureau of Indian Affairs	1/4/2023		UD-2023-0014	TeMoak tribal attorney alleged that certain individuals removed "TeMoak federal records, documents and financial records off of TeMoak trust land."	Pending review/follow-up	UD-2023-0014 Open
Bureau of Indian Affairs	1/25/2023		UD-2023-0019	A formal BIA employee allegedly removed BIA records when they departed the agency.	Pending review/follow-up	UD-2023-0019 Open

Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
Bureau of Land Management	2/16/2017	8/15/2018	UD-2017-0016	Fire damaged/destroyed the Bureau of Land Management Challis, ID field office. Majority of records destroyed/damaged include realty records, rights-of-way, recreation records, unauthorized use, grazing permits, allotment files, and mining claim surface management files. Contractor was hired to evaluate the records that were damaged/destroyed as a result of the fire. Agency is estimating that a final report from the contractor that will include an estimate of records destroyed and recovery efforts for those that can be salvaged will be received in July/August time frame.	Founded	UD-2017-0016 Open/Close

Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
Bureau of Land Management	7/27/2017	8/24/2017	UD-2017-0027	On December 27, 2016, a Bureau of Land Management (BLM) employee in the Salt Lake Field Office (SLFO) prematurely disposed of physical land-use (film) permits in an effort to make space for additional records. The records that were disposed were the original records in paper form covering FY 1990 through FY 2015 and included correspondence, applications, maps, permits, payment receipts, serial register pages, and related materials. Approximate volume 8 cubic feet.	Founded	UD-2017-0027 Open/Close
Bureau of Land Management	5/13/2022	5/13/2022	UD-2022-0041	Two boxes of FY2016-2016 hardcopy file incident records	Founded	UD-2022-0041 Open/Close

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Justice

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Search

Justice ↑↓	Case Open Date ↑↓	Case Close Date ↑↓	Case ID ↑↓	Records ↑↓	Status ↑↓	Case Letters ↓
Bureau of Alcohol, Tobacco Firearms & Explosives	9/5/2017	11/22/2019	UD-2017-0032	Laboratory Case files generated between 1976 and 1991	Founded	UD-2017-0032 Open/Close
Bureau of Alcohol, Tobacco Firearms & Explosives	7/12/2021	7/12/2021	UD-2021-0036	Report of the box that went missing during the transfer of records from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Field Office to the NARA Federal Records Center (FRC) located in Chicago, IL.	Founded	UD-2021-0036 Open/Close
Bureau of Prisons	10/21/2019		UD-2020-0004	NARA received a phone call from a staff member of the Bureau of Prisons alleging that one of their locations, FCI Aliceville, is “not maintaining official records properly,” “losing some records,” and “falsifying government records.”	Pending review/follow-up	UD-2020-0004 Open
Bureau of Prisons	1/13/2020		UD-2020-0021	Deletion of prison surveillance video.	Pending review/follow-up	UD-2020-0021 Open

Justice 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
Drug Enforcement Administration	10/3/2019	1/15/2020	UD-2020-0003	During the process to review a draft records schedule NARA noticed that a records series included language that records created in the 70s and 80s have possibly been destroyed.	Unfounded	UD-2020-0003 Open/Close
Drug Enforcement Administration	10/21/2019	1/21/2020	UD-2020-0008	The Official Government Vehicle (OGV) records such as vehicle registration, titling, and licensing; accident and incident reports; and maintenance and repair receipts were destroyed as a result of Hurricane Dorian.	Unfounded	UD-2020-0008 Open/Close
Drug Enforcement Administration	3/18/2020	3/30/2020	UD-2020-0031	Drug Signature Analysis Files, permanent under RCS N1-170-00-001/item 3 were erroneously disposed of under RCS NC1-170-77/1/item 901-01 which is temporary.	Founded	UD-2020-0031 Open/Close








Justice ↑↓	Case Open Date ↓↑	Case Close Date ↓↑	Case ID ↓↑	Records ↓↑	Status ↓↑	Case Letters ↓
Drug Enforcement Administration	11/20/2020	12/8/2022	UD-2021-0007	While updating their scheduled it was noted that the DEA cannot locate the Training Aids Files, which have been scheduled as permanent since 1977.	Founded	UD-2021-0007 Open/Close
Drug Enforcement Administration	7/8/2021	7/8/2021	UD-2021-0035	A box of records went missing during the transfer of records from the DEA Cedar Rapids Resident Office to the NARA Federal Records Center (FRC) located in Lenexa, Kansas	Founded	UD-2021-0035 Open/Close
Drug Enforcement Administration	11/28/2022		UD-2023-0009	Two boxes from the Galveston Resident Office went missing via shipment when they were erroneously sent to the Drug Enforcement Administration (DEA) Headquarters instead of the warehouse.	Pending review/follow-up	UD-2023-0009 Open

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Labor

Show entries

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Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
Bureau of Labor Statistics	4/27/2023	6/5/2023	UD-2023-0049	NARA staff reported that permanent records relating to the National Labor Turnover Program have not been accessioned into the National Archives. After numerous transfer request, the agency stated they no longer have the records.	Founded	UD-2023-0049 Open/Close
Wage and Hour Division	10/13/2016	1/6/2017	UD-2017-0004	After an employee whose records were requested by the ALG FOIA left the organization, the e-mail account was deleted (approximately six weeks after the employee left the agency) and ITS has no way to reconstitute these records.	Unfounded	UD-2017-0004 Open/Close








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State

Show entries

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Agency ↓↑	Case Open Date ↓↑	Case Close Date ↓↑	Case ID ↓↑	Records ↓↑	Status ↓↑	Case Letters ↓↑
American Citizen Services, Manila Embassy	9/11/2019	11/26/2019	UD-2019-0051	A member of the public is alleging that the agency is deleting emails without reading them.	Unfounded	UD-2019-0051 Open/Close
State	3/3/2015	6/13/2022	UD-2015-0005	Alienation of federal email records created or received by Sec. Clinton (2009-2013) from the State's official recordkeeping system. Potential alienation of email records created or received by former Secretaries of State dating back to Sec. Albright.	Founded	UD-2015-0005 Open/Close
State	9/4/2015	8/9/2021	UD-2015-0006	Alienation of federal email records created or received by senior embassy staff including Amb. Caroline Kennedy, and overall management of records at Embassy Tokyo, Japan.	Founded	UD-2015-0006 Open/Close
State	7/18/2016	12/15/2017	UD-2016-0018	E-mail records of former State Department employee Bryan Pagliano during Secretary Clinton's tenure.	Founded	UD-2016-0018 Open/Close

Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
State	8/8/2016	12/10/2019	UD-2016-0022	Possible emergency destruction of Central African Republic embassy records; Amb. Lewis Lukens' e-mails that he deleted; U.S. Consul General in Jerusalem Michael Ratney's e-mails that he deleted; Alleged destruction of Sec. Clinton's schedules.	Unfounded	UD-2016-0022 Open/Close
State	5/19/2020	11/4/2020	UD-2020-0035	Member of the public is alleging that the OIG is not designating emails as records unless they receive explicit authorization to do so.	Unfounded	UD-2020-0035 Open/Close

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Transportation

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Agency ⬆️⬆️	Case Open Date ⬆️⬆️	Case Close Date ⬆️⬆️	Case ID ⬆️⬆️	Records ⬆️⬆️	Status ⬆️⬆️	Case Letters ⬆️⬆️
Federal Aviation Administration	6/13/2018	10/15/2018	UD-2018-0017	The FAA Academy trains and evaluates air traffic controllers in simulators that have an audio recording capability. This capability records ambient audio as well as audio directly from the headset of the air traffic control trainee as he speaks instructions to aircraft in the simulator. The FAA admitted that it does not have a retention schedule for such records. Instead, the FAA claimed they must delete the audio within 7 days due to "space limitations."	Unfounded	UD-2018-0017 Open/Close








Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
Federal Aviation Administration	1/24/2023	2/24/2023	UD-2023-0021	According to a Reuters article, the Federal Aviation Administration (FAA) stated that a preliminary review found that contract personnel "unintentionally deleted files" disrupting a key computer system and prompting a nationwide groundstop that disrupted more than 11,000 flights. The FAA said the issue occurred while personnel were working "to correct synchronization between the live primary database and a backup database."	Founded	UD-2023-0021 Open/Close
Federal Railroad Administration	12/14/2016	4/6/2017	UD-2017-0010	Emails from FRA Administrator and FRA associate Administrator for Finance and Administration.	Founded	UD-2017-0010 Open/Close
National Highway Traffic Safety Administration	12/9/2019	6/20/2023	UD-2020-0018	Auto safety records pertaining to rulemaking, promulgation, and implementation of Federal Motor Vehicle Safety Standards (FMVSS 208) for AIR BAGS.	Unfounded	UD-2020-0018 Open/Close

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Treasury








Show 10 entries

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Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
Bureau of Engraving and Printing	10/24/2016	3/6/2017	UD-2017-0005	Video Surveillance Files at District of Columbia and Fort Worth facilities were automatically deleted by the security system because of a lack of space for recording.	Founded	UD-2017-0005 Open/Close
Bureau of Engraving Printing	8/24/2017	12/9/2022	UD-2017-0031	Preliminary product design records (for currency, etc.) disposed of without an approved schedule.	Founded	UD-2017-0031 Open/Close

Agency ↑↓	Case Open Date ↑↓	Case Close Date ↑↓	Case ID ↑↓	Records ↑↓	Status ↑↓	Case Letters ↑↓
Bureau of Engraving Printing	1/4/2021	6/15/2023	UD-2021-0009	During review of a pending schedule, it became apparent that the agency cannot locate its pre-1980 records that are related to the draft schedule.	Pending review/follow-up	UD-2021-0009 Open/Close
Financial Crimes Enforcement Network	5/17/2018	6/26/2018	UD-2018-0013	Suspicious-activity reports (SARs) discovered absent from the database maintained by the Treasury Department's Financial Crimes Enforcement Network (FINCEN).	Unfounded	UD-2018-0013 Open/Close
Internal Revenue Service	2/9/2018	2/9/2018	UD-2018-0006	A single IRS tax document as part of the annual Collection Statute Expiration Date (CSED) "Pull to Save" project for Ogden List Year 10. The document DLN 29-141-235-117-51-0 could not be located upon request.	Founded	UD-2018-0006 Open/Close
Internal Revenue Service	4/10/2018	6/8/2021	UD-2018-0010	Alienation of IRS Federal Advisory Committee Act email records.	Founded	UD-2018-0010 Open/Close

Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
Internal Revenue Service	5/23/2019	10/28/2019	UD-2019-0024	One box of IRS records was lost in shipment to San Bruno FRC while in the custody of the United Parcel Service. The box (Box #13 of 20) contained closed legal case files, specifically temporary 2015 closed TECHMIS files, a sub classification of general litigation	Founded	UD-2019-0024 Open/Close
Internal Revenue Service	4/5/2019	4/10/2019	UD-2019-0019	82 boxes of closed Criminal Investigation case files were mistakenly picked up by the shred contractor and destroyed.	Founded	UD-2019-0019 Open/Close

Agency 	Case Open Date 	Case Close Date 	Case ID 	Records 	Status 	Case Letters 
Internal Revenue Service	1/14/2020	1/14/2020	UD-2020-0020	One box (box 2) of 10 boxes of closed Offers in Compromise (OIC) case files from an IRS Small Business/Self-Employed (Collections) Office in Oklahoma City, Oklahoma was lost during UPS transport to Ft. Worth FRC.	Founded	UD-2020-0020 Open/Close
Internal Revenue Service	4/20/2020	4/20/2020	UD-2020-0034	General Litigation Files, temporary dispose 10 years after case closure. Box number two of five boxes, shipped via UPS from Oklahoma City to Ft Worth FRC, were lost.	Founded	UD-2020-0034 Open/Close

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Veterans Affairs

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Agency ⬆️⬆️	Case Open Date ⬆️⬆️	Case Close Date ⬆️⬆️	Case ID ⬆️⬆️	Records ⬆️⬆️	Status ⬆️⬆️	Case Letters ⬆️⬆️
Office of General Counsel	9/4/2019	12/4/2020	UD-2019-0047	Improper and accidental loss of military health, litigation/appeal, and contractor files containing PII.	Founded	UD-2019-0047 Open/Close
Veterans Affairs	2/11/2019		UD-2019-0012	Possible alienation of e-mail records resulting from the alleged use of personal e-mail accounts by former Secretary Dr. David Shulkin and others.	Pending review/follow-up	UD-2019-0012 Open
Veterans Affairs	11/20/2019	12/4/2020	UD-2020-0016	Loss of research study files for approximately 57 inactive research studies, some containing PII following flood damage to the facility housing the records.	Founded	UD-2020-0016 Open/Close
Veterans Affairs	4/16/2021		UD-2021-0027	Alteration and improper documentation of SF-50 records	Pending review/follow-up	UD-2021-0027 Open
Veterans Affairs	3/11/2022	10/17/2022	UD-2022-0029	A member of the public is alleging that the VA is improperly destroying permanent and vital records after imaging the material into the VBMS.	Resolved	UD-2022-0029 Open/Close

Agency ⬆️⬆️	Case Open Date ⬆️⬆️	Case Close Date ⬆️⬆️	Case ID ⬆️⬆️	Records ⬆️⬆️	Status ⬆️⬆️	Case Letters ⬆️⬆️
Veterans Affairs	9/27/2022	1/4/2023	UD-2022-0042	An employee alleges that team messages relating to an EEOC complaint were destroyed. According to the employee, the messages should have been retained as part of the patient medical record.	Pending review/follow-up	UD-2022-0042 Open/Close
Veterans Affairs	7/15/2022	9/14/2022	UD-2022-0050	Agency report of unauthorized disposition of VA records. Specifically five electronic records: three C3R Monitors documents and two Records Management standard operating procedure documents.	Founded	UD-2022-0050 Open/Close
Veterans Affairs	9/27/2022	12/14/2022	UD-2022-0066	A member of the public alleged that video surveillance records were erroneously destroyed.	Founded	UD-2022-0066 Open/Close
Veterans Affairs	6/5/2023	6/5/2023	UD-2023-0042	The Gainesville VA Medical Center has reported unrecoverable patient Image data identified during the migration of images from the legacy VistA Imaging Tier II long term storage systems (Jukeboxes and Archive Appliances) to the current NetApps StorageGrid.	Founded	UD-2023-0042 Open/Close

Agency <small>↕</small>	Case Open Date <small>↕</small>	Case Close Date <small>↕</small>	Case ID <small>↕</small>	Records <small>↕</small>	Status <small>↕</small>	Case Letters <small>↕</small>
Veterans Affairs	6/5/2023	7/26/2023	UD-2023-0061	A VA staff member has alleged that text messages (2014-present), email, Skype messages, and a list of alternative email addresses for any VA executive who is assigned more than one government email address were destroyed.	Unfounded	UD-2023-0061 Open/Close

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Independent Agencies

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Agency <small>↕</small>	Case Open Date <small>↕</small>	Case Close Date <small>↕</small>	Case ID <small>↕</small>	Records <small>↕</small>	Status <small>↕</small>	Case Letters <small>↕</small>
Federal Trade Commission	8/14/2023	10/27/2023	UD-2023-0068	News outlet reports that the House Judiciary Committee Chairman asserted that the FTC deleted documents related to the agency's implementation of a new rule that would prohibit non-compete clauses for workers.	Unfounded	UD-2023-0068 Open/Close

Agency ↕↕	Case Open Date ↕↕	Case Close Date ↕↕	Case ID ↕↕	Records ↕↕	Status ↕↕	Case Letters ↕↕
General Services Administration	2/22/2017	5/18/2017	UD-2017-0019	Allegations of 27 personal email accounts of 18F staff (GSA contractors) were used to send work-related emails without copying government accounts.	Founded	UD-2017-0019 Open/Close
National Aeronautics and Space Administration	7/21/2017	10/5/2017	UD-2017-0026	300 magnetic data tape reels for NASA Goddard Space Flight Center dating from 1969-1972, along with two large computers bearing NASA GSFC markings.	Founded	UD-2017-0026 Open/Close
National Aeronautics and Space Administration	3/20/2020		UD-2020-0032	Deletion of emails of departed employees 30 days after their departure	Pending review/follow-up	UD-2020-0032 Open
National Archives and Records Administration	8/31/2023	8/31/2023	UD-2023-0093	Handwritten registers tracking information about appraisal dossiers, which were created upon receipt of SF-115 Records Dispositions Requests from FY1981 and FY1982 cannot be found and may be destroyed.	Founded	UD-2023-0093 Open/Close
National Council on Disability	9/11/2019	12/3/2019	UD-2019-0050	A member of the public is alleging that the agency is deleting emails without reading them.	Unfounded	UD-2019-0050 Open/Close

Agency ↑↓	Case Open Date ↑↓	Case Close Date ↑↓	Case ID ↑↓	Records ↑↓	Status ↑↓	Case Letters ↑↓
National Credit Union Administration	11/20/2015	11/22/2016	UD-2016-0002	Email record server deleted in the absence of an agency email management recordkeeping practice, such as print-and-file, or a NARA-approved disposition authority.	Founded	UD-2016-0002 Open/Close
Office of Special Counsel	3/5/2018	8/15/2018	UD-2018-0008	The potential unauthorized deletion of electronic files maintained in an electronic folder of an official in the Human Capital Office as well as the removal of boxes of unknown content by an employee.	Founded	UD-2018-0008 Open/Close
Office of Special Counsel	5/4/2023	6/6/2023	UD-2023-0051	A member of the public alleges that the Office of Special Council (OSC) stated that OSC destroyed records responsive to their Expedited FOIA Request	Unfounded	UD-2023-0051 Open/Close
Peace Corps	1/6/2017	3/15/2018	UD-2017-0011	Peace Corps Capstone approach implemented a system that performed routine 90-day destruction of emails after and employee leaves the Peace Corps.	Unfounded	UD-2017-0011 Open/Close

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