

Robert Hammond
via Muckrock.com

December 24, 2022

Deputy Archivist of the United States
National Archives and Records Administration,
8601 Adelphi Rd.,
College Park, Maryland 20740.

Subject: Expedited Appeal of FOIA Request NARA 23-G Muckrock. FOIA Advisory
Committee September 9, 2023 Chat Comments

Agency FOIA Tracking Number. NGC23-580

***** This appeal will be timely for judicial review within twenty working days *****

Addendum I is my Unauthorized Records Disposition Complaint to NARA regarding the destruction of records responsive to this request. Within Addendum I, Attachment A is the Agency's response to my Subject FOIA request, whereas Attachment B therein is my subject FOIA Request.

Addendum II is a screenshot documenting seeming fraud, violations of NARA's policies regarding posting and investigating unauthorized disposition complaints and thus also a violation of the Administrative Procedures Act in NARA failing to follow its own published policies.

Addendum III is DOJ OIP complaint regarding this matter, which contains therein my request for NARA's Office of Government Information Services formal mediation and my distinct request for NARA FOIA Public Liaison dispute resolution, which is a distinct right under FOIA, separate from any other actions and remaining in effect until the time of litigation, if any. The fact of my appeal and any subsequent response to it by NARA does not render moot my requests for OGIS formal mediation and NARA FPL dispute resolution. Moreover, OGIS may not circumvent formal mediation by contacting NARA's FPL, as these are distinct rights.

All records are available on Muckrock.com at <https://www.muckrock.com/foi/united-states-of-america-10/expedited-foia-request-nara-23-g-muckrock-foia-advisory-committee-september-7-2023-chat-comments-151780/> .

NARA's appellate determination must be via Muckrock.com.

All violations of the FOIA statute or any federal law or policy are subject to inclusion in a FOIA appeal. FOIA is not exempt from federal laws and the FOIA statute does not limit what may be included in an appeal.

RECORDS SOUGHT VIA FOIA - NARA 23-G Muckrock.

Expedited Appeal of September 10, 2023 FOIA Request NARA 23-G Muckrock. FOIA Advisory Committee September 9, 2023 Chat Comments.

See PDF.

Expedited FOIA Request NARA 23 -G. Muckrock. FOIA Advisory Committee September 7, 2023 Chat Comments

See PDF.

1. All records of the September 7, 2023 Webex Chat
 - 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. This includes Committee members present at the virtual meeting. Others present or participating in the virtual meeting, including all registered participants.
2. Records of all persons who registered via Eventbrite to attend the meeting.
3. 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).

BASIS FOR EXPEDITED APPEAL.

My FOIA request sought expedited processing; therefore, this appeal must be expedited. This is a separate appeal from any other matter.

This appeal cites potential violations of the law under multiple statutes. FOIA is not exempt from those statutes, which may be relevant to any judicial proceeding.

NARA must adjudicate this appeal using only the facts at the time of this appeal. There cannot be any unlawful “moot” determinations. In any instance where the agency failed to meet the requirements of my appeal at the time it is received, the Agency must grant my appeal as to those matters and remand the request back to NARA for continued processing.

1. Untimely Expedited Processing Denial.

- a. NARA failed to respond to my September 13, 2023 expedited FOIA request for expedited processing within ten days in violation of the FOIA statute. U.S. Code 552(a)(6)E(ii)(I).

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

- b. NARA failed to respond to my request for expedited processing within ten days in violation of NARA’s own FOIA regulation and therefor also the Administrative Procedures Act (Public Law 79–404, 60 Stat. 237; 5 U.S.C. §§ 551–559.). *See* NARA FOIA policy 36 CFR Part 1250.28(d) at [NARA FOIA regulations | National Archives https://www.archives.gov/foia/regulations](https://www.archives.gov/foia/regulations).
- c. NARA received my FOIA request on September 13, 2023 and did not issue a determination until September 27, 2023. Notwithstanding that NARA ultimately responded to my FOIA request, NARA’s failure to timely respond to my FOIA request for expedited processing is not made moot.

2. Expedited Processing Denial Basis.

- a. NARA must address every element of my request for expedited processing, as all elements are intertwined, and NARA did not do so.
- b. NARA did not address my request for expedited processing based on “eminent loss of due process rights.” (*See* paragraph 4 of my request for expedited processing). Therefore, NARA has no choice but to grant my appeal on that basis.
- c. As to “an urgent need to inform the public about an actual or alleged Federal Government activity,” my justification cites government misconduct and the (then) upcoming “December 1, 2022, where this will be a topic.”
- d. **EXPEDITED PROCESSING JUSTIFICATION.**

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 apparent.
- 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).

- 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.

3. Expedited Processing – NARA Did Not Grant Any Expedited Processing in FY 2022.

- a. NARA’s Annual FOIA Reporting is knowingly false based on records I have placed into the public domain in written public comments to open FOIA meetings.
- b. Notwithstanding NARA’s willful false FOIA reporting- about which DOJ OIP has done nothing to correct and has been complicit in – NARA’s FY 2022 Annual FOIA report states that NARA did not process a single expedited FOIA request.
- c. This is a” pattern of practice” abuse.

4. Fee Waiver – Failure to Respond.

- a. NARA failed to respond to my request for fee waiver as mandated by the FOIA statute and NARA's FOIA policy. Notwithstanding that NARA did not ultimately charge fees, the fact that NARA failed to respond to my request for fee waiver is not moot. NARA must therefore grant my appeal on this basis.
- 5. Untimely Claim of Unusual Circumstances.**
- a. NARA unlawfully claimed unusual circumstances on October 12, 2023 after the twenty-working day mandatory time for response had already passed. NARA must grant my appeal on this basis. It is not moot as a matter of law.
- 6. Unusual Circumstances -Unlawful Failure to Describe Unusual Circumstances.**
- a. NARA must describe what the alleged unusual circumstances are. Instead, NARA simply stated, "Your request falls within one of the "unusual circumstances" categories contemplated by the FOIA, 5 U.S.C. § 552(a)(6)(B)(iii) (I), (II) and (III), and we need additional time to respond to your request beyond the twenty business days provided by the FOIA statute."
- 7. Unusual Circumstances - Unlawful Failure to Offer Limiting the Scope.**
- a. In violation of the FOIA statute, DOJ FOIA Policy, NARA FOIA policy and the Administrative Procedures Act, NARA did not include in its notice asserting unusual circumstances an offer for the requester to limit the scope of the subject FOIA request.
- 8. Unusual Circumstances - Aggregating FOIA Requests; Individualized Tracking Numbers.**
- a. NARA must assign individualized tracking numbers to every FOIA request even if aggregating for the purpose of determining unusual circumstances and NARA does not do so.
- 9. Unusual Circumstances and Processing Queues Unlawful Citation – -36 CFR § 1250.26 (f).**
- a. NARA impermissibly states that: However, if complexity or unusual circumstances prevent NARA from making a decision within 20 working days, we place your request into a complex processing queue.
 - b. The intent of "multitrack processing is not meant to circumvent the twenty-working day time standard.
 - c. In violation of NARA's FOIA policy and therefore the Administrative Procedurdss Act, NARA does not classify all FOIA requests taking more than twenty working days to process as COMPLEX. If this were true, NARA would not have any Simple FOIA requests taking longer than twenty working days to process. However, NARA's FY 2022 Annual FOIA Report shows that on average NARA answers SIMPLE FOIA requests in 224 days.
- 10. False FOIA Reporting.**

- a. My many written public comments – cited in my justification for expedited processing – document NARA’s massive false FOIA reporting with intent and DOJ OIP’s complicity in it.
- b. As one example related to “Simple” FOIA requests, NARA’s FY 2022 annual FOIA report states that the oldest FOIA requests is 2,516 days old, yet NARA’s FY 2021 Annual FOIA report states (365 days earlier) that the oldest request is 891 days old. The oldest request cannot go from 891 days old to 2,516 days old in a 365-day period. DOJ OIP knows this. An analysis of NARA’s raw data is warranted.
- c. In any litigation, the massive inaccuracy of NARA’s FOIA reporting will be a central issue.

11. Failure to Respond Within the Additional Ten Days of Asserted Unusual Circumstances.

12. Failure to Timely Issue IDA Letter in Twenty Working Days. NARA did not respond to my September 13, 2023 FOIA request until November 17, 2023. NARA must grant my appeal on this basis.

13. Inadequate Search and/or Unlawful Destruction of Records.

- a. NARA must address the inadequate search and/or unlawful destruction of records based on NARA’s official statement that it could not locate:

All records of the September 7, 2023 Webex Chat

- 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. This includes Committee members present at the virtual meeting. Others present or participating in the virtual meeting, including all registered participants.

14. Unlawful Destruction of Records. *See* Addendum I. NARA must address the matters therein. NARA unlawfully destroyed records of meeting participants. The Federal Advisory Committee Act mandates:

§10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

- (c) Detailed minutes of each meeting of each advisory committee 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 advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

15. Violation of the Federal Advisory Committee Act 5 USC Chapter 10

NARA unlawfully destroyed records of meeting participants. The Federal Advisory Committee Act mandates:

§10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(c) Detailed minutes of each meeting of each advisory committee 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 advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee

16. Status Issued after November 17, 2023 IDA States FOIA Request Still Open - False Official Statement.

- a. In a November 21, 2023 status update, after NARA had already issued an IDA response on November 17, 2023, NARA states:

“Currently, NGC23-580 is #497 in our complex FOIA queue. Our estimated time to completion is 41 months from today.”

17. Courtesy Copy of My FOIA Request – Withholding Records/Inaccurate Statement.

- a. In creating a materially false record for the court in nay litigation, NARA states that “A courtesy copy of your initial request has been appended to our response to you.” NARA is refusing to acknowledge that the agency copy of my FOIA request is an official record that I properly sought under FOIA and must be identified as such. NARA has previously failed to return a copies of my incoming FOIA requests and this inaccurate statement is designed to protect those other unlawful withholding of records.

18. Exemption B6 – Unlawful Withholding/Redactions.

- a. NARA has unlawfully withheld in its entirety under B6 the “Records of all persons who registered via Eventbrite to attend the meeting.”b. §10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance
- b. Whereas NARA is required to include this in its publicly posted meeting minutes per the Federal Advisory Committee Act.

§10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(c) Detailed minutes of each meeting of each advisory committee 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 advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

- c. Within those persons who registered via WEBEX and participated in the meeting are:
 - FOIA Advisory Committee members whose identities are publicly posted.
 - NARA and DOJ OIP staff whose identities are publicly posted.
 - My registration, which NARA cannot redact under B6.
- d. "The presumption in favor of disclosure is as strong [under Exemption 6] as can be found anywhere in the Act." See *Wash. Post Co. v. HHS*, 690 F.2d 252, 261 (D.C. Cir. 1982).
- e. The Agency redacted names in my emails to them and in other records that are clearly already in the public domain.

As a general matter, “[o]ne can have no privacy interest in information that is already in the public domain, especially when the person asserting his privacy is himself responsible for placing that information into the public domain. See *Citizens for Responsibility & Ethics in Wash.*, 2012 WL 45499 at *6; see also Department of Justice, Office of Information Policy, Exemption 6 at 435, http://www.justice.gov/oip/foia_guide09/exemption6.pdf (“Unless the information has become ‘practically obscure’ . . . there is generally no expectation of privacy regarding information that is particularly well known or is widely available within the public domain.”).

- f. Government misconduct. Government misconduct is at issue regarding FOIA/PA processes, including the potential destruction of records. The public interest is particularly high where government misconduct is concerned. See *Trentadue v. Integrity Comm.*, 501 F.3d 1215, 1234 (10th Cir. 2007).
- g. NARA releases this same information in its meeting minutes for the Chief FOIA Officers Council, which contains many of the same participants as the FOIA Advisory Committee. See Chief Freedom of Information Act Officers Council Meeting Minutes – April 21, 2022 at <https://www.archives.gov/ogis/about-ogis/chief-foia-officers-council/mtg-min-2022-04-21>.

19. No articulated Foreseeable Harm.

- a. The 2016 amendments to FOIA^[1] added a foreseeable harm provision to the statute. After its enactment, "the government's successful invocation of a FOIA exemption cannot justify its withholding of exempt material without a

more particularized inquiry into what sort of foreseeable harm would result from the material's release.

5 U.S.C. § 552(a)(8)

(A) An agency shall—

(i) withhold information under this section only if—

(I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or

(II) disclosure is prohibited by law

- b. NARA OIG did not articulate foreseeable harm for each of its withholdings/redactions as mandated by the FOIA statute.
- c. This is extremely important because as articulated on DOJ OIP's website Vol. XV, No. 2 under OIP Guidance "Applying the foreseeable Harm Standard Under Exemption 5" DOJ states:

"In short, it be shall the policy of the Department of Justice to defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption."

FOIA Update: OIP Guidance: Applying the "Foreseeable Harm" Standard Under Exemption Five | OIP | Department of Justice ,
<https://www.justice.gov/oip/blog/foia-update-oip-guidance-applying-foreseeable-harm-standard-under-exemption-five>

- d. *See also* D.C. Circuit: FOIA's 'foreseeable harm' standard has teeth. Analysis by the Reporter's Committee for Freedom of the Press, Adam. A. Marshall July 26, 2021 at <https://www.rcfp.org/dc-circuit-foreseeable-harm-ruling/>.
- e. *See* Foreseeable Harm Discussion in the December 1, 2022 FOIA Advisory Committee meeting transcript by Anne Weismann and Ryan Mulvey at <https://www.archives.gov/ogis/foia-advisory-committee/2022-2024-term/foiaac-mtg-transcript-2022-12-01>.
- f. *See* Hammond Public Comments. Document Cloud Alphabetical (25 per page on web, not alphabetical) at <https://www.documentcloud.org/app?q=%2Buser%3Arobert-hammond-106693%20>
 - Foreseeable Harm Standard Errantly Cited - Proposed B5 Model Letter
 - Foreseeable Harm Standard. DOJ OIP Misinformation + Navy Misconduct and Idiocy
 - Foreseeable Harm Standard Vanita Gupta. November 3, 2022 CFO Meeting

- Sued into Oblivion. Foreseeable Harm Standard

20. Improperly Withholding Records Generally. 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).

Appellate Authority Action Sought. I am seeking that the Appellate Authority:

1. Process my expedited appeals in the order in which they were received.
2. Address each of the elements and sub-element of my request and the basis of my appeal fully and separately and on the facts at the time of the appeal,
3. Grant each element of my appeal;
4. Remand my FOIA request back to the Agency for direct reply to me (with proper FOIA processing calculations); and,
5. Grant me new appellate rights following a subsequent reply by the Agency. Do not simply release records without restoring my appeal rights.
6. Grant me new appellate rights for any additional appellate basis for denial of any portion of the records sought.
7. Provide response via email with cover letter and record account via Muckrock.com.

With respect,

/s/

Robert Hammond
Requester
Whistleblower

Addendum I. Unauthorized Records Disposition Complaint to NARA

- Attachment A is the Agency’s response to my Subject FOIA request
- Attachment B therein is my subject FOIA Request.

Addendum II. Screenshot of NARA Posted UD Complaints

Addendum III. DOJ OIP complaint regarding this matter (without redundant attachments)

- request for NARA’s Office of Government Information Services formal mediation
- request for NARA FOIA Public Liaison dispute resolution

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) 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) 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)

**Addendum I. Unauthorized Records Disposition
Complaint to NARA**

- Attachment A is the Agency's response to my Subject FOIA request
- Attachment B therein is my subject FOIA Request.

December 5, 2023

Subject: NARA Unauthorized Disposition (UD) Complaint ICO September 7, 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 September 7, 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- 580) 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.

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	<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:</p> <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 	<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>	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 NGC23-580
- B. Hammond FOIA Request NGC23-580
- 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

UD Complaint Attachment A

NARA FOIA Response to NGC23-580



17 November 2023

Robert Hammond
151780-36163156@requests.muckrock.com

RE: Freedom of Information Act Request NGC23-580

Dear Robert Hammond:

This is in response to your Freedom of Information Act (FOIA) request to the National Archives and Records Administration (NARA), dated 10 September 2023. In your request, you asked for:

1. ... All records of the September 7, 2023 Webex Chat
 - 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. This includes Committee members present at the virtual meeting. Others present or participating in the virtual meeting, including all registered participants.
2. Records of all persons who registered via Eventbrite to attend the meeting.
3. 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) ...

Following a search, we located 1 document responsive to item 2 of your request. This document is being withheld in full 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.

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

A courtesy copy of your initial request has been appended to our response to you.

This completes the processing of your FOIA request to us.

NATIONAL ARCHIVES *and*
RECORDS ADMINISTRATION

8601 ADELPHI ROAD
COLLEGE PARK, MD 20740-6001
www.archives.gov

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 **NGC23-580**.

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
Tel: 301-837-1750
Email: NGC.public.liaison@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
Email: ogis@nara.gov
Website: ogis.archives.gov
Tel: 202-741-5770 or 1-877-684-6448

Thank you for contacting the National Archives and Records Administration. Please feel free to contact me directly if you have any questions or further concerns.

Sincerely,

Brewer Thompson
Deputy FOIA Officer/Archivist
National Archives and Records Administration
brewer.thompson@nara.gov

UD Complaint Attachment B

Hammond FOIA Request NGC23-580

September 10, 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 -G. Muckrock. FOIA Advisory Committee
September 7, 2023 Chat Comments
RECORDS SOUGHT VIA FOIA.**

Expedited FOIA Request NARA 23 -G. Muckrock. FOIA Advisory Committee September 7, 2023 Chat
Comments **See PDF.**

1. All records of the September 7, 2023 Webex Chat
 - 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. This includes Committee members present at the virtual meeting. Others present or participating in the virtual meeting, including all registered participants.
2. Records of all persons who registered via Eventbrite to attend the meeting.
3. 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 apparent 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).
- 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

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)

- 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:

-

- 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.

-
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.

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 Pubic 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)

Addendum II. Screenshot of NARA Posted UD Complaints

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.

Independent Agencies

Show 102550100200All entries

Agency	Case Open Date	Case Close Date	Case ID	Records	Status	Case Letters
U.S. International Development Finance Corporation	6/1/2023	11/22/2023	UD-2023-0054	From 2014 to December 7th, 2020, former OPIC onboarding staff was not formally categorizing Capstone officials.	Founded	UD-2023-0054 Open/Close
U.S. Agency for Global Media	3/1/2021		UD-2021-0021	During an investigation by the Department of State's OIG, it was discovered that a former senior official at the USAGM requested that	Pending review/follow-up	UD-2021-0021 Open/Close

Agency	Case Open Date	Case Close Date	Case ID	Records	Status	Case Letters
				<p>USAGM employees communicate with her using Signal, a mobile messaging application, that she had installed on her personal devices and adjusted the settings on the application so that the messages that she sent and received would disappear after one week.</p>		
<p>Tennessee Valley Authority</p>	<p>8/17/2020</p>		<p>UD-2020-0037</p>	<p>Tennessee Valley Authority reported that a large water pipe break resulted in the flooding of records storage areas, including its legal research center at the Knoxville Office Complex.</p>	<p>Pending review/follow-up</p>	<p>UD-2020-0037 Open</p>
<p>Surface Transportation Board</p>	<p>2/22/2022</p>	<p>2/22/2022</p>	<p>UD-2022-0024</p>	<p>Calendar records were lost due to an error made during a records migration process</p>	<p>Founded</p>	<p>UD-2022-0024 Open/Close</p>

Agency	Case Open Date	Case Close Date	Case ID	Records	Status	Case Letters
Social Security Administration	5/21/2018	10/3/2022	UD-2018-0015	A relatively small grouping of Earnings Records (referred to hereafter as “1086 film”) stored on cellulose acetate-based microfilm has begun to deteriorate through a process called “Vinegar Syndrome”, whereby the film outgasses acetic acid and becomes warped, brittle, curled and over time, unusable.	Founded	UD-2018-0015 Open/Close
Social Security Administration	10/26/2021	10/26/2021	UD-2022-0002	Lost or destroyed the Annual Management Reviews, the Manager’s Annual Audit reports, and the Third Party Draft documentation	Founded	UD-2022-0002 Open/Close
Social Security Administration	7/20/2023	8/22/2023	UD-2023-0079	Civilian alleges that the SSA Syracuse office accidentally destroyed two forms (SSA Form - 455 and SSA -3441 BK) for a medical review. The civilian claims	Unfounded	UD-2023-0079 Open/Close

Agency	Case Open Date	Case Close Date	Case ID	Records	Status	Case Letters
				that an SSA agent stated "they were probably accidentally shredded"		
Securities and Exchange Commission	1/19/2017	4/6/2018	UD-2017-0013	Unauthorized destruction and improper handling and maintenance of whistleblower files & SEC government employees are inappropriately using personal email accounts to conduct agency business.	Unfounded	UD-2017-0013 Open/Close
Securities and Exchange Commission	5/14/2019	5/28/2019	UD-2019-0025	Lost 202 out of 39,199 records within the Tips, Complaints, and Referrals (TRC) electronic information system during a system migration.	Founded	UD-2019-0025 Open/Close
Securities and Exchange Commission	7/18/2022	11/8/2022	UD-2022-0053	Agency report regarding inadvertent destruction and loss of some Confidential	Resolved	UD-2022-0053 Open/Close

Agency	Case Open Date	Case Close Date	Case ID	Records	Status	Case Letters
				Treatment Material records within the Division of Corporation Finance (CorpFin).		

Addendum III.

DOJ OIP complaint regarding this matter

- request for NARA's Office of Government Information Services formal mediation
- request for NARA FOIA Public Liaison dispute resolution

perseverance2013@aol.com

From: perseverance2013@aol.com
Sent: Sunday, December 24, 2023 12:47 PM
To: 'OIP.ComplianceInquiry@usdoj.gov'; 'bobak.Talebian@usdoj.gov'; 'Lindsay.Steel@usdoj.gov'
Cc: 'william.bosanko@nara.gov'; 'micah.cheatham@nara.gov'; 'garym.stern@nara.gov';
'pamela.wright@nara.gov'; 'erica.pearson@nara.gov'; 'valorie.findlater@nara.gov';
'Colleen.Murphy@nara.gov'; 'sheena.burrell@nara.gov'; 'john.hamilton@nara.gov';
'jay.trainer@nara.gov'; 'susan.donius@nara.gov'; 'chris.naylor@nara.gov'; 'mark.smith@nara.gov';
'oliver.potts@nara.gov'; 'amon.nevils@nara.gov'; 'laurence.brewer@nara.gov';
'john.valceanu@nara.gov'; 'tasha.ford@nara.gov'; 'brett.baker@nara.gov'; 'meg.phillips@nara.gov';
'christopher.eck@nara.gov'; 'mark.bradley@nara.gov'; 'alina.semo@nara.gov';
'christopher.pinkney@nara.gov'; 'william.fischer@nara.gov'; 'scott.levins@nara.gov';
'allison.olson@nara.gov'; 'richard.hunt@nara.gov'; 'kara.blond@nara.gov';
'stephanie.bogan@nara.gov'; 'john.simms@nara.gov'; 'john.valceanu@nara.gov';
'ovnelle.millwood@nara.gov'; 'ellis.brachman@nara.gov'; 'martha.murphy@nara.gov';
'sheela.portonovo@nara.gov'; 'carrie.mcguire@nara.gov'; 'kirsten.mitchell@nara.gov';
'teresa.brady@nara.gov'; 'dwaine.bacon@nara.gov'; 'jessica.hartman@nara.gov';
'daniel.levenson@nara.gov'; 'kimberlee.ried@nara.gov'; 'archivistoftheunitedstates@nara.gov';
'garym.stern@nara.gov'; 'FOIA'; 'ogis@nara.gov'; 'alina.semo@nara.gov'; 'perseverance2013@aol.com'
Subject: DOJ OIP Compliance Inquiry. FOIA Request NARA 23-G Muckrock. FOIA Advisory Committee September 9, 2023 Chat Comments
Attachments: UD Complaint. September 7, 2023 FOIA Advisory Committee Meeting w. attach.pdf; Addendum II NARA UD Webpage.pdf; Email to FOIA Advisory Committee, NGC23-580.pdf

Mr. Talebian, Ms. Steel, DOJ OIP Compliance Inquiry Staff:

Please provide me with the individualized DOJ OIP compliance Inquiry tracking number for this complaint. Please address all twenty complaints and sub-paragraphs alleging violations of the FOIA statute, DOJ FOIA policy and multiple federal statutes and policies, which are not exempt from FOIA.

Notwithstanding my request for FPL dispute resolution, my request for OGIS mediation and any subsequent appeal or NARA responses thereto, my compliance inquiry is a separate, non-exclusive right under the FOIA.

Please provide your closure letter affirming these violations to Ms. Colleen Shogan, Archivist of the United States.

Thank you.

With my deep respect,

Robert (Bob) Hammond
Private Citizen FOIA Advocate

From: perseverance2013@aol.com <perseverance2013@aol.com>
Sent: Sunday, December 24, 2023 12:19 PM
To: 'ogis@nara.gov' <ogis@nara.gov>; 'alina.semo@nara.gov' <alina.semo@nara.gov>
Cc: 'william.bosanko@nara.gov' <william.bosanko@nara.gov>; 'micah.cheatham@nara.gov'

<micah.cheatham@nara.gov>; 'garym.stern@nara.gov' <garym.stern@nara.gov>; 'pamela.wright@nara.gov' <pamela.wright@nara.gov>; 'erica.pearson@nara.gov' <erica.pearson@nara.gov>; 'valorie.findlater@nara.gov' <valorie.findlater@nara.gov>; 'Colleen.Murphy@nara.gov' <Colleen.Murphy@nara.gov>; 'sheena.burrell@nara.gov' <sheena.burrell@nara.gov>; 'john.hamilton@nara.gov' <john.hamilton@nara.gov>; 'jay.trainer@nara.gov' <jay.trainer@nara.gov>; 'susan.donius@nara.gov' <susan.donius@nara.gov>; 'chris.naylor@nara.gov' <chris.naylor@nara.gov>; 'mark.smith@nara.gov' <mark.smith@nara.gov>; 'oliver.potts@nara.gov' <oliver.potts@nara.gov>; 'amon.nevils@nara.gov' <amon.nevils@nara.gov>; 'laurence.brewer@nara.gov' <laurence.brewer@nara.gov>; 'john.valceanu@nara.gov' <john.valceanu@nara.gov>; 'tasha.ford@nara.gov' <tasha.ford@nara.gov>; 'brett.baker@nara.gov' <brett.baker@nara.gov>; 'meg.phillips@nara.gov' <meg.phillips@nara.gov>; 'christopher.eck@nara.gov' <christopher.eck@nara.gov>; 'mark.bradley@nara.gov' <mark.bradley@nara.gov>; 'alina.semo@nara.gov' <alina.semo@nara.gov>; 'christopher.pinkney@nara.gov' <christopher.pinkney@nara.gov>; 'william.fischer@nara.gov' <william.fischer@nara.gov>; 'scott.levins@nara.gov' <scott.levins@nara.gov>; 'allison.olson@nara.gov' <allison.olson@nara.gov>; 'richard.hunt@nara.gov' <richard.hunt@nara.gov>; 'kara.blond@nara.gov' <kara.blond@nara.gov>; 'stephanie.bogan@nara.gov' <stephanie.bogan@nara.gov>; 'john.simms@nara.gov' <john.simms@nara.gov>; 'john.valceanu@nara.gov' <john.valceanu@nara.gov>; 'ovnelle.millwood@nara.gov' <ovnelle.millwood@nara.gov>; 'ellis.brachman@nara.gov' <ellis.brachman@nara.gov>; 'martha.murphy@nara.gov' <martha.murphy@nara.gov>; 'sheela.portonovo@nara.gov' <sheela.portonovo@nara.gov>; 'carrie.mcguire@nara.gov' <carrie.mcguire@nara.gov>; 'kirsten.mitchell@nara.gov' <kirsten.mitchell@nara.gov>; 'teresa.brady@nara.gov' <teresa.brady@nara.gov>; 'dwaine.bacon@nara.gov' <dwaine.bacon@nara.gov>; 'jessica.hartman@nara.gov' <jessica.hartman@nara.gov>; 'daniel.levenson@nara.gov' <daniel.levenson@nara.gov>; 'kimberlee.ried@nara.gov' <kimberlee.ried@nara.gov>; 'archivistoftheunitedstates@nara.gov' <archivistoftheunitedstates@nara.gov>; 'garym.stern@nara.gov' <garym.stern@nara.gov>; 'FOIA' <foia@nara.gov>; 'perseverance2013@aol.com' <perseverance2013@aol.com>

Subject: OGIS Formal Mediation of FOIA Request NARA 23-G Muckrock. FOIA Advisory Committee September 9, 2023 Chat Comments

Ms. Semo, OGIS Staff:

Notwithstanding my request for FPL dispute resolution and any subsequent appeal or NARA responses thereto, I am seeking immediate OGIS formal mediation of the matters herein, which is a separate, non-exclusive right under the FOIA.

From: perseverance2013@aol.com <perseverance2013@aol.com>

Sent: Sunday, December 24, 2023 12:16 PM

To: 'archivistoftheunitedstates@nara.gov' <archivistoftheunitedstates@nara.gov>; 'garym.stern@nara.gov' <garym.stern@nara.gov>; 'FOIA' <foia@nara.gov>

Cc: 'william.bosanko@nara.gov' <william.bosanko@nara.gov>; 'micah.cheatham@nara.gov' <micah.cheatham@nara.gov>; 'garym.stern@nara.gov' <garym.stern@nara.gov>; 'pamela.wright@nara.gov' <pamela.wright@nara.gov>; 'erica.pearson@nara.gov' <erica.pearson@nara.gov>; 'valorie.findlater@nara.gov' <valorie.findlater@nara.gov>; 'Colleen.Murphy@nara.gov' <Colleen.Murphy@nara.gov>; 'sheena.burrell@nara.gov' <sheena.burrell@nara.gov>; 'john.hamilton@nara.gov' <john.hamilton@nara.gov>; 'jay.trainer@nara.gov' <jay.trainer@nara.gov>; 'susan.donius@nara.gov' <susan.donius@nara.gov>; 'chris.naylor@nara.gov' <chris.naylor@nara.gov>; 'mark.smith@nara.gov' <mark.smith@nara.gov>; 'oliver.potts@nara.gov' <oliver.potts@nara.gov>; 'amon.nevils@nara.gov' <amon.nevils@nara.gov>; 'laurence.brewer@nara.gov' <laurence.brewer@nara.gov>; 'john.valceanu@nara.gov' <john.valceanu@nara.gov>; 'tasha.ford@nara.gov' <tasha.ford@nara.gov>; 'brett.baker@nara.gov' <brett.baker@nara.gov>; 'meg.phillips@nara.gov' <meg.phillips@nara.gov>; 'christopher.eck@nara.gov' <christopher.eck@nara.gov>; 'mark.bradley@nara.gov' <mark.bradley@nara.gov>; 'alina.semo@nara.gov' <alina.semo@nara.gov>; 'christopher.pinkney@nara.gov' <christopher.pinkney@nara.gov>; 'william.fischer@nara.gov' <william.fischer@nara.gov>; 'scott.levins@nara.gov' <scott.levins@nara.gov>; 'allison.olson@nara.gov' <allison.olson@nara.gov>; 'richard.hunt@nara.gov' <richard.hunt@nara.gov>; 'kara.blond@nara.gov' <kara.blond@nara.gov>; 'stephanie.bogan@nara.gov' <stephanie.bogan@nara.gov>; 'john.simms@nara.gov' <john.simms@nara.gov>; 'john.valceanu@nara.gov'

<john.valceanu@nara.gov>; 'ovnelle.millwood@nara.gov' <ovnelle.millwood@nara.gov>; 'ellis.brachman@nara.gov' <ellis.brachman@nara.gov>; 'martha.murphy@nara.gov' <martha.murphy@nara.gov>; 'sheela.portonovo@nara.gov' <sheela.portonovo@nara.gov>; 'carrie.mcguire@nara.gov' <carrie.mcguire@nara.gov>; 'kirsten.mitchell@nara.gov' <kirsten.mitchell@nara.gov>; 'teresa.brady@nara.gov' <teresa.brady@nara.gov>; 'dwaine.bacon@nara.gov' <dwaine.bacon@nara.gov>; 'jessica.hartman@nara.gov' <jessica.hartman@nara.gov>; 'daniel.levenson@nara.gov' <daniel.levenson@nara.gov>; 'kimberlee.ried@nara.gov' <kimberlee.ried@nara.gov>; 'perseverance2013@aol.com' <perseverance2013@aol.com>

Subject: Immediate FOIA Public Liaison (FPL) Dispute Resolution of FOIA Request NARA 23-G Muckrock. FOIA Advisory Committee September 9, 2023 Chat Comments

Importance: High

Robert Hammond

December 24, 2022

Archivist of the United States and
NARA FOIA Public Liaison
National Archives and Records Administration,
8601 Adelphi Rd.,
College Park, Maryland 20740.

Subject: Immediate FOIA Public Liaison (FPL) Dispute Resolution of FOIA Request NARA 23-G Muckrock.
FOIA Advisory Committee September 9, 2023 Chat Comments

Agency FOIA Tracking Number. NGC23-580

I am seeking immediate, written FPL dispute resolution regarding the enumerated issues herein.

My FOIA request sought expedited processing; therefore, this FPL dispute resolution must be expedited. FPL dispute resolution is not made moot by any subsequent appeal, or agency response thereto. FPL dispute resolution may ensue up to the time of litigation (if any).

Herein are potential violations of the law under multiple statutes. FOIA is not exempt from those statutes, which may be relevant to any judicial proceeding .

Addendum I is my Unauthorized Records Disposition Complaint to NARA regarding the destruction of records responsive to this request. Within Addendum I, Attachment A is the Agency's response to my Subject FOIA request, whereas Attachment B therein is my subject FOIA Request. NARA already has this record.

Addendum II is a screenshot documenting seeming fraud, violations of NARA's policies regarding posting and investigating unauthorized disposition complaints and thus also a violation of the Administrative Procedures Act in NARA failing to follow its own published policies.

All records are available on Muckrock.com at <https://www.muckrock.com/foi/united-states-of-america-10/expedited-foia-request-nara-23-g-muckrock-foia-advisory-committee-september-7-2023-chat-comments-151780/> .

All violations of the FOIA statute or any federal law or policy are subject to inclusion in a FOIA appeal. FOIA is not exempt from federal laws and the FOIA statute does not limit what may be included in an appeal.

RECORDS SOUGHT VIA FOIA - NARA 23-G Muckrock.

Expedited Appeal of September 10, 2023 FOIA Request NARA 23-G Muckrock. FOIA Advisory Committee September 9, 2023 Chat Comments.

See PDF.

Expedited FOIA Request NARA 23 -G. Muckrock. FOIA Advisory Committee September 7, 2023 Chat Comments
See PDF.

1. All records of the September 7, 2023 Webex Chat
 - 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. This includes Committee members present at the virtual meeting. Others present or participating in the virtual meeting, including all registered participants.
2. Records of all persons who registered via Eventbrite to attend the meeting.
3. 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).

1. Untimely Expedited Processing Denial.

- a. NARA failed to respond to my September 13, 2023 expedited FOIA request for expedited processing within ten days in violation of the FOIA statute. U.S. Code 552(a)(6)E(ii)(I).

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

- b. NARA failed to respond to my request for expedited processing within ten days in violation of NARA’s own FOIA regulation and therefor also the Administrative Procedures Act (Public Law 79–404, 60 Stat. 237; 5 U.S.C. §§ 551–559.). See NARA FOIA policy 36 CFR Part 1250.28(d) at [NARA FOIA regulations | National Archives https://www.archives.gov/foia/regulations](https://www.archives.gov/foia/regulations).
- c. NARA received my FOIA request on September 13, 2023 and did not issue a determination until September 27, 2023. Notwithstanding that NARA ultimately responded to my FOIA request, NARA’s failure to timely respond to my FOIA request for expedited processing is not made moot.

2. Expedited Processing Denial Basis.

- a. NARA must address every element of my request for expedited processing, as all elements are intertwined, and NARA did not do so.

- b. NARA did not address my request for expedited processing based on “eminent loss of due process rights.” (See paragraph 4 of my request for expedited processing). Therefore, NARA has no choice but to grant my appeal on that basis.
- c. As to “an urgent need to inform the public about an actual or alleged Federal Government activity,” my justification cites government misconduct and the (then) upcoming “December 1, 2022, where this will be a topic.”
- d. **EXPEDITED PROCESSING JUSTIFICATION.**

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 FOIA 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 apparent.
- 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).
- 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.

3. Expedited Processing – NARA Did Not Grant Any Expedited Processing in FY 2022.

- a. NARA’s Annual FOIA Reporting is knowingly false based on records I have placed into the public domain in written public comments to open FOIA meetings.
- b. Notwithstanding NARA’s willful false FOIA reporting- about which DOJ OIP has done nothing to correct and has been complicit in – NARA’s FY 2022 Annual FOIA report states that NARA did not process a single expedited FOIA request.
- c. This is a” pattern of practice” abuse.

4. Fee Waiver – Failure to Respond.

- a. NARA failed to respond to my request for fee waiver as mandated by the FOIA statute and NARA’s FOIA policy. Notwithstanding that NARA did not ultimately charge fees, the fact that NARA failed to respond to my request for fee waiver is not moot. NARA must therefore grant my appeal on this basis.

5. Untimely Claim of Unusual Circumstances.

- a. NARA unlawfully claimed unusual circumstances on October 12, 2023 after the twenty-working day mandatory time for response had already passed. NARA must grant my appeal on this basis. It is not moot as a matter of law.

6. Unusual Circumstances -Unlawful Failure to Describe Unusual Circumstances.

- a. NARA must describe what the alleged unusual circumstances are. Instead, NARA simply stated, “Your request falls within one of the “unusual circumstances” categories contemplated by the FOIA, 5 U.S.C. § 552(a)(6)(B)(iii) (I), (II) and (III), and we need additional time to respond to your request beyond the twenty business days provided by the FOIA statute.”

7. Unusual Circumstances - Unlawful Failure to Offer Limiting the Scope.

- a. In violation of the FOIA statute, DOJ FOIA Policy, NARA FOIA policy and the Administrative Procedures Act, NARA did not include in its notice asserting unusual circumstances an offer for the requester to limit the scope of the subject FOIA request.

8. Unusual Circumstances - Aggregating FOIA Requests; Individualized Tracking Numbers.

- a. NARA must assign individualized tracking numbers to every FOIA request even if aggregating for the purpose of determining unusual circumstances and NARA does not do so.

9. Unusual Circumstances and Processing Queues Unlawful Citation – -36 CFR § 1250.26 (f).

- a. NARA impermissibly states that: However, if complexity or unusual circumstances prevent NARA from making a decision within 20 working days, we place your request into a complex processing queue.
- b. The intent of “multitrack processing is not meant to circumvent the twenty-working day time standard.
- c. In violation of NARA’s FOIA policy and therefore the Administrative Procedures Act, NARA does not classify all FOIA requests taking more than twenty working days to process as COMPLEX. If this were true, NARA would not have any Simple FOIA requests taking longer than twenty working days to process. However, NARA’s FY 2022 Annual FOIA Report shows that on average NARA answers SIMPLE FOIA requests in 224 days.

10. False FOIA Reporting.

- a. My many written public comments – cited in my justification for expedited processing – document NARA’s massive false FOIA reporting with intent and DOJ OIP’s complicity in it.
- b. As one example related to “Simple” FOIA requests, NARA’s FY 2022 annual FOIA report states that the oldest FOIA requests is 2,516 days old, yet NARA’s FY 2021 Annual FOIA report states (365 days earlier) that the oldest request is 891 days old. The oldest request cannot go from 891 days old to 2,516 days old in a 365-day period. DOJ OIP knows this. An analysis of NARA’s raw data is warranted.
- c. In any litigation, the massive inaccuracy of NARA’s FOIA reporting will be a central issue.

11. Failure to Respond Within the Additional Ten Days of Asserted Unusual Circumstances.

12. Failure to Timely Issue IDA Letter in Twenty Working Days. NARA did not respond to my September 13, 2023 FOIA request until November 17, 2023. NARA must grant my appeal on this basis.

13. Inadequate Search and/or Unlawful Destruction of Records.

- a. NARA must address the inadequate search and/or unlawful destruction of records based on NARA’s official statement that it could not locate:

All records of the September 7, 2023 Webex Chat

- 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. This includes Committee members present at the virtual meeting. Others present or participating in the virtual meeting, including all registered participants.

14. Unlawful Destruction of Records. See Addendum I. NARA must address the matters therein. NARA unlawfully destroyed records of meeting participants. The Federal Advisory Committee Act mandates:

§10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(c) Detailed minutes of each meeting of each advisory committee 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 advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

15. Violation of the Federal Advisory Committee Act 5 USC Chapter 10

NARA unlawfully destroyed records of meeting participants. The Federal Advisory Committee Act mandates:

§10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(c) Detailed minutes of each meeting of each advisory committee 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 advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee

16. Status Issued after November 17, 2023 IDA States FOIA Request Still Open - False Official Statement.

- In a November 21, 2023 status update, after NARA had already issued an IDA response on November 17, 2023, NARA states:

“Currently, NGC23-580 is #497 in our complex FOIA queue. Our estimated time to completion is 41 months from today.”

17. Courtesy Copy of My FOIA Request – Withholding Records/Inaccurate Statement.

- In creating a materially false record for the court in nay litigation, NARA states that “A courtesy copy of your initial request has been appended to our response to you.” NARA is refusing to acknowledge that the agency copy of my FOIA request is an official record that I properly sought under FOIA and must be identified as such. NARA has previously failed to return a copies of my incoming FOIA requests and this inaccurate statement is designed to protect those other unlawful withholding of records.

18. Exemption B6 – Unlawful Withholding/Redactions.

- NARA has unlawfully withheld in its entirety under B6 the “Records of all persons who registered via Eventbrite to attend the meeting.”b. §10. Advisory committee procedures;

meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

- b. Whereas NARA is required to include this in its publicly posted meeting minutes per the Federal Advisory Committee Act.

§10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(c)Detailed minutes of each meeting of each advisory committee 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 advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

- c. Within those persons who registered via WEBEX and participated in the meeting are:

- FOIA Advisory Committee members whose identities are publicly posted.
- NARA and DOJ OIP staff whose identities are publicly posted.
- My registration, which NARA cannot redact under B6.

- d. "The presumption in favor of disclosure is as strong [under Exemption 6] as can be found anywhere in the Act." See *Wash. Post Co. v. HHS*, 690 F.2d 252, 261 (D.C. Cir. 1982).

- e. The Agency redacted names in my emails to them and in other records that are clearly already in the public domain.

As a general matter, “[o]ne can have no privacy interest in information that is already in the public domain, especially when the person asserting his privacy is himself responsible for placing that information into the public domain. See *Citizens for Responsibility & Ethics in Wash.*, 2012 WL 45499 at *6; see also Department of Justice, Office of Information Policy, Exemption 6 at 435, http://www.justice.gov/oip/foia_guide09/exemption6.pdf (“Unless the information has become ‘practically obscure’ . . . there is generally no expectation of privacy regarding information that is particularly well known or is widely available within the public domain.”).

- f. Government misconduct. Government misconduct is at issue regarding FOIA/PA processes, including the potential destruction of records. The public interest is particularly high where government misconduct is concerned. See *Trentadue v. Integrity Comm.*, 501 F.3d 1215, 1234 (10th Cir. 2007).

- g. NARA releases this same information in its meeting minutes for the Chief FOIA Officers Council, which contains many of the same participants as the FOIA Advisory Committee. See Chief Freedom of Information Act Officers Council Meeting Minutes – April 21, 2022 at <https://www.archives.gov/ogis/about-ogis/chief-foia-officers-council/mtg-min-2022-04-21>.

19. No articulated Foreseeable Harm.

- a. The 2016 amendments to FOIA^[1] added a foreseeable harm provision to the statute. After its enactment, "the government's successful invocation of a FOIA exemption cannot justify its withholding of exempt material without a more particularized inquiry into what sort of foreseeable harm would result from the material's release.

5 U.S.C. § 552(a)(8)

- (A) An agency shall—
 - (i) withhold information under this section only if—
 - (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or
 - (II) disclosure is prohibited by law
- b. NARA OIG did not articulate foreseeable harm for each of its withholdings/redactions as mandated by the FOIA statute.
- c. This is extremely important because as articulated on DOJ OIP’s website Vol. XV, No. 2 under OIP Guidance “Applying the foreseeable Harm Standard Under Exemption 5” DOJ states:

“In short, it be shall the policy of the Department of Justice to defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption.”

FOIA Update: OIP Guidance: Applying the "Foreseeable Harm" Standard Under Exemption Five | OIP | Department of Justice , <https://www.justice.gov/oip/blog/foia-update-oip-guidance-applying-foreseeable-harm-standard-under-exemption-five>
- d. *See also* D.C. Circuit: FOIA’s ‘foreseeable harm’ standard has teeth. Analysis by the Reporter’s Committee for Freedom of the Press, Adam. A. Marshall July 26, 2021 at <https://www.rcfp.org/dc-circuit-foreseeable-harm-ruling/>.
- e. *See* Foreseeable Harm Discussion in the December 1, 2022 FOIA Advisory Committee meeting transcript by Anne Weismann and Ryan Mulvey at <https://www.archives.gov/ogis/foia-advisory-committee/2022-2024-term/foiaac-mtg-transcript-2022-12-01>.
- f. *See* Hammond Public Comments. Document Cloud Alphabetical (25 per page on web, not alphabetical) at <https://www.documentcloud.org/app?q=%2Buser%3Arobert-hammond-106693%20>
 - Foreseeable Harm Standard Errantly Cited - Proposed B5 Model Letter
 - Foreseeable Harm Standard. DOJ OIP Misinformation + Navy Misconduct and Idiocy
 - Foreseeable Harm Standard Vanita Gupta. November 3, 2022 CFO Meeting
 - Sued into Oblivion. Foreseeable Harm Standard

20. Improperly Withholding Records Generally. 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).

Appellate Authority Action Sought. I am seeking that the Appellate Authority:

1. Process my expedited appeals in the order in which they were received.
2. Address each of the elements and sub-element of my request and the basis of my appeal fully and separately and on the facts at the time of the appeal,
3. Grant each element of my appeal;
4. Remand my FOIA request back to the Agency for direct reply to me (with proper FOIA processing calculations); and,
5. Grant me new appellate rights following a subsequent reply by the Agency. Do not simply release records without restoring my appeal rights.
6. Grant me new appellate rights for any additional appellate basis for denial of any portion of the records sought.
7. Provide response via email with cover letter and record account via Muckrock.com.

With respect,

/s/

Robert Hammond
Requester
Whistleblower

Addendum I. Unauthorized Records Disposition Complaint to NARA

- Attachment A is the Agency's response to my Subject FOIA request
- Attachment B therein is my subject FOIA Request.

Addendum II. Screenshot of NARA Posted UD Complaints

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) 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) 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)

From: perseverance2013@aol.com <perseverance2013@aol.com>

Sent: Tuesday, December 5, 2023 12:00 PM

To: 'execsec@nara.gov' <execsec@nara.gov>

Cc: 'perseverance2013@aol.com' <perseverance2013@aol.com>

Subject: FW: NARA Unauthorized Disposition (UD) Complaint ICO September 7, 2023 FOIA Advisory Committee Meeting

Importance: High

Who is acting AOTUS?

Who is Acting FOIA Appellate Authority?

From: perseverance2013@aol.com <perseverance2013@aol.com>

Sent: Tuesday, December 5, 2023 10:24 AM

To: unauthorizeddisposition@nara.gov; archivistoftheunitedstates@nara.gov; colleen.shogan@nara.gov

Cc: jay.trainer@nara.gov; laurence.brewer@nara.gov; debra.wall@nara.gov; brett.baker@nara.gov;

perseverance2013@aol.com; FOIacompliance@gmail.com

Subject: NARA Unauthorized Disposition (UD) Complaint ICO September 7, 2023 FOIA Advisory Committee Meeting

Importance: High

[Best viewed as HTML. *See* PDF for full complaint, submitted upon information, belief, and records available to me.]

December 5, 2023

Subject: NARA Unauthorized Disposition (UD) Complaint ICO September 7, 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 September 7, 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- 580) 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.

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: • 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

Attachments

- A. NARA FOIA Response to NGC23-580
- B. Hammond FOIA Request NGC23-580
- 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