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

December 1, 2021

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

I. ALLEGATIONS.

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

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

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

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

II. ACTION SOUGHT.

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

III. IDENTIFICATION OF RECORDS.

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

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

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

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

Public Law No: 114-185 excerpts:

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

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

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

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

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

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

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

I am respectfully seeking:

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

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

public via WEVEX)

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

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

V. APPLICABLE RETENTION SCHEDULE, NARA GRS 4.2 Item 20

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

32 CFR §286.6 Preservation of records.

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

VII. 36 CFR § 1230.3

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

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

a. FEDERAL AGENCY NOTIFICATION.—

The head of each Federal agency shall notify the Archivist of any actual, impending, or

threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency, or from another Federal agency whose records have been transferred to the legal custody of that Federal agency.

b. **ARCHIVIST NOTIFICATION.**—

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

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

IX. Public Law No: 114-185

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

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

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

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

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

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

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

With my respect,

/s/

Robert Hammond

Whistleblower

Attachments:

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

- NARA 22-S. 11.17.2021 CFO Council Chat Comments