

# Access to United States Government Records at the U.S. National Archives and Records Administration

**DAVID J. MENGEL**  
**Chief, Special Access and FOIA Staff**  
**National Archives and Records Administration**

*“In the Rotunda of the National Archives Building in Washington, DC, the Declaration of Independence, Constitution and Bill of Rights are on display for anyone who wishes to see them. The words on these carefully preserved parchments have shaped our Government and our country for more than two centuries and they capture forever the hopes, dreams, and aspirations the founders of our democracy had for its citizens. But it is beyond the walls of the Rotunda that most of the stories of America can be found in records that document history, the business and actions of Government, and the rights and entitlements of individuals. It is in our offices, regional archives, records centers, Presidential Libraries, and research rooms where the work of our mission is planned and carried out every day across the country.”*<sup>1</sup>

—Allen Weinstein  
Archivist of the United States

The United States National Archives and Records Administration (NARA) is the custodian for the permanently valuable records created by or for the Federal Government, that document the rights of American citizens, the actions of Federal officials, and the national experience. Our holdings include Federal records from the Legislative, Executive and Judicial branches; Presidential materials from presidential administrations dating back to President Herbert Hoover; and donated materials collected from a wide variety of individuals who worked for or interacted with the Federal government. These materials document some of the most important civil, military and diplomatic events that have occurred in the United States and around the world. Some of the oldest materials in NARA are on parchment and date back to the founding of the United States. The main Archives building, and the Archives II facility in College Park, Maryland alone preserve, protect and provide reference on “six billion pieces of paper and over eleven million still pictures; 112,469 reels of motion pictures and 236,557 sound and video recordings; 2,760,890 maps and charts; 3,639,571 architectural and engineering plans; and 20,687,173 aerial photographs.”<sup>2</sup>

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<sup>1</sup> A quote by Archivist of the United States Allen Weinstein from the “Preface from the Archivist” in the NARA strategic plan “*Preserving the Past to Protect the Future: The Strategic Plan of the National Archives and Records Administration 2006-2016.*” The National Archives and Records Administration 2006.

<sup>2</sup> “National Archives and Records Administration (NARA) Fact Sheet”, March 13, 2007. NARA Office of Public Affairs. Available on the internet at <http://www.archives.gov/press/factsheet.html>.

Every day government agencies create new records that might be transferred to the National Archives. Of all the documents and materials created in the course of business conducted by the Federal government, only 1%-3% are so important for legal or historical reasons that they are legally transferred to NARA kept by us forever. The National Archives and Records Administration (NARA) is the Government agency that preserves and maintains these materials, and makes them available to the public.

The primary goal of NARA is to provide the public with access to as much information as possible while preserving these records for future generations. Each year, our staff serves the public with billions of publicly available textual documents, photographs, video and audio recordings, drawings, maps, treaties, posters, and other items. These materials are available for researchers to use in-person at our facilities around the country. While the majority of our holdings are declassified and open to the public, an estimated 5 percent are closed to research due to classified national security concerns or other statutory restrictions. Access to historical materials is perhaps the most complex archival issues faced by NARA today. To provide access to historical records from all three branches of the Government and Presidential records, our staff reviews records under access regulations that can be very different depending on the collection. While the categories of records have some restrictions in common, like national security and privacy, they all have restrictions and access regulations that are unique. To understand all the intricacies of these laws requires extensive training and years of hands on experience. For example, it takes three days for the Department of Justice to train reviewers on the basics of the Freedom of Information Act. While some agencies are affected by a few of these regulations, NARA must review for access under all of them.

One of the foundations of the U.S. democracy is the belief that government must answer to the people. The only way for the public to hold government officials accountable for their actions is for the government to be as open as possible. So how does the public gain access to information created and collected by the different branches of the Federal government? What option does the public have if the government says no to providing access to information? To answer these questions for NARA holdings we must look at the types of records in our custody and briefly describe how they are affected by access regulations.

## **EXECUTIVE BRANCH RECORDS**

Executive branch records include all agencies of the Federal Government that fall organizationally under the President of the United States. This includes Federal records created in the Executive Office of the President, all Federal agencies, and many independent boards, commissions and investigative bodies. A large percentage of the closed Executive branch records contain information that has been designated as national security classified. In addition to national security classified information, these records can contain highly sensitive statutory, personal privacy information, business proprietary

and investigative information. Protecting national security, statutory and personal information are the highest priorities for NARA access professionals.

The public can request access to closed executive branch information in one of two ways, the Freedom of Information Act (FOIA) and the access provisions of Executive Order 12958, as amended (EO 12958). While these laws require agencies to review their records, they do not require agencies to disclose all sensitive information. Information that falls within the categories allowed by the law can be exempted from public release.

### **The Freedom of Information Act (5 U.S.C. 552)**

The Freedom of Information Act (FOIA) was enacted by Congress in 1966 to provide U.S. citizens with a legal process by which they could request access to government information that is not publicly available. Until then the public had the right to challenge the workings of the government, but no effective legal authority to back up that right. Congress enacted the FOIA to ensure that the public has a legal avenue to challenge the government to release information it collects and creates. Two interesting things have occurred since the FOIA was enacted. First, it has become the basis for access laws throughout the U.S. and around the world. Second, it continues to evolve as new records access issues develop.

The FOIA is constantly being amended, updated and refined. While innovative, the original FOIA law had little legal authority to back it up, and provided requestors with no method to appeal government decisions. Following the Watergate scandal of the early 1970s, Congress pushed through amendments to the FOIA in 1974 overriding President Ford's veto. These amendments set up the current review and appeal processes that give the public the ability to challenge government denial decisions.

In 1996, due to the increase in electronic records, the growth of the internet and a court decision stating that electronic records are subject to the FOIA, Congress passed the e-FOIA amendments. These amendments required agencies to review electronic records under the FOIA, provide researchers access to records electronically if they were available in that format, and create online FOIA reading rooms to post frequently requested records.

In December 2005, President Bush issued E.O. 13392, mandating all agencies to review their FOIA programs and develop plans to improve customer service and the FOIA review process. Under the direction of the Department of Justice, agencies developed FOIA improvement plans to address inadequacies in their programs. This new mandate requires agencies not only to report their annual FOIA numbers, but to report annually on the progress of their improvement plans.

Simply put, the FOIA gives members of the public the right to request access to any document collected or created by the Executive Branch. Under the FOIA, government agencies must search for, perform a page-by-page review of, and provide as much information as possible to the public unless it falls under the very specific restrictions

outlined in the law. Should a government agency choose to withhold information from the public under the FOIA it must cite one of the nine exemptions<sup>3</sup> established by the law. If an agency denies the information the requestor then has the right to appeal the agency's decision directly to the denying agency. Should the agency deny the appeal, the requestor may then take legal action against the government through the U.S. District Court system. The court collects information and makes a final ruling on whether or not the documents can be released.

Since NARA is the legal custodian of agency records determined to be permanent, FOIA exemptions apply to the historical records at NARA as well as our administrative records. To request access to any closed historical or administrative records in NARA custody, researchers need only cite the FOIA when submitting their request. NARA staff will locate, review, and if possible release the requested documents.

### ***Searching for Records in NARA Custody Under FOIA***

Searching for responsive records can be the most difficult aspect of responding to FOIA requests for historical records in our custody. Often researchers perform little or no research prior to submitting a request. We frequently receive very general or vague

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<sup>3</sup> The nine FOIA exemptions cited in section (b) of the FOIA are:

**(b)(1)** (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

**(b)(2)** related solely to the internal personnel rules and practices of an agency;

**(b)(3)** specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

**(b)(4)** trade secrets and commercial or financial information obtained from a person and privileged or confidential;

**(b)(5)** inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

**(b)(6)** personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

**(b)(7)** records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

**(b)(8)** contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

**(b)(9)** geological and geophysical information and data, including maps, concerning wells.

requests, such as I want “everything you have on Vietnam”, or “any and all information on my relative”. NARA can only expend limited resources to respond to broad requests of this nature, and we are not staffed to perform substantive research for requests. Experienced reference archivists make every effort to work with researchers to narrow down requests or provide them with the opportunity to perform their own search of collections. Despite a provision in the FOIA that allows agencies to charge search fees, NARA does not charge search fees. We only charge reproduction fees for any released materials.

### ***FOIA Review of Classified Information***

If information is determined to be national security classified or statutory, NARA has very limited authority to release these documents to the public. Processing access requests for classified records is traditionally the cause of lengthy backlogs. In limited cases NARA staff can sanitize or remove sensitive information, and provide the researcher with the unclassified or declassified information. However, in the majority of cases, NARA access reviewers provide copies of classified documents to agency reviewers for a declassification review. Once all appropriate agencies have reviewed the document and sent declassification instructions to NARA, the staff makes public use versions available to the public. The coordination process can take several years.

### ***FOIA Review of Privacy Information***

Once the records have been identified and determined to be closed to the public for reasons other than national security, NARA access reviewers read each page to determine if any information falls under the other eight FOIA exemptions. This can be a long and tedious process. NARA reviewers have more leeway to make access decisions on information that falls under the remaining exemptions. Staff reviewing records for these exemptions must be able to balance the public’s need to know versus the laws protecting sensitive information. As is required under the FOIA, NARA access reviewers sanitize documents by masking or removing the sensitive information to provide the researcher with as much information as possible.

By far the most common type of unclassified or statutory information that NARA reviewers identify is personal privacy. Compounding our review is the very real concern, in this age of instant access to information, of identity theft. As more and more records become available electronically, the ability for anyone around the world to access this information makes protecting personal information extremely difficult. NARA access reviewers make every effort to protect current personal information, however, the volume of our holdings makes it impossible to identify every bit of private information. Other types of information commonly reviewed and withheld under the FOIA are investigative information, business proprietary information and records of concern.

### ***Records of Concern***

In the aftermath of the terrorist attacks on September 11, 2001, most Federal agencies began to re-examine their open records to determine if any information could aid terrorists or their supporters to attack the U.S. or its citizens. NARA took this duty very

seriously and performed a systematic review of collections that may have contained information that could allow terrorists to:

1. Steal a person's identity through access to names with social security numbers;
2. Target or plan a terrorist attack on a public site;
3. Exploit information about security, evacuation, and other emergency planning to maximize damage following an attack; and
4. Obtain information about potential weapons for purposes of destruction.

After initially identifying a large volume of records, staff was able to identify only those documents that specifically fell under these categories. A total of approximately one tenth of one percent of our holdings were withdrawn under this program. Review under the ROC program was completed systematically, meaning potentially sensitive records were withdrawn in their entirety. Should anyone request these records under FOIA, NARA staff will perform a more detailed review that will no doubt result in the release of additional information.

### **Executive Order 12958**

To ensure that sensitive national security information is protected, President Richard Nixon issued first Executive Order in 1972. Executive Order 11652 outlined a new system for classifying and declassifying national security information.<sup>4</sup> That original order has been superseded three times since 1972. Currently, access to classified records of the United States is governed by Executive Order 12958, as amended. This order was issued by President William J. Clinton in 1995, and later amended by President George W. Bush. Under this order, classified records can be declassified through three different methods, systematic review, mandatory review and automatic declassification.

#### ***Automatic Declassification***

By far the most significant of the three declassification methods is the provisions for automatic declassification. While the concept of automatic declassification is not new, establishing a date upon which all classified information is automatically declassified (unless specifically exempted) is unique to this order. Under the order, any classified information must be reviewed and exempted, or it will be automatically declassified in January of the year the oldest record in the collection becomes 25 years old. Agencies were forced to complete a page-by-page review their historical records to identify any information that was still sensitive. Not only were they required to identify their own information, they must also identify other agency equities that appeared in their records.<sup>5</sup> Identified classified information that was not exempted or referred by the originating agency prior to the automatic declassification deadline is automatically declassified.

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<sup>4</sup> Through E.O. 11652 in 1972, President Nixon also established the Mandatory Review process, which allowed the public to request access to information that had been classified for more than 10 years.

<sup>5</sup> In EO 12958, identification of other agency equities is described as the referral process. Agencies were given an extra three years, until January 2009, to review their referrals identified by other reviewers.

The order also makes it more difficult for agencies to withdraw or reclassify information that was declassified. Should an agency determine its information was improperly declassified, any reclassification action must be made by a senior agency official and they must notify Information Security Oversight Office (ISOO) of their action. This prevents first line access reviewers from simply stamping and withdrawing documents with no notification or justification.

After several extensions a firm automatic declassification was set, and, on January 1, 2007, the automatic provisions of the E.O. took effect. Millions of pages of classified information were declassified overnight. Unfortunately, the National Archives has been unable to keep up with the massive amount of records that were declassified. While millions of pages are declassified, NARA is still working to remove the exempted information from our collections and make these huge volumes of material available to the public. Despite pulling resources from other archival functions, we have not yet processed the massive volumes of textual material for public release.

While NARA continues to process the results of the original review, the clock is running toward the next deadlines. Automatic declassification is an annual event, more records will turn 25 years old this year and must be reviewed before they are automatically declassified on January 1, 2008. In addition, agencies have already begun the process of the reviewing referrals in preparation of the January 2009 referral deadline.

For now these deadlines only refer to classified textual materials. The order created a separated deadline for special media holdings. On January 1, 2011, the deadline for automatic declassification of special media goes into effect. This is already proving difficult for NARA. NARA is the custodian of all types of media including, film, audio recordings, video tape, photographs, maps and electronic records. Many of these records are on outdated or obsolete formats. NARA has just begun to address this issue. Over the next two years we must ensure we can access the different classified media types, and establish review procedures agencies can use to identify information that is still classified.

### ***Mandatory Declassification Review***

Executive Order 12958 also contains Mandatory Declassification Review (MDR) provisions that give the public the right to request access to specific classified documents. These provisions go beyond the boundaries of the FOIA in that classified information in Federal, Legislative and donated records can be requested. If a requestor submits an access request under the MDR provisions of the order, agencies are required to review the requested document(s) for declassification. Agencies can still deny access to the requested information, but must be able to cite one of the nine categories established under the order<sup>6</sup>.

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<sup>6</sup> E.O. 12958 has two lists of classification authorities, one for records under 25 years old and the other for records older than 25 years old. Where as the categories for information under 25 years are more general, the exemptions standards for information over 25 years are more difficult meet. Since most classified NARA records fall into the over 25 year old category, the following restrictions are applied to our 25 year old records under the EO:

Should the requestor wish to appeal a denial decision, the order establishes appeal procedures. Agencies are required to give the requestor the opportunity to appeal directly to the agency. As a final appeal authority the order also created the Interagency Security Classification Appeals Panel (ISCAP). This group is a Presidential body that consists of representatives from the Departments of Defense (DOD), State (DOS), Justice (DOJ), the Central Intelligence Agency (CIA), NARA, and chaired by the National Security Council. The group is supported by the Interagency Security Oversight Office (ISOO), whose director acts as the Executive Secretary. The Panel reviews appeals, makes declassification decisions and votes to release additional information or support the denial agency's original decision.

Processing requests for classified information under the MDR provisions is very similar to processing classified records under the FOIA. NARA can not declassify agency information without specific written guidance from the originating agency. NARA staff is forced to make copies of any documents and send them to agencies for review and declassification. Should a document contain information created by more than one agency, each agency must have the opportunity to review the information. In these cases NARA acts as the agency that coordinates a response to the requestor. Once all decisions have been received on a document, NARA staff will release the entire document, deny the document at the request of the equity agency, or create a redacted copy for the requestor. The coordination process can add years onto the declassification process.

## **PRESIDENTIAL RECORDS**

In the past, many Presidential papers and records had been lost, destroyed, sold for profit, or ruined by poor storage conditions. President Franklin D. Roosevelt, on the advice of noted historians and scholars, established a public repository to preserve the evidence of the Presidency for future generations. Beginning a tradition that continues to this day, he

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*25X1: reveal the identity of a confidential human source, or a human intelligence source, or reveal information about the application of an intelligence source or method;*

*25X2: reveal information that would assist in the development or use of weapons of mass destruction;*

*25X3: reveal information that would impair U.S. cryptologic systems or activities;*

*25X4: reveal information that would impair the application of state-of-the-art technology within a U.S. weapon system;*

*25X5: reveal actual U.S. military war plans that remain in effect;*

*25X6: reveal information, including foreign government information, that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;*

*25X7: reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other protectees for whom protection services, in the interest of the national security, are authorized;*

*25X8: reveal information that would seriously and demonstrably impair current national security emergency preparedness plans or reveal current vulnerabilities of systems, installations, infrastructures, or projects relating to the national security;*

*25X9: violate a statute, treaty, or international agreement.*

raised private funds for the facility and then turned it over to the United States government to be for operated through the National Archives.

Congress legislated this policy, passing the Presidential Libraries Act in 1955 (amended in 1986). The Presidential Library system is composed of eleven Presidential Libraries and the Nixon Presidential Materials. These facilities are overseen by the Office of Presidential Libraries, in the National Archives and Records Administration. Presidential Libraries are not libraries in the usual sense. They are archives and museums, bringing together in one place the documents and artifacts of a President and his administration and presenting them to the public for study and discussion without regard for political considerations or affiliations.

Access to Presidential records is governed by three different Congressional Acts, the Presidential Records Act of 1955, the Presidential Recordings and Materials Preservation Act and the Presidential Records Act of 1978, as amended. Records covered under each Act have different legal status, and therefore are governed by different access regulations.

### **The Presidential Libraries Act of 1955 (44 U.S.C. 2108)**

The Presidential Libraries Act was passed by Congress in response to the desire of President Roosevelt to establish an institution of access and learning to house his presidential papers. Prior to this law, Presidential papers were taken by the departing President and in many cases were lost, damaged or sold to private collectors. The Presidential Libraries Act established the Presidential Libraries System. These libraries are also called donor libraries since the personal papers of the President were donated to the government, which continues to preserve the papers and provide access. Access to these materials is controlled by restrictions cited by the President, or his family, in the deed of gift. All deeds allowed for the protection of sensitive or classified government information. Researchers can request access to national security information through the MDR provisions of EO 12958.<sup>7</sup>

### **The Presidential Recordings and Materials Preservation Act of 1974 (44 U.S.C 2111note)**

In the wake of the Watergate scandal, the U.S. Congress passed the Presidential Recordings and Materials Preservation Act to protect the Nixon Presidential materials from possible destruction. This law seized the Nixon materials and set up guidelines for providing access to the public. This was a significant change from access regulations established for the donor libraries. This law was the precursor to a radical change in the

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<sup>7</sup> Papers documenting presidential administrations from President Herbert Hoover through President Jimmy Carter (excluding Nixon Presidential materials) are donated historical materials transferred to the National Archives and Records Administration pursuant to 44 USC 2111. Nixon Presidential historical materials are governed by the Presidential Recordings and Materials Preservation Act (PRMPA) (44 USC 2111 note) and are also not subject to FOIA. The Presidents donated these materials under deeds of gift that outline the terms of access that apply to these records. Each library maintains a very small number of Federal records that are subject to the provisions of the Freedom of Information Act.

legal status of Presidential records. As with donor libraries, access to classified information can be requested through a MDR request. Under the law, the archivists must send out notification letters to the public (through a notice in the Federal Register), incumbent President and former administration officials who asked to be notified. These individuals have the opportunity to review any materials and object prior to release. Despite the limited scope of this law, it had an important effect on the legal status of Presidential records. The access provisions established in this law would become the basis for the Presidential Records Act of 1978.

### **The Presidential Records Act of 1978 (44 U.S.C. 2201-2207)**

Following the PRMPA, Congress passed the Presidential Records Act (PRA). This new law officially changed the status of most Presidential records from personal papers to public records, and established a new statutory structure under which Presidents must manage their records. Specifically, the Presidential Records Act:

- Defines and states public ownership of the records.
- Places the responsibility for the custody and management of incumbent Presidential records with the President.
- Allows the incumbent President to dispose of records that no longer have administrative, historical, informational, or evidentiary value, once he has obtained the views of the Archivist of the United States on the proposed disposal.
- Requires that the President and his staff take all practical steps to file personal records separately from Presidential records.
- Establishes a process for review and public access to these records. Specifically, the PRA allows for public access to Presidential records through the Freedom of Information Act (FOIA) beginning five years after the end of the Administration, but allows the President to invoke as many as six specific restrictions to public access for up to twelve years. The PRA also establishes procedures for Congress, courts, and subsequent Administrations to obtain special access to records that remain closed to the public, following a thirty-day notice period to the former and current Presidents.
- Requires that Vice-Presidential records are to be treated in the same way as Presidential records.

The PRA went into affect in 1981, and covers all Presidential records from the administration of President Ronald Reagan to the present.

In November 2001, President Bush issued Executive Order 13233, which serves as the implementing directive for the PRA. This order superseded previous directives and expands on the incumbent President's authority to review materials proposed for release. Under this order, NARA must provide the incumbent and former Presidents with copies of documents proposed for release, and allow 90 days for review of these materials. Based on this review, either President can deny access to any records deemed to fall under the category of privileged.

In conjunction with change in legal status, PRA records became subject to review under FOIA. This change makes it easier for the public to request access to PRA records, however, it has made access review much more difficult for library staff. The fact that these records are very recent in nature makes review extremely complex and difficult. Compounding the complexities of review is the issue of workload. Almost immediately after the records become subject to the FOIA, the PRA libraries are inundated with requests. This has led to extensive backlogs that will take years to overcome.

## **LEGISLATIVE RECORDS**

The National Archives is the custodian for the Legislative records of the United States Congress. These records include the historically valuable records of the U.S. Senate, and the U.S. House of Representatives, legislative commissions, and legislative support agencies. The House and Senate records consist of the official committee records, not the personal papers of members. While these records are transferred to the physical custody of NARA, the House and Senate retain legal custody.

Congressional records transferred to NARA are subject to restrictions established by each chamber of Congress. House Rule VII allows public access to unpublished committee records after 30 years. Senate Resolution 474 allows public access to unpublished Senate committee records after 20 years. Investigative committee records that may contain personal privacy and law enforcement information may be closed to the public for 50 years. Having said this, the House and Senate make much of the information they create open immediately, including transcripts of open hearings and published reports. Appeals of House records are made to the Clerk of House, while appeals for Senate records are made to the committee that created the records.

Legislative support agencies determine their access restrictions independent of the House and Senate. Legislative support agencies, such as the Government Printing Office and Congressional Budget Office, often make their records immediately available to the public upon transfer. The 9/11 Commission, a legislative Commission, transferred their records to the National Archives with guidance to open as many records as possible to the public after a five year period, January 2009. Many of the 9/11 Commission records were classified by Executive Branch agencies and must be declassified under the provisions of EO 12958. Some may have information that is subject to NARA general restrictions that generally mirror the FOIA.

## **JUDICIAL RECORDS**

Judicial records are those created or collected by all levels of Federal Courts as the result of judicial actions, often including exhibits offered as evidence. Judicial records at NARA include records of the District Courts of the United States, U.S. Court of Claims, U.S. Commerce Court, Court of Claims Section, U.S. Supreme Court, U.S. Court of Appeals,

U.S. Tax Court, U.S. Court of International Trade, and , the Administrative Office of the United States Courts. There is high public interest in the records of Bankruptcy Court, and regional Court Case Files, which are located at our Regional Records Services Facilities around the country.

### **Access to Judicial Records**

Access to judicial records at the NARA does not follow any of the established access laws. As with the records of Congress, the U.S. Courts determine public access to their records. Generally, any record used in open court is considered open to the public. At NARA we release any information that was entered into evidence or presented in open court. The Courts, however, have the option of sealing the records used or created during the course of their work. Judicial records can only be unsealed by the Court that ordered the original seal. The only way for the public to gain access to sealed Judicial records is to petition the Court for access. In rare cases the Court has agreed that the public's need to know outweighs the need to protect the records and will remove the seal.

The most sensitive Judicial information in NARA custody comes from grand jury investigations. Any information obtained by a grand jury is sealed under the Federal Rules of Criminal Procedure, or by the court and can only be unsealed by petition. While grand jury information is not generally difficult to identify, it occasionally turns up in non-Judicial collections. Not surprisingly Grand Jury information is most frequently found in Department of Justice records and the records of Independent Counsel investigations. Unless we can show that grand jury information was released to the public through an authorized disclosure, NARA reviewers strictly protect this information.

### **SUMMARY**

NARA access reviewers are committed to making as many of our holdings available to public as is legally possible. As you can see we have a large volume of records and many different access laws to consider before we can release information to the public. To complete this process we have access reviewers who are experts on the various access laws, and the records being reviewed. Reviewers must always be able to balance the needs of the public good against the law that requires them to protect the information. This work is very difficult, tedious and in some cases performed under intense pressure. Reviewers are frequently asked to complete detailed page-by-page review of large volumes of material in very short periods of time. Despite all these hurdles, it is our job as NARA staff to make every effort to meet the needs of the American citizens.

The National Archives as a whole is committed to access on all levels. We are currently expanding our use of the web to make records available to public all across the country and around the world. On our website [www.archives.gov](http://www.archives.gov) researchers can access the Archival Research Catalog (ARC), which contains information on over 50% of our archival holdings, and the Access to Archival Databases (AAD) online resource, which

gives the public access to a small selection of historic databases preserved permanently by NARA. We are continuing to look toward the future through the development of the Electronic Records Archive (ERA). ERA will allow NARA to ingest and preserve records independent of their original format, and make these records available to the public over the internet. Side by side with these electronic initiatives, NARA staff continue to work with other agencies to ensure that we can preserve, protect and serve to the public, the permanently valuable records of the United States Government.

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***About the author:*** DAVID J. MENGEL has worked for the National Archives and Records Administration since 1991. Prior to his current assignment, Mr. Mengel was the supervisory archivist in charge of textual processing, textual reference, and tapes review for the Nixon Presidential Materials Staff. He is currently the chief of the Special Access and Freedom of Information Act (FOIA) Staff. His office is responsible for tracking all FOIA requests for archival materials in the Office of Records Services, Washington, D.C., and for processing FOIA requests for closed records. This office is also the custodial unit for the John F. Kennedy Assassination Records Collection, records of Independent and Special Counsels, and other collections with special access restrictions. His duties include representing NARA as the liaison to the Interagency Security Classification Appeals Panel (ISCAP).