

Draft Document
Prepared for Discussion
by the
Society of American Archivists
Committee on Advocacy and Professional Development
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Issue Brief: Strengthening of Authority of the National Archives and Records Administration [NARA]

SAA Position

The Society of American Archivists encourages and supports an increase of statutory authority granted to the National Archives and Records Administration that will more effectively allow NARA to carry out its crucial responsibility for the proper management of federal records. SAA further recommends that federal legislative and judicial records not currently under the authority of the Federal Records Act be placed thereunder.

1. The Congress should pass, and the President should sign, legislation that gives the NARA Inspector General authority and resources to investigate violations of records management laws and policies. Such legislation should also set appropriate penalties – levied appropriately according to the degree of authority and responsibility granted to the offender - for noncompliance with existing records management laws and policies. Penalties shall be levied by the Department of Justice upon recommendation by NARA.
2. NARA should be provided the resources to carry out regular audits of the records management practices of federal agencies to determine their level of compliance with existing laws and regulations. Agencies should be audited at least once every five years to ensure compliance.
3. Such legislation should include language permitting private citizens to initiate judicial proceedings against agencies and organizations in specific cases where federal records laws are not being appropriately followed or enforced.
4. Additional legislation should be passed that strengthens the definition of “public papers” of members of Congress and federal judges as property of the U.S. government. NARA should be provided the authority and resources to properly oversee the disposition of these records.
5. All federal government employees and contractors should be required to complete basic records management training on an annual basis.

Expansion on the Position

1. Although the National Archives and Records Administration, under Title 44, Chapter 21, United States Code, is the official institution responsible for the proper management of federal records, it lacks sufficient authority to enforce existing federal records laws. Instead, NARA is obliged to rely upon federal agency adherence to NARA's records management training and policies and proactive internal enforcement on the part of federal agencies. The current system or relying on agency compliance without any enforcement authority for NARA is ultimately untenable, and has resulted in numerous gaps in the documentary record of the United States government.

SAA believes that in order to carry out its vitally important functions, NARA must be vested with statutory authority to investigate potentially illegal activities related to records creation, retention and management carried out by any and all federal agencies. As the investigative arm of NARA, the Office of the Inspector General should be provided the resource to investigate and determine when such violations occur. Approved penalties for violations of federal records laws and regulations should be strengthened and NARA's determination as to whether such violations have occurred should be binding.

2. Despite records management laws and regulation having been on the books for decades, non-compliance with the letter and spirit of accountability and transparency, which are inherent in these statutes, are regular occurrences. Currently agencies are required to assess their own records management posture and report their findings to NARA, which in turn issues a consolidated report. However, after five years of self-assessments, the 2013 report indicates that 71% of Executive agencies are at a moderate to high risk in compromising the integrity of public records. Leaving agencies to self-regulate their compliance with existing regulations has repeatedly proven to be ineffectual, especially given the lack of resources agencies often dedicate to their records management operations. Furthermore, self-regulation leaves information professionals, some of whom are SAA members, subject to political expediency and pressure from agency leadership. A proactive outside audit authority, as represented by NARA, would place agency leadership on notice that their records management decisions and practices will be reviewed and assessed against existing regulations. Furthermore, regular audits would highlight deficiencies and allow agencies to address any shortcomings before they become critical problems affecting the historical record. NARA should be provided the necessary resources to carry out this expanded function.

3. Because the United States Government answers to the American people and protects their liberties and interests, the people have a vested interest in ensuring that the documentary record of their government is complete and accurate, and that public officials follow the law. Because of this, SAA believes that any legislation which expands NARA's records authority must also allow private citizens to sue the government in order to ensure that agencies are not violating federal records law. When a public official or agency willfully disobeys that law, they prevent citizens from having a full and proper understanding of what the government does in their name.

Therefore, a citizen has the right and standing to sue the government and force compliance with the law.

4. It is a dissonance in American federal government that the public papers of the President of the United States are considered legal property of the National Archives and Records Administration, whereas Senators, Representatives, Supreme Court Justices, and other federal judges are permitted to deposit the records from their government offices (which document government activities just as much as do those of Presidents) in a repository of their choosing. This loophole allows these collections of crucially important public records to potentially evade free and open public access. In 1977, the National Study Commission on Records and Documents of Federal Officials stated in its final report that “personal papers” should be narrowly defined to include only those materials of a purely private or non-official character. The Commission further recommended that the public papers of members of Congress and the Judiciary should be the property of the United States. It is time to act on all the Commission’s recommendations relative to the Legislative and Judicial branches. In order to achieve consistency and to ensure that all branches of the government are adequately and equally documented, SAA believes that all government records hitherto **not** under the authority of federal records law should be placed under that authority. NARA should be vested with explicit authority and resources to properly oversee the disposition of these records.

SAA recommends that categories of records that currently enjoy exemptions from the Freedom of Information Act continue to do so once placed under NARA’s supervision.

5. Currently there is no requirement that employees receive regular, standardized records management training across all three branches of federal government. The 2012 OMB Memorandum on Managing Government Records indicates Executive agencies must establish records management training but is silent on methods and procedures. This has resulted in inconsistent and ineffective efforts, with some agencies doing better than others¹. Therefore, it is unrealistic to expect all government employees to understand their responsibilities much less be equipped to comply with records management statutes and policies. Furthermore, the lack of regular, ongoing training, is inconsistent and incompatible with the expectation that agencies adhere to proper records management practices. A recent survey of federal employees involved with records management found significant lack of confidence in existing practices whereas “improved training and awareness was cited as one of the most vital recommendations to ensuring federal records are secure.”²

¹ For example the Department of Homeland Security DHS requires regular training courses including a on records retention which covers what is a record, how store, and how to apply the disposition schedule which is provided as a 60-90 minute online training course.

² Amanda Vicinanza, “Information Technology: Federal Agencies Lack Confidence in Records and Information Management Practices,” *Homeland Security Today*, May 18, 2015, accessed June 26, 2015, <http://www.hstoday.us/focused-topics/information-technology/single-article-page/federal-agencies-lack-confidence-in-records-and-information-management-practices.html>.

In order to encourage general records management awareness, anyone, including contractors, who creates or receives public records in their official capacity should be required to complete annual training that explains their records management responsibilities. NARA should take the lead, working with other stakeholders as appropriate, to develop a simple, online records management awareness module that can be proactively pushed out to agencies on an annual basis. This would enable agencies and offices that currently lack adequate records management resources to comply with the OMB directive. The Chief Information Officer, Records Officer, and the General Counsel of each agency, office, or entity should certify compliance with this requirement.

Additional Resources

NARA Records Management Self-Assessment (RMSA), <http://www.archives.gov/records-mgmt/resources/self-assessment.html>.

Final report of the National Study Commission on Records and Documents of Federal Officials, 1977, <http://catalog.hathitrust.org/Record/007412697>.

NARA Affiliated Archives, <http://www.archives.gov/locations/affiliated-archives.html>.

Managing Government Records Directive, OMB Memorandum, August 24, 2012, <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-18.pdf>.