

Letter to the National Archives and Records Administration Regarding Records Appraisal

December 13, 2019

The Honorable David S. Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Avenue NW
Washington, DC 20480

SENT VIA EMAIL

Dear Archivist Ferriero:

On behalf of the undersigned researchers, advocates, scholars, and others concerned with the preservation of federal records for government transparency, accountability, and documentation of the work of the U.S. government, we respectfully request that NARA incorporate the following considerations when appraising records to ensure both 1) compliance with the Federal Records Act (FRA) and 2) the ability of the public to exercise its rights of access to federal records under the Freedom of Information Act (FOIA). We believe the recommended changes will position NARA to bring the voices and perspectives of more stakeholders into the records appraisal process, thus strengthening records management and improving government transparency.

The signatories to this letter, and other members of the public, depend on government records for decision making, oversight, and research. “Records are the foundation of open government, supporting the principles of transparency, participation, and collaboration. Well-managed records can be used to assess the impact of programs, improve business processes, and share knowledge across the government.”¹ To fulfill these ends, NARA must account for a variety of stakeholders in government records who represent a wide range of professions, areas of expertise, and areas of interest. NARA, in its work with agencies on federal records management, should proceed in a manner that enables all public stakeholders to become aware of and able to engage consequentially in decisions about records disposition.

According to NARA, anyone can use the National Archives. The welcoming, inclusive invitation to use government archives demonstrates an access-oriented stance. NARA speaks in its appraisals about the interests of “NARA researchers.” NARA has an expansive view of what this term encompasses — in essence, anyone who comes to NARA through any venue or means is a NARA researcher.²

The records included in agency disposition requests are, however, agency records not necessarily located in the National Archives. Those agency records that cannot be found at the National Archives are also of great importance and concern to researchers. Thus, records management policies that take into account this reality are essential to ensure meaningful access.

¹ National Archives and Records Administration, [Overhaul of Federal Record-Keeping Ordered by NARA, Office of Management and Budget](#), August 24, 2012 (Quoting Archivist of the United States David S. Ferriero and Acting OMB Director Jeffrey D. Zients).

² Email correspondence from Meg Phillips, External Affairs Liaison at NARA, July 22, 2019.

We recommend NARA use a broader term than “NARA Researchers” when considering records disposition requests and NARA’s appraisals. “Public stakeholders” or some equivalent term would not only encompass the concerns of “NARA Researchers” but also allow for a more expansive consideration of researchers beyond those coming to the National Archives either in person or through any of NARA’s web properties. Such a change of framing would be more descriptive, inclusive, and appropriate. Considering a broad range of researchers will ensure that people can access the government records they seek. By anticipating that records appraisal may have various stakeholders with divergent needs, NARA can create a more robust and effective records disposition program.

NARA is required by federal records laws to preserve and provide access to records that may be of public interest. The Federal Records Act (44 U.S.C. §3301) defines “records” to include “all recorded information, regardless of form or characteristics, made or received by a Federal agency 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 United States Government or because of the informational value of data in them.” FOIA further requires that NARA provide access to all agency records in its control or possession.

As the recent records schedule issues at the Department of the Interior revealed,³ without more inclusive, public stakeholder designations, the government risks destroying and otherwise failing to maintain, records relevant, and sometimes critical, to the public. As an example, environmental advocacy groups (which do not fit comfortably in the “NARA researcher” category) found that U.S. Fish & Wildlife Service Endangered Species Recovery Plan Files and Fish & Wildlife Data records were marked for destruction with the NARA appraisal finding that the records had “little or no research value.”

Meanwhile, environmental organizations believe that the Recovery Plans are critical for their work. The FWS itself considers recovery plans as the “road map[s] to recovery” that constitute “one of the most important tools to ensure sound scientific and logistical decision-making throughout the recovery process.” The plans are commonly used by researchers, regulators, litigators, and courts to analyze the status of endangered or threatened species. Similarly, Critical Habitat Case Files and Fish & Wildlife Surveys, Critical Habitat, and Revocation Case Files may be key to legal research regarding land-use and development decisions, as well as scientific decisions about species recovery years after their active use, but may not be of immediate research importance. Again, in a similar vein, Oil and Gas Exploration and Production Records and Mining Claim Case Files can be of central importance to safety and cleanup researchers in the case of leaks from improperly plugged and oil wells that sometimes occur decades after the records are created.

The diversity of potential stakeholders requires that NARA develop a process that will ensure an open, transparent, and more navigable opportunity for public comment and involvement in records disposition processes. An effective records disposition process would make it easier for people to be aware of and engage in the records appraisal process. While posting notices of disposition records in regulations.gov is

³ See, for example, [DOI Records Request Openness-Accountability Community Comments](#) November 26, 2018; [Comments on Proposed Dept. of Interior Natural Resources Planning and Development Document Records Schedule, Control No. DAA-0048-2015-0003](#) November 26, 2018.

a great start and we commend NARA for instituting this change, there is still more that can be done to provide stakeholders with effective notice and opportunities to participate before records are marked for destruction. Such a process would ensure that the federal government complies with the records preservation and transparency requirements set forth in the FRA and FOIA.

Technological advances in record creation, maintenance, and storage allow NARA and federal agencies to retain more records using far fewer resources than ever before. Today, most federal records are born digital. Advances in digital recordkeeping give NARA the opportunity to preserve terabytes of records in seconds and err on the side of preservation without worrying about filling up paper files/stacks and storing records offsite. The ever-increasing ease of digital records storage allows NARA to reframe its conception of records researchers and consider the wide range of the public stakeholders in agency records. These technological advances also permit NARA to ensure the appropriate preservation of federal government records that may bring a variety of people to the government's archives now and in the future.

Given the critical importance of NARA's role as the gatekeeper in preserving documents of significance to the American public, we urge NARA to address the concerns raised in our letter and develop a process that will ensure an open, transparent, and less mysterious opportunity for public comment and involvement, and ensure compliance with the FRA and FOIA. We are concerned that if the scope and vision of who uses federal agency records is not broadened, the public may lose access, forever, to records that are critical to the public. We believe our recommendations will ensure that records are preserved and record collections maintained for all public stakeholders.

We are committed to working with NARA to identify ways to bring the voices and perspectives of stakeholders to the process.

Thank you for considering our requests. If you have any questions and comments, please contact Patrice McDermott, Director, Government Information Watch (pmcdermott@govinfowatch.net) and Sarah Lamdan, Professor of Law, CUNY School of Law (Sarah.lamdan@law.cuny.edu).

Sincerely:

American Association of Law Libraries
American Library Association
Archivists Round Table of Metropolitan New York
Association of University Presses
Center for Auto Safety
Citizens for Responsibility and Ethics in Washington (CREW)
Concerned Archivists Alliance
Constitutional Alliance
Defending Rights & Dissent
Demand Progress Education Fund
Government Accountability Project
National Coalition for History
National Federation of Federal Employees
National Security Archive

National Security Counselors
Open the Government
PEGI Project
Public Citizen
Society of Professional Journalists
The Chicago Headline Club
Western Values Project

Margaret Townsend, Center for Biological Diversity
Lucy Komisar, Komisar Scoop
Stephanie Knutson, Environmental Data & Governance Initiative*
Michael Halpern, Union of Concerned Scientists*
Wendy Jacobs, Harvard Law School Emmett Environmental Law & Policy Clinic*
Diane Duesterhoeft, St. Mary's University, Blume Library*
Suzanne Guid, Bucknell University Press*
Joseph Koivisto, University of Maryland*
Margaret Levenstein, ICPSR, the Data Consortium*
Roger W. Hurlbert, Sage Information Services*
James Jacobs, Free Government Information*
David Levine, Elon University School of Law*

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Thomas Hickman
Brenna McLaughlin
Donna Dixon
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Pete Beatty
Jennifer Castle
Ashley Levine
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Cc: Laurence Brewer, Chief Records Officer for the U.S. Government, National Records and Archives
Administration
Margaret R. Hawkins, Director of Records Management Operations, National Records and Archives
Administration