

**Statement
Of
Patrice McDermott
Director
OpenTheGovernment.org**

**Information Policy, Census, and National Archives Subcommittee
Oversight and Government Reform Committee**

**On
The National Archives and Records Administration**

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Thank you, Chairman Clay, Mr. McHenry, and Members of the Subcommittee, for the opportunity to speak today on the issues that the Obama Administration should consider in selecting the next Archivist of the United States.

My name is Patrice McDermott. I am the Director of OpenTheGovernment.org, a coalition of more than 70 consumer and good government groups, library associations, journalists, environmentalists, labor organizations and others united to make the federal government a more open place in order to strengthen public trust in government, make us safer, and support our democratic principles.

A National Archives and Records Administration for the Future

One of my former colleagues, who recently retired from NARA said, "I believe in NARA – as an ideal." I think that is where those of us on this panel and our colleagues in the public interest community stand as well. Perhaps we hold the agency and its staff to an impossibly high ideal. We do this because NARA is probably the only agency in the Executive Branch that has – and is seen by the public to have – access to government information as its primary mission.

NARA has primarily understood its mission to encompass primarily information that, for a variety of reasons, is historically significant. This understanding of its mission is reflected in its leadership and its staff. While the employees of NARA are dedicated civil servants and there are many talented individuals working there, the agency has a tendency to be inward looking and

focused on history. The perception of NARA is that it is primarily reactive, not pro-active. And we know that NARA has preferred to take a collegial rather than leadership stance with the agencies and within the government overall. The critical position of NARA in the life-cycle management of the records of our federal government and the mounting challenges the government faces in this area necessitate that the culture and stance of NARA change.

NARA is increasingly being asked to face new challenges and is looked to as the site to locate new initiatives and offices pertaining to public access to contemporaneous government information. These include the Office of Government Information Services, created by the OPEN Government Act, and an office that will have responsibility for implementing the Memorandum on Designation and Sharing of Controlled Unclassified Information, better known as "Sensitive But Unclassified" information. This latter office has the task of bringing order to the multiplicity of control markings – such as SBU, FOUO – across the government that are meant to safeguard information that is not classifiable, but that is arguably not for immediate public disclosure.

Importantly, though, NARA has another primary mission that receives an insufficient amount of the agency's attention and resources: records administration. Many of us in the public access community are deeply concerned about how NARA is addressing its responsibility for records, and especially, e-records, management and provision of access to the records of our nation. NARA's 2006-2016 Strategic Plan is indicative of the reasons for our concerns: it has a total of 1.5 pages on records administration and one vague strategy for electronic records management –

We will expand the demand for records management in the Federal Government by advocating for it at senior levels. By providing guidance, training, and assistance throughout the Government, we will support agencies' business needs and embed records management in the agencies' business processes and systems.

accompanied by a strategy on physical records storage.

Indeed, the strong and evident focus on the strategic plan is on the Archives portion of NARA's mission combined with an emphasis on civic education and exhibits. The perception, reinforced by conversations with current and former NARA staff, is that the agency increasingly understands itself as a museum.

The Next Archivist of the United States

The former Archivist, Dr. Allen Weinstein, started moving the agency in some good directions with the use of technology. NARA's use of technology, though, appears to be focused on making NARA a museum, rather than a lead agency on life-cycle management of records for public access and government accountability.

Recent history shows, however, that we need an Archivist who has a proven record of standing up for open government. Dr. Weinstein took good positions on open government when crises arose, but did not put the agency in a leadership stance. That is an approach we can no longer afford.

We need an archivist who understands NARA is not just a museum of historical documents, but is a steward responsible for securing the integrity of government records. He or she must be able to lead NARA to embrace the role of catalyst for the information revolution and enunciate clear, consistent and practical electronic record policies.

Most importantly, we need an archivist who will lead the government to meet the new challenges of managing and preserving electronic records, including e-mails. Records management must not be about cleaning up messes after they occur, but, rather, taking the proactive steps necessary to prevent the loss of our documentary record.

The new Archivist needs to be a visionary in terms of the importance and public use of government records in all forms and formats, and throughout their life-cycle, and so needs to have strong familiarity with technology – as a tool. She or he also needs to be someone who understands and appreciates records management throughout the life cycle, not just of records that will be archived.

The public and the government need an archivist who can provide vision and leadership for the federal government on information and records management, and foster successful partnerships with history and access professionals inside and outside government. A successful archivist may be a historian, an archival professional, an editor or publisher, a legal reformer, the head of a major library, or a longtime government servant. The key qualification is his or her commitment to maintaining the record of our national government and meeting the mandates of law.

Because the next Archivist will have so many challenges to meet, we recommend that a second-tier political appointee be created to serve in a chief-of-staff type position and to manage and enliven the bureaucracy at NARA. This would free the Archivist to assume the needed leadership role, and might attract candidates who have the vision to move the agency and to assist the President in moving the government forward.

The new Archivist and this second person should give the Controlled Unclassified Information Office and the Office of Government Information Services (OGIS) support and independence that the Information Security Oversight Office (ISOO) has. For OGIS, this independence is particularly important because OGIS must also oversee NARA's own significant involvement with FOIA. Additionally, NARA needs to be particularly proactive in ensuring it implements FOIA well, as any failure by NARA will impact the credibility of OGIS.

In order for President Obama's day one promises on transparency to have any meaningful impact, immediate steps must be taken to protect the integrity of government records throughout their lifecycles, from creation to permanent preservation or authorized destruction.

NARA's Responsibility for Records Administration

The National Archives and Records Administration (NARA) is supposed to be the leader in this area. The Federal Records Act gives NARA clear authority (44 USC 2904) including for promulgating standards, procedures, and guidelines, and conducting inspections or surveys of the records and the records management programs and practices within and between Federal agencies. As far back as 1996, NARA committed to working "with agencies on the design of recordkeeping systems for creating and maintaining records of value." While a procurement standard developed by the Department of Defense was accepted many years ago by NARA, very little progress has been made government-wide toward electronic records management systems. Records are stored on servers and, in some cases, on individual PCs, but they are not managed in the sense of being easily retrievable by subject or creator or, I would guess, disposition schedule. We repeatedly have to relearn the lesson, apparently, that servers and backup tapes are not appropriate records management systems.

Congress has been lax in holding agencies accountable and for ensuring that records management is seen as part of the mission-critical components of every department and agency. While Congress is rightfully alarmed at the loss of documents and information through a system breach, it and the Executive Branch have turned a blind eye to their loss through indifference. The end result is the same except with indifference – or intentional failure to preserve – we will not necessarily know what has been taken from us and will not be able to restore our history to its previous status.

The problem is not just life-cycle management of the documents and information. We are also concerned by what we understand to be the preservation policies promulgated by NARA. Those of us outside government understand that the common policy is to only preserve the final policy document, for instance. That is important, but not sufficient. Some of us remember the days of carbon copies and complete paper files. In the government, the paper copies were annotated and initialed by those who saw and commented on them. It was not just the final version of the policy or memo that was filed away, but a documentary history of that policy's development. Now, however, across the federal government, we do not know with any certainty that all of the documents and information that we need to write our history, to understand policy development and implementation, to trace who knew what, read and edited what document, are being preserved.

The issue of records management of e-mail is the iceberg below this tip, of course. NARA's policy in this area is fatally flawed. It allows the agencies to not schedule e-mail communications in the way that other communications, such as letters and memos. NARA does not tell the agencies that they can treat all letters sent or received in the course of government work in exactly the same way, but that is exactly what it has told them they are permitted to do with e-mail. Tellingly, NARA's guidance on IM (instant messaging) – which is essentially e-mail that you must be logged in to receive – says:

If an agency determines IM content to be a Federal record, the record must have a NARA-approved disposition authority. *Do not identify IM content as a single series of records with a universal disposition.* Instead, evaluate IM content within the context of the overall records of the

program to which the IM relates and the business rules that may apply. Disposition instructions for IM should be consistent with similar agency records. Schedule in accordance with the agency's established records management policy. *IM records may already be scheduled as part of other series, such as records typically found in a case file or a correspondence system. (Emphasis added)*

This is the polar opposite of NARA's guidance on e-mail and it is precisely what its policy on all electronic communications, including the new social media, should be.

The Federal Records Act also gives NARA clear authority (44 USC 2904) including for also conducting inspections or surveys of the records and the records management programs and practices within and between Federal agencies. NARA has elected, however, to limit its role to providing guidance only with little or no agency follow-through. Most significantly, NARA has abandoned its previous practice of conducting annual audits of agency compliance and proclaimed publicly that the responsibility rests first and last with individual federal agencies. At a symposium in 2007, NARA was told by agency personnel that the failure to audit meant a failure of records management.

As I noted, the next Archivist of the United States must restore NARA's presence and reaffirm its leadership in the life-cycle management of the records of the federal government in all their forms and formats and regardless of whether they are the 1-3% that will eventually be accessioned into the Archives and preserved by NARA as permanent.

Thank you for the opportunity to speak to you on these important issues. I am happy to answer any questions you might have.

MANAGING THE PUBLIC'S RECORDS FOR ACCOUNTABILITY AND HISTORY

This report was created through the efforts of policy advocates, including current and former government employees, concerned about the preservation and management of government records. A list of endorsing organizations and individuals can be found beginning on page six.

INTRODUCTION

The American public has much to gain from a well maintained electronic record keeping system. If, rather than silos of agency information, government websites made it easy for citizens to find information and put the data into context by linking it to other programs that are affected by the information, then citizens could see how the components of federal government relate to their own lives. If electronic records were stored with appropriate meta-data that made it easy for search engines to find them, it would be easier to point out waste, fraud and abuse in the federal government. There also would be long-term access to the historical data necessary to validate current work and to write a faithful account of our nation's history. Today, however, the information necessary for accountability and history is at risk. Across the federal government, we do not know with any certainty that all of the documents and information that we need to write our history, to understand policy development and implementation, and to trace who knew what, read and edited what document, are being preserved.

Executive leadership is absolutely necessary to create a system where our nation manages and uses its information in the most efficient and useful way. Agencies must be given the message that records management is important from the very top of the organizational chart. However, executive leadership is not sufficient to make this vision a reality.

Below, we identify persistent challenges to creating a reliable electronic record keeping system, and suggest solutions.

Government-Wide Problems

Lack of Leadership

Most agency Chief Information Officers (CIOs), who should be in charge of the agency's information policies, are more oriented toward acquiring and implementing new technology. Because there are no longer specified file keepers, agency personnel must act as their own records managers. Given that top agency management gives little attention to electronic records management, it is not surprising that non-managerial staff also do not make good record keeping a priority—viewing it as an added burden rather than as a part of their jobs. Further, agency personnel currently receive little to no training on proper records management.

The Administration of George W. Bush set a poor example for the executive branch with its failure to properly manage both its presidential and its federal records in the White House. Comprehensive e-records management needs to be implemented from the top of the government on down.

Proposed Solutions

The President should

- Create a position akin to a “Chief Transparency Officer” (CTO), on an equivalent level to the CIO to share responsibility in a clearly defined relationship for maintaining trustworthy knowledge assets.

Alternatives include:

- Requiring that the office of each CIO should have a high-level manager solely in charge of information policy. The upper-level manager must ensure adequate training for personnel on all aspects of information policy, including records management.
- Revising the standard job descriptions for Chief Information Officer (CIO), Supervisory Chief Technology Officer, and Supervisory Chief Records Officer to make the positions less technology-centric.

The President should also

- Require agency CIOs/CTOs to give much higher priority to the importance of records management. In addition, give agencies both adequate resources to purchase, implement, and train personnel on an electronic records management system and ensure that investing consider investing in this effort is a priority.

Notably, while up-front costs may be high, a reliable electronic records management system is likely to elicit long-term savings once internal efficiencies and all of the costs associated with complying with the Freedom of Information Act (FOIA) are considered. A mandated date for full functionality of a usable electronic records management system, and strong reporting requirements, will prompt agency officials to make this task a priority.

- Create a high-level panel of Chief Information Officers (CIOs) and CTOs, under the auspices of the Office of Management and Budget (OMB), to reiterate that DoD 5015.2 is a mandatory procurement standard across the executive branch; establish a baseline for a system all agencies should have in place; and set benchmarks for agency compliance.

In addition to looking at DoD 5015.2, which has been endorsed by NARA, this panel should look at the significant amount of work on creating a uniform standard for government electronic management systems that has been done internationally (notably, standards developed by New Zealand and Australia have been approved by the International Council on Archives).

After setting a baseline and benchmarks, this panel should convene a meeting of technology companies in order to prompt the market to develop a common, interoperable functionality for governmentwide use and versions that fit agency needs. To assure the technology companies that agencies will buy the system, there should be a date-certain mandate for agencies to have electronic record keeping systems in place, and penalties for agencies that fail to meet the deadline.

- Direct that, if the responsibility for records management continues to fall only on the individual employee, agency systems should be automated using software at the server level to make the records management decisions. Such a system should be transparent to the user, but not require his or her attention. Different automated systems have been used with great success—a sample of such projects is described in Appendix B of this report.

Lack of Agency Incentive to Implement Interoperable Electronic Management Systems

Challenges

Despite the fact that technologies to create documents electronically have been employed by the government for over 25 years and e-mail has been in wide use for over 15 years, federal agencies have yet to implement widely-available tools that would improve agency function and information sharing. The benefits of a fully-interoperable federal (and state and local) electronic record keeping system are diffuse and may not be immediately apparent to the federal official charged with allocating some of the agency's scarce resources to purchasing such a system.

Moreover, records management systems only receive and manage information objects that are declared to be records, which are created or received elsewhere (e.g., word processing systems, email systems, image management systems, case management systems, etc.) and transferred to the Electronic Records Management (ERM) system control. ERM only works when it interoperates with other software systems where records are created/received. The totality of all the software systems that create/receive/manage information “content” (as it is called to distinguish it from technology) is now called an Enterprise Content Management System (ECMS). An Electronic Records Management Systems only makes sense when it is a component of an interoperable ECMS.

In the face of immediate, centralized, costs and future, dispersed, benefits, agencies have failed to invest in systems that that are individualized to meet agency-specific needs *and* are interoperable with other systems both within the agency and government-wide—opting instead to buy the cheapest package on the shelf, when they purchase any system at all.

Proposed Solutions

The President should

- Ensure that the cost for a records management system that meets federal standards and requirements, as identified earlier, is built in to agency technology purchases. In the short term, the Executive, through the Office of Federal Procurement Policy, should require that a portion of resources used for IT contracts for information services be set aside to pay a percentage of the cost of purchasing electronic records management systems *if* the system meets federal standards. The service fee would be collected by the General Services Administration (GSA).

Alternatively, a fund dedicated to enhancing record keeping capabilities and the delivery of citizen services can be made up of monies collected by adding a nominal fee onto some record service, as was done by New York State in the 80's. (See Appendix A)

The President and the Congress should work together to

- Identify and/or create a fund that federal, state and local public institutions, in the long term, can have access to for the purchase of knowledge asset (e.g., records) preservation and access systems that are interoperable. Some states have created such pools, resulting in interoperable systems at the state, county, and municipal level—a sample of such projects are discussed in Appendix A. A federal program that led toward federal systems that could interoperate with state and local governments could generate strong congressional support as Members could identify it as a boon to their constituencies. It would also advance the President's goal of an interconnected government and public access to government information.

Lack of Oversight

Challenges

The National Archives and Records Administration (NARA) ceased inspecting and auditing agencies' record keeping—ending all assumption that agencies should make record keeping a priority. The reasons NARA ceased the audits are telling: in general, agencies refused to allow NARA to audit their record keeping (despite the law) or agencies let the audit go ahead and then ignored NARA's findings because NARA had no enforcement capabilities. Political resistance to devote scarce resources to electronic record keeping from agencies will not be overcome without real effective oversight.

The benchmarks and reporting requirements discussed above would focus agency attention on the issue; oversight will ensure agencies adequately address it.

Proposed Solutions

Congress should:

- Charge agency Inspectors General (IG) with the responsibility to enforce e-records management. To take on this responsibility, the IG statute may need to be amended and, of course, they would have to be given sufficient resources.
- Yearly agency reports of “Records on Hand,” including e-records and at least the volume of e-mail, should be re-instated and the reports should be reviewed to ensure agencies do not merely adjust the reports by adding an inflation factor year-to-year. When agencies were required to file annual reports of “Records on Hand” and were subject to NARA audits, records management happened; when the reports and audits were eliminated, records management ceased to have agency priority and, in many cases, ceased to occur.
- Require NARA to reinstate yearly audits. To lower the time and cost of these audits (which were abandoned primarily because they took too long and cost too much), NARA could be given the authority to remotely access and check agency files. This solution suffers from the fact that NARA personnel would have to have a deep familiarity with the agency’s individualized systems and their uses.
- Alternatively, agencies could be required to report directly to Congress regarding their progress towards the benchmarks set by the CIO panel and NARA could be required to report to Congress on how it is helping agencies meet those benchmarks. In either scenario, NARA should be given additional personnel to accomplish these goals.

Policy Issues

Challenges

Most agencies are currently operating under General Records Schedule 20 (GRS 20) for managing their e-mail records, meaning that all emails—regardless of what part of the agency they come from or the importance of their content—are allowed to be treated the same. GRS 20 allows agencies to either preserve emails qualifying as records in electronic format or print out e-mail and then destroy the electronic copy. Agencies have almost universally chosen the latter course. Reports show that even if individuals do print out their email, it often is not filed.

Under current law, federal records management is currently governed under a myriad of statutes and multiple agencies are charged with record keeping responsibilities; existing laws should be reconciled (e.g., Clinger-Cohen with the Federal Records / FOIA and other Acts) to encourage agencies to work together and to simplify and clarify overlaps in governance. When reconciling existing law, the following ideas should be considered:

Proposed Solutions

Congress should:

- Amend the E-Government Act to require Chief Information Officer's (CIO) to audit records management.
- Revisit the IG statute to give/ensure IGs (have) the responsibility to audit records management and require reports on electronic records management. Poor agency record keeping practices frustrate investigations by Inspectors General (IG) and cause IGs to waste precious resources looking for records that should be readily available. Since good electronic records management will improve IG performance,
- Revisit the legislation governing Chief Financial Officers to require the CFO to work in partnership with other Officers responsible for information policy. An agency's Chief Financial Officer (CFO) cannot audit the agency without proper records, To avoid the information from being stove-piped, there must be a clearly defined relationship and shared responsibilities between the CFO and other offices charged with knowledge management and preservation.

The President should:

- Institute an agency report card (similar to PART -- Performance Assessment Rating Tool) for agency record keeping. Unlike PART, however, when an agency fails to meet standards/ expectations, the agency's record keeping budget should not be cut reflexively. Instead, the primary penalty for failing the assessment should be public embarrassment. NARA, or OMB, should use these assessments to analyze why an agency fails to meet expectations and work with the agency to make improvements.
- Tie electronic record keeping to the job performance assessment for all officials formally charged with records management.
- Institute, through job descriptions and OMB policy, clearly defined relationships and shared responsibilities among the CFO, CIO, Chief Transparency Officer and other offices charged with knowledge management and preservation. This clarity is necessary to avoid the information from being stove-piped in the various offices.

Endorsed By:

**OpenTheGovernment.org
American Association of Law Libraries
Association of Research Libraries
Center for Responsibility and Ethics in Washington (CREW)**

FIRM Council, John Paul Deley, Chair
National Security Archive
OMB Watch
Sunlight Foundation

APPENDIX A

In New York, the State Archives offers grants and awards to support and promote sound records management practices. Between 500 and 700 local governments apply each year, and the competition is tough. The deadline for the next Local Government Records Management Improvement Fund (LGRMIF) grant cycle is December 1, 2004. Information about the program is available online at www.archives.nysed.gov/a/grantsawards.shtml , and grant application information sessions are held in advance of the deadline.

More and more state governments are instituting similar grant programs, often funded by a portion of the document filing fees collected by county clerks. New Jersey is launching its PARIS grant program in 2005, and you don't have to speak French to apply! The Public Archives and Records Infrastructure Support (PARIS) grant program will initially have a narrow focus looking specifically to fund state-coordinated county needs assessment and strategic planning services and grants-in-aid for imaging systems and services; archival records preservation services; and municipal needs assessment. Application forms should be available in January from the Division of Archives and Records Management of the Department of State, which is overseeing the grants program.

The sixteen-month-long planning process that resulted in the PARIS program was principally funded by the National Historical Publications and Records Commission (NHPRC). In states where there is no state-sponsored program for grants, the NHPRC may be the only game in town. The Commission funds projects that deal with the following kinds of material: records of state, county, municipal, tribal, or other non-Federal units of government; manuscripts, personal papers, or organizational and business archives; collections of photographs, motion pictures, sound recordings, electronic records, and/or such visual materials as unpublished architectural, cartographic, and engineering drawings. One example: A grant of \$28,460 to the City of Milwaukee, WI, to establish retention and preservation criteria for tape recordings of city government activities.

In Connecticut, the State Library's Historic Documents Preservation Program purports to be noncompetitive and give every eligible town that applies within the established guidelines an award. As applications increase and with limited funds available, it is expected that this program will become increasingly competitive.

In Pennsylvania, the History and Museum Commission uses an annual appropriation from the General Assembly. Grants are offered up to \$15,000 for such projects as county records improvement or preservation of local government records.

APPENDIX B

- a. The World Bank has invested heavily in document templates that have records retention and disposition schedules embedded in the templates. They have created hundreds of such templates for all kinds of standardized documents – trip reports, project descriptions, cost estimates for projects, reports of findings, etc., etc. All the user has to do is choose the right template, create the document, press Save, and voila! Records management is accomplished!

- b. At the Office of the Comptroller of the Currency, records managers worked with the business process owners and the IT people in OCC's most important division, Large Bank Supervision. They analyzed the highly complex and detailed workflow process a bank examiner goes through in conduct and completing a Bank Examination. They keyed the analysis to OCC records schedules and are in process of tweaking the ERM software system. The result, when completed soon, will be that the bank examiner goes about her or his business; when the examiner reaches precisely the point in the workflow where a record is created – and only at that point – a pop-up appears on the desktop that says “Make Record?” The examiner hits Yes, then Save, and everything else is automatic. So the process is minimally intrusive on the user; the pop-up only occurs where the joint analysis showed a record should be being created.

- c. The most ambitious is the Air Force's Enterprise Information Management Strategy, now almost a year into its implementation, that will extend to all 10,000 AF installations and its 2 million people. AF manages all information as assets as a matter of policy. This includes the corollary that all information is managed according to records management discipline. What does that mean? It means: All information is assigned a retention and disposition schedule from the moment of creation/receipt. How is AF accomplishing this. (i) They are using Automated Metadata Extraction on all information. Commercial off-the-shelf AME systems are well established – 4 of the best known as FAST, Convera, Autonomy, and Teragram. (AF uses the first three, World Bank uses the fourth.) So, AF automatically extracts a 60-item set of standardized metadata that is associated with each piece of information. (ii) AF has its detailed records retention and disposition schedules. (iii) In the only custom-tailored piece of this scheme, AF is building a Rules Engine that, for each and every piece of information (document, email, spreadsheet, image, etc.) will automatically use the metadata set, the detailed records schedules, and the Rules Engine to assign a retention and disposition schedule to that piece of information. This is ALL AUTOMATED. The user sees none of this. It takes care of records management for documents, emails and everything else, and completely handles e-discovery, FOIA, and privacy. All with no intrusion on the user. Is a given piece of information a record? The answer is determined by its retention/disposition schedule; for example, if you've decided to keep it a year, it's a record.