

*Statement*

*Of*

*Mr. Paul Brachfeld*

*Inspector General*

*National Archives and Records Administration*

*Information Policy, Census, and National Archives Subcommittee*

*Oversight and Government Reform Committee*

*Thursday, July 30, 2009*

*2154 Rayburn HOB*

*2:00 p.m.*

*“National Archives and Records Administration Organizational Issues”*

Mr. Chairman and Members of the Subcommittee, I thank you for offering me the opportunity to testify today.

I have been called before the Subcommittee to provide testimony on the circumstances surrounding an external computer hard-drive missing from the National Archives and Records Administration (NARA) which contained a vast amount of material from the Clinton Administration including Presidential Records Act or PRA material. The Presidential Records Act (PRA) of 1978, [44 U.S.C. §2201-2207](#), governs the official records of Presidents and Vice Presidents created or received after January 20, 1981. The PRA changed the legal ownership of the official records of the President from private to public, and established a new statutory structure under which Presidents must manage their records. I trust that in reaction to the loss of the hard-drive new policies, procedures, and processes will be defined and implemented at NARA, and certainly my office will evaluate these actions to provide guidance and appropriate independent and skilled oversight. However our focus now is on the criminal investigation of the disappearance of a hard-drive capable of holding two terabytes of our government's information, and which my forensic investigator informs me was essentially filled with data. At the outset, I must say I am not able to talk about all aspects of the investigation at this time. This is an ongoing criminal investigation which may have elements affecting national security; therefore, I know that the Chair and distinguished members of

the subcommittee would not wish me to provide any information that could potentially damage the investigation's integrity or potential success.

Currently we are working with the assistance of the United States Secret Service and the Federal Bureau of Investigation to more precisely identify the contents of the hard-drive. However, an initial cursory review identified that thousands of examples of personally identifiable information or PII data resided on the hard-drive. We reported this to NARA management officials and they have hired a contractor to further analyze this PII aspect and provide breach notifications per OMB requirements. I should also note that at my request the Special Agent In Charge of the Secret Service Washington Field Office generously made their 24/7 hotline operation available to us in order to support the investigation and potential recovery of the missing drive. In response to our suggestion NARA established a reward of up to \$50,000 for information leading to the successful recovery of the missing hard-drive. No productive leads have resulted to date from this action.

The subcommittee asked about the security in place at NARA at the time the hard-drive went missing, and after the hard-drive went missing. The direct answer is that the controls in place were inadequate, and what controls were there were readily bypassed and obviously compromised on an ongoing and dynamic basis. Quite simply, this was an accident waiting to happen, and now it has.

As a direct result of these failures in controls, my office's capacity to investigate this accident has been severely compromised. The loss went unnoticed potentially for months; conservatively speaking at least 100 people had access to the area; and even rudimentary access controls such as badge or sign-in logs were not maintained or could be readily bypassed. While the drive was kept in an area ostensibly secured by a proximity card reading lock, in practice this system failed. People could simply piggy-back by going through the door when another person opened it; and even worse, doors which should have been secured were propped open for ventilation purposes. It was also reported to my investigators that the processing area in which the hard-drive went missing was used as a conduit or short-cut to the restrooms. Therefore it can be argued that the security for this area was no greater than the general security for the building as a whole.

The loss of this hard-drive holding PRA material is not the only concern I have in this investigation. Many in the pool of potential subjects of this criminal investigation have access to the processing area, where this disk-drive disappeared, as well as to more traditional storage or stack areas. Therefore, I cannot say with any confidence that data stored in these areas was not compromised. This includes the records of the 9/11 Commission, the Warren Commission as well as large quantities of other national security holdings. In a benign case where proper controls were in place or the subject hard-drive was lost or erroneously disposed of, one might take comfort that other data was not compromised. The facts dictate that I am afforded no such comfort. If the drive

was deliberately removed, the person or persons could have just as readily removed other holdings or copied information onto other mediums.

I am also deeply concerned about how NARA generally treated the category of presidential data like that which was on the missing hard-drive. Specifically, when the data was copied from original Executive Office of the President or EOP computer tapes to modern hard-drives, this copying was done by contractors – off-site and without any security requirements. NARA had a fixed-price delivery order for the duplication of 1,428 such EOP computer tapes to external hard-drives to include the missing hard-drive. A small business was provided complete custody and control over the housing and content of this EOP material. Amazingly, this contract was one in a series of like contracts in which NARA was silent in addressing any security requirements for the tapes or the information which they held. In fact, the contract made absolutely no mention of the sensitivity of the contents of these records.

When handling and processing groups of PRA material, I would think it essential to institute appropriate measures of security over transport and processing of these records off-site by a contractor. However, no such measures were identified. In this specific case the tapes were sent off-site to a small store-front operation in New Jersey. The existing security at this location was rudimentary and clearly inadequate to protect and limit inappropriate access to PRA material.

In a June 18, 2009 letter, Senator Charles E. Grassley asked the Acting Archivist of the United States, “Do you recognize NARA as a National Security Agency?” She stated “No. NARA is not a national security agency by any shared meaning of that term within the Executive Branch for which we are aware. NARA does not make nor does it implement national security policy. NARA’s only relationship to national security is our responsibility for ensuring that those security classified records that come into our custody from other agencies are stored, protected, and handled following the rules to which all agencies that handle classified records must adhere.”

I would submit that NARA has in this and other recent cases breached that relationship. While by some technical standards NARA may not meet the traditional definition of a formal National Security Agency, the information and records we hold are vital to our nation’s security. What I will say specific to the loss of this hard-drive is that the American people deserve better security and accountability than NARA has provided them. I can assure you that through our audits and investigations, management consultations and briefings, we will work to help NARA strengthen its internal control and security mechanisms.

While some corrective measures have, and I trust more will be taken – it is analogous to closing the barn door after the horse has left. The event has passed and the damage done, the extent of which I cannot quantify for you today.

I thank you for the opportunity to testify and am available to take your questions.

