



InterPARES 2 Project

International Research on Permanent Authentic Records in Electronic Systems

Policy Cross-domain

Archival Legislation in the United States

Compiled by Catherine Miller
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Scope

This report includes information found from an examination of federal legislation available on-line which relates to records preservation in The United States. Legislation examined includes:

- **National Archives and Records Administration** (*44 U.S.C. Chapter 21*)
- **Disposal of Records** (*44 U.S.C. Chapter 33*)
- **E-Government Act of 2002**
- **Freedom of Information Act, 2002 Amendment**
- **Privacy Act 1974, 2004 Edition**

The National Archives and Records Administration legislation was used to answer the six bullet points under the Examination of Statutes in the Study Definition document. The Disposal of Records, E-Government Act, the Freedom of Information Act and the Privacy Act were examined to identify any possible areas which may have an impact on preservation, i.e., definitions of records, references to authentication of electronic records, and retention and disposition requirements. Direct quotes from the legislation are included where most appropriate along with hyperlinks to applicable sections.

National Archives and Records Administration (*44 U.S.C. Chapter 21*)¹

1. Definition of Record

The legislation does not specifically define record; however, the definition for Historical Materials may be useful for comparison.

2101. Definitions²

(2) "historical materials" including books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, motion

¹ http://www.archives.gov/about_us/basic_laws_and_authorities/nara.html#presidential.

² http://www.archives.gov/about_us/basic_laws_and_authorities/nara.html#def.

pictures, sound recordings, and other objects or materials having historical or commemorative value;

2. Assignment of Responsibility for Preservation

2102. Establishment³

There shall be an independent establishment in the executive branch of the Government to be known as the National Archives and Records Administration. The Administration shall be administered under the supervision and direction of the Archivist.

2109. Preservation, arrangement, duplication, exhibition of records⁴

The Archivist shall provide for the preservation, arrangement, repair and rehabilitation, duplication and reproduction (including microcopy publications), description, and exhibition of records or other documentary material transferred to him as may be needful or appropriate, including the preparation and publication of inventories, indexes, catalogs, and other finding aids or guides to facilitate their use. He may also prepare guides and other finding aids to Federal records and, when approved by the National Historical Publications and Records Commission, publish such historical works and collections of sources as seem appropriate for printing or otherwise recording at the public expense.

3. Governance Structure

Information about the governance structure is found in section 2103 at:

http://www.archives.gov/about_us/basic_laws_and_authorities/nara.html#admin

The Archivist of the United States is appointed by the President with the advice and consent of the senate. The archivist submits an annual report to congress.

4. Scope of acquisition

NARA accepts both official government records (section 2107), the records of past presidents and records which are relevant to the government (section 2111)

2107. Acceptance of records for Historical Preservation⁵

2111. Material accepted for deposit⁶

5. Life Cycle References

Section 2107 above allows for the National Archivist to, “(2) direct and effect the transfer to the National Archives of the United States of records of a Federal agency that have been in existence for more than thirty years and determined by the Archivist of the

³ http://www.archives.gov/about_us/basic_laws_and_authorities/nara.html#establish.

⁴ http://www.archives.gov/about_us/basic_laws_and_authorities/nara.html#preserve.

⁵ http://www.archives.gov/about_us/basic_laws_and_authorities/nara.html#accept.

⁶ http://www.archives.gov/about_us/basic_laws_and_authorities/nara.html#material.

United States to have sufficient historical or other value to warrant their continued preservation by the United States Government, unless the head of the agency which has custody of them certifies in writing to the Archivist that they must be retained in his custody for use in the conduct of the regular current business of the agency.”

6. References to Standards

No references to standards were found in this legislation.

Other Relevant Sections:

2116. Legal status of reproductions; official seal; fees for copies and reproductions⁷

(a) When records that are required by statute to be retained indefinitely have been reproduced by photographic, microphotographic, or other processes, in accordance with standards established by the Archivist, the indefinite retention by the photographic, microphotographic, or other reproductions constitutes compliance with the statutory requirement for the indefinite retention of the original records. The reproductions, as well as reproductions made under regulations to carry out chapter 21, 29, 31, and 33 of this title, shall have the same legal status as the originals.

(b) There shall be an official seal for the National Archives of the United States which shall be judicially noticed. When a copy or reproduction, furnished under this section, is authenticated by the official seal and certified by the Archivist, the copy or reproduction shall be admitted in evidence equally with the original from which it was made.

Disposal of Records (*44 U.S.C. Chapter 33*)⁸

3301. Definition of records⁹

As used in this chapter, "records" includes all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government 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 Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included.

⁷ http://www.archives.gov/about_us/basic_laws_and_authorities/nara.html#legal.

⁸ http://www.archives.gov/about_us/basic_laws_and_authorities/disposal_of_records.html#def.

⁹ Ibid.

E-Government Act of 2002¹⁰

The E-Government Act of 2002 is intended to “improve the methods by which Government information, including information on the Internet, is organized, preserved, and made accessible to the public.”

A committee which includes members of NARA was established with the following functions:

(1) Committee Functions- Not later than 2 years after the date of enactment of this Act, the Committee shall submit recommendations to the Director on--

(A) the adoption of standards, which are open to the maximum extent feasible, to enable the organization and categorization of Government information--

(i) in a way that is searchable electronically, including by searchable identifiers; and

(ii) in ways that are interoperable across agencies;

(B) the definition of categories of Government information which should be classified under the standards; and

(C) determining priorities and developing schedules for the initial implementation of the standards by agencies

Freedom of Information Act, as amended in 2002¹¹

Under Section 2, with regards to making records available;

“For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph”

Privacy Act 1974, 2004 Edition¹²

The privacy act defines a record as, “any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.”¹³

The section of this act that could have an effect on preservation is *A. 5 U.S.C. 552a(e)(1)*,¹⁴ which limits the purposes for retention of information.

¹⁰ http://www.archives.gov/about_us/basic_laws_and_authorities/egov_act_section_207.html.

¹¹ <http://www.usdoj.gov/04foia/foiastat.htm>.

¹² http://www.usdoj.gov/04foia/04_7_1.html.

¹³ <http://www.usdoj.gov/04foia/1974definitions.htm#record>.

¹⁴ <http://www.usdoj.gov/04foia/1974agenreq.htm>.

Each agency that maintains a system of records shall --
“maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President.”