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Scheduling Legal Records

Records Scheduling Guide 3

National Archives and Records Administration
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About This Guide

This guide is for agency records managers and NARA appraisal archivists. Use it when scheduling and appraising legal records. Use of this guide is not required. Always consult [NARA's appraisal criteria](#) when proposing the disposition of records.

What are Legal Records?

This scheduling guide covers legal records created by agency General Counsel offices or their equivalent. The legal function in an agency supports the agency's mission by:

- Providing legal advice
- Interpreting the law
- Assessing legal risk
- Litigating on behalf of their agency
- Defending their agencies in court

This guide does not cover:

- **Judicial records** or records related to the court system.
- **Congressional relations or legislative files.** This function sometimes occurs in General Counsel offices, but is not covered here.
- **Rulemaking records.** This function sometimes occurs in General Counsel offices, but is not covered here.

Considerations When Scheduling Legal Records

Be mindful of the following issues when scheduling Legal records:

- **Record retention requirements.** Legal records are likely to have retention requirements based on statutes of limitation.
- **Organizational structure.** Some departments centralize their General Counsel function at the departmental level. Records may exist both within the component agency and at the departmental level. Records officers at different levels should coordinate scheduling of legal records.
- **Selection criteria.** Agencies often use criteria to separate permanent records out of a series that is otherwise temporary. See the discussion below for series that tend to use selection criteria. Common selection criteria include:

- Mission-related records versus records related to administrative matters.
- Precedent or policy setting records as significant.
- Identifying records that relate to matters that were of interest to the media, Congress, or the public as significant. All other records are non-significant.
- Identifying the records of specific offices of officials as significant. All other records are non-significant.

Avoid selection criteria where someone needs to make a decision when records are prepared for transfer to NARA. Making selections years after active use of the records by staff unfamiliar with them can be difficult. Instead, selection criteria should reflect how the records are created or maintained. For example:

- **Role-based implementation.** Records in the same series may be handled by different offices or individuals. Examples:
 - One person responds to administrative matters while another responds to mission-related matters. The agency could schedule administrative and mission-related matters as two separate items. Implementation would be based on who created or maintained the records.
 - The head of the office must approve all mission-related legal opinions. Therefore, the copy approved by that individual is the permanent record. All other legal opinions are temporary.
- **Process-based implementation:** A workflow helps to implement selection criteria. Example:
 - There is a workflow that identifies precedent setting case files at closeout. For example, using a closeout review process or form. The office keeps these case files separate from non-precedent setting files. This allows for the staff that know the records best to make decisions about their value. It also allows for proper records management. Permanent records must be maintained apart from temporary records.

Agencies that propose selection criteria on a schedule should be prepared to discuss with their appraiser how implementation will be successful. At the time of transfer, NARA archivists may want to know how you decided a record was permanent. If your schedule is already based on how records are created and maintained, that is easier to answer.

- **Record format.** Legal advice or opinions may only exist in email. These records are often scheduled as permanent, at least in part. Make sure that your agency is capturing them in some manner. This might include capturing General Counsel email as a permanent record. Agencies using the Capstone approach for email records management (GRS 6.1) may already be capturing the lead General Counsel's email as a permanent record.

Legal Records Covered by the GRS

The General Records Schedules (GRS) provide disposition for records created by most federal agencies. Records covered by the GRS should not be included on agency-specific records schedules submitted to NARA. The only exception is when requesting to deviate from the GRS. See the [GRS website](#) for more information about the GRS and deviation requests.

Common legal records covered by the GRS include:

- **GRS 1.1, item 080 - Administrative claims by or against the United States**
- **GRS 6.1, item 010 - Email and other electronic messages of Capstone officials:** Category 8 includes "Roles or positions that routinely provide advice and oversight to the agency ... including: General Counsels."

GRS items for activities that may occur in a General Counsel's office:

- **GRS 1.1, item 010 - Financial transaction records related to procuring goods and services, paying bills, collecting debts, and accounting.** Includes debt collection records and contracts.
- **GRS 2.3, items 070-071 - Alternative Dispute Resolution (ADR) case files.**
- **GRS 2.3, item 060 - Administrative grievance, disciplinary, performance-based, and adverse action case files**
- **GRS 2.3, item 090 - Labor arbitration (negotiated grievance procedure) case records**
- **GRS 2.3, item 100 - Federal Labor Relations Authority (FLRA) case files.**
- **GRS 2.3, items 110-111 - EEO discrimination complaint case files.**
- **GRS 2.3, item 120 - Records documenting contractor compliance with EEO regulations.**

- **GRS 2.3, item 130 - Labor management relations agreement negotiation records.**
- **GRS 2.8, Employee Ethics Records.**
- **GRS 4.2, Information Access and Protection Records.** For FOIA program records.

Agencies must schedule legal records that are not covered by the GRS.

Scheduling Common Legal Records

The following types of legal records are not included in the GRS. Although common, the value or retention needs vary depending on the significance of the records. In some cases the records are almost always of permanent value.

Administrative records. These are records related to the day to day management and operation of the office. Examples include status and activity reports, work assignments, and project tracking documentation. GRS 5.1, item 010, may cover these records. These records are usually scheduled as temporary with short retention periods.

Attorney working files. These working files may include notes, reference documents, and drafts. They are usually scheduled as temporary. Working files may also contain non-record reference material.

Chief Counsel's Records. Most agency Chief Counsels are Capstone officials. As such, their records are more likely permanent. Their records may include correspondence, program and policy files, and subject files. These records tend to have longer transfer periods for internal reference use. Transfer periods between 15 and 30 years are typical.

Common Types of Case Files:

- **Claims Files.** GRS 1.1, item 080, covers administrative claims by or against the United States. Agencies should use the GRS for claims files. If the agency believes they have historically significant claims files that should be permanent records, it should request a deviation to the GRS.
- **Enforcement Files.** Not all agencies enforce rules and regulations through legal processes. Some agencies keep enforcement files separate from their litigation files. These records tend to be temporary. Like litigation files, selection criteria may be appropriate if the agency creates historically significant files. Retention of

these records appears to be at least 10 years.

- **Litigation Files.** Agencies tend to schedule litigation files as temporary or use selection criteria to identify some cases as permanent, while most are temporary. Common selection criteria are cases that are precedent or policy setting or that are historically significant. Permanent litigation records tend to have a longer transfer period due to agency business needs. Transfer periods range anywhere between 15 to 30 years. Retention periods for temporary litigation files vary and may depend on the type of litigation and agency business use. NARA recommends retaining these records at least for 7 years to meet the statute of limitations.

Contract related records. General Counsel offices may have records related to contracts. Usually these are contract review files. These records are often scheduled as temporary. Records are usually retained for 6 years after completion of the contract. This is in line with GRS 1.1, item 010. Shorter retention may be appropriate when records aren't directly related to a contract.

Correspondence Files. These are general correspondence files and not correspondence related to specific legal cases. Correspondence related to specific cases should be filed in the related case file. These records are usually temporary, unless they belong to the Chief Counsel. The retention of these records varies from agency to agency. Retention may be anywhere from 3 years to 30 years. Retention should be based on your General Counsel's office's business needs. Note that correspondence files may have been replaced by email. If your agency uses the Capstone approach to manage email, only the email of designated Capstone officials is permanent. All other email in the General Counsel's office would be a 7 year temporary record.

Legal advice or opinions. Different factors influence how agencies approach scheduling these records. Ultimately, the value of these records depends on their content and significance in documenting decisions.

- In some agencies, advice is less formal than a legal opinion. Legal advice is temporary and legal opinions are permanent.
- The volume of records may play a role in how the agency manages them. If the volume is large, the agency may use selection criteria to identify permanent records. If the volume is small, all records may be permanent or temporary.

Agencies frequently use selection criteria to identify permanent legal advice or opinions. See the discussion of selection criteria in the section on Considerations When Scheduling Legal Records.

Legal advice or opinions may only exist in your agency as email. If an agency uses a Capstone approach to managing email, it may need to establish processes to capture permanent legal advice. This is especially true if not all permanent records are in the Chief Counsel's email. Usually only the Chief Counsel's email is a permanent record under the Capstone approach. Some agencies have added additional attorneys as permanent Capstone officials due to their areas of expertise and the need to capture their email as permanent records.

Retention of temporary legal advice/opinions may be long if needed for reference. Agencies should transfer permanent records 15 years after closure. In some cases a longer transfer period may be appropriate.

Legal matters/case tracking or Case management system. These systems contain information used to track and manage legal cases. Case management systems may also contain the case files themselves. The case tracking and management data in these systems is almost always temporary. Any case files in these systems need to be scheduled as case files, as their value may vary. Retention of case tracking or management data should reflect the retention of the related cases.

Subpoenas. Some General Counsel's offices maintain separate subpoena files. These records are usually temporary. Retention varies based on individual agency needs.

Retention Guidelines

Transfer of permanent records

NARA typically approves records for transfer to NARA between 15 and 30 years. For longer or shorter transfer periods, see [NARA Bulletin 2020-02: Guidance on Scheduling the Early and Late Transfer of Permanent Records](#).

Retention of temporary records

Agencies should base the retention of temporary records on the agency's administrative, fiscal and legal needs for the records. Some legal records are kept for longer periods for agency reference.

Related NARA Resources

Code of Federal Regulations: [36 CFR Chapter XII, Part 1235](#) (Transfer of Records to the National Archives of the United States)

[Strategic Directions: Appraisal Policy](#) (excerpted from NARA Directive 1441)

[NARA Bulletin 2018-01](#): Updating [NARA Bulletin 2014-04](#), Format Guidance for the Transfer of Permanent Electronic Records

[NARA Bulletin 2023-02](#): Expanding the Use of a Role-Based Approach (Capstone) for Electronic Messages