





#### Welcome

THE KNOW YOUR RECORDS PROGRAM consists of free events with up-to-date information about our holdings. Events offer opportunities for you to learn about the records held at the National Archive through ongoing lectures and genealogy programs.



#### **About the National Archives**



The National Archives and Records Administration (NARA) is the nation's record keeper. Of all the records created in the course of the business conducted by the United States Federal government, only a small percentage (roughly 2%-3%) are so important for legal or historical reasons that they are kept by us forever.

The National Archives preserves these permanent records so that they can be made available to everyone, whether you want to see if they contain clues about your family's history, need to prove a veteran's military service, or are researching an historical topic that interests you.



#### March 14, 2018



### Access and Transparency-Records held at the National Archives

In recognition of Sunshine Week, learn how we can we help you request and access the Federal records held at the National Archives and Records Administration (NARA) – most without having to file a Freedom of Information Act (FOIA) request. A panel of staff experts will discuss and answer questions about their work in making records available from the Executive agency, Judicial, Legislative, and Presidential records held at the National Archives.



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<b>Vilhelm</b> with the Center for Legislative Archives
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# Executive Branch (non-Presidential): Access to Accessioned & Unrestricted Records





**Martha Murphy** 

Martha Murphy has been a National Archives employee since 1991. She is currently a Program Manager for access policy, Chief of the Special Access and FOIA Staff, and acts as the FOIA Public Liaison for Research Services.



#### **Access to Unrestricted Records**

Executive Branch = Non-Presidential records from the Executive Branch of Government

Access Status = Most Executive Branch records in NARA's holdings are open and available WITHOUT filing a FOIA Request. Always start by examining NARA's On-line resources and/or communicating with our Reference Staff. There's no need to file a FOIA until you know that the records are restricted.



#### **Access to Unrestricted Records**

#### Requesting Access to Unrestricted Records:

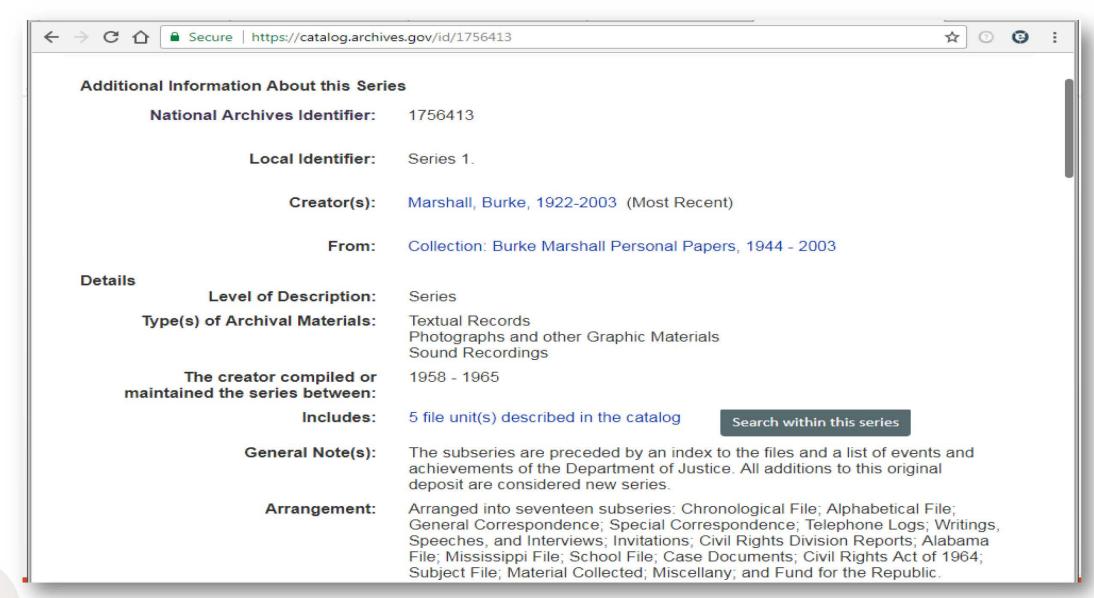
- Search NARA's On-Line resources
- e-mail the unit with custody of the records
  - or inquire@nara.gov
  - or post a question on "History Hub" <a href="https://historyhub.history.gov/welcome">https://historyhub.history.gov/welcome</a>
- Visit a National Archives Research Room



# Access to Accessioned Executive Branch Records Access to Unrestricted Records

Interpreting the National Archives Catalog:

https://catalog.archives.gov/id/560995





achievements of the Department of Justice. All additions to this original

deposit are considered new series.

Arrangement: Arranged into seventeen subseries: Chronological File; Alphabetical File;

General Correspondence; Special Correspondence; Telephone Logs; Writings, Speeches, and Interviews; Invitations; Civil Rights Division Reports; Alabama File; Mississippi File; School File; Case Documents; Civil Rights Act of 1964; Subject File; Material Collected; Missellany; and Fund for the Popullis

Subject File; Material Collected; Miscellany; and Fund for the Republic.

Access Restriction(s): Restricted - Partly

Specific Access Restriction: Donor Restricted

Note: Selected folders may contain withdrawal sheets where documents, in accordance with the donor's deed of gift, were removed from this series. These include documents which may be used to injure or harass any living person. All withdrawn documents have been placed under seal and upon request the Kennedy Library will review any material which has been closed for a period of not less than 2 years for the purpose of opening items which no longer require restrictions. Researchers should consult the reference staff to

obtain the appropriate form(s).

Use Restriction(s): Restricted - Possibly

Specific Use Restriction: Copyright

Note: Some of the archival materials in this series may be subject to copyright or other intellectual property restrictions. Users of these materials are advised to determine the copyright status of any document from which they wish to

publish.

Subjects Represented in the Archival Material(s): Civil rights

#### Scope & Content

This series consists of materials relating to Burke Marshall's work with Robert F. Kennedy and for the Department of Justice as Assistant **Attorney General** in the Department's Civil Rights Division. Types of materials include correspondence, writings, administrative and legal documents and reports, subject **files**, and published materials





Copy 1: Preservation-Reproduction-Reference

Extent (Size): 16 linear feet, 8 linear inches

Physical Occurrence Note: The box of photographs containing this series contains material from other

series within this collection.

Contact(s): John F. Kennedy Library (LP-JFK)

Columbia Point

Boston, MA 02125-3398 Phone: 617-514-1600 Fax: 617-514-1652

Email: kennedy.library@nara.gov

Count: 38.083 Legal Archives Box, Standard





#### **Access to Restricted Records**

#### Why are some NARA Records Restricted?

- As a Federal Agency, NARA is subject to the provisions of the FOIA
- The FOIA outlines nine reasons that records can be restricted
- Agencies notify NARA at transfer if restrictions apply to their records
  - Restrictions are noted in NARA's holdings management system at the time of accessioning
  - That data is transferred to the Catalog when the records are processed
  - The boxes are also labeled for a second level of physical control



#### **Access to Restricted Records**

#### Why are some NARA Records Restricted?

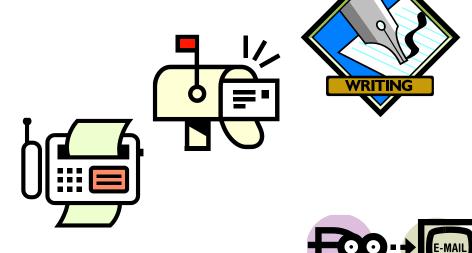
- Main reasons for withholding access:
  - Classification Properly classified under the Executive Order
  - Statutory Withholdings Tax Return information, Grand Jury records
  - Personally Identifiable Information (PII) Social Security Numbers, address, date of birth, mother's maiden name or contextual privacy (resolved and unresolved accusation of illegal activity)
  - Law Enforcement Records Agencies such as FBI, ATF, USSS, and others
  - Less Common:
    - Business Proprietary, Bank Examination Records, Information regarding wells



#### **Access to Restricted Records**

#### How are Requests to be Filed?

Requests must be in writing.
 They may be mailed,
 faxed,
 submitted via e-mail.



 You may also use the FOIA Online portal for requesting NARA's operational records. Special Access and FOIA

#### Contact Us

Feel free to contact us if you have questions regarding:

② **(9**)

- 1. the Special Access and FOIA unit
- 2. how to file a FOIA request
- to check the status of your FOIA request

#### By mail:

Special Access and FOIA National Archives at College Park 8601 Adelphi Road Room 5500 College Park, MD 20740-6001

By phone: 301-837-3190 By fax: 301-837-1864

By email:

specialaccess\_foia@nara.gov

#### FOIA Public Liaison

Accessioned Executive Branch Records - Washington, D.C. Area

Attn: Martha Wagner Murphy 8601 Adelphi Road, Room 5500 College Park, MD 2074

Tel: 301-837-3270 Email: dc.foia.liaison@

#### How to File a FOIA Request



About Us

The Special
Access and
Freedom of
Information
Act (FOIA)
staff of
Research
Services at the
National
Archives at
College Park,
MD is
responsible
for:

 Logging and tracking requests for archival records under the FOIA

Processing



Learn more about filing a FOIA Request →

For additional questions regarding FOIA requests at NARA please see our FOIA Reference Guide





#### **Access to Restricted Records**

#### What to Expect After You File Your FOIA:

- Within 20 working days you will receive
  - Your FOIA tracking number
  - A statement regarding whether or not NARA has records responsive to your request
  - Instructions on how to access the records

#### Or

An estimated time when review of the records will be completed



#### **Access to Restricted Records**

#### What to Expect After You File Your FOIA:

- You will be notified when review is complete
  - If records are released to you, you will have the option to come and view and copy them here or pay for NARA to reproduce the documents and send you copies.
- If records are restricted in any way you will be notified of the information withheld
  - Withdrawal form if entire page is withheld
  - Redactions if only specific information is withheld
  - The FOIA provision under which the information is withheld will be noted

NH 100-19186

Enclosed LHM is classified confidential as information provided by sources NH T-1 through NH T-5 could reasonably result in the identification of sources of continuing value.

NH T-1 is Bridgeport,
Conn., Police Department (By request)

NH T-2 1s

FOIA(b) (7)

(D)

NH T-3 is New Haven Police Department (by request)

NH T-4 is

The enclosed LHM contains a summary of the activites of the BPP in the State of Consecticut, in accordance with instructions set forth in referenced Bureau sirtel dated November 19, 1968.

SA JOHN A. DANAHER, JR., contacted MH T-4 and MH T-5 on March 20, 1969. All other sources were contacted by SA THOMAS F. MC GORRAY.

Enclosed LHM is being disseminated locally to Secret Service, 108th MI Group, and USA, New Haven, as well as ATF, Hartford, Connecticut.

LEADS

NEW HAVEN

At Hartford, Conn.

Will conduct appropriate background investigation regarding Project Mathew to determine its relationship to the BPP.





#### **Access to Restricted Records**

#### What to Expect After You File Your FOIA

A final response letter will be sent to you and will:

- list what was released in full, and what was withheld if anything
- explain the FOIA provision under which records were withheld with a plain language explanation of what that provision means
- provide you with appeal rights if any information has been withheld
- provide you with contact information for the FOIA Public Liaison
- provide you with contact information for the Office of Government Information Services (OGIS)



## **Declassification of Records in the National Declassification Center**





**Don McIlwain** 

Don McIlwain currently serves as a supervisory archivist and Chief of the Classified FOIA/MDR Division in the National Declassification Center (NDC) and has since January 2010. He directs a staff that processes access demand requests for classified Federal records that have been accessioned into the National Archives. Prior to the creation of the NDC, he served as a supervisory archivist in the Initial Processing and Declassification Division from March 2002 to December 2009. There he oversaw a variety of archival activities including accessioning, review and description of civilian agency records. Prior to becoming a supervisory archivist, he served as subject area specialist dealing with the accessioning, description and declassification of records pertaining to the foreign relations of the United States. Don has also worked as an archivist in the Initial Processing and Declassification Division, Textual Projects Division, and Center for Electronic Records. He began his NARA career in 1990 as an archives technician working in the Suitland Reference Branch and Records Declassification Division. He has served as an instructor for several courses including Managing the Lifecycle of National Security Information, the Modern Archives Institute, and Introduction to Archives for Archives Technicians.



# DECLASSIFICATION OF RECORDS IN THE NDC

NATIONAL

Don McIlwain
Supervisory Archivist, FOIA-MDR
National Declassification Center
National Archives and Records Administration

### **Executive Order 13526**

- Executive on classification and declassification.
  - Only Executive branch agencies have the authority to classify or declassify information, as delegated by the President.
  - Details declassification review processes automatic declassification, systematic review and mandatory review.
- Provides the public with an avenue to request access to classified Executive Branch, Presidential, Congressional, and other non-executive branch records.
- Outlines classification and declassification authorities.
- Establishes the Interagency Security Classification Appeals Panel (ISCAP) to be the final appeal authority.

### **Executive Order 13526**

- Section 3.3 Automatic Declassification
- Section 3.4 Systematic Declassification
- Section 3.5 Mandatory Declassification
- Section 3.7 The National Declassification Center

CENTER

### **Automatic Declassification**

- E.O. 13526 (section 3.3) requires Federal agencies to review their permanently valuable classified records by the end of 25 years from creation and take one of four actions:
  - Exempt
  - Refer
  - Declassify
  - Exclude
- May be done pass/fail at the document or subdocument level
- Sometimes called the "factory" approach

### **Executive Branch Records**

- Access for still classified records can be requested under:
  - The Freedom of Information Act (5 U.S.C. § 552)
  - Mandatory Declassification Review Provision (section 3.5) of Executive Order 13526

### DECLASSIFICATION CENTER

### Freedom of Information Act (FOIA)

- Enacted by Congress in 1966, amended several times since.
- Gives public the right to request access to any record created or collected by Executive Branch agencies.
- Agencies can deny access only after a page by page review and must cite one of the nine specific exemptions.
- Agencies must "reasonably segregate" declassified information
- Public may appeal agency denials, last resort appeals must be made through the Courts.

### Processing a FOIA Request

- Review
  - Determine if the records are restricted.
  - Determine if NARA has declassification Authority
- Referral
  - Documents sent to equity agencies for review.
- Processing
  - Make sanitized copies of documents based on agency decisions.
- Appeal
  - Researchers may appeal release decisions. NARA manages this process for accessioned records.
- Last Resort
  - If appeal is denied, researchers last option is to go to court.

### **FOIA Exemptions**

- b(1) National Security
- b(2) Internal Agency Personnel Rule and Practices
- b(3) Statutory Restrictions
- b(4) Trade Secrets and Commercial Information
- b(5) Inter (Intra)-Agency Communications
- b(6) Personal Privacy
- b(7) Law Enforcement
- b(8) Financial Institutions
- b(9) Geological and Geophysical Information

### FOIA Exemption b(1)

Materials specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and are in fact properly classified pursuant to such an order.

# DECLASSIFICATION

### NARA and b(1) Exemptions

- NARA has no original classification authority
- NARA reviewers depend on agency guidelines.
- Without guidelines, documents are referred to equity agencies for review and declassification/sanitization.
- NARA coordinates appeals with the equity holding agencies

### Mandatory Declassification Review

- Executive Order 13526, section 3.5
- Provides the public with an avenue to request access to Presidential, Congressional, and other "non-federal" records and papers as well as Federal records.
- May be more efficient than FOIA for requesting well identified records such as withdrawn items.

### Processing a MDR Request

- Review
  - Determine if the records are restricted.
  - Determine if NARA has review Authority
- Referral
  - Documents sent to equity agencies for review.
- Processing
  - Make sanitized copies of documents based on agency decisions.
- Appeal
  - Researchers may appeal release decisions. For Federal records, NARA manages the appeal process.
- Last Resort
  - A researchers final appeal option is the Interagency Security Classification Appeals Panel (ISCAP).
  - Different than FOIA

#### The National Declassification Center

- Was established by section 3.7 of EO 13526 and charged with:
  - timely and appropriate processing of referrals for accessioned Federal records and transferred Presidential records.
  - general interagency declassification activities necessary to fulfill the automatic declassification requirements
  - the exchange among agencies of detailed declassification guidance to enable the referral of records
  - the development of effective, transparent, and standard declassification work processes, training, and quality assurance measures
  - the development of solutions to declassification challenges posed by electronic records and special media

#### The National Declassification Center

- Something New: Indexing on Demand (IOD)
  - Can be requested for accessioned records that have completed all phases of NDC processing except final indexing and segregation
  - Allows the public to have input on what we prioritize for final release
  - Uses the results of 25-Year "factory" pass/fail review
  - To date,13,556,000 pages processed with a release rate of about 80%
  - For more information and to see a listing of eligible records series:

https://www.archives.gov/declassification/ndc/iod

#### For more information:

Don McIlwain, 301-837-0587 don.mcilwain@nara.gov

General NDC Questions: <a href="NDC@nara.gov">NDC@nara.gov</a>
On-site office hours in room 2000
National Archives at College Park, MD (Archives II)
Monday-Friday, 10:00-11:30



### Access to Presidential Papers and Records: Understanding the Process





John Laster

John Laster is the Director of the Presidential Materials Division at the National Archives and Records Administration (NARA). He has worked with NARA since 1996 when he began his career as an archivist at the George Bush Library. He transferred to Washington in 2001 and served as a senior policy archivist and White House liaison specializing in access to and release of Presidential records.

# Three Types of NARA's Presidential Holdings

- Donated Presidential Papers (44 U.S.C 2111)
  - Hoover through Carter Administrations except Nixon
- Seized Nixon Materials (44 U.S.C. 2111 note)
- Publicly-owned Presidential Records (44 U.S.C. 2203 (f))
  - Reagan Administration forward



Jimmy Carter Working on His State of the Union Address, 1/18/1978. National Archives and Records Administration. National Archives Catalog. Web. 02 Feb. 2018.

# **Donated Presidential Papers**

- Access is determined by donor's deed of gift
- Donated historical papers are not subject to FOIA
- Systematic review is the rule
- Classified material is subject to MDR



President Richard Nixon and Former President Lyndon Baines Johnson Greeting the Crowd at the Eureka Airport in California, 8/27/1969. National Archives and Records Administration. National Archives Catalog. Web. 02 Feb. 2018.

### Seized Nixon Materials



President Richard Nixon Shaking Hands with Chairman Mao Tse-tung, 2/21/1972. National Archives and Records Administration. National Archives Catalog. Web. 02 Feb. 2018.

- Access governed by the Presidential Recordings and Materials Preservation Act (PRMPA)
- Not subject to FOIA
- Systematic Review
- Classified material is subject to MDR

#### Presidential Records

 Access governed by the Presidential Records Act (PRA)

 Records are subject to both FOIA and MDR requests five years after the end of the administration

 Required notification period prior to release of records

 Review of these collections is driven by FOIA requests SYSTEM II ( 91239 ( 7,2727

THE WHITE HOUSE

Mar. 28 85

Dear Secretary General Hordrocher

Mour that we are both home o facing the took of leading our countries with a more constructive relationship with such attending you barried to my initial. Thoughts on our meetings. Thought I will be swaining shortly, in a more furner of official manner, a more detailed commentary on our discussions, there are some things I would like to convey very personally of privately.

First, I want you to know that I friend our meetings of great walve, We had agreed to sepoch frankly, and we did. On a rosult, I came away from the meeting with a better understanding of your attitudes. I happe you alway understand mine a little better. Obviously there are many things on which we disagree and disagree very fundamentally. But if I understand you correctly, you too are determined to take strips to see that our nations manage their relations in a procedul Justion. If this is the case, then this is one point on which we are in total agreement—and it is afterable the most fundamental one of all.

DECLASSIFIED
Authority: N. Menan, NSC 10/11/99
By: DSD, NARA Date: 10/16/99

Reagan, Ronald. Letter to Mikhail Gorbachev (English version). 28, November 1985. Ronald Reagan Presidential Records, National Security Council, Executive Secretariat 1981-1989. Ronald Reagan Library, National Archives and Records Administration.

# Similarities in Review for all Types of Presidential Holdings

- Sensitivity of the records requires a page-by-page, line-by-line review to apply restrictions.
- Certain restrictions, while varying slightly in wording, are universal.
- National security information, private information, and information concerning protection of the President all require closure, regardless of whether it's donated or governed by the PRMPA or the PRA.



President Bush and President Gorbachev sign the Strategic Arms Reduction Treaty (START) in the Kremlin in Moscow, Soviet Union, 7/31/1991. National Archives and Records Administration. National Archives Catalog. Web. 02 Feb. 2018.

# Review of PRA-governed Presidential Records



President William Jefferson Clinton Meeting in the Situation Room, 4/23/1994. National Archives and Records Administration. National Archives Catalog. Web. 02 Feb. 2018.

- Eight of the nine FOIA exemptions apply
- Six Presidential restrictive categories
- Two unique Presidential restrictions
  - P2: Material related to appointment to Federal office
  - P5: Confidential communications requesting or submitting advice between a President and his advisors or between those advisors

## Timeline of Presidential Records

Three distinct periods of review exist for PRA records

- 1. First five years from the end of a Presidential administration
- 2. Five to 12 years from the end of a Presidential administration
- 3. 12 years after the end of a Presidential administration

FOIAs Accepted
No FOIAs
PRA and FOIA exemptions apply
Only FOIA exemptions apply
Years 12 forward

#### For more information

Contact me:

John Laster

202-357-5144

john.laster@nara.gov

Contact the Presidential Libraries:

www.archives.gov/presidential-libraries



#### **Access to Legislative Branch Records**





Kristen Wilhelm

Kristen Wilhelm has been an archivist at the Center for Legislative Archives since 1992. Because she has worked with legislative records involving the Kennedy assassination, 9/11, organized crime, the Jonestown massacre, and the financial crisis of 2008, she enjoys the relative calm of 19th-Century records.

#### Access to Legislative Branch Records



Capitol Building with cherry blossoms

# Legislative Branch

- Congress (House of Representatives and Senate)
- Legislative Support Agencies (ex. GAO, GPO, CBO)
- Legislative Branch Commissions

# FOIA only applies to the executive branch!

#### **Access Rules**



Changing the Senate's Ohio clock for daylight savings time

#### House of Representatives

- Unpublished = 30 years old
- Investigative = 50 years old

#### Senate

- Unpublished = 20 years old
- Investigative and nominations = 50 years old

# Screening

- Mandatory
- General Restrictions (36 CFR 1256)
- Takes time!



Dancing the Charleston in front of the Capitol

#### Contact Us



Legislative.Archives@nara.gov

www.archives.gov/legislative



#### FOIAs for Operational Records at NARA





Joseph A. Scanlon

Joseph A. Scanlon has been the Freedom of Information Act (FOIA) and Privacy Act Officer of the National Archives and Records Administration since November 2010. Mr. Scanlon also serves as NARA's Alternate Liaison to the Interagency Security Classification Appeal Panel (ISCAP). Mr. Scanlon completed his M.A. in Public Administration (2010) American Public University; and received his B.A. in Government and Politics from the University of Maryland in 1989.

Mr. Scanlon has been with NARA since 1992, starting his career as an archives technician in the Records Relocation Branch in the Washington National records Center (WNRC). He has spent two-thirds of his career working in the Records Declassification Division (predecessor to the National Declassification Center) and the Special Access and FOIA Staff implementing access policy with regards to accessioned records.





#### FOIAs for Operational Records at NARA

Joseph Scanlon, NARA FOIA & Privacy Act Officer



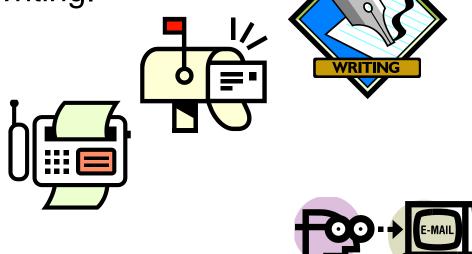
#### How are Requests to be Filed?

Requests must be in writing.

They may be mailed,

faxed,

submitted via e-mail.



You may also use the FOIA Online portal for requesting NARA's operational records.



#### The Process

- Request is received in our office.
- The FOIA is logged into an internal database and <u>FOIAonline</u>
- We have 20 working days to respond.
- If the volume of records is large, or consultation outside of the agency is required, an additional 10 days may be requested – you will be informed of this.



#### The Process (continued)

- We will respond in writing or e-mail. Whichever you prefer.
- Three determinations: Total Grant, Partial Grant, and Denial.
- We will offer appeal rights, access to our FOIA Public Liaison, and the Office of Government Information Services (OGIS).



#### Fees at NARA

What does NARA charge? It depends on the record.

If the record is operational?

Requester categories per the statute: commercial, media/educational institutions, and all-others Fee schedule can be found at 36 C.F.R. §1250.53

• If the record is accessioned?

No requester categories
No fee waivers per statute 44 U.S.C. §2116(c)
Fee schedule can be found online at:
www.archives.gov/research/order/fees.html



#### Office of Government Information Services (OGIS)

- Created by OPEN Government Act of 2007
- Started operations September 2009
- Assist FOIA requesters and Federal agencies by offering dispute resolution services
- Review agency FOIA compliance to identify trends and strategies to improve performance
- Website: <a href="https://www.archives.gov/ogis">https://www.archives.gov/ogis</a>



#### NARA Appeal Authority

- The Deputy Archivist of the United States is NARA's appellate authority for FOIA & MDR requests
- The appellant has 90 calendar days to submit an appeal (this used to be 60 days)
- The appeal may be in writing, e-mail, or fax. You must explain why an appeal is necessary
- All NARA FOIA appeal letters will have instructions for contacting OGIS and filing in federal court
- All NARA MDR appeal letters will have instructions for appealing to ISCAP



#### Appeal of Accessioned Legislative Records

- The Deputy Archivist of the United States is NARA's appellate authority
- The appellant has 90 calendar days to submit an appeal
- The appeal may be in writing, or e-mail. You must explain why an appeal is necessary
- All NARA appeal letters from the Deputy Archivist are final determinations



#### For Additional Information Contact

Joe Scanlon, NARA FOIA & Privacy Act Officer joseph.scanlon@nara.gov, 301-837-0583

www.archives.gov/foia

www.foia.gov

www.justice.gov/oip

www.archives.gov/ogis





# Question & Answer Panel Session





# Thank you for attending!

Today's video recording and materials will remain available at www.archives.gov/calendar/know-your-records







# We value your opinion.

Please take a few minutes to complete this short evaluation. Your comments help us maintain the quality of our services and plan future programs.

**Click** ⇒ **Event Evaluation** 

www.surveymonkey.com/r/KYREventEval