



February 4, 2020

TO: David S. Ferriero
Archivist of the United States

FROM: James Springs *James Springs*
Inspector General

SUBJECT: Special Report No. NARA-SPEC-20-0075-S, *NARA's Process for Banning Researchers from Facilities*

This special report covers a limited examination of the National Archives and Records Administration's (NARA's) process for banning researchers from NARA facilities, as evidenced by a recent incident at the National Archives in Washington, DC (A1). This limited review did not examine the alleged conduct or make any determination surrounding it. The review was limited to the process alone. While it appears NARA personnel honestly worked to ensure the safety of NARA facilities and provide the individual with proper notification, the process did not completely align with NARA's regulations published in the Code of Federal Regulations (C.F.R.). One potential cause is there seems to be some confusion around the use of the term "ban" as opposed to other options such as removal or revocation of privileges.

Background

36 C.F.R. 1280.34 governs how individuals may be removed or banned from NARA facilities. Individuals may be removed from "the premises" for up to seven calendar days, and NARA management states this option is used for immediate security concerns. Banning is different than removal, and can be appealed to the Deputy Archivist of the United States (Deputy Archivist). In a banning situation, a decision must be made whether to ban an individual from specific or all NARA facilities. 36 C.F.R. 1254.46–52 governs another process, how NARA may revoke research privileges. When an individual's research privileges are revoked, they may still enter NARA facilities such as museum areas. However, unlike banning, when a researcher's privileges are revoked it is automatically applied to all NARA research rooms. Revocation can also be appealed to the Deputy Archivist.

The regulations in the C.F.R. are publically available. However, NARA also follows NARA Directive 1604, Denying or Revoking Researcher Privileges, Banning of Researchers, and Appeals; and NARA 1604-S1, How to Handle Threats and Misconduct in Research Rooms. These NARA directives provide more detail to NARA staff on what actions to take in certain instances and flesh out the procedures to follow. They are not posted publically, though they are subject to the Freedom of Information Act.

Recent Banning Incident

In the fall of 2019 a NARA staffer reported to their supervisor that a researcher was complaining about various closings of research rooms and stated “You all had a day off yesterday, anyone who is not here today should be shot.” The supervisor reported this incident up their chain of command, and NARA Security Management (BX) determined the researcher should be removed from the facility until they could further investigate the incident. Under 36 C.F.R. 1280.34(a)(1), a researcher can be removed from the facility for up to seven calendar days. However, by this time the researcher had left A1 and traveled to the National Archives at College Park, MD (A2) to research there. BX had security guards at A2 inform the researcher they had to leave and the researcher was escorted out of the building without incident.

The researcher immediately contradicted the staff account, and maintained they did not state any threat. The staff member gave a statement about the words used, but there is no evidence they were asked whether or not they believed it to be a legitimate threat or not. The researcher has consistently denied making the statement as claimed, stating their actions and words should be discernible from the security video. However, video of the incident has no audio. While no parties on the video appeared to react to any statements, the words used cannot be discerned.

The Director of the Textual Records Division (RDT), BX, and NARA’s Office of General Counsel (NGC) coordinated the afternoon of the incident and the next day to address the issue. The day after the incident the researcher was sent a letter banning them from all NARA facilities for three days for making a threat, signed by RDT, who oversees research room staff at A1. During this time, BX determined there was no credible threat to NARA staff or facilities. After three days the researcher returned to NARA without incident. A few days later they were also given a letter of “formal notification regarding [their] conduct,” stating they “must treat [NARA] staff and other people in the research room with respect.” That letter referenced the earlier banning letter, stating the banning letter was issued under 36 CFR 1280.32, the regulation describing conduct for which an individual may be removed.

Analysis

While BX had the researcher removed for security reasons until they could further investigate and understand what happened, 36 C.F.R. 1280.34(b) reserves the power of removal for the “regional administrator of the facility (or the director if so designated).” That power is limited to “the facility” and does not include the power to remove a patron from all facilities. Further, under 36 C.F.R. 1280.34, the decision to ban an individual from some or all NARA facilities is reserved for the Assistant Archivist for Administration. A ban from all NARA facilities requires “written notification by the Assistant Archivist for Administration.” NARA no longer has an “Assistant Archivist for Administration,” but it is clear that position had NARA-wide leadership responsibilities. For instance, they managed NARA’s nationwide procurement program. Neither the head of BX at A1, or RDT is equivalent to the old Assistant Archivist for

Administration. NARA 1604-S1 says the authorizing official for a ban “from a facility” up to seven days is the Access Coordinator. For bans “from any or all facilities on a long term basis” the approval authority is the Executive for Business Support. There is no specific guidance on short-term bans from all facilities.

It appeared all NARA personnel were earnestly trying to figure out a correct response to the situation in accordance with agency procedures. However, the term “ban” seemed to be used synonymously with both removal and the revocation of research privileges. These are different steps available to address issues in the research room, and this confusion of terms led NARA to issue a ban without following all terms of NARA 1604 and published regulations. Ultimately, after being removed the researcher was banned from all NARA facilities for three days. However, the letter they received was modeled after “Letter E” from NARA 1604-S1 which is for a ban from a specific NARA facility for seven days or less. The more appropriate form letter, “Letter F” for bans from all NARA facilities for up to 180 days, would have notified the researcher of their appeal rights. While some of the practical effect of an appeal has been nullified due to the short nature of the ban and NARA’s subsequent warning letter to the researcher advising them to treat staff with respect and acknowledging the researcher’s disagreement with staff accounts, there are other factors to consider as well. The researcher has repeatedly claimed their innocence to NARA officials and protested their ban, claiming they want the incident wiped from their record. If the action taken was not intended to be a ban but instead was a removal, that has not been corrected and the researcher has not been notified. However, as it stands an official that did not match NARA’s written procedures formally banned the researcher from all NARA facilities, and the researcher was not notified of their appeal rights.

NARA’s process for banning researchers did not function effectively in accordance with NARA policy and regulations in the instance reviewed. NARA management should consider:

1. Clarifying the difference between removal, revocation of privileges, and banning in NARA policy and regulations.
2. Examining what authorities BX has to order removal of an individual for safety reasons and whether that authority should be broadened to all facilities.
3. Determining what positions should have removal and banning authority and ensure all regulations and policy are updated.
4. Ensuring all applicable staff are trained on any updates.

Please respond within 45 calendar days detailing what, if any, actions you took or plan to take to address these issues.

As with all OIG products, we will determine what information is publicly posted on our website from this special report. Should you or management have any redaction suggestions based on FOIA exemptions, please submit them to my counsel within two days from the date of this special report. Should we receive no response from you or management by this timeframe, we will interpret that as confirmation NARA does not desire any redactions to the posted report.

Please call me with any questions, or your staff may contact John Simms, Counsel to the Inspector General, at (301)837-3000.

cc: Debra Wall, Deputy Archivist of the United States
William Bosanko, Chief Operating Officer
Kimm Richards, Accountability
United States House Committee on Oversight and Government Reform
Senate Homeland Security and Governmental Affairs Committee



Date: 31 March 2020
To: James Springs, Inspector General
From: David S. Ferriero, Archivist of the United States
Subject: OIG Special Report No. NARA-SPEC-20-0075-S, *NARA's Process for Banning Researchers from Facilities*

Thank you for your recent review of NARA's process for banning researchers from NARA facilities. These inconsistencies will be addressed through revisions of NARA policy and regulations, as well as collaboration amongst the impacted program offices. The following actions will address the issues identified by your review:

Revisions of NARA Policy and regulations

NARA has substantially revised 36 CFR Part 1280. We expect the revised regulation to be published in the Federal Register soon. Our changes will be effective 40 days after the date they are published in the Federal Register.

With respect to the issues addressed under this Special Report, NARA is revising 36 CFR § 1280.34 to update who may authorize removal, clarify that removal is temporary, update who may authorize temporary or permanent bans, and clarify that banning may be permanent or for a specific period of time and may apply to the specific facility from which an individual was removed, or all NARA property or facilities. We have also clarified that 36 CFR Part 1280 applies to facilities owned or operated by either the General Services Administration or the Government Publishing Office.

36 CFR § 1254 is scheduled to be revised. Those revisions will include clarifying the meaning of denial of research privileges versus revocation of research privileges, and listing the officials who make those decisions.

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NARA 1604, Denying or Revoking Researcher Privileges, Banning of Researchers, and Appeals, and the Supplement 1604 S-1, How to Handle Threats and Misconduct in Research Rooms, will be revised to: incorporate all changes made to the regulations; clarify steps to be taken by staff in response to possible removal, denial, revocation, or banning situation; remove inconsistencies; and other changes as are useful.

Examination of BX Authorities

The proposed revision to 36 CFR § 1280.34 authorizes the Executive for Agency Services; Executive for Research Services; Executive for Legislative Archives, Presidential Libraries and Museum Services; and the Director of the Security Management Division to immediately remove an individual who violates the provisions in 36 CFR Part 1280 and temporarily deny further access to the property or facility for up to seven calendar days. During this removal period, the Executive for Business Support Services renders a decision on whether the person should be banned from the specific facility from which they were removed, or all NARA property or facilities, for either a specific period of time or permanently.

Determination of positions with removal and banning authority

As explained above regarding revisions to NARA policy and regulations, the agency is updating and clarifying the proper positions to make decisions regarding removal, denial of research privileges, revocation of research privileges, and banning.

Training of applicable staff

Once the changes to 36 CFR Part 1280 are made and NARA 1604 and the Supplement 1604 S-1 are revised to reflect these changes, we will ensure that all affected NARA staff are trained on the revised authorities and steps to be taken in response to a possible removal, denial, revocation, or banning situation.

We expect the actions outlined above to result in clear authorities and guidelines regarding removal, denial, revocation and banning from NARA facilities. If you have questions about this response, please contact Kimm Richards at kimm.richards@nara.gov or by phone at 301-837-1668.



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