

August 17, 2018

FROM: James E. Springs *James Springs*
Inspector General

TO: David S. Ferriero
Archivist of the United States

SUBJECT: *Special Report No. 18-SR-13, NARA's Plans to Make Electronic Records
Archives-Congressional Records Instance Records Available to the Public*

The purpose of this Special Report is to inform you of the results of our review of the National Archives and Records Administration's (NARA) actions to make electronic records in the Electronic Records Archives-Congressional Records Instance (ERA-CRI) available to the public. We primarily focused on determining if NARA is adequately planning for the public release of ERA-CRI records based on relevant access rules.

Background

NARA's Center for Legislative Archives (Center) serves as the repository for the official records of the United States (US) House of Representatives (House) and the US Senate, which remain in the permanent legal custody of the House and Senate, respectively. House and Senate records are exempt from the Federal Records Act and, reflecting their status as records of independent institutions in a separate branch of government, are governed solely by House and Senate rules, respectively. The Center also holds records of legislative branch agencies and commissions such as the 9/11 Commission, Financial Crisis Inquiry Commission, Congressional Budget Office, Government Accountability Office, and the Government Publishing Office.

To support the current business needs of the Congress, the Center responds to requests from House and Senate committees and subcommittees for the timely delivery of closed records to the appropriate authorities. As legislative issues typically remain active through successive sessions of Congress, majority and minority staffs of House and Senate committees and subcommittees recall these records to advance the nation's legislative agenda. The Center also provides closed records of legislative branch commissions to answer authorized special access requests from congressional committees, federal agencies, and federal courts to support their current work.

The Center also operates the ERA-CRI, which stores over 160 terabytes¹ of data. The ERA-CRI is a preservation system that contains the electronic records of congressional committees, held by, but not in the legal custody of NARA. The system holds Unclassified and some Sensitive records due to the nature of the records discussed in committee, which can include Personally Identifiable Information. The ERA-CRI also includes congressional web harvest data. The

¹ A terabyte is about 1 trillion bytes or about 1,000 gigabytes.

Center preserves the content and appearance of congressional websites by capturing snapshots of websites once at the end of each two-year Congress. These web harvests produce a public reference copy of the websites for the purpose of continual availability to the public, and also produce a record copy to be retained in NARA's holdings. Access to the ERA-CRI is restricted to internal authorized NARA staff.

At the conclusion of each Congress, the Center typically receives significant increases in electronic records transfers. That trend continued with the conclusion of the 114th Congress on January 3, 2017, albeit at a slightly lower pace than in the past. The Center's electronic holdings grew approximately 44 percent from 2016-2017. At the end of the 113th Congress, the volume growth of electronic holdings was 98 percent, while the end of the 112th Congress showed an increase of 70 percent.

Rules of Access Governing the Release of Legislative Records

The holdings of the Center are made available according to access policies set by the creator of the records. For example, the House and Senate determine the access policies for their own records. House Rule VII opens most House records when they are 30 years old. Records containing personal privacy, information closed by statute, and records of executive sessions are closed for 50 years. Senate Resolution 474 from the 96th Congress opens most Senate records when they are 20 years old. Records containing personal privacy, information closed by statute, and records of executive nominations are closed for 50 years. Access to the records of joint committees follow the access policy of whichever chamber transferred the records to the Center's custody. Records of legislative branch commissions are accessioned under the provisions of the Federal Records Act. Each commission determines its own access policy. Lastly, records of legislative branch organizations are accessioned under the provisions of the Federal Records Act. Most of these records are open as soon as they are accessioned into NARA's custody.

Advisory Committee on the Records of Congress

The Treasury, Postal Service and General Government Appropriations Act, Public Law 101-509 dated November 5, 1990 created the Advisory Committee on the Records of Congress (Advisory Committee). The Advisory Committee consists of 11 members that include the Secretary of the Senate, the Clerk of the House, and the Archivist of the US. The Advisory Committee meets semi-annually to review the management and preservation of the records of Congress. The Advisory Committee issued five reports between 1991 and 2012 on the progress made in the preservation of the records of Congress and its Members, the effectiveness of programs, and highlights of emerging challenges. In addition, the Center submits a semi-annual report to the Advisory Committee on its accomplishments and progress updates during the reporting period.

Current Status

Based on an OIG request for information about open records in ERA-CRI that have crossed, or are approaching the 20 or 30 year thresholds under the relevant access rules, the Center estimates there are fewer than 100 accessions of Senate records that could be open for request. These potentially² open accessions cover records created through 1998. However, rough estimates suggest the number of accessions open for request will increase considerably in less than 10 years. For example, the Center estimates there will be approximately 340 potentially open accessions of records created from 2003-2006.

The Center's primary means of promoting access to records is by describing them in the National Archives Catalog (NAC). Under the current description plan (See Attachment A for an overview of the plan), which was developed with the guidance of the Advisory Committee, the Center is currently describing the records of the 98th Congress (1983-1984). To date, the Center has not reached the point of describing records that contain a significant volume of electronic records. When the description plan reaches that point, the Center expects public demand for those records to follow the publishing of their description in the NAC. A NARA official indicated the Center responds to public requests for textual and electronic records that have not yet been described in the NAC.

Currently, there is a 14-year difference between when a record gets described in the NAC and when it has past the Senate's 20-year threshold where it could potentially be made public. If the description plan continues at its present pace (i.e., one Congress described each fiscal year), this difference will be reduced each year. See Table 1 below.

² The Center does not systematically screen records, but screens on demand in response to reference requests. It is during this screening process that the Center would discover files that need to remain closed for longer periods of time.

Table 1. Projected Description Plan Schedule

Last Full Year of Congress ³ Getting Described	Potential Year Senate Record Could be Released to Public	Projected Fiscal Year for Describing Records	Difference in Years from When a Senate Record Could Potentially be Released and the Projected Fiscal Year it Gets Described
1984	2004	2018	14
1986	2006	2019	13
1988	2008	2020	12
1990	2010	2021	11
1992	2012	2022	10
1994	2014	2023	9
1996	2016	2024	8
1998	2018	2025	7
2000	2020	2026	6
2002	2022	2027	5
2004	2024	2028	4
2006	2026	2029	3

With the increase in the volume of electronic records from the last few Congresses, and an increase going forward in the number of records in ERA-CRI that will cross the 20 and 30 year thresholds under the relevant access rules, the Center will need to start planning on how it will fulfill NARA’s goal of making access happen as it relates to electronic congressional records. The planning may include the need for additional resources, as well as updating the roles and responsibilities of current staff members, along with updating policies and procedures. It will also include incorporating the ERA-CRI into the upgraded ERA 2.0 system. We will continue to monitor NARA’s work related to the public release of records in the ERA-CRI.

Consistent with our responsibility under the *Inspector General Act, as amended*, we are providing copies of this Special Report to congressional committees with oversight responsibility over the National Archives and Records Administration.

Please call me with any questions, or your staff may contact Jewel Butler, Assistant Inspector General for Audits, at (301) 837-3000.

³ Each Congress is comprised of two, one year sessions. The second session typically ends the first week in January of an odd numbered year.

cc: Deputy Archivist of the United States
Chief Operating Officer
Accountability
United States House Committee on Oversight and Government Reform
Senate Homeland Security and Governmental Affairs Committee

Overview of the Center's Description Plan

The Center's description program was developed in response to recommendations from the Advisory Committee. The Advisory Committee appointed the Task Force on Description in 2009 to make specific recommendations for improving the description of and access to congressional records. The Center contracted with the Center for History and New Media (CHNM) in 2010 to analyze the Center's description processes as they related to existing NARA systems and description standards. The resulting report, "Recommendations for Center for Legislative Archives Next Generation Finding Aid," was endorsed by the Task Force on Description and the Advisory Committee in June 2011.

In 2011, the Center embarked on two pilot description projects that resulted in new workflows, templates, standard operating procedures, and a plan for completing the improvement goals outlined in the CHNM report. In addition, the pilot projects provided useful metrics that were used to develop the Center's Next Generation Finding Aid (NGFA) Project, which was later renamed the Legislative Enhanced Archival Description (LEAD) Project. The NGFA/LEAD project is a ten-year description plan (2011-2021) to improve the description of and access to the records of Congress.

The Center's LEAD Project reflects the unique characteristics of congressional records while adhering to national standards and NARA's description standards and processes. A significant portion of the LEAD Project has focused on description of open House and Senate records. As of March 2018, the Center has produced enhanced descriptions for 97 of the 99 Congresses for which both House and Senate records are fully or partially open, providing improved access to records that document 197 years of congressional history (1789–1986).