NATIONAL ARCHIVES

MEMORANDUM

TO: Heads of Federal Agencies and Departments, Legal Counsel, Senior Agency Officials for Records Management, Agency Records Officers
FROM: The National Archives and Records Administration
SUBJECT: Guidance on Applying the Federal Records Act to Artificial Intelligence Materials

This memorandum explains how to apply the Federal Records Act (FRA) to existing Artificial Intelligence (AI) uses, with a focus on the use of AI platforms. It proceeds in two parts.

Part I provides guidance to federal departments and agencies on how to apply the definition of a federal record to inputs, outputs, data, audit trails, software, and other materials involved in the use of AI (collectively, "AI materials"). It explains that agencies' use of AI platforms does not, in and of itself, result in the creation of federal records. Subsequent use of AI-generated materials in agency business may result in the creation of federal records. This memorandum explains the factors agencies should consider when making these determinations. Specifically, whether an AI material is a federal record depends on the circumstances surrounding the creation, maintenance, and use of the materials, such as whether the agency relies on it in decision-making, uses it to conduct official business, circulates the material to others, or incorporates it into an agency system.

Part II confirms that agencies may only dispose of AI-related federal records in accordance with a NARA-approved records schedule. It identifies existing General Records Schedules (GRS) that authorize agencies to dispose of AI-related federal records when they reach the specified retention period. Part II further explains that when agencies create federal records while using AI, these records may be "transitory" records that can be destroyed when no longer needed or "intermediary" records that may be destroyed upon creation of the subsequent record. An appendix to Part II identifies other GRS that authorize disposal of administrative and programmatic AI records that do not meet the definition of a transitory or intermediary record.

This memo addresses records management requirements under the FRA only and does not establish policy related to AI governance, e-discovery, privacy, security, or ethical use.

I. APPLYING THE FEDERAL RECORDS ACT TO AI

There are several common uses for AI by federal agencies:

(1) the user inputs "prompts" or "queries" that generate answers to different research topics;
(2) the user asks the model to summarize and/or synthesize information across certain documents;
(3) the user prompts the AI platform to prepare a first draft of a document;
(4) the user directs the AI platform to generate a transcript or summary of a meeting; and
(5) the user prompts the AI platform to review and revise a document.

Agencies' use of AI is relatively new and will likely expand and evolve over time. Part I explains how to apply the FRA to agencies' use of AI platforms. NARA may issue additional guidance as new uses emerge.

A. Defining a Federal Record

The FRA requires agencies to "make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency." 44 U.S.C. § 3101.

A **"federal record"** is defined as recorded information, regardless of format, that is: "made or received by a Federal agency 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 United States Government or because of the informational value of data in them." 44 U.S.C. § 3301(a)(emphasis added). **Recorded information thus does not become a federal record merely because it is made or received by a federal agency.** It must also be preserved or appropriate for preservation due to its informational or evidential value.

- "Made" means created or recorded by agencies, agency employees, or contractors working on their behalf, in the course of their official duties. Employees often make records when they create them and share them with others.

- "Received" means accepted or collected by or on behalf of agency personnel in the course of their official duties. Information created by AI and passively retained by a third-party platform such as ChatGPT or Claude is not necessarily "received" by an agency, *unless* it is downloaded or otherwise captured in an agency system and used for official purposes.

- "Preserved" means filed, stored, or kept by any other method of *systematically* maintaining documentary materials. In the AI context, for example, an agency may determine that FOIA employees must preserve, in each FOIA case file, any prompts used to direct AI to search records, as evidence that may be necessary to document the search in a declaration.

- "Appropriate for preservation" means the agency should maintain the records, even if they don't have formal recordkeeping policies and practices for doing so. For AI purposes, this means that even if an AI material is not covered by the agency's existing document-retention policies it may still be a federal record. If the agency determines it needs to retain that material to satisfy its legal or business needs, the agency should treat the information as a federal record.

Taken together, whether recorded information is a federal record depends on the circumstances surrounding the creation, maintenance, and use of the information, such as whether it:

- Was used by the agency in the course of official business;
- Was relied upon in decision making;
- Was circulated and shared with others;
- Was integrated into the agency's systems;

- Was subject to the agency's control; and
- Must otherwise be retained to satisfy the agency's business or legal obligations.

AI software, specifically, is a federal record when an agency creates it, pays a contractor to create it on the agency's behalf; or significantly modifies a commercial, off-the-shelf product, so that the coding is unique.

As with all records management policies, agencies' policies governing the creation and retention of AI materials must accomplish the following:

- Document the persons, places, things, or matters dealt with by the agency.
- Facilitate action by agency officials and their successors in office.
- Make possible a proper scrutiny by the Congress or other duly authorized agencies of the Government.
- Protect the financial, legal, and other rights of the government and of persons affected by it.
- Document the formulation and execution of basic policies and decisions and the taking of necessary actions, including all substantive decisions and commitments reached orally (person-to-person, by telecommunications, or in conference) or electronically.
- Document important board, committee, or staff meetings.

AI materials that would likely be federal records include:

- Prompts or queries, that are captured and saved within an agency system, and that are either circulated to other employees or otherwise used for official purposes other than personal convenience.
- Meeting summaries generated by AI that are circulated to other employees or that serve as the official meeting record.
- Audit trails an agency captures and uses to conduct official business, such as investigations.
- Outputs, such as query results or a product created via AI, if they are captured and saved in an agency system and used for official business. (The applicable record schedule is whatever schedule applies to the output).
- Documentation of the procurement and general operations of AI platforms.
- Copies of agency records used to train AI.
- Algorithms, models, or code related to AI use written by or for the agency.

B. Defining a Non-Record

Agencies should distinguish between records and non-record materials when applying the definition of records to AI materials. Agencies should apply the guidelines listed in 36 C.F.R. 1222.16 for managing non-record materials.

Non-record materials are recorded information that does not meet the statutory definition of a federal record or that has been excluded from that definition. Agencies do not need a NARA-approved record schedule to dispose of non-records.

Non-records include personal files, which are materials that document personal and private matters, or work-related documents that are kept only for personal convenience. Personal files include work-related materials such as rough notes that are never circulated or relied upon in decision making, and personal appointment schedules or calendar entries. These materials are personal files if they are not circulated to others and serve only the person's own purpose or personal convenience; for example, as reminders or to refresh one's recollection.

Non-records also include some types of working files such as uncirculated rough notes and preliminary drafts.

Audit trails

Agencies may wish to allow individual users to retain the queries and results created in an AI system. Several AI products provide users with "audit trails," the ability to log all queries and search results. Moreover, some new models provide the option to toggle the audit-trail feature on or off. If an individual toggles on the audit trail feature to retain a record of his or her queries and search results for their personal convenience only, such as to refresh their memory, and the audit trail was not circulated to others or used to make decisions, the audit trail likely is a personal file.

Agencies may decide to maintain an audit trail of all of its employees' actions on their laptops and other work devices, including actions performed in an AI system. **Mere retention of the audit trail within the AI system does not establish that the audit trail is a federal record.** The audit trail would become a record, however, if, for example, the agency decides to capture it and use it to conduct an investigation.

The following AI materials are likely not federal records:

- AI query results that the agency does not act upon in the course of agency business, such as AI research results that are never used.
- Audit trails or similar AI-generated information that are used solely for the employee's personal convenience, such as to refresh their memory, or that are not acted upon by an agency to conduct official business, such as an investigation.
- Meeting notes created for the user's recollection that are not circulated to others or used as the official meeting record.
- Commercial software applications, such as Gemini and ChatGPT, which are not created or significantly modified by an agency employee or contractor acting on the agency's behalf.
- Data that is not owned by the federal government, such as data purchased under an agreement that it must be returned to the vendor after an AI system has been trained.

C. Applying the Definitions

Scenarios 1 and 2 below demonstrate the factors agencies might rely upon to conclude that an AI material is a federal record or non-record, respectively.

Scenario 1: An agency employee uses an AI platform to conduct preliminary research, asking the system a question, which generates an answer. The employee is exploring different topics for a work-

related white paper. She has toggled the audit trail feature on, in case she needs to refer back to this early research. She changes the focus of her assignment and never captures the initial questions and answers in an agency system, nor does she circulate the input or output to any of her coworkers or use it in her research. The AI materials are likely non-records.

Scenario 2: An agency retains an audit trail of all of its employees' actions using its AI platform. The agency's security department determines that a particular employee may be using resources inappropriately, so it captures and stores an audit trail of the employee's AI usage for a given time period, and uses that audit trail to conduct its investigation. The agency's file plan states that any reports of employee internet activity used in an investigation must be stored as part of the investigative case file. This audit trail has become a federal record.

Each agency has principal responsibility for determining whether an AI material is a federal record, based on its business needs and practices. Agencies may reach out to NARA on a case-by-case basis for specific guidance.

D. Additional Guidance

Records management is an integral part of properly managing AI materials. Agencies must ensure that federal records management requirements are incorporated into their AI policies, processes, and procedures. Although there is no "one size fits all" solution for agencies to implement policies, processes, and procedures related to the use of AI, NARA recommends agencies adopt formal AI policies in collaboration with legal, information technology, and other relevant stakeholders.

NARA recognizes that the use of AI continues to evolve. NARA will continue to work with agencies to provide further resources in managing records when necessary or appropriate.

For additional information, your agency's records officer may contact the NARA appraisal archivist with whom your agency interacts. A list of the appraisal contacts is posted on NARA's website at http://www.archives.gov/records-mgmt/appraisal/.

II. IDENTIFYING DISPOSITION AUTHORITIES

All AI materials that meet the definition of a federal record (collectively, "AI records") require a NARA-approved record schedule before an agency may dispose of them; either a GRS or an agency-specific records schedule.

A. Identifying Transitory and Intermediary Records

Some AI records will meet the definition of a transitory or intermediary record under GRS 5.2 and have short retention periods.

- A transitory record is one that is needed for less than 180 days and that is not needed to satisfy financial or legal obligations. These are covered by GRS 5.2, item 010, and can be destroyed when no longer needed.

- An intermediary record is one that is used in the creation of a subsequent record. These are covered by GRS 5.2, item 020, and can be destroyed upon creation of the subsequent record.

B. Identifying other Record Schedules

For the purposes of this memo, AI records that do not meet the definition of a transitory or intermediary record are categorized into two functional areas:

- Administrative records related to the development and general operation of AI systems within any given agency (see Appendix A for additional information on these types of records); and
- Program records that are created from or during the use of AI, whether they are related to mission or non-mission activities.

See Appendix A for GRS schedules that may apply to administrative AI records.

The GRS may authorize destruction of some, but not all, AI records that are not transitory or intermediary. This depends on the nature of the resultant work product, and whether that record is covered by an existing schedule. If, for example, AI is used to create an email, the applicable schedule is the one that applies to emails. If AI is used to create a final report, the relevant schedule is the one that would apply to that report. The fact that AI was used is secondary.

Although administrative in nature, and related to the development and general use of AI, the GRS does not currently cover the following records:

- Policy documents related to the use of AI within an agency. These may be covered in agency-specific policy records series, especially if created and managed at a senior level.
- Records related to the training of AI. This specifically includes bodies of data managed separately for the sole purpose of training or further developing the AI.

NARA is considering updating the GRS to include these records. In the meantime, agencies may submit agency-specific record schedules for authority to dispose of these records.

APPENDIX A

The GRS already covers most types of administrative records related to the to the development and general operation of AI. This includes:

- Records related to the procurement or acquisition of AI software, tools, or systems (contracts, payment vouchers, etc.): GRS 1.1, item 010.
- Records related to the design and development of AI tools or systems: GRS 3.1, item 011.
- Records related to the testing of AI tools or systems: GRS 3.1, item 011 (This does not include records used to train AI tools, however).
- Records related to the general maintenance and upkeep of AI tools or systems: GRS 3.1, items 020 and 030.
- Records related to the auditing and evaluation of AI tools and systems: GRS 3.1, item 040.
- Records related to in-house (non-COTS) developed software, including algorithms, related to AI tools and systems: GRS 3.1, item 012. (COTS software, including COTS AI algorithms, are not records).
- Documentation (manuals, code plans, etc.) related to AI tools and systems: GRS 3.1, item 050 or 051.
- Records related to the training of staff in the use of AI tools and systems: GRS 2.6, items 010 and 030.
- Certain user logs, such as those related to web-based AI tools and systems, when those materials are incorporated into an agency system and used in agency business: GRS 3.1, item 020.
- System access records, including logs, when those materials are incorporated into an agency system and used in agency business: GRS 3.2, items 030 and 031.
- General administrative records, including data calls, correspondence, and general subject files, related to AI use: GRS 3.1, item 001.
- Records of administrative task forces and committees, including those that focus on AI use: GRS 5.1, item 030.