

Request for Records Disposition Authority

Records Schedule Number DAA-0330-2014-0005
Schedule Status Approved

Agency or Establishment Office of the Secretary of Defense
Record Group / Scheduling Group Records of the Office of the Secretary of Defense
Records Schedule applies to Major Subdivision
Major Subdivision Office of Military Commissions
Schedule Subject Program Records of the Office of Military Commissions
Internal agency concurrences will be provided No

Background Information

On November 13, 2001, the President George W. Bush issued an order governing the detention, treatment and trial of certain non-citizens in the war against terrorism. The order provided for trial by military commission of any noncitizen for whom there was "reason to believe" that the person was a member of al Qaeda or had engaged or participated in terrorist activities aimed at or harmful to the United States.

The Secretary of Defense published Military Commission Order (MCO) No. 1 on March 21, 2002, and revised it on August 31, 2005, to implement the President's order. MCO No. 1 provided for a Review Panel, appointed by the Secretary of Defense and consisting of three military officers, who could be civilians commissioned pursuant to Title 10, Section 603 of the United States Code.

On June 29, 2006, the Supreme Court ruled in *Hamdan v. Rumsfeld*, 548 U.S. 557, 635 (2006), that the military commission scheme violated the Uniform Code of Military Justice (UCMJ) and the Geneva Conventions, and that the Appellant was entitled to the protections of Common Article 3 of the Geneva Conventions. In response, Congress passed the Military Commissions Act (MCA) of 2006.

In October 2006, the President signed into law the 2006 Military Commissions Act, which created the Court of Military Commission Review, composed of military appellate judges or civilians with "comparable qualifications." The Court was authorized to sit as a whole or in panels of three. Its appellate jurisdiction was limited to matters of law. Fifteen military appellate judges and four civilians of "comparable qualifications" were appointed to the Court by the

Secretary of Defense. The Court heard and issued decisions on interlocutory issues in four cases.

The 2009 Military Commissions Act modified the CMCR, renaming it the United States Court of Military Commission Review, and expanding the scope of the Court's jurisdiction beyond the former CMCR, to include factual sufficiency of the evidence, making the scope of review the same as the Service Courts of Criminal Appeals created in the Uniform Code of Military Justice. The Secretary of Defense appoints judges from the Service Courts of Criminal Appeals to the United States Court of Military Commission Review. The 2009 MCA granted the President authority to appoint civilian judges, with the advice and consent of the Senate. Here is the list of judges currently serving on the USCMCR.

Organization Structure

The Office of Military Commissions consists of five organizations:

1. The Office of the Convening Authority
2. The Office of the Chief Prosecutor
3. The Military Commissions Trial Judiciary
4. The United States Court of Military Commission Review
5. The Office of the Chief Defense Counsel

The five organizations have separate functions and responsibilities for achieving the overarching goal of a just resolution to all cases referred to a military commission. The organizations are comprised of members from every branch of the U.S. Armed Forces, as well as civilian employees of the Department of Defense and the Department of Justice.

The Office of the Convening Authority is responsible for the overall management of the military commission's process, including logistics and personnel support. The Convening Authority is empowered to convene military commissions, refer charges to trial, negotiate pre-trial agreements, and review records of trial. The Convening Authority also provides an accused an opportunity for clemency before taking action on the findings and sentence of all military commission cases.

The Office of the Chief Prosecutor includes attorneys, paralegals and support staff from each branch of the U.S. Armed Forces and the Department of Defense, and attorneys from the Department of Justice. Counsel assigned to the Office of the Chief Prosecutor coordinate investigative efforts, prepare charges, and represent the United States before military commissions.

The Military Commissions Trial Judiciary consists of military judges nominated by The Judge Advocates General from the military departments and the judges' support staff. The judges are military attorneys on active duty and must be a member in good standing with their bar, and be certified to practice in Federal Court or the highest State Court in their jurisdiction. They are experienced trial judges who have presided over courts-martial. Military judges preside over each military commission.

The U.S. Court of Military Commission Review is an appellate court composed of one or more panels, including at least three appellate judges, who sit in panels or as a whole, to review each military commission case submitted to the Court of Military Commission Review. The Court of Military Commission Review reviews the findings and sentence of each military commission case for legal and factual sufficiency, unless the accused waives the right to appeal.

The Office of the Chief Defense Counsel maintains a separate command structure to help ensure fairness and independence of the legal system. Defense counsel for the accused include military attorneys and civilian attorneys employed by the Department of Defense, and/or civilian defense counsel retained by the accused at his own expense, who are appointed by the Chief Defense Counsel to represent the accused. An accused may ask to be represented by a specific military counsel. In capital cases, an accused will also be appointed a "learned" counsel with specialized training and experience in capital litigation. These "learned counsel" may be military attorneys or civilian defense counsel, whose fees and expenses are paid for by the Department of Defense. Defense counsel is responsible for providing a zealous defense for each accused tried by a military commission. (Per the National Archives: OMC Defense Counsel legal files are outside the preview of the Federal gov't and are not considered Federal Records)

Item Count

Number of Total Disposition Items	Number of Permanent Disposition Items	Number of Temporary Disposition Items	Number of Withdrawn Disposition Items
8	6	2	0

GAO Approval

Outline of Records Schedule Items for DAA-0330-2014-0005

Sequence Number	
1	Military Commission Legal Filings Disposition Authority Number: DAA-0330-2014-0005-0001
2	Military Commission Guidance and Policy Files Disposition Authority Number: DAA-0330-2014-0005-0002
3	Witness Files Disposition Authority Number: DAA-0330-2014-0005-0003
4	Military Commission Records of Trial Disposition Authority Number: DAA-0330-2014-0005-0004
5	Military Commission Operational Files Disposition Authority Number: DAA-0330-2014-0005-0005
6	Office of Court Administration Files Disposition Authority Number: DAA-0330-2014-0005-0006
7	Victim Assistance Program Files Disposition Authority Number: DAA-0330-2014-0005-0008
8	Military Commission Records of Trial (Public Version) Disposition Authority Number: DAA-0330-2014-0005-0009

Records Schedule Items

Sequence Number														
1	<p>Military Commission Legal Filings</p> <p>Disposition Authority Number DAA-0330-2014-0005-0001</p> <p>Information regarding legal filings from trial counsel, defense counsel, military judge, convening authority, or other party provided to the military commission or convening authority which is used during the swearing and referring of charges, active court litigation, and trial on the merits, sentencing and the final record of trial.</p> <p>Final Disposition Permanent</p> <p>Item Status Active</p> <p>Is this item media neutral? Yes</p> <p>Do any of the records covered by this item currently exist in electronic format(s) other than e-mail and word processing? No</p> <p>Disposition Instruction</p> <p>Cutoff Instruction Cutoff when case closes</p> <p>Transfer to the National Archives for Accessioning Transfer to NARA when 20 years old. Transfer to NARA in a medium and format acceptable to NARA in accordance with 36 CFR 1235</p> <p>Additional Information</p> <p>First year of records accumulation 2001</p> <p>What will be the date span of the initial transfer of records to the National Archives? Unknown Cases began in 2001 and are on going</p> <p>How frequently will your agency transfer these records to the National Archives? Unknown Transfer to NARA 20 years after case closes</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;"></th> <th style="width: 25%;">Estimated Current Volume</th> <th style="width: 25%;">Annual Accumulation</th> </tr> </thead> <tbody> <tr> <td>Electronic/Digital</td> <td style="text-align: center;">10</td> <td style="text-align: center;">3</td> </tr> <tr> <td>Paper</td> <td style="text-align: center;">10 Cubic feet</td> <td style="text-align: center;">1 Cubic feet</td> </tr> <tr> <td>Microform</td> <td></td> <td></td> </tr> </tbody> </table>			Estimated Current Volume	Annual Accumulation	Electronic/Digital	10	3	Paper	10 Cubic feet	1 Cubic feet	Microform		
	Estimated Current Volume	Annual Accumulation												
Electronic/Digital	10	3												
Paper	10 Cubic feet	1 Cubic feet												
Microform														

Hardcopy or Analog Special Media		
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Military Commission Guidance and Policy Files

Disposition Authority Number DAA-0330-2014-0005-0002

Information regarding the legal operation of the military commission system through court rules and regulations which impact how military commissions are operated within and outside the courtroom.

Final Disposition Permanent

Item Status Active

Is this item media neutral? Yes

Do any of the records covered by this item currently exist in electronic format(s) other than e-mail and word processing? No

Disposition Instruction

Cutoff Instruction Cutoff annually when superseded or obsolete

Transfer to the National Archives for Accessioning Transfer to the National Archives in 5 year blocks 20 year(s) after block closes

Additional Information

First year of records accumulation 2001

What will be the date span of the initial transfer of records to the National Archives? Unknown
Cases began in 2001 and on going

How frequently will your agency transfer these records to the National Archives? Unknown
Transfer 20 years after superseded.

	Estimated Current Volume	Annual Accumulation
Electronic/Digital	1 GB	0.5 GB
Paper	3 Cubic feet	1 Cubic feet
Microform		

Hardcopy or Analog Special Media		
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Witness Files

Disposition Authority Number **DAA-0330-2014-0005-0003**

Information on witnesses, experts, and non-experts who are requested to appear before a military commission. This includes correspondence, witness information, oaths/affirmations, contract/funding agreements, approval letters, authorizations and other information indicating action has been taken.

Final Disposition **Permanent**

Item Status **Active**

Is this item media neutral? **Yes**

Do any of the records covered by this item currently exist in electronic format(s) other than e-mail and word processing? **No**

Disposition Instruction

Cutoff Instruction **Cutoff when case closes.**

Transfer to the National Archives for Accessioning **Transfer to the National Archives 20 year(s) after case closes**

Additional Information

First year of records accumulation **2001**

What will be the date span of the initial transfer of records to the National Archives? **Unknown
Cases opened in 2001 and are on going.**

How frequently will your agency transfer these records to the National Archives? **Unknown
Cases opened in 2001 and are on going**

	Estimated Current Volume	Annual Accumulation
Electronic/Digital	500 MB	50 MB
Paper	10 Cubic feet	
Microform		

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Hardcopy or Analog Special Media		
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Military Commission Records of Trial

Disposition Authority Number DAA-0330-2014-0005-0004

Includes all information required for the completion of the record of trial for a specific military commission. This includes all legal filings, transcripts, opinions/ rulings, evidence, allied papers, and other legal filings appropriate to construct and publish the record of trial to the public, accused, trial and defense counsel, and other parties as required by the Military Commission Act of 2009.

Final Disposition Permanent

Item Status Active

Is this item media neutral? Yes

Do any of the records covered by this item currently exist in electronic format(s) other than e-mail and word processing? No

Disposition Instruction

Cutoff Instruction Cutoff when all appeals have been exhausted, case is completed and record of trial has been authenticated by the military judge,

Transfer to the National Archives for Accessioning Transfer to NARA 20 years after cutoff. Transfer to NARA in a medium and format acceptable to NARA in accordance with 36 CFR 1235.

Additional Information

What will be the date span of the initial transfer of records to the National Archives? Unknown
2001 to ongoing

How frequently will your agency transfer these records to the National Archives? Unknown
Transfer 20 years after case closes

	Estimated Current Volume	Annual Accumulation
Electronic/Digital	10 GB	3 GB
Paper	20 Cubic feet	2 Cubic feet

Microform		
Hardcopy or Analog Special Media		

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Military Commission Operational Files

Disposition Authority Number DAA-0330-2014-0005-0005

Information on the internal management of a military commission and its proceeding. Information includes logistical, construction, security, travel, contract procurements and the budgets and funding necessary for the operation of the military commission proceedings. This includes all budget, travel, military and civilian personnel, information technology, contractual agreements, and other items necessary for the operational running of the Office of Military Commissions.

Final Disposition Permanent

Item Status Active

Is this item media neutral? Yes

Do any of the records covered by this item currently exist in electronic format(s) other than e-mail and word processing? No

Disposition Instruction

Cutoff Instruction Cutoff annually.

Transfer to the National Archives for Accessioning Transfer to the National Archives in 5 year blocks 20 year(s) after block closes

Additional Information

First year of records accumulation 2001

What will be the date span of the initial transfer of records to the National Archives? Unknown
Cases began in 2001 and are on going.

How frequently will your agency transfer these records to the National Archives? Every 5 Years

	Estimated Current Volume	Annual Accumulation
Electronic/Digital	5 GB	500 MB
Paper	20 Cubic feet	

Microform		
Hardcopy or Analog Special Media		

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Office of Court Administration Files

Disposition Authority Number DAA-0330-2014-0005-0006

Information concerning the administration of court proceedings to include court stenographers, court reporters, panel members, and a repository for legal documents required for the operation of the public aspects of military commission proceedings.

Final Disposition Temporary

Item Status Active

Is this item media neutral? Yes

Do any of the records covered by this item currently exist in electronic format(s) other than e-mail and word processing? No

Disposition Instruction

Cutoff Instruction Cutoff upon completion of a military commission proceeding or when an individual is no longer required to participate.

Retention Period Destroy 6 year(s) after cutoff

Additional Information

GAO Approval Not Required

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Victim Assistance Program Files

Disposition Authority Number DAA-0330-2014-0005-0008

Records pertaining to the development and execution of the victim family member assistance program within the military commission system. This includes outreach materials, policies, procedures, victim and family member information, logistical support coordination, and other related information necessary for successful outreach and support.

Final Disposition Temporary

Item Status Active

Is this item media neutral? Yes

8	Do any of the records covered by this item currently exist in electronic format(s) other than e-mail and word processing?	No
	Disposition Instruction	
	Cutoff Instruction	Cutoff upon completion of trial or withdrawal of family member from program.
	Retention Period	Destroy 6 year(s) after cutoff
	Additional Information	
	GAO Approval	Not Required
	Military Commission Records of Trial (Public Version)	
	Disposition Authority Number	DAA-0330-2014-0005-0009
	Public version of Records of trial, provided to the public via the Office of the Military Commissions Website. This includes unclassified legal filings, transcripts, opinions/ rulings, evidence, allied papers, and other legal filings appropriate to construct and publish the record of trial to the public, accused, trial and defense counsel, and other parties as required by the Military Commission Act of 2009 and published to the OMC website.	
	Final Disposition	Permanent
	Item Status	Active
	Is this item media neutral?	No
	Explanation of limitation	Electronic records only
	Do any of the records covered by this item currently exist in electronic format(s) other than e-mail and word processing?	Yes
	Do any of the records covered by this item exist as structured electronic data?	No
Disposition Instruction		
If this item has multiple sections, indicate here records to which this section apply	Electronic Records	
Cutoff Instruction	Cutoff when case closes	
Transfer to the National Archives for Accessioning	Transfer to the National Archives 15 year(s) after case closes	
Additional Information		

First year of records accumulation **2001**

What will be the date span of the initial transfer of records to the National Archives? **Unknown**
Cases opened in 2001 and are still on going.

How frequently will your agency transfer these records to the National Archives? **Unknown**
Cases opened in 2001 and are still on going10

	Estimated Current Volume	Annual Accumulation
Electronic/Digital	10 GB	1 GB
Paper		
Microform		
Hardcopy or Analog Special Media		

Agency Certification

I hereby certify that I am authorized to act for this agency in matters pertaining to the disposition of its records and that the records proposed for disposal in this schedule are not now needed for the business of the agency or will not be needed after the retention periods specified.

Signatory Information

Date	Action	By	Title	Organization
02/27/2014	Certify	Luz Ortiz	OSD Records Manager	Department of Defense - Office of the Secretary of Defense
10/01/2014	Return for Revision	David Weber	for	National Archives and Records Administration - Records Management Services
10/09/2014	Submit For Certification	Ronald McCully	Electronic Records Management Specialist	Office of the Secretary of Defense - Office of the Director of Administration and management
11/21/2014	Certify	Luz Ortiz	OSD Records Manager	Department of Defense - Office of the Secretary of Defense
03/07/2016	Return for Revision	David Weber	Senior Appraisal Archivist	National Archives and Records Administration - Records Management Services
03/07/2016	Submit For Certification	Ronald McCully	Electronic Records Management Specialist	Office of the Secretary of Defense - Office of the Director of Administration and management
05/10/2016	Certify	Luz Ortiz	OSD Records Manager	Department of Defense - Office of the Secretary of Defense
11/06/2020	Submit for Concurrence	David Weber	Senior Appraisal Archivist	National Archives and Records Administration - Records Management Services
11/23/2020	Concur	Margaret Hawkins	Director of Records Management Services	National Records Management Program

				- ACNR Records Management Services
12/01/2020	Concur	Laurence Brewer	Chief Records Officer	National Records and Archives Administration - National Records and Archives Administration
12/01/2020	Approve	David Ferriero	Archivist of the United States	Office of the Archivist - Office of the Archivist