

REQUEST FOR RECORDS DISPOSITION AUTHORITY		LEAVE BLANK (NARA use only)	
		JOB NUMBER <i>NI-563-08-33</i>	
To NATIONAL ARCHIVES & RECORDS ADMINISTRATION 8601 ADELPHI ROAD, COLLEGE PARK, MD 20740-6001		Date Received <i>7/3/08</i>	
1 FROM (Agency or establishment) Department of Homeland Security		NOTIFICATION TO AGENCY	
2 MAJOR SUB DIVISION Office of the General Counsel		In accordance with the provisions of 44 U S C 3303a, the disposition request, including amendments is approved except for items that may be marked "disposition not approved" or "withdrawn" in column 10	
3 MINOR SUBDIVISION			
4 NAME OF PERSON WITH WHOM TO CONFER Kathy Schultz	5 TELEPHONE 202-447-5075	DATE <i>6/11/09</i>	ARCHIVIST OF THE UNITED STATES <i>Adrienne Thomas</i>
6 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 on the attached <u>6</u> page(s) are not needed now for the business of this agency or will not be needed after the retention periods specified, and that written concurrence from the General Accounting Office, under the provisions of Title 8 the GAO Manual for Guidance of Federal Agencies. <input checked="" type="checkbox"/> is not required <input type="checkbox"/> is attached, or <input type="checkbox"/> has been requested			
DATE 6/30/08	SIGNATURE OF AGENCY REPRESENTATIVE <i>Kathleen A. Schultz</i>		TITLE Senior Records Officer
7 ITEM NO	8 DESCRIPTION OF ITEM AND PROPOSED DISPOSITION	9 GRS OR SUPERSEDED JOB CITATION	10 ACTION TAKEN (NARA USE ONLY)
1	See attached sheet(s) for: Office of the General Counsel program records		

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General Counsel, Office of the

The Office of the General Counsel (OGC) is responsible for all legal activities within the Department of Homeland Security (DHS), to ensure full implementation of DHS' statutory responsibilities and all policies set forth by the Secretary and all officials of DHS

The General Counsel is the chief legal advisor to the Secretary and the chief legal officer for the Department. The General Counsel and his staff ensure that DHS activities comply with all legal requirements and integrate the attorneys and staff throughout the Department into a cohesive, full-service legal team. Attorneys in Headquarters are organized into legal divisions, each legal division is led by an Associate General Counsel or equivalent who supervises attorneys practicing in a particular area of the law. There are also OGC attorneys in the operational DHS components. Each operational component legal program is led by a Chief Counsel or equivalent who supervises attorneys practicing in his or her respective legal program.

All DHS sub-unit and component legal offices report up to the DHS Office of the General Counsel.

OGC provides legal counsel for all DHS offices except those specifically excluded by regulation or directive. OGC develops plans, policies, and operating methods and represents the agency and determines its position in order to provide effective legal services dealing with claims, protests, litigation, alternative dispute resolution, and representation of DHS in all legal forums. OGC drafts legislation proposed by DHS officials and furnishes legal advice in connection with reports on legislation proposed by other Federal agencies. OGC develops, implements, and coordinates DHS' ethics program for current and former DHS employees. OGC provides legal services to Boards and Commissions for which DHS provides administrative support.

Unless otherwise noted, all disposition instructions are media neutral; they apply regardless of the media or format of the records.

1 Administrative Appeals and Hearings Case Files

Files on cases in which appeals are made and administrative hearings are held.

Disposition:

TEMPORARY Cut off at end of calendar year in which final order or decision is made. Destroy 10 years after cutoff.

2 Board of Correction of Military Records

Under the authority of 10 USC, Section 1552, the Board has the function to review all applications from former and current members of the Coast Guard to correct their military records. The errors may be corrected by the removal of errors or injustice in discharges and reenlistment codes, fitness reports, promotion actions, disability matters or various kinds of benefits.

Application File

Consists of individual application, correspondence, evidentiary material and the Board's final decision.

Disposition:

Supersedes N1-398-86-2 Item 1

TEMPORARY Cut off at end of calendar year in which final decision is made. Destroy or delete 40 years after cutoff.

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3 Congressional Information Requests

Duplicate set of copies of documents and other materials produced in response to congressional information requests (informal information requests, subpoenas, or by other requesting modes) managed by the Office of the General Counsel (OGC) Note OGC will return original documentation to the original custodian of the document

Disposition:

TEMPORARY Destroy or delete when no longer needed for business, legal or informational purposes

4 Disclosure and Prohibited Personnel Practices (PPP) Complaints Case Files

The U S Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency, their basic authorities come from three federal statutes, the Civil Service Reform Act, the Whistleblower Protection Act, and the Hatch Act

Included in the disclosure files are correspondence related to the investigation, the investigative reports (including witness statements), and drafts and final reports sent to OSC Typically, PPP case files contain correspondence to/from OSC and clients and may also include investigative reports, depending on the nature of the case

Disposition:

TEMPORARY Cut off at end of calendar year in which the matter is closed or when no further action is required Destroy or delete 10 years after cutoff

5 Regulatory Actions Files

5a. Administrative Record Files

Documents that show the development of a rulemaking action, including but not limited to, the authorizing statute(s), copies of all rulemakings and notices published in the Federal Register, the proposed and final regulatory evaluation and other economic documents, the version of the rule or notice that the Secretary reviewed, decision documents indicating the Secretary's concurrence with the rulemaking action, and any legal memoranda accompanying the rulemaking action, the version of the rule or notice that the Department submitted to the Office of Management and Budget for review under Executive Order 12866, summary of public comments received, relevant legislative documents (e g , testimony, questions for the record), correspondence with interested parties, and reference materials that the Department used to develop the rulemaking action (e g , industry reports, public meeting records, legislative histories, case law, publications, raw data, and statistics)

5a1. For Significant Regulatory Actions per Executive Order 12866 (or successor E.O.).

A Significant Regulatory Action, as defined by Executive Order 12866, is any regulatory action that is likely to result in a rule that may

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities,
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency,
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

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- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order

Disposition: PERMANENT Cut off at end of calendar year in which the final rulemaking became effective Transfer to the National Archives 20 years after cutoff

NOTE: These records are maintained in hardcopy This transfer instruction applies only to the paper or hardcopy version of these records When/if DHS decides to transfer these records to the National Archives in an electronic format, DHS and the National Archives will develop appropriate transfer instructions at that time to cover the electronic records

Additional Information:

Date Span Unknown (DHS has not yet identified the precise set of case files that fall into this category)

Estimated Total Volume Unknown

Estimated Annual Accumulation Unknown

Year of First Transfer to the National Archives Unknown

5a2. For All Others.

Disposition: TEMPORARY Cut off at end of calendar year in which the final rulemaking became effective Destroy 20 years after cutoff

5b. Working Papers.

Includes drafts of rulemaking documents, public comments received and deliberative correspondence

Disposition: TEMPORARY Cut off at end of calendar year in which the final rulemaking became effective Destroy 20 years after cutoff

6—General Notice (Docket) Files

ITEM 6 WITHDRAWN

Disposition:

~~a Copies of general notices as sent through the clearance process, clearance records, internal DHS comments on general notices, and signed copies of the general notices on the same form as sent to the Federal Register for publication, including notices of delegations of authority-~~

~~TEMPORARY—Cut off on date of publication—Destroy or delete 10 years after cutoff-~~

~~b Working papers and background material not incorporated into the case history file described above-~~

~~TEMPORARY—Destroy 6 months after final regulation or notice is published in the Federal Register or when no longer needed-~~

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~~7—Informational Law and Intellectual Property Files~~

ITEM 7 WITHDRAWN

~~Contains 1) documents related to data rights and interpretations under contracts and cooperative agreements involving DHS. These documents may include, but are not limited to, copies of contracts, requests for proposals, disclosure of project data, affidavit waivers, and related internal and external correspondence regarding negotiations and decisions. 2) documents regarding application for intellectual property rights on behalf of DHS. These documents may include, but are not limited to, applications for patents, trademarks, and copyrights (when assigned to DHS), licenses for limited data rights, trade secrets and other rights associated with DHS' use of intellectual property, and related internal and external correspondence regarding negotiations and decisions in obtaining, maintaining, and defending DHS intellectual property rights.~~

Disposition:

~~TEMPORARY—Cut off at end of calendar year in which decision made or completion of contract or project, whichever is later—Destroy or delete 3 years after cutoff.~~

8 Legal History Files

Records that serve as unique documentation of historical DHS legal programs and functions. These files include 1) significant legal matters, advice and analysis files which contain significant legal opinions, analysis, conclusions, advice or interpretations or pertain to significant policy-making decisions or major activities, 2) significant litigation and case files which deal with significant policy-making within DHS, and 3) legislation monitoring files for bills enacted into law.

Disposition: PERMANENT. Cut off at end of calendar year in which the legal matter is completed. Transfer to the National Archives 5 years after cutoff.

Additional Information:

Date span 2003 – present

Estimated current volume Unknown (DHS has not yet identified the precise set of case files that fall into this category.)

Estimated annual accumulation Unknown (DHS cannot predict the future volume of case files that will fit these selection criteria.)

Year of first transfer to the National Archives 2009

9 Legal Matters, Advice and Analysis Files

Disposition:

a Files that do not contain significant legal opinions, analysis, conclusion, advice or interpretations or that do not pertain to significant policy-making decisions or major activities.

TEMPORARY. Cut off at end of calendar year in which record is created or when the project is completed, whichever is later. Destroy or delete 3 years after cutoff.

b ~~Significant case files.~~

~~PERMANENT—See Legal History item for disposition instruction.~~

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>>ITEM 9b IS STRUCK-THROUGH BECAUSE IT IS A NOTE, NOT A REQUEST FOR DISPOSITION AUTHORITY. NARA CONCURS WITH THIS NOTE.<<

10 Legislation Monitoring Files

The General Counsel's office maintains files on individual Congressional bills relating to topics of interest to the Department. The files are organized by Congress. The files may include, but are not limited to correspondence, memoranda, and other written materials analyzing individual legislative proposals, copies of testimony prepared for presentation to Congressional committees and other forums, externally produced materials (copies of hearing and committee reports, correspondence, articles, statistical reports, etc.) and relating legislative proposals.

If a bill is enacted into law, the individual file is transferred to the Legal History file. Otherwise, the file is kept with the set of bills from the particular Congress.

Disposition:

a Bills not enacted into law

TEMPORARY Cut off at end of calendar year in which the current Congress adjourns or when no longer needed, whichever is later. Destroy 3 years after cutoff.

~~b Bills enacted into law~~

~~PERMANENT See Legal History item for disposition instruction~~

>>ITEM 10b IS STRUCK-THROUGH BECAUSE IT IS A NOTE, NOT A REQUEST FOR DISPOSITION AUTHORITY. NARA CONCURS WITH THIS NOTE.<<

11 Litigation and Case Files

Disposition:

a Litigation that does not deal with significant policy-making within DHS

TEMPORARY Cut off at end of fiscal year in which judgment is made or when all appeals have been exhausted, whichever is later. Destroy or delete 10 years after cutoff.

~~b Significant case files~~

~~PERMANENT See Legal History item for disposition instruction~~

>>ITEM 11b IS STRUCK-THROUGH BECAUSE IT IS A NOTE, NOT A REQUEST FOR DISPOSITION AUTHORITY. NARA CONCURS WITH THIS NOTE.<<

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12 Potential Claims Files

Documents that may be relevant to a potential liability of the government. Records may include the investigative reports (including witness statements), correspondence from the injured party, investigation, analysis, and other relevant documents.

Disposition:

TEMPORARY. Cut off at the end of the fiscal year in which the incident occurred. Destroy or delete 3 years after cutoff if no claim is filed.