



SUBJECT: Requests by Departing and Former Employees to Access or Remove
Documentary Materials

1. PURPOSE. This order establishes policy on requests by departing and former employees to access, or remove from the custody of the Department of the Treasury, documentary materials. It establishes procedures with respect to the Departmental Offices, and it defines certain responsibilities of bureau heads with regard to documentary materials.

2. SCOPE. The policies in this order apply to all employees in the Department, including the Departmental Offices, all bureaus, and the Office of Inspector General (OIG) and the Treasury Inspector General for Tax Administration (TIGTA). Certain procedures in this order apply to the Departmental Offices and to requests for removal or access by bureau heads (as defined in section 3.j.). Bureau heads (including the IG and TIGTA) may adopt other procedures to implement the policies in this order, so long as such procedures are not inconsistent with the policies of this order and any Department-wide implementing requirements established by the Assistant Secretary for Management (ASM). This order is not intended to modify or replace more specific policies of a bureau which have been adopted to address particular requirements of that bureau and which are not inconsistent with this order.

3. DEFINITIONS.

a. Removal. Permanent removal from the custody of the Department of the Treasury.

b. Access. The opportunity to review documents on government premises or at another agreed-upon location.

c. Departing Employee. An individual who is preparing to leave employment by the Departmental Offices, a bureau, OIG or TIGTA.

d. Former Employee. An individual who has left the employment of the Departmental Offices, a bureau, OIG, or TIGTA.

e. Document or Documentary Materials. All records, nonrecord materials, and personal papers (see 3.g(2)), regardless of the nature of the medium or the method or circumstances of recording.

f. Federal Records. All books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, that are made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business, and that are 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 Government or because of the informational value of the data in them. (44 U.S.C. § 3301.) Electronic communications such as electronic mail messages may meet this definition.

g. Nonrecord Materials. Nonrecord materials include:

(1) Those Federally-owned documentary materials that do not meet the statutory definition of records (44 U.S.C. § 3301) or that have been specifically excluded from coverage. Materials excluded from the definition of records include extra copies of documents (but only if the sole reason such copies are preserved is for convenience of reference); library and museum materials (but only if such materials are made or acquired and preserved solely for reference or exhibition purposes); and stocks of publications and of processed documents. (These are defined as "nonrecord materials" by regulations of the National Archives and Records Administration (NARA) (36 C.F.R. § 1222.34).)

(2) Documentary materials not owned by the Federal government, including documentary materials (or any reasonably segregable portion thereof) of a private or nonpublic character that do not relate to, or have an effect upon, the conduct of agency business. (These are defined as "personal papers" by NARA regulations (36 C.F.R. § 1222.36).)

h. Classified Information. Information that requires protection against unauthorized disclosure in the interest of national security and that is within the scope of Executive Order 12958, as amended.

i. Employee. The term "employee" refers to all personnel appointed to a position in the Department of the Treasury.

j. Bureau and Bureau Head. For purposes of this order, the Assistant Secretary for Management is the bureau head for the Departmental Offices, the Inspector General is the bureau head for the OIG, and the Treasury Inspector General for Tax Administration is the bureau head for the Office of the TIGTA. For purposes of this order, the Office of the General Counsel is part of the Departmental Offices; each office of Chief Counsel or Legal Counsel shall be considered part of the bureau which that office services.

4. POLICY ON SEGREGATION OF DOCUMENTARY MATERIALS. The following procedures will assist in making subsequent determinations regarding the removal of documentary materials.

a. Separation of Personal Papers. Personal papers (as defined in section 3.g (2)) shall be clearly designated as such and shall at all times be maintained separately from official files.

b. Partial Federal/Personal Record. If information about personal matters and Department of the Treasury business appears in the same document, the document shall be copied with the personal information deleted, and the remaining material treated as a Federal record or nonrecord material, as appropriate. (See sections 3.f. and 3.g.)

c. Use of Labeling. Documentary materials labeled "personal," "confidential," or "private," or similarly designated, used in the transaction of public business and which meet the definition of a record, are Federal records or nonrecord materials subject to the provisions of this order. The use of a label such as "personal" is not sufficient to determine the record status of documentary materials.

5. DEPARTMENT-WIDE POLICIES AND PROCEDURES

a. Each bureau head is responsible for:

(1) Implementing policies and procedures that ensure that current employees, departing employees, consultants, and contractors do not remove documentary materials from the custody of the Department without written authorization;

(2) Ensuring that each employee is made aware of such policies and procedures, and that each departing employee is provided a copy of the guidance at Appendices 1 and 2;

(3) Ensuring that nonrecord material that is the subject of a request for removal or access by a departing employee is examined by the bureau head (or his or her designee) for the purpose of providing the appropriate protection for information that is privileged or restricted from release under the Privacy Act or other statutes, regulations or executive orders;

(4) Deciding upon requests made for removal of, or access to, documentary materials, other than a request that is covered under sections 6 and 7;

(5) Obtaining a signed Treasury Department Form (TD F) 80-05.5, "Documentary Materials Removal/Nonremoval Certification," from all departing employees;

(6) Ensuring that the signed TD F 80-05.5 and related documentation (including requests for, and authorizations of, removal or access) are retained by the bureau for 10 years; and

(7) Notifying the Deputy Secretary upon the receipt of a request for removal of or access to documentary materials and informing him of the disposition of each such request.

b. Bureau heads may redelegate the authorities and responsibilities delegated by this order, with the exception of the authority delegated in section 5.a (4), which may not be redelegated.

c. Each decision authorizing removal of, or access to, documentary materials issued under section 5.a (4) shall be concurred in by the General Counsel or by the counsel who ordinarily provides legal advice to the deciding official. This authority may be delegated by the General Counsel or Chief Counsel within the Legal Division.

d. A bureau head or a deciding official under section 7.a may, at his or her discretion, require that a requester pay a fee before the request is granted. To the extent practicable, any fee shall be identical to the fee that would have been charged had the request been processed as a request under the Freedom of Information Act (FOIA).

e. The ASM is delegated authority to make any further rules or procedures needed to implement this order in the Departmental Offices. The ASM is further delegated authority to make any rules applicable throughout the Department to the extent such rules are necessary to assure the policies in this order are implemented, taking into account the goal of flexibility within the bureaus.

f. A departing or former employee may request copies of and access to only documentary materials that are reasonably related to the requester's official responsibilities while an employee. Requests for other documentary materials are outside the scope of this order.

g. A request by a former employee for copies of or access to documentary materials pursuant to this order must be received no more than one year after the employee leaves the Department's employment. Any request for documentary materials after such date may be submitted in accordance with the FOIA.

h. Some types of documentary materials may never be removed. Appendix 2 describes such documentary materials. All other types of nonpublic Federally-owned documentary materials may be removed only with specific approval, as described in this section.

i. A request to access or remove documentary materials pursuant to this order must be submitted in writing to the deciding official on a form prescribed by the ASM. The request must describe the documentary materials with sufficient detail to permit their retrieval. Departing employees are encouraged to assemble the requested materials and attach them to the request, or, if the materials are voluminous, explain how the requested materials may be readily assembled. Any request that entails an unreasonable administrative burden may be denied. In processing requests, priority may be given to requests that entail the least burden on the Department.

j. Every decision on a request shall be in writing and shall be in sufficient detail to identify which documents may be removed or accessed, under what conditions or restrictions, and for which documents removal or access is denied. Each decision shall be provided to the requester.

k. A release of documentary materials may be made only to the requester. Access to documents may be given to the requester or to an individual designated by the requester. Any

such release or access shall be provided only on terms consistent with this order and applicable law and regulation.

1. A departing employee may remove personal papers (defined in section 3.g.(2)) that have been properly segregated in accordance with section 4 without making a written request. A copy of a publicly available document (such as a brief filed in court or a newspaper article) may also be removed without approval. Any questions as to whether materials constitute personal papers or are publicly available should be referred to the relevant counsel office.

6. DOCUMENT REQUESTS BY DEPARTING OR FORMER EMPLOYEES OF THE DEPARTMENTAL OFFICES AND BY BUREAU HEADS.

a. Some types of documentary materials may never be removed. Appendix 2 describes such documentary materials. All other types of nonpublic Federally owned documentary materials may be removed only with specific approval, as described in sections 6 and 7.

b. Departing or former employees of the Departmental Offices and bureau heads may request the following:

(1) Removal of or access to documentary materials that are reasonably related to the requester's official responsibilities while an employee. Determinations regarding such removal or access shall be made in accordance with the standards set forth in, or established pursuant to, this order.

(2) Maintenance by the Department for a limited period of time. A departing or former employee may request maintenance of assembled documentary materials for a specific period of time, not to exceed one year following departure from the Department's employment, during which he or she may request removal or access pursuant to section 6.b(1).

7. DECISIONS ON REQUESTS MADE PURSUANT TO SECTION 6.

a. The deciding official for requests by the Deputy Secretary is the Secretary. In the case of requests by all other officers and employees in the Departmental Offices and by bureau heads, the Deputy Secretary is the deciding official.

b. The ASM shall determine which offices potentially would be affected by the removal of, or access to, the documentary materials that are subject to a request. The ASM shall so inform those offices, and each of those offices shall, consistent with the ASM's request, designate one or more employees to assist in review of the documentary materials. The ASM shall coordinate review by the affected offices, and obtain any necessary review or advice from the Office of the General Counsel. The reviewers for each request shall include, at a minimum, one subject matter expert from each affected policy office; a representative of the ASM; and a

representative of the General Counsel. The ASM shall be responsible for assuring that all documentary materials have been adequately screened to determine whether release or access would be lawful and appropriate. The ASM may require each office that participates in the review to certify in writing that the review has been carried out, and to state its views on whether to permit removal of each document and any conditions or restrictions on removal, and the basis for that conclusion.

c. Following the review required by section 7.b, the ASM shall transmit the request to the deciding official along with the ASM's recommendation for the disposition of the request.

d. In cases where the ASM intends to recommend the denial of a request on the basis of the administrative burden of substantive review of the documents or similar burdens, the ASM shall notify the requester of the proposed recommendation and give the requester an opportunity to negotiate an accommodation.

e. In cases where the deciding official determines to grant the request in whole or in part, the concurrence of the Office of the General Counsel must be obtained before the decision is implemented.

f. The deciding official may, at his or her discretion, deny the request in whole or in part on any reasonable basis, such as to protect privacy interests, governmental privilege, law enforcement interests, or commercial interests, or because of the administrative burden of reviewing the documents requested. The deciding official may, at his or her discretion and when resources so permit, offer a requester the opportunity to receive a redacted version of any document that would otherwise be withheld from release.

g. Every decision on a request shall be in writing, shall be in sufficient detail to identify which documents may be removed or accessed, under what conditions or restrictions, and for which documents removal or access is denied. Each decision shall be provided to the requester. The deciding official shall provide a copy of each decision to DO's Records Management Officer. Each such decision and relevant documentation (including detailed logs of all document releases) shall be retained by the Records Management Officer for 10 years.

8. STATUTORY PENALTIES AND REQUIREMENTS.

a. The disposal of Federal records in agency custody is governed by provisions of chapter 33 of title 44, United States Code. Criminal penalties are provided in 18 U.S.C. §§ 641 and 2071 for the unlawful removal, destruction, or theft of Federal records. Criminal penalties are provided in 18 U.S.C. §§ 793, 794, and 798 for the unlawful disclosure, loss, or destruction of certain information pertaining to national defense or national security. Other criminal and civil penalties apply to the unlawful disclosure of statutorily confidential information.

b. The Secretary is required by 44 U.S.C. § 3106 to notify the Archivist of the United

States of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of Federal records in the custody of the Department.

9. CANCELLATION. To the extent that any provisions in Treasury Directive 80-05 conflict with this order, those provisions are hereby superceded.

10. AUTHORITY. This order is issued under authority provided in 5 U.S.C. § 301, 31 U.S.C. § 321(b), and 36 C.F.R., Chapter XII, § 1222.40.

11. NO RIGHT OF ACTION. This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.

A handwritten signature in black ink that reads "John W. Snow". The signature is written in a cursive, flowing style.

John W. Snow
Secretary

APPENDIX 1: PRIVACY ACT GUIDANCE FOR DEPARTING EMPLOYEES

The Privacy Act of 1974 provides safeguards against the misuse of information that is collected and used by Federal agencies about individuals by giving those individuals the right to be protected against unwarranted invasions of their privacy. The Privacy Act restricts disclosure of personally identifiable records maintained by agencies.

Treasury employees may ask for and receive copies of their records maintained in a Privacy Act system of records unless the system of records has been properly exempted from the access provisions of the Act. Employees are prohibited from disclosing a record which is part of a system of records without obtaining the prior written consent of the subject, unless the record is otherwise authorized to be disclosed to an officer or employee of the Treasury Department who has a need for the record in order to perform his/her official duties. Each Treasury employee is responsible for safeguarding information collected and maintained under the Privacy Act that they are exposed to. An employee who willfully discloses Privacy Act information in any manner to any person or agency not entitled to receive it may be found guilty of a misdemeanor and subject to a fine up to \$5,000. Once you cease to be an employee of the Department, you are no longer entitled to the special access that you previously had by virtue of that position. This is true even if you had a role in the preparation of a particular record or had a need for it during your employment.

Consequently, upon your departure, you may not remove any Privacy Act record or a copy of the record from the Department. There are criminal penalties which can apply to current and former federal employees who gain access to or copies of records under false pretenses. Some examples of a collection of records that are not covered under the Act: (1) purely private notes created and maintained by an employee, used as personal memory refreshers which are not shared with other individuals or employees; (2) folders named for each state or congressional district with no index by an individual's name; (3) records filed by subject matter (e.g., "general correspondence," "interpretative rulings") or company names, with no separate indices which enable retrieval by an individual's name or assigned number or symbol; or (4) a personal phone list, card index system or contact file created and maintained solely by an individual employee to assist him/her in his/her work.

APPENDIX 2: POLICY ON REMOVAL OF DOCUMENTARY MATERIALS

The following types of documentary materials may NEVER be removed:

(1) Any federal record;

(2) The only copy of any documentary materials involved in the conduct of the affairs of the Treasury Department or any other components of the Federal Government, whether or not judged to be records (including any copy that is unique, for example because it contains the signature or initials of the writer, reviewers, and/or concurring parties);

(3) Any documentary materials (whether or not judged to be records) the removal of which will create such a gap in the files as to impair the completeness of essential documentation;

(4) The only copy of indices or other finding aids (whether or not judged to be records) that are necessary to the use of official files;

(5) Portions of documentary materials (whether or not judged to be records) that constitute classified information;

(6) Portions of documentary materials (whether or not judged to be records) that constitute information protected from disclosure; and

(7) Portions of any other documentary materials (whether or not judged to be records) that constitute information the disclosure of which is prohibited by law, such as grand jury, tax, and trade secret information.