

A Practical Guide to Personal Papers

The Environmental Protection Agency is required by statute to "make and preserve records containing adequate and proper documentation" of its activities (44 U.S.C. Chapter 31). The documentation necessary to do so constitutes our official records, and staff should be aware of the Agency policies concerning the management and disposition of official records. Officials may also maintain personal collections of papers that they have accumulated while in office. Both the official records and the personal collections of papers are important: both may have historical significance. But it is sometimes difficult to distinguish between the two.

The National Archives and Records Administration's (NARA) *Personal Papers of Executive Branch Officials*, the most recent installment in its continuing Management Guide Series, can help determine which documents must be incorporated into Agency files and which materials may be considered personal papers.

Personal Papers

Officials of advisory and regulatory agencies of the Federal Government create and maintain official records during the course of their Government service. By law official Federal records are all documentary materials, regardless of physical form, that:

... are made or received by an agency of the U.S. Government under Federal law or in connection with the transaction of public business, and

... are preserved or appropriate for preservation as evidence of agency activities or because of the value of the information that they contain (44 U.S.C. 3301).

Once officials have fulfilled their responsibility to adequately document the agency's organization, functions and activities in the records of the agency, questions may arise about what work-related and other materials may be considered personal papers. Most officials accumulate and keep some personal papers at the office. Certain materials are clearly personal, and officials may clearly claim them as such. In the more difficult cases you may wish to consult the agency records officer, legal counsel, or other designated official to help determine if the materials in question are personal papers or agency records.

Some of the guidance expressed in the NARA Management Guide is based upon court decisions that define agency records under the Freedom of Information Act (FOIA). At this time these decisions are the most pertinent guidance available for determining which work-related documents may constitute personal papers. Future court decisions may produce different results and revised guidance.

This Technical Leaflet summarizes the information contained in the NARA Guide. For a copy of the Guide itself please contact Michael L. Miller, Agency Records Officer, at (202) 260-5911.



There Are Penalties ...

Statutory law prohibits the destruction or removal from Government custody of any Federal records without the approval of the Archivist of the United States (44 U.S.C. 3303 and 44 U.S.C. 3314). 44 U.S.C. 3105 requires the heads of Federal agencies to establish safeguards against the removal or loss of records. Criminal penalties are provided for the unlawful loss, removal, or destruction of Federal records (18 U.S.C. 2071). The heads of Federal agencies are required to notify the Archivist of any actual, impending or threatened unlawful removal, alteration or destruction of records in their custody. The Archivist will assist agency heads in initiating action through the Attorney General of the United States for the recovery of records unlawfully removed.

What Are Personal Papers?

Personal papers are defined as 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 (36 CFR 1222.20(d)). It should be noted that personal papers may refer to or comment on the subject matter of agency business, provided that they are not used in the conduct of that business.

Many EPA employees do have personal papers in their file cabinets or computers. Traditionally, there are three generally accepted classes of personal papers:

- ◆ Materials accumulated before entering Government service that are not subsequently used in the transaction of Government business, e.g. previous work files, political materials and reference files.

- ◆ Materials brought into, or created or received while in office that relate solely to an individual's private affairs, e.g. outside business pursuits, professional affiliations, volunteer and

How Does One Determine What's What?

In determining the status of a document as an agency record or a work-related personal paper, agency employees can use the following questions as guidelines:

Creation

Q: Was the document created or received by an agency employee on agency time, with agency materials, at agency expense?

A: If not, then the document very likely is not an agency record on that basis alone. If the answer is yes, the document may or may not be an agency record, depending upon other considerations.

Content

Q: Does the document contain substantive information about agency business? Does the document contain personal as well as official information?

A: If it does not contain official information, then it very likely is not an agency record on that basis alone. If it does, then additional factors should be considered in determining whether the document is an agency record.

Purpose

Q: Was the document created solely for an individual employee's personal convenience?

A: If so, then it is very likely that it is not an agency record.

Q: Was the document created to facilitate agency business?

A: If so, it may be an agency record depending on its distribution and use by other agency employees.

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Distribution

Q: Was the document distributed to anyone else for agency business or official purpose?

A: If it was distributed to other employees for an official purpose, it may be an agency record.

Use

Q: To what extent did the document's author actually use the document to conduct agency business? Did others use it?

A: Materials brought into the agency for reference use do not become agency records merely because they relate to official matters or because they influence the employee's work. (On the other hand, as influence becomes reliance or use by other officials, a document is more likely to be an agency record.)

Maintenance

Q: Was the document kept in the author's possession, or was it placed in the agency files?

A: If it was placed in an official agency file, it is likely to be an agency record.

Disposition

Q: Was the document's author free to dispose of it at his or her personal discretion?

A: If so, it is unlikely to be an agency record. However, if the authority to dispose of the document is based on an agency disposition schedule, the document most likely is a record despite the fact that the author had the authority under this disposition schedule to destroy the document. With agency permission, however, officials may retain nonrecord copies of documents as part of their personal papers.

Control

Q: Has the agency attempted to exercise "institutional control" over the document through applicable maintenance or disposition regulations? Did it do so by requiring the document to be created in the first place?

A: If so, the document is most likely an agency record.

Segregation

Q: Is there any practical way to segregate personal information in the document from official business information?

A: If so, the official portion of the document should be copied or extracted and placed in the agency files. ♦

If you have questions regarding the interpretation of personal papers, please call:

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Agency Alternate Ethics Official
at (202) 260-5460, or

Michael Miller
Agency Records Officer
at (202) 260-5911.

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community service records or private political associations that do not relate to agency business.

◆ Diaries, journals, notes and personal calendars and appointment schedules that are not prepared or used for, or circulated and communicated in the course of, transacting Government business.

Care should be taken with all of the above categories to file personal papers separately from the records of the agency and to keep in mind that some of these materials could later be determined to be agency records, depending on the circumstances surrounding their creation, maintenance and use, and disposition. Labeling materials as "personal," "private," or "confidential" does not necessarily make them personal papers. Documents marked with those or similar designations are indeed Federal records and not personal papers if they are used in the transaction of agency business.

General Principles

Several general principles may be drawn with regard to agency records/personal papers issues. These issues include:

◆ Private materials not created within an agency but brought into it by an employee for reference purposes do not become agency records by mere incidence of location.

◆ A document created within an agency cannot be regarded as "personal" merely because its author is free to dispose of it.

◆ Use alone is not conclusive. The only consideration that may be conclusive is the assertion of agency control over a document through institutional requirements mandating its creation or retention. ◆



For Additional Information:

- ▲ EPA Ethics Advisory 89-2, *Disposition of Federal Records and Personal Papers*, January 18, 1989.
- ▲ NARA Bulletin 93-2, *Proper Disposition of Federal Records and Personal Papers*, National Archives and Records Administration, November 13, 1992.
- ▲ *Personal Papers of Executive Branch Officials: A Management Guide* [Management Guide Series], Office of Records Administration, National Archives and Records Administration, 1992.
- ▲ *What Makes Papers Personal?* [flyer] National Records Management Program, Information Access Branch, Office of Information Resources Management, U.S. Environmental Protection Agency, August 1992. EPA 220-F-92-013.

*This Fact Sheet was developed by
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