Federal Advisory Committee Records Management

Assessment Report

National Archives and Records Administration
July 2019

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INTRODUCTION

The National Archives and Records Administration (NARA), based on authority granted by 44 United States Code (U.S.C.) 2904(c), is responsible for assessing the proper management of records in all media within Federal agencies to protect rights, assure government accountability, and preserve and make available records of enduring value. Under this authority, NARA conducts records management oversight of Federal agencies, including agency inspections and assessments. An assessment is a multi-agency evaluation of a specific topic, issue, or activity affecting records management (RM) processes, procedures, or policies.

In the second quarter of FY 2019, NARA conducted an assessment on thirteen agencies pertaining to records management policies and practices related to the management of Federal Advisory Committee records, with an emphasis on email management. Agencies were selected based upon their Federal Advisory Committee responsibility, as indicated in FACADatabase.gov.

Agencies completed and submitted to NARA a questionnaire along with any directives, training materials, and file plans pertaining to Federal Advisory Committee records management. NARA conducted interviews with each agency and asked questions focused on seven categories including: collaboration, policies and procedures, RM training, recordkeeping formats, information systems, records schedules, and challenges. This report synthesizes information gathered via the data call and individual interviews and contains twelve recommendations to meet RM requirements and establish best practices.

General Records Management

The management of Federal Advisory Committee records is unique in that the Federal Advisory Committee Act (FACA), as summarized by General Services Administration (GSA) FACA 101, requires that federal agency Committee Management Officers (CMO) and Designated Federal Officers (DFO) bear recordkeeping responsibilities for purposes of public transparency. As required by 44 U.S.C. 3102, federal agencies must establish and maintain a records management program providing effective controls over creation, maintenance, use, and disposition of all their records, including Federal Advisory Committee records. This responsibility is carried out by the Agency Records Officer (ARO). In essence, multiple agency staff legally share committee recordkeeping and records management responsibilities. Given these legal requirements, it is necessary that these staff members establish and maintain a strong, collaborative relationship and that their recordkeeping and records management roles and responsibilities are clearly defined.

All agencies interviewed indicated that their records management directives and policies and procedures apply to committee records. A few agencies have resources describing the roles and responsibilities of members and agency staff as they pertain to the functions of committees. These resources include handbooks, FAQs, and informational handouts, but generally, most do not explicitly outline records management requirements for Federal Advisory Committee records.

Overall, most AROs have little to no involvement in the capture, maintenance, and disposition of committee records. Though lines of communication remain open for consultation, CMOs and DFOs largely work independently with little coordination or oversight from agency records management programs. Absent among all interviewed agencies are standard operating procedures (SOPs) documenting roles and responsibilities for the ARO, CMO, DFOs, and others responsible for committee RM, as is a workflow process for capture, maintenance, and disposition of committee records. Additionally, most AROs are not exercising oversight of committee records by failing to evaluate committee records management to ensure effective application of existing agency policies and practices and compliance with NARA RM regulations. Several agencies noted that high turnover of DFOs and records custodians threaten intellectual and physical control of committee records. Establishing SOPs and effective oversight will mitigate such risks.

Recommendation 1: Agencies should establish standard operating procedures documenting roles, responsibilities, and workflow processes for the ARO, CMO, DFOs, and others as needed, to properly capture, maintain, and disposition committee records.

Recommendation 2: Agencies must establish an evaluation process as a means of RM oversight of Federal Advisory Committee records.

Records Management Training

No formal records management training is required for committee members by any interviewed agency. The absence of more in-depth records management training for committee members is largely attributed to the fact that they are not federal government employees and are not required to take records management training. Several agencies include a broad overview of records management during committee member orientation, focusing more on the DFO's responsibilities for recordkeeping. In most instances this training is presented by general counsel rather than the agency records management program. However, most of the agencies recognize the benefit of providing more detailed records management information during member orientation.

All agencies indicated that DFOs receive some type of records management training. The majority attend the FACA training offered by GSA which incorporates records management requirements for creation, maintenance, and disposition of committee records. Several agencies noted difficulty reserving seats for the GSA training. Often DFOs are in their position for a year or more before a seat becomes available. Some agencies require DFOs to take more extensive records management training, including the agency internal RM training, the Federal Records Officer Network (FRON) training, and NARA online/video RM training. While DFO RM training appears adequate, implementation remains a concern due to a lack of agency internal SOPs.

Recommendation 3: Agencies should develop role-based RM training tailored to CMO, DFO, and committee member responsibilities.

Recommendation 4: The ARO or a member of the agency RM program should present tailored training to all committee members to ensure members understand their contribution to the government record.

Recommendation 5: All DFOs must be required to take annual internal agency RM training.

Recommendation 6: NARA should coordinate with GSA to ensure DFOs receive more timely training upon appointment.

Electronic Records

The majority of agencies interviewed manage committee records electronically via shared drives, electronic document systems, or other electronic means. A few of the agencies maintaining their records electronically expressed challenges transferring committee records to NARA, in large part due to not knowing who at NARA to contact with transfer questions. Most agencies have not transferred any committee records electronically because they have not reached eligibility. A couple of agencies continue to print and file committee records. One of these agencies expressed interest in advice and guidance from NARA pertaining to selection of an electronic records management system.

Recommendation 7: NARA should work to clearly identify accessible points of contact to provide answers to questions about transfers.

Recommendation 8: Agencies must begin managing their committee email and permanent electronic records electronically in compliance with OMB and NARA requirements.

Email Management

None of the agencies interviewed issue government email addresses to committee members. Half of the agencies capture committee member email electronically either via courtesy copy to the DFO or a dedicated email box specific to each committee. The dedicated email box provides more consistency and continuity for email capture and will mitigate the risk of loss for any potential email that is a record and establish communication continuity given the high turnover rate of DFOs. A few of the agencies capture email via print and file, while the rest of the agencies do not capture any committee email. Common among most agencies is the uncertainty of the type of information exchanged by committee members via email or whether the information exchanged is a federal record. Most presume member email content is largely non-substantive or non-record. However, some agencies described the exchange of product drafts as attachments via email, though temporary records, they should be captured, maintained, and dispositioned appropriately.

Recommendation 9: Agencies should establish dedicated email boxes for each of their committees and require members courtesy copy that email box on all email communications.

Recommendation 10: Agencies must begin managing their committee email records electronically in compliance with OMB and NARA requirements.

Disposition Authority and Implementation

General Records Schedule (GRS) 6.2 is the governing disposition authority for Federal Advisory Committee records, unless an agency requested and was granted an exception within 120 days of its issuance. Without an exception, all agency schedules previously applicable to Federal Advisory Committee records are superseded by GRS. 6.2. Of the agencies interviewed, one requested and was granted an exception to deviate from the GRS. All other agencies interviewed are required to use GRS 6.2 for the disposition of both permanent and temporary committee records.

Some agencies expressed confusion over disposition implementation and the requirement to use GRS 6.2. Instead, they continued using superseded, agency schedules. A few agencies indicated they only capture the permanent committee records and not temporary committee records. Agencies expressing this confusion either have no permanent ARO or an ARO whose RM duties are collateral, or prior to this assessment, the AROs experienced limited engagement with the CMOs and DFOs and did not realize this was an area of concern. Several agencies noted difficulty locating Federal Advisory Committee records management information through NARA's website and did not know to whom to address questions.

Some AROs are involved in the disposition of permanent records, and have also established a disposition request process for the destruction of temporary records upon disposition eligibility. For most of the agencies interviewed, the DFOs are responsible for disposition of temporary and permanent committee records. Other agencies have assigned the task to the program office supporting the committee or they allow committee members to dispose of temporary records. For one agency, schedule implementation is handled by the Secretariat, in another it is carried out by IT. For most of these agencies, ARO involvement is ad hoc with no standard procedures driving the disposition process, nor is there oversight or audits of disposition actions. Overall, disposition implementation is problematic. Establishing SOPs and effective oversight will help bridge some of these gaps.

Recommendation 11: Agencies not granted a disposition exception by NARA must use GRS 6.2 as the disposition authority for all committee records and incorporate this authority into their file plans.

Recommendation 12: Agencies not currently capturing temporary records must gain intellectual control over the types of records being created by members and determine if they fall under GRS 6.2 and manage them accordingly.

Recommendation 13: Agencies should consider centralizing disposition of committee records, permanent and temporary, within their agency records management program. If centralized disposition is not feasible, agencies should establish a disposition request process for the disposal of records to ensure that agency records management programs are able to review and approve appropriate disposal actions.

Recommendation 14: NARA should assess the availability and accessibility of information pertaining to Federal Advisory Committee records management on its website.

Best Practices

A number of best practices pertaining to Federal Advisory Committee RM do exist and many are common among several agencies that participated in this assessment. These best practices include:

1. use of centralized and dedicated email boxes for each committee;
2. development and use of an RM handbook specific to the intricacies of Federal Advisory Committees documenting agency and member requirements; and
3. creation and distribution of FAQs pertaining to committee member RM responsibilities.

One agency in particular identified gaps in their Committee records management prior to this assessment. In response, this agency

4. created and distributed supplemental internal guidance pertaining to committee RM to address current policy gaps until official policies can be formally updated; and
5. distributed an RM questionnaire to committee members to ensure capture of potential federal records in the possession of current and former committee members.

Template versions of items 3 - 5 are provided (see Appendix B - D) and all agencies responsible for Federal Advisory Committees are encouraged to review these and, if applicable, adapt for their own use.

Conclusion

Overall, this assessment resulted in fruitful discussion between the NARA assessment team and participating agency staff. For many of the agencies interviewed, this assessment revealed a gap in records management procedures. In particular, Federal Advisory Committee member RM training, email management, temporary records capture, and disposition authority implementation emerged as areas of concern. Mitigating these risks can be addressed through documentation and standardization of processes. During many of the interview discussions, agencies readily realized these gaps and were planning resolutions before the interview even ended. NARA can also support agencies by working to eliminate training barriers, accessioning of permanent records barriers, and working with GSA to include GRS 6.2 information on their website. Collectively, such actions will help mitigate risk to the intellectual and physical control of Federal Advisory Committee records.

APPENDIX A
LIST OF PARTICIPATING AGENCIES

Bureau of Consumer Financial Protection
Commission on Civil Rights
Commodity Futures Trading Commission
Environmental Protection Agency
Federal Communications Commission
General Services Administration
Internal Revenue Service
National Archives and Records Administration
National Endowment of the Humanities
National Science Foundation
Nuclear Regulatory Commission
Office of Personnel Management
United States Trade Representative

APPENDIX B
Federal Advisory Committee Act (FACA) Member Recordkeeping FAQs

Q1. Why must federal advisory committee records be preserved?
A. FACA requires that advisory committee records be managed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapter 31, and regulations issued by the National Archives and Records Administration (NARA). *See* 41 C.F.R. § 102-3, Appendix A to Subpart D.

Q2. What records must Committee Management Officers (CMOs) create or maintain?
A. According to 41 C.F.R. § 102-3.115, the CMO must keep records that include, but are not limited to:

- *Charter and membership documentation.* A set of filed charters for each advisory committee and membership lists for each advisory committee and subcommittee;
- *Annual comprehensive review*. Copies of the information provided as the agency's portion of the annual comprehensive review of Federal advisory committees, prepared according to 41 C.F.R. § 102–3.175(b);
- *Agency guidelines*. Agency guidelines maintained and updated on committee management operations and procedures; and
- *Closed meeting determinations*. Agency determinations to close or partially close advisory committee meetings required by 41 C.F.R. § 102–3.105.

Q3. What records must Designated Federal Officers (DFOs) create or maintain?
A. DFOs should maintain the official records an advisory committee creates or receives as long as the committee exists. 41 C.F.R. § 102-3.175. This includes records such as correspondence, relating to the committee's decisions or actions.

Q4. What records must the agency make publicly available?
A. FACA requires agencies to make the documents provided to, prepared for, or prepared by the *full* committee available to the public for inspection and copying, subject to applicable exceptions in the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). 5 U.S.C., App. 2 § 10(b). This includes all records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by the full advisory committee. *Id.*

Federal Records Act (FRA)

Q5. What is a federal record?
A. Under the FRA, Congress has defined federal records as "all recorded information, regardless of form or characteristics, 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). This means that any recorded information relating to the work of a government agency is a federal record, regardless of who created it or how the information was recorded.

Q6. Why does Agency XXXX need to preserve committee members' emails and other correspondence related to committee decisions or actions?
A. The FRA requires every federal agency to make and preserve records that contain adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency. NARA's General Records Schedule (GRS) 6.2 (2015) and its predecessor, GRS 26 (2004), require the agency to permanently preserve substantive federal advisory committee records, including member's correspondence (e.g., emails) pertaining to committee business. This obligation extends to Federal records that are outside the custody of the agency and therefore, in those instances, the agency must attempt to retrieve such Federal records outside of agency custody. *See* 44 U.S.C. § 3105 (agencies are required to establish safeguards against the removal or loss of records).

Q7 Does everything I create and/or receive as an advisory committee member have to be preserved by Agency XXXX under the Federal Records Act?
A. No. Agency XXXX is required to preserve substantive records that document decisions discussions or actions a committee takes. Such records include meeting minutes, reports and briefing materials, research materials, unpublished studies, and substantive correspondence not captured elsewhere in committee records. Administrative or logistical documents (i.e., committee social function planning, meeting logistics, scheduling, travel, and non-substantive correspondence including committee member exchanges that do not discuss committee deliberations or decisions) do not need to be preserved. You should contact your DFO if you have any questions about whether a particular document is substantive.

Q8. Do the record retention requirements apply only to external communications (i.e., committee member communications with non-committee members), or do the requirements also apply to communications between members?
A. The records management requirements do not distinguish between internal and external advisory committee records, so all committee communications by members—whether with other members or external parties—are covered by the records retention policy.

Q9. Is it mandatory for me to transfer FACA records in my possession to Agency XXXX?
A. Yes.

Q10. Is it mandatory for me to transfer a record even if the record was created using my employer-sponsored email account?
A. Yes. Emails pertaining to committee business are federal records and must be permanently retained as required by the FRA and GRS 26, even if such emails were generated using an email account owned or managed by a member's employer.

Q11. Will former advisory committee members be asked to transfer committee records within their custody to the agency?
A. The agency has an obligation under the FRA to preserve committee records. Therefore, where the agency does not have the records of a former advisory committee member, the agency will endeavor to contact the former committee member and request that those records be transferred.

Federal Records Act – Procedures for Records Preservation

Q12. How do I transfer FACA records to Agency XXXX?
A. Records should be transferred in their native format, be that electronic or paper. For ease of transferring permanent email records on an ongoing basis, always copy your committee's organizational mailbox. Records outside the agency's custody should also be forwarded to the same address. If you do not know the organizational email address, inquire with your DFO. Your DFO can also provide you with an address to which any paper records should be sent and information about reimbursement for costs associated with transferring paper records.

Q13. The volume of records I have to transfer is large. Is there an easier way to transfer the information to Agency XXXX?
A. Yes. Please contact your DFO for more information.

Q14. What should I do if I know I have deleted emails pertaining to committee business?
A. Please notify your DFO about the deletion of emails related to committee business.

Q15. What should I do if I no longer have access to an email account that I used for committee correspondence (e.g., because I changed employers)?
A. Please notify your DFO.

Q16. What should I do if I used an email account that was subject to an automatic deletion policy (e.g., all emails are deleted after 6 months) to conduct committee business? Who should I contact if I have other questions?
A. Please notify your DFO.

Q17. If I do not have access to a business email account that I used through a former employer, will that employer be asked to provide any federal records still in its custody?
A. Agency XXXX has a statutory obligation to attempt to recover uncaptured federal records. The agency will first attempt to retrieve records through committee members; however, subsequent recovery efforts could include asking a committee member's employer or former employer to voluntarily provide uncaptured federal records created or received using an employer's email system.

Q18. Could a committee member or his or her employer or former employer be subject to liability or penalty because the committee member used the employer's email system to conduct committee business?
A. No. Nothing in FACA or the FRA prohibits a committee member from using his employer's email system. Records obligations under the FRA apply only to federal executive agencies, not to private entities. Similarly, the FACA creates statutory obligations for advisory committees and the executive agencies that employ such committees, not private businesses. \

Freedom of Information Act (FOIA)

Q19. Will the records, including emails, that I provide to the agency be publicly disclosed?
A. Advisory committee records are generally subject to public disclosure through the FOIA process unless the agency has a reasonable expectation that an exemption contained in section 552(b) of the FOIA applies, and the agency chooses to exert that exemption. In addition, as further explained in Q4, above, any document that was prepared for or by the *full* advisory committee must be made publicly available under FACA §10(b).

Q20. If I used an employer-sponsored email account to conduct committee business, is my employer now subject to FOIA requests pertaining to my committee work?
A. No. The FOIA statute only applies to federal executive agencies, not to private entities. *See* 5U.S.C. § 552; 5 U.S.C. § 551 (defining "agency").

APPENDIX C
Interim Guidance for Protecting Federal Agency Committee Act Records

Purpose: This interim guidance (IG) release clarifies Designated Federal Officers (DFO) and Federal Advisory Committee (FAC) members' responsibilities for ensuring the appropriate retention of FAC records.

Background and Sources of Authority: The Federal Advisory Committee Act (FACA), 5 USC Appendix 2, was enacted in 1972 to control the growth and standardize the operations of committees, boards, and similar groups established to advise executive branch agencies. FACA is designed to assure that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees. It requires advisory committees to comply with certain procedural requirements, e.g. balanced membership, records management and timely notice of meetings in the Federal Register.

To ensure records management requirements are appropriately followed and adhered to by FAC members, the Records Office is issuing interim guidance to provide clarification on recordkeeping processes and procedures, especially as they relate to committee members' email retention responsibilities.

The statutory definition of records (44 U.S.C. § 3301) includes all recorded information made or received by an agency of the United States Government under Federal law or about the transaction of public business. The National Archives and Records Administration (NARA) has determined that substantive documents pertaining to federal advisory committee and subcommittee work are considered permanent federal records under this statute. See General Records Schedule 6.2. Managing information in appropriate recordkeeping systems ensures Agency XXXX compliance with records management policies and regulations established by NARA, increases business efficiency, and improves the agency's ability to provide the most current and correct information subject to litigation and Freedom of Information Act (FOIA) requests.

This guidance will help ensure Agency XXXX information generated by FAC members is appropriately managed. Agency XXXX will provide guidance and training where necessary on implementing these policy requirements.

Effect on other Documents and Procedures:

Effective date: This policy is effective immediately.

Contact information:

Distribution:
Use of Personal Email to Conduct Federal Advisory Committee (FAC) Business

1. Email may be used for all informal and formal business communications and collaborations among FAC members, with stakeholders, and/or agency committee staff (such as Designated Federal Officer, DFO).

2. Agency XXXX FAC members are not issued government email accounts to conduct FAC business. Use of employer-sponsored email accounts or personal email accounts for FAC-related work is permitted and expected.

Preserving Record Email Exchanges (FAC Members)

1. To ensure compliance with records management/retention requirements under General Records Schedule (GRS) 6.2 for Federal Advisory Committee Act (FACA) Records, all Agency XXXX FAC members must copy a designated committee organizational mailbox address for all substantive FAC-specific business emails.

2. Substantive records created by committee members include correspondence documenting decisions, discussions, or actions relating to the work of the committee, including email, exchanged between one or more committee members and/or agency committee staff (such as the DFO).

3. Excluded from this sub-set of substantive (permanent) committee member communications are records relating to purely logistical or administrative aspects of committee activities, such as meeting planning (e.g., location, administrative issues and other meeting arrangements). These records (including emails) can be deleted when no longer needed, and do not require copying the committee mailbox. However, if committee member email contains a mix of administrative and substantive FAC business, the email should be preserved.

DFO Recordkeeping Responsibilities

1. The DFO maintains the official records an advisory committee creates or receives (41 CFR 102-3.175). This includes correspondence between committee members and other records that relate to the committee's decisions or actions (see GRS 6.2).

2. The DFO (or other designated committee official) should assume primary responsibility for overall management of the FAC mailbox.

3. Permanent records generated by or for an advisory committee must be transferred to NARA when records are 15 years old or upon termination of the committee, whichever is sooner. The records must be processed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29–33, and regulations issued by the National Archives and Records Administration (NARA). [41 C.F.R. §102-3.175(e).]

Effective Date: MM-DD-YYYY

APPENDIX D
Federal Advisory Committee Act Records Management Questionnaire

Member Name: **Date Checklist Completed:**

Committee Name: **Email:**

Telephone Number:

Background
You have been identified as a member or former member of an Agency XXXX Federal Advisory Committee (FAC). The Agency XXXX Records Office is requesting your response to this questionnaire to gather information about Agency XXXX records which you may have created or maintained as a FAC member.

A federal record is any recorded information relating to the work of a government agency, regardless of who created it or how the information was recorded. This can include, but is not limited to email correspondence, case files, contracts, and documentation of policy-related discussions and decisions. **In almost all circumstances, the work performed by FAC committee members (as it relates to Agency XXXX initiatives and program work) involves receipt or creation of federal records.**

As an Advisory Committee member, you have the responsibility to manage those federal records in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapter 31, and regulations issued by the National Archives and Records Administration (NARA). See 41 C.F.R. § 102-3, Appendix A to Subpart D ¶ IV.

Work you create/created as a member of an Agency XXXX Advisory Committee that documents the discussions and deliberations of the committee's recommendation is a record. Such substantive records require permanent retention. Other records purely logistical in nature, personal files, and extra copies of records maintained only for reference purposes are **not** records that need to be maintained long-term. The bulk of FAC records, however require permanent retention by the agency and must be transferred to the agency. For more retention information regarding all FACA-related records (permanent and temporary), please reference GRS 6.2 - Federal Advisory Committee Records.

Instructions
Please check the appropriate box (yes or no) to indicate your answer to each question and where requested, include a detailed response in the text box to support your answer. As stated above, the bulk of FAC records require permanent retention by the agency. If in doubt as to whether a record is substantive, please presume that it is and will need to be sent to the Agency XXXX. Please return the completed questionnaire to your committee's Designated Federal Officer (DFO).

If you have any questions regarding what a record is, or need assistance completing the form, please contact your FAC DFO.

Questions

1. Are you in possession of, or do you have access to any substantive Advisory Committee-related emails, including those that document decisions, discussions, and/or actions of the committee or a subcommittee? If no, please explain why you do not have those emails.

   Please explain your response below:
   YES NO

2. Do you have any other (substantive non-email, paper or electronic) records that have been created as a result of your involvement with the Advisory Committee?
   If Yes, please provide the types of records you have created.

   Please explain your response below:
   YES NO

3. Have you sent your records to Agency XXXX for official recordkeeping?
   If no, please complete question 4 below.
   YES NO

4. Are you able to email your records to Agency XXXX? If you cannot email your records to Agency XXXX an alternative solution will be provided to you.
   If No, please explain why those records cannot be emailed.

   Please explain your response below:
   YES NO

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