

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Transmittal Memo

DATE: December 20, 2016

TO: All Staff

SUBJECT: NARA 1463, UNAUTHORIZED DESTRUCTION OR REMOVAL OF RECORDS IN THE LEGAL OR PHYSICAL CUSTODY OF FEDERAL AGENCIES

Purpose: This transmits revisions to NARA 1463, Unauthorized Destruction or Removal of Records from the Legal or Physical Custody of Federal Agencies, providing procedures for responding to actual or alleged instances of records being improperly destroyed or removed that are in the custody of Federal agencies. Information regarding the unauthorized destruction or removal of records stored in NARA Federal Records Centers has been moved to this Directive from NARA 1464, Destruction of Federal Records in the Custody of NARA Records Centers. NARA 1463 advises staff of measures that must be taken in response to allegations of unauthorized destruction or removal of Federal records and to solicit information from agencies on the circumstances of the destruction or removal and the actions taken to prevent recurrence.

Background: 44 U.S.C. §§ 2905 and 3106 provide instructions for the heads of agencies, the Archivist of the United States, and the Attorney General to respond to any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of Federal records. The statutes provide for Federal agencies' notification of the Archivist to initiate action and the Archivist's notification of the Attorney General in those instances where the head of the agency does not initiate action or does not respond to notification in a reasonable period of time.

Significant Changes: This directive updates procedures in accordance with current NARA practices for responding to unauthorized destruction or removal cases. This directive incorporates relevant information from NARA 1464.

Available forms: None.

Cancelled policy: NARA 1463, Unauthorized Destruction or Removal of Records at Agencies, dated March 27, 2003.

Related policy:

- NARA 1462, Recovery of Alienated Archival Materials.

- NARA 1572, Preventing Theft and Vandalism of NARA Holdings in NARA Facilities.

Effective date: This directive is effective upon signature.

Contact information: For questions on this directive, contact Director, Records Management Oversight and Reporting (ACO), at 301-837-3426 or donald.rosen@nara.gov.

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Deputy Archivist of the United States

Attachment

National Archives and Records Administration

**NARA 1463
December 20, 2016**

SUBJECT: Unauthorized Destruction or Removal of Records in the Legal or Physical Custody of Federal Agencies

1463.1 Policy.

NARA responds to actual or alleged instances of records being improperly destroyed or removed from the legal or physical custody of Federal agencies, informs agencies about allegations of unauthorized destruction or removal of records, and solicits information from agencies on the circumstances of the destruction or removal and actions taken to prevent recurrence.

1463.2 Coverage.

This directive applies primarily to Records Management Oversight and Reporting (ACO) staff, who follow Part 1 of the Procedures in the Supplement, and to NARA's Federal Records Centers Program (AFO) staff, who follow Part 2 of the Procedures. Other NARA staff with knowledge of an alleged unauthorized destruction or removal of Federal records should promptly alert ACO staff.

1463.3 Destruction or removal of Federal records not covered by the directive.

This directive does not cover the following actions:

- a. Improper destruction or removal of records that have been accessioned into and/or are in the legal custody the National Archives of the United States. In such cases, refer to NARA 1462, Recovery of Alienated Archival Materials and NARA 1572, Preventing Theft and Vandalism of NARA Holdings in NARA Facilities.
- b. Improper destruction or removal of records governed by the Presidential Records Act not yet in the legal custody of NARA. In such cases, NARA staff members should contact NARA General Counsel.
- c. Destruction of records under certain conditions in time of war or when hostile action seems imminent outside the continental United States. An agency must inform NARA after such destruction has taken place, per 44 U.S.C. 3311 and 36 CFR 1229.12.
- d. Emergency destruction of records whose physical condition makes them a continuing menace to human health or life, or to property. An agency must seek and receive NARA approval for such emergency disposal, per 36 CFR 1229.10.
- e. Temporary records that have been retained for the prescribed retention period and that are proposed to be donated to a non-Federal entity. An agency must obtain NARA approval for such a donation following the process in 36 CFR 1226.26.

f. Loaning of permanent or unscheduled records to another Federal agency or to a non-Federal entity. An agency seeking to make a loan must obtain NARA approval following the process in 36 CFR 1228.1 through 1228.16.

g. Transfer of records from one agency to another agency. The transferring agency must obtain NARA approval following the process in 36 CFR §§ 1231.1 through 1231.18.

1463.4 Responsibilities.

a. The Archivist:

- (1) Under 44 U.S.C. 2905, the Archivist has the responsibility to notify the head of an agency of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of Federal records and initiate any necessary actions to recover the records.
- (2) Under 44 U.S.C. 2905 and 3106, if the head of the agency does not initiate action for recovery or other redress for the records within a reasonable time of being notified of the unlawful destruction or removal, the Archivist has the responsibility to request that the Attorney General initiate action for recovery or other redress, and to notify Congress when such a request has been made.

b. The General Counsel (NGC) advises the Archivist on measures to take, including whether to request redress by the Attorney General, if necessary, on a case-by-case basis.

c. Records Management Oversight and Reporting (ACO) has operational responsibility to notify agencies of allegations and instances of unauthorized destruction or removal of records outside of FRCs and to work with agencies to resolve these matters.

d. The Federal Records Centers Program (AF) notifies agencies and ACO of the unauthorized destruction or removal of records at NARA Federal Records Centers.

1463.5 NARA's actions to address allegations of improper destruction or removal.

a. NARA promptly notifies agencies regarding any credible allegations of actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of Federal records. AF will notify the impacted agency of any alleged unauthorized destruction or removal of records at NARA Federal Records Centers; ACO will notify agencies of any alleged unauthorized destruction or removal occurring at any other facilities. See the Supplement for procedures for addressing allegations.

b. NARA will ensure that agencies are informed about allegations so that they can address them, take any necessary action to avoid a recurrence, and attempt to recover any missing or removed records, as appropriate. When an allegation comes from a contact

within an agency, but an official notification has not come from the agency, procedures may be modified to accommodate the particular circumstances.

1463.6 NARA actions when an agency is unresponsive.

- a. If an agency is unresponsive or does not demonstrate appropriate corrective action regarding an allegation of unauthorized destruction or removal, the Archivist may ask NARA's General Counsel to contact the general counsel and/or the Inspector General of the agency requesting additional information or action.
- b. If this measure does not lead to resolution of the case, the Archivist may take further appropriate action, such as contacting the head of the agency, appropriate Congressional oversight committees, or the Department of Justice.

1463.7 Definitions.

- a. **Agency**--any executive agency that is subject to the Federal Records Act, or an establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol) that is subject to the Federal Records Act.
- b. **Donation**--an addition to holdings acquired without monetary consideration and becoming the sole property of the recipient, frequently effected by a deed of gift. (Agencies only may donate temporary Federal records and only with prior NARA approval.)
- c. **Unauthorized destruction**--the willful or accidental destruction of unscheduled or permanent records; destruction or erasure prior to the end of the NARA-approved retention period of a temporary record; and destruction or erasure of a record subject to a FOIA request, litigation hold, or any other hold requirements to retain the records.
- d. **Unauthorized removal**--selling, donating, loaning, transferring, stealing, or otherwise allowing a record to leave the custody of a Federal agency without the permission of the Archivist of the United States. Also included is failure to bring a record created outside of an agency into the custody of the agency.

1463.8 Authorities.

- a. 44 U.S.C. 2905 directs the Archivist of the United States to notify the head of a Federal agency of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of Federal records and to assist the agency head in initiating any necessary action to recover the records.
- b. 44 U.S.C. 3106 directs agency heads to notify the Archivist of the United States of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of Federal records and, with the Archivist's assistance, to initiate any necessary action for recovery of the records.

- c. 36 CFR 1230, Unlawful or Accidental Removal, Defacing, Alteration, or Destruction of Records. NARA's regulations that contain the procedures and agency reporting requirements for unauthorized destruction or removal of records in the legal or physical custody of Federal agencies.

1463.9 Public Release.

Unlimited. This directive is approved for public release.

1463.10 Records Management.

- a. The assigned ACO staff member maintains a file for the unauthorized destruction or removal case in accordance with Files 203, item 1301-1b.
- b. ACO produces quarterly reports on the cases, for filing under item 1301-1b.