

OPENTHEGOVERNMENT.ORG

Americans for Less Secrecy, More Democracy



Steering Committee

Steven Aftergood
*Federation of
American Scientists*

Bill Allison
Sunlight Foundation

Mary Alice Baish
*American Association
of Law Libraries*

Gary Bass*
OMB Watch

Tom Blanton*
*National Security
Archive*

Beth Daley
*Project on Government
Oversight*

Lucy Dalglish
*Reporters Committee
for Freedom of the
Press*

Charles Davis
*National Freedom of
Information Coalition*

Leslie Harris
*Center for Democracy
& Technology*

Robert Leger
*Society of Professional
Journalists*

Conrad Martin
*Fund for Constitutional
Government
(Ex-officio member)*

Michael Ostrolenk
Liberty Coalition

Reece Rushing
*Center for
American Progress*

Peg Seminario
AFL-CIO

David Sobel
*Electronic Frontier
Foundation*

**co-chairs*

Patrice McDermott
Director

Amy Fuller
Program Associate

Statement
Of
Patrice McDermott
Director
OpenTheGovernment.org

Information Policy, Census, and National Archives
Subcommittee
Oversight and Government Reform Committee
On

The National Archives and Records Administration

Thursday, May 21, 2009

2154 Rayburn HOB

2:00 P.M.

Thank you, Chairman Clay, Mr. McHenry, and Members of the Subcommittee, for the opportunity to speak today on the issues that the Obama Administration should consider in selecting the next Archivist of the United States.

My name is Patrice McDermott. I am the Director of OpenTheGovernment.org, a coalition of more than 70 consumer and good government groups, library associations, journalists, environmentalists, labor organizations and others united to make the federal government a more open place in order to strengthen public trust in government, make us safer, and support our democratic principles.

A National Archives and Records Administration for the Future
One of my former colleagues, who recently retired from NARA said, "I believe in NARA – as an ideal." I think that is where those of us on this panel and our colleagues in the public interest community stand as well. Perhaps we hold the agency and its staff

to an impossibly high ideal. We do this because NARA is probably the only agency in the Executive Branch that has – and is seen by the public to have – access to government information as its primary mission.

NARA has primarily understood its mission to encompass primarily information that, for a variety of reasons, is historically significant. This understanding of its mission is reflected in its leadership and its staff. While the employees of NARA are dedicated civil servants and there are many talented individuals working there, the agency has a tendency to be inward looking and focused on history. The perception of NARA is that it is primarily reactive, not pro-active. And we know that NARA has preferred to take a collegial rather than leadership stance with the agencies and within the government overall. The critical position of NARA in the life-cycle management of the records of our federal government and the mounting challenges the government faces in this area necessitate that the culture and stance of NARA change.

NARA is increasingly being asked to face new challenges and is looked to as the site to locate new initiatives and offices pertaining to public access to contemporaneous government information. These include the Office of Government Information Services, created by the OPEN Government Act, and an office that will have responsibility for implementing the Memorandum on Designation and Sharing of Controlled Unclassified Information, better known as “Sensitive But Unclassified” information. This latter office has the task of bringing order to the multiplicity of control markings – such as SBU, FOUO – across the government that are meant to safeguard information that is not classifiable, but that is arguably not for immediate public disclosure.

Importantly, though, NARA has another primary mission that receives an insufficient amount of the agency’s attention and resources: records administration. Many of us in the public access community are deeply concerned about how NARA is addressing its responsibility for records, and especially, e-records, management and provision of access to the records of our nation. NARA’s 2006-2016 Strategic Plan is indicative of the reasons for our concerns: it has a total of 1.5 pages on records administration and one vague strategy for electronic records management –

We will expand the demand for records management in the Federal Government by advocating for it at senior levels. By providing guidance, training, and assistance throughout the Government, we will support

agencies' business needs and embed records management in the agencies' business processes and systems.

accompanied by a strategy on physical records storage.

Indeed, the strong and evident focus on the strategic plan is on the Archives portion of NARA's mission combined with an emphasis on civic education and exhibits. The perception, reinforced by conversations with current and former NARA staff, is that the agency increasingly understands itself as a museum.

The Next Archivist of the United States

The former Archivist, Dr. Allen Weinstein, started moving the agency in some good directions with the use of technology. NARA's use of technology, though, appears to be focused on making NARA a museum, rather than a lead agency on life-cycle management of records for public access and government accountability.

Recent history shows, however, that we need an Archivist who has a proven record of standing up for open government. Dr. Weinstein took good positions on open government when crises arose, but did not put the agency in a leadership stance. That is an approach we can no longer afford.

We need an archivist who understands NARA is not just a museum of historical documents, but is a steward responsible for securing the integrity of government records. He or she must be able to lead NARA to embrace the role of catalyst for the information revolution and enunciate clear, consistent and practical electronic record policies.

Most importantly, we need an archivist who will lead the government to meet the new challenges of managing and preserving electronic records, including e-mails. Records management must not be about cleaning up messes after they occur, but, rather, taking the proactive steps necessary to prevent the loss of our documentary record.

The new Archivist needs to be a visionary in terms of the importance and public use of government records in all forms and formats, and throughout their life-cycle, and so needs to have strong familiarity with technology – as a tool. She or

he also needs to be someone who understands and appreciates records management throughout the life cycle, not just of records that will be archived. The public and the government need an archivist who can provide vision and leadership for the federal government on information and records management, and foster successful partnerships with history and access professionals inside and outside government. A successful archivist may be a historian, an archival professional, an editor or publisher, a legal reformer, the head of a major library, or a longtime government servant. The key qualification is his or her commitment to maintaining the record of our national government and meeting the mandates of law.

Because the next Archivist will have so many challenges to meet, we recommend that a second-tier political appointee be created to serve in a chief-of-staff type position and to manage and enliven the bureaucracy at NARA. This would free the Archivist to assume the needed leadership role, and might attract candidates who have the vision to move the agency and to assist the President in moving the government forward.

The new Archivist and this second person should give the Controlled Unclassified Information Office and the Office of Government Information Services (OGIS) support and independence that the Information Security Oversight Office (ISOO) has. For OGIS, this independence is particularly important because OGIS must also oversee NARA's own significant involvement with FOIA. Additionally, NARA needs to be particularly proactive in ensuring it implements FOIA well, as any failure by NARA will impact the credibility of OGIS.

In order for President Obama's day one promises on transparency to have any meaningful impact, immediate steps must be taken to protect the integrity of government records throughout their lifecycles, from creation to permanent preservation or authorized destruction.

NARA's Responsibility for Records Administration

The National Archives and Records Administration (NARA) is supposed to be the leader in this area. The Federal Records Act gives NARA clear authority (44 USC 2904) including for promulgating standards, procedures, and guidelines,

and conducting inspections or surveys of the records and the records management programs and practices within and between Federal agencies. As far back as 1996, NARA committed to working “with agencies on the design of recordkeeping systems for creating and maintaining records of value.” While a procurement standard developed by the Department of Defense was accepted many years ago by NARA, very little progress has been made government-wide toward electronic records management systems. Records are stored on servers and, in some cases, on individual PCs, but they are not managed in the sense of being easily retrievable by subject or creator or, I would guess, disposition schedule. We repeatedly have to relearn the lesson, apparently, that servers and backup tapes are not appropriate records management systems.

Congress has been lax in holding agencies accountable and for ensuring that records management is seen as part of the mission-critical components of every department and agency. While Congress is rightfully alarmed at the loss of documents and information through a system breach, it and the Executive Branch have turned a blind eye to their loss through indifference. The end result is the same except with indifference – or intentional failure to preserve – we will not necessarily know what has been taken from us and will not be able to restore our history to its previous status.

The problem is not just life-cycle management of the documents and information. We are also concerned by what we understand to be the preservation policies promulgated by NARA. Those of us outside government understand that the common policy is to only preserve the final policy document, for instance. That is important, but not sufficient. Some of us remember the days of carbon copies and complete paper files. In the government, the paper copies were annotated and initialed by those who saw and commented on them. It was not just the final version of the policy or memo that was filed away, but a documentary history of that policy’s development. Now, however, across the federal government, we do not know with any certainty that all of the documents and information that we need to write our history, to understand policy development and implementation, to trace who knew what, read and edited what document, are being preserved.

The issue of records management of e-mail is the iceberg below this tip, of course. NARA’s policy in this area is fatally flawed. It allows the agencies to not schedule e-

mail communications in the way that other communications, such as letters and memos. NARA does not tell the agencies that they can treat all letters sent or received in the course of government work in exactly the same way, but that is exactly what it has told them they are permitted to do with e-mail. Tellingly, NARA's guidance on IM (instant messaging) – which is essentially e-mail that you must be logged in to receive – says:

If an agency determines IM content to be a Federal record, the record must have a NARA-approved disposition authority. *Do not identify IM content as a single series of records with a universal disposition.* Instead, evaluate IM content within the context of the overall records of the program to which the IM relates and the business rules that may apply. Disposition instructions for IM should be consistent with similar agency records. Schedule in accordance with the agency's established records management policy. *IM records may already be scheduled as part of other series, such as records typically found in a case file or a correspondence system. (Emphasis added)*

This is the polar opposite of NARA's guidance on e-mail and it is precisely what its policy on all electronic communications, including the new social media, should be.

The Federal Records Act also gives NARA clear authority (44 USC 2904) including for also conducting inspections or surveys of the records and the records management programs and practices within and between Federal agencies. NARA has elected, however, to limit its role to providing guidance only with little or no agency follow-through. Most significantly, NARA has abandoned its previous practice of conducting annual audits of agency compliance and proclaimed publicly that the responsibility rests first and last with individual federal agencies. At a symposium in 2007, NARA was told by agency personnel that the failure to audit meant a failure of records management.

As I noted, the next Archivist of the United States must restore NARA's presence and reaffirm its leadership in the life-cycle management of the records of the federal government in all their forms and formats and regardless of whether they are the 1-3% that will eventually be accessioned into the Archives and preserved by NARA as permanent.

Thank you for the opportunity to speak to you on these important issues. I am happy to answer any questions you might have.