

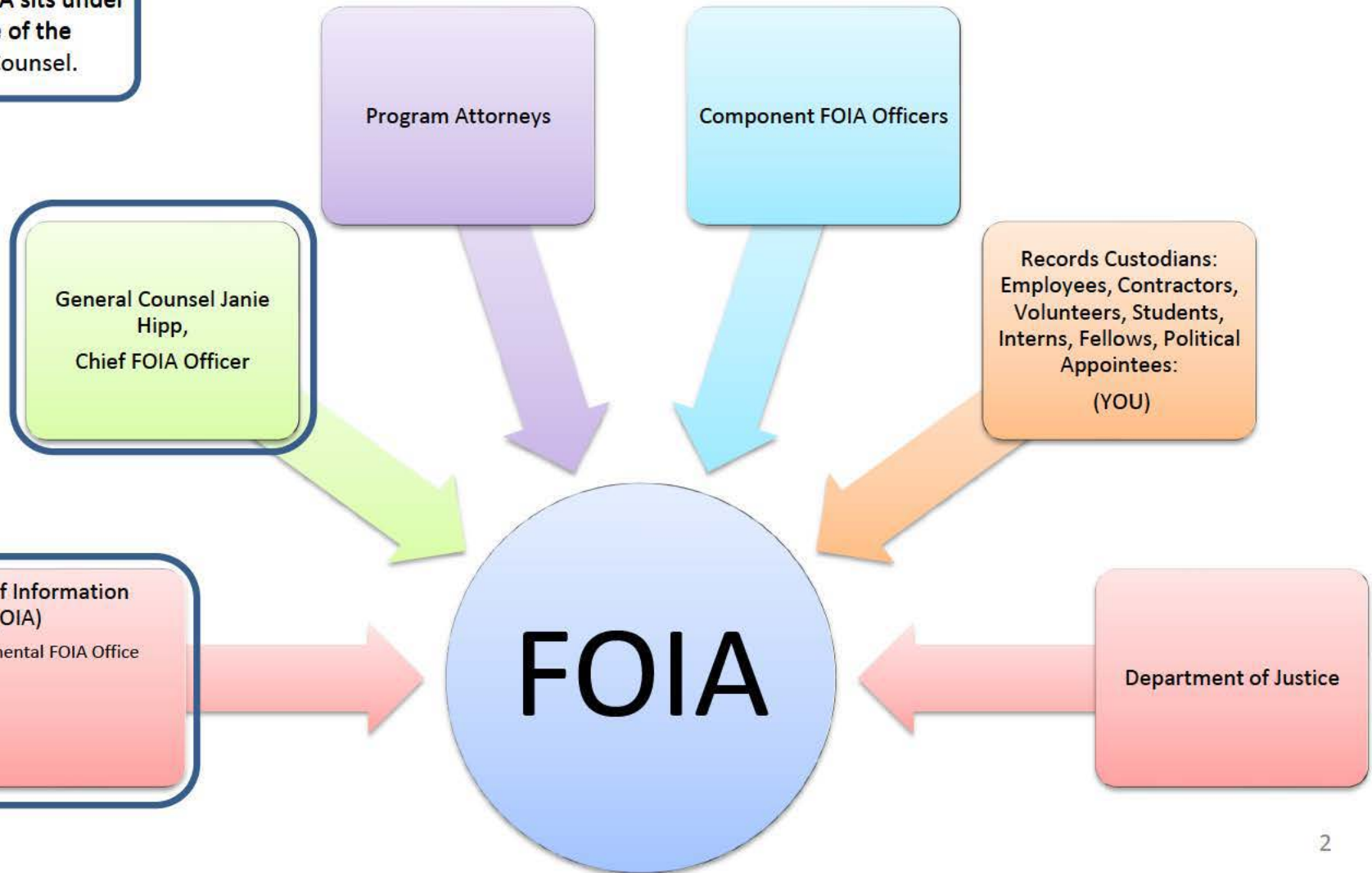
Introduction to the Freedom of Information Act (FOIA) & Records Management

New Employee Orientation



Key Players in the USDA FOIA Program

USDA FOIA sits under the Office of the General Counsel.



The Freedom of Information Act

Since 1967, the Freedom of Information Act (FOIA) has provided the public the right to request access to records from any federal agency. It is often described as the law that keeps citizens in the know about their government. Federal agencies are required to disclose any information requested under the FOIA unless it falls under one of nine [exemptions](#) which protect interests such as personal privacy, national security, and law enforcement.

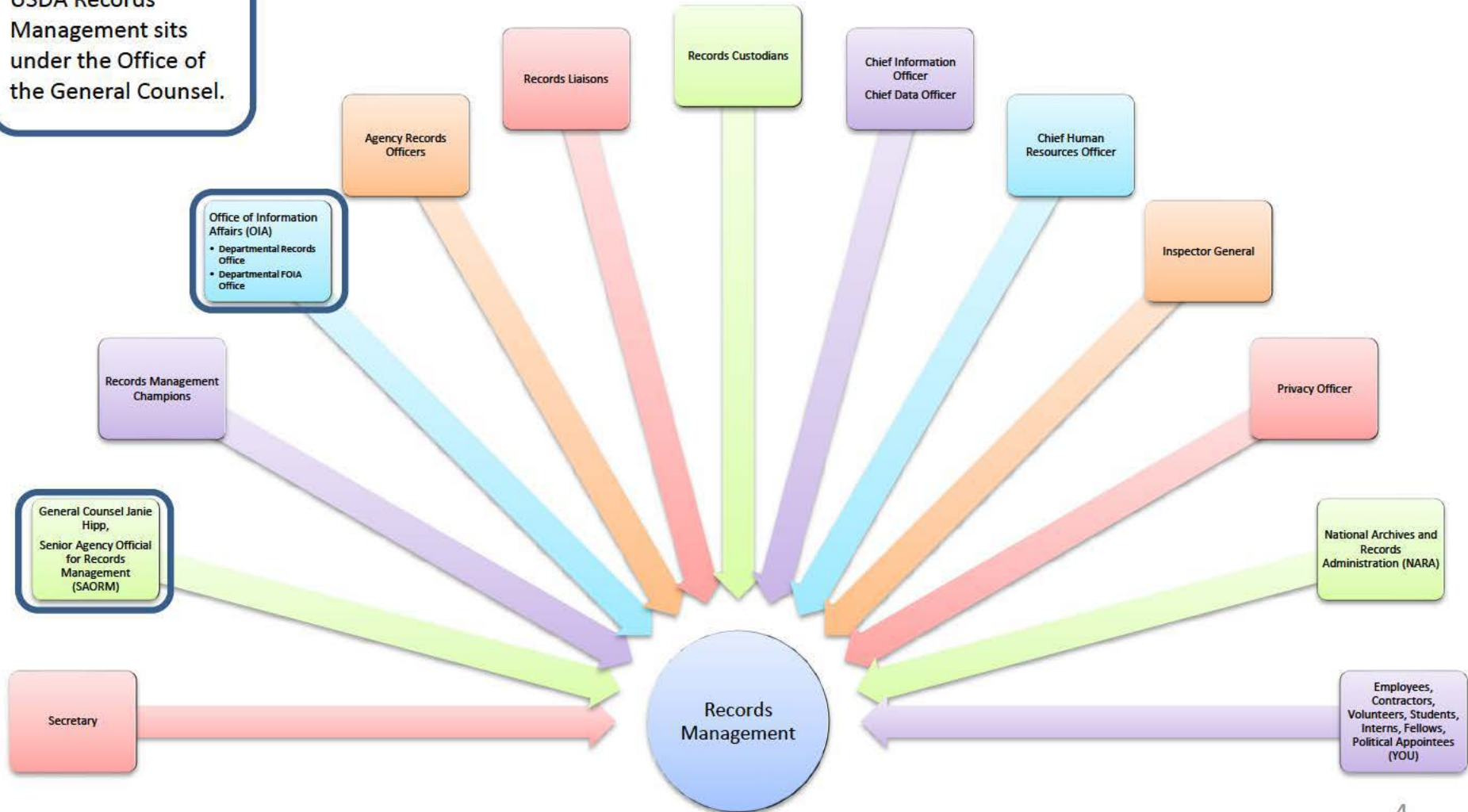
The FOIA also requires agencies to proactively post online certain categories of information, including frequently requested records. As Congress, the President, and the Supreme Court have all recognized, the FOIA is a vital part of our democracy.

The short version:

“The Freedom of Information Act is a law that gives you the right to access information from the Federal Government. It is often described as a law that keeps citizens ‘in the know’ about what their government is doing.”

Key Players in the USDA Records Management Program

USDA Records Management sits under the Office of the General Counsel.



Definition of a Record

"Includes **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. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included." **44 U.S.C. 3301**

The short version:

A record is information in any media, created or received while fulfilling the duties of your position or conducting official business, as evidence of Agency functions, organization, and activities.

FOIA Records

“Record” is **NOT** a statutorily defined term in FOIA.

“...records created or obtained by an agency, and under agency control at the time of the FOIA request.” **U.S. Dep’t of Justice v. Tax Analysts, 492 U.S. 136 (1989)**

The FOIA is much broader in its scope of records.

Examples of Records

- Time and Attendance
- IT Help Desk Requests
- Budget Files
- Accounts Payable /Receivable
- Talent Acquisition Files
- Position Descriptions
- Fingerprint Files
- Unofficial and Official Personnel Files
- Acquisition, Procurement and Market Research
- Transcripts
- Training Attendance Records
- Travel Receipts
- Program Subject Files
- Case Files
- Briefings, Briefing Books Presentations and Position Papers
- Internal and External Reports
- Project Tracking Files
- Reports, Analyses, Case Studies and Scientific Papers
- Food Inspection Reports
- Loan and Grant applications
- Blueprints
- Program Authorities
- Program Management Files
- Policies, Handbooks, Manuals, and Standard Operating Procedures
- Directives and other Guidance
- Letters and Email Correspondence
- Data (including alpha-numeric and geospatial)
- Memorandums
- Congressional Correspondence
- Calendars and Visitor Logs
- Email
- Photos, Slides, Audio-visual Recordings and Spatial Imagery
- Handwritten Notes
- Drafts (written or hard copy)
- Web Pages, including SharePoint Pages Containing Agency Information and Documents
- Teams Recordings, Channels and Pages
- Text and Electronic Messaging (Including Teams, Skype, and any other system)

Records Not Subject to the FOIA

Materials not qualifying as agency records include, but are not limited to:

1. Phone calls
2. Memories
3. Museum Objects



Capstone

- USDA has adopted the Capstone approach to managing email;
- Email is managed at account rather than individual message level;
- NARA approved Capstone roles are designated permanent;
- NARA approved non-Capstone roles are designated temporary;
- Capstone is flexible:
 - Individual emails can be categorized as permanent, regardless of Capstone status; and
 - Individual emails can be categorized as temporary, regardless of Capstone status – as approved by Records Management.

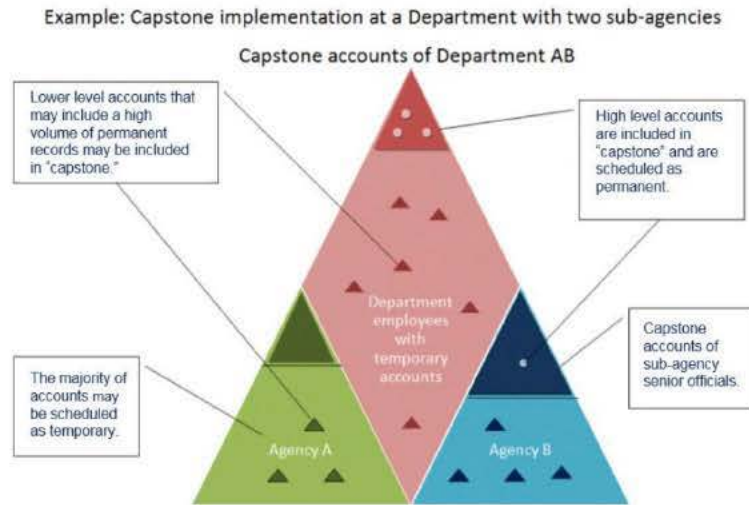


Diagram of Capstone Implementation at a department with two sub-agencies.

Your Records Management Responsibilities

Federal Employees, Contractors, Volunteers, Students, Interns, Fellows and Political Appointees Must:



- Complete mandatory annual Records Management training;
- Create and manage information that documents your work;
- Coordinate with Records Management and your supervisor to learn about the kinds of records you create and receive, and the length of time they must be kept;
- Safeguard information that needs to be protected, including sensitive business information;
- Retain, store, and maintain physical records in USDA offices;
- Store information containing Personally Identifiable Information (PII) in locked cabinets or limited access electronic folders;
- Store information about your employees, if a supervisor, in a locked, limited access cabinet, and if held electronically, only available to the supervisor in the supervisor's protected Drive, such as the H Drive;
- If you see something, say something, to your supervisor, and your Agency Records Officer:
 - When records are left unattended;
 - When records are in a dumpster;
 - When records are in trash bins outside of an office;
- Follow Departmental policies for maintaining, protecting, preserving and using records;
- Separate personal files from official Federal records;
- Use official accounts to conduct agency business, including official electronic messaging accounts;
- Carbon copy or forward any text, SMS, and electronic messages created or received from a personal account to your official account within 20 days;

Your Records Management Responsibilities

Federal Employees, Contractors, Volunteers, Students, Interns, Fellows and Political Appointees Must:



Your
Responsibilities,
Continued

- Store records created and received during telework in an official, USDA provided recordkeeping system, such as Shared Drives, One Drive and SharePoint;
 - When in doubt, contact your Agency Records Officer for assistance.
- Retain and safeguard records and non-records subject to a Freedom of Information Act (FOIA), Privacy Act (PA), Inspector General (IG) investigation, Equal Employment Opportunity (EEO) investigation, or litigation hold;
- Participate in records management activities, such as, but not limited to: updating File Plans, records inventories, official clean up days, and working with your Agency Records Officer (ARO) on records schedules;
- Report unscheduled records to your Agency Records Officer and preserve them until there is an approved, legal records schedule;
- Report unauthorized destruction or inadvertent loss to your supervisor and Agency Records Officer;
- Work with your Agency Records Officer to keep, and lawfully dispose of records according to an approved, legal records schedule;
- Request approval from your Agency Records Officer for all disposal, deletion, and destruction of records;
- Work with your Agency Records Office for the acquisition and decommissioning of any systems that contain records; and
- Coordinate with Records Management *before transferring or leaving a position*, to comply with [DR-3099-001](#), *Records Management Policy for Departing Employees, Contractors, Volunteers, and Political Appointees*.
 - Complete the [AD-3001](#), Documentary Materials Removal/Non-Removal Certification and Non-Disclosure Agreement with the Agency Records Office.

Records Management Responsibilities for Senior Officials



Senior Officials and Political Appointees must also:

- Properly manage electronic messages, including email, SMS texts, encrypted communications, social media messages, and those created on any other type of messaging system;
- Manage official alias and group accounts, where multiple individuals may be involved in daily operations;
- Ensure all accounts are managed and identifiable according to Federal recordkeeping requirements;
- Recognize that all records may be considered permanent;
- Promote proper records management to staff, including ensuring that supervisors allocate time for staff to conduct records management activities;
- Ensure staff complete annual mandatory records management training; and
- Anticipate personal review of file structure and agency records by Records Management officials, including:
 - Electronic devices; and
 - Paper and electronic files.

The First 120 Days & Best Practices

(1) Get Started with RM Compliance

- ✓ Complete annual mandatory Records Management Training
- ✓ Identify Your Agency Records Officer
- ✓ Learn about Your Office's File Plan

(2) Separate Personal Materials from Records

- ✓ Calendars
- ✓ Emails

(3) Keep USDA Work in the USDA Channels

(4) Establish Email Etiquette

- ✓ Clear, direct subject lines
- ✓ Cautious with humor
- ✓ Assume nothing is confidential – so write accordingly

(5) Schedule FOIA and Records Training for Your Program/Office to Further Discuss Compliance and Best Practices

- ✓ FOIA contains a fee shifting provision permitting the trial court to award attorney fees and litigation costs to plaintiffs. **5 U.S.C. 552(a)(4)(E)(i)**
- ✓ **Subsection (b) of 18 U.S.C. 2071** provides for a \$2,000 fine and/or imprisonment to any custodian of a public record who “willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys any record.”



Resources for Senior Officials

USDA Departmental Records Management Program

- [Departmental Records Management Entrance Guide for Senior Officials](#)
- [Guidance for Senior Officials and Political Appointees Documenting Your Public Service](#)
- [NARA Records Management Guidance for Political Appointees](#)

NARA Reports for Senior Officials

- [Senior Agency Officials for Records Management Annual Reports](#)
- [Records Management Self-Assessment Reports \(RMSA\)](#)
- [Federal Electronic Records and Email Management Reports](#)



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