



Office of the General Counsel
U.S. DEPARTMENT OF AGRICULTURE

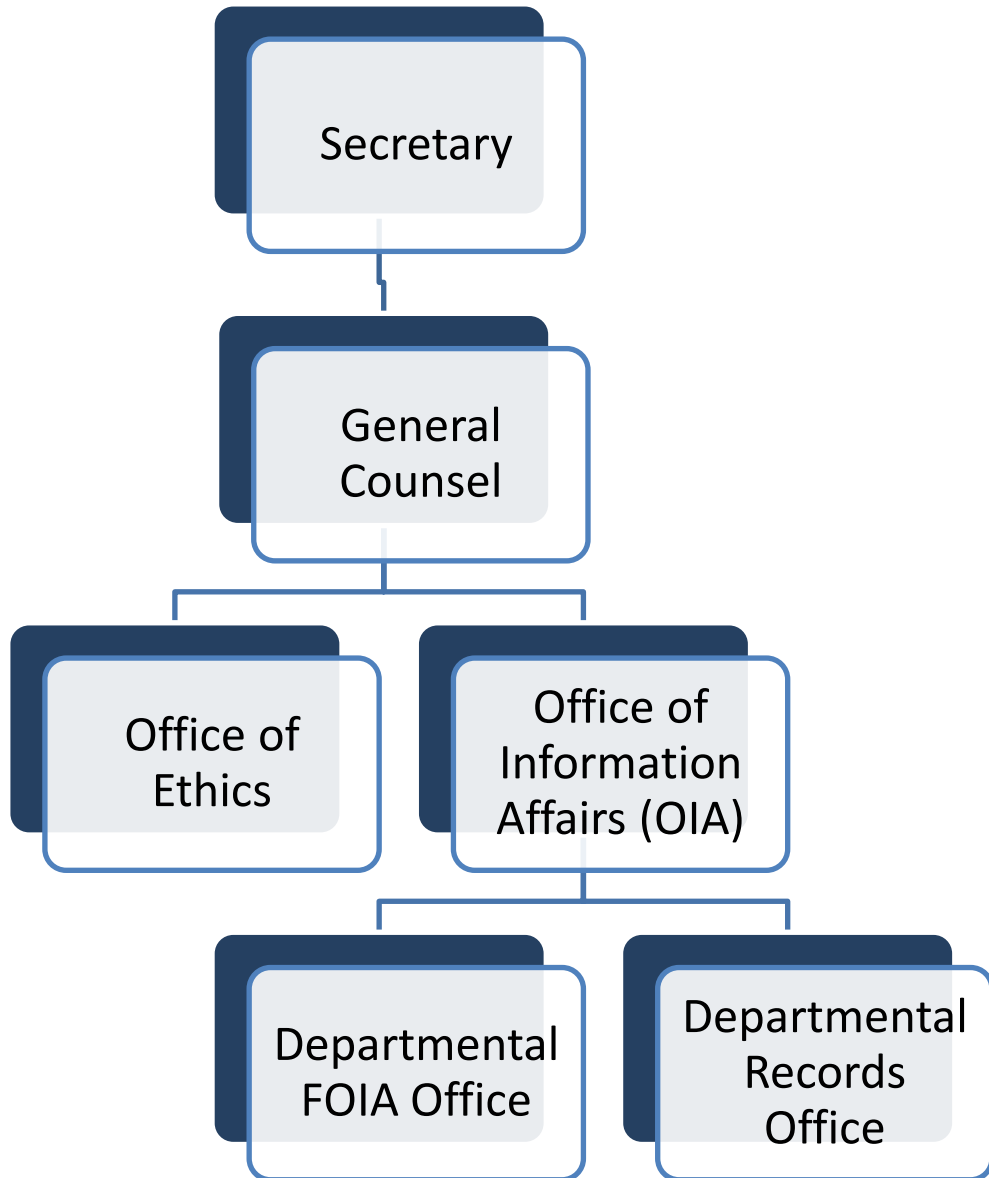
Office of Information Affairs

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

New Hire Orientation for Political Appointees and Senior Officials

Revised July 2025

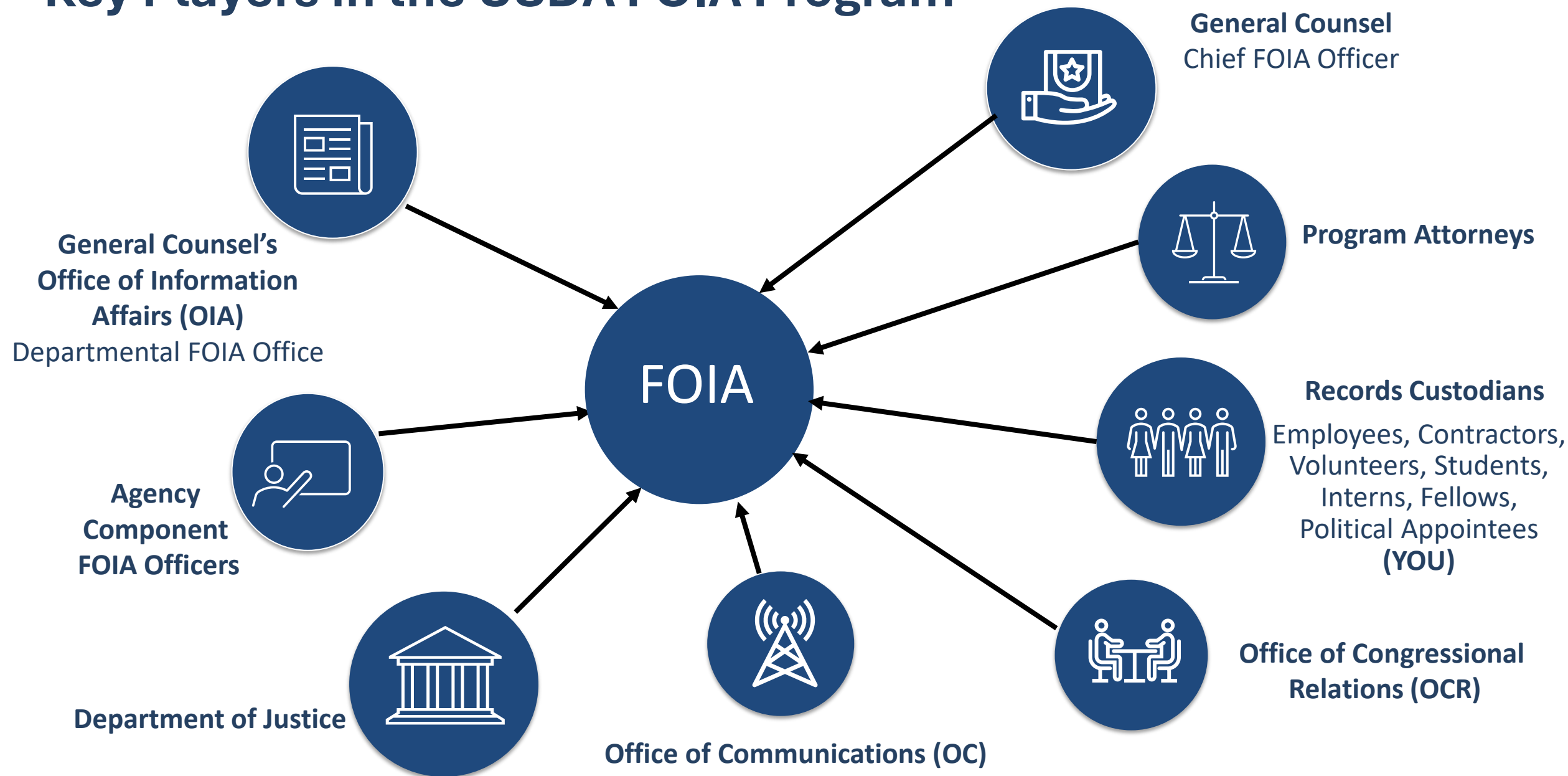
USDA FOIA and Records Program Placement



Why does Records Program location matter?

- Federal Records Act requires the head of each agency to establish and maintain a program for records management.
- Senior Agency Official for Records Management (SAORM) acts on behalf of the agency head to ensure the agency efficiently and appropriately complies with all applicable records management statutes, regulations, National Archives and Records Administration (NARA) policy, and Office of Management and Budget (OMB) policy.
- USDA SAORM is in the Office of General Counsel (OGC).
- The General Counsel provides legal advice and services to the Secretary of Agriculture.
- In August 2020, USDA established the Office of Information Affairs to oversee the USDA Departmental Freedom of Information Act (FOIA) Program and the Departmental Records Program.
- The OIA works closely with the General Counsel to protect the legal interests of USDA.

Key Players in the USDA FOIA Program



The Freedom of Information Act (FOIA)

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.”

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.

USDA Records Management Stakeholder Model – Key Players



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.

Everything is a Record

- What is a Record?
- **Everything** and **anything** you create, and receive on behalf of USDA is record.
- Put another way:
 - All information created or received on behalf of USDA is a record of the United States Government.



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)

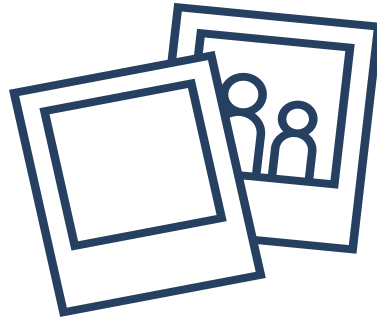
Records Not Subject to the FOIA

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

Phone Calls



Memories



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; and
- 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.

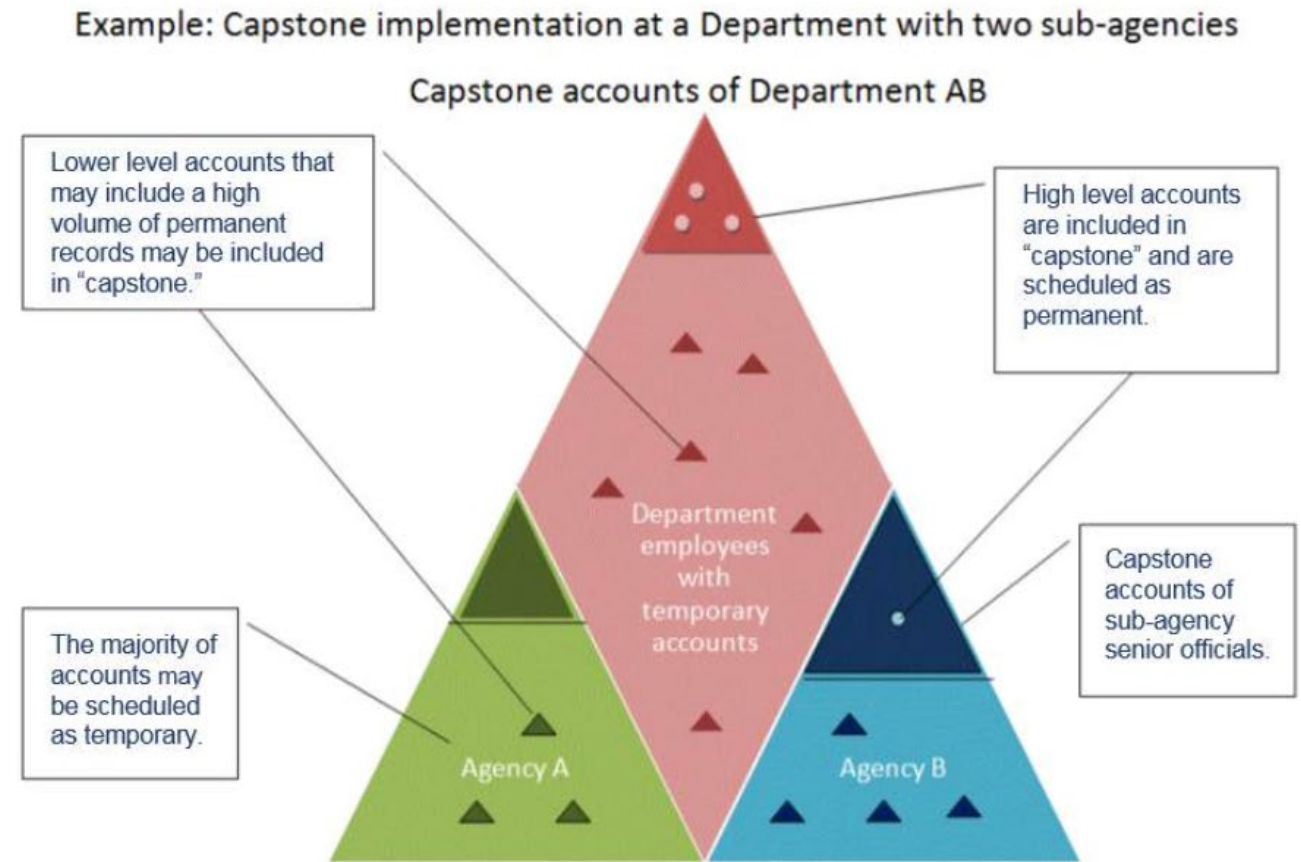


Diagram of Capstone Implementation at a department with two sub-agencies.

USDA Personnel Records Management Responsibilities

USDA Personnel (Employees, Contractors, Students, Volunteers, Interns, Fellows, and Political Appointees) – You must:

- Complete mandatory annual Records Management training;
- Document the work that you create and receive to conduct USDA business;
- Safeguard information that needs to be protected, including sensitive business information and personally identifiable information (PII);
- Retain, store, and maintain physical records in USDA offices;
- Store records created during work and telework in an official, USDA-provided recordkeeping system, such as Shared Drives, and SharePoint;
 - One Drive files are not available to your team; and
 - One Drive files are deleted after you leave USDA;
- 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;
- Contact your IT Administrator if you do not have a Shared Drive or SharePoint site;
- 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 and information;



USDA Personnel Records Management Responsibilities (Cont'd.)

USDA Personnel (Employees, Contractors, Students, Volunteers, Interns, Fellows, and Political Appointees) – You must:

- Separate personal files from official Federal records;
- Use official accounts to conduct agency business, including official electronic messaging accounts;
- Conduct all USDA business on Government Furnished Equipment (GFE) and maintain records and information in official USDA systems;
- Carbon copy or forward any text, SMS, and electronic messages created or received from a personal account to your official email account within 20 days;
 - When in doubt, contact your Agency Records Officer for assistance.
- Ensure USDA records and information are accessible to USDA and your team:
 - Print record emails to PDF and file them with the rest of your program records, if the information needs to be shared and does not exist elsewhere; or
 - Drag and drop to put emails into shared access program repositories, such as SharePoint, or the Shared Drive.
- Retain, preserve 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;
- Ensure that USDA can meet its FOIA responsibilities by responding to USDA FOIA Offices in a timely manner and assisting to locate records requested under the FOIA, for processing by FOIA Professionals;
- 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;



USDA Personnel Records Management Responsibilities (Cont'd.)

USDA Personnel (Employees, Contractors, Students, Volunteers, Interns, Fellows, and Political Appointees) – You must:

Your Responsibilities

- Report unscheduled records to your Agency Records Officer and preserve them as if permanent 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 maintain and preserve USDA records and information according to an approved records schedule;
- Request Agency Records Officer approval for all disposal, deletion, destruction, shredding, discarding, and transfer of records;
- Use only NARA-approved disposition authorities to dispose of records, not agency-created file codes;
- Work with your Agency Records Officer 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 Officer.

USDA Personnel Records Management Responsibilities for Senior Officials

Senior Officials and Political Appointees must also:

A woman with curly hair, wearing a black vest over a white shirt and black pants, is holding a white sign. The sign has the text "Your Responsibilities" written on it. A line from the sign points to the first bullet point in the list.

Your Responsibilities

- 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.

Government Furnished Equipment (GFE) and Conducting USDA Business

USDA records and information must be created, received, managed and preserved on USDA networks, in USDA official systems.

- You must conduct all USDA business on Government Furnished Equipment (GFE) and maintain records and information in official USDA systems.
- Use of a personal device or account may result in the device being confiscated and forfeited, or the personal account being accessed by USDA Personnel for discovery, litigation, or any official business use.

Teleworking

- Use only your GFE to conduct USDA business, including USDA-provided laptops, mobile devices and cellular phones.
- Work with your supervisor to safeguard records and information that you are handling, which may include personally identifiable information (PII), business sensitive and proprietary information.
- Do not remove documents containing personally identifiable information from the office. This information should always be handled according to the USDA DR 3515-002, Privacy Policy and Compliance for Personally Identifiable Information (PII).



Managing Electronic Messages and Email

- The Federal Records Act was amended in November 2014 and added a new definition for electronic messages in 44 U.S.C. 2911.
- The law states, “The term ‘electronic messages’ means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.”
- USDA Personnel (Employees, Contractors, Students, Volunteers, Interns, Fellows, and Political Appointees) should use official accounts to conduct agency business. However, if an electronic message that meets the definition of a Federal record is created or received in a personal account, the message must be carbon copied or forwarded to an official electronic messaging account within 20 days.
- The statutory definition of electronic messages includes email, text messages, and social media posts that are official business. In other words, if it is related to agency business, it must be captured and maintained as a record whether it is text, messaging on third-party applications, or social media.
- Disposition of electronic records follows the same rules as paper records, as long as there is: Agency Records Officer approval and a valid disposition authority provided by NARA.
- Electronic Messages are email and other electronic messaging systems that are used for purposes of communicating between individuals.

AgRecords

- **What is AgRecords?**
- Federal Records Act mandates preservation of all documentation of government actions.
- OMB Mandate (M-23-07) requires Federal agencies to transition to electronic business and recordkeeping by June 30, 2024.
- 2022 National Archives and Records Administration (NARA) Inspection of USDA Records Programs resulted in 24 recommendations across four major risk areas, including electronic records management.
- To comply with Federal mandates, USDA purchased an **electronic records management system, called AgRecords, to automatically capture, manage, search for, and preserve USDA records and information.**



AgRecords is Leading the Way

- USDA AgRecords is the **largest** Electronic Records Management (ERM) initiative **within the entire U.S. Federal government.**

-Richard Long

Vice President of Strategy

Feith Systems and Software Inc.

The First 120 Days & Best Practices

- **Get Started with RM Compliance**

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

- **Separate Personal Materials from Records**

- Calendars
- Emails

- **Keep USDA Work in the USDA Channels**

- **Establish Email Etiquette**

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

- **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.”





FOIA Resources for Senior Officials

- The Freedom of Information Act (FOIA)
 - [The Freedom of Information Act, 5 U.S.C. § 552 As Amended By Public Law No. 110-175, 121 Stat. 2524 \(PDF\)](#)
- USDA FOIA Regulation
 - [USDA FOIA Regulation](#)
- FOIA Training for Executives
 - [Training for Executives](#)

Records Management Resources for Senior Officials

USDA Departmental Records Management Program

- <https://www.usda.gov/about-usda/general-information/staff-offices/office-general-counsel/office-information-affairs/records-management-division>
- [Departmental Records Management Entrance Guide for Senior Officials](#)

NARA Reports for Senior Officials

- [Senior Agency Officials for Records Management Annual Reports](#)
- [Federal Agency Records Management Reporting](#)



Learn More

One USDA: AgRecords Page

<https://intranet.usda.gov/topics/usda-records-management/agrecords>

Including:

- AgRecords Overview
- Agency Records Officers
- Frequently Asked Questions
- Fact Sheet
- Implementation Plan
- Milestones
- Newsletter

Contact Information

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Questions