

**Testimony of Thomas Blanton, Director,
and Lauren Harper, Public Policy Director,
National Security Archive, George Washington University**
www.nsarchive.org

**To the United States Senate
Committee on Homeland Security and Governmental Affairs**

**Hearing on “Modernizing the Government’s Classification System”
Thursday, March 23, 2023
10 a.m., Dirksen Senate Office Building SD-562**

Chairman Peters, and Ranking Member Paul, thank you very much for holding this hearing and focusing a searchlight on the deep-seated problem of over-classification. Historians and journalists founded our own non-governmental organization, the National Security Archive, way back in 1985 precisely because over-classification had already taken hold of our republic, diminishing Congressional oversight, disempowering citizens, and withholding evidence from historians and the more fact-based among journalists.

Our statement today, co-authored by me and the Archive’s director of public policy, Lauren Harper, with the invaluable help of the Archive’s senior historian, Dr. William Burr, rises from 35+ years experience with too many secrets, from our 70,000 Freedom of Information requests to some 200 federal agencies, and from more than 20 government-wide audits of Freedom of Information and secrecy processes. We’ve won the Emmy Award for news and documentary research, and the George Polk Award for “piercing self-serving veils of government secrecy.” We brought the lawsuit that saved the White House e-mail from the Reagan, Bush and Clinton administrations, and we’ve gone to court against every administration ever since, to preserve records and compel appropriate declassification.

We’re here today to make 5 points in our 5 minutes.

Over-classification is out of control.

Declassification has collapsed.

Core functions of the National Archives have flatlined budget-wise for 30 years.

Key reform tools, needed by Congress and the public, are shriveling.

The only potential reform that will actually modernize the system is automatic sunsets.

Let's start with the over-classification crisis. You're holding this hearing today so you don't need to be convinced, but the data on over-classification is only getting worse. Years ago Donald Rumsfeld's deputy at the Pentagon told a committee of the Congress that over-classification was about 50%. Half of the secrecy was overdone. But now we have 20+ years of statistics from the only interagency review panel that objectively tests agency secrecy claims against requesters who want that information, and **the over-classification level was over 75%**! Three quarters of the time, that group of agency officials ruled for declassification, and against the secrecy claim, from 1996 to now. During the last year for which we have data, the openness rulings amounted to 93%!

Reformers used to think that reducing the number of original classification authorities (OCAs) would ultimately reduce the amount of secrecy. But the opposite has happened. We have fewer of those original authorities than ever, and more secrets than ever. Why? Computers enable the infinite replication of secrets. A single original classification in the digital age drives unlimited derivative classification decisions. In effect, the advent of electronic records has created what inside experts call a **"tsunami of classified digital records."** The tsunami is arriving and the system is already underwater.

At the National Security Archive, we're seeing more and more absurd claims by agencies. The Pentagon, for example, is withholding 60-year-old documents about Jupiter missiles in Italy and Turkey during the Cuban Missile Crisis on the grounds that release would supposedly harm our foreign relations. Actually, the Italian archives show they wanted to get rid of those missiles, just made them a target for the Soviets. Maybe that's what the Pentagon is hiding.

On our website at <https://nsarchive.gwu.edu>, we have a whole section of postings we call **"Dubious Secrets"** – multiple declassified versions of the same items, top half blacked out one time, bottom half the next, or released in full one year, censored a few years later. We published one of Colin Powell's White House e-mails in two versions with almost completely different black-outs, released 10 days apart. Turned out it was the same reviewer both times, just forgot what he cut in his rush.

The point is, as the former Solicitor General of the United States, Erwin Griswold, lamented, years after he lost the Pentagon Papers case, most classification covers government embarrassment of one form or another, not actual damage to our security. So the challenge today is to force better decisions on the front end, to minimize the incoming classified, and to disgorge as much as possible on the back end. That's not happening.

Declassification has collapsed

Sad to say, the normal declassification processes have collapsed so badly that we at the National Security Archive now have to go to court just to get a processing schedule on our Freedom of Information requests. The George W. Bush Library told

us last year that one of our FOIA requests, for the records from a single meeting the President held with outside experts, preparing for his first encounter with Vladimir Putin, would take **12 years before declassification review could even start**. These are already 22-year-old documents, and now we wait another decade?

We can cite far too many metrics like that one. That interagency panel that did such a good job overriding agency secrecy claims now is totally jammed up, with more than a thousand cases in their backlog. The State Department's documentary history series, the *Foreign Relations of the United States*, has fallen years behind its statutory mandate of 30 years after the relations in question. Now we are lucky to see the volumes after 40 years, because the Pentagon and the intelligence agencies delay on their reviews and treat historic materials as if they were current records. The breakdown of the declassification system across the board is blocking Congressional oversight, depriving history of evidence, and stalling accountability. Analyzing the causes leads us and our colleagues among historians and journalists to the conclusion that resources and authorities are sadly lacking.

The National Archives needs one more Marine One helicopter

One of our audits, led by Lauren, found that the Congress, five Presidents, and most of the Archivists dating back to 1991 have effectively flat-lined the budget for the past 30 years of the National Archives – one key institution that can **channel the secrecy tsunami if it has the authorities and the resources**. A couple of budgetary bumps in the last two years don't make up for decades in the poor house. Those decades saw the exponential increase in the amount of records the National Archives is responsible for. For example, the Bush 41 White House left 80 gigabytes of records; the Trump White House left 250 terabytes! (Roughly 12 terabytes equals the size of the Library of Congress.) Federal agencies hold even more.

Last year, I told CNN, somewhat flippantly, the entire budget of the National Archives was about equal to a single Marine One helicopter that flew the President around – and they fact-checked me. No, Tom, you're wrong, it's two Marine Ones.

Well, we're here to tell you today that the National Archives needs at least another chopper. The Marines are ordering 23 of them, at about \$217 million apiece. We've got nothing against comfortable, secure travel for the President, but the institutional memory of our country is at stake when the National Archives withers. We're including with our testimony the full text of our audit showing the "30-Year Flat-line" and an updated chart comparing the last two years of small increases to the sad story of the previous decade.

Congress's oversight depends on National Archives' functions

For Congress to fulfill its oversight responsibilities, the National Archives contains a whole toolbox that you need to have fully funded and on the case. We historians

and journalists also depend on this toolkit. Let us name the most useful pliers and wrenches (no hammers but our court cases will work on that):

-- The **Public Interest Declassification Board**, established by Congress in the first place, could be the go-to venue for examining classified documents Congress wants for its oversight but agencies claim you can't have. That Board can report to and pressure the President, but it needs a budget, member terms that don't expire until a new appointee is confirmed, and staff support. (Its original budget was only \$650,000 a year, so this is a tiny investment with major payoff for oversight.)

-- The **Information Security Oversight Office** provides the staff support for the Board, but has a shrinking budget that is a shame and a sin. Doubling this Office's budget is another tiny investment (\$5-10 million) with huge payoffs. The Office (Eye-Soo in the jargon) is a tiny band of hardy security inspectors who know the innards of the secrecy system, used to collect and publish the most helpful data on the classification problem, have honchoed massive declassification projects, and could make a real difference, with Congress's support and tasking.

-- That Office is also supposed to staff the single most consequential secrecy reform from the 1990s, the **Interagency Security Classification Appeals Panel** (Ice-Cap we call it). We mentioned earlier, over its 20+ years, the Panel has ruled for declassification more than 75% of the time – one very stark data point measuring the degree of over-classification across the government – overruling the agencies in favor of requesters. The Panel proved that taking the declassification decision out of the cold dead hands of the originating agency led to actually rational outcomes. But the Panel's success became its doom: requesters went there instead of to court, and now – after Covid – there's a 1,317 case backlog. Not enough staff support. Too many repeat requesters. And no agency learning from all those Panel decisions before, so the same battles come up over and over, the results never get incorporated into agency classification guides.

-- Then there's the **National Declassification Center**. A great idea of the 1990s, put into effect in the 2010s, to centralize declassification review of older records instead of sending the documents around in a daisy chain referral process. But as T.S. Eliot wrote, between the idea and the reality, falls the shadow. In this case, the shadow of limited resources and even more limited authorities. That Center, and the National Archives overall, needs the authority to declassify all historic records – those over the 30 year mark, for example – rather than referring them back out to the agencies. If the National Archives and the Center have to keep deferring to agency "equities," we'll never see the end of the backlog. Right now, the backlog amounts to millions of classified agency and presidential records and thousands of unanswered declassification requests. But we can hope that ownership authority at the Center would incentivize agencies to detail their own reviewers to the Center to take part in review, thus bulwarking the work.

In the short term, as a result of giving ownership to the National Archives, some agencies may try to keep their records away from the Center and the National Archives instead of handing them over at the 25 or 30 year retirement mark. Working in the other direction, however, the June 2024 deadline for electronic records management across the federal government should force an automatic process for the hand-off of records, and Congress can make sure that is built in to the design of the IT systems government-wide.

Congress' rightful role in reducing classification

The Constitution says Congress is supposed to set the rules for the government and the military (Article I, Section 8). But a whole succession of Presidents has elevated the Article II designation as commander-in-chief to write the rules for themselves when it comes to classification. The bipartisan Moynihan-Helms-Combest commission more than 20 years ago recommended Congress write a statute to govern classification instead of leaving the system up to White House whims. Never happened.

Even today, on useful declassification bills like the new one on Covid origins, Congress misses the mark by leaving redactions up to the Executive. Back in 2016, Congress smartly added to the Freedom of Information Act the requirement of "demonstrable harm" before government could apply an exemption for a redaction. Congress needs to add the same requirement to all the withholding statutes, on sources-and-methods, on organization-and-functions, and more.

The goal should be to compel a real deliberation on the front end and the back end of the secrecy life-cycle. Does this need to be classified in the first place? Would there be any real harm from release? Would the harm outweigh the Congressional and public interest in this release? **What's the cost of keeping this classified, and what's the benefit from making it open?** Is there any way to "gist" this information so it can be unclassified, thus reducing costs and increasing information sharing? Can we minimize the upfront classification?

The only no-cost modernization reform: Sunsets on secrets

The only NO COST reform that would really work, both for the backlog and for better front-end classification decisions, is to set real sunsets on secrets. The first post-Cold War insider review, by the Information Security Oversight Office under Steve Garfinkel, recommended a **40-year "drop dead" date for secrets**, meaning release without review for everything other than nuclear weapons design and human sources where a demonstrable harm would come from release. The reason, said Garfinkel in 1996, was "When we looked at material that was 40 years old or older, we were ending up declassifying just about every bit of it, far more than 99 percent of it."

We at the National Security Archive opposed the 40-year sunset at the time, arguing for a much shorter deadline, like 25 years. But the 25-year idea that ultimately appeared in the Clinton executive order on classification had so many exemptions it produced no sunset action at all, just an endless twilight. So we were wrong and Garfinkel was right.

Now, Garfinkel's successors and other well-meaning reformers recommend that we get rid of the Confidential category. We don't think so. There's a strong argument that doing so will just absorb tons of bureaucratic energy and resources instead of actually reducing secrecy. Worse, with no Confidential stamp to deploy, classifiers will drive their information upwards into an already bloated Secret level. Confidential serves a real purpose in the current secrecy system. It signals that any damage here is time-limited, that the records don't endanger sources or weapons design but more temporarily sensitive matters. Confidential material is the best candidate for automatic sunsets.

Instead of eliminating the Confidential category, let's test the sunset proposition. Instead of bumping Confidential material up to Secret, **let's automatically declassify, without review, all historic Confidential records that are 15 years old.** Let's also include all the Confidential records whose original classifier set a "declassify by" date that has passed, often shorter than 15 years. No review for classification, perhaps some automated review to catch privacy matters like Social Security numbers. But again, by definition, Confidential records do not include weapon design information or sources-and-methods information.

Such bulk sunset releases should help un-gum the backlogged review system, and compel more thoughtful original classification decisions and categorization. Initially, having a drop-dead sunset may indeed push classifiers to assign higher levels of classification, or to set longer sunsets than 15 years even for Confidential-level material. But the pay-off for no-cost no-review declassification down the road would be worth the initial increases in over-classification. This core reform would signal the end of costly labor-intensive page-by-page declassification review or at least its reservation for the most sensitive records. This core reform would put teeth in the executive order's rhetorical commitment that no secret is forever.

We need to **disgorge the Confidential documents, not just get rid of the Confidential label.** Then, we need to apply a "demonstrable harm" standard and a cost-benefit balancing test to all the rest, along with real "drop dead" dates for release. Machine learning and new technologies can help, but computers are no magic wand. Secrecy reformers have talked about applied IT for more than a decade, but real computerized effectiveness is still years and many dollars away, just like the self-driving car. Meanwhile, the secrecy crisis is now.

Thank you for your time and attention, and we welcome your questions!

U.S. National Archives' (NARA) Budget: The 30-Year Flatline



National Security Archive's 21st Sunshine Week Audit Shows Zero Real Dollar Increase at NARA Since 1991 Despite Exponential Rise in Records

Nation's Historical Memory Systematically Starved by Congress, Five Presidents, and Agency's Own Leadership

President Biden's Pick for Archivist Must Double the Budget and Fix the Enormous Declassification Backlogs – 12-Year Wait on One Freedom of Information Act Request

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the Open Society Foundation



Washington, D.C., March 11, 2022 - The National Archives and Records Administration's (NARA) budget has remained stagnant in real dollars for nearly thirty years. At roughly \$320 million dollars when adjusted for inflation, its budget represents 0.0076% of the federal budget — this according to a National Security Archive Audit released today to mark the beginning of Sunshine Week.^[1]

While its budget has flatlined, the number of records NARA must preserve, particularly electronic records, has increased exponentially over three decades. The George H.W. Bush Library, for example, has **20 gigabytes** of electronic records in its holdings, whereas the Obama Library has **250 terabytes**.^[2] This explosion of electronic records is a huge part of the growing backlog for Freedom of Information Act (FOIA) and Mandatory Declassification Review (MDR) requests at the presidential libraries, which constitute only part of NARA's holdings.

A recent letter to our office from the George W. Bush Library encapsulates the gravity of the crisis: in response to an estimated date of completion query for a FOIA request, the library replied "we estimate that your FOIA may be completed in **12 years**. We apologize for this inconvenience and appreciate your understanding and patience." (Emphasis added.)

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Edited by Lauren Harper

For more information, contact:
202-994-7000
or nsarchiv@gwu.edu

Subjects: **Secrecy and FOIA**
Regions: **United States and Canada**
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and the HKH Foundation.

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FOIA Audits

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Department of Justice Guidance on Still Interested Letters
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OGIS Three-Part Study on Administrative Closures through the Use of "Still Interested" Letters and other resources

Presidential Library	Textual Records	Electronic Records (All volumes are approximate)	Non-Textual Audio-Visual Records
Bush 41	23,371 cubic feet	20 GB	1,634 cubic feet
Clinton	33,196 cubic feet	4 TB	2,361 cubic feet
Bush 43	26,758 cubic feet	80 TB	1,292 cubic feet
Obama	15,022 cubic feet	250 TB	623 cubic feet
Trump	5,324 cubic feet	250 TB	4 cubic feet

NARA is stretched too thin in normal times, and its insufficient budget and statutory authority were no match for the Trump administration's disdain for records management. From a President who regularly destroyed records, to executive branch agencies like the Department of Interior and the Environmental Protection Agency that followed Trump's lead, it was hard-pressed to protect government records in real time.

Now is a critical time for the agency to course-correct. The current Archivist of the United States (AOTUS), David Ferriero, will step down in April after 12 challenging years on the job. President Biden has an opportunity now to pick a successor who builds on Ferriero's successes, like strongly supporting the Office of Government Information Services and maintaining a good relationship with the public to help improve NARA's services. Above all, President Biden must also choose someone who will loudly advocate for a budget that reflects the critical services NARA provides, and will take full advantage of all of the agency's statutory authority, and push for more. **This will help ensure that NARA functions like the nation's living memory** and back-up hard drive, rather than an attic for old documents. Without these qualities, NARA will continue to be underwater, and the public's access to its records and a full accounting of its history will remain in serious doubt.

The Budget

NARA's current budget is a recipe for disaster for an agency whose outsized responsibilities include: preservation of government records (which includes more than 13 billion pages of textual records alone and hundreds of terabytes of electronic records); providing public access to its holdings; running a government-wide records management program; maintaining a sprawling network of records facilities; and administering the presidential libraries.

Budget woes are not new for the agency. There have been seven Archivists of the United States (including three acting) since the agency gained independence from the General Services Administration in 1985. The agency has been given more responsibility in that time (in the form of more presidential libraries and standing up the National Declassification Center), and few additional resources.

The chart below, which was compiled by obtaining NARA's gross total outlays in a given fiscal year (FY) and then adjusting the figures for inflation using a budget deflator (which used FY2012 as a baseline), shows how little the budget situation has changed.

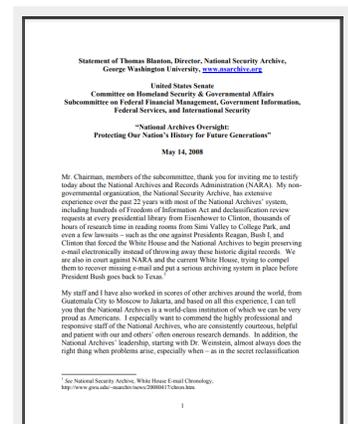
FY	Actual outlays, gross (total) - in thousands of \$	Adjusted with budget deflator - in thousands of \$	Real change from prior year - in thousands of \$	Archivist
FY 2020	362,000	321,663	16,077 decrease	David Ferriero
FY 2019	373,000	337,740	12,265 decrease	David Ferriero
FY 2018	380,000	350,005	19,040 decrease	David Ferriero



Letter Says 12-Year Wait for FOIA at Bush 43 Library



Sunshine Week: Open government is good government.



Archive Director's 2008 Testimony Highlights Ongoing Concerns with NARA

FY 2017	392,000	369,045	4,172 increase	David Ferriero
FY 2016	381,000	364,873	14,757 increase	David Ferriero
FY 2015	363,000	350,116	14,715 increase	David Ferriero
FY 2014	346,000	335,401	17,880 decrease	David Ferriero
FY 2013	359,000	353,281	281 increase	David Ferriero
FY 2012	353,000	353,000	3,450 decrease	David Ferriero
FY 2011	349,000	356,450	2,625 increase	David Ferriero
FY 2010	339,000	353,825	4,346 increase	David Ferriero
FY 2009	329,000	349,479	38,075 increase	Adrienne Thomas (acting)
FY 2008	293,000	311,404	11,503 increase	Allen Weinstein
FY 2007	273,000	299,901	11,260 decrease	Allen Weinstein
FY 2006	276,000	311,161	10,105 decrease	Allen Weinstein
FY 2005	276,000	321,266	9,216 increase	Allen Weinstein
FY 2004	260,000	312,050	63,862 increase	John Carlin
FY 2003	202,000	248,188	31,646 decrease	John Carlin
FY 2002	223,000	279,834	23,065 increase	John Carlin
FY 2001	202,000	256,769	16,185 increase	John Carlin
FY 2000	185,000	240,584	89,906 decrease	John Carlin
FY 1999	248,000	330,490	19,421 increase	John Carlin
FY 1998	231,000	311,069	3,980 increase	John Carlin
FY 1997	227,000	307,089	6,794 decrease	John Carlin
FY 1996	227,000	313,883	31,333 decrease	John Carlin
FY 1995	245,000	345,216	83,388 decrease	John Carlin
FY 1994	295,351	428,604	29,962 increase	Trudy H. Peterson (acting)
FY 1993	270,000	398,642	7,465 decrease	Trudy H. Peterson (acting)
FY 1992	266,000	406,107	87,350 increase	Don Wilson
FY 1991	199,000	318,757	18,671 increase	Don Wilson

FY 1990	180,172	300,086	82,476 increase	Don Wilson
FY 1989	127,650	217,610	33,398 increase	Don Wilson
FY 1988	104,006	184,212	7,893 increase	Don Wilson
FY 1987	95,988	176,319	7,420 decrease	Frank Burke (acting)
FY 1986	96,610	183,739	2,593 decrease	Frank Burke (acting)
FY 1985	95,961	186,332		Frank Burke (acting)

Budget Shortfalls at the National Declassification Center and the Presidential Libraries

Decreasing budgets and staffing shortages hamper some of the most critical offices within NARA, particularly at the National Declassification Center (NDC) and the presidential libraries. The chart below shows the total budget requested for NARA’s “Legislative, Presidential Libraries, and Museums” program – for which the presidential libraries make up the bulk of total costs – and the NDC. These figures have also been adjusted for inflation.

FY	NARA Budget Actual Dollars	Legislative, Presidential Libraries, and Museums budget request (in thousands of \$)	LPM Full Time Employee request	NDC budget request (in thousands of \$)
FY 2020	321,663	\$79,510	403	\$5,164
FY 2019	337,740	\$85,112	403	\$6,119
FY 2018	350,005	\$95,234	460	\$5,788
FY 2017	369,045	\$103,548	492	\$6,524
FY 2016	364,873	\$104,675	489	\$6,529
FY 2015	350,116	\$100,840	511	\$6,935
FY 2014	335,401	\$106,260	542	\$7,241
FY 2013	353,281	\$101,971	538	\$7,539

The National Declassification Center was established during the Obama administration to streamline the declassification process and improve the release of historically valuable permanent records. It is responsible for processing tens of millions of pages, many requiring declassification processing and/or review annually, and developing processes to review more than *198,000 cubic feet* of classified paper records, as well as large volumes of classified electronic records. **Its budget in real dollars has decreased steadily in the time since NARA began reporting the amount requested for the Center, which has only 58 employees to carry out this task (its FOIA/MDR staff has only 8 people, meaning there are more presidential libraries than declassifiers).**

Staffing is certainly not the only challenge the NDC faces. The extraordinary inefficiency of current declassification procedures is another large problem. The NDC also must be granted the authority to declassify any record over 25 years old on its own (as long as declassification does not impair confidential sources and nuclear weapons details or personal privacy) and stop the current wasteful equity referral and consultation re-review process, wherein multiple reviewers from multiple agencies are allowed to re-review the same document multiple times. The rule

should be that if agencies wish to participate in NDC reviews of 25 year old or older documents, that they be required to detail employees to the NDC to help the process, and if agencies balk at this necessary shift and try to hold onto their historical records, there should be a statutory provision prohibiting them from hoarding their records 50 years old and older. Furthermore, for the sake of ensuring reasonable public access, NARA and the NDC must also take the **Public Interest Declassification Board's recommendation and discontinue "pass/fail" review**, which means a single word in a historical record can doom the entire document to "fail" to qualify for declassification.

Presidential libraries, and those trying to access their records, are also impacted by these shortages. Currently, when a requester submits a FOIA to the libraries, they must wait (often years) only to be told that the documents they requested are classified and need to be requested again under Mandatory Declassification Review, which also often takes years. With adequate resources, the NDC could be systematically and proactively declassifying these documents, which are the highest-level documents in the government and very likely to be of the most public interest, without forcing customers to submit painstaking FOIA and MDR requests.

Limited Oversight of Records Retention Schedules and Important Records Management Policies

Staffing issues play out in less obvious ways, too. One pernicious example is that it results in limited oversight of agency records retention schedules. These are the forms every agency must submit to NARA that, if approved, allow the agency to destroy information or withhold it for unreasonably lengthy periods. **Numerous alarming approvals of dangerous records retention policies point to NARA's limited oversight capabilities.** They include:

- In 2018, NARA formally approved a CIA records retention schedule that allows the agency to destroy information that is more than 30 years old – in spite of the warnings from public interest groups and others that this will likely result in the permanent loss of an untold number of potentially important documents. The records schedule – and NARA's apparent rubber-stamp approval of it – was doubly concerning considering the agency's widely acknowledged history of destroying important records.
- In 2017, NARA **approved** an outrageous request by the Defense Threat Reduction Agency (DTRA) granting the agency unprecedented control over historical reports on nuclear weapons stockpiles. Specifically, DTRA can, thanks to NARA's approval, keep its reports on the U.S. nuclear weapons stockpile closed to the public for *80 years* or more after they were created – a move that the Archive's Dr. William Burr described as an "ill-advised action... contrary to the public interest as well as to NARA's mission and its organizational interests."
- In 2017, NARA's Records Appraisal and Agency Assistance branch recommended the AOTUS approve a controversial Immigration and Customs Enforcement records schedule that would have allowed the agency to designate as temporary (and then legally destroy) a wide array of sensitive immigrant detainee information. The proposed schedule would have included records on sexual abuse claims filed by detainees while at ICE facilities and investigative records on detainee deaths. After a public outcry and letters signed by members of both the Senate and the House, NARA re-opened **a 15-day public comment period** on the matter in 2018.

Not only are these not isolated incidents, they account for only part of the problem of historical materials being lost to the American people – a problem greatly exacerbated by the lack of resources for oversight. NARA's "**unauthorized disposition of federal records**" chart catalogs all of the cases NARA investigated concerning the "actual, impending, or threatened **unlawful** removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records." A quick look shows that the departments of State, Interior, Agriculture, and Justice are frequently investigated agencies, and that improperly disappearing records and encrypted messaging applications are a common theme.

Limited oversight capabilities also make it far more difficult to ensure that agencies comply with records management policies, like guidance on managing all email electronically and managing all permanent electronic records in electronic format, which were the subject of the Archive's Sunshine Week audits in **2016** and **2018** respectively. **Our audits contradicted agencies' self-reported assessments and results – which NARA had been unable to independently verify – and agency**

responses showed that FOIA requesters are often not seeing the benefit of any improved electronic records management.

Our audits make clear that NARA needs to actively oversee the electronic records management process, as opposed to taking agency self-assessments at their word.

The Next Archivist Needs to Speak Bluntly and Demand More Statutory Authority

The next AOTUS needs more than just resources, they will need to maximize the authority they have and be granted more.

One of the most frustrating episodes of Ferriero's tenure concerned the Senate Intelligence Committee's full, scathing report on the Central Intelligence Agency's torture program. Despite pleas from the public and Members of Congress, Ferriero refused to use his clear statutory authority to label the report a federal record, which would have made it subject to Freedom of Information Act disclosure requirements. Ostensibly, this was because the Justice Department told NARA not to. According to a **November 5, 2015, letter** written by Senators Patrick Leahy of Vermont and Dianne Feinstein of California, "personnel at the National Archives and Records Administration have stated that, based on guidance from the Department of Justice, they will not respond to questions about whether the study constitutes a federal record under the Federal Records Act because the FOIA case is pending."

The **Presidential and Federal Records Act Amendments of 2014** explicitly grants the Archivist the power to declare documents as federal records (even if they cannot currently be released to the public), and the AOTUS should have used it. **While the record was preserved as a presidential record, which is arguably another reason Ferriero declined to enter the fray over the fate of the report, the Trump administration experience has shown that we cannot blindly trust the Chief Executive to do the right thing.**

The Trump administration's disastrous handling of its presidential records underscores the need for NARA to have more real-time input into the White House's preservation policies, including the ability to review administration policies at the beginning of each presidential term, as well as the right to receive regular reports from the White House Office of Administration on the Executive Office of the President's compliance with the Presidential Records Act.

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This is the Archive's 21st FOIA Audit. Modeled after the California Sunshine Survey and subsequent state "FOI Audits," the Archive's FOIA Audits use open-government laws to test whether or not agencies are obeying those same laws. Recommendations and findings from previous Archive FOIA Audits have: directly led to FOIA fixes in both the 2016 FOIA Improvement Act (25-year B5 sunset) and the Open Government Act of 2007 (requiring agencies to report their ten oldest pending requests); exposed OMB's lack of action on FOIA fee regulations, ultimately prompting an Administrative Procedures Act lawsuit filed by Cause of Action that forced the agency to craft **new (albeit lackluster) regulations**; forced agencies to craft explicit customer service guidelines; mandated FOIA backlog reduction; institutionalized the use of individualized FOIA tracking numbers; led to reporting requirements on the average number of days needed to process requests; and revealed the (often embarrassing) ages of the oldest pending FOIA requests - like FOIA requests so old they could rent a car. The surveys include:

- **The Ashcroft Memo: "Drastic" Change or "More Thunder Than Lightning"? (2003)**
- **Justice Delayed is Justice Denied: The Ten Oldest Pending FOIA Requests (2003)**
- **A FOIA Request Celebrates Its 17th Birthday: A Report on Federal Agency FOIA Backlog (2006)**
- **Pseudo-Secrets: A Freedom of Information Audit of the U.S. Government's Policies on Sensitive Unclassified Information (2006)**
- **File Not Found: 10 Years After E-FOIA, Most Federal Agencies are Delinquent (2007)**
- **40 Years of FOIA, 20 Years of Delay (2007)**
- **Mixed Signals, Mixed Results: How President Bush's Executive Order on FOIA Failed to Deliver (2008)**
- **2010 Knight Open Government Survey: Sunshine and Shadows: The Clear Obama Message for Freedom of Information Meets Mixed Results (2010)**

- **2011 Knight Open Government Survey: Glass Half Full: Freedom of Information Change, But Many Federal Agencies Lag in Fulfilling President Obama's Day One Openness Pledge (2011)**
- **2011 Knight Open Government Survey: Eight Federal Agencies Have FOIA Requests a Decade Old (2011)**
- **Outdated Agency Regs Undermine Freedom of Information (2012)**
- **Freedom of Information Regulations: Still Outdated, Still Undermining Openness (2013)**
- **Half of Federal Agencies Still Use Outdated Freedom of Information Regulations (2014)**
- **Most Agencies Falling Short on Mandate for Online Records (2015)**
- **Saving Government Email an Open Question with December 2016 Deadline Looming (2016)**
- **Three out of Five Federal Agencies Flout New FOIA Law (2017)**
- **Agencies Struggling to Respond to FOIA Requests for Email (2018)**
- **25-Year-Old FOIA Request Confirms FOIA Delays Continue Unabated (2019)**
- **How Transparent is President Trump? Audit Shows Three-Quarters of His Decisions Have Been Bad for Openness (2020)**
- **"Still Interested" Letters Add Insult to Injury of Long-Ignored FOIA Requests (2021)**

NOTES

[1] These figures are based on the actual outlays from FY2020, which are the most recent actual budget outlays available.

[2] One terabyte equals one thousand gigabytes. It is estimated that 10-15 terabytes could hold the entire contents of the Library of Congress.

National Security Archive
Suite 701, Gelman Library
The George Washington University
2130 H Street, NW
Washington, D.C., 20037

Phone: 202/994-7000
Fax: 202/994-7005

[Contact by email](#)



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FY	Actual outlays, gross (total) - in thousands of \$*	Adjusted with budget deflator - in thousands of \$	Real change from prior year - in thousands of \$	Archivist
FY2022	385,000	336,627	8,700 increase	Ferriero/Debra Steidel Wall (acting)
FY2021	368,000	327,627	6,264 increase	David Ferriero
FY 2020	362,000	321,663	16,0777 decrease	David Ferriero
FY 2019	373,000	337,740	12,265 decrease	David Ferriero
FY 2018	380,000	350,005	19,040 decrease	David Ferriero
FY 2017	392,000	369,045	4,172 increase	David Ferriero
FY 2016	381,000	364,873	14,757 increase	David Ferriero
FY 2015	363,000	350,116	14,715 increase	David Ferriero
FY 2014	346,000	335,401	17,880 decrease	David Ferriero
FY 2013	359,000	353,281	281 increase	David Ferriero
FY 2012	353,000	353,000	3,450 decrease	David Ferriero
FY 2011	349,000	356,450	2,625 increase	David Ferriero
FY 2010	339,000	353,825	4,346 increase	David Ferriero
FY 2009	329,000	349,479	38,075 increase	Adrienne Thomas (acting)
FY 2008	293,000	311,404	11,503 increase	Allen Weinstein

*These figures are found in the official Budget of the United States that is issued by the Office of Management and Budget (OMB) and published on GovInfo.gov. The budget numbers for NARA are found in the appendix of a given FY's budget. The actual outlays, gross (total) for a given FY are found in the FY report two years following; so, for example, the FY2020 actual outlays are found in the FY2022 report:

<https://www.govinfo.gov/content/pkg/BUDGET-2022-APP/pdf/BUDGET-2022-APP.pdf> (see page 1314).

Biographies of National Security Archive witnesses for Senate Homeland Security and Governmental Affairs Committee hearing, March 23, 2023

Thomas Blanton is the director since 1992 of the independent nongovernmental National Security Archive at George Washington University (www.nsarchive.org), which won the George Polk Award in 2000 for “piercing self-serving veils of government secrecy.” He was the Archive’s first Research Director starting in 1986, and he has also served as the Henry M. Jackson Lecturer at Whitman College, the Lazerow Lecturer at Long Island University, and the Henderson Lecturer at the University of North Carolina at Chapel Hill. Educated at Harvard University, he is series co-editor for the Archive’s online and book publications of more than a million pages of declassified U.S. government documents obtained through the Archive’s more than 70,000 Freedom of Information Act requests. His books have been awarded the Link-Kuehl Prize from the Society for Historians of American Foreign Relations, and “Outstanding Academic Title” designation from the Association of College and Research Libraries. His honors include the Emmy Award (2005) for individual achievement in news and documentary research, the Jean Mayer Global Citizenship Award (2011) from Tufts University, Harvard University’s Newcomen Prize in History (1979), and the American Library Association’s James Madison Award Citation (1995) for “defending the public’s right to know.”

Lauren Harper is the Director of Public Policy & Open Governmental Affairs at the National Security Archive. She has been with the Archive since 2011, and in her current role helps develop the Archive’s public policy positions, maintains key relationships within the federal government and open government community, and serves as one of the organization’s chief public spokespersons on access to information and secrecy issues. Harper has led or co-authored eleven of the Archive’s FOIA audits, including 2022’s “U.S. National Archives’ Budget: The 30-Year Flatline,” and 2019’s “25-Year-Old FOIA Request Confirms FOIA Delays Continue Unabated.” She has authored or contributed to dozens of other National Security Archive Electronic Briefing Books, writes regularly for the Archive’s blog, *Unredacted*, on a wide-range of FOIA and national security issues, and manages all of the Archive’s social media accounts. Harper also oversees the Archive’s Afghanistan Project, and edited a 2,000-document reference collection on the 20-year U.S. war in Afghanistan. She holds a Master of Arts degree in Middle Eastern Studies and a Master of Public Policy degree, both from the University of Chicago, and received her Bachelor of Arts degree from Scripps College. She is a member in good standing of the American Society of Access Professionals, and has just been appointed by the Acting Archivist to the Freedom of Information Advisory Committee.

The National Security Archive is a non-profit non-governmental organization based at the George Washington University and recognized by the IRS as a public charity. The Archive receives no government funding or contracts, and instead relies on publication royalties and donations from individuals and foundations for its \$3 million annual budget.