



ART Statement on ICE Retention Schedules

The
**Archivists
Round Table**
of Metropolitan
New York,
Inc.

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10274-0154

The Archivists Roundtable of Metropolitan New York (ART) urges the National Archives and Records Administration (NARA) to reconsider the records retention schedule preliminarily approved on June 20, 2017 (Appendix 1), relating to the disposition of detainee records generated by the officials of the U.S. Immigration and Customs Enforcement (ICE), Office of Professional Responsibility. ART has represented a diverse group of more than 400 archivists, librarians, and records managers in the New York metropolitan area since its inception in 1979, and is collectively alarmed by the implications of this ICE records appraisal.

ICE is seeking approval from NARA to routinely destroy 11 types of records relating to abuses of detained individuals in ICE custody, including documentation of deaths and sexual assaults in ICE custody, uses of solitary confinement, alternatives to detention programs, communications from the public reporting detention abuses, and logs about detainees, among other records.¹ The various timelines for the destruction of these records—from 20 years for sexual assault and death records, to 3 years for reports of use of solitary confinement—fail to adhere to archival and records management best practices, and present ethical red flags for information professionals and the general public. Our concerns derive from professional and ethical standpoints:

Archives and Records Management Perspective: What Value Do The Records Possess?

Historical Value

ICE is a relatively new federal agency with significant activities under the umbrella of the Department of Homeland Security. Homeland Security data recently collected by New York University researchers reported that between ICE's inception in 2003, and 2015, 150 individuals died in the agency's custody.² Furthermore, the immigration detainee watchdog group, Community Initiatives for Visiting Immigrants in Confinement (CIVIC), highlighted

¹ Immigration and Customs Enforcement, *DAA-0567-2015-0013*, by Ashby Crowder, College Park, MD: National Archives and Records Administration, 2017, https://static1.squarespace.com/static/5722daf11d07c02f9c1739cc/t/599c58dc579fb35b895fa6fd/1503418593227/ICE_NARA-appraisal_detainee-records.pdf (accessed October 5, 2017).

² Megan Granski, Allen Keller, and Homer Venters, "Death Rates among Detained Immigrants in the United States," *International Journal of Environmental Research and Public Health*, 12, no. 11 (2015).



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14,693 reported incidents of sexual and physical abuse in ICE detention centers from 2010 to 2016, with just about 1 percent of these reports actually resulting in investigations.³ Deciding wholesale that 0% of records of abuses of ICE detainees deem worthy of permanent retention leaves no room for reassessment in the historical narrative, hamstringing future research with a glaring gap in the documentary record.

Further, the “annual reports” mentioned in NARA’s “Appraisal Justification,”⁴ which amount to yearly summaries of abuse incidents or allegations,⁵ privilege top-down documentation of serious abuses of power by the government,⁶ and shroud the activities of ICE in secrecy, notably at a time when ICE is increasing its presence and authority. These executive reports are no replacement for the complete documentation generated by ICE officials, especially at a time of unprecedented immigration enforcement.

This prioritization of top-down documentation also begs the question: Whose history is worth preserving? The executive summaries from ICE managers relating to (generalizing about) abuses in ICE custody will function as the “official” account—the public will thus rely on these synopses, as opposed to more nuanced documentary evidence from the ground (i.e. internal investigation documents scheduled for imminent destruction).

Finally, a pillar of records management, that, “not everything can be saved,” fails to hold up. If the “Death and Sexual Abuse and Assault Files” are growing so exponentially, one might conclude that abuse of ICE detainees is a serious problem requiring administrative remedy and retrospective deliberation. This would be a strong argument *against* destroying such

³ Rebecca Merton and Christina Fialho to Thomas D. Homan, Claire Trickler-McNulty, John F. Kelly, John Roth, and Veronica Venture, April 11, 2017, *Re: Sexual Abuse, Assault, and Harassment in U.S. Immigration Detention Facilities*, http://www.endisolation.org/wp-content/uploads/2017/05/CIVIC_SexualAssault_Complaint.pdf

⁴ Immigration and Customs Enforcement, *DAA-0567-2015-0013*, by Ashby Crowder, College Park, MD: National Archives and Records Administration, 2017, https://static1.squarespace.com/static/5722daf11d07c02f9c1739cc/t/599c58dc579fb35b895fa6fd/1503418593227/ICE_NARA-appraisal_detainee-records.pdf (accessed October 5, 2017).

⁵ Department of Homeland Security, Office for Civil Rights and Civil Liberties, *Fiscal Year 2015 Annual Report to Congress*, Washington, D.C.: GPO, 2016, <https://www.dhs.gov/sites/default/files/publications/crcl-fy-2015-annual-report.pdf> (accessed October 5, 2017)

⁶ Jorge Rivas, “ICE Seeks Permission to Destroy Records of Sexual Assaults and Deaths,” *Splinter*, accessed October 5, 2017. <https://splinternews.com/ice-seeks-permission-to-destroy-records-of-sexual-assau-1798541263>.



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records—there are potentially many lessons to be learned from the documents, and the agency should *invite* scrutiny. If the file is not actually growing so much (i.e. if deaths and sexual assaults in ICE custody just aren't commonplace), then, again, the “can't keep everything” argument is fraudulent.

Administrative Value

Why does ICE maintain records of abuse in the first place? Presumably, ICE keeps these records to document the circumstances surrounding deaths or sexual assaults in its custody, and to use this information to improve their practices. These are the records' primary use. The records also function to hold the agency accountable for the documented abuses. Theoretically, this allows the public to access documentation of agency activities, and take action to advocate for change. These are the records' secondary use. While ART hopes ICE is taking the necessary steps to fix detention practices, the proposed retention schedule diminishes the ability of the public to assess information about ICE practices, and thus hold its government accountable.

Moreover, as records professionals, ART finds the appraisal language related to “Detainee Sexual Assault Abuse and Assault Files” particularly problematic. NARA's “Appraisal Justification” claims these records do “not document significant actions of Federal officials.”⁷ To be clear, these records document the deaths and sexual assaults of detainees while in federal immigration custody. ART finds the assertion that federal agents have no significant actions in the fate of those in their custody at best a glaring oversight, and at worst, a severe obstruction to transparency and government accountability.

Legal Value

Preserving records of ICE abuses serves legal ends too. The documents could be used in lawsuits for or against ICE agents, and could either exonerate or incriminate the alleged

⁷ Immigration and Customs Enforcement, *DAA-0567-2015-0013*, by Ashby Crowder, College Park, MD: National Archives and Records Administration, 2017,
https://static1.squarespace.com/static/5722daf11d07c02f9c1739cc/t/599c58dc579fb35b895fa6fd/1503418593227/ICE_NARA-appraisal_detainee-records.pdf (accessed October 5, 2017).



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offender(s). Destroying records relating to inmate abuse, whether after 3 years or 20, hampers the ability to legally defend or charge the accused, and shackles wrongly detained individuals seeking legal redress. For example, former detainees seeking to rectify unlawful use of solitary confinement while in ICE custody might find no record of such abuses (i.e. the records' 3-year lifespan could very likely end before the statute of limitations for seeking legal redress). Beyond circumventing public accountability and government transparency, the destruction of this body of records flouts the constitutional rights of those in ICE custody, as well as those of ICE officials.

Government Accountability and Citizen's Rights Perspective

Public records evidence the activities of our collective democracy, and provide documentary evidence of government, in service of its constituents. The decision to destroy ICE detention records will severely handicap access to this body of public records, thereby undermining government transparency and public accountability. This is especially alarming, considering that these records document the abuses of human subjects in the custody of a government agency (ICE). As concerned records professionals, we implore NARA to reconsider what could very well be a disastrous mistake for records management, for the historical record, and for government accountability and transparency.

Sincerely,

ART Board of Directors



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APPENDIX 1

The
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NATIONAL ARCHIVES *and*
RECORDS ADMINISTRATION
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Date: June 20, 2017
Appraiser: Ashby Crowder, ACRA
Agency: Immigration and Customs Enforcement
Subject: DAA-0567-2015-0013

*not
6/20/17*

INTRODUCTION

Schedule Overview Detainee Records

Background Information

ICE Enforcement and Removal Operations (ERO) manages and oversees the civil immigration detention system in the United States. Non-U.S. persons who are apprehended and determined to need custodial supervision are placed in detention facilities. ICE endeavors to ensure that its detention facilities, whether government-run or contracted out, follow ICE's Performance-Based National Detention Standards.

The Office of Professional Responsibility investigates allegations of misconduct involving employees of ICE and U.S. Customs and Border Protection (CBP). In cases of potential misconduct that would violate state or federal criminal law, or that would jeopardize or undermine the agency's ability to perform its mission, OPR prepares reports of its investigations for possible judicial or management action. OPR also provides independent reviews of ICE programs and offices.

Overall Recommendation

I recommend approval of the attached schedule.

APPRAISAL

Item 0001: Detainee Sexual Abuse and Assault Files

Records relating to incidents of sexual assault at ICE facilities created and maintained in accordance with the Prison Rape Elimination Act of 2003.

Proposed Disposition: Temporary

Appropriateness of Proposed Disposition: Appropriate

Appraisal Justification:

* Does not document significant actions of Federal officials. This information is highly sensitive and does not warrant permanent retention in the National Archives. ICE creates annual reports on incidents or allegations of sexual abuse or assault of individuals in ICE custody.

Adequacy of Proposed Retention Period: Adequate from the standpoint of legal rights and accountability.

Media Neutrality: Approved

Item 0002: Death Review Files

Investigation records of deaths of detainees in ICE custody conducted by the Office of Professional Responsibility's Office of Detention Oversight. Includes findings of violations of applicable Performance Based National Detention Standards. In 2015, approximately 8 detainees died in ICE custody.

Proposed Disposition: Temporary

Appropriateness of Proposed Disposition: Appropriate

Appraisal Justification:

- * Does not document significant actions of Federal officials.
- * Has little or no research value.

Adequacy of Proposed Retention Period: Adequate from the standpoint of legal rights and accountability. The period ensures that individuals and organizations who may wish to obtain the review files have many years to request them from the Agency.

Media Neutrality: Approved

Item 0003: Detainee Telephone Rate Records

Records relating to telephone rates charged for calls to or from detention facilities. The Federal Communications Commission (FCC) monitors telephone rates, endeavoring to ensure that rates for phone calls are just, reasonable and fair.

Proposed Disposition: Temporary

Appropriateness of Proposed Disposition: Appropriate

Appraisal Justification:

- * Does not document significant actions of Federal officials.
- * Has little or no research value.

Adequacy of Proposed Retention Period: Adequate from the standpoint of legal rights and accountability.

Media Neutrality: Approved

Item 0004: Weekly Detention Service Monitor Reports

Reports filed by Detention Service Monitors (DSMs). DSMs support oversight of ICE's largest facilities, soliciting feedback from local and regional staff.

Proposed Disposition: Temporary

Appropriateness of Proposed Disposition: Appropriate

Appraisal Justification:

- * Has little or no research value.

Adequacy of Proposed Retention Period: Adequate from the standpoint of legal rights and accountability.

Media Neutrality: Approved

Item 0005: Alternative to Detention Records

Records documenting uses of alternatives to detention such as ankle bracelets and phone monitoring in lieu of detention.

Proposed Disposition: Temporary

Appropriateness of Proposed Disposition: Appropriate

Appraisal Justification:

- * Has little or no research value.

Adequacy of Proposed Retention Period: Adequate from the standpoint of legal rights and accountability.

Media Neutrality: Approved

Item 0006: Alternative to Detention Emergency/Incident Records

Proposed Disposition: Temporary

Appropriateness of Proposed Disposition: Appropriate

Appraisal Justification:

- * Has little or no research value.
- * Does not document significant actions of Federal officials.

Adequacy of Proposed Retention Period: Adequate from the standpoint of legal rights and accountability.

Media Neutrality: Approved

Item 0007: Detainee Escape Reports

Proposed Disposition: Temporary

Appropriateness of Proposed Disposition: Appropriate

Appraisal Justification:

- * Has little or no research value.

Adequacy of Proposed Retention Period: Adequate from the standpoint of legal rights and accountability.

Media Neutrality: Approved

Item 0008: Detention Information Reporting Line Records

The ICE ERO Detention Reporting and Information Line is a toll-free service that provides a direct channel for detainees, the public, non-governmental organizations, academic institutions, and advocates to communicate directly with ERO to answer questions and resolve concerns. Call center representative answer calls and assist with resolution on subjects such as: incidents of sexual or physical assault or abuse; serious or unresolved problems in detention; reports of victims of human trafficking; and requests for basic case information.

Proposed Disposition: Temporary

Appropriateness of Proposed Disposition: Appropriate

Appraisal Justification:

- * Has little or no research value.

Adequacy of Proposed Retention Period: Adequate from the standpoint of legal rights and accountability.

Media Neutrality: Approved

Item 0009: Detainee Segregation Case Files

Records documenting placement of detainees in segregated housing, either for non-punitive administrative reasons or as a disciplinary action.

Proposed Disposition: Temporary

Appropriateness of Proposed Disposition: Appropriate

Appraisal Justification:

* Has little or no research value.

Adequacy of Proposed Retention Period: Adequate from the standpoint of legal rights and accountability.

Media Neutrality: Approved

Item 0010: Daily Detention Log

Item 0011: Residential Detainee Locator Files

Proposed Disposition: Temporary

Appropriateness of Proposed Disposition: Appropriate

Appraisal Justification:

* Has little or no research value. These records do not have value beyond their administrative use.

Adequacy of Proposed Retention Period: Adequate from the standpoint of legal rights and accountability.

Media Neutrality: Approved

A handwritten signature in blue ink, appearing to read 'Ashby Crowder', is written over the printed name.

ASHBY CROWDER

Appraiser