



Date: April 22, 2015
To: Paul M. Wester, Jr., Chief Records Officer for the U.S. Government (AC) *PMW*
From: Laurence Brewer, Director, National Records Management Program (ACN) *LB*
Subject: Review of Personal Clinton Email

Senior staff at the National Archives and Records Administration (NARA) will conduct a review of each individual email sent or received by Secretary of State Hillary Clinton that has been identified by the Department of State as a personal email and therefore not a federal record. As part of this review, NARA staff will validate whether the Department has correctly applied Federal statutes, regulations, and guidelines in making this determination.

SCOPE

The Department of State received approximately 55,000 pages of emails from former Secretary Clinton that she determined to be Federal records. Within this collection of emails, currently maintained by the Department's Office of Information Programs and Services, the Department identified 1,246 emails to be personal in nature, and therefore not meeting the statutory definition of a record as defined in the Federal Records Act, as amended. According to NARA regulations, personal files must be clearly designated as personal and maintained separately from records that meet the Federal definition of the record (see 36 CFR 1222.20(b)).

NARA's review will focus on the 1,246 hard copy versions of the emails identified by the Department as personal. NARA will review each individual email to conduct an independent determination of the appropriateness of this designation. If NARA determines that any individual email is not of a personal nature (i.e., relates to official agency business) either in full or in part, NARA will advise the Department to return the email(s) to the record collection of records received from Secretary Clinton.

NARA's review will be based on existing Federal standards and will be conducted using the following methodology.

STANDARDS

NARA staff assigned to review the collection of personal email records will refer to relevant NARA regulations and guidance that define personal files and how they should be maintained and managed:

Personal files (also called *personal papers*) are documentary materials belonging to an individual that are not used to conduct agency business. Personal files are excluded from the definition of Federal records and are not owned by the Government. (36 CFR 1220.18)

(1) If information about private matters and agency business appears in a received document, the document is a Federal record. Agencies may make a copy of the document with the personal information deleted or redacted, and treat the copy as the Federal record.

(2) Materials labeled “personal,” “confidential,” or “private,” or similarly designated, and used in the transaction of public business, are Federal records. The use of a label such as “personal” does not affect the status of documentary materials in a Federal agency. (36 CFR 1222.20)

Records include 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. (44 U.S.C. 3301(a) (2014))

METHODOLOGY

NARA staff reviewing the collection of personal emails identified by the Department should consider the following questions and guidance, to the extent possible, in making their determination on whether each individual email is appropriately identified as personal (see NARA’s Disposition of Federal Records, 1997):

Content. Does the email contain only substantive information about agency business, or does it contain only information about the Secretary’s personal matters? Does it contain both official and personal information?

Purpose. Was the email created to facilitate agency business, or was it created solely for personal convenience?

Distribution. Was the email distributed to other Department staff for an official purpose?

Use. Did other Department staff use the email or rely on the information in the email to conduct agency business?

Segregation. Can substantive agency information in the email be segregated from any personal information and extracted for filing in the larger collection of emails meeting the Federal definition of a record?

In addition to the above general guidance, NARA staff reviewing Secretary Clinton's personal email will assess information specific to each individual email, including:

- (a) The subject of the email, names of sender and all addressee(s), and date and time the message was sent. This information will facilitate evaluating the context of the message, and ensures each message can be uniquely identified and controlled;
- (b) Attachments to an email that may be an integral part of the record. This information may clarify whether a particular email is personal or related to official agency business; and
- (c) Number of pages of each identified email to verify the completeness and integrity of the collection.

With consideration to the above general and specific guidance, NARA staff will document its determination for each identified personal email. Using the Department's hard copy report (i.e., inventory) that lists each of the 1,246 personal emails, NARA will either validate the Department's determination, or recommend that email(s) be returned to the larger collection of emails meeting the definition of a Federal record.

Each NARA reviewer will annotate the provided inventory as follows:

- (a) If the NARA reviewer agrees with the Department's determination of personal, NARA will initial and date the entry.
- (b) If NARA believes the email meets the definition of a Federal record, in full or in part, the entry should be lined through on the report indicating that the email should be removed from the inventory of personal emails and returned to the larger collection. The entry should also be initialed and dated.

Upon completion of the review, NARA will retain a photocopy of the inventory as evidence of its actions and decisions on the collection of emails identified as personal.