



NATIONAL ARCHIVES *and* RECORDS ADMINISTRATION
8601 ADELPHI ROAD COLLEGE PARK, MD 20740-6001
www.archives.gov

Sent Via Email. No Hard Copy to Follow.

September 10, 2019

Mr. Jeffrey C. Dutton
Department of Justice
Federal Bureau of Investigation
Information Management Division
170 Marcel Drive
Winchester, VA 22602

Dear Mr. Dutton:

The National Archives and Records Administration (NARA) has been made aware of an allegation of unauthorized disposition by a member of the public on the Federal Bureau of Investigation (FBI)'s practices and procedures regarding the designation of email communications as records. Based on information in a declaration from a recent court case, it is alleged that the "FBI has a practice of widespread designation of emails as 'not records' if they don't meet some unspecified level of 'significance'" and that while FBI employees have the discretion to determine which emails constitute federal records, the FBI's standards are "narrower" than the statutory definition of a federal record (see attached). The report also raises questions about the management of emails which may not be filed within Sentinel.

In accordance with 36 CFR 1230.16(b), NARA is requesting that the FBI provide us with a report within 30 calendar days that is responsive to these allegations. If the FBI determines that an unauthorized disposition has occurred, then the FBI must submit a report to NARA, as required by 36 CFR 1230.14, that addresses whether specific records can be recovered, recreated, or duplicated from other sources and the steps the FBI will take to ensure that all email records are labeled appropriately and captured by the FBI.

If you have any questions, please contact me at laurence.brewer@nara.gov.

Thank you for your cooperation.

Sincerely,

LAURENCE BREWER
Chief Records Officer
for the U.S. Government

Enclosures



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November 7, 2019

Mr. Jeffrey C. Dutton
Department of Justice
Federal Bureau of Investigation
Information Management Division
170 Marcel Drive
Winchester, VA 22602

Dear Mr. Dutton:

The National Archives and Records Administration (NARA) is in receipt of your letter dated October 10, 2019 in response to the allegation from a member of the public that the Federal Bureau of Investigation's (FBI) practices and procedures regarding the alleged widespread practice of designating emails as "not records." Your letter details the policies and procedures as to how the FBI identifies and designates emails as records, and ensures that emails designated as records are appropriately captured in a recordkeeping system per FBI policies.

While we appreciate the information you extracted from the FBI's Records Management Policy Guide (RMPG), we identified a point in your letter that we believe requires further clarification. In your description of the FBI handling of transitory emails, you state that "employees are not required to upload transitory emails into the CRS because transitory emails *are neither temporary nor permanent records.*" This statement is not consistent with NARA policy as defined in the General Records Schedules (GRS) where NARA defines transitory files as records distinct from non-records. In addition, after reviewing the RMPG, we confirmed that the Guide properly describes transitory records, including the management of transitory emails consistent with Federal records management requirements. NARA encourages the FBI to remind staff that transitory emails are records of short-term value as defined in GRS 5.2 Transitory and Intermediary Records (see <https://www.archives.gov/files/records-mgmt/grs/grs05-2.pdf>).

With this clarification, and based on the information that you provided, NARA considers this matter resolved. Thank you for your cooperation. If you have any questions, please contact me at laurence.brewer@nara.gov or by phone at (301) 837-1539.

Sincerely,

LAURENCE BREWER

Chief Records Officer
for the U.S. Government

cc. Kelly Hines, Division Policy Officer, khines@fbi.gov