



DEPARTMENT OF STATE

Washington, D.C. 20520

M2 Chron

9 DEC 1976

MEMORANDUM:

TO: A - Mr. John A. Thomas

FROM: L - Monroe Leigh

SUBJECT: GSA Bulletin, FPMR B-65

On November 15, GSA issued Bulletin FPMR B-65, concerning the disposition of personal papers and official records. This Bulletin was circulated in the Department under Jack Pruden's memorandum of November 22 (Tab 1). With one major exception, we agree with all of the provisions in the GSA Bulletin.

The one major exception is paragraph 3c of the GSA Bulletin. That paragraph states that the definition of personal papers covers material "pertaining solely to an individual's private affairs" and that otherwise personal correspondence which is relevant to the conduct of public business "is nonetheless an official record."

In our view, paragraph 3c goes beyond existing law in the following respects:

1. Existing case law rejects the view that personal papers are limited to "material pertaining solely to an individual's private affairs." Instead, it is well established that a paper of a government employee can refer extensively to government business and still remain personal. Thus, the fact that a government employee keeps a diary or personal notes that refer to government business does not, by itself, convert the diary or notes into official records. United States v. First Trust Co. of St. Paul, 251 F.2d. 686, (8th Cir. 1958); Porter County Chapter v. A.E.C. 380 F. Supp. 630. (N.D. Ind. 1974).

DECLASSIFIED

Authority

111079556

2. Existing government regulations recognize that personal papers can include discussions of government activities. Thus, the OMB Guidelines to the Privacy Act make it clear that "agency records" do not include "uncirculated personal notes, papers and records which are retained or discarded at the author's discretion and over which the agency exercises no control or dominion" -- even if such materials are "in possession of agency employees and used by them in performing official functions." 40 F.R. 28952 (1975). Under Department of State regulations, a paper is deemed personal if it has been expressly and consistently designated or filed as personal from the time it was originated or received. 5 FAM 417.1. A copy of the Department of State regulations is attached.

3. The provisions in the new GSA Bulletin have an internal inconsistency. Paragraph 3b requires that extracts be made of certain matters pertaining to official business that appear in "private-personal correspondence." Yet, in paragraph 3c, the term personal papers (presumably including "private-personal correspondence") is defined so as to cover only materials pertaining solely to an individual's private affairs. If a personal paper cannot, by definition, contain any discussion of any official business, of what use are the longstanding regulations that require the preparation of extracts of official matter from personal correspondence? Either the longstanding regulations on extracts or the new paragraph 3c is incorrect, and we believe it is the latter.

4. A formula similar to that appearing in paragraph 3c appeared in a proposed regulation submitted to Congress under the Presidential Recordings and Materials Preservation Act. Earlier this year, both houses of Congress expressly rejected that very provision. S. Res. 428; H. Res. 1505; H. Rep. No. 94-1485, at 4-5 (1976). This Congressional action places some cloud on the viability of paragraph 3c in the recent GSA Bulletin.

For these reasons, the Department should not follow paragraph 3c, but should adhere strictly to its own regulations, which have been in effect since 1967. To avoid any misimpressions arising from Jack's memorandum of November 22, we have prepared a draft follow-up memorandum (Tab 2) for FADRC's consideration.

cc: O/FADRC

Attachments:

1. Jack Pruden's memorandum of November 22, with GSA Bulletin attached.
2. Proposed follow-up memorandum.

L:MDSandler:rr
12/8/76 x 22149

DECLASSIFIED

Authority

79556

MS
ML



DEPARTMENT OF STATE

Washington, D C. 20520

November 22, 1976

MEMORANDUM

TO: ALL EXECUTIVE DIRECTORS AND ADMINISTRATIVE OFFICERS

FROM: O/FADRC - John S. Pruden

SUBJECT: GSA Bulletin FPMR B-65:
Disposition of Personal Papers and Official Records

An advance copy of GSA Bulletin FPMR B-65 is attached for your information. The principles outlined therein having to do with disposition of personal papers and official papers, are in harmony with the Department's regulations found in 5FAM400. O/FADRC, in carrying out its record officer responsibilities, stands ready to assist offices and individuals in making determinations in this area.

Attachment:
As stated

GENERAL SERVICES ADMINISTRATION

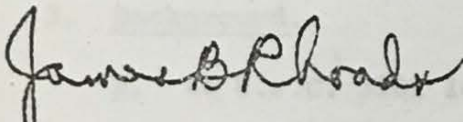
National Archives and Records Service

PERSONAL PAPERS AND OFFICIAL RECORDS

Notice of Issuance of GSA Bulletin FPMR B-65

Notice is hereby given of the issuance of GSA Bulletin FPMR B-65 regarding the disposition of personal papers and official records created in Federal agencies. Heads of Federal agencies will receive GSA Bulletin FPMR B-65 through normal methods of distribution but the timely nature of the information in the bulletin warrants its immediate publication.

Dated: November 15, 1976



JAMES B. RHOADS
Archivist of the United States

DECLASSIFIED

Authority

UND 79556

November 15, 1976

GSA BULLETIN FPMR B-65
ARCHIVES AND RECORDS

TO : Heads of Federal Agencies

SUBJECT: Disposition of personal papers and official records

1. Purpose. This bulletin summarizes the requirements of Federal law and related regulations and reminds all Federal agencies of their legal responsibility to (a) inform agency officials and personnel about established procedures for maintaining personal papers and (b) ensure the security and integrity of Federal records.

2. Expiration date. This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. Background.

a. 44 U.S.C. 3301 legally defines the word "records" to include--

...all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government 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 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.

b. FPMR 101-11.202-2(d) provides a legal definition of personal papers and prescribes standards for their maintenance--

Papers of a private or nonofficial character which pertain only to an individual's personal affairs that are kept in the office of a Federal official will be clearly designated by him as nonofficial and will at all times be filed separately from the official records of his office. In cases where matters requiring the

transaction of official business are received in private personal correspondence, the portion of such correspondence that pertains to official business will be extracted and made a part of the official files....

c. The definition of official records involves materials made or received either in pursuance of Federal law or in connection with the transaction of public business. The definition of personal papers covers material pertaining solely to an individual's private affairs. In other words, correspondence designated "personal," "confidential," or "private," etc., but relevant to the conduct of public business, is nonetheless an official record subject to the provisions of Federal law pertinent to the maintenance and disposal of such records. Official records are public records and belong to the office rather than to the officer.

d. The legal definition of records (44 U.S.C. 3301) specifically excludes "extra copies of documents preserved only for convenience of reference." Such extra copies of documents are commonly regarded as nonrecord materials and are disposable without reference to the requirements of chapter 33, Title 44, United States Code. A Government official may accumulate for convenience of reference extra copies of papers and other materials which he has drafted, reviewed, or otherwise acted upon. When deposited in a research institution, extra copies can serve the needs of historical scholarship. Government officials may be permitted to retain these extra copies, provided that such retention would not (1) diminish the official records of the agency; (2) violate confidentiality required by national security, privacy, or other interests protected by law; or (3) exceed normal administrative economies.

e. Federal law (44 U.S.C. 3105) requires heads of Federal agencies to establish safeguards against the removal or loss of Federal records. Such safeguards include notifying agency officials that (1) the alienation and destruction of records in agency custody is governed by specific provisions of chapter 33, Title 44, United States Code, and (2) criminal penalties are provided for the unlawful removal or destruction of Federal records (18 U.S.C. 2071) and for the unlawful disclosure of certain information pertaining to national security (18 U.S.C. 793, 794, and 793).

f. Federal law (44 U.S.C. 3106) requires heads of Federal agencies to notify the Administrator of General Services of any actual or threatened unlawful removal or destruction of records in their custody. The Archivist of the United States has been delegated authority to assist agency heads in initiating action through the Attorney General for the recovery of records unlawfully removed.

unlawful loss of Federal records. Adequate safeguards include the following measures:

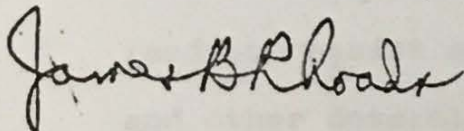
(1) Ensure that employees are acquainted with the Federal law governing the disposition of official records. Disposal of Federal records can occur only as a result of authorization of NARS approved records control schedules or provisions of general records schedules covering records common to one or more Federal agencies.

(2) Ensure that employees are aware of the criminal penalties that attach to the unlawful removal or destruction of Federal records. Employees also should be made aware of their legal responsibility for informing their records management officer of any actual or threatened unlawful loss or removal of official records.

(3) Ensure that employees are aware of the requirement for identifying and maintaining their personal papers separately from official records. Records management officers should monitor compliance with this requirement on a regular basis.

b. An effective means of bringing these legal requirements to the attention of agency personnel is incorporation of the requirements into agency files maintenance manuals and records control schedules. Adequate and proper separation and control of personal papers at the time of their creation offers the best approach for avoiding the problem of commingled personal and official papers. Widespread knowledge of the requirement for identifying and separating official from private papers at the time of their creation can assist greatly in establishing adequate and proper control over private papers.

5. Assistance to agencies. The National Archives and Records Service will assist agencies in appraising a body of materials and determining whether it comprises personal papers or official records. Oral requests for such assistance should be directed to the Records Disposition Division, Office of Federal Records Centers, telephone number 376-8845. Written requests should be forwarded to the General Services Administration (NC), Washington, DC 20408.



JAMES B. RHOADS
Archivist of the United States

DRAFT MEMORANDUM:

TO: ALL EXECUTIVE DIRECTORS AND ADMINISTRATIVE OFFICERS
FROM: O/FADRC - John S. Pruden
SUBJECT: Disposition of Personal Papers and Official Records

On November 22, I sent you a memorandum enclosing an advanced copy of GSA Bulletin FPMR B-65. The memorandum states that the principles outlined in the recent GSA Bulletin are in harmony with Department of State regulations found in 5 FAM 400.

On closer examination, we and L have found one problem with the GSA Bulletin. In paragraph 3c, the GSA Bulletin presents an expansive view of what papers constitute official records, as opposed to personal papers. We have determined that this paragraph goes somewhat beyond both existing law and Department regulations.

It is our intention to adhere to the provisions of the Department's regulations -- in particular, those stated in 5 FAM 417 and 432. Again, O/FADRC stands ready to assist offices and individuals in making these and other determinations in this area.