

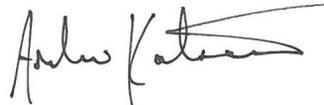


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Inspector General

February 28, 2022

MEMORANDUM

FROM: Andrew Katsaros
Inspector General 

TO: Lina M. Khan, Chair

SUBJECT: Management Advisory on FTC Records Management (M-22-05)

This memorandum alerts FTC leadership to certain records management conditions that we identified in the course of our oversight and review work.¹ We discussed these conditions with various program officials and managers, who understood that the FTC's ability to improve records management is integral to the agency's future success and effectiveness.

Summary

While the FTC recently has made significant progress in some areas of records management, such as shifting to all-electronic recordkeeping, the FTC still faces challenges in (1) complying with National Archives and Records Administration (NARA) records schedule requirements² and (2) setting up automated practices for properly storing and timely disposing of records in a uniform manner across the agency. The FTC must assess whether its current personnel and technology are capable of meeting these challenges in advance of fiscal year 2023.

I. Background

A. Applicable Authorities

The Federal Records Act (as amended) requires federal agencies to engage in *records scheduling*, the process of identifying all of their records—as well as how long each type of record is valuable—and requesting legal authority either to destroy the records or transfer them to the National Archives when there is no longer a need for them at the creating agencies.³ NARA manages the records scheduling process, which includes the requirement that NARA “approve all records schedules before they can

¹ On July 21, 2021, we met with Office of the Secretary officials to discuss an informal review of the FTC's records management program.

² Records schedules were in draft as of the date of this memorandum.

³ NARA, *FAQs About Records Scheduling & Appraisal*, <https://www.archives.gov/records-mgmt/faqs/records-mgmt/faqs/scheduling-appraisal>; 36 C.F.R. Part 1225.

be used [by the agency] to either destroy records or transfer records to the National Archives.”⁴ NARA regulations further outline the requirements for *records maintenance*, which places on the creating agencies certain responsibilities such as identification, recordkeeping, scheduling, and disposition.⁵

In response to the FTC’s first 2019 submission of records accompanying its comprehensive records disposition schedule, N1-122-09-1, NARA expressed concerns over the FTC’s agency-wide records maintenance. NARA’s May 4, 2020, response letter to the FTC requested that the agency halt the destruction and deletion of records covered by two schedules within its comprehensive plan (mission records, as well as policy and special collections records) while continuing to act on the disposition of other records covered by NARA’s General Records Schedules (GRS). With its request to the FTC to halt disposition of those specific non-GRS records categories, NARA provided the agency an opportunity to submit new draft records dispositions schedules for NARA approval. According to management within the FTC’s Office of the Secretary (OS) Records Management Branch, the agency has made the following progress in its response to NARA’s May 2020 request:⁶

- *FTC operating units with new/completed NARA-approved records schedules*—the Chair’s office (tweets), the Commissioners’ office (tweets), Premerger Notification Office (PNO), OIG
- *FTC operating units currently drafting new records schedules for NARA approval*—Office of International Affairs (OIA), the Consumer Sentinel System, OS

B. Prior Oversight of the FTC Records Management Program

The FTC currently has several open recommendations related to oversight of its agency records management program.

In FY 2020, the U.S. Government Accountability Office (GAO) evaluated 17 agencies, including the FTC, on their implementation of the Federal Records Act and subsequent directives. GAO’s objectives were to determine whether (1) policies and procedures address the electronic recordkeeping requirements in the Managing Government Records Directive and the Presidential and FRA Amendments of 2014 and (2) NARA assisted in managing their electronic records.⁷ As part of the evaluation, GAO recommended that the FTC establish a timeframe to update the agency’s electronic information system inventory.⁸ As of the date of this advisory, the NARA-ordered records disposition halt is still in effect—and FTC management

⁴ *Id.* (based on 36 C.F.R. § 1225.18).

⁵ 36 C.F.R. Parts 1220–26.

⁶ FTC OS management has noted, per the agency’s progress in responding to NARA’s request for updated records schedules, that NARA may take 1 year or longer to approve a records schedule after agency submission.

⁷ GAO, *Information Management: Selected Agencies Need to Fully Address Federal Electronic Recordkeeping Requirements*, [GAO-20-59](#) (February 27, 2020).

⁸ GAO made recommendations to most (14 of 17) of the agencies.

awaits NARA approval of its new records schedules. As a result, the recommendation is still open.

In 2018, FTC's Internal Control and Enterprise Risk Management (ICRM) Program also performed a review of the Records and Filings Office (RFO).⁹ The review identified five conditions, along with 20 associated recommendations to improve records management. Fourteen recommendations from three conditions remain open—and completion of these recommendations is contingent upon the FTC's submission and NARA's approval of new records schedules.

Finally, as part of its responsibility for overseeing and reporting to Congress on the state of records management across the federal government, NARA required agencies to submit three separate reports to its Office of the Chief Records Officer, in preparation for its annual Federal Agency Records Management (FARM) report.¹⁰ For FY 2020, this included (1) a Senior Agency Official for Records Management (SAORM) Annual Report,¹¹ (2) a Federal Electronic Records and Email Management Maturity Model Report,¹² and (3) an annual Records Management Self-Assessment (RMSA).¹³ With respect to the RMSA, an OIG analysis of 60 agencies shows the FTC with the 9th lowest records management self-assessment score.¹⁴ Further, in its Email Maturity Model report, the FTC ranked as the 3rd lowest of 60 agencies included in the report.¹⁵

II. Observations

As coordinated by the Office of the Secretary (OS), the FTC's records management personnel are in the process of preparing records schedules for each of its bureaus and offices.¹⁶ During this process, OS has held detailed discussions with the FTC's operating units about each of their business processes to determine record ownership and make decisions on file maintenance.

⁹ FTC, *FTC FY 17 A-123 Program Review Records and Filings Office*, (April 30, 2018).

¹⁰ NARA, Records Management Self-Assessment, <https://www.archives.gov/records-mgmt/resources/self-assessment.html>.

¹¹ NARA provided a template to those agencies with a SAORM to elicit information from a senior management perspective. The focus is on agency progress towards full electronic recordkeeping.

¹² NARA provided a two-part maturity model template based on the Universal Electronic Records Management (ERM) Requirements and the Criteria for Managing Email Records in Compliance with the Managing Government Records Directive (M-12-18).

¹³ Agency records officers provided an evaluation of their individual agency's compliance with federal records management statutes, regulations and program functions.

¹⁴ The FTC scored 2.11 out of a possible 4.00 in its RMSA. The median score for 60 agencies the OIG compared against was 2.89.

¹⁵ The FTC scored 0.40 out of a possible 4.00 in its Email Maturity Model Report. The median score for 60 agencies the OIG compared against was 3.00.

¹⁶ The FTC is comprised of three bureaus, ten functional offices (not including the OIG) and eight regional offices.

The FTC's records scheduling process has revealed certain challenges that are unique to the agency. While all federal agencies are required to review their files to determine whether they contain records that need to be preserved, the FTC's business processes and evolving culture make this requirement even more burdensome.

First, inefficient records management overall—and lack of coordination across the agency—may be limiting agency efforts to modernize. Currently, the FTC stores files in shared drives, with each operating unit (and, to some extent, each group within each unit) having its own unique method for housing information. As a result, the FTC does not use any uniform method to store files, and the records that they contain—nor can it easily and consistently search for files across the agency. Further, by storing files in its various shared drive folders, the FTC is also limited in its ability to automate the storage and disposal of records in accordance with the new records schedules it intends to issue. The FTC's transition of its files to the cloud platform,¹⁷ in theory, could be an opportunity to shift its current approach to records management, but management has communicated to us that it does not plan to do so.

Particularly noteworthy, the Bureau of Competition and the Bureau of Consumer Protection do not use a comprehensive case management system for their case files—and have delayed moving to such a system for many years, either due to budget constraints or other competing priorities. Such a system could be set up for automatic and proper record storage and disposal, bring some consistency to the management of case files, and assist the bureaus in managing large sets of records.

In addition to the lack of a comprehensive file management system, the FTC has not prioritized records management nor embedded it as a value in the agency's culture. As of FY 2022, current staffing levels and technological support are viewed as insufficient to meet records management challenges—more specifically, to address a need for (a) additional staff not just for records scheduling, but also developing the subsequent plans for executing approved schedules, as well as (b) updated capabilities to identify related records, lock down records against user edits, and track records usage. As a result, the FTC risks falling out of compliance with NARA records schedule requirements to be met in calendar year 2022, as well as Office of Management and Budget milestones to be met by the start of calendar year 2023.¹⁸

Likewise, the FTC's culture contributes to the difficulty of complying with NARA's requirements. According to one official, the FTC has many case files (some likely up to 30 years old) that staff do not want to delete, based on the possibility that they contain information that could be useful for a future matter. The official expressed concern that continued resistance to disposing of these records pursuant to an updated records schedule could cause increased risk to the FTC if it decides to move forward with a plan

¹⁷ The FTC expects to finish the movement to the cloud platform by the end of calendar year 2022.

¹⁸ On June 28, 2019, OMB issued M-19-21, *Transition to Electronic Records*, to set “consistent, government-wide policy and practices,” directing all federal agencies to “[e]nsure that all Federal records are created, retained, and managed in electronic formats, with appropriate metadata.” It further called on federal agencies to develop plans to close agency-operated storage facilities for paper and other analog records and transfer records to NARA centers or commercial storage facilities by December 31, 2022. By January 1, 2023, all other legal transfers of permanent records must be in electronic format, to the fullest extent possible, whether the records were “born electronic” or not. After that date, agencies will be required to digitize permanent records in analog formats before transfer to NARA.

to become a more decentralized agency—with much of its staff working throughout the country and without access to these hard-copy records.

III. Conclusion

The FTC faces complex challenges in complying with OMB and NARA records schedule requirements (including its submission of the remaining records schedules that still await NARA approval since May 2020)—as well as setting up an automated records management system that properly stores and timely disposes of records in a uniform manner across the agency. Tackling these challenges now and making records management progressively more integral to its operations will, in the long term, significantly ease the burden of records management and compliance with NARA requirements on the FTC. We therefore recommend the following:

Recommendations

We recommend that the FTC Chair and the appropriate agency senior leadership—in coordination with the Office of the Secretary and the Office of the Chief Information Officer, and in accordance with NARA and OMB directives—develop requirements for

1. acquiring the necessary staff and technology resources for managing records scheduling, disposition, access, and storage; and
2. incorporating records management function, retention, and disposition requirements into information life cycle processes and stages.

Subsequent to issuing the draft advisory, we worked with FTC management to revise the second recommendation, preserving the emphasis on the connection between records management and information lifecycle processes. Please see the attachment for the agency's concurrence.

Please submit to us an action plan that addresses the recommendations contained in this advisory within 60 calendar days. This advisory will be posted on our public website pursuant to section 8M of the Inspector General Act of 1978, as amended (5 U.S.C App., § 8M).

We thank the Office of the Secretary and FTC leadership for the cooperation and consideration given to the OIG in the development of this product. If you have any questions, please contact me at (202) 326-2457.

Attachment



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

February 23, 2022

MEMORANDUM

FROM: Lina Khan
Chair

LINA M. KHAN
Digitally signed by LINA M. KHAN
Date: 2022.02.23 23:50:08
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TO: Andrew Katsaros
Inspector General

SUBJECT: Management's Response to Draft Management Advisory on FTC
Records Management

The Federal Trade Commission (FTC) appreciates the Office of the Inspector General's (OIG) continued work to identify potential risks to the FTC.

The draft Management Advisory describes potential control risks identified during OIG's review of the FTC's records management program. The draft Management Advisory recommends the FTC Chair and the appropriate agency senior leadership—in coordination with the Office of the Secretary (OS) and the Office of the Chief Information Officer (OCIO), and in accordance with NARA and OMB directives—develop requirements for:

1. Acquiring the necessary staff and technology resources for managing records scheduling, disposition, access, and storage; and
2. Incorporating records management function, retention, and disposition requirements into information life cycle processes and stages—including the design, development, implementation, and decommissioning of information systems.

The FTC agrees with these recommendations and is committed to ensuring appropriate management controls are in place and operating as intended.

OIG Recommendation 1: OS has issued a request for information for acquiring the staffing needed to manage records scheduling, disposition, access, and storage. OS will provide OCIO with technological requirements for managing records scheduling, disposition, access, and storage electronically.

OIG Recommendation 2: OCIO will implement a policy to collaborate with OS in ensuring that records management function, retention, and disposition requirements are incorporated into information life cycle processes and stages, including the design, development, implementation, and decommissioning of information systems.