U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Legal Counsel

131 M St, N. E., Fifth Floor
Washington, D. C. 20507
Toll Free: (877)-869-1802
TTY (202) 663-7026
FAX (202) 653-6034
Website: www.eeoc.gov

March 8, 2018

VIA: john@greenewald.com
Mr. John Greenewald Jr.
Media
The Black Vault
8512 Newcastle Avenue
CA

Re: FOIA No.: 820-2018-000085 (Best Practices 2012 Desk Reference for Investigators)

Dear Mr. Greenewald:

Your Freedom of Information Act (FOIA) request, received on November 10, 2017, is processed. Our search began on November 14, 2017. The initial due date was extended by 10-business days [per our correspondence sent on December 11, 2917. On January 29, 2018, a member of my Team emailed you a progress update. All agency records in creation as of November 10, 2017 are within the scope of EEOC's search for responsive records. The paragraph(s) checked below apply.

[X] Your request is granted in part and denied in part. Portions not released are withheld pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.

[X] The disclosed records are enclosed. No fee is charged because the cost of collecting and processing the chargeable fee equals or exceeds the amount of the fee. 29 C.F.R. § 1610.15(d).

[X] I trust that the furnished information fully satisfies your request. If you need any further assistance or would like to discuss any aspect of your request please do not hesitate to contact the FOIA Professional who processed your request or our FOIA Public Liaison (see contact information in above letterhead or under signature line).

[X] You may contact the EEOC FOIA Public Liaison, Stephanie D. Garner, for further assistance or to discuss any aspect of your request. In addition, you may contact the Office of Government Information Services (OGIS) to inquire about the FOIA mediation services they offer.

The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, email at ogis@nara.gov; telephone at (202) 741-5770; toll free 1-877-684-6448; or facsimile at (202)741-5769.

The contact information for the FOIA Public Liaison: (see contact information in the above letterhead or under signature line).

Re: FOIA No.: 820-2018-000085

[X] If you are not satisfied with the response to this request, you may administratively appeal in writing. Your appeal must be postmarked or electronically transmitted in 90 days from receipt of this letter to the Office of Legal Counsel, FOIA Programs, Equal Employment Opportunity Commission, 131 M Street, NE, 5NW02E, Washington, D.C. 20507, or by fax to (202) 653-6034, or by email to FOIA@eeoc.gov, or online at the following public access link (PAL): https://publicportalfoiapal.eeoc.gov/palMain.aspx. Your appeal will be governed by 29 C.F.R. § 1610.11.

[X] See the attached Comments page for further information.

Sincerely,

/s/Sdgarner

Stephanie D. Garner
Assistant Legal Counsel
Phone: (202) 663-4634
FOIA@eeoc.gov

Applicable Sections of the Freedom of Information Act, 5 U.S.C. § 552(b):

Exemption(s) Used:

[X] (b)(3)(A)(i)
- [X] Section 706(b) of Title VII
- [X] Section 709(e) of Title VII
- [X] Section 107 of the ADA
- [X] Section 207 of the GINA

[X] (b)(5)
[X] (b)(7)(C)
[X] (b)(7)(E)

For a full description of the exemption codes used please find them at the following URL: https://publicportalfoiapal.eeoc.gov/palMain.aspx.

Re: FOIA No.: 820-2018-000085

Exemption (b)(3)(A)(i) to the Freedom of Information Act (FOIA), 5 U.S.C. § 2(b)(3)(A)(i) (2016), as amended by the FOIA Improvement Act of 2016, states that disclosure is not required for a matter specifically exempted from disclosure by statute . . . if that statute

(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue;

Sections 706(b) and 709(e) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-5(b), 2000e-8(e)(2007), are part of such a statute. Section 706(b) provides that:

Charges shall not be made public by the Commission . . . . Nothing said or done during and as a part of [the Commission's informal endeavors at resolving charges of discrimination] may be made public . . . .

Section 709(e) of Title VII provides:

It shall be unlawful for any officer of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section [to investigate charges of discrimination and to require employers to maintain and submit records] prior to the institution of any proceeding under this title involving such information.

Section 107 of the Americans with Disabilities Act (ADA) and § 207 of the Genetic Information Nondiscrimination Act (GINA) adopt the procedures of Sections 706 and 709 of Title VII.

See *Equal Employment Opportunity Commission v. Associated Dry Goods Co*., 449 U.S. 590 (1981); *Frito-Lay v. EEOC*, 964 F. Supp. 236, 239-43 (W.D. Ky. 1997); *American Centennial Insurance Co. v. United States Equal Employment Opportunity Commission*, 722 F. Supp. 180 (D.N.J. 1989); and *EEOC v. City of Milwaukee*, 54 F. Supp. 2d 885, 893 (E.D. Wis. 1999).

DOCUMENTS WITHHELD PURSUANT TO EXEMPTION (b)(3)(A)(i) TO THE FOIA:

References to EEOC charge information

Re: FOIA No.: 820-2018-000085

Exemption (b)(5) to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(5) (2016), as amended by the FOIA Improvement Act of 2016, Pub. L. No. 110-175, 121 Stat. 2524, permits withholding documents that reflect the analyses and recommendations of EEOC personnel generated for the purpose of advising the agency of possible action. This exemption protects the agency's deliberative process, and allows nondisclosure of "inter-agency or intra-agency memorandums or letters which would not be available to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). The exemption covers internal communications that are deliberative in nature. *National Labor Relations Board v. Sears, Roebuck & Co*., 421 U.S. 132 (1975); *Hinckley v. United States*, 140 F.3d 277 (D.C. Cir. 1998); *Mace v. EEOC*, 37 F.Supp. 2d 1144 (E.D. Mo. 1999). The purpose of the deliberative process privilege is to "allow agencies freely to explore alternative avenues of action and to engage in internal debates without fear of public scrutiny." *Missouri ex. rel. Shorr v. United States Corps of Eng'rs*., 147 F.3d 708, 710 (8th Cir. 1998).

Records may be withheld under this exemption if they were prepared prior to an agency's decision, *Wolfe v. Department of Health and Human Services*, 839 F.2d 768, 775, 776 (D.C. Cir. 1988) (*en banc*) and for the purpose of assisting the agency decision maker. *First Eastern Corp. v. Mainwaring*, 21 F.3d 465,468 (D.C. Cir. 1994). *See also*, *Greyson v. McKenna & Cuneo and EEOC,* 879 F. Supp. 1065, 1068, 1069 (D. Colo. 1995). Records may also be withheld to the extent they reflect "selective facts" compiled by the agency to assist in the decision making process *A. Michael's Piano, Inc. v. Federal Trade Commission*, 18 F.3d 138 (2d Cir. 1994). An agency may also withhold records to the extent that they contain factual information already obtained by a requester through prior disclosure. *See Mapother, Nevas, et al. v. Dep't of Justice,* 3 F.3d 1533 (D.C. Cir. 1993).

DOCUMENTS WITHHELD PURSUANT TO EXEMPTION (b)(5) TO THE FOIA:

Policies regarding charge processing are predecisional deliberations and recommendations

Internal advice, recommendations, and strategy, for handling and analyzing information, are predecisional

Re: FOIA No.: 820-2018-000085

Exemption (b)(7)(C) to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(7)(C) (2016), as amended by the FOIA Improvement Act of 2016, authorizes the Commission to withhold:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy . . . .

The seventh exemption applies to civil and criminal investigations conducted by regulatory agencies. *Abraham & Rose, P.L.C. v. United States,* 138 F.3d 1075, 1083 (6th Cir. 1998). Release of statements and identities of witnesses and subjects of an investigation creates the potential for witness intimidation that could deter their cooperation. *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214, 239 (1978); *Manna v. United States Dep't. of Justice*, 51 F.3d 1158,1164 (3d Cir. 1995). Disclosure of identities of employee-witnesses could cause "problems at their jobs and with their livelihoods." *L&C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir. 1984).
The Supreme Court has explained that only "[o]fficial information that sheds light on an agency's performance of its statutory duties" merits disclosure under FOIA, and noted that "disclosure of information about private citizens that is accumulated in various governmental files" would "reveal little or nothing about an agency's own conduct." *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press,* 489 U.S. 749, 773 (1989).

For the purposes of determining what constitutes an unwarranted invasion of personal privacy under exemption (b)(7)(C), the term "personal privacy" only encompasses individuals, and does not extend to the privacy interests of corporations. *FCC v. AT&T Inc.*, 131 S.Ct. 1177, 1178 (2011).

DOCUMENTS WITHHELD PURSUANT TO EXEMPTION (b)(7)(C):

References to EEOC charge information, to include third party personal information

Re: FOIA No.: 820-2018-000085

Exemption (b)(7)(E) to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(7)(E) (2016), as amended by the FOIA Improvement Act of 2016, Pub. L. No. 110-175,121 Stat. 2524, authorizes the Commission to withhold:

> law enforcement information that "would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law."

DOCUMENTS WITHHELD PURSUANT TO EXEMPTION (b)(7)(E) OF THE FOIA:

Instructors' notes

Internal guidelines

Advice, recommendations, and strategy, for handling and analyzing data

Research tips

Re: FOIA No.: 820-2018-000085

Comments

We have completed the processing of your request for a copy of "the *Case Management Desk Reference for Investigators 2012*." Your request is granted in part and denied in part pursuant to the third, fifth, and seventh exemptions to the FOIA. 5 U.S.C. §§ 552(b)(3)(A)(i), (b)(5), (b)(7)(C), and (b)(7)(E).

The information withheld consists of training materials describing internal agency practices, techniques, and procedures used by agency personnel to conduct investigations into violations of the statutes EEOC enforces. The withheld information is deliberative in nature and contains pre-decisional analyses, recommendations by EEOC personnel, and recommendations to the decision-maker. Disclosing the information would result in disclosure of agency techniques, strategies, or information which could harm the interests of the Commission, interfere with EEOC enforcement activities, and risk circumvention of the laws EEOC is charged with enforcing.

Information withheld under both the fifth and seventh exemption cited in the previous pages include technical instructions for investigators on investigatory best practices, derived from years of investigative experience and resulting expertise acquired by the agency, such as: what types of information to look for and how to obtain it, how to recognize systemic and class issues, procedures to be used in building a class, and negotiation and conciliation strategy. Should these unique techniques and procedures become public, respondents would be able to use their newfound knowledge of EEOC investigative strategies and tactics to thwart or circumvent our investigations, and/or prevent EEOC from obtaining the information needed to determine whether a violation has occurred.

The confidentiality provisions of Title VII of the Civil Rights Act and the Americans with Disabilities Act prohibit the EEOC from confirming or denying the existence or nonexistence of a charge to a third party of the charge. The third exemption to the FOIA exempts this information from disclosure.

The seventh exemption to the FOIA permits the agency to withhold information compiled in investigative files where disclosure of such information could result in an unwarranted invasion of personal privacy.

This response was prepared by Joanne Murray, Government Information Specialist, who may be reached at (202) 663-4500.

CASE MANAGEMENT BEST PRACTICES
Desk Reference for Investigators

2011

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INTRODUCTION

Over the last several years, the U.S. Equal Employment Opportunity Commission (EEOC) has experienced a significant increase in the number of people who inquire about employment discrimination matters and the number of people who actually file charges. During the same period of time, the EEOC has experienced a decline in the number of investigators and other staff across the country due to attrition and the inability to replace critical staff.

Charge receipts have grown significantly from almost 81,000 in FY 2001 to just over 95,000 in FY 2008 and 93,000 in FY 2009, with 2008 and 2009 being the highest two years in the last twenty. From FY 2000 through FY 2008, the number of investigators declined sharply, from 917 in FY 2000, down to 646 in FY 2008, as staff attrition and a hiring freeze decimated the number of investigators. From FY 2000 through FY 2008, EEOC lost a total of 271 investigators - more than 30 percent of its investigative workforce.

The increase in charge receipts coupled with the decrease in investigators ensured that the agency's inventory would grow. As the inventory rose, the average caseload per available investigator also rose.

In September of 2009, Deputy Directors and Enforcement Managers met in Washington, DC and discussed case management best practices. During this meeting Nicholas Inzeo, Director of the Office of Field Programs, formed a Work Group to craft a Case Management Best Practices Desk Reference for Investigators. Members of the Work Group included Cheryl Mabry-Thomas (Acting Deputy, Washington Field Office), Daniel J. Cabot (Director, Cleveland Field Office), Janet Elizondo (Deputy Director, Dallas District Office), Julianne Bowman (Deputy Director, Chicago District Office), and Webster Smith (Deputy Director, Indianapolis District Office).

After interviewing investigators and supervisors from the field and reviewing prior headquarters' documents on case management, the Work Group created this Case Management Best Practices Desk Reference. This Desk Reference is not a one-size-fits-all manual nor is it a cookie cutter approach to case management. It includes a variety of approaches to case management that current investigators found worked best for them. We ask that you study this document with an open mind and take from it what will help you better manage your caseload. We hope that whether you have just completed New Investigator training or you are celebrating your 30th year anniversary with the Commission, you find some new and refreshing tools in this living document to enable you to be the best investigator that you can.[1]

[1] Please note that we realize that some offices have work plans that address specific priorities, methodologies, and work processes that must be followed locally. This Desk Reference is not intended to trump any specific field office requirements.

INVESTIGATIVE TOOLS

DEVELOPING YOUR INVESTIGATIVE TOOL KIT

Efficient investigators plan to process cases in a timely and effective manner while adhering to District and Agency goals and priorities. Developing a "tool kit," or game plan, to manage case loads is beneficial to all efficient investigators. Common tools in the investigative "tool kit" include, but are not limited to, the following:

- **Models of Proof** – Models of Proof help investigators stay on track given the particular theory of discrimination, bases and issues in the case. They help you know when to investigate, and can keep you from getting emotionally connected to the case or getting off track because of extraneous facts, etc. Attachment 1

- **Priority Charge Handling Procedures (PCHP) –** PCHP helps to prioritize and process cases effectively and make the hard calls (b)(5);(b)(7)(E)

(b)(5);(b)(7)(E)
7 lines of text redacted.

(b)(5);(b)(7)(E)
12 lines of text redacted.

The standard that investigators should apply in all cases under PCHP is whether additional work will likely lead to a violation finding (b)(5);(b)(7)(E)

(b)(5);(b)(7)(E)
7 lines of text redacted.

- **Custom RFIs -** Custom tailored RFIs drafted at the Intake stage of case processing allow the investigator to quickly determine merit by requiring respondents to include specific information with its initial response as opposed to waiting to receive the common general denial in a position statement.

- **Early Settlement Discussions** - (b)(5);(b)(7)(E)

(b)(5);(b)(7)(E)
9 lines of text redacted.

You might send the case to ADR from Intake. However, if the case comes out of ADR and ends up in Enforcement, you can still explore settlement. Quick settlements mean less investigative time spent and in most cases, parties are happy to be done with it.

- **On-Sites** - On-site investigation is an excellent case management tool in appropriate cases. An on-site is a great way to determine whether a violation exists and to check for additional violations. After an on-site has been completed, investigators are able to quickly bring a case to resolution or have clear next steps. Most of the time cases can be closed as no cause or written up as cause without more work after the on-site.

redacted.

(b)(7)(E)

(b)(5);(b)(7)(E)

6 lines of text redacted.

- **Self-Directed Reviews -** Most investigators participate in management-directed review groups as a means of helping them focus on case management with the office and Agency priorities as the backdrop. However, a self-directed review tool in your kit can save time and energy -

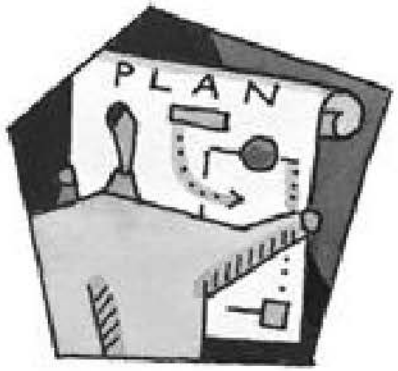
(b)(5);(b)(7)(E)

11 lines of text redacted.

(b)(5);(b)(7)(E)

3 lines of text redacted.

- **Working Tracking Systems** - An investigator must have a system for case management, file organization, setting goals and keeping track of progress on those goals. The system can be unique but it must work for the investigator. As an investigator, you must become aware of the goals of your particular office and the Agency. Your system must be designed to help you achieve those goals. It must be designed to achieve what can sometimes be conflicting goals. It must be flexible to handle distractions and shifting goals as office management and/or headquarters personnel require. If this Desk Reference does not assist you in creating a system that helps you stay on top of your District and Agency goals, talk to your supervisor, talk to a coworker, talk to other members of management until you have a system that helps you stay organized and prioritized.



"Over the years I have used a variety of methods and seen other people use a variety of methods that all work. The bottom-line is to use the current priorities as the bedrock for any plan/method."

(b)(5);(b)(7)(E)

4 lines of text redacted.

MANAGING YOUR TIME EFFECTIVELY

TIME MANAGEMENT IS CASE MANAGEMENT

Time management skills are essential skills for effective investigators. Investigators who use good time management skills routinely are the highest achievers in the workplace. If you use good time management skills, you will be able to function exceptionally well.

Concentrate on results, not on being busy.

Many investigators spend their days in a frenzy of activity, but achieve very little. They're not concentrating their effort on the things that matter the most. By applying good time management skills you can optimize your effort to ensure that you concentrate as much of your time and energy as possible on the high payoff tasks. This ensures that you achieve the greatest benefit possible with the limited amount of time available to you.

Touch things a minimum number of times

You should always try to touch things as minimum a number of times as possible. If you pick up an investigative file or piece of information you received, do something with it that moves the processing of the charge further down the road. For example, review a position statement when you receive it, determine the next action and schedule it. If it appears to be a "C" charge, take the appropriate action in your office right then and there to close it. If it appears to need additional investigation, decide what you need to do and schedule it.

Do something productive.

The same course of action should be taken when you receive other responses or information from a charging party or respondent. Avoid at all costs developing the bad habit of just "filing it away for another day." Here are examples of how four investigators use their time in calculated ways to accomplish specific goals:

(b)(7)(E)
5 lines of text redacted.

(b)(7)(E)
4 lines of text redacted.

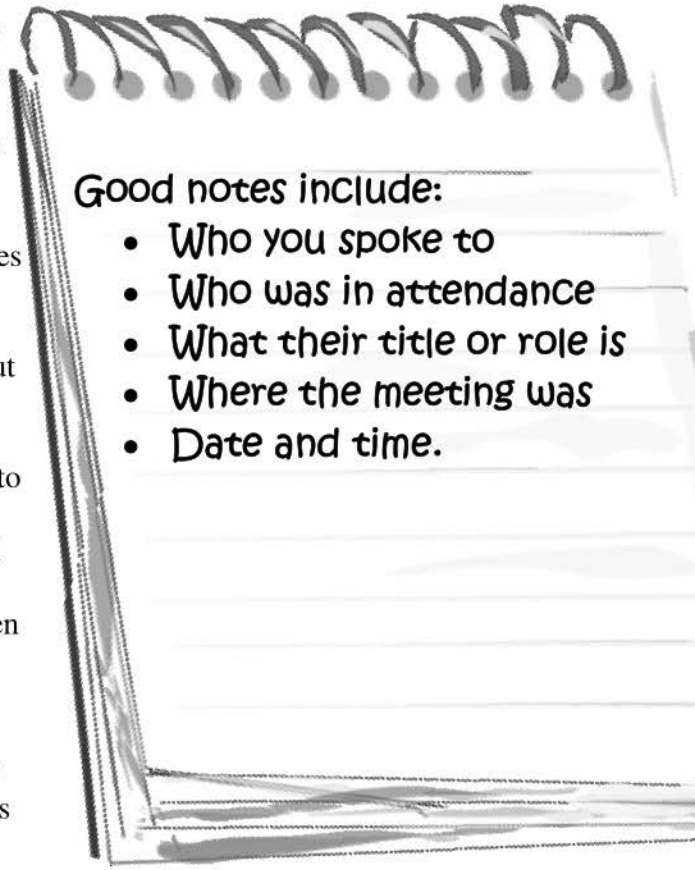
(b)(5);(b)(7)(E)

17 lines of text redacted.

Write things down

If you are a new investigator with only a few cases, you may be able to keep track of what you did on a particular case, what you were told by a particular party or what your supervisor told you to do as a next step. However, you will soon discover that your caseload will become too large to keep track of all that information in your head. WRITE THINGS DOWN. Use the case log at the beginning of the file to record the steps you took in the case: when you talked to witnesses or parties, the date you mailed a letter to respondent, the date you left a voice mail for the charging party, the date you met with your supervisor and/or Legal. This information can be very important for any number of reasons later in the investigation or much later in litigation. You may also use the note section of IMS, but you must make sure hard copies of the notes are in the case file.

Take good notes of your conversations. You save yourself and others time when you take complete and accurate notes. This relates to conversations with witnesses and parties but it also includes conversations with your supervisor or Legal about next steps or the case status. These are your cases; you are expected to know what is going on. Keeping good notes will help you retrieve information quickly when you are not focused on that particular case. See the Communications section for more on how to prepare for these types of conversations.



One caveat about taking good notes and keeping the case log

Once a file has been closed, charging parties have 90 days in which to file in federal court. During that 90-day period, charging parties can see most of the documents in their investigative file. Once the charging party has filed suit, the respondent gets access to the file. Certain documents and/or types of information are withheld from either party as privileged. This information is withheld as part of the government deliberative process privilege, e.g., as a government Agency, our deliberations concerning a particular investigation are privileged.

As you are recording your actions and keeping notes of conversations concerning your investigations, be mindful that documents which contain a mix of facts or information (which can be produced to the parties) and our analysis will have to be reviewed and the analysis redacted (or removed) from the document before it can be turned over to the parties. It saves your time, and the time of the EEOC staff who disclose our investigative files, if you don't mix the two kinds of information.

Two common examples may help clarify this caveat. If you have discussed your case with Legal, it is helpful to note in the case log that you did so. It will help you remember what has happened on the case. If you also include what you discussed with the attorney and the advice you were given, that information will have to be redacted from the case log before it is disclosed to the parties. (b)(7)(E)

(b)(7)(E)

2 lines of text redacted.

A second example relates to witness interviews. For your witness interviews, record the facts or statement that the witness is making. Do NOT include your opinion about the person or your opinion about the person's credibility as part of your witness interview. (b)(7)(E)

(b)(7)(E)

5 lines of text redacted.

Review inventory not being actively worked on a regular basis

Get in the habit of setting time aside on a recurring schedule, i.e., once a month, once every other month or at least once a quarter, to pull pending inventory (with position statements) that you are not actively working on and review the investigative file. Set a few hours aside or even a day to review your selected investigative files and determine if each file needs additional investigation, needs to be upgraded or if it can be dismissed.

(b)(7)(E)

5 lines of text redacted.

Another suggestion is to try this with a team member or your team as a whole. You can each bring investigative files and talk about the facts and evidence, bouncing them off each other. Remember it is not uncommon to "get stuck" on a case and quite often two or more minds are better than one. The Playbook section of this Desk Reference has an example of how some investigators take advantage of this teamwork-oriented tool.

Limit the impact of overflow from Intake

It is very challenging to balance investigative duties and Intake counseling duties. During your time devoted to Intake, you may be interviewing potential charging parties, drafting charges, reading, analyzing and processing mail inquiries, making phone calls to potential charging parties, etc. The challenge is to try and complete your Intake responsibilities during the time you have dedicated to Intake and avoid letting those duties pour over into your time dedicated to investigating charges.

When you are in Intake, do Intake!

Make it your only priority during your dedicated Intake time to get whatever paperwork, phone calls or IMS data entry that needs to be done, done. Where support staff is available, let them do some of the clerical work putting the investigative file together and/or sending the charge out if this is acceptable in your District. Avoid scheduling any investigative work on pending charges during your Intake time. Keeping your Intake duties from pouring over into your investigative duties allows you to better plan your investigative time, i.e., scheduling witness interviews, onsites, settlement conferences, fact-finding conferences, meetings with attorneys, meetings with supervisors, etc.

One particular challenge with Intake is playing telephone tag with charging parties in order to be able to draft the charge. When you have to call potential charging parties because you have been assigned mailed-in inquiries (b)(7)(F) (b)(7)(F) 2 partial lines redacted. make one phone call to the charging party during your allotted Intake time. If you are unable to connect with the person, immediately send them a letter that informs them of what you need to know to be able to draft a charge for them.

The standard 2A letter in IMS may be used, and you can customize it to add specific information you need. This gives the charging party 30 days to respond. Most charging parties will respond in writing, either by letter or e-mail. Note that it is against Agency policy to require charging parties to respond in writing. Therefore, the investigator must be prepared to play some telephone tag. Consider allotting a certain amount of time for phone calls and informing people that they can call you within the time frame you've allotted yourself. This may not completely stop the telephone tag, but it will significantly decrease it. Keep in mind that if a charging party can only be reached at a time outside of your allotted Intake time, you must follow up with that person-either in writing or by telephone.

Another idea is to leave a voice message for the charging party that includes two dates/times when you will attempt to reach the person again. The dates/times you give should be within your allotted Intake time if possible. Your voice message should include what you need to draft a charge and it should provide the person with your e-mail address and fax number in the event they would like to provide written responses to your questions. This way, when you call, the person is either available or prepared to discuss what you specifically indicated you needed, or the person is unavailable but can e-mail or fax the information you need. In those instances where you are unable to connect and you've already sent the 30-day 2A letter, you can close the inquiry until such time as you are contacted again. It is important that on your voice message and any letter you send, you indicate the charge filing time limit.

The overarching goal is to come up with a way of providing proper customer service while still maintaining some degree of control over your work days. Scheduling appointments to conduct interviews for mailed-in inquiries works well.

Limit impact of office distractions

A critical piece of making good use of your time is to avoid wasting it on the ever-present office distractions in the work environment. Many things in the office may not seem to make an impact on your work collectively, but they do. Distractions include getting on the internet for non-work related purposes or sending and receiving non-work related e-mails.[3] Even unnecessary work related e-mails should be avoided when a phone call or face-to-face discussion would be more productive and a better use of your time to move an investigation forward.

Also, as we become good friends with our co-workers over time, it is very tempting to spend time visiting on non-work related issues. Try to keep this to a minimum.

[3] The EEOC has a policy against using computers for non-work related things. We have been advised that the system for everyone is slowed down.

Select and use a tracking mechanism/system to monitor the progress of your inventory

When dealing with a large number of investigative files, each with their own level of priority and complexity, it is imperative that you select some form of tracking mechanism, or two, to assist you in moving all of your inventory forward in an expeditious manner. Avoid letting a charge "fall through the cracks" or "collect dust." A tracking mechanism/system assists you with making the best use of your time in light of competing priorities and due dates. Some options/tools available to you are as follows:

(b)(7)(E)
10 lines of text redacted.

At the end of the day, you want to avoid, or at least minimize, having the feeling of not knowing what you have in your inventory. A lot of time can be wasted each day wandering around your office trying to figure out what to do next. Have a plan, have a system, and stick to it! However, it is important to revisit and perhaps tweak the system you have if it is not working for you.

(b)(7)(E)
4 lines of text redacted.

(b)(7)(E) 1 line of text redacted.

(b)(7)(E)
10 lines of text redacted.

The Playbook section of this Reference will provide you with more information about how to track/monitor/manage caseloads.

ORGANIZING YOUR INVESTIGATIVE FILES

TIPS ON STAYING ORGANIZED

Being organized is half the battle in becoming a productive and efficient investigator. Handling anywhere from 50 to 200 investigative files at any one time requires physical organization of files so that they may be located on short notice when a supervisor or attorney knocks on your door or a charging party or respondent calls. There are

different ideas on what may be the best way to organize work. An investigator needs to have some method to physically maintain files that works. Some methods include:

- **File cabinet** in which each drawer has investigative files in a different stage of processing (usually filed by age within each drawer) Drawers could be used for:
  - ✓ pending settlements or on-sites scheduled
  - ✓ awaiting receipt of information such as requests for information and position statements
  - ✓ Cause pending or issued, in conciliation
- **File cabinet** in which each drawer has investigative files based on type of categorization

(b)(7)(E)

3 partial lines of text redacted.

- **File cabinet** maintained in charge number order
- **Book case**, each shelf has investigative files based on different stages of processing or categorization
- **Stack on your desk** method based on what investigative actions need to be taken or based on categorization
- **Stack on your desk** method based on Respondent or industry you have been assigned
- **Combination method** where priority charges are stacked on your desk with the remaining investigative files in a file cabinet or in a book case filed by stage of processing, type of categorization or by charge number
- **Combination method** where charges that need action are stacked on your desk with the remaining investigative files in a file cabinet or book case filed by stage of processing or type of categorization.

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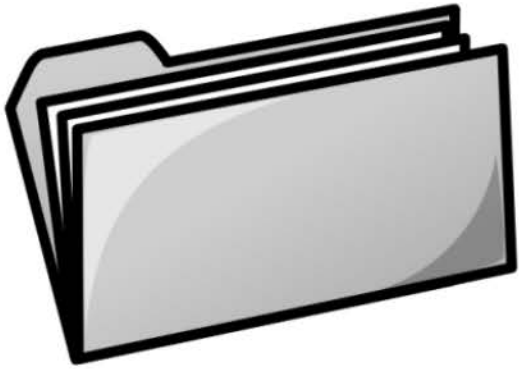
Included in organizing physical files is the actual placement of notes, memos, responses, statements, etc. into the case file. It is a time saving measure to file documents under the correct tabs. This allows you to promptly locate certain documents in the case file when you need to refer to them. Each office has a particular case filing preference with regard to tabbing, pronging and organizing the case files. All of the systems are derived from the basic blueprint for tabbing case files laid out in Volume I of the EEOC Compliance Manual. For example, Tab B has the charge, 131, 212; Tab C has all communications/responses back and forth between CP and EEOC; Tab D has all such communications and responses back and forth between R and EEOC.

TECHNOLOGY AND CASE MANAGEMENT

HOW TO USE TECHNOLOGY TO IMPROVE YOUR CASE MANAGEMENT

Each day we all use our computers to get our work done. The efficient use of technology enables us to work at faster pace, draft documents, retrieve and send information, etc. However, we should all ensure that our use of technology is done appropriately and safely within the guidelines set forth by our security team as well as the Office of Information Technology. It is critical to create a system for organizing the documents you create on your computer and your e-mails.



Computer Documents

First and foremost, when creating an RFI, letter, settlement proposal, memo for supervisor or Legal or any other document relating to a particular case, SAVE THE DOCUMENT ON YOUR D: DRIVE. This may sound insanely basic, but you don't have to look far before you find an investigator or OAA or supervisor who created a document and printed it out thinking he or she would never need it again. Documents get edited. Typos are found. An RFI in one case may be used as the basis for an RFI in another case. Or, you may be asked to produce that memo or letter at some future date by management, Legal, Headquarters, a Congressman, the White House, the press, etc.

Second, because the D: drives are not backed up automatically by the Agency, talk to your IT person about the best way to back up documents and how often to back them up. Computers crash. Documents get lost. Back up your files.

Third, organize the documents you create on your computer. Do you want a file folder for every case? Maybe, when there are not many charges in your inventory. Creating a file folder for 150 pending investigations might not be efficient. Do you want to organize them by type of document, e.g., all settlement agreements in one folder? Do you want to organize them by fiscal year? In alphabetical order? By charge number? You decide. Create naming conventions so you know what to look for later is a way of being efficient and on point in your searches for documents. The goal is to create a system of saving your documents so you can promptly retrieve them when you want them or when you are asked about them later.

Fourth, keep a folder with sample documents including IMs, settlement agreements, conciliation agreements, language for difficult or unusual charges, LODs, RFIs and subpoenas. This will help you as you begin to build inventory and don't want to "re-invent the wheel" every time you start an investigation. Be aware that your samples are just that: samples.[5]

Always make a copy of any document created for a particular charge, and put it in the file. If the document requires a signature, e.g., the Director's signature on an LOD, be sure to include a signed copy of the document in the file. Again, this is very basic, but every office in the country has a story of a great case in litigation where the crucial document sent to Respondent couldn't be found, or a signed copy of the LOD could not be produced in court.

Emails

As with computer-generated case documents, you need to create a system for keeping track of your e-mails relating to charges. Agency policy requires staff to keep e-mails relating to particular charges (Attachment 7). In the current era of e-discovery, when the EEOC litigates cases (or, in some instances, when private parties litigate cases), we may be required to turn over e-mails about cases, or, at a minimum, admit that we have such e-mails and why we aren't required to produce them. In addition, closed files are destroyed after a period of time. On occasion, being able to pull up e-mails (or computer-generated documents of any kind) about a case long after the file is destroyed can be quite important to the EEOC, the charging party or respondent.

Figure out a system to keep track of and retrieve your e-mails. Become familiar with GroupWise and the various ways you can organize e-mails. One example is to create a folder for each of your bigger, ongoing investigations for which there is a lot of e-mail traffic with outside parties, management and/or Legal.

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Currently, e-mails are backed up through the Agency computer backup system every night. In addition, any e-mail you haven't deleted is archived to your D: drive after 45 days. As noted previously, D: drives are not backed up by the Agency. Talk to your IT person about how to regularly back up your D: drive.

In addition to allowing us to work faster, draft, save and retrieve documents more efficiently, technology also helps us effectively manage our caseloads by using various available tools.

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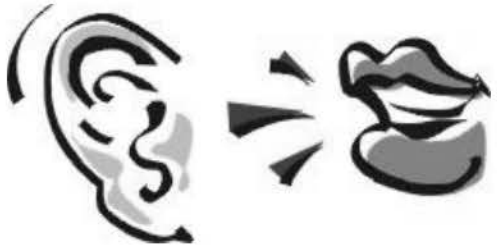
EFFECTIVE COMMUNICATION AS A CASE MANAGEMENT TOOL



TIPS ON COMMUNICATING WITH EVERYBODY

Communication with charging parties, witnesses, respondents and representatives is a major part of the investigation for any charge. Effective communicate with supervisors, members of management, Legal and, colleagues is also important.

Calls from Parties – A Case Management Tool or an Interruption?

? It's 8:45 and you are sitting at your desk with your day planned out to include work on your top priority – your Systemic case – with just enough time left over to PDI a charging party in the early afternoon and write the closure memos for two other cases. If you have any extra time, you have a couple of new position statements that you need to review. As you pull out your systemic file, the phone rings. Should you answer it or let it go to voice mail?

How you handle the parts of your day/week/month that are not part of your plan is critical to making your case management system successful. The answer to the question may be different for each investigator. What is most important is that you consider the question and devise a plan for handling those parts of your day that are not planned. Ideas include:

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Whatever method you choose, be sure to include a balance between planned work and telephone interruptions. Also, be sure to build time to respond to parties and other callers into your workday or week. Failing to respond to these calls not only is poor customer service, it can cost more time as frustrated callers start contacting supervisors or upper management.

Dealing with Difficult Respondents

On occasion, respondents and their representatives can be difficult to handle. Here are some tips for getting what you want from respondents or their representatives.

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Effectively Communicating with Charging Parties

Just as respondents and their representatives can be difficult, communications with charging parties can be stressful in other ways. Charging Parties have come to the EEOC expecting that the wrongs they have perceived will be made right. Some have seen newspaper articles or TV news stories where individuals received large amounts of damages for employment discrimination claims and expect the same result. Some have mental or physical disabilities that make communication difficult. And, some have lost jobs, homes and financial security and are looking for the EEOC to help them get back on their feet. What are some tips for effectively communicating with charging parties whose goals and expectations may be different than those of the Agency?

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Communicating with Legal

You've reviewed the case, analyzed the information you've received, and now you have some questions that you think an attorney should answer. What do you do?

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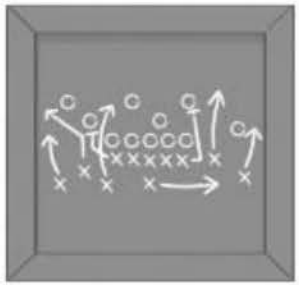
PLAYBOOK



REAL INVESTIGATORS, REAL CASE MANAGEMENT SYSTEMS

How does an investigator who has 100 cases manage the case load when 50 of the cases are As, 4 are systemic and the investigator has to do walk-in Intake one week every 6 weeks? Here are real examples of good case management helpful in answering such questions. Mix and match some of the methodologies that these investigators use along with others that are not covered here. The ultimate goal is to do what it takes to ensure successful case management.

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RESEARCH AND CASE MANAGEMENT

RESEARCH TOOLS AVAILABLE

There are a wide range of research options available to assist you with the development of your cases and your overall case management efforts. The Headquarters Library provides a variety of services: research, circulation of print and audiovisual materials from the headquarters collection, interlibrary loan of materials unavailable in the EEOC Library and the acquisition and provision of online services.

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EEO-1 Desktop/Support Assistance is Available

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If you are having trouble using EEO-1 Desktop, and cannot find the answer in the help file, you can seek assistance by calling or e-mailing the following EEOC staff:

Investigators: **Ron Edwards** and his unit
Research and Technical Information Branch, Program Research and Surveys Division, ORIP

Attorneys: **Joe Donovan** and his unit
Research and Analytic Services, OGC

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Other Tools Available on your Desktop

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CONCLUSION

The Case Management Best Practices Workgroup would like to thank all EEOC staff who contributed to making this product possible. We tried to incorporate the various thoughts and comments we received from senior managers, area, local and field directors, as well as enforcement supervisors. We extend our greatest appreciation to the many investigators who engaged us in lengthy discussions regarding case management in an effort to make this product useful and timeless. We sincerely hope that there are at least some investigators out there who will truly benefit from this Case Management Best Practices Desk Reference.

Attachments

ATTACHMENT 1: MODELS OF PROOF

I. DISPARATE TREATMENT

PROOF OF DISPARATE TREATMENT VIA CIRCUMSTANTIAL EVIDENCE (hiring/promotion)	
P.F. CASE:	(1) Charging Party (CP) is a member of the protected class (2) CP applied for a job for which CP met the stated qualifications (3) CP was rejected (4) Employer (ER) filled the job or continued to seek applications from persons with similar qualifications (ER's selection of person outside of CP's protected class supports inference of discrimination but this is not always a required element of proof)
REBUTTAL:	ER articulates a legitimate, nondiscriminatory reason for rejecting CP
PRETEXT:	The reasons advanced by ER are a pretext to hide discrimination. Examples of such evidence are: (1) reason advanced by ER is not believable (2) similarly situated individuals outside CP's class were treated differently (3) evidence of bias by ER's decision makers towards persons of CP's class (4) Statistics showing underemployment of members of CP's class (this evidence may be helpful but usually not determinative)

NOTE: CP must be a member of a protected class and has to have suffered adverse treatment/actions. CP's claim is not necessarily defeated if CP cannot provide comparative evidence which reasonably gives rise to an inference of discrimination. Also, a claim should not be dismissed based on lack of certain evidence if CP was not in a position to have access to such evidence.

PROOF OF DISPARATE TREATMENT VIA CIRCUMSTANTIAL EVIDENCE (discharge/discipline)	
P.F. CASE:	(1) CP is a member of the protected class (2) CP was performing at satisfactory level (3) CP was discharged or otherwise disciplined (4) CP was replaced by an employee outside the protected class (this is not always a required element of proof)
REBUTTAL:	ER articulates legitimate, nondiscriminatory reason for discharging or disciplining CP
PRETEXT:	The reasons advanced are a pretext to hide discrimination. (See example above)

DIRECT EVIDENCE OF EXCLUSIONARY POLICY UNDER TITLE VII, ADEA	
P.F. CASE:	Testimony or documentation evidence of an employment policy or practice to exclude CP from a job or otherwise adversely treat persons in CP's protected class
REBUTTAL:	ER disapproves discriminatory policy or practice, or proves statutory defense such as EFOQ

NOTE: *Under the ADA, an ER can justify a blanket policy that excludes persons with a particular covered disability if it can prove that the policy is job related and consistent with business necessity, and that the particular CP could not perform the job even with a reasonable accommodation.*

PROOF OF MIXED MOTIVES DEFENSE FOR DISPARATE TREATMENT	
P.F. CASE:	Circumstantial or direct evidence proves that discrimination against CP on the basis of his/her protected class was a motive in the challenged action
REBUTTAL:	ER is unable to discredit proof of discriminatory motive but attempts to prove it would have take the same action even without the discriminatory motive
RELIEF:	**Under Title VII, the ADA and the EPA,** ER is liable at minimum for injunctive relief and attorney's fees. If ER proves that the challenged action was also based on a legitimate motive and that this motive would have induced it to take same action regardless of the discrimination, it avoids liability for reinstatement, back pay or damages. If ER does not prove it would have taken the same action anyway, it is liable for full relief. **Note: The mixed motive theory is no longer available under the ADEA as the result of the Supreme Court decision in *Gross v. FBL Financial Services.*** Instead, the employee must establish that age was the "but for" cause of the employer's action.

AFTER ACQUIRED EVIDENCE OF LEGITIMATE MOTIVE FOR DISPARATE TREATMENT	
P.F. CASE:	CP proves either through circumstantial or direct evidence that discrimination was the true motive operating at the time of the challenged action.
RELIEF:	If ER proves that there was a legitimate basis for the challenged action that ER discovered after-the-fact and that this evidence would have induced it to take the same action regardless of the discrimination, the CP will usually not be entitled to reinstatement and other remedies will also be limited. Specifically, back pay and compensatory damages (other than damages for emotional harm) will be limited to the period prior to the discovery of the relevant evidence.

ADVERSE IMPACT UNDER TITLE VII	
P.F. CASE:	Neutral employment practice has disproportionate adverse effect on CP's protected class
REBUTTAL:	ER proves that challenged practice is job related and consistent with business necessity
ALTERNATIVES:	There is an alternative employment practice that would be substantially as effective but would have less adverse impact

ADVERSE IMPACT UNDER ADEA **(Note: The adverse impact theory of discrimination is available under the ADEA, but the scope of liability is narrower than under Title VII)**	
P.F. CASE:	Neutral employment practice has disproportionate adverse effect on older workers. CP must isolate and identify the specific employment practice(s) that are allegedly responsible for any observed statistical disparities.
REBUTTAL:	ER has to show that the practice is based on reasonable factors other than age. This is a different standard than that used under Title VII cases and narrows the scope of liability for the ER. As the Supreme Court noted: "Unlike the business necessity test [used in Title VII disparate impact cases], which asks whether there are other ways for the employer to achieve its goals that do not result in a disparate impact on a protected class, the reasonableness inquiry includes no such requirement."
NOTE:	The Office of Legal Counsel (OLC) is in the process of developing policy guidance on disparate impact under the ADEA. Investigators who encounter a possible ADEA disparate impact claim should consult with their Legal Unit. OLC is available for consultation as well.

DISCRIMINATORY QUALIFICATION STANDARDS AND SELECTION CRITERIA UNDER ADA NOTE: Investigators should refer to the ATTACHED February 9, 2009 OLC Memorandum "Issuance of Revised Advice to the Field on the ADA Amendments Act"	
P.F. CASE:	(1) CP has physical or mental impairment that substantially limits one or more major life activities (2) A neutral qualification standard or selection criterion screens out CP on the basis of his or her disability and CP satisfies the other job requirements
REBUTTAL:	(1) ER proves that challenged standard is job related and consistent with business necessity (2) ER proves that CP could not meet the standard with reasonable accommodation

III. OTHER FORMS OF UNLAWFUL DISCRIMINATION

EPA: SEX-BASED WAGE DISPARITY	
P.F. CASE:	(1) Unequal pay between CP and other employee(s) of opposite sex (2) The jobs at issue require substantially equal skill, effort and responsibility and are performed under similar working conditions within the same establishment
REBUTTAL:	Wage difference is based on a seniority, merit or incentive system, or on any other factor other than sex

TITLE VII: FAILURE TO PROVIDE RELIGIOUS ACCOMMODATION	
P.F. CASE:	(1) CP sincerely holds religious belief that conflicts with job requirements (2) CP informed supervisor of conflict and need for accommodations (3) ER failed to provide a reasonable accommodation
REBUTTAL:	CP's requested accommodation would result in more than minimal hardship to ER

ADA: FAILURE TO PROVIDE REASONABLE ACCOMMODATION NOTE: Investigators should refer to the February 9, 2009 OLC Memorandum "Issuance of Revised Advice to the Field on the ADA Amendments Act"	
P.F. CASE:	(1) CP has a disability under prongs on (a physical or mental impairment that substantially limits one or more major life activities) or two (a record of a disability) (2) CP notified ER of his/her disability and need for accommodation (3) There is an accommodation that would allow CP to participate in the application process; to perform the essential functions of the job; or to enjoy equal benefits and privileges of employment (4) ER failed to provide an effective accommodation
REBUTTAL:	The requested accommodation (as well as alternative effective accommodations) would pose an undue hardship.

RETALIATION	
P.F. CASE:	(1) CP opposed what CP reasonably and in good faith believed to be an unlawful employment practice or CP participated in the EEO process (2) ER subjected CP to adverse treatment (3) There was a casual connection between CP's protected activity and the adverse treatment (shown, e.g., by timing of adverse treatment soon after CP's protected activity)
REBUTTAL:	ER articulates a legitimate nondiscriminatory reason for the adverse action
PRETEXT:	Reasons advanced by ER are a pretext to cover retaliatory motive. Examples of such evidence: (1) reason advanced by ER is not believable (2) similarly situated individuals who did not oppose discrimination or participate in the EEO process were treated differently

HARASSMENT (on any protected basis)	
P.F. CASE:	(1) CP was subjected to unwelcome comments or conduct based upon his/her protected class status (2) The conduct resulted in a tangible job action or was sufficiently sever or pervasive to interfere with CP's work performance to create a hostile environment (measured by standard of reasonable person in CP's situation) (3) Basis exists for holding ER liable for harassment
REBUTTAL:	ER attempts to prove the harassment did not happen, or the CP welcomed the conduct, or it was not sufficiently severe or pervasive, or that it did not know about the harassment and therefore cannot be held liable.

LIABILITY (for supervisor/management harassment):

ER is automatically liable if the harassment resulted in a tangible employment action. If it did not, ER is still liable unless it proves that it took reasonable care to prevent and correct the harassment promptly and that the CP unreasonably failed to take advantage of any preventive or corrective opportunities provided by the ER

LIABILITY (for co-worker harassment):

ER is liable if it knew or should have known of the harassment and failed to take immediate and appropriate corrective action

LIABILITY (for non-employee harassment):

ER is liable if it knew or should have known are failed to take immediate and appropriate corrective action and ER had some control over the harasser

ATTACHMENT 2: PRIORITY CHARGE HANDLING PROCEDURES

INTRODUCTION

In order to more effectively implement the agency's mission of eradicating employment discrimination, and to address the growing backlog of cases, on December 1, 1994, Chairman Gilbert F. Casellas authorized a task force chaired by Vice-Chairman Paul M. Igasaki to conduct a "clean slate" review of the Commission's charge processing procedures.

On April 19, 1995, the Commission adopted a series of motions incorporating key recommendations of the task force. In addition, the Chairman announced a number of action items implementing the new procedures.

The new procedures are based upon the development of a national enforcement plan, which will provide a coordinated approach to achieving the agency's mission through investigation, conciliation, and litigation, in addition to technical assistance and public education. Central to the new approach is a charge prioritization system, the subject of this memorandum, which provides for the classification of charges into three categories: Category A (charges that fall within the national or local enforcement plans as well as other charges in which it also appears "more likely than not" that discrimination has occurred); Category B (charges where further evidence is required to determine whether it is more likely than not that a violation has occurred); and, Category C (charges subject to immediate dismissal). Category A cases will receive priority treatment; Category B cases will be investigated as resources permit; and, Category C cases will be dismissed.

The new standards give field personnel flexible procedures for processing charges, including discretion to decide the appropriate level of resources to be utilized for each charge and permitting settlement in appropriate cases. They place substantial decision-making authority in field offices and with front line investigators and attorneys. These priority charge handling procedures apply to both incoming charges and the charge inventory.

The Commission's actions are fully consistent with the President's National Performance Review which supports "reinvention" based on stakeholder input, greater responsibility for front line staff and reduced levels of administrative review. In addition, broad agreement exists among the agency's stakeholders; including representatives of employers, employees, and labor, civil rights and advocacy organizations, and the bar, as well as the agency's own staff, that such change is needed.

I. BACKGROUND: The Commission's and Chairman's April 19, 1995, Initiatives

The principal initiatives from the April 19th meeting are as follows:

1. National and Local Enforcement Plans.

The Commission will adopt a national enforcement plan to identify priority issues and set out a plan for administrative and litigation enforcement. Each district office will then develop a local enforcement plan to be reviewed by the General Counsel and Director of the Office of Program Operations for consistency with the national plan, and approved by the Chairman. Union and management, and field and headquarters staff, across-the-board, will be involved in the common effort to develop and implement the plans. Moreover, stakeholders' views regarding national and local priorities will be solicited in developing these plans.

2. Priority Charge Handling Procedures to Focus Resources on Charges with the Most Law Enforcement Potential.

Consistent with the priority charge handling procedures approved by the Commission, field offices will develop methods for classifying charges into three basic categories. As rapidly as possible, new charges as well as charges in the current inventory will be assigned a category and handled under the new procedures.

3. Rescission of the "Full Investigation" Policy.

The "full investigation" policy as well as the December 6, 1983, Commission resolution on which it was based, was rescinded. The investigation to be made in each case should be appropriate to the particular charge, taking into account the EEOC's resources.

4. End Use of Substantive "No Cause" LODs.

The Commission ended the use of the substantive "no cause" letters of determination in cases where an appropriate investigation has not established that a violation has occurred. Instead, the parties will be informed in a short-form determination that the investigation failed to disclose a violation. However, communication with CP's regarding the basis for the dismissal of their charges remains essential.

5. Rescission of the "Enforcement Policy;" Authorization of the Exercise of Prosecutorial Discretion in Litigation Decisions.

The Commission rescinded the September 11, 1984 "Statement of Enforcement Policy" that: 1) set forth a cause standard that was commensurate with a finding of litigation worthiness; and 2) required the litigation of all conciliation failures. Offices may now find violations and attempt conciliation in all cases where there is reasonable cause to believe that it is more likely than not that a statute has been violated -- whether or not the case is litigation worthy. In addition, the General Counsel has been delegated substantial prosecutorial discretion in deciding which cases to litigate and is encouraged to re-delegate that authority to the Regional Attorneys (RAs) to the maximum extent feasible.

6. Rescission of the Remedies Policy; Authorization of More Discretion in Settlement.

The Commission repealed the February 5, 1985 "Policy Statement on Remedies and Relief for Individual Cases of Unlawful Discrimination," which stated that the EEOC would not settle for less than full relief when there was reasonable cause to believe that a violation had occurred. The Commission unanimously approved the following motion:

That settlement efforts be encouraged at all stages of the administrative process and that the Commission may accept settlements providing "substantial relief" when the evidence of record indicates a violation or "appropriate relief" at an earlier stage in the investigation.

7. Procedures for Commissioner Charges and Directed Investigations.

The Chairman directed that:

New systemic cases developed in the field offices based on individual or Commissioner Charges shall not require prior approval or oversight of the investigation by the Office of Program Operations (OPO); and

Directors are encouraged to increase the use of directed investigations in ADEA and EPA cases. Requests for directed Commissioner charges in Title VII and ADA cases may be submitted directly to the Commission, and if signed by a Commissioner, shall be investigated like other charges, without OPO oversight of the investigation.

II. PRIORITY CHARGE HANDLING PROCEDURES IN PRIVATE AND NON-FEDERAL PUBLIC SECTOR CASES FILED BY CHARGING PARTIES

Set forth below is the framework for priority charge handling procedures in private and non-federal public sector cases filed by charging parties (CP's). It includes standards to be applied, revised charge receipt procedures, suggested investigative procedures to resolve the majority of charges more rapidly, and options for addressing the charge inventory, including the backlog. All priority charge handling procedures must take into account the agency's limited resources. However, this should be construed consistent with giving charging parties a fair opportunity to present their case.

The new procedures are effective as of June 13, 1995 and, where inconsistent with Volume I of the Compliance Manual, supersede the Compliance Manual guidance. Except as inconsistent with this document, Volume I of the Compliance Manual will continue as a guide, useful to the field staff in exercising its discretion.

A. PRIORITY CATEGORIZATION SYSTEM

Charges are to be classified into one of the three categories described below. Field offices may utilize subcategories within the three categories so long as the essential priority handling scheme is preserved and operates effectively.

Category A: **Enforcement Plan/Potential Cause Charges.**

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Category B: **Charges Requiring Additional Information.**

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Category C: **Charges Suitable For Dismissal.**

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B. CHARGE RECEIPT: INITIAL CASE CATEGORIZATION

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The charge receipt process, whether conducted in person, by phone or by mail, should include a CP interview conducted by experienced personnel who will counsel the CP and recommend an assessment or disposition of the charge.

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1. Charge Receipt Counseling

The following are essential elements of charge receipt counseling:

- The individual should be explicitly informed by charge receipt personnel that he or she has a right to file a charge and that filing the charge is necessary to preserve the right to file a private suit under Title VII, ADA, or the ADEA. The office should also explain to the individual that if a formal charge is filed, the EEOC must provide notice of the charge to the respondent. The individual should be informed about the risk of retaliation, that retaliation is itself a violation of federal discrimination law, and that a CP may amend a charge to include an allegation of retaliation.

- To enhance the explanation of our processes, a notice taking into consideration the particular needs of an office and the communities it serves should be given to potential CPs. It should also inform CPs, in an accessible format, of what they may expect during the processing of their charge. We will be working closely with appropriate offices to develop and disseminate model notices as soon as possible. The field will be provided forms in languages other than English to meet the needs of their particular communities. Consideration is also being given to the development of videos and other formats for providing the necessary information.

- Potential CPs should not be discouraged from filing a charge. Where, based on the initial interview, the charge appears to be weak, the CP should be told that and counseled about our process. If the CP wishes to file a charge, he or she should be told that it will be served on the respondent and might be dismissed at or shortly after that time. While the number of charges filed will be less critical to our operations than previously, because now the resources devoted to each charge will depend on its merits, staff must remain cognizant that the decision regarding whether to file is very important to the CP and must be made by the CP. Additional guidance will be forthcoming on this issue.

- Charge receipt staff should give CPs their best initial assessment of the evidence. This assessment will assist CPs in making an informed decision about whether and how to proceed. In addition, such assessment will enable CPs to assist more efficiently in the development and investigation of their charge.

- Throughout this process it is vital to convey fairly and honestly to potential CPs the status of their case, how it fits into our new procedures, and what they can expect to happen.

2. Prompt Charge Assessment

Efforts should be made to assess as promptly as possible new charges after they are filed (or for mail and telephone charges, during the period the charge is being perfected).

In connection with charge assessment, offices should consider the following guidance:

- Offices may provide literature and questionnaires asking for information relating to statute, basis, and issue to potential CPs as an aid to effective intake interviewing.

- Offices should consider the use of an appointment system for charge receipt.

- Charge receipt staff should assemble intake notes/memoranda to the file, gathering as much information as necessary to facilitate priority charge assessment. Affidavits or declarations may be taken at the discretion of the office when they serve an investigative purpose. For example, obtaining an affidavit or other statement at the charge receipt stage or shortly thereafter, regarding matters within the CP's knowledge, may preserve valuable evidence and save investigative resources later on.

- The inclusion of information on the charge form sufficient to allow Respondents to adequately respond to the charge, or a Request for Information ("RFI") if one is issued, can expedite charge processing.

- Pursuant to 29 CFR § 1601.15(b), the office may require in appropriate cases that the CP provide a statement that includes: each specific harm the person has suffered and the date on which each harm occurred; for each harm, a specification of the act, policy, or practice that is alleged to be unlawful; and for each act, policy, or practice that is alleged to have harmed the person, the facts that lead the person to believe that the act, policy, or practice is discriminatory.

- In limited cases, calls to respondents or witnesses during charge receipt may be helpful to explore settlement or gather information. While this practice will not always be appropriate, pursuing such opportunities may save resources and/or benefit a party. For example, if contacted during charge receipt, a witness may or may not verify a CP's version of the facts or an employer might have second thoughts about a recently taken adverse action.

(b)(5);(b)(7)(E)

4 lines of text redacted.

- Offices should develop effective attorney referral procedures, including lists of attorneys who can aid those who wish to bring suit. The question of appropriate referrals of CPs to advocacy and civil rights groups will be addressed as part of the communications plan which will be disseminated as soon as it is available. At a minimum, it is important to assure that any group to which a CP is referred is aware of the changes to the charge processing system and has the resources and is otherwise able to assist CPs.

C. CATEGORIZATION OF EXISTING CHARGE INVENTORY

Field offices should categorize pending charges according to the same priority handling standards set out in this memorandum. As promptly as possible they should (b)(5);(b)(7)(E) - 12 words redacted.

The staff who have been assigned charges are most familiar with the contents of the file. As a result, supervisors and investigators should normally prioritize the cases in their own inventories. Field managers can support the process by providing staff with definitions and benchmarks based on local conditions and continuing guidance for prioritizing the caseload into categories.

D. INVESTIGATION AND PROCESSING AFTER INITIAL CATEGORIZATION

1. Investigation

The investigation to be made in each case should be appropriate to the particular charge, taking into account the EEOC's resources. In general, an appropriate investigation is one where the field office determines that a statute has been violated or that there is sufficient information to conclude that further investigation is not likely to result in a finding that there is reasonable cause to believe that a statute has been violated.

(b)(5);(b)(7)(E)
5 lines of text redacted.

As soon as practicable after receipt of a position statement or a response to a RFI, the office should decide whether to take further investigative or settlement action. (b)(5);(b)(7)(E) - 1 sentence redacted.

While this document is not intended to address in detail the investigation of charges, the following guidance addresses particular issues regarding investigations in the context of charge prioritization.

a. Offices should determine how decisions will be made about the scope and limitations of investigations, including the specific practices and/or policies to be addressed as well as the time period to be covered.

b. A thorough statement of the information provided by the CP should be contained in the file. This information may be in the form of a memorandum to the file, the CP's affidavit, the CP's responses to a questionnaire, and/or intake notes setting out all the relevant CP information. The focus is on substance, not on whether a particular type of document is in the file.

c. Offices should eliminate forms and documents that are unnecessary or duplicative

(b)(5);(b)(7)(E)
5 lines of text redacted.

d. The Chairman has directed that charging parties and respondents should normally be provided with access, upon request, to the positions of the other. This exchange, including documents as appropriate, should permit the parties to narrow the issues, encourage them to resolve disputed facts, and reduce the burden on the office in handling FOIA/§ 83 document requests.

e. For those cases that have been pending for several months since contact with either party, the office should communicate with the parties, by phone or in writing, a brief report on the status of the case.

f. (b)(5);(b)(7)(E) - 1 sentence redacted.

g. (b)(5);(b)(7)(E) - 9 words redacted. RFIs tailored to the particular charge should be used.

2. Continuing Priority Assessment

(b)(5);(b)(7)(E) 2 lines redacted.

E. SETTLEMENT OF CHARGES

(b)(5);(b)(7)(E)
9 lines redacted.

(b)(5);(b)(7)(E)

8 lines of text redacted.

F. DETERMINATIONS

(b)(5);(b)(7)(E)

19 lines of text redacted.

(b)(5);(b)(7)(E)

6 lines of text redacted.

3. Requests for Reconsideration

Many parties request reconsideration of the resolutions of their charges. The EEOC has no statutory or regulatory duty to act on these requests, and Directors may decline to review such requests unless the CP presents substantial new and relevant evidence or a persuasive argument that the EEOC's prior decision was contrary to law or the facts.

(b)(5);(b)(7)(E)

6 lines of text redacted.

G. SPECIFIC ISSUES

1. Expedited Subpoena Issuances

The field can expedite the issuance of subpoenas from Area and Local Offices by using FAX, BBS, or teleconference procedures.

2. Title VII/ADA Notice of Right to Sue (NRTS) Issued on Request; ADEA § 7(d) Conciliation on Request

Cases where a Title VII/ADA CP has requested a Notice of Right to Sue (NRTS) prior to 180 days from filing may generally be closed and an NRTS issued if the Director has certified that processing cannot be completed within 180 days. All but a handful of district courts recognize jurisdiction over these cases. If a court subsequently dismisses the case because of the early NRTS, however, the case should be reopened. In addition, regulations permit an NRTS to be issued in any case on request after 180 days

(b)(5);(b)(7)(E)

3 lines of text redacted.

ADEA charges generally may be closed with the issuance of a notice of dismissal or termination at the request of the CP prior to 60 days from filing after a § 7(d) conciliation attempt.

(b)(5);(b)(7)(E)

2 lines of text redacted.

3. CP Has Sued on the Same Issue under State Law or on a Different Basis

Occasionally, CPs file suit on the same basis (such as race or age) under State law or challenge the allegedly discriminatory act on a different basis (e.g., as a contract or constitutional violation).

(b)(5);(b)(7)(E)

5 lines of text redacted.

4. ADEA Charges Filed More Than 180/300 Days after Date of Violation

Under both the current and the new procedures, when an ADEA CP files a charge more than 180/300 days from the DOV, absent equitable considerations, such charge is untimely for purposes of preserving private suit rights. The CP should be informed that if he or she chooses to file, the charge will be dismissed. CPs should be informed of the timeliness problem if they want to consider pursuing their private suit rights.

5. Bankrupt Respondents

(b)(5);(b)(7)(E)

6 lines of text redacted.

H. CONTINUED COMMUNICATION WITH STAKEHOLDERS

Currently, EEOC expends substantial resources responding to complaints from parties regarding the handling of their cases. It is reasonable to believe that the number of complaints may temporarily increase with adoption of priority charge handling procedures, since many charges will likely be dismissed within a relatively short period of time after filing. The success of the new procedures will depend on a full understanding by both internal and external stakeholders that the field has the discretion to make a wide variety of processing decisions, why these new procedures were implemented and how they will affect both charging parties and respondents.

To this end, the EEOC will pursue a more active role in stakeholder education. Further guidance on education and outreach will be disseminated shortly. Guidance on the appropriate handling of correspondence is also being developed and will be distributed as soon as it is available.

I. MANAGEMENT OPTIONS

1. Processing of Pending Inventory, Including Backlog Cases

It is critical that the agency deal with its charge backlog as expeditiously as possible in order to restore its credibility as a law enforcement agency. Moreover, the backlog requires substantial resources just to maintain the status quo and results in unmanageable burdens on investigators and other staff. It is no longer acceptable to permit the backlog to drive our law enforcement priorities.

Offices are encouraged to develop approaches for handling charges that meet their particular needs. The following are examples of management options that may be considered:

Field offices may, in their discretion, handle older cases as a priority on a temporary basis (b)(5);(b)(7)(E) 9 words redacted. Dedicated teams could be formed, or pending charge assignments could be made to individual employees. Such cases could be assigned to professional staff as appropriate.

Pending charges may be transferred from one office to another, applying procedures similar to those for transferring hearings cases, provided that the receiving field offices can absorb them without substantially interfering with their own enforcement plans.

Notices could be sent to (b)(5) 2 words redacted (b)(7)(E) CPs who have not been contacted recently to determine if they want to proceed. If the CP does not wish to proceed a withdrawal might be appropriate or a NRTS could be issued. In addition, if the CP fails to provide requested necessary information, fails or refuses to appear or be available for interviews, or otherwise fails to cooperate, after due notice and 30 days in which to respond, the office may dismiss the case and issue a NRTS. If the CP wants to go forward, the office should review options with the CP, including settlement as well as a review of evidence which may have been developed.

The office can "troubleshoot" the inventory for cases that can be dismissed either for lack of jurisdiction or on the merits.

The office could conduct expedited fact-finding conferences.

The office could "stand down" for all purposes other than taking charges in order to work on older cases or hold a "settlement week."

(b)(5);(b)(7)(E)
3 lines of text redacted.

(b)(5);(b)(7)(E)
2 lines of text redacted.

2. Improved Coordination between Enforcement and Legal Staff

(b)(5);(b)(7)(E)

5 lines of text redacted.

3. Potential Additional Options

(b)(5)

7 lines of text redacted.

III. PROCEDURES FOR COMMISSIONER CHARGES AND DIRECTED INVESTIGATIONS

A. INTRODUCTION

In his April 19, 1995 announcement of steps to implement recommendations of the charge processing task force, the Chairman reasserted the importance of Commissioner Charges and directed investigations as part of the EEOC's enforcement mission. In addition, he mandated the development of new, streamlined procedures for the approval of Commissioner Charges and the conduct of the resulting investigations. This section provides the information necessary to carry out these directives. As with other sections of this memorandum, it supersedes instructions currently in Volume I of the Compliance Manual regarding headquarters supervision of these charges but should otherwise be read in conjunction with the guidance in the Compliance Manual.

B. BACKGROUND

Enforcement of Title VII, the ADEA, the EPA and the ADA is not limited to charges filed by individuals. In the absence of an individual charge, a Commissioner may initiate action under Title VII or the ADA through a "Commissioner charge," while field directors and the director of OPO have the authority to initiate "directed investigations" in ADEA and EPA cases. Commissioner charges and directed investigations are integral to EEOC's law enforcement mission and are an important complement to the enforcement of the law through individually initiated charges. They recognize that some types and incidents of illegal discrimination will not be the subject of individual charges but, nonetheless, constitute serious violations of the laws that should be the subject of enforcement action.

For example, discrimination against members of underserved communities may not be reflected in individually filed charges for the precise reason that members of such communities are not aware of their rights and/or of the processes available to pursue those rights. Persons not hired for discriminatory reasons may not be aware of why they were not offered a job, or that discrimination may have been a factor, and therefore fail to file a charge. Other discrimination victims may be too frightened to file an individual charge. Or, an individual may be jurisdictionally barred from filing a charge even though the evidence shows that the underlying discriminatory policy or practice persists.

C. GENERAL PROCEDURES

1. Identification of Potential Commissioner Charges and Directed Investigations

The identification and development of Commissioner Charges and directed investigations should be consistent with the priorities in the national and local enforcement plans. Such charges and investigations may involve systemic discrimination issues as well as individual discrimination. They may be of broad or limited scope but will typically involve priority and/or novel issues.

2. Development of the Charge and/or Investigation

Field offices should determine the scope and limitations of the recommended Commissioner charge or directed investigation, including the practices and policies to be addressed as well as the period to be covered by the charge and investigation.

3. Management of Directed Investigations

Directed investigations under the ADEA and EPA will be managed entirely at the field office, in accordance with the same principles applying to individually filed charges.

4. Commissioner Charges

a. The Charge Proposal

(b)(5);(b)(7)(E)

9 lines of text redacted.

(b)(5);(b)(7)(E)

2 lines of text redacted.

b. Submission of the Charge Proposal

(b)(5);(b)(7)(E)

4 lines of text redacted.

c. Investigation and Disposition of Commissioner Charges

Field Offices should investigate Commissioner Charges in the same manner as individually filed charges, without headquarters supervision. Field offices can settle, decide and conciliate these charges in the same manner as other cases.

(b)(5);(b)(7)(E)

- - 2 lines of text redacted.

Commissioners should be notified of the resolution of charges they have filed.

IV. CONCLUSION

This memorandum on priority charge handling is designed to begin the implementation of the motions adopted by the Commission on April 19, 1995 and the Chairman's action items of the same date. The guidance and procedures it incorporates will assist the agency in more effectively carrying out its mission of eradicating employment discrimination through a coordinated strategy of investigation, conciliation, litigation, technical assistance and public education.

ATTACHMENT 3

(b)(5);(b)(7)(E)

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ATTACHMENT 4:

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ATTACHMENT 5:

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ATTACHMENT 6: GROUPWISE CALENDAR

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ATTACHMENT 7: EMAIL POLICY

U.S. EQUAL EMPLOYIVIENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of the Chair

MEMORANDUM

To: All Employees

From: Anthony Kaminski
Chief Operating Officer

Re: Required Printing and Filing of E-mails as Official Agency Records;
E-mail Non-deletion Requirements

The purpose of this memorandum is to re-confirm and remind you that all employees are required to print and file e-mail when such e-mail constitutes an official agency record. Additionally, this memorandum outlines the Commission's new practice regarding the automatic archiving of e-mail. Finally, it supersedes a 1997 memorandum from the Executive Director.

I. PRINTING AND FILING E-MAIL

The Commission's record-keeping obligations are governed by the Federal Records Act (FRA), as administered by the National Archives and Records Administration (NARA). According to the FRA, a "record" includes:

> [A]ll. . . machine readable [i.e., electronic] materials or other documentary materials . . . 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 . . . 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.

44 U.S.C. § 3301. Thus, the two elements of a federal record are that the material 1) is produced or received in connection with the transaction of public business and 2) is appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government.

Based upon this statutory definition of federal records, as well as NARA regulations and schedules issued to assist in applying the statutory definition, we can classify e-mails into one of three categories:

1. E-mail which is not produced or received in connection with the transaction of public business and which is not appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government (**"Non-business E-mail"**);

2. E-mail which is produced or received in connection with the transaction of public business, but is not appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government (**"Business E-mail that is not a Federal Record"**); and

3. E-mail which is both produced or received in connection with the transaction of public business and appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government (**"Business E-mail that is a Federal Record"**).

These categories and employees' responsibilities for each category of e-mail are discussed below.

NON-BUSINESS E-MAIL

Print? - No.
Delete? - Yes, as soon as possible.

An e-mail which does not satisfy element (1) of the FRA definition - it is not connected to the transaction of Commission business - need not be printed. In fact, Non-business E-mail should be deleted immediately from the Commission's system by deleting it to Trash, which is automatically emptied from the system after seven days. Deleting Non-business E-mail from the system will lessen the storage requirements of the Commission's system. Examples of Non-business E-mail include e-mails which address only your personal affairs, e.g., family matters, social events, scheduling of personal appointments, and solicitations/announcements to you from non-government sources which address your personal professional development or your personal financial matters. In summary, this type of e-mail which is personal to you or otherwise unrelated to Commission business does not meet the FRA's definition of federal records and therefore should be deleted from the computer system as soon as possible without being printed or otherwise retained as part of the Commission's official records.

BUSINESS E-MAIL THAT IS NOT A FEDERAL RECORD

Print? - No.
Delete'? - No.

E-mail which is connected with Commission business, but which does not satisfy element (2) of the FRA definition - it is not sufficiently important to serve as long-term evidence of Commission organization, functions, policies, etc. - need not be printed. NARA has defined this type of e-mail in its General Record Schedule 23, paragraph 7 as e-mail messages "of short-term (180 days or less) interest. . . which have minimal or no documentary or evidential value." Examples of such e-mail would be suspense/tickler files, "to-do" lists, routine notification of meetings, scheduling trips or scheduling activities, notices of holidays, charity or welfare fund appeals, bond campaigns and similar quasi-official notices, letters of transmittal if they do not add substantive information, and routine requests for information which require no administrative action, policy decision or special research for reply. Therefore, you do not have to print and file this type of e-mail. **HOWEVER, DO NOT DELETE THESE NON-RECORD E-MAILS TO TRASH**. They must be electronically archived pursuant to the Commission's new e-mail archiving practice, as explained in the final section of this memorandum.

BUSINESS E-MAIL THAT IS A FEDERAL RECORD

Print? - Yes.
Delete? - No.

An e-mail which satisfies both elements of the FRA definition - connected to Commission business and sufficiently important to memorialize organization, functions, policies, etc. – must be retained in the Commission's official and NARA-approved paper record-keeping system. Therefore, you must print and place this type of e-mail in the appropriate paper file. In other words, this type of e-mail must be filed in the same manner as any other paper record maintained by the EEOC in accordance with the provisions of the FRA and EEOC Order 201.001. Be aware that for agency record purposes, e-mail attachments must be saved and printed as well. After printing the e-mail for filing in the appropriate Commission file, **DO NOT DELETE THE EMAIL INTO TRASH**. Although the Commission will maintain the printed paper copy in the Commission's official records, we are also preserving the electronic version of Business E-mail that is a Federal Record in accordance with the Commission's new e-mail archiving practice described below.

II. NEW E-MAIL ARCHIVING PRACTICE

The Commission previously deleted all non-archived e-mail from the system network once a month if the e-mail was over 90-days old. The Commission is changing this practice in order to support the Commission's compliance with discovery obligations under the Federal Rules of Civil Procedure. This change, by which the Commission will retain

the electronic version of all Business E-mail, will be implemented by a permanent software solution in the coming months. That final software solution will make the archiving of all Business E-mail a virtually automatic process. Until that final software solution is implemented, however, all employees should preserve their Business E-mail and destroy their Non-business E-mail as follows.

First, all Non-business E-mail (such as the personal e-mail as described in the prior "Non-business E-mail section) should be deleted into Trash as soon as possible. Non-business e-mails should never be archived. Any currently archived Non-business e-mails should be deleted into Trash, which is emptied as it becomes seven days old. Deleting any e-mail into Trash means that it will be emptied from the system.

Second, all Business E-mail, regardless of whether it is a Federal Record, must be preserved. There are two ways by which a Business E-mail can be preserved. One option is to manually archive your Business E-mail. Archiving is accomplished by highlighting the e-mail which you wish to archive, right-clicking on your mouse and then clicking on "move to archive." This option has the advantage of keeping your mailbox uncluttered. The second option for preserving Business E-mail is to leave it in your mailbox. It will be automatically archived when it is 90 days old. Once archived, you will have access to your archived e-mail.[1] **DO NOT DELETE BUSINESS E-MAILS TO TRASH BECAUSE THEY WILL THEN BE EMPTIED FROM THE SYSTEM WHEN THEY ARE SEVEN DAYS OLD.**

If you have any questions on printing e-mails, please contact your office's Information Technology Specialist/Computer Assistant or the Office of Information Technology Help Desk at OIT.HELPDESK@EEOC.GOV or call 202-663-4767, 202-663-7193 TTY.

[1] There are two ways to access your archived items from the main window of GroupWise: (1) click “File” and then click “Open Archive” or (2) click “Online” (above the folder list) and then click “Archive.” For more detailed information regarding GroupWise archiving, go to InSite and then successively click on “Technology,” “KnowIT-Knowledgebase,” FAQ Question “How do I save my GroupWise email messages longer than 90 days?”