

PUTTING RECORDS MANAGEMENT TRAINING INTO PRACTICE

Ethel J. Abeita
Director, Office of Trust Records
Office of the Special Trustee for American Indians
U.S. Department of the Interior

Presented at
RACO Atlanta 2008
September 9, 2008

PUTTING RECORDS MANAGEMENT TRAINING INTO PRACTICE

1. Background

The Office of Trust Records (OTR), Office of the Special Trustee for American Indians (OST), was established in 1999 to develop and implement a program for the economical and efficient management of trust records, consistent with the American Indian Trust Fund Management Reform Act of 1994, the Federal Records Act, National Archives Records Administration (NARA) regulations, Department of the Interior (Interior) policies and procedures and OTR directives and policies and procedures. The OTR records management program has been developed and implemented, and continues to evolve, to ensure that necessary Indian records are maintained, records retention schedules are consistent with retention needs, and records are safeguarded throughout the life-cycle. OTR has overall responsibility and authority for establishing and directing both the Bureau of Indian Affairs (BIA) and the OST Indian Affairs Records Management Program, including recordkeeping requirements.

Interior has had numerous lawsuits filed against it by individual Indians and Tribal Governments. Access to records became an issue for both the Federal Government in defense of the lawsuits as well as the Plaintiffs in prosecution of their cases. As with many other federal agencies, the BIA and the OST have not had full time records officers or managers for many years. Generally, administrative staff or clerical support personnel were assigned the responsibility for managing records as a collateral duty. There was no on-going program to train these employees in records management responsibilities. Litigation filed by Indian Tribes and individual Indians against the Department of the Interior resulted in record “freezes” affecting the BIA and OST programs.

A lawsuit, currently styled *Cobell, et al., v. Kempthorne*, Civ. Action No. 96-1285 (JR), U.S. District Court for the District of Columbia, (*Cobell*) was filed by individual Indians against then Secretary Babbitt. Records required to defend Interior were very difficult to find. In addition to approximately 40,000 boxes of inactive records stored in the various regional Federal Records Centers (FRCs), there existed an unknown backlog of inactive records stored at BIA agencies and regional offices.

2. Records Management Issues to Address and Approaches Taken

Records or the inability to find supporting records became a central focus of the *Cobell* litigation. The court appointed a special master to oversee implementation of records reform and to investigate record keeping practices of the BIA and OST. Because of the high profile of this case in Interior, direct supervision of OTR was transferred to the Assistant Deputy Secretary, Office of the Secretary, in 2002. A work plan was developed setting forth specific goals to address the major deficiencies perceived by the federal court. These goals included: establishing records retention schedules; establishing and implementing record keeping requirements that allow for record retrieval on an as needed basis; ensuring records are safeguarded at all locations; implementing records

management training programs; implementing an on-going evaluation of Indian programs' records management; establishing a program to meet trust and other record retrieval needs of customers and document production requests; and to report on progress on these items to the special master.

A. Establish Records Retention Schedules

The records retention schedules for the Bureau of Indian Affairs (16 Bureau of Indian Affairs Manual – BIAM) had not been updated since 1989. Many newly created programs did not have schedules developed and of course, existing programs had outdated schedules. The OST had adopted portions of the 16 BIAM applicable to Indian fiduciary trust financial records. Otherwise, schedules were nonexistent in OST. OTR worked with the BIA and OST to update the existing trust program records retention schedules in the 16 BIAM (approved by the Archivist in November 2003), to develop the Indian Fiduciary Financial Trust Record Schedule (approved by the Archivist in December 2003) and the new business systems established under the Fiduciary Trust Model for OST.

One of the first things that needed to be developed was a tool to assist not only OST and BIA identify Indian fiduciary trust records but to enable all agencies within Interior to do so as well. A series of questions were developed to help identify trust records. A set of decision trees were then developed. Using the appropriate decision tree, records which clearly met the criteria of an Indian fiduciary trust record could be readily identified. The decision trees were published in the Departmental Manual on September 5, 2003, 303 DM 6 - Indian Fiduciary Trust Records. All Interior agencies are expected to use the appropriate decision tree if personnel are unsure as to whether a particular document is an Indian fiduciary trust record. Additionally, the Office of the Secretary required that all Interior agencies identify any trust records they create, receive and /or maintain and to ensure their records retention schedules clearly identified all such records as permanent.

Today, all programs within BIA and OST now have paper records retention schedules with the latest approvals received from the Archivist in 2007. OTR continues to work with BIA and OST on developing retention schedules for electronic systems. OTR is now in the process of consolidating all Indian Affairs records retention schedules into a single volume entitled the "Indian Affairs Records Manual". This manual will include all Interior agencies with Indian fiduciary trust records and will list the records series identified by each agency.

B. Establish and Implement Recordkeeping Requirements that Allow for Record Retrieval

In order to produce records relevant to the *Cobell* lawsuit, records pertaining to individual Indian money accounts (IIM accounts) were collected from BIA and OST field offices and shipped to Albuquerque, New Mexico. There were well over 42,000 boxes of records located in Albuquerque in 2002. These boxes were stored in OST rented warehouses. Many of these boxes had been recalled from Federal Records Centers

(FRC) across the country. As account reconciliation and production of documents progressed, it was unknown whether the contents of the boxes remained intact after files had been removed for research or production purposes.

In order to ensure the accuracy of box contents and develop a record retrieval system that would inform Interior about the documents in the collections, it was decided that an electronic database that could employ a search engine was necessary. OTR worked with a contractor to develop the database. The volume of the records to be input into the database also required the services of the contractor. The database is called the Box Index Search System (BISS) – this electronic database contains, at a minimum, file folder label information for every folder in the box. The BISS is used daily to identify boxes which may contain records that are potentially responsive to any requests for records stored at the American Indian Records Repository (AIRR). As of July 2008, information on the contents of 178,600 boxes had been entered into the BISS. The BISS is a Privacy Act system of records and has been published as such in the Federal Register.

OTR placed records management specialists at the 12 BIA regional offices to assist BIA, OST, and Tribal Government employees on a daily basis. These specialists are referred to as Regional Records Liaisons (RRLs). This assistance includes helping OST and BIA personnel in properly identifying all active and inactive records. They provide oversight in retirement of inactive records. The updating and development of records retention schedules has assisted program offices to readily identify active trust records. This has resulted in records being readily accessible to agency personnel. OTR provides instruction on a daily basis to OST and BIA personnel on the proper labeling of files for active records.

C. Safeguard Records

Two major programs were undertaken in order to safeguard active records. OTR has furnished filing equipment with a one hour insulated fire rating up to 1700 degrees to BIA, OST and tribal programs that create and maintain trust records. To date, over 4,980 pieces of equipment have been furnished. OTR required program offices to ship inactive trust records to AIRR before they could receive new filing equipment. This program has been quite successful.

A major undertaking to safeguard inactive trust records was achieved through an agreement entered into with NARA to build AIRR, a state of the art records storage facility, in Lenexa, Kansas. The facility was opened in May 2004. It was built using NARA archival quality storage standards and is managed by NARA under the agreement. The agreement was recently modified to include storage of Tribal Government records should any Tribe wish to store records in AIRR. Interior agencies with Indian fiduciary trust records may also store those records at the AIRR.

One of the objectives of Interior was to consolidate all Indian Affairs records in one location, not only for safeguarding purposes, but in order to provide easy records retrieval when necessary. Previously, with Indian Affairs records located across the United States

in various FRCs and it was very difficult to timely produce documents necessary for litigation. OTR collected relevant Indian Affairs records from the various regional FRCs and BIA field offices to respond to requests for production in the *Cobell* and other tribal trust litigation. However, after these boxes were collected, the *Cobell* court ordered that all records remain at their then current locations. This created a major backlog of inactive records in remote BIA locations putting these records into jeopardy due to inadequate storage conditions. OTR worked with the Assistant Deputy Secretary to develop policies and procedures that would enable OTR to move inactive records. These procedures were agreed to by the special master in 2004. The procedures put into place have very specific criteria for moving any Indian Affairs records and today these procedures apply to all Interior agencies that wish to retire inactive Indian fiduciary trust records. With the policies and procedures agreed upon, over 42,000 boxes of records collected from the BIA regional and agency offices that were housed in Albuquerque were sent to AIRR. Additionally, records held in the various FRCs were also relocated to AIRR.

As records have been brought in from remote locations, OTR has occasionally contracted with a conservationist and other commercial entities specializing in the recovery of damaged records to clean and repair records affected by adverse conditions. Obviously, records stored in less than desirable conditions while in isolated and remote locations were not always in good shape. OTR has worked with the General Services Administration to clean some of the records as well.

This centralization, along with the BISS, have made it possible to timely meet requests for production, provides one central location for parties to conduct their research of documents necessary to their cases, and ensures that Interior is safeguarding all the documents. No original Indian Affairs records are allowed to leave the facility; only copies are provided, either by scanning or xerox copies. Access must be authorized by the OTR Director and each researcher must attend a record handling instruction class prior to being allowed to access records.

In a memorandum issued by the court, on August 8, 2008, in the *Cobell* case, the court noted that one of the benefits of the litigation was the repository and the tools that have been developed to use the records. Specifically, the court stated: “But the benefits of the litigation are manifest: not only has the present and future reliability of the Indian trust system greatly increased, but the repository at Lenexa and the technological tools that have been developed to examine historical transactions have created a wellspring of information from which scholars will continue to learn about the history of the Indian trusts, Indian lands, and Federal-Indian relations.” *Cobell v. Kempthorne*, No. 96-1285, 2008 WL 3155157, at *28 (Aug. 8, 2008, D.D.C.).

D. Implement a Records Management Training Program

Another major undertaking by OTR was to train BIA and OST personnel on their responsibilities for complying with recordkeeping requirements under the Federal Records Act and the requirements imposed by the *Cobell* court and other tribal trust

litigation. First, records management policies and procedures had to be put in place that would provide guidance on these requirements. OTR completed the Indian Affairs Records Management Manual in 2004, incorporating specific requirements for handling Indian fiduciary trust records. OTR then developed its training manuals and materials and began training BIA and OST personnel in 2004.

BIA and OST managers were required to identify a “records contact” for each program office. The “records contacts” are required to attend records management training provided by OTR. Since the implementation of the training program, over 4,000 BIA and OST records contacts and tribal employees have been trained. The records contacts are responsible for assisting other personnel in their respective offices with records management responsibilities.

At the request of Tribal Governments, OTR provided basic records management training for over 80 tribal governments last fiscal year. This year, OTR has worked with 98 tribal governments to provide this training. OTR has also entered into agreements with certain Tribes to assist in the development of records management programs for their offices. These Tribes are generally those which are carrying out programs contracted from the BIA or OST and require record keeping responsibilities.

OTR established and funds records management courses at the Haskell Indian Nations University (HINU) and the first class was offered in the Fall Semester 2004. Over 120 students have successfully completed this program. As HINU is approximately 30 miles from AIRR, OTR established internships at AIRR during the school year. Students gain “hands on” records management experience and work directly with OTR staff. During the summer months, OTR hires students under the Student Temporary Employment Program at Lenexa. This past summer, 11 students participated in the program. Two of the students were able to travel to work with RRLs at field locations. One worked with the RRL in providing assistance to a tribal government office and the other worked in an OST field office. This experience has demonstrated the potential for employment with both federal and tribal governments to these students. A goal of this program has been and is to provide a cadre of individuals with records management experience who can work with federal and tribal governments. OTR has hired two former students as full time employees at AIRR.

OTR has assisted Interior’s Records Officer to develop and implement computer based training that includes a module on Indian fiduciary trust records and continues to work with the Departmental Records Office on E-Government issues.

In August 2008, OTR held its First Annual Records Management Conference. The conference was well attended by BIA, OST and tribal employees. Attendees numbered 130 individuals. Very favorable comments have been received by OTR.

E. Implement an On-going Evaluation of Indian Programs

OTR was initially responsible for evaluation of records management programs of all BIA and OST offices. OTR developed the criteria for conducting site assessments and this is incorporated in the Indian Affairs Records Management Manual. However, it was determined that an entity other than OTR should be conducting the records program assessments and in 2004, this function became the responsibility of the OST Office of Trust Review and Audit (OTRA). OTRA conducts evaluations of records management in OST and BIA trust program offices and the Office of the Chief Information Officer (OCIO), Office of the Assistant Secretary – Indian Affairs (ASIA), evaluates the rest of the BIA programs. OTRA and the ASIA OCIO issue written reports of their findings. If a corrective action plan must be initiated, OTR records management specialists work with the programs to assist in bringing the programs into compliance.

F. Establish a Program to Meet Trust and other Record Retrieval Needs of Customers and Document Production Requests

All of the programs described above were designed to establish a program that meets trust and other record retrieval needs of customers and to provide ready access to documents necessary for litigation. The Indian Affairs Records Management Manual provides guidance on how to handle every aspect of a record's lifecycle. OTR provides continuous training on records management, monitors implementation of records schedules, assists to repair when damaged records are found, and assists programs that are notified of corrective actions that must take place to bring the program into compliance with record keeping responsibilities. OTR has provided fire resistant filing equipment to many BIA, OST and tribal programs to safeguard Indian fiduciary trust records. The IARMM incorporates procedures on retiring inactive records and how to ship them for retirement.

Every box of inactive records sent to AIRR is indexed and the data stored in the Box Index Search System. Research of over 178,600 boxes is conducted using a search engine and average turnaround time in response to a research request is less than two days. OTR responded to over 2,660 research requests last fiscal year and provided over 183,770 copies of documents in response to the requests. The response rate associated with requests for production related to litigation has greatly improved as more and more records are entered into the BISS.

G. Reporting on Progress to the *Cobell* Court

Every month, OTR files a monthly activity report with the *Cobell* court. OTR reports on progress in collection of the inactive records backlog, indexing and development of trust record schedules. As improvements and changes to the records management programs at BIA and OST have been made, there has been less to report. Records Retention Orders have been entered in eight on-going tribal trust litigation cases. Inactive records related to these eight tribes are now to be held at their current locations and notice given to tribal attorneys before any inactive records can be retired. Once this provision has been complied with, records can then be moved to AIRR. However, this process can take months to complete. As more tribal trust cases are filed, the potential for the backlog of inactive records being held in the field increases and with that comes the potential for records in jeopardy situations.

3. Conclusion

In October 2005, supervision and management of OTR was transferred back to the OST Chief Information Officer, as OTR accomplishments had resulted in significant advancements in Indian Affairs records management programs at OST and BIA. This work continues today under the leadership of the OST CIO.

Records management reforms have taken a number of years to implement and is on-going. OTR has developed records retention schedules that reflect the need of the current programs at BIA and OST. It has collected and indexed over 178,600 boxes of inactive records from BIA and OST field locations and made those records available for research and litigation production. OTR continues to assist BIA and OST program in meeting recordkeeping requirements for active records through its records training program, location of RRLs in the field offices, and by providing assistance in addressing corrective action plans. It also provides access to records at the AIRR while ensuring that the records are safeguarded.

The NARA staff has provided substantial assistance to OTR in achieving these goals. We have worked with Jason Baron, NARA General Counsel, staff in the Life Cycle Management Division in College Park, particularly Yvonne Wilson, on records retention schedule development and securing approval from the Archivist; John Allshouse and RoseMarie Weisz on the build out and operation of the American Indian Records Repository in Lenexa, Kansas, and with a variety of special needs related to the records stored at AIRR; and Robin Riat and Karen Shaw of the NARA Central Plains Region on training programs, and numerous other NARA employees. But the greatest contributions have been the staff of the Office of Trust Records. This is the most dedicated group of individuals who saw the challenge, accepted it, and changed the records management programs for the BIA and OST. Additionally, the BIA and OST program records contacts and employees have eagerly received records management training information and have put this information into practice.

APPENDICES

1. Department of the Interior, Departmental Manual, Part 303, Indian Responsibilities, Chapter 6 Indian Fiduciary Trust Records, 303 DM 6.
2. Memorandum of Understanding Between The Department of the Interior and The National Archives and Records Administration Regarding an American Indian Records Repository Located at NARA's Lenexa, Kansas, Regional Records Services Facility.