



BUILDING A STRONG RECORD

(PART TWO)

How to organize an administrative record

- See if there are any special rules
- Make the record “legible” to the reviewer
- Be appropriately inclusive
- Why be appropriately inclusive?

Make the record “legible” to the reviewer

- Make things logical and accessible. The more intuitive, the better
- Make the organization fit the material
 - By chronology, subject matter, or agency
 - (or mix and match)
- Can someone unfamiliar with the administrative record find documents quickly?

Be appropriately inclusive

- Courts review agency actions based on the *whole* administrative record before the agency when it made its decision
- Define the right scope with attorneys
- If there's a problem, let the attorneys know

Why be appropriately inclusive?

- Legal duty
- And some practical considerations
 - Supplementation
 - Extra-record discovery
 - Defeat in court

How to identify and handle privileged documents

- What “privilege” means (and what it does not)
- Do not assume privilege while decision-making is ongoing
 - Privilege may not exist—and if it does, it may not be maintained.

How to identify and handle privileged documents (Part II)

- Privileged materials might initially be in the administrative materials
- Create an administrative record index
- Attorneys will classify and redact the documents later

Steering Clear of Deficient and Damaging Inclusions

- Ensure that the administrative record is clear and well-reasoned
- Remember the principles of storytelling

What happens after the Administrative Record is organized

- Certification
- Eventually, Bates stamping