

Building a Strong Record



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What is an Administrative Record and Why is it Important



3 General Categories for the Maintenance and Disclosure of Federal Records (Frequently Overlap)

- Records Management- Maintaining a Decision File
- Freedom of Information Act (FOIA)
- Administrative Record Compilation

What is an Administrative Record

- Consists of all documents and materials that existed or were available to the decision maker at the time an agency decision is made
- Documents and materials considered by or relied upon by the agency during the decision-making process
- Documents the process the agency used in reaching its final decision to demonstrate it followed the required procedures, as required by statute, regulation, and agency policies

Why is an Administrative Record Important

- If an agency decision is challenged, the administrative record is the basis for whether the agency wins or loses
- If the agency fails to compile a complete administrative record, it may significantly impact DOJ's ability to defend, and the court's ability to review, a challenged agency decision

Legal Standard for Judging an Administrative Record

- Administrative Procedure Act (APA):
 - Arbitrary or capricious, an abuse of discretion; or otherwise not in accordance with law
 - Court evaluates the whole Administrative Record and considers whether the agency
 - Acted within the scope of its legal authority
 - Explained its decision
 - Relied on the facts that have some basis in the record; and considered the relevant facts

Where to Find Documents that Compose the Administrative Record

- Identify an agency employee to be responsible for compiling the Administrative Record
- Conduct a thorough search- who to contact
- Search agency files
- If more than one agency was involved in the decision, contact the other agency
- **Keep a record of the search including where you searched and who was consulted**

What Documents and Materials Should be Included in the Administrative Record



Include All Documents and Materials that Were Before or Available to the Decision Maker at the Time the Decision Was Made

- Even if not specifically considered by the decision-maker
- Even if they were considered only indirectly
- Even if they contain privileged or protected information
- Regardless of whether they support the agency decision

Documents and Materials Include

- Policies, Guidelines, Directives, Manuals
- Factual information or data
- Draft documents
- Documents cited as a reference
- Minutes or transcripts of meetings
- Electronic communications

Documents and Materials can be in Any Form

- Paper
- Computer tapes or disks
- Data, graphs, charts
- Handwritten notes
- Electronic (emails)
- Microfilm or microfiche

Do Not Include (Generally)

- **Documents and materials not in existence at the time of the agency decision**
- Personal notes, appointment calendars
- Draft documents
 - Generally exclude drafts that agree with previous drafts or contain primarily grammatical edits

Consequences of an Incomplete Administrative Record

- May raise questions about completeness of the entire record
- Court may allow extra-record discovery