



Office of the Chief
Records Officer for the
U.S. Government

Sent Via Email. No Hard Copy to Follow.

August 14, 2023

Cynthia Savage
Acting Agency Records Officer
Federal Trade Commission
600 Pennsylvania Ave., NW
Room H-158A
Washington, DC 20580

Dear Cynthia Savage,

The National Archives and Records Administration (NARA) has recently become aware of an allegation of unauthorized disposition of Federal Trade Commission (FTC) records. On June 5, 2023, a Fox News article reported that the House Judiciary Committee Chairman, Representative Jim Jordan (R-Ohio), asserted that the FTC deleted critical documents related to the agency's implementation of a new rule that would prohibit non-compete clauses for workers.

Chairman Jordan further asserted that FTC staff explained that the FTC had deleted relevant documentation prior to the Committee's request and that the deleted materials included files of the Consumer Financial Protection Bureau (CFPB) employee who the FTC brought on to lead FTC's rulemaking, as well as materials of other employees, including the CFPB employee who led the team, supervised drafting of the proposed rule, ensured that drafts were circulated among Commission senior leadership, and oversaw any legal research.

NARA requests that the FTC investigate the allegations outlined above to determine whether the FTC has destroyed the records in question. If an unauthorized disposition of FTC records has occurred, please provide a comprehensive report within 30 days of this letter in accordance with 36 CFR 1230. Your report should include a complete description of the records mentioned in the allegation, including volume and dates of the records, applicable records schedule, and specific details describing the unauthorized disposition incident. Additionally, please include in your report any salvage, recovery, or restoration efforts, and safeguards that will be implemented to prevent the future unauthorized disposition of agency records.

Thank you for your attention to this matter. If you wish to discuss further, please do not hesitate to contact me at Laurence.Brewer@nara.gov.

Sincerely,

A handwritten signature in blue ink that reads "Laurence V. Brewer". The signature is written in a cursive, flowing style.

LAURENCE BREWER
Chief Records Officer
for the U.S. Government



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October 27, 2023

Cynthia Savage
Acting Agency Records Officer
Federal Trade Commission
600 Pennsylvania Ave., NW
Room H-158A
Washington, DC 20580

Dear Cynthia Savage,

The National Archives and Records Administration (NARA) received the Federal Trade Commission (FTC) report dated September 14, 2023, in response to the allegations of unauthorized disposition of agency records related to the proposed rulemaking on non-compete clauses.

This report indicates that FTC's investigation into these allegations revealed that there has been no unauthorized disposition of agency records and that any records related to the above-mentioned rulemaking were treated in a manner that complies with NARA and FTC policies, including approved agency-specific or General Records Schedules.

FTC's investigation included interviews with appropriate agency staff and a review of all files related to the proposed rulemaking. NARA acknowledges that the FTC can confirm that all records in the matter have been and continue to be preserved in shared agency network drives and in Microsoft 365 Teams locations in accordance with FTC policy.

Additionally, FTC confirms that files of the Consumer Financial Protection Bureau detailee and two other former FTC employees were appropriately destroyed more than one month before the Committee's request. The deleted materials were non-records that were not subject to any litigation or other legal hold at the time of deletion and hence were destroyed in accordance with FTC policy. The FTC's treatment of non-record materials aligns with 36 CFR 1222.16(b)(3) in that non-records, such as convenience copies, drafts, notes, working files, and copies of final documents routed or circulated to Commission Bureaus, Offices, or the Commission for action,

barring no litigation, FOIA, or other legal or congressional holds can be purged when no longer needed for reference.

Furthermore, the detailee and two other former employees routinely copied other current Commission employees on emails. Therefore, to the extent that anything responsive to the Committee's request from these three departed employee accounts were deleted in accordance with Commission policy and procedures, duplicates of these non-record materials are preserved and exist in the accounts of current Commission employees who worked on the project at that time.

Based on the information provided, the reporting requirements of 36 CFR 1230.14(a) have been met. NARA considers the allegations unfounded and this matter is now closed. Thank you for your commitment to improving your records management practices.

Sincerely,

A handwritten signature in blue ink that reads "Laurence M. Brewer". The signature is written in a cursive style with a large initial "L".

LAURENCE BREWER
Chief Records Officer
for the U.S. Government