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HOW-TO SERIES

Considering NAGPRA When Crafting a Digitization Policy or Protocol

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Abstract
Now more than a year into the revised NAGPRA regulations, practitioners are carefully considering how best to respond to the amendments, especially newly added components such as duty of care (§10.1[d]). Because associated records are not a defined category under the Act, however, practitioners have no guidance on how best to move beyond the return of Ancestors and cultural items to the long-term preservation and curation of the records that may remain once repatriation is complete. Since associated records play such a significant role in NAGPRA compliance, and since digitizing archaeological records has become commonplace in repositories across the country, we propose that curatorial facilities adopt a policy prior to digitizing records that contain information pertinent to NAGPRA. Considerations about Indigenous data sovereignty, privacy concerns, and sensitivity of certain themes or types of data should be factored into the decision-making process. This article provides a review of the relevant context and a step-by-step guide to creating a policy for your institution.

Resumen
A más de un año de las revisiones a las regulaciones de NAGPRA en 2024, los practicantes están cuidadosamente considerando cómo responder a las enmiendas, especialmente los nuevos componentes como "duty of care" (obligación de diligencia, (§10.1(d))). Dado a que las notas y documentos asociados a los récords no son una categoría definida en el Acto, los practicantes no tienen una guía sobre como no tan solo cumplir con los deberes de retornar los Antepasados y elementos culturales, sino también ir más allá y cumplir con la preservación a largo plazo y la curación de los documentos que permanecen luego de que se cumpla la repatriación. Ya que los documentos asociados con los récords tienen un importante rol en el cumplimiento de NAGPRA, y ya que la digitalización de récords arqueológicos es común en repositorios en el país, proponemos que depósitos curatoriales adopten una política institucional antes de digitalizar récords que contengan información pertinente a NAGPRA. En la política institucional, se debe de tomar en cuenta la soberanía de información indígena, consideraciones de la privacidad, y la sensibilidad de los temas o tipos de datos. Este artículo provee una revisión del contexto relevante y una guía, paso a paso, para crear una política para su institución.

Keywords: digitization; NAGPRA; policies and procedures; records management; repatriation

Palabras clave: digitalización; NAGPRA; las políticas y los procedimientos; administración de registros; repatriación

Crucial to being a good steward is compassionate, ethical care of archaeological collections.[1] Collections professionals overseeing NAGPRA compliance navigate the middle ground between planning for long-term curation and collections management and simultaneously considering the possibility of repatriation. The laws and regulations that guide these efforts leave room for interpretation, leaving it up to institutions[2] to fill in the gaps with policies and procedures and to identify best practices without

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compromising ethical principles. One important area of consideration is tied to the management of associated records that document human remains (hereafter referred to as Ancestors) and cultural items, as defined by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). As of May 2025, there is currently no language codified in law or regulation of which the authors are aware that prohibits or outlines restrictions pertaining to the digitization and subsequent digital curation of these records, especially in cases where an institution maintains control of the records after repatriation.

During the NAGPRA process, an institution is tasked with using the "information available"[3] to evaluate cultural affiliation, draft summaries, prepare itemized lists, and initiate consultation. Associated records play a crucial role in this work. These records can include everything from field reports, site forms, photographs, maps, or human skeletal data forms, to provenance records such as donor files, catalog records, and loan forms. These records often contain sensitive information, such as locational data of archaeological sites, and descriptions or images of funerary objects, sensitive objects, or Ancestral remains that could cause harm if made accessible. Moreover, as the repatriation process progresses, additional records are created to document the process, such as consultation records, itemized lists and inventories, summaries, and repatriation or disposition statements. The regulations explicitly and repeatedly call for federal agencies and museums to "protect sensitive information from disclosure to the general public to the extent consistent with applicable law" (NAGPRA regulations; §10.7[c](5), §10.9[g], etc.). Privacy concerns must be considered alongside the principles of access, use, and preservation, including before, during, and after the digitization of these records (Council of Nova Scotia Archives 2024; McCurdy 2023; Note 2018; Suina and Chosa 2020). This is a foundational theme of the CARE Principles for Indigenous Data Governance, which specifically address the ethical use of data, especially data derived from the cultural heritage of Indigenous peoples and descendant communities. "CARE" stands for Collective benefit, Authority to control, Responsibility, and Ethics (Carroll et al. 2020, 2021). Therefore, institutions should consider developing a policy for digitizing and curating NAGPRA-related records with intention. Furthermore, the development of policy and decision-making must include consultation with, and the informed consent of, the affected parties—those individuals, communities, or cultures whose data are contained within those records.

NAGPRA, both the Act and the regulations, requires consultation throughout the process. The NAGPRA regulations in particular "require deference to the Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations" (§10.1[a](3)). Although the regulations do not specifically address associated records relating to repatriations, it is good practice to include the topic of long-term care (or return) of the associated records in your discussions with interested parties when considering the repatriation of Ancestors and cultural items. Those records will be maintained long-term or in perpetuity by the institution if they are not returned with the Ancestors and cultural items. The requests of culturally affiliated Tribal Nations should be carefully considered in this process and accommodated to the maximum degree possible.

Institutions will find it easier to accommodate these requests if they already have policies in place concerning the creation, management, access, and use of records. While some records may be returned, it is likely that the institution will still have a wide range of records related to repatriation to manage, be they closed, restricted, or open, analog or digital.

Moving toward Digital

Preservation and retention practices for archaeological records have evolved over the last several decades (for context, see Clarke 2015; Demas 2002; Kintigh and Altschul 2010; Nicholson et al. 2021). For example, many records generated from the mid 1990s to the present are "born digital"—meaning they were created in digital form—and the process of creating digital surrogates for analog records is routine (Rivers Cofield et al. 2024).[4] Moreover, the widespread implementation of both FAIR (Findable, Accessible, Interoperable, and Reusable) and CARE principles has drawn pointed attention to the significance of digital data—how they can be used, how they should be preserved, and who should have authority over them. (See Nicholson et al. [2023] for a discussion of FAIR.)

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In light of the 2024 revised NAGPRA regulations and the move toward born-digital and digitization of analog records, new strategies should be considered that protect sensitive data commonly found among NAGPRA-related associated records. For better or worse, the common perspective is that digitization is a solution to the potential loss of data when analog records decay or the cost of maintenance is prohibitive. The reality is that digitization is simply one step in a larger digital curation plan. A variety of factors affect the decision to digitize, including the possibility of recovering lost or damaged data, taking steps to prevent data loss, making records findable and accessible, restricting discovery, and respecting Indigenous data sovereignty and the sensitivity of certain types of record. Before digitization occurs, we suggest that institutions carefully consider the inherent privacy concerns from a context informed by NAGPRA repatriation and create a policy guiding how this strategy would be used by institutions prior to implementation. We offer our suggestions for how to implement this in a considered manner.

Step by Step

The steps below are separated into two sections: first, the steps you need to take prior to the drafting of your digitization policy; and second, the components that we recommend including in the policy itself (Table 1). We have also included additional citations intended to further delve into the technical nuances of the recommended policy components (Table 2).

Pre-draft Considerations

Determine Authority to Digitize Collections

The first step is to determine an institution's authority to make decisions about digitization. This begins by understanding the institution's obligations under NAGPRA and conferring with the entity with management responsibility (possession or control, in NAGPRA terminology) for the records. NAGPRA explicitly defines, and draws a distinction between, custody and possession or control.[5] An institution that has custody, but not possession or control, must coordinate with the institution with possession or control prior to making collections management decisions that are not already codified in their curation agreement, or a similar document. A digitization policy, like any other policy developed by your institution, should specifically outline which collections fall under its authority and which do not. Associated records that are under the authority of another institution should be addressed in any policy on a case-by-case basis but always in consultation with the institution with management authority.

Obtain Management Approval/Support

Identify the individual(s) who need to approve this effort and ensure that they support the creation of a digitization policy. This is also the time to pinpoint who will review and approve a policy. Engage or establish any appropriate committees who can provide multiple perspectives on the draft document. For example, if your institution has a NAGPRA committee or review board, coordinate with them to ensure that they are informed throughout the process as it pertains to records from sites with NAGPRA components. They may also be actively consulting with Tribal Nations and need to be aware of what efforts are taking place within the collections. If there is no committee or review board, then make sure your direct supervisor is supportive. We also highly recommend that you consult with Tribal Nations, descendant communities, or other groups on your policy as early as possible. Finally, consider funding needs, if any, for drafting the policy and for future digitization efforts.

Identify Roles, Responsibilities, Resources, and Your Schedule for Policy Development

Identify your schedule for completing the drafting of your policy and determine who will be responsible for the individual components. You may want to divide the labor based on existing expertise—if someone already knows about metadata or digitization software, for example, or if another person works in public education, maybe they are the best individuals to develop those sections of the policy. You might also divide labor among the review steps: one person might take the initial draft, another review and edit a second draft, and a third do quality control prior to final approval. Regardless of

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Table 1. Considerations and Components.

Task/Component	When?	Why?
Determine Authority	Pre-draft	• Ensure you have the authority to make decisions about the record/collection. • Ensure the responsible entity is aware of collections management decisions and actions. • Document decisions made for institutional record and accountability.
Obtain Approval/Support	Pre-draft	• Ensure funding or other resources. • Review other institutional policies or procedures for possible restrictions. • Evaluate other departments/branches for preexisting policies/procedures.
Identify Roles and Schedule	Pre-draft	• Ensure there is capacity to complete the work. • Prioritize the right individuals for specific tasks. • Establish a timeline for completion, approval, and regular review.
Assign Sensitivity Levels	Pre-draft	• Ensure sensitive records are restricted to only those who should have access. • Ensure that Indigenous data sovereignty is respected. • Ensure that consultation has occurred (it will inform the categories).
Statement of Intent	Draft	• Tie in to your institutional mission. • Codify the motivation of your digitization plan.
Collections Scope	Draft	• Clarify the collections and associated records eligible or not eligible for digitization. • Help to outline the scope of the workload.
Terminology and Definitions	Draft	• Create a common language. • Create a reference for policy users.
Sensitivity Categories	Draft	• Respect Indigenous data sovereignty. • Reflect the results of consultation. • Minimize access to sensitive records.
Digitization Plan	Draft	• Establish which collections will be digitized. • Establish process logistics.
Access and Use	Draft	• Determine who can access records (tied to sensitivity levels). • Establish methods of use and their restrictions.
Roles and Responsibilities	Draft	• Assign tasks to individuals or to job positions. • Ensure that the workload is matched in employee capacity.
Timeline and Review Process	Draft	• Establish a timeline for review. • Establish a schedule for task completion.

the division of labor, it is important to ensure that these tasks are assigned ahead of time and that a schedule for completion is associated with them. This could be anything from student labor to grants (departmental, institutional, private, federal), to institutional line-item funding. Understanding the resources available will help you make decisions about the volume of digitization you can handle.

Assign Sensitivity Levels to Collections/Documents

The next step is to define the parameters that shape the sensitivity levels of individual records. Several excellent examples of this in practice include the Digital Archaeological Record (tDAR) and Mukurtu.org, a free, open-source collaborative platform for sharing digital cultural heritage where sensitivity levels are arranged around building a community and setting community protocols. Additionally, the Society for American Archivists (the "other" SAA) endorses the *Protocols for Native American Archival Materials*, a First Archivist Circle document, which can be accessed via the SAA's website.

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Table 2. Additional Resources.

Component	Resource	Link
Statement of Intent	American Alliance of Museums 2012	http://tinyurl.com/AAM-CMP
Statement of Intent	Sustainable Heritage Network 2018	http://tinyurl.com/SHN-Policy
Brief Overview of Collections Scope	Boynton Beach City Library Archives 2013	http://tinyurl.com/Boynton2013
Brief Overview of Collections Scope	Utah Division of Arts and Museums 2012	http://tinyurl.com/UtahDoArts
Terminology and Definitions	Beebe 2017	https://doi.org/10.1017/aap.2017.15
Terminology and Definitions	Digital Preservation Coalition 2025	https://www.dpconline.org/handbook/glossary
Terminology and Definitions	Nicholson et al. 2023	https://doi.org/10.1017/aap.2022.40
Terminology and Definitions	North Carolina Exploring Cultural Heritage Online 2025	https://tinyurl.com/3cnjc7yr
Sensitivity Categories	Carroll et al. 2021	https://www.nature.com/articles/s41597-021-00892-0
Sensitivity Categories	McCurdy 2023	https://consentia.com/ensuring-confidentiality-in-digitization/
Digitization Plan	Carroll et al. 2020	https://doi.org/10.5334/dsj-2020-043
Digitization Plan	Carroll et al. 2021	https://www.nature.com/articles/s41597-021-00892-0
Digitization Plan	Digital Preservation Coalition 2025	https://www.dpconline.org/handbook/getting-started
Digitization Plan	DT Heritage 2025 (not free)	https://heritage-digitaltransitions.com/product-category/digitization-guides-and-training/
Digitization Plan	Federal Agencies Digital Guidelines Initiative 2025	https://www.digitizationguidelines.gov/
Digitization Plan	Nicholson et al. 2023	https://doi.org/10.1017/aap.2022.40
Roles and Responsibilities	Sustainable Heritage Network 2018	https://sustainableheritagenetwork.org/system/files/atoms/file/Strategic_Digitization_Goals_Part3_Developing_a_Digitization_Policy.pdf
Access and Use	Council of Nova Scotia Archives 2024	https://www.councilofnsarchives.ca/writing-an-access-policy
Access and Use	Sustainable Heritage Network 2018	https://sustainableheritagenetwork.org/system/files/atoms/file/Strategic_Digitization_Goals_Part3_Developing_a_Digitization_Policy.pdf

In many cases, digitized records are more readily findable than analog records, making them more prone to requests for access. It is recommended that institutions establish a four-level system for categorization to enable staff to make informed decisions when these requests arise:

Level I: Closed or sealed records. Examples include records requested by one or more Tribal Nations to be "closed" to all except members of that community, such as records documenting the private details of a religious ceremony. These records will not be digitized.

Level II: Highly sensitive information. It should not be shared without the informed consent of connected or affected communities. Examples of this category: skeletal data records, information about cultural practices, photographs of interments or human remains, archaeological site data, and any information deemed sensitive during consultation with Tribal Nations. Some records may be determined accessible within the parameters of specific protocols.

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Level III: Possibly sensitive information. This includes all records that are not "nonsensitive" (see below), have not been identified as highly sensitive or closed, or that have not been previously consulted upon. The institution should carefully review any requests for access and consult with connected or affected communities. Examples of this category: records concerning potentially "nonfunerary" areas at sites that contain interments and collections that have not been previously consulted upon but are not currently known to contain Ancestors or cultural items subject to NAGPRA.

Level IV: Information considered nonsensitive at this time. Examples include records (field notes, journals, etc.) from collections that have already been summarized and made available to Tribes for review under NAGPRA Section 6 (but with site locations redacted), and records previously reviewed for sensitivity by culturally affiliated or connected Tribal Nations and/or communities.

Components of a Policy

Statement of Intent

An institution's mission and goals can change in response to a variety of factors. For instance, when NAGPRA was first enacted, institutions were required to complete tasks (inventories and summaries, for example) that had not previously been part of their collections management strategies. With the recent revisions to the regulations, more changes may be required in institutional policy or procedures. Regardless, it is useful to identify the intent of drafting the policy at the beginning of the document. Each time you return to your policy, reflect on whether the intent or mission you are working toward has changed, and whether you need a policy update to reflect those changes. One example of a statement of intent could be "To facilitate public access to records determined through consultation to be nonsensitive." It could also be "To make records documenting historical cultural practices findable and accessible to contemporary Native practitioners." Your institution's mission and goals will inform your intent.

Brief Overview of Collections Scope

Your institution may be responsible for various types of collections (archaeological, ethnographic, archival, etc.) or collections for which you have custody but not possession or control under NAGPRA. A digitization policy should discuss the records associated with all collections, whether there is a known NAGPRA component, and whether you currently have the authority (or means) to digitize the records. We suggest that you also include the volume of the records under discussion (linear feet, cubic feet, etc.). When you discuss your digitization plan you will identify what will or will not be digitized and why, as well as your timeline for completing that work. A policy outlines an institution's approach and perspective on a specific topic; if you are saying that certain collections are not eligible for digitization, you should be able to refer to those collections in your collections scope. For example, "Collection A contains Native American Ancestors and associated funerary objects from two mounds, as well as pottery and faunal remains from a nearby hearth. The associated records include skeletal data forms, field reports, and photographs of individual interments." Listing this collection in your initial scope allows you to refence it for both your sensitivity categories and in your digitization plan. Do not make assumptions about whether you will be able to digitize certain associated records. Let the institution with possession or control and the culturally affiliated Tribal Nation(s) make those decisions in consultation.

Terminology and Definitions

Your policy may be read, used, or shared by a variety of people at and outside of your institution, so including a list of terms and their definitions is important. This will allow anyone reading your policy to "speak the same language" and ensure consistency in the application of your process and protocols. There are many resources available that collate the various terms you might find useful, though if you have never digitized before, you may wonder which terms will be needed, or useful. (What is a checksum, anyway?) Defining terms directly from a reference guide into your policy may not be helpful, because it is through context that these terms have meaning. Ideally, you will define these terms in your own words

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in your policy, so that they contain the nuances specific to your institution or project. The best way to start building this section is to think about the reasons you might want to digitize, then review the terms tied to those actions. So, for example, if you think digitization will be useful to help you restrict access to certain images, you may want to include terms like "copyright," "licensing," or "intellectual control." It is okay to amend any section later, and it is also certain that your first project will give you greater insight into the needs of your policy than anything else can.

Sensitivity Categories

The best time to create your sensitivity categories is prior to drafting your policy. For any records pertaining to NAGPRA, you should consult with Tribal Nations with potential cultural affiliation on these categories, the types of records or information that should be covered by each, and the types of users appropriate to the level (if any). When you draft this component of your policy, be sure to not only discuss the overarching categories but also how the records discussed in your collections scope fit into the individual categories. As the revised regulations make clear, federal agencies and museums have a "duty of care" to Ancestors and cultural items in their custody or in their possession or control. While not explicitly stated in the regulations, it seems clear that the duty of care should extend beyond Ancestors and their belongings to their descendants and their communities. Institutions have a duty to minimize harm in whatever way possible; supporting Indigenous data sovereignty through consultation on records management is a minimum standard that should be adopted.

This section should expand on the standard categories to include the types of control that will be enforced: for example, will you be implementing password control? Will certain types of information (site locations, descriptions of Ancestors or funerary objects) be redacted? Will you implement labeling policies to alert users to types of sensitive content? Whatever you decide, these are appropriate terms to add to your terminology in your policy.

Digitization Plan

This is the decisional section of your policy. What, specifically, will and will you not digitize? You can do this in two possible ways: (1) you can refer to your scope of collections and decide for each one, treating this section as a workplan; or (2) you can more broadly discuss here the exact types of record that may be digitized, per the results of your consultation. If you are deciding collection by collection, this should be done by a predetermined individual or position, per your established Roles and Responsibilities (see below). Once you have an idea of the "what," you need to move to the "how." The logistics of digitization should be described here as well. What technology will you use? How will you structure your metadata? How will you establish a system to back up your files? What about file security? Some of the most important decisions you will make here may seem the simplest: something like how you name your files and folders can have a significant impact on the usability (and findability!) of the data later.

Roles and Responsibilities

Define what roles will need to be filled, and who should fill them. While it is fine to associate an individual with a role, ensure that you also associate a *job description* with role completion, to account for individuals leaving their positions. You will need to outline the responsibility for completing each individual component of the policy, in addition to any associated responsibilities from your planning stages, and a decision-making authority. Consider who works with different document classifications, especially sensitive and closed materials. Consultation may have provided you some insight into who should be permitted to do so, and this should be factored in as you assign these roles.

Access and Use

Whether records are digitized or not, it is important to delineate who should be able to access them, how they may do so, and what parameters will guide their use (publication, research, etc.). You will need to define the categories of people (researchers, Tribal Nations/communities, descendant communities, students, institutional staff, etc.) and decide whether they have conditional or unconditional access, what the conditions might be (unlimited, limited, within certain dates, certain records only, etc.), and how

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they are able to use the data they collect. Decisions about access and use should consider any sensitivity of the records and whether consultation has ever occurred for the sites included within the collection(s).

Timeline and Review

Are you planning on continuously digitizing your collections? This would mean you are beginning at a determined time and then moving through collections until all items identified to be digitized are complete. Any new records received would join the queue. You also may decide to digitize in a staggered manner, due to time, funding, or other reasons. In this scenario you might do two collections in 2026, two collections in 2027, etc. You also may have a minimum or maximum of records per year, which could be related to student labor, interns, or grants. Sometimes you may digitize only on a case-by-case basis, such as when certain types of record come in, or when reference is requested: "We will digitize all topographical maps associated with sites x, y, and z," for example.

Establish a date for your policy to be reviewed. A five-year timeline is common, but in the early days of your policy, especially when you are first navigating identifying your sensitivity levels and are potentially involved in active consultation with Tribal Nations, you may want to review every two or three years. It is also important to outline who will be reviewing, and whether your regular review will continue to include consultation. We recommend that it does include consultation each time, to ensure that all sensitive materials are identified and categorized to the best of your ability. This timeline can be a simple table at the end of your policy.

Conclusion

The digitization of records may or may not be a viable step for your institution, particularly if your volume of records is heavily weighted toward those deemed sensitive by consulting Tribal Nations or other descendant communities. A number of factors must be considered prior to crafting a policy that would guide this process, including the privacy of the records and of any communities or individuals who might be affected by access to, or use of, them; the long-term research utility of any data; the authority of your institution to digitize the records; and the plan for allowing and facilitating access, among other details. Regardless of the final decision made by your institution—to digitize or not to digitize—this decision should be codified in a policy that ensures that all employees, visitors, concerned parties and communities, et cetera, understand exactly what the institution will and will not do as far as records management is concerned.

Once your institution decides to take on the task of drafting a digitization policy, or a records management policy that includes a digitization clause, they have a responsibility to ensure that the digital records are carefully curated, just as any physical records collections would be, and that the data contained in those digitized records are protected to the maximum extent possible by law when they contain sensitive information, as required by the NAGPRA regulations. Digitization may appear to be an easy solution to a variety of problems—records decay, access and use, storage—but it is important to remember that a digital record requires just as much care and maintenance as an analog record and brings with it additional considerations as far as sensitivity and sovereignty are concerned. Institutions should weigh their decision carefully and in consultation with connected communities.

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Notes

1. The term "collections" is used as defined in 36 CFR Part 79 (Department of the Interior 2022), and means both material remains and the records associated with them. When speaking of only "records," that term is used. When speaking of only "material remains," that term is used.
2. "Institutions" is used to refer to both federal agencies and museums (as defined under NAGPRA) in lieu of spelling out both each time their use is required. When speaking of only "federal agencies" or only "museums," those terms are used. The term "museum" in this article should be understood to be as defined in NAGPRA (i.e., an institution accepting federal funds), not in the more general sense.
3. This term is used frequently in the regulatory text when referring to determining cultural affiliation, or drafting a summary or itemized list, etc. See §10.9(a) or §10.10(a)(1), for examples.
4. While born-digital records must be accounted for, and policy should include them, they are not the focus of this article. This article specifically addresses paper or other ("analog") records that have the potential to be digitized.
5. NAGPRA defines "custody" (where an institution has an obligation to care for an item but not sufficient legal interest to complete the NAGPRA process) separately from "possession or control" (where an institution has sufficient legal interest to make decisions regarding that item, such as repatriation). If a museum is curating federal collections, they have custody of those collections, not possession or control.

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