

PRESIDENTIAL RECORDS ACT OF 1978, 44 U.S.C. §§ 2201-2207 -

HOW DO ITS ACCESS PROVISIONS WORK? HOW DOES IT INTERSECT WITH FOIA?

INCUMBENT PRESIDENT	PRESIDENT LEAVES OFFICE	YEARS 1 TO 5	YEARS 5 TO 12	AFTER 12 YEARS
Specifies up to 6 restriction categories Specifies duration of restrictions, up to 12 years after term(s) end During incumbency, no right of public access President to segregate P-recs from personal Same provisions for V-P records	Presidential records transfer to legal custody of Archivist of the U.S. Archivist responsible for custody, control, preservation and access Archivist has "affirmative duty" to make records available to public "as rapidly and completely as possible"	P-records, even unrestricted, are exempt from FOIA access until <u>earlier</u> of: ♦ 5 years after Archivist takes custody <u>or</u> ♦ Archivist completes processing Only access is "special access": congress, judicial process, or incumbent Pres. ("current business")	Access through FOIA Both PRA restrictions and FOIA exemptions apply Archivist determines PRA restrictions <u>in consultation w/</u> former President No judicial review of PRA restrictions All disclosures: notice to current and former Pres.	Access through FOIA Only FOIA exemptions apply <u>But</u> Ex. 5 is "not available" to withhold P-recs All other provisions of FOIA apply All disclosures: notice to current and former Pres.

PRA restriction categories (44 U.S.C. § 2204(a)):

- 1 - national security information properly classified under Executive Order [FOIA Ex. 1]
- 2 - information relating to appointments to federal office
- 3 - exempted from disclosure by statute [FOIA Ex. 3]
- 4 - trade secrets and confidential business information [FOIA Ex. 4]
- 5 - confidential communications requesting or submitting advice, between the President and his advisors or between such advisors
- 6 - information which if disclosed would cause a clearly unwarranted invasion of personal privacy [FOIA Ex. 6]

PRESIDENTIAL RECORDS ACT OF 1978, 44 U.S.C. §§ 2201-2207

Presidential records: “documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President, whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President.” [Section 2201(2)]

Four basic elements of the PRA:

- ① Ownership by the United States of presidential [Section 2202]
- ② Management of presidential (and V-P) records, including disposal [Section 2203]
 - during an Administration (President)
 - post-Presidency (Archivist of the United States)
- ③ Access to presidential records by public [Section 2204]
 - restrictions for up to 12 years, specified by President before leaving office
 - Freedom of Information Act exemptions (except Exemption 5) and procedures
 - notice to former and incumbent Presidents of proposed disclosures [EO 12667]
- ④ Special access - judicial process; current business of incumbent President; congress; former President [Section 2205]

Court decisions addressing the PRA:

Armstrong v. Bush, 924 F.2d 282 (D.C. Cir. 1991) (historians have standing to sue to challenge proposed destruction of records; no judicial review of President’s compliance with PRA)

Armstrong v. Executive Office of the President, 1 F.3d 1274 (D.C. Cir. 1993) (allowing limited judicial review under PRA of President’s guidelines designating what is and is not a presidential record)

Armstrong v. Executive Office of the President, 90 F.3d 553 (D.C. Cir. 1996), petition for cert. filed (U.S. Sup. Ct., Feb. 4, 1997) (National Security Council is not “agency” subject to FOIA, but instead creates presidential records)

American Historical Ass’n v. Peterson, 876 F. Supp. 1300 (D.D.C. 1995) (finding “Bush-Wison Agreement” concerning Bush presidential materials to be contrary to PRA)

[See also Nixon v. United States, 978 F.2d 1269 (D.C. Cir. 1992) (Nixon compensation case, examining history of use, control and disposition of presidential papers)]

THE WHITE HOUSE

WASHINGTON

April 22, 1993

Dear Dr. Peterson:

In accordance with the requirements of the Presidential Records Act, 44 U.S.C. (c) (1), I propose to dispose periodically of the following categories of Presidential records:

- o certain categories of public mail to the President, the First Lady and their staffs including anonymous correspondence, correspondence with an incomplete address, mail from prolific writers, and public opinion mail. Samples, when appropriate, will be retained.
- o copies of press releases, press conference and briefing transcripts, personnel announcements, mass mailings and other internal publications that are distributed widely. Record copies of each is retained by the originating office within the White House.
- o publications, brochures, clippings and other types of enclosures in public mail, when there is no immediate or historical importance to the materials.

The White House Office of Records Management will dispose of these materials only after representatives of the National Archives have reviewed, approved and, when appropriate in their opinion, sampled it.

This would continue a policy initiated under President Reagan and agreed to by the National Archives. This policy has allowed the disposal of over 35,000 cubic feet of materials since its inception. It is a policy that has benefitted both the White House and the National Archives by allowing significant savings in space, maintenance, and budget, in the short term for the White House, and in the long term for the National Archives.

Sincerely,


John D. Podesta
Assistant to the President
and Staff Secretary

Dr. Trudy H. Peterson
Acting Archivist of the United States
Room 111
National Archives and Records Administration
7th and Pennsylvania Avenue, N.W.
Washington, D.C. 20408

Where is
this done?

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National Archives



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FED10

Washington, DC 20408

MAY 11 1993

Honorable John D. Podesta
Assistant to the President
and Staff Secretary
The White House
Washington, D.C. 20500

Dear Mr. Podesta:

In accordance with the authority granted to me by the Presidential Records Act, Section 2203(c)(2), I approve of disposal of the three (3) categories of Presidential bulk mail described in your letter of April 22, 1993. Those categories are:

- (1) Certain categories of public mail to the President, the First Lady and their staffs including anonymous correspondence, correspondence with an incomplete address, mail from prolific writers, and public opinion mail.
- (2) Copies of press releases, press conference and briefing transcripts, personnel announcements, mass mailings and other internal publications that are distributed widely. As you stated in your letter, a record copy of each of these items should be retained in the originating White House office.
- (3) Publications, brochures, clippings and other types of enclosures in public mail, when there is no immediate or historical importance to the materials.

As in the past, I recommend that representatives of the National Archives and Records Administration, in coordination with the White House Office of Records Management, review these materials before disposal and take samples when appropriate. These samples will be retained permanently. If groups of materials that should not be destroyed are identified during sampling, the National Archives will inform you.

I do not intend to take any Congressional action with regard to this request as provided for by Section 2203(e) of the Presidential Records Act.

I support your effort to continue the disposal of Presidential bulk mail. This practice has been very successful since it began in 1982, and, as you point out, has been mutually beneficial for both the White House and the National Archives.

Sincerely,


TRUDY HUSKAM PETERSON
Acting Archivist
of the United States

National Archives at College Park



8601 Adelphi Road College Park, Maryland 20740-6001

January 12, 1999

Miriam Nisbet, Office of General Counsel
Nancy Kegan Smith, Presidential Materials Staff, Office of
Presidential Libraries

Briefing on Presidential Records Act notifications received by
the Office of White House Counsel

1. WHY DOES THE WHITE HOUSE COUNSEL'S OFFICE RECEIVE NOTIFICATION OF ACCESS AND OPENINGS FOR PRESIDENTIAL RECORDS?

The White House Counsel's Office receives notification of requests for, and proposed disclosure of, the records of former Presidents Reagan and Bush and the records of former Vice Presidents Bush and Quayle. The representatives for the former President or Vice President who created these records also receive notice. The notification is required by the Presidential Records Act of 1978 (44 U.S.C. §§ 2201-2207), NARA's implementing regulations (36 C.F.R. Part 1270), and Executive Order 12667. The purpose of the notification is to give Counsel, on behalf of the incumbent President, the right to object to any request for access, or release of Presidential or Vice Presidential records, in order to protect Executive privilege.

2. WHAT IS COUNSEL SUPPOSED TO BE LOOKING FOR IF IT DECIDES TO REVIEW THE RECORDS SUBJECT TO NOTIFICATION?

The theory behind the notification and possible review for privileged information in these Presidential records on behalf of the incumbent President is that even though these records are not produced by the Clinton Administration, their premature release could have a chilling effect upon the advice received by the incumbent President or upon the national security. For this reason, the Presidential Records Act gave both to the incumbent President and to the former President who created the records the right to object to the proposed access and release of any Presidential records.

3. WHAT IS THE NOTIFICATION TELLING COUNSEL?

The notification that Counsel's Office receives will be of two types: (1) for records that are not currently opened to the public but are being requested under one of the categories of exceptions to restrictions provided by the Presidential Records Act ("special access requests") or (2) for records that are being proposed for opening to the public.

4. WHAT IS THE AVAILABILITY OF PRESIDENTIAL RECORDS?

Under the Presidential Records Act, Presidential records are not open for five years after the date on which the Archivist obtains custody of them, or until processing of the records has been completed by the Archives, whichever is earlier. After that grace period, Presidential records are subject to Freedom of Information Act requests, although information in them may be withheld under the six PRA restrictive categories for up to 12 years (both former Presidents have chosen to apply these restrictive categories to their records) and the FOIA exemptions. Reagan Presidential and Bush Vice Presidential records became subject to FOIA requests in January 1994. Bush Presidential and Quayle Vice Presidential records became available to FOIA in January 1998.

Special access to restricted information (PRA Section 2205) is allowed pursuant to: (1) a subpoena or other judicial process issued by a court; (2) a request by the incumbent President for records needed for his current business; (3) either House of Congress or their committees or subcommittees if such records are needed for the conduct of congressional business; and (4) to the former President or his designated representative.

5. WHAT IS THE PROCEDURE FOR HANDLING PRESIDENTIAL RECORD ACT REQUESTS?

To protect the rights of the former and incumbent Presidents, a procedure has been established to handle these requests. The basic elements of this procedure are:

(A) All Executive branch requests for Presidential records are coordinated through White House Counsel's Office. The coordination gives Counsel the opportunity to confirm that the request is really necessary for the ongoing business of the President and to specify any specific conditions for the access or release of Presidential records. This means that if the Archives is directly contacted by an Executive branch agency, or anyone inside of the White House with the exception of Counsel (and in some cases the National Security Council), with a request for Presidential or Vice Presidential records that are not already open to the public, we will give that person the name of our current contact in the White House Counsel's Office. The usual procedure has been for the Counsel's Office to ask for the request in writing and then to pass that written request along to the National Archives if Counsel concurs in the need for the records.

(B) The National Archives will notify Counsel's Office of any subpoena, court order or Congressional request. A copy of the notice goes to the Assistant Attorney General for Legal Counsel (on behalf of the Attorney General). The notice is in writing and, in accordance with NARA's regulations, gives Counsel 30 days to object.

(C) Counsel's response to notifications of exceptions to restricted access requests and openings of Presidential records should be in writing to the Office of General Counsel. We need to know whether you concur, or are raising a claim of privilege. If Counsel has a concern or wants to discuss executive privilege, please contact the General Counsel's Office immediately (see #9 for phone numbers and names).

6. ARE THERE ANY OTHER NOTIFICATIONS FOR OPENING OF PRESIDENTIAL MATERIALS THAT COUNSEL'S OFFICE WILL RECEIVE?

Yes. White House Counsel's Office will also receive notification of Nixon Presidential materials openings at least 30 days in advance. This is required by the Presidential Recordings and Materials Preservation Act and its implementing regulations, which deal solely with the Nixon Presidential historical materials.

7. WHO ARE THE REPRESENTATIVES FOR THE FORMER PRESIDENTS AND VICE PRESIDENTS?

The representatives for handling Reagan Presidential record requests are: John Mintz, who is associated with Gibson, Dunn & Crutcher, at 703-620-2537, and Joanne Drake, who is Chief of Staff, Office of Ronald Reagan, at 310-552-1980.

The representative for Bush Vice Presidential and Presidential record requests is James Cicconi, Senior Vice President at AT&T, at 202-457-2233.

The representative for Quayle Vice Presidential record requests is Lew Fischer at 703-759-3694.

8. WHERE ARE THE LIBRARIES AND RECORDS?

The Reagan Presidential Library is in Simi Valley, California. The Bush Presidential Library is in College Station, Texas. The Quayle Vice Presidential records are at the Bush Presidential Library.

9. WHO SHOULD COUNSEL CONTACT ON PRESIDENTIAL RECORD ACT REQUESTS AND INFORMATION?

For legal or archival guidance on access to Presidential records, Counsel should contact either Miriam Nisbet, Special Counsel for Information Policy, at 301-713-6025, ext. 253, or Nancy Kegan Smith, Director of the Presidential Materials Staff, at 202-501-5700. Gary M. Stern is NARA's General Counsel and can also be reached at 301-713-6025.

For general questions about Presidential Libraries, please call Nancy Smith, or David Peterson, Assistant Archivist for Presidential Libraries, and Sharon Fawcett, Deputy Assistant Archivist for Presidential Libraries, both at 301-713-6050.

PRESIDENTIAL RECORDS

92 Stat. 2523 (44 U.S.C. § 2201, Chapter 22)*

Sec.

- 2201. Definitions.
- 2202. Ownership of Presidential records.
- 2203. Management and custody of Presidential records.
- 2204. Restrictions on access to Presidential records.
- 2205. Exceptions to restriction on access.
- 2206. Regulations.
- 2207. Vice-Presidential records.

§ 2201. Definitions

As used in this chapter—

(1) The term "documentary material" means all books, correspondence, memorandums, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, audio, audio-visual, or other electronic or mechanical recordings.

(2) The term "Presidential records" means documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term—

(A) includes any documentary materials relating to the political activities of the President or members of his staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

political

*Codified as positive law.

(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e) of title 5, United States Code); (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

(3) The term "personal records" means all documentary materials, or any reasonably segregable portion thereof, of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term includes—

(A) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business;

(B) materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; and

(C) materials relating exclusively to the President's own election to the office of the Presidency; and materials directly relating to the election of a particular individual or individuals to Federal, State, or local office which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

(4) The term "Archivist" means the Archivist of the United States.

(5) The term "former President," when used with respect to Presidential records, means the former President during whose term or terms of office such Presidential records were created.

§ 2202. Ownership of Presidential records

The United States shall reserve and retain complete ownership, possession, and control of the Presidential records; and such records shall be administered in accordance with the provisions of this chapter.

§ 2203. Management and custody of Presidential records

(a) Through the implementation of records management controls and other necessary actions, the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance

of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as Presidential records pursuant to the requirements of this section and other provisions of law.

(b) Documentary materials produced or received by the President, his staff, or units or individuals in the Executive Office of the President the function of which is to advise and assist the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.

(c) During his term of office, the President may dispose of those of his Presidential records that no longer have administrative, historical, informational, or evidentiary value if—

(1) the President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records; and

(2) the Archivist states that he does not intend to take any action under subsection (e) of this section.

(d) In the event the Archivist notifies the President under subsection (c) that he does intend to take action under subsection (e), the President may dispose of such Presidential records if copies of the disposal schedule are submitted to the appropriate Congressional Committees at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

(e) The Archivist shall request the advice of the Committee on Rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Administration and the Committee on Government Operations of the House of Representatives with respect to any proposed disposal of Presidential records whenever he considers that—

(1) these particular records may be of special interest to the Congress; or

(2) consultation with the Congress regarding the disposal of these particular records is in the public interest.

(f) (1) Upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President.

* Correct Citation
for 2204 (2)(A)

The Archivist shall have an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this Act.

(2) The Archivist shall deposit all such Presidential records in a Presidential archival depository or another archival facility operated by the United States. The Archivist is authorized to designate, after consultation with the former President, a director at each depository or facility, who shall be responsible for the care and preservation of such records.

(3) The Archivist is authorized to dispose of such Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation. Notice of such disposal shall be published in the Federal Register at least 60 days in advance of the proposed disposal date. Publication of such notice shall constitute a final agency action for purposes of review under chapter 7 of title 5, United States Code.

§ 2204. Restrictions on access to Presidential records

(a) Prior to the conclusion of his term of office or last consecutive term of office, as the case may be, the President shall specify durations, not to exceed 12 years, for which access shall be restricted with respect to information, in a Presidential record, within one or more of the following categories:

(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relating to appointments to Federal office;

(3) specifically exempted from disclosure by statute (other than sections 552 and 552b of title 5, United States Code), provided that such statute (A) requires that the material be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of material to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers; or

(6) personnel and medical files and similar files the disclosure of which would constitute a

clearly unwarranted invasion of personal privacy.

(b) (1) Any Presidential record or reasonably segregable portion thereof containing information within a category restricted by the President under subsection (a) shall be so designated by the Archivist and access thereto shall be restricted until the earlier of—

(A) (i) the date on which the former President waives the restriction on disclosure of such record, or

(ii) the expiration of the duration specified under subsection (a) for the category of information on the basis of which access to such record has been restricted; or

(B) upon a determination by the Archivist that such record or reasonably segregable portion thereof, or of any significant element or aspect of the information contained in such record or reasonably segregable portion thereof, has been placed in the public domain through publication by the former President, or his agents.

(2) Any such record which does not contain information within a category restricted by the President under subsection (a), or contains information within such a category for which the duration of restricted access has expired, shall be exempt from the provisions of subsection (c) until the earlier of—

(A) the date which is 5 years after the date on which the Archivist obtains custody of such record pursuant to section 2203(d)(1); or

(B) the date on which the Archivist completes the processing and organization of such records or integral file segment thereof.

(3) During the period of restricted access specified pursuant to subsection (b) (1), the determination whether access to a Presidential record or reasonably segregable portion thereof shall be restricted shall be made by the Archivist, in his discretion, after consultation with the former President, and, during such period, such determinations shall not be subject to judicial review, except as provided in subsection (e) of this section. The Archivist shall establish procedures whereby any person denied access to a Presidential record because such record is restricted pursuant to a determination made under this paragraph may file an administrative appeal of such determination. Such procedures shall provide for a written determination by the Archivist or his designee, within 30 working days after receipt of such an appeal, setting forth the basis for such determination.

(c) (1) Subject to the limitations on access im-

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posed pursuant to subsections (a) and (b), Presidential records shall be administered in accordance with section 552 of title 5, United States Code, except that paragraph (b) (5) of that section shall not be available for purposes of withholding any Presidential record, and for the purposes of such section such records shall be deemed to be records of the National Archives and Records Service of the General Services Administration. Access to such records shall be granted on nondiscriminatory terms.

(2) Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President.

(d) Upon the death or disability of a President or former President, any discretion or authority the President or former President may have had under this chapter shall be exercised by the Archivist unless otherwise previously provided by the President or former President in a written notice to the Archivist.

(e) The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the former President asserting that a determination made by the Archivist violates the former President's rights or privileges.

§ 2205. Exceptions to restricted access

Notwithstanding any restrictions on access imposed pursuant to section 2204—

(1) the Archivist and persons employed by the National Archives and Records Service of the General Services Administration who are engaged in the performance of normal archival work shall be permitted access to Presidential records in the custody of the Archivist;

(2) subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available—

(A) pursuant to subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(B) to an incumbent President if such records contain information that is needed for conduct of current business of his office and that is not otherwise available; and

(C) to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available; and

(3) the Presidential records of a former Pres-

ident shall be available to such former President or his designated representative.

§ 2206. Regulations

The Archivist shall promulgate in accordance with section 553 of title 5, United States Code, regulations necessary to carry out the provisions of this chapter. Such regulations shall include—

(1) provisions for advance public notice and description of any Presidential records scheduled for disposal pursuant to section 2203(f) (3);

(2) provisions for providing notice to the former President when materials to which access would otherwise be restricted pursuant to section 2204(a) are to be made available in accordance with section 2205(2);

(3) provisions for notice by the Archivist to the former President when the disclosure of particular documents may adversely affect any rights and privileges which the former President may have; and

(4) provisions for establishing procedures for consultation between the Archivist and appropriate Federal agencies regarding materials which may be subject to section 552(b) (7) of title 5, United States Code.

§ 2207. Vice-Presidential records

Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records. The duties and responsibilities of the Vice President, with respect to Vice-Presidential records, shall be the same as the duties and responsibilities of the President under this chapter with respect to Presidential records. The authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist under this chapter with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a non-Federal archival depository. Nothing in this chapter shall be construed to authorize the establishment of separate archival depositories for such Vice-Presidential records.

SUBCHAPTER E—PRESIDENTIAL RECORDS

PART 1270—PRESIDENTIAL RECORDS

Subpart A—General Provisions

- § 1270.10 Scope of part.
 § 1270.12 Application.
 § 1270.14 Definitions.

Subpart B—Actions Taken on Behalf of Former Presidents

- § 1270.20 Designation of person or persons to act for former President.
 § 1270.22 When Archivist may act for former President.

Subpart C—Disposal of Presidential Records

- § 1270.30 Disposal of Presidential Records by incumbent President.
 § 1270.32 Disposal of Presidential Records in the custody of the Archivist.

Subpart D—Access to Presidential Records

- § 1270.40 Identification of restricted records.
 § 1270.42 Denial of access to public; right to appeal.
 § 1270.44 Exceptions to restricted access.
 § 1270.46 Notice of intent to disclose Presidential Records.

Subpart E—Presidential Records Compiled for Law Enforcement Purposes

- § 1270.50 Consultation with law enforcement agencies.

AUTHORITY: The Presidential Records Act of 1978, Pub. L. 95-591, 92 Stat. 2523-27, as amended by the National Archives and Records Administration Act of 1984, Pub. L. 98-497, sec. 107(b)(7), 98 Stat. 2287 (1984) (codified at 44 U.S.C. 2201-07).

SOURCE: 53 FR 50404, Dec. 15, 1988, unless otherwise noted.

Subpart A—General Provisions

§ 1270.10 Scope of part.

These regulations implement the provisions of the Presidential Records Act of 1978, Pub. L. No. 95-591, 92 Stat. 2523-27, as amended by Pub. L. No. 98-497, sec. 107(b)(7), 98 Stat. 2287 (1984) (codified at 44 U.S.C. 2201-07), by setting forth the policies and procedures governing preservation, protection, and

disposal of, and access to Presidential and Vice-Presidential records created during a term of office of the President or Vice President beginning on or after January 20, 1981. Nothing in these regulations is intended to govern procedures for assertion of, or response to, any constitutionally based privilege which may be available to an incumbent or former President.

§ 1270.12 Application.

(a) These regulations apply to all Presidential records created during a term of office of the President beginning on or after January 20, 1981.

(b) Vice-Presidential records shall be subject to the provisions of this part in the same manner as Presidential records. The Vice President's duties and responsibilities, with respect to Vice-Presidential records, shall be the same as the President's duties and responsibilities with respect to Presidential records. The Archivist's authority with respect to Vice-Presidential records shall be the same as the Archivist's authority with respect to Presidential records, except that the Archivist may, when he determines it to be in the public interest, enter into an agreement with a non-Federal archival repository for the deposit of Vice-Presidential records.

§ 1270.14 Definitions.

For the purposes of this part—

(a) The terms *documentary material*, *Presidential records*, *personal records*, *Archivist*, and *former President* have the meanings given them by 44 U.S.C. 2201 (1)-(5), respectively.

(b) The term *agency* has the meaning given it by 5 U.S.C. 551(1) (A)-(D) and 552(f).

(c) The term *Presidential archival depository* has the meaning given it by 44 U.S.C. 2101(1).

(d) The term *Vice-Presidential records* means documentary materials, or any reasonably segregable portion thereof, created or received by the Vice President, his immediate staff, or a unit or individual of the Office of the Vice President whose function is to advise and assist the Vice President, in the

course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the Vice President. The term includes documentary materials of the kind included under the term *Presidential records*.

(e) The term *filed* means the date something is received in the office of the official to whom it is addressed.

Subpart B—Actions Taken on Behalf of Former Presidents

§ 1270.20 Designation of person or persons to act for former President.

(a) A President or former President may designate some person or persons to exercise, upon death or disability of the President or former President, any or all of the discretion or authority granted to the President or former President by chapter 22 of title 44 U.S.C.

(b) When a President or former President designates a person or persons to act for him pursuant to paragraph (a) of this section, this designation shall be effective only if the Archivist has received notice of the designation before the President or former President dies or is disabled.

(c) The notice required by paragraph (b) of this section shall be in writing, and shall include the following information:

(1) Name(s) of the person or persons designated to act for the President or former President;

(2) The current addresses of the person or persons designated; and

(3) The records, identified with reasonable specificity, over which the designee(s) will exercise discretion or authority.

§ 1270.22 When Archivist may act for former President.

In those instances where a President has specified, in accordance with 44 U.S.C. 2204(a), restrictions on access to Presidential records, but has not made a designation under § 1270.20 of this subpart, the Archivist shall, upon the death or disability of a President or former President, exercise the discretion or authority granted to a Presi-

dent or former President by 44 U.S.C. 2204.

Subpart C—Disposal of Presidential Records

§ 1270.30 Disposal of Presidential records by incumbent President.

A President may, while in office, dispose of any Presidential records which in his opinion lack administrative, historical, informational, or evidentiary value if one of the following two sets of requirements is satisfied:

(a)(1) The President has obtained the written views of the Archivist concerning the proposed disposal; and

(2) The Archivist states in his written views to the President that he does not intend to request, with respect to the President's proposed disposal of Presidential records, the advice of the Committees on Rules and Administration and Governmental Affairs of the Senate, and the Committees on House Administration and Government Operations of the House of Representatives because he does not consider—

(i) The records proposed for disposal to be of special interest to the Congress; or

(ii) Consultation with the Congress concerning the proposed disposal to be in the public interest; or

(b)(1) The President has obtained the written views of the Archivist concerning the proposed disposal;

(2) The Archivist states in his written views either—

(i) That the records proposed for disposal may be of special interest to the Congress; or

(ii) That consultation with the Congress concerning the proposed disposal is in the public interest; and

(3) The President submits copies of the proposed disposal schedule to the Committees on Rules and Administration and Governmental Affairs of the Senate and the Committees on House Administration and Government Operations of the House of Representatives at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress *sine die*, and the days on which either House is not in session because of

adjournment of more than 3 days to which certain are excluded in the computation of the days in which Congress is in continuous session.

1270.32 Disposal of Presidential Records in the custody of the Archivist.

(1) The Archivist may dispose of Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation.

(2) When Presidential records are scheduled for disposal pursuant to paragraph (a) of this section, the Archivist shall publish a notice of this disposal in the FEDERAL REGISTER at least 60 days before the proposed disposal date.

The notice required by paragraph (b) of this section, shall include the following:

(a) A reasonably specific description of the records scheduled for disposal;

(b) A concise statement of the reason for disposal of the records.

(c) Publication in the FEDERAL REGISTER of the notice required by paragraph (b) of this section shall constitute a final agency action for purposes of review under chapter 7 of title 5, U.S.C. (5 U.S.C. 701-706).

part D—Access to Presidential Records

1270.40 Identification of restricted records.

If a President, prior to the conclusion of his term of office or last consecutive term of office, as the case may be, specifies durations, not to exceed 12 months, for which access to certain information contained in Presidential records shall be restricted, in accordance with 44 U.S.C. 2204, the Archivist or designee shall identify the Presidential records affected, or any reasonably segregable portion thereof, in consultation with that President or his authorized representative(s).

The Archivist shall restrict public access to the information contained in records identified as affected

(1) The date on which the former President waives the restriction on disclosure of the record or information contained within;

(2) The expiration of the period of restriction specified under 44 U.S.C. 2204(a) for the category of information under which a certain record, or a portion thereof, was restricted; or

(3) The Archivist has determined that the former President or an agent of the former President has placed in the public domain through publication a restricted record or a reasonably segregable portion thereof, if this date is earlier than either of the dates specified in paragraph (b)(1) or (2) of this section.

§ 1270.42 Denial of access to public; right to appeal.

(a) Any person denied access to a Presidential record (hereinafter *the requester*) because of a determination that the record or a reasonably segregable portion thereof was (1) properly restricted under 44 U.S.C. 2204(a), and (2) not placed in the public domain by the former President or his agent, may file an administrative appeal with the Assistant Archivist for Presidential Libraries (NL), Washington, DC 20408.

(b) Appeals shall be filed no later than 10 working days after the requester receives written notification that access to Presidential records has been denied.

(c) Appeals shall be in writing and shall set forth the reason(s) why the requester believes access to the records sought should be allowed. The requester shall identify the specific records sought.

(d) Upon receipt of an appeal, the Assistant Archivist for Presidential Libraries shall have 30 working days from the date an appeal is filed to consider the appeal and to respond in writing to the requester. The Assistant Archivist's response shall state whether or not the Presidential records requested are to be released and the basis for this determination. The decision of the Assistant Archivist to withhold release of Presidential records is final and not subject to judicial review.

§ 1270.44

36 CFR Ch. XII (7-1-95 Edition)

§ 1270.44 Exceptions to restricted access.

(a) Notwithstanding any restrictions on access imposed pursuant to section 2204 or these regulations, and subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available in the following instances:

(1) Pursuant to subpoena or other judicial process properly issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(2) To an incumbent President if the records sought contain information which is needed for the conduct of current business of his office and is not otherwise available;

(3) To either House of Congress, or, to the extent of matter within its jurisdiction, to a Congressional committee or subcommittee if the records sought contain information which is needed for the conduct of business within its jurisdiction and is not otherwise available.

(b) Requests by an incumbent President, a House of Congress, or a Congressional committee or subcommittee pursuant to paragraph (a) of this section shall be addressed to the Archivist. All requests shall be in writing and, where practicable, identify the records sought with reasonable specificity.

(c) Presidential records of a former President shall be available to the former President or his designated representative upon request.

§ 1270.46 Notice of intent to disclose Presidential records.

(a) The Archivist or his designee shall notify a former President or his designated representative(s) before any Presidential records of his Administration are disclosed.

(b)(1) The notice given by the Archivist or his designee shall:

(i) Be in writing;

(ii) Identify the particular records with reasonable specificity;

(iii) State the reason for the disclosure; and

(iv) Specify the date on which the record will be disclosed.

(2) In the case of records to be disclosed in accordance with § 1270.44, the notice shall also:

(i) Identify the requester and the nature of the request;

(ii) Specify whether the requested records contain materials to which access would otherwise be restricted pursuant to 44 U.S.C. 2204(a) and identify the category of restriction within which the record to be disclosed falls; and

(iii) Specify the date of the request.

(c) If, after receiving the notice required by paragraph (a) of this section, a former President raises rights or privileges which he believes should preclude the disclosure of a Presidential record, and the Archivist nevertheless determines that the record in question should be disclosed, in whole or in part, the Archivist shall notify the former President or his representative of this determination. The notice given by the Archivist or his designee shall:

(1) Be in writing;

(2) State the basis upon which the determination to disclose the record is made; and

(3) Specify the date on which the record will be disclosed.

(d) The Archivist shall not disclose any records covered by any notice required by paragraph (a) or (c) of this section for at least 30 calendar days from receipt of the notice by the former President, unless a shorter time period is required by a demand for Presidential records under § 1270.44.

(e) Copies of all notices provided to former Presidents under this section shall be provided at the same time to the incumbent President.

Subpart E—Presidential Records Compiled for Law Enforcement Purposes

§ 1270.50 Consultation with law enforcement agencies.

(a) For the processing of Presidential records compiled for law enforcement purposes that may be subject to 5 U.S.C. 552(b)(7), the Archivist shall request specific guidance from the appropriate Federal agency on the proper treatment of a record if there is no general guidance applicable, if the record is particularly sensitive, or if

the type of record or information is widespread throughout the files.

(b) When specific agency guidance is requested under paragraph (a) of this section, the Archivist shall notify the appropriate Federal agency of the decision regarding disclosure of the specific documents. Notice shall include the following:

(1) A description of the records in question;

(2) Statements that the records described contain information compiled

for law enforcement purposes and may be subject to the exemption provided by 5 U.S.C. 552(b)(7) for records of this type; and,

(3) The name of a contact person at NARA.

(c) Agency guidance under this section is not binding on the Archivist. The final determination on whether Presidential records may be subject to the exemption in 5 U.S.C. 552(b)(7) is the Archivist's responsibility.

consistent with national security requirements and considerations, it is hereby ordered that Executive Order No. 12171, as amended, is further amended to add the following subsection:

"1-213. The subdivisions of the Federal Aviation Administration, Department of Transportation:

(a) Federal Air Marshal Branch, International Civil Aviation Security Division, Office of Civil Aviation Security.

(b) Units composed of Civil Aviation Security Inspectors in Civil Aviation Security divisions whose responsibilities require Federal air marshal functions."

RONALD REAGAN

THE WHITE HOUSE,

January 12, 1989.

Executive Order 12667 of January 18, 1989

Presidential Records

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish policies and procedures governing the assertion of Executive privilege by incumbent and former Presidents in connection with the release of Presidential records by the National Archives and Records Administration pursuant to the Presidential Records Act of 1978, it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this Order:

(a) "Archivist" refers to the Archivist of the United States or his designee.

(b) "NARA" refers to the National Archives and Records Administration.

(c) "Presidential Records Act" refers to the Presidential Records Act of 1978 (Pub. L. No. 95-591, 92 Stat. 2523-27, as amended by Pub. L. No. 98-497, 98 Stat. 2287), codified at 44 U.S.C. 2201-2207.

(d) "NARA regulations" refers to the NARA regulations implementing the Presidential Records Act. 53 Fed. Reg. 50404 (1988), codified at 36 C.F.R. Part 1270.

(e) "Presidential records" refers to those documentary materials maintained by NARA pursuant to the Presidential Records Act and the NARA regulations.

(f) "Former President" refers to the former President during whose term or terms of office particular Presidential records were created.

(g) A "substantial question of Executive privilege" exists if NARA's disclosure of Presidential records might impair the national security (including the conduct of foreign relations), law enforcement, or the deliberative processes of the Executive branch.

(h) A "final court order" is a court order from which no appeal may be taken.

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Sec. 2. Notice of Intent to Disclose Presidential Records.

(a) When the Archivist provides notice to the incumbent and former Presidents of his intent to disclose Presidential records pursuant to section 1270.46 of the NARA regulations, the Archivist, utilizing any guidelines provided by the incumbent and former Presidents, shall identify any specific materials, the disclosure of which he believes may raise a substantial question of Executive privilege. However, nothing in this Order is intended to affect the right of the incumbent or former Presidents to invoke Executive privilege with respect to materials not identified by the Archivist. Copies of the notice for the incumbent President shall be delivered to the President (through the Counsel to the President) and the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel). The copy of the notice for the former President shall be delivered to the former President or his designated representative.

(b) Upon the passage of 30 days after receipt by the incumbent and former Presidents of a notice of intent to disclose Presidential records, the Archivist may disclose the records covered by the notice, unless during that time period the Archivist has received a claim of Executive privilege by the incumbent or former President or the Archivist has been instructed by the incumbent President or his designee to extend the time period. If a shorter time period is required under the circumstances set forth in section 1270.44 of the NARA regulations, the Archivist shall so indicate in the notice.

Sec. 3. Claim of Executive Privilege by Incumbent President.

(a) Upon receipt of a notice of intent to disclose Presidential records, the Attorney General (directly or through the Assistant Attorney General for the Office of Legal Counsel) and the Counsel to the President shall review as they deem appropriate the records covered by the notice and consult with each other, the Archivist, and such other Federal agencies as they deem appropriate concerning whether invocation of Executive privilege is justified.

(b) The Attorney General and the Counsel to the President, in the exercise of their discretion and after appropriate review and consultation under subsection (a) of this section, may jointly determine that invocation of Executive privilege is not justified. The Archivist shall be promptly notified of any such determination.

(c) If after appropriate review and consultation under subsection (a) of this section, either the Attorney General or the Counsel to the President believes that the circumstances justify invocation of Executive privilege, the issue shall be presented to the President by the Counsel to the President and the Attorney General.

(d) If the President decides to invoke Executive privilege, the Counsel to the President shall notify the former President, the Archivist, and the Attorney General in writing of the claim of privilege and the specific Presidential records to which it relates. After receiving such notice, the Archivist shall not disclose the privileged records unless directed to do so by an incumbent President or by a final court order.

Sec. 4. Claim of Executive Privilege by Former President.

(a) Upon receipt of a claim of Executive privilege by a former President, the Archivist shall consult with the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel), the Counsel to the President, and such other Federal agencies as he deems appropriate concerning the Archivist's determination as to whether to honor the former President's claim of privilege or instead to disclose the Presidential records notwithstanding the claim of privilege. Any determination under section 3 of this Order that Executive privilege shall not be invoked by the incumbent President shall not prejudice the Archivist's determination with respect to the former President's claim of privilege.

(b) In making the determination referred to in subsection (a) of this section, the Archivist shall abide by any instructions given him by the incumbent President or his designee unless otherwise directed by a final court order. The Archivist shall notify the incumbent and former Presidents of his determination at least 30 days prior to disclosure of the Presidential records, unless a shorter time period is required in the circumstances set forth in section 1270.44 of the NARA regulations. Copies of the notice for the incumbent President shall be delivered to the President (through the Counsel to the President) and the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel). The copy of the notice for the former President shall be delivered to the former President or his designated representative.

Sec. 5. Judicial Review. This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

THE WHITE HOUSE,
January 18, 1989.

RONALD REAGAN

Executive Order 12668 of January 25, 1989

President's Commission on Federal Ethics Law Reform

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), an advisory committee on reform of the Federal ethics laws, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established the President's Commission on Federal Ethics Law Reform. The Commission shall be composed of not more than eight members appointed by the President. These members shall be distinguished individuals with broad experience in ethics and public service.

(b) The President shall designate a Chairman and Vice Chairman from among the members of the Commission.

Sec. 2. Functions. The Commission shall advise the President for legislative and public confidence.

(b) The Commission shall provide a

Sec. 3. Administration. The Director of the Office of Management and Organization shall provide the Commission with the resources required for its purposes.

(b) Members of the Commission shall work on the Commission, membership shall be determined in lieu of subsistence, and the extent of funds shall be determined.

(c) The Attorney General shall determine the availability of administrative services and may be necessary.

Sec. 4. Counsel. The Commission's report, recommendations, and periodic reports shall be submitted to the President, the Attorney General, and the Executive Secretary.

Sec. 5. General. The Commission shall report to the President, the Attorney General, and the Executive Secretary. The Commission shall be amended, except as provided in the Commission's charter with guidance from the General Services Administration.

(b) The Commission shall be extended.

THE WHITE HOUSE,
January 25, 1989.

Editorial note: For announcement on January 25, 1989, see the *Weekly Compilation of Presidential Documents*.

Miriam -

I think correct citation style is set forth
below. A copy of The EO from 3CFR, 1989 Comp., is also
attached. Call if questions.

Thank.

CR

Cite Presidential documents in this volume

3 CFR, 1989 Comp.

thus: 3 CFR, 1989 Comp., p. 1

Cite Chapter I entries in this volume

3 CFR

thus: 3 CFR 100.735-1



our order. It's easy!

Orders may be telephoned to the GPO order
dept. 753-3238 from 8:00 a.m. to 4:00 p.m.
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REV. 11-1-81

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ATTORNEY WORK PRODUCT PRIVILEGE
ATTORNEY-CLIENT PRIVILEGE

The following procedures have been developed from the Presidential Records Act, implementing regulations and Executive Order 12667 and in consultation with the Civil Division, Department of Justice.

Outline of Presidential Records Act Privilege Review Process

1. NARA staff at Presidential Library identifies Presidential records responsive to the discovery demand, court order or other special access request. See 44 U.S.C. § 2205(2).
2. The Archivist provides notice of the Archivist's intent to disclose Presidential records. The notice should identify the requester and the date and nature of the request and should specify whether the requested records contain materials to which access would otherwise be restricted and identify the applicable category of restriction. 36 C.F.R. § 1270.46(b)(2). Copies of the notice are sent to the incumbent President (through the Counsel to the President) and the Attorney General (through the Assistant Attorney General, Office of Legal Counsel) and to the former President. E.O. 12667, § 2(a).
3. In providing this notice, the Archivist, utilizing guidelines provided by incumbent and former Presidents, shall identify any specific materials the disclosure of which the Archivist believes may raise a substantial question of Executive privilege. Id., § 2(a). (See the discussion below regarding privilege.)
4. The period for review by the incumbent and former Presidents of the Archivist's notice of intent to disclose Presidential records is at least 30 days. Id., § 2(b).

Incumbent President's Claim of Privilege

5. If the Attorney General and Counsel to the President believe invocation of Executive privilege is warranted, the issue shall be presented to the President. See id., § 3.
6. If the President decides to invoke Executive privilege, the Archivist shall not disclose the privileged records unless directed to do so by an incumbent President or by Court order. Id., § 3(d).

Former President's Claim of Privilege

7. The former President may make a determination as to whether to raise a claim of Executive privilege. Id., § 4(a).

8. Upon consultation with the Attorney General/OLC and the Counsel to the President, the Archivist determines whether to honor claim of Executive privilege by the former President or instead to disclose Presidential records notwithstanding claim of privilege. Id., § 4(a).
9. In making a determination not to honor a former President's claim of Executive privilege, the Archivist shall abide by any instructions given by the incumbent President or his designee. Id., § 4(b).
10. If the Archivist determines that the claim of Executive privilege by the former President should not be honored, notice of this decision should be provided at least 30 days prior to disclosure of the Presidential record. Id., § 4(b). This would allow the former President to bring any legal action on his own behalf. Thereafter, the Archivist may disclose the records unless otherwise enjoined.
11. If the Archivist determines that the claim of Executive privilege by the former President should be honored, the Archivist should determine, pursuant to the process of providing notice to the incumbent President, whether the incumbent President will join in the claim of Executive privilege by the former President. See id., § 4(a).
12. The incumbent President may join in the former President's claim, may not join in the claim but may not object to the Archivist's honoring of the claim, or may raise his own claim of Executive privilege. Should the Archivist intend to honor a claim of Executive privilege by a former President and/or should the Archivist be notified that the incumbent will claim Executive privilege, notice of the assertion of the privilege should be provided to the requester of the information accordingly.
13. In the event the incumbent President joins in a claim of privilege by a former President, the Archivist would participate directly in the defense of any challenge to withhold Presidential records on privilege grounds.

Executive Privilege

E.O. 12667 provides that a "substantial question of Executive privilege" exists if NARA's disclosure of Presidential records might impair: (1) the national security (including the conduct of foreign relations; (2) law enforcement; or (3) the deliberative processes of the Executive branch. E.O. 12667, § 1(g). (The assertion of privilege to protect classified information would be made solely by the incumbent President. See Nixon v. Administrator, 433 U.S. 425, 440 (1977).) In addition, the Supreme Court has held that there is an Executive (or Presidential) privilege

that protects confidential communications exchanged between the President and his advisers in the course of shaping policies and making decisions. Id. at 446-51. Although this Presidential privilege may be invoked by a former President, the claim is weakened if not joined in by the incumbent President. Id. at 449. The foregoing elements of privilege apply for purposes of a claim of privilege in response to a discovery demand, court order, or other disclosure. This issue of privilege is distinct from the issue of whether access to a Presidential record shall be "restricted" for a period up to 12 years under the Presidential Records Act. 44 U.S.C. § 2204(a).

July 1994

[c:\work\pra\privilge]



Date : January 5, 1996
Reply to : NKS/mek
Attn of : NL (Nancy Kegan Smith) and GC (Amy E. Krupsky) AEC
Subject : The ABCs of the FRA & PRA
To : N

This is in response to your request for a brief comparison of the basic provisions of the Federal Records Act and the Presidential Records Act.

I. Definitions

Federal: Documentary materials regardless of physical form that are made or received by an agency of the U.S. Government under Federal law or in connection with the transaction of public business, and preserved or appropriate for preservation as evidence of agency activities or because of the value of the information they contain.

Presidential: Documentary materials regardless of physical form that are created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President, whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory or other ceremonial or official duties of the President. Applies only to records created after January 20, 1981.

II. What's not included in the definitions above?

Federal: Personal papers and materials not used in the transaction of government business, also non-record material such as exhibits, stocks of publications and extra copies for convenience of reference.

Presidential: Personal papers, as defined in the statute, include materials of purely private character such as diaries, journals, not used in government business, materials relating to private political associations, and materials relating to the election of President and others.

III. What entities create these records?

Federal: Federal agencies including agencies in the executive branch, the courts (except the Supreme Court) and some establishments in the legislative branch except the

Senate, House of Representatives and Architect of the Capitol.

Presidential: President, members of his immediate staff who advise and assist, includes NSC and other components of the Executive Office of the President who solely advise and assist the President.

Vice Presidential: Vice President and members of his staff create Vice Presidential records which are treated in the same way as Presidential records.

IV. Who determines record status?

Federal: The head of the agency determines federal record status.

Presidential: The President determines Presidential record status.

V. Who maintains the records?

Federal: The agencies maintain their own records until they are transferred to NARA if they are permanent, usually when they are 30 years old, or the agencies dispose of them in accordance with NARA-approved disposition schedules. Agencies maintain their records in accordance with agency guidelines and NARA guidance.

President: Presidential records are maintained by the President during his term of office and transferred to NARA at the end of the administration. The Executive Office of the President maintains its Presidential records in accordance with EOP guidelines and, when requested, NARA guidance.

VI. Who has authority to dispose of these records?

Federal: The Archivist must approve the destruction of all federal records, either through the promulgation of general records schedules, which apply to records common to many agencies, or through the approval of specific requests for disposition.

Presidential: The Archivist must provide his views in writing in response to a proposed destruction of Presidential records by an incumbent President. The Archivist may also dispose of Presidential records once transferred to NARA when he has determined that they do not warrant continued preservation. 60 days advance notice must be published in the Federal Register.

VII. What responsibilities does the Archivist have with regard to these records?

Federal: The Archivist must maintain the permanently valuable records of the Government, appraise and approve the disposition of all non-permanent federal records, advise the agencies on proper records management practices and advise the Attorney General and Congress of possible destruction of federal records.

Presidential: The only statutory responsibility that the Archivist has for records of an incumbent President is the responsibility for providing his views in writing in response to a proposed destruction of Presidential records and for requesting the advice of the appropriate committees of the House and Senate if he thinks that the destruction raises concerns or is of particular interest to Congress.

At the end of the Administration the Archivist assumes additional responsibilities with regard to maintenance and access to Presidential records, see below.

VIII. How does the public gain access to essential evidence?

Federal: The public may request access, at any time, to executive branch agency records under The Freedom of Information Act. NARA will process these request under the statute and may withhold some information under one or more of the nine FOIA exemptions. These exemptions include, for example, national security and invasion of privacy.

Presidential: Presidential records are not available for public access during the term of the incumbent. While in office the President has the right to chose to apply up to six restrictive categories that will be applied to his records once he leaves office. These restrictions may not exceed 12 years after he leaves office and are applied by the Archivist, in consultation with the former President, during the 12 years only. Thereafter only the FOIA applies.

For a period of five years after the end of the term or until the Archivist has processed an integral file segment (if sooner), the records are not available to public access requests. After the five year period, any records that do not fall within the six restrictive categories are available under FOIA, subject to eight FOIA exemptions. Exemption 5, encompassing the deliberative process privilege, is not available. The Archivist must notify the incumbent and former President before release of any Presidential records in accordance with E.O.12667 for possible claims of privilege.

§ 2201. Definitions

As used in this chapter—

(1) The term "documentary material" means all books, correspondence, memorandums, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, audio, audio-visual, or other electronic or mechanical recordings.

(2) The term "Presidential records" means documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of

conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term—

(A) includes any documentary materials relating to the political activities of the President or members of his staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e) of title 5, United States Code [5 U.S.C.A. § 552(f)]); (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

(3) The term "personal records" means all documentary materials, or any reasonably segregable portion thereof,¹ of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term includes—

(A) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business;

(B) materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; and

(C) materials relating exclusively to the President's own election to the office of the Presidency; and materials directly relating to the election of a particular individual or individuals to Federal, State, or local office, which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

(4) The term "Archivist" means the Archivist of the United States.

(5) The term "former President", when used with respect to Presidential records, means the former President during whose term or terms of office such Presidential records were created.

(Added Pub.L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2523.)

¹ So in original. Probably should be "thereof."

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1986 Act. Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 5627.

References in Text

Section 552(e) of title 5, referred to in par. (2)(B)(i), was redesignated section 552(f) of title 5 by section 1802(b) of Pub.L. 99-570.

Effective Dates

1978 Act. Section 3 of Pub.L. 95-591 provided that: "The amendments made by this Act [enacting this chapter, amending sections 2111 and 2112 of this title and enacting provisions set out as notes under this section] shall be effective with respect to any Presidential records (as defined in section 2201(2) of title 44, as amended by section 2 of this

Act [this section]) created during a term of office of the President beginning on or after January 20, 1981."

Separability of Provisions

Section 4 of Pub.L. 95-591 provided that: "If any provision of this Act [enacting this chapter, amending sections 2107 and 2108 of this title and enacting provisions set out as notes under this section] is held invalid for any reason by any court, the validity and legal effect of the remaining provisions shall not be affected thereby."

Short Title

1978 Act. For Short Title of this chapter as the "Presidential Records Act of 1978", see section 1 of Pub.L. 95-591, set out as a note under section 101 of this title.

CROSS REFERENCES

Presidential archival depository, continuous and permanent possession of materials, see 44 USCA § 2112.

LIBRARY REFERENCES

American Digest System

Control, regulation, and use of public property, buildings, and places, see United States §57.

Custody, care, and use of records in general, see Records §13.

Encyclopedias

Control, regulation, and use of public property and places, see C.J.S. United States § 74.

Custody, care, and use of records in general, see C.J.S. Records § 34.

WESTLAW ELECTRONIC RESEARCH

Records cases: 326k[add key number].

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Records within section 1**1. Records within section**

Private suit under Administrative Procedures Act to compel compliance by the President of the United States (as head of the Executive Office of the President), the National Security Council and the Archivist of the United States with the Federal Records Act and Presidential Records Act in connection with information contained on Professional Office

System (PROFS) intercomputer communication system was not required to be dismissed or disposed of through summary judgment on ground that PROFS system information was required to be reduced to hard copy form by administrative policies and that the residue in the system did not constitute records; material question of fact, precluding such relief, existed as to whether users adequately complied with D.D.C.1989, 721 F.Supp. 343.

§ 2202. Ownership of Presidential records

The United States shall reserve and retain complete ownership, possession, and control of Presidential records; and such records shall be administered in accordance with the provisions of this chapter.

(Added Pub.L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2524.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1986 Act. Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 5627.

LIBRARY REFERENCES

American Digest System

Control, regulation, and use of public property, buildings, and places, see United States §57.

Custody, care, and use of records in general, see Records §13.

Encyclopedias

Control, regulation, and use of public property, and places, see C.J.S. United States § 74.

Custody, care, and use of records in general, see C.J.S. Records § 34.

WESTLAW ELECTRONIC RESEARCH

Records cases: 326k[add key number].

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2203. Management and custody of Presidential records

(a) Through the implementation of records management controls and other necessary actions, the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as Presidential records pursuant to the requirements of this section and other provisions of law.

(b) Documentary materials produced or received by the President, his staff, or units or individuals in the Executive Office of the President the function of which is to advise and assist the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.

(c) During his term of office, the President may dispose of those of his Presidential records that no longer have administrative, historical, informational, or evidentiary value if—

(1) the President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records; and

(2) the Archivist states that he does not intend to take any action under subsection (e) of this section.

(d) In the event the Archivist notifies the President under subsection (c) that he does intend to take action under subsection (e), the President may dispose of such Presidential records if copies of the disposal schedule are submitted to the appropriate Congressional Committees at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

(e) The Archivist shall request the advice of the Committee on Rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Administration and the Committee on Government Operations of the House of Representatives with respect to any proposed disposal of Presidential records whenever he considers that—

(1) these particular records may be of special interest to the Congress; or

(2) consultation with the Congress regarding the disposal of these particular records is in the public interest.

(f)(1) Upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President. The Archivist shall have an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this Act.

(2) The Archivist shall deposit all such Presidential records in a Presidential archival depository or another archival facility operated by the United States. The Archivist is authorized to designate, after consultation with the former President, a director at each depository or facility, who shall be responsible for the care and preservation of such records.

(3) The Archivist is authorized to dispose of such Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to

warrant their continued preservation. Notice of such disposal shall be published in the Federal Register at least 60 days in advance of the proposed disposal date. Publication of such notice shall constitute a final agency action for purposes of review under chapter 7 of title 5, United States Code [5 U.S.C.A. § 701 et seq.].

(Added Pub.L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2524.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1986 Act. Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 5627.

References in Text

This Act, referred to in subsec. (f)(1), means Pub. L. 95-591, Nov. 4, 1978, 92 Stat. 2523, as amended, known as the

Presidential Records Act of 1978, which enacted this chapter, amended sections 2107 and 2108 of this title, and enacted provisions set out as notes under section 2201 of this title. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 101 of this title and Tables.

LIBRARY REFERENCES

American Digest System

Control, regulation, and use of public property, buildings, and places, see United States § 57.

Custody, care, and use of records in general, see Records § 13.

Disposition of property in general, see United States § 58(1).

Exercise of supreme executive authority, see United States § 28.

Encyclopedias

Control, regulation, and use of public property and places, see C.J.S. United States § 74.

Custody, care, and use of records in general, see C.J.S. Records § 34.

Disposition of public property in general, see C.J.S. United States § 75.

Powers and duties of President in general, see C.J.S. United States § 29.

WESTLAW ELECTRONIC RESEARCH

Records cases: 326k[add key number].

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2204. Restrictions on access to Presidential records

(a) Prior to the conclusion of his term of office or last consecutive term of office, as the case may be, the President shall specify durations, not to exceed 12 years, for which access shall be restricted with respect to information, in a Presidential record, within one or more of the following categories:

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relating to appointments to Federal office;

(3) specifically exempted from disclosure by statute (other than sections 552 and 552b of title 5, United States Code [5

U.S.C.A. §§ 552 and 552b]), provided that such statute (A) requires that the material be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of material to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers; or

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(b)(1) Any Presidential record or reasonably segregable portion thereof containing information within a category restricted by the President under subsection (a) shall be so designated by the Archivist and access thereto shall be restricted until the earlier of—

(A)(i) the date on which the former President waives the restriction on disclosure of such record, or

(ii) the expiration of the duration specified under subsection (a) for the category of information on the basis of which access to such record has been restricted; or

(B) upon a determination by the Archivist that such record or reasonably segregable portion thereof, or of any significant element or aspect of the information contained in such record or reasonably segregable portion thereof, has been placed in the public domain through publication by the former President, or his agents.

(2) Any such record which does not contain information within a category restricted by the President under subsection (a), or contains information within such a category for which the duration of restricted access has expired, shall be exempt from the provisions of subsection (c) until the earlier of—

(A) the date which is 5 years after the date on which the Archivist obtains custody of such record pursuant to section 2203(d)(1); or

(B) the date on which the Archivist completes the processing and organization of such records or integral file segment thereof.

(3) During the period of restricted access specified pursuant to subsection (b)(1), the determination whether access to a Presidential record or reasonably segregable portion thereof shall be restricted shall be made by the Archivist, in his discretion, after

consultation with the former President, and, during such period, such determinations shall not be subject to judicial review, except as provided in subsection (e) of this section. The Archivist shall establish procedures whereby any person denied access to a Presidential record because such record is restricted pursuant to a determination made under this paragraph, may file an administrative appeal of such determination. Such procedures shall provide for a written determination by the Archivist or his designee, within 30 working days after receipt of such an appeal, setting forth the basis for such determination.

(c)(1) Subject to the limitations on access imposed pursuant to subsections (a) and (b), Presidential records shall be administered in accordance with section 552 of title 5, United States Code [5 U.S.C.A. § 552], except that paragraph (b)(5) of that section shall not be available for purposes of withholding any Presidential record, and for the purposes of such section such records shall be deemed to be records of the National Archives and Records Administration. Access to such records shall be granted on nondiscriminatory terms.

(2) Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President.

(d) Upon the death or disability of a President or former President, any discretion or authority the President or former President may have had under this chapter shall be exercised by the Archivist unless otherwise previously provided by the President or former President in a written notice to the Archivist.

(e) The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the former President asserting that a determination made by the Archivist violates the former President's rights or privileges.

(Added Pub.L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2525, and amended Pub.L. 98-497, Title I, § 107(b)(7), Oct. 19, 1984, 98 Stat. 2287.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1978 Act. House Report No. 95-1487, see 1978 U.S.Code Cong. and Adm.News, p. 5732.

1984 Act. Senate Report No. 98-373 and House Conference Report No. 98-1124, see 1984 U.S.Code Cong. and Adm.News, p. 3865.

References in Text

This Act, referred to in subsec. (c)(2), means Pub.L. 95-591, Nov. 4, 1978, 92 Stat. 2523, as amended, known as the

Presidential Records Act of 1978, which enacted this chapter, amended sections 2107 and 2108 of this title, and enacted provisions set out as notes under section 2201 of this title. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 101 of this title and Tables.

Amendments

1984 Amendment. Subsec. (c)(1). Pub.L. 98-497 substituted "National Ar-

chives and Records Administration" for "National Archives and Records Service of the General Services Administration".

Effective Dates

1984 Act. Amendment by Pub.L. 98-497 effective Apr. 1, 1985, see section

301 of Pub.L. 98-497 set out as a note under section 2102 of this title.

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 12667

Jan. 18, 1989, 54 F.R. 3403

PRESIDENTIAL RECORDS; EXECUTIVE PRIVILEGE PROCEDURES

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish policies and procedures governing the assertion of Executive privilege by incumbent and former Presidents in connection with the release of Presidential records by the National Archives and Records Administration pursuant to the Presidential Records Act of 1978, it is hereby ordered as follows:

Section 1. Definitions. For purposes of this Order:

(a) "Archivist" refers to the Archivist of the United States or his designee.

(b) "NARA" refers to the National Archives and Records Administration.

(c) "Presidential Records Act" refers to the Presidential Records Act of 1978 (Pub.L. No. 95-591, 92 Stat. 2523-27, as amended by Pub.L. No. 98-497, 98 Stat. 2287), codified at 44 U.S.C. 2201-2207 [this chapter].

(d) "NARA regulations" refers to the NARA regulations implementing the Presidential Records Act. 53 Fed.Reg. 50404 (1988), codified at 36 C.F.R. Part 1270.

(e) "Presidential records" refers to those documentary materials maintained by NARA pursuant to the Presidential Records Act and the NARA regulations.

(f) "Former President" refers to the former President during whose term or terms of office particular Presidential records were created.

(g) A "substantial question of Executive privilege" exists if NARA's disclosure of Presidential records might impair the national security (including the conduct of foreign relations), law enforcement,

or the deliberative processes of the Executive branch.

(h) A "final court order" is a court order from which no appeal may be taken.

Sec. 2. Notice of Intent to Disclose Presidential Records.

(a) When the Archivist provides notice to the incumbent and former Presidents of his intent to disclose Presidential records pursuant to section 1270.46 of the NARA regulations, the Archivist, utilizing any guidelines provided by the incumbent and former Presidents, shall identify any specific materials, the disclosure of which he believes may raise a substantial question of Executive privilege. However, nothing in this Order is intended to affect the right of the incumbent or former Presidents to invoke Executive privilege with respect to materials not identified by the Archivist. Copies of the notice for the incumbent President shall be delivered to the President (through the Counsel to the President) and the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel). The copy of the notice for the former President shall be delivered to the former President or his designated representative.

(b) Upon the passage of 30 days after receipt by the incumbent and former Presidents of a notice of intent to disclose Presidential records, the Archivist may disclose the records covered by the notice, unless during that time period the Archivist has received a claim of Executive privilege by the incumbent or former President or the Archivist has been instructed by the incumbent President or his designee to extend the time period. If a shorter time period is required under the circumstances set forth

in section 1270.44 of the NARA regulations, the Archivist shall so indicate in the notice.

Sec. 3. Claim of Executive Privilege by Incumbent President.

(a) Upon receipt of a notice of intent to disclose Presidential records, the Attorney General (directly or through the Assistant Attorney General for the Office of Legal Counsel) and the Counsel to the President shall review as they deem appropriate the records covered by the notice and consult with each other, the Archivist, and such other Federal agencies as they deem appropriate concerning whether invocation of Executive privilege is justified.

(b) The Attorney General and the Counsel to the President, in the exercise of their discretion and after appropriate review and consultation under subsection (a) of this section, may jointly determine that invocation of Executive privilege is not justified. The Archivist shall be promptly notified of any such determination.

(c) If after appropriate review and consultation under subsection (a) of this section, either the Attorney General or the Counsel to the President believes that the circumstances justify invocation of Executive privilege, the issue shall be presented to the President by the Counsel to the President and the Attorney General.

(d) If the President decides to invoke Executive privilege, the Counsel to the President shall notify the former President, the Archivist, and the Attorney General in writing of the claim of privilege and the specific Presidential records to which it relates. After receiving such notice, the Archivist shall not disclose the privileged records unless directed to do so by an incumbent President or by a final court order.

Sec. 4. Claim of Executive Privilege by Former President.

(a) Upon receipt of a claim of Executive privilege by a former President, the Archivist shall consult with the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel), the Counsel to the President, and such other Federal agencies as he deems appropriate concerning the Archivist's determination as to whether to honor the former President's claim of privilege or instead to disclose the Presidential records notwithstanding the claim of privilege. Any determination under section 3 of this Order that Executive privilege shall not be invoked by the incumbent President shall not prejudice the Archivist's determination with respect to the former President's claim of privilege.

(b) In making the determination referred to in subsection (a) of this section, the Archivist shall abide by any instructions given him by the incumbent President or his designee unless otherwise directed by a final court order. The Archivist shall notify the incumbent and former Presidents of his determination at least 30 days prior to disclosure of the Presidential records, unless a shorter time period is required in the circumstances set forth in section 1270.44 of the NARA regulations. Copies of the notice for the incumbent President shall be delivered to the President (through the Counsel to the President) and the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel). The copy of the notice for the former President shall be delivered to the former President or his designated representative.

Sec. 5. Judicial Review. This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN

LIBRARY REFERENCES

American Digest System

Control, regulation, and use of public property, buildings, and places, see United States ¶57.

Custody, care, and use of records in general, see Records ¶13.

Exercise of supreme executive authority, see United States ¶28.

Encyclopedias

Control, regulation, and use of public property and places, see C.J.S. United States § 74.

Custody, care, and use of records in general, see C.J.S. Records § 34.
Disposition of public property in general, see C.J.S. United States § 75.
Powers and duties of President in general, see C.J.S. United States § 29.

WESTLAW ELECTRONIC RESEARCH

Records cases: 326k[add key number].
United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2205. Exceptions to restricted access

Notwithstanding any restrictions on access imposed pursuant to section 2204—

(1) the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to Presidential records in the custody of the Archivist;

(2) subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available—

(A) pursuant to subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(B) to an incumbent President if such records contain information that is needed for the conduct of current business of his office and that is not otherwise available; and

(C) to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available; and

(3) the Presidential records of a former President shall be available to such former President or his designated representative.

(Added Pub.L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2527, and amended Pub.L. 98-497, Title I, § 107(b)(7), Oct. 19, 1984, 98 Stat. 2287.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1978 Act. House Report No. 95-1487, see 1978 U.S.Code Cong. and Adm.News, p. 5732.

1984 Act. Senate Report No. 98-373 and House Conference Report No. 98-1124, see 1984 U.S.Code Cong. and Adm.News, p. 3865.

Amendments

1984 Amendment. Subsec. (a)(1). Pub. L. 98-497 substituted "National Archives and Records Administration" for "National Archives and Records Service of the General Services Administration".

Effective Dates

1984 Act. Amendment by Pub.L. 98-497 effective Apr. 1, 1985, see section

301 of Pub.L. 98-497 set out as a note under section 2102 of this title.

LIBRARY REFERENCES

American Digest System

Control, regulation, and use of public property, buildings, and places, see United States § 57.

Custody, care, and use of records in general, see Records § 13.

Duties of officers and agents and performance thereof, see United States § 41.

Encyclopedias

Control, regulation, and use of public property and places, see C.J.S. United States § 74.

Custody, care, and use of records in general, see C.J.S. Records § 34.

Duties of officers, agents, and employees, see C.J.S. United States § 41.

WESTLAW ELECTRONIC RESEARCH

Records cases: 326k[add key number].
United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2206. Regulations

The Archivist shall promulgate in accordance with section 553 of title 5, United States Code [5 U.S.C.A. § 553], regulations necessary to carry out the provisions of this chapter. Such regulations shall include—

(1) provisions for advance public notice and description of any Presidential records scheduled for disposal pursuant to section 2203(f)(3);

(2) provisions for providing notice to the former President when materials to which access would otherwise be restricted pursuant to section 2204(a) are to be made available in accordance with section 2205(2);

(3) provisions for notice by the Archivist to the former President when the disclosure of particular documents may adversely affect any rights and privileges which the former President may have; and

(4) provisions for establishing procedures for consultation between the Archivist and appropriate Federal agencies regarding materials which may be subject to section 552(b)(7) of title 5, United States Code [5 U.S.C.A. § 552(b)(7)].

(Added Pub.L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2527.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1978 Act. House Report No. 95-1487, see 1978 U.S.Code Cong. and Adm.News, p. 5732.

LIBRARY REFERENCES

American Digest System

Control, regulation, and use of public property, buildings, and places, see United States ⅈ57.

Custody, care, and use of records in general, see Records ⅈ13.

Duties of officers and agents and performance thereof, see United States ⅈ41.

Encyclopedias

Control, regulation, and use of public property and places, see C.J.S. United States § 74.

Custody, care, and use of records in general, see C.J.S. Records § 34.

Duties of officers, agents, and employees, see C.J.S. United States § 41.

WESTLAW ELECTRONIC RESEARCH

Records cases: 326k[add key number].

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2207. Vice-Presidential records

Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records. The duties and responsibilities of the Vice President, with respect to Vice-Presidential records, shall be the same as the duties and responsibilities of the President under this chapter with respect to Presidential records. The authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist under this chapter with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a non-Federal archival depository. Nothing in this chapter shall be construed to authorize the establishment of separate archival depositories for such Vice-Presidential records.

(Added Pub.L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2527.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Act. House Report No. 95-1487,
see 1978 U.S.Code Cong. and Adm.News,
p. 5732.

LIBRARY REFERENCES

American Digest System

Control, regulation, and use of public property, buildings, and places, see United States ⅈ57.

Custody, care, and use of records in general, see Records ⅈ13.

Duties of officers and agents and performance thereof, see United States ⅈ41.

Encyclopedias

Control, regulation, and use of public property and places, see C.J.S. United States § 74.

Custody, care, and use of records in general, see C.J.S. Records § 34.

Duties of officers, agents, and employees, see C.J.S. United States § 41.

WESTLAW ELECTRONIC RESEARCH

Records cases: 326k[add key number].

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

National Archives



Washington, DC 20408

Date : April 26, 1993
Reply to :
Attn of : NL
Subject : Archives White House Support
To : Marianne Smith

*File
archives*

The attached memo gives a history of the Archives support for the President. The memo recommends the re-establishment of an "Archives Office" in the OEOB based on the Johnson Administration model. This recommendation is based on the fact that the Johnson archives office provided extremely effective support for the development of the LBJ Library, and my sense that this office would facilitate President Clinton's implementation of the Presidential Records Act.

The role of the Archives Office

The primary responsibility of the Archives office would be to provide archival assistance on Presidential records, storage and reference service on the personal papers of the President and the First Lady, and to assist the President in planning for his Presidential Library.

The Archives office would provide the same type of assistance for the President's and First Lady's personal papers, as is currently provided by the White House Office of Records Management for official Presidential files. The head of this office would work closely with the Director of the WHORM and the White House Counsel's Office to ensure that the Presidential Records Act is adhered to by following proper records handling practices. The Archives office would be particularly helpful to President Clinton in carrying out the Presidential Records Act requirement that documentary materials created by the President or his staff "...to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately." (44 USC 2203) By maintaining a separate file for personal papers, the Office would be implementing the requirements of the Presidential Records Act and guarding against inadvertent designation of personal papers as Presidential record.

For the most part, during the Reagan and Bush Administrations the early separation of personal and record materials simply did not occur, nor were there consistent record keeping practices on what papers should be filed

separately in a personal file. The Archives was not asked to provide assistance with the President or First Lady's personal archival material, or in ensuring the early creation and maintenance of a separate file for President's and First Lady's personal papers.

The Archives did provide assistance to the White House Office of Records Management, WHORM, and the Office of White House Counsel with respect to Presidential Records issues during the past two Administrations. This support has been provided by the Archives liaison to WHORM and through the Office of Presidential Libraries and NARA legal counsel to White House Counsel.

- * The lack of archival assistance for personal papers in both Presidential Administrations and the unfamiliarity with the Presidential Records Act created some archival problems that the Presidential Libraries are dealing with today. Clearly personal items, for example the President's letters to his grandchildren or the First Lady's letter to her close friends, have been filed with Presidential record material. Private political materials have also been filed with Presidential record material. The inadvertent mix of some Presidential record and personal papers causes confusion as to proper file status and as to the appropriate statutory authority governing access. Most of the separation of personal papers was done at the end of these Administrations at the very time when the determination as to proper record status is the most difficult to make.

Presidential personal papers are a highly valuable historical record of a Presidential Administration because they often contain the most personal and private insights of the President and his key advisors. Under the Presidential Records Act it is essential that these files be established and maintained on a consistent basis. Two Presidential Administrations have shown us that the distinctions between what is Presidential and what is personal record need to be thought about early in the Administration. Personal papers of the President, his advisors, and his family are usually donated by the President, or deeded in his will, to his Presidential Library. For the reasons mentioned above and to ensure the creation and proper protection of the most complete historical record, I believe that the National Archives should provide archival support for the President's and First Lady's personal files by the re-establishment of an Archives office.

Responsibilities of the Archives Office

The size of the Archives office staff would not have to be large because the volume of personal papers is much smaller than the Presidential Records file. The Personal Files could include the following types of materials: Diaries, Journals, Personal Notes, Campaign and Re-election Files, the President's records as head of the Democratic Party, Pre-Presidential files that the President may need to use as President, family and personal correspondence, financial records, First Lady's personal files, and copies of Presidential records that the President may want for his personal use.

A primary role of this Office would be to assist the President in his plans for a Presidential Library. The Office should serve as a liaison with groups working to establish a Clinton Library. The Office would work closely with the White House Gift Unit to make sure that appropriate exhibit material for the Clinton Presidential Library is properly identified and maintained. The staff of the Office would work closely with the President's and First Lady's advance teams to make sure that their trip activities are adequately documented and exhibit items are brought back to the White House for eventual use in the Presidential Library.

Archival concerns dealing with the development of computer systems in the White House offices could be referred to this office. The requirement to separate Federal Records and Presidential Records in the NSC and EOP offices has a parallel in the White House offices e.g., mixing personal and Presidential records may convert personal papers to government property. Under the Presidential Records Act any computer systems that include both Presidential records and personal records should have the ability to segregate these files so that the President does not lose control over his personal material.

The President's daily diary provides another example of a computer system that requires the ability to segregate personal and record material. The Diary, to be most useful to the President and future scholars, should contain both the President's official, personal and private political activities. Yet, if there is no provision to designate these types of activity when the information is entered, the President's personal information may become Presidential record.

*Young staff -
moving on admin -
changing views -
political career future
to be considered*

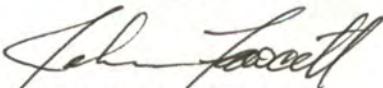
Organizational Placement

If an Archives office is re-established, there are several options for the organizational placement of this Office. These options include reporting directly to: (1) the President and First Lady; (2) the Staff Secretary; (3) the Chief of Staff, and (4) Office of White House Counsel. Whatever the placement of the Office, it is important that the work of the Office be preceived as having high level support.

Additional areas of responsibility for this Office could include consolidating some activities that the Archives has performed for different offices in the White House. These activities include the Federal Register's publishing of the "Weekly Compilation of Presidential Documents", and the "Public Papers of the President"; preservation advice; research activities for the President and First Lady; and oral histories conducted with current and departing staff.

* The proper selection of the person to head this office is critical to its success. This individual must have professional experience with personal papers. Presidential Library background and familiarity with the Presidential Records Act would be particularary useful to this Office. * The individual must be one that will have the full confidence of the President and Mrs. Clinton.

I hope my preliminary thoughts on this topic have been of some assistance. If the re-establishment of an Archives Office is an idea that has interest to the White House, I will be happy to provide more detail as to the functions and staffing for this Office.



JOHN FAWCETT
Assistant Archivist
for Presidential Libraries

National Archives



Washington, DC 20408

Date : April 26, 1993
Reply to :
Attn of : NL, Nancy Kegan Smith
Subject : Presidential Records Act requests
To : Marianne Smith

The White House Counsel's Office will be receiving notification of requests for the Presidential records of Reagan and Bush. The notification is required by the Presidential Records Act and the accompanying regulations. The purpose of the notification is to give Counsel, on behalf of the incumbent President, the right to object to any request for access or release of Presidential records to protect Executive privilege.

Even though these records are not produced by the Clinton Administration, their premature release could have a chilling effect upon the advice received by the incumbent President, or the conduct of national security. For this reason, the Presidential Records Act gave the right to the incumbent and to the former President who created the records to object to the proposed access and release of any Presidential records.

Some previous examples of requests for Presidential records include requests for Reagan records dealing with Agent Orange, Iran/Contra, Nuclear Proliferation, and transition materials.

Under the Presidential Records Act, special access is the only type of access allowed to Presidential records for 5 years after the date on which the Archivist obtains custody of the records, or until processing has been completed. Therefore, until January 1994 for Reagan, and January 1998 for Bush all requests into Presidential records are governed under the special access provisions. In the case of sensitive material, access may be restricted for up to twelve years.

Special access during this period is allowed pursuant to:
(1) a subpoena or other judicial process issued by a court;
(2) a request by the incumbent President for ongoing business; (3) either House of Congress or their committee or subcommittee if such records are needed for the conduct of Congressional business; and (4) to the former President or his designated representative.

To protect the rights of the former and incumbent Presidents a formalized procedure was established. The basic elements of this formalized procedure are:

1. All Executive branch requests are coordinated through White House Counsel's Office for Presidential records. The coordination gives Counsel the opportunity to confirm that the request is really necessary for the ongoing business of the President and to specify any specific conditions for the access or release of Presidential records.
2. Counsel's Office will be notified of any subpoena or Congressional requests.
3. Any requests for special access that are received by the National Archives are referred to White House Counsel. The notification is in writing from the Office of Presidential Libraries and in accordance with the regulations gives Counsel 30 days to object.
4. Counsel's response to the special access request should be in writing to the Office of Presidential Libraries.

White House Counsel's Office will also receive notification of Nixon Presidential materials openings at least 30 days in advance. This is required by the Presidential Recordings and Materials Preservation Act and its accompanying regulations.

The current notification that Counsel's Office have received include:

1. Two outstanding special access requests for Reagan Presidential records - one is from the FBI, the other is from a U.S. attorney.
2. A notification of a proposed opening of 3 hours of Nixon White House tape segments dealing with Watergate and some Nixon textual files.

Our Office, along with NARA legal counsel, would be happy to meet with White House Counsel to discuss the following procedures in more detail.

Nancy Kegan Smith
Nancy Kegan Smith
Supervisory Archivist
Office of Presidential Libraries

National Archives' White House Liaison Office Programs During Carter Administration

Assisted White House staff with records management

- o drafted written procedures (usually at request of Counsel)
- o surveyed records retained in staff offices
(jointly done with White House Office of Records Management)
- o answered staffers' questions concerning records management
- o provided courtesy archival storage and retrieval for personal, political and other pre-Presidential documentary materials
- o evaluated and recommended changes in recordkeeping practices for Vice President Mondale's office
- o identified appropriate destruction facilities for disposable Presidential materials
- o identified and/or created documentation for electronic records systems

Planned and implemented oral history programs

- o conducted recorded interviews and secured legal instruments for deposit of tapes in the Carter Library for over 150 staff members including Jody Powell, Robert Lipshutz, Lloyd Cutler, Zbigniew Brzezinski, Ann Wexler, Tim Kraft, Stuart Eizenstat, Gerald Rafshoon, Alfred Kahn, Kit Dobelle, Mary Finch Hoyt
- o conducted several dozen biographical interviews with members of Carter/Smith families in Georgia, Virginia and North Carolina. Completed legal instruments and transcripts for deposit in Carter Library.
- o submitted proposals for several other oral history programs, related to Camp David Accords, among other events

Advised White House staff on archival issues

- o prepared briefing papers at the request of various White House staff members on such topics as the implementation of the Presidential Records Act, planning for a Presidential Library, copyright and literary property issues, etc.

Managed Presidential audiovisual and gift materials

- o Stored, preserved and retrieved on request the following:
 - o WHCA audiotape and videotape copies of media coverage of Administration figures and events
 - o film and videotape of President's public appearances prepared by Naval Photographic Center
 - o Presidential gifts from foreign and domestic sources

Managed the exchange of documents or artifacts between Presidential Libraries or Archives exhibits and White House

Assisted White House staff involved in planning future Presidential Library

Solicited papers or other documentary materials for future Library

Completed contingency planning for Presidential records transition for both possible election outcomes

**Marie Allen
4/29/93**

National Archives



Washington, DC 20408

Date : April 22, 1993
Reply to
Attn of : NL
Subject : Archives Support for President Clinton
To : Marianne Smith

The National Archives has provided archival and records management assistance to the Presidents and their staffs since the agency's establishment. While the number of support activities has increased dramatically in the past twenty years, the administration and coordination of this work in the White House has become decentralized. Therefore, it is recommended that President Clinton's staff consider re-establishing an archives office to coordinate this agency's support activities and to assist in the planning process for a Clinton Presidential Library.

Background:

Shortly after the National Archives was established in 1934, President Roosevelt called on the Archivist of the United States to assist him in planning a Presidential Library to be located on his family estate in Hyde Park, New York. The National Archives quickly responded to the President's request. The Library was constructed with private funds on land donated by the President and the Archives began operating the facility in 1940.

The Archives support activities for the President continued during subsequent Administrations. In the mid 1960's, the National Archives established a permanent office located in the Old Executive Office Building (OEOB) to coordinate and direct the growing number of archives activities in support of the President. The National Archives maintained an office in the OEOB for nearly two decades, reorganizing its structure and staffing to meet the needs of each successive President.

In 1984, the Archives office was disbanded. However, all of the archival and records support activities continued and in fact were expanded over the remaining years of the Reagan and Bush Administrations by detailing employees or providing support from various Archives offices.

The National Archives Presidential support activities and planning for a Presidential Library was most effective when

an archives office was maintained in the OEOB. Three distinct office organizations have been established for previous Administrations.

* The first example of an archives office was created during the Johnson Administration. This office was headed by Ms. Dorothy P. Territo, a professional records manager, who had organized Lyndon Johnson's Senate and Vice Presidential papers. Ms. Territo reported directly to President Johnson.

The second example of an archives OEOB occurred during the Nixon Administration. The Archives hired Mr. Jack Nesbitt, a trained historian, to head the archives office. Mr. Nesbitt's office reported to the White House Chief of Staff HR Haldeman's organizational structure.

The final example for an archives office was created by President Carter in 1978. This office was headed by Marie B. Allen, a professional archivist, who had previous experience working in the Nixon archives office. The Carter office reported to Hugh Carter Jr., who headed the White House Office of Administration.

The structure and organizational placement of each of the above archives offices worked effectively for the Archives and the President. However, the Johnson example had several distinct advantages which improved the planning for the President's Library and the level of service that could be provided to the President. Most of these advantages were related to Ms. Territo's previous work experience with Lyndon Johnson. This relationship and the high degree of confidence that existed between the President and the archives office led to several activities and office functions that are unique to this example including the following:

1. combining the responsibility for the President's personal files, official diary, and photograph index in a single office;
2. establishment of a single point of contact for all National Archives offices including the Office of Presidential Libraries (NL), the Office of the National Archives (NN), the Office of Public Programs (NE), the Office of the Federal Register (NF), and the Office of Records Administration (NI);
3. providing for direct working relationships along inter-office lines with the First Ladies Office, the Office of White House Counsel, the Press Office, and the White House Records Office;

4. allowing for rapid response to Presidential needs by coordinating and implementing Presidential directives.

Recommendations

In light of the broad range of Archives support activities and the increasing records responsibilities of the Presidential Records Act, President Clinton should consider establishing an Archives Liaison Office. If such an office is established, previous experience in staffing, organizational placement and program responsibilities should be examined to assure that this office allows the Archives to serve the President in the most effective manner possible.



JOHN FAWCETT
Assistant Archivist
for Presidential Libraries

Support Activities Provided by the National Archives to the President

I. Current Archives Support Activities

*** Provide guidance to WHORM on the Presidential Records Act and courtsey storage and retrieval of records - Office of Presidential Libraries

*** Assist the Gift Unit in courtesey storage and retrieval of gifts and guidance on archival questions dealing with Head of State and Personal Gifts - Office of Presidential Libraries

*** Courtesey storage and retrieval of records and guidance on archival questions to the following White House Offices: Photo Office, White House Television, White House Communications Agency (audio and video sections), Office of the Vice President - Office of Presidential Libraries

*** Duplication and distribution of White House video placed in the public domain including Mrs. Clinton's Health Care Message - Office of Presidential Libraries and Office of Public Programs

*** Interest in or reference from Presidential Libraries - Office of Presidential Libraries

*** Assistance to White House Counsel on archival issues - Archivist, Office of Presidential Libraries, Office of Records Administration

*** Assistance to the National Security Counsel with declassification - Office of National Archives

*** Maintain President's daily diary and detail a diarist - Office of Presidential Libraries

*** Publication of weekly compilation of Presidential documents and Public Papers of the President - Office of the Federal Register

*** Recommendations on archival quality of inks and paper - Office of National Archives

*** Assist the White House Gift Unit in making determinations on loans of gifts - Office of Presidential Libraries

*** Assist with exit interviews of departing staff - Office of Presidential Libraries

*** Advise the President on matters dealing with the establishment of a Presidential Library - Archivist, Office of Presidential Libraries

*** Archival sampling and disposal approval of public opinion mail - Archivist, Office of Presidential Libraries

Support Activities Provided by the National Archives to the President

2. Past Archives Support Activities

*** Conducting oral history interview with departing White House staff

*** Coordinating with the President's personal administrative staff to maintain storage of personal papers including tape recordings of meetings and phone conversations

*** Maintaining Personal Papers of the President

*** Establishing and maintaining a diary backup file for the President consisting of supporting documentation to the daily diary

*** Establishing and maintaining a Presidential night reading and handwriting file

*** Maintaining originals of Head of State correspondence file for future exhibits

*** Coordination with Presidential advance team members to ensure appropriate documentation on travel and to save potential museum items

*** Provide reference services to the President from his personal files and reference on topics of interest to the President

*** Liaison with the head of White House Office of Records Management on the President's Personal and official files

*** Assisted the White House Correspondence Unit with requests dealing with personal aspects of the President and his family history

*** Maintained scrapbooks of important events

GUIDELINES FOR RECORDS IN THE WHITE HOUSE OFFICE

On behalf of the President, White House Office staff members process hundreds of thousands of letters, memoranda, reports, photographs, charts, computer messages, maps, schedules, films, briefing papers, speeches, and other types of documentary materials every year. The majority of these materials are legally classified as

*** Presidential records**

Materials created or received by the President or his staff in the course of "conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President." (44 U.S.C. Chapter 22)

Examples include letters received by the President expressing support for or opposition to Administration programs; one copy of each speech given by the President or staff members (including copies of significant drafts); briefing papers prepared by staff for the President; etc.

Presidential records cannot be destroyed or removed permanently from the White House Complex without the concurrence of the White House Counsel.

Occasionally White House Office staffers will receive or create other types of record material which **should always be filed separately** from Presidential records in order to preserve their legal status. These other categories include:

*** Presidential political materials**

Letters, memoranda, reports, or other materials relating exclusively to the President's political associations or activities.

Examples: letters encouraging President's support for candidates for office; election campaign materials; correspondence with the Democratic National Committee that does not concern Presidential programs or policies; etc.

*** Presidential personal materials**

Letters, photographs, diaries or other materials of a purely private and nonpublic character. Examples: correspondence with a daughter's school or dance instructors about her activities; life or health insurance documents for members of the President's family; letters from close family friends; or diaries created for personal uses only.

*** Staffers' personal materials**

Letters, memoranda, photographs, or other materials of a purely private or nonpublic character. Examples: health or life insurance documents; personal diaries not used for official purposes; citations or other awards received, etc.

A staffer may not consider as personal any copies of memoranda, briefing papers, speeches, reports or other materials created as part of his/her job. Materials created as part of official responsibilities are Presidential records. However, the White House Counsel may approve the removal of extra copies of such materials at the request of individual staffers.

Further assistance in making these distinctions is available from the White House Counsel's Office, White House Office of Records Management, or National Archives.

Please note that the same definitions apply to Vice Presidential Records, with the substitution of "Vice Presidential" for "Presidential" in all of the categories listed above.

Also note that the White House Office is not classified as an agency for the purposes of the Federal Records Act, and, accordingly, does not create federal records. Most of the other units of the Executive Office of the President (OMB, NSC, OA, for example) are classified as agencies and do create federal records.



Date : May 6, 1993
Reply to :
Attn of : NL, Nancy Kegan Smith
Subject : First Ladies Papers
To : Marianne Smith

The papers of the First Lady traditionally have received less attention in terms of filing practices than those of the President. However, these papers are an extremely valuable resource to scholars. During the past decade, the twentieth-century First Lady, her influence on her husband and his policies, and her own management of an office that has no legally prescribed function, have become topics of great interest. Along with this new interest in First Ladies, has come an increasing use of their papers at the Presidential Libraries.

The First Ladies papers always have been treated on a different basis than those of the President's, because the First Lady is not an elected official and has no statutory role. Surprisingly, since the passage of the Presidential Records Act, no real examination of how this Act applies to the First Lady's papers has been undertaken until the Hillary Clinton health care task force raised some concerns. Because Hillary Clinton clearly is playing an important role in the Clinton Administration, her official and personal papers will be of vital interest to future scholars. Both archival and legal guidance is needed so that these papers can be filed properly and thus provide a full and complete record of the First Lady's activities.

Background on First Ladies Papers

Historically, most First Ladies papers since Eleanor Roosevelt either were donated to her husband's Presidential Library as part of the President's Personal Paper collection or donated as a separate collection of Personal Papers of the First Lady. These papers often have been deeded to the Library at a much later time period than the President's. Because the First Lady is a private citizen and has no statutory role, the papers have been viewed as more sensitive in terms of potential privacy concerns than those of the President.

The White House Social Office Files are the official files that document the ceremonial and official functions of the

First Lady's office. The Social Office Files are composed of several series, including: the Social Entertainment Files, the Social Secretary Files, the Press Secretary Files, and the Alpha File containing the correspondence of the First Lady's Office.

Some of the series in the Social Office Files document the ceremonial functions of the Presidency, including the Social Entertainment Files which contain invitation lists, entertainment materials, seating charts, and background on guests at Head of State dinners. Other series, for example, the Press Secretary's Files, traditionally have documented more of the policy role of the First Lady - her interests and projects. Until the Reagan Administration, the Social Office Files were kept separate from the President's files. During the Reagan and Bush Administrations, these files were interfiled with the President's records entered in the WHORM stairs system, and treated as a staff office file. Other files of the First Lady, for example, her own correspondence files, also were intermixed with the President's White House subject files.

Archival and Legal Questions on the First Lady's Files

Early in the Clinton Administration decisions should be made on the handling of the Social Office Files and other files of the First Lady. Under the Presidential Records Act, the First Lady is not mentioned. However, the Act does say that Presidential records include: "documentary materials...created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon carrying out of the constitutional, statutory, or other official or ceremonial duties of the President."

Many of the Social Office Files document ceremonial or other official functions of the President. However, other series document the various activities of the First Lady. Are the Social Office Files to be treated in their entirety as Presidential Record material; or are some series, depending on the overall documentation in the file, to be treated as the Personal Papers of Hillary Clinton? Will Mrs. Clinton want her correspondence files interfiled with the President's or kept separate? Does Mrs. Clinton want to maintain all of the Social Office and First Lady's Files separately regardless of record status, or are some files to be intermixed? The status of the files dealing with the First Lady raise important archival and legal concerns that need to be studied and addressed early in the Clinton

With
intermixing
you loose
control
and past
first ladies
don't have
as easy
access to
their papers/
records

Administration. By addressing these questions early on, the First Lady will maintain control over the files she feels are her personal property and at the same time leave scholars a clear documentation of her role in the Clinton Administration.

Nancy Kegan Smith

Nancy Kegan Smith
Supervisory Archivist
Office of Presidential Libraries

National Archives



Archivist of the United States

Washington, DC 20408

93 MAY 10 P5:34
FACSIMILE COVER PAGEDate: 5/10/93

TODD

To:

John Podesta

From:

Marianne Smith

Comments/Instructions:

I thought you might want to look at
this memo regarding the First Lady's records -
I know you were addressing this issue awhile ago.

Number of pages including cover page 4

Document will also be mailed _____

Nancy has an
interesting perspective and
has told me about
the consequences of

Phone numbers:

Phone numbers: intermixing.Office: 486-2702

Office: 202-501-5130

FTS-241-5130

FAX: 456-2215

FAX : 202-501-5244

FTS-241-5244

Background on First Ladies Papers

Historically, most First Ladies papers since Eleanor Roosevelt either were donated to her husband's Presidential Library as part of the President's Personal Paper collection or donated as a separate collection of Personal Papers of the First Lady. These papers often have been deeded to the Library at a much later time period than the President's. Because the First Lady is a private citizen and has no statutory role, the papers have been viewed as more sensitive in terms of potential privacy concerns than those of the President.

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Some of the series in the Social Office Files document the ceremonial functions of the Presidency, including the Social Entertainment Files which contain invitation lists, entertainment materials, seating charts, and background on guests at Head of State dinners. Other series, for example, the Press Secretary's Files, traditionally have documented more of the policy role of the First Lady - her interests and projects. Until the Reagan Administration, the Social Office Files were kept separate from the President's files. During the Reagan and Bush Administrations, these files were interfiled with the President's records entered in the WHORM stairs system, and treated as a staff office file. Other files of the First Lady, for example, her own correspondence files, also were intermixed with the President's White House subject files. By intermixing the First Lady's papers with Presidential record material, an ambiguous situation in terms of the record status of this material has developed. In many cases, the simple intermixing of these papers will cause the First Lady to loose access control over this material.

*Archival and Legal Questions on the First Lady's Files

Early in the Clinton Administration decisions should be made on the handling of the Social Office Files and other files of the First Lady. Under the Presidential Records Act, the First Lady is not mentioned. However, the Act does say that Presidential records include: "documentary materials...created or received by the President, his

immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon carrying out of the Constitutional, statutory, or other official or ceremonial duties of the President."

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Nancy Kegan Smith

Nancy Kegan Smith
Supervisory Archivist
Office of Presidential Libraries

National Archives



Washington, DC 20408

Date : May 6, 1993
Reply to :
Attn of : NL, Nancy Kegan Smith
Subject : First Ladies Papers
To : Marianne Smith

You asked me to write you a memo regarding the status of First Ladies Papers, particularly after the passage of the Presidential Records Act. I have worked with First Ladies Papers for the last ten years. My interest in First Ladies started when I reviewed portions of Mrs. Johnson's Social Files. Since then, I have written three articles which have been published in professional journals describing Mrs. Johnson's files. I have lectured to graduate and undergraduate classes, professional organizations and various civic groups on modern First Ladies Papers. I was a co-editor of a NARA book: Modern First Ladies Their Documentary Legacy. I think the papers of First Ladies are an extremely rich and important historical record and raise many questions for an incoming Administration that need to be considered.

The papers of the First Lady traditionally have received less attention in terms of filing practices than those of the President. However, these papers are an extremely valuable resource to scholars. During the past decade, the twentieth-century First Lady, her influence on her husband and his policies, and her own management of an office that has no legally prescribed function, have become topics of great interest. Along with this new interest in First Ladies, has come an increasing use of their papers at the Presidential Libraries.

The First Ladies papers always have been treated on a different basis than those of the President's, because the First Lady is not an elected official and has no statutory role. Surprisingly, since the passage of the Presidential Records Act, no real examination of how this Act applies to the First Lady's papers has been undertaken until the Hillary Clinton health care task force raised some concerns. Because Hillary Clinton clearly is playing an important role in the Clinton Administration, her official and personal papers will be of vital interest to future scholars. Both archival and legal guidance is needed so that these papers can be filed properly and thus provide a full and complete record of the First Lady's activities.

THE WHITE HOUSE

WASHINGTON

February 18, 1997

MEMORANDUM FOR: *T* TODD STERN
ASSISTANT TO THE PRESIDENT
NANCY HERNREICH
DEPUTY ASSISTANT TO THE PRESIDENT

FROM: TERRY GOOD *T. Good*
OFFICE OF RECORDS MANAGEMENT

RE: RECORDS MANAGEMENT RECOMMENDATIONS

Sharon Fawcett of the National Archives has asked me to participate with her in preparing a report relating to records management at the White House with an eye toward ensuring that the historical record of this Administration is being created and maintained. She informs me that this is the outgrowth of a meeting held last month in Room 100 attended by representatives of the National Archives and the White House. Not having attended the meeting, I am uncomfortable acting on behalf of the White House without some guidance beyond my own views and experience. However, I am pleased to participate in any project such as this and will contribute to the best of my ability and knowledge.

What follows are my views on some, but by no means all, topics that often arise in discussions about:

- 1) White House records management programs
 - Computer programs that will transfer to the Clinton Library
 - Defining Presidential, personal, and political records
 - Making "House Calls"
 - Conducting oral history interviews with departing staff
- 2) NARA's previous on-site efforts preparing for a Presidential library
 - NARA's two most significant and sustained projects to prepare for a Library while the President was in office
 - NARA's feasibility study of processing records while the President was In office
 - NARA archivists assigned to the Office of Records Management: two more approaches
- 3) NARA's current on-site support programs for the White House:
 - President's Daily Diary
 - Weekly Compilation of Presidential Documents
 - National Security Council - Access Management Office

(Continued)

file copy

4) NARA's current off-site support programs that are managed primarily by the Office of Presidential Libraries

Courtesy storage and retrieval of records/gifts/audio/video tapes for the:

Office of Records Management

Gift Unit

White House Communications Agency

National Security Council

Reference service to the public of video recordings for the:

Office of Media Affairs

Reference service to the public of records of the President's Task Force
For Health Care Reform for the:

Office of Records Management

Review and approval to dispose of certain categories of material for the:

Office of Records Management

5) Staffing recommendations for now and at the Presidential library

WHITE HOUSE RECORDS MANAGEMENT PROGRAMS

I have chosen not to focus on the various programs that ORM daily administers. Based on feedback from White House staff, we seem to be successfully discharging our duties in these areas. Rather, I would prefer to highlight areas of long range concern that affect both ORM and later, NARA's President Clinton Library.

Status of ORM's Computer hardware and software

Unfortunately, ORM's programs are labor/equipment intensive. The equipment is no longer limited to paper, pencils, and file folders. Today, computers and the software to run them are the tools of our trade. And as the technology advances, those dependent upon this equipment must stay abreast not because it has failed to work, but because it is no longer supported by the vendors. We have two programs that are subject to this threat.

For some years now, both ORM and NARA have been concerned about ORM's aging mainframe data base, STAIRS, an IBM program that IBM no longer sells nor services. Unfortunately, IBM's successor program, SEARCH MANAGER, seems to be searching for, if not a manager, then at least a lot of buyers, particularly in the Federal Government arena. When first announced, IBM assured all STAIRS customers that "migrating" to SEARCH MANAGER would be painless, that the change would be transparent to the user, a very appealing proposition, and something worth waiting for. ORM is still waiting. For more than two years, ORM has waited to visit a Federal Government site with an operating SEARCH MANAGER data base. So far IBM has been unable to find one in the Washington, D.C. area nor anywhere close.

If ORM were the only player in this drama, we would not be too worried. We have the assurance of support from the Office of Administration's IS & T Division, at least as long as its mainframe exists. NARA, unfortunately is the party in jeopardy in this relationship. It inherits what ORM transfers at the end of each Administration, the textual records and software programs to run the computerized indices to these records. Three Presidential libraries are wedded to STAIRS. A fourth will be unless something occurs within the next year, which would allow ORM enough time to carefully "migrate" to a new software system before January 20, 2001. ORM would then be able to transfer to NARA a system that IBM would license and support at the four affected libraries.

ORM remains hopeful that IBM will discover a local Federal Government user of its system, a pioneer who has blazed the trail and returned to assure us that it is safe. It would be so much easier and, possibly less costly, to stay with IBM. We are not anxious to look elsewhere but may be forced to within the year. NARA, for its part, is developing a software program for its agency-wide needs. It is unknown to ORM how soon it will be operational and whether the STAIRS system could be converted to it. Further, it is doubtful that it could be employed in ORM since our needs are unique.

The second computerized program in need of upgrading is the optical disk system. In place since the Bush Administration, it has undergone several enhancements but is overdue for another. The aging equipment and software are living on borrowed time. "Downtime" has increased and with it, ORM's quality of service has suffered. It will only deteriorate more until new hardware and software are installed which, in any case, must be done in time to convert the system to one that NARA can inherit and operate on January 20, 2001. ORM made its needs known to the White House Administrative Office last year.

Status of other White House offices' computer hardware and software

ORM is not the only WHO with computerized programs that will be transferred to the President's library. Listed below are other programs that, as with ORM's, must be downloaded into the ASCE format that NARA requires, a daunting task under any circumstances, worse if left to the last minute. Yet many of the systems simply can not be shut down until the last minute: the White House is as dependent upon them as the body is the heart. Given the number and variety of programs and systems, it is mandatory to start early to survey, document, and plan for the transfer of these computerized data bases. NARA would be well advised to select a computer technician as part of the advance team of Clinton archivists assigned to the White House. The systems listed here are only some of those currently in operation throughout the Complex. Each will contribute in a very significant way to President's library.

The condition of these other computer systems is subject to the same technologically aging dynamics: all offices should be encouraged to upgrade in time to transfer programs that NARA can easily administer. The Office of Administration's Division of Information Systems and Technology (IS & T) could be tasked with coordinating this effort.

Quorum system for the Office of Correspondence
Daily Diary system
IBM's STAIRS system for the Photo Office photographic files
Resumex system for Office of Presidential Personnel
NSC's indexing system
E-mail system for Office of Correspondence

Defining Presidential, personal and political records

I understand that one of the topics at the meeting dealt with the question of separating the President's personal papers that were political from the Presidential records. I would like to participate in further discussions on this topic. My experience with this subject has been both enlightening and distressing. The legislation that defines these terms, the Presidential Records Act, while laudatory in intent, leaves many confused who attempt to apply it. I would hope that the experience of the two libraries operating under the PRA guidelines, Reagan and Bush, could be brought to bear on this subject. The guidelines employed at the Nixon Presidential Library Project, while designed to meet different legal and legislative requirements, would also be useful.

Any effort to address this subject must take into account the existence of over 2,000 cubic feet of files and 6,000 boxes of Presidential documents already in ORM's custody plus an unknown but probably equally large number elsewhere in every staff office throughout the Complex. A review of these files and boxes to separate these records would appear to be a logistical impossibility at this time. Whatever is decided may have to accept the fact that these records will be transferred to NARA commingled with the Presidential documents. The White House may want to ask NARA if it could or would identify the political documents later as it processes the files at the library. This leads into a related topic.

Check-in procedure equal to the check-out process

When staff depart the White House, they must undergo a rather elaborate check-out process, visiting a number of offices to insure that they are current with the Mess, the Credit Union, the Library, etc. ORM is one of the stops on that trail. We remind them of the Presidential Records Act regulations prohibiting them from removing any records. Our brief message is : "Take all the fond memories but no records, not even copies."

In too many instances, it is clear that these individuals are hearing this for the first time. After an initial pause, they will ask how the PRA defines official versus personal records. Sometimes a fairly lengthy discussion ensues, at the end of which they will sign a statement that they are abiding by the PRA. There are occasions when I sense that they are leaving with a slightly uncomfortable feeling about the document they just signed.

Some of this could be avoided if they were required to visit with ORM at the beginning of their White House tenure. We would, of course, take the opportunity to talk with them about the importance of an adequate and organized records management system, and the amount and type of support that ORM could provide. As the Security Office now does, we could have a regularly scheduled time each month when new WHO employees could attend a meeting at which we would address records management issues. This would be a logistically practical way to provide the training envisioned in the May, 1993, memo to the White House staff from John Podesta and Stephen Neuwirth on this subject. To insure that incoming staff abide by this requirement, it could be stipulated that they would not receive their badge until all the offices had signed their check-in form. As I understand it, such a requirement is in place now for the Security Office. I might add that I believe that many, if not all, of the offices on the current check-out form would support this recommendation.

"House" Calls

In every Administration, ORM develops, over time, rapport with most White House offices. Some are more receptive than others to our recommendations. Some take advantage of some/many of our services. In a number of instances, we visit offices on a daily basis to pick up/return files, documents, and correspondence for appropriate handling. As every Administration ages, the staffs become aware of ORM's vast and constantly growing bank of information. Our ability to retrieve and provide information from this resource invariably evokes awe. The satisfaction that we derive from these compliments is dampened by the knowledge that there are other offices for whom we don't provide a comparable level of support. Obviously, we would like to broaden our customer base.

To pursue that goal, and in keeping with the Podesta/Neuwirth memo, ORM would like to meet with office staffs, periodically, to remind them to practice good records management procedures and to consider taking advantage of our support. To be fairly successful, a reissue of the P/N memorandum with a currently dated cover memo would greatly help in scheduling meetings with all offices, particularly, those with whom we have yet to establish a working relationship. The cover memo could simply reiterate that this Administration places a high value on documenting its record, discuss briefly the requirements of the Presidential Records Act, and stress that each office arrange with ORM for occasional in-office training sessions to ensure that the staff is in compliance. I am keenly aware that this proposal would have an uneven reception and it is for that reason that I would ask for a memorandum from a highly placed staff member as a door-opener. Another alternative might be meetings on records management in the Conference Room 450 as is being done this week and last on the subject of ethics sponsored by the Counsel's Office.

Oral History

I have conducted these interviews in the Administrations of Nixon, Reagan, and Bush, first as a NARA staff person, and later as a White House employee. Lee Johnson also conducted similar interviews during the Carter Administration. In all cases, they were voluntary. We have not interviewed anyone during this Administration due to an understandable hesitancy by White House staff to talk "on tape" in the current highly charged partisan atmosphere where subpoena bombardment puts all documentation at risk. However, the amount of information lost, while regrettable, is not irreplaceable. These "exit interviews" should not be confused with in-depth interviews conducted later by NARA. Rather, they are intended to capture some basic information which will assist NARA at that time.

NARA'S ON-SITE SUPPORT FOR THE WHITE HOUSE IN THE PAST

The National Archives, established during the Roosevelt Administration, has a long tradition of assigning archivists to the White House, going back at least to Truman. Almost every situation has been unique: different lengths of time, different projects, varying numbers of people, working for different offices, reporting to different staff. Lee Johnson and I have been part of that tradition, having participated in the two most significant and sustained projects to prepare for a library while the President was in office.

NARA's two most significant and sustained projects to prepare for a library while the President was in office.

I first came to the White House in January, 1969, as part of a two person team to begin planning for a Nixon Library. This Office of Presidential Papers and Archives (OPPA) eventually grew to about 12 people, a number of whom were committed to transferring to the Nixon Library. Following Nixon's resignation and the postponement of plans for a library, and after working for a number of months as part of a special NARA team tasked with reviewing all Nixon White House records for Watergate evidence, I was offered and accepted a position with ORM.

Projects undertaken by the OPPA included: writing the Daily Diary, identifying all individuals in White House Photo Office pictures, purchasing current and out-of-print books, creating a vertical reference file, providing courtesy storage at- and retrieval from NARA for WHO files, video tapes, and gifts, and conducting oral history interviews with departing staff.

Lee first came here as part of the NARA team that assisted with boxing of the Nixon Papers following the President's resignation. He was part of the NARA team that assisted with boxing and transferring the records of the Ford Administration to NARA. Later, he was assigned here for approximately 16 months as part of a NARA team of about five people to prepare for a Carter Library. With a much smaller staff, this team undertook some of the tasks pursued by OPPA.

An objective appraisal of these two NARA projects would reveal some significant contributions to each library program. Certainly, there was a direct correlation between the number of staff and the results.

NARA's feasibility study of processing records while the President was in office.

Toward the end of the Reagan Administration, NARA assigned 5 (?) archivists to ORM to archivally process some Presidential records in advance of their transfer to California. This was a pilot project to determine whether such an effort was worthwhile. For a variety of reasons, everyone concluded that it was premature, in all but the most unusual circumstances, to process the records before they were transferred to the library. This Administration's experience in processing the records of the President's Task Force on Health Care Reform would seem to corroborate this conclusion.

NARA archivists assigned to the Office of Records Management: two more approaches.

Jim Hastings, one of the archivists assigned to the feasibility study, remained with ORM through the beginning of the Bush Administration. Jim had prior experience as director of the Nixon Presidential Papers Project. In ORM he assisted us in all aspects of our daily and long term responsibilities. A promotional opportunity at NARA lured him away from us.

Later, we selected another archivist, David Alsobrook, who had been part of the NARA team at the White House preparing for the Carter Library. At the end of the Carter Administration, he had transferred with the records to Atlanta. At the time we invited him back to the White House, David was the senior archivist at the Carter Library. He took this new assignment with the understanding that, as before, he would transfer to the Bush Library when that time came. And he did.

Everyone agrees that David's experiences at the White House during Carter and Bush were extremely valuable. He was able to learn and take with him knowledge that helped him, first, at the Carter and now, at the Bush library. We strongly recommend this approach. Jim, on the other hand, learned but wasn't able to apply the knowledge when he returned to NARA in another capacity. While he contributed to the success of this office, all of us, including Jim, agree that his activities here had little long term benefit for the Bush library. We would not recommend that NARA follow this approach in the future. Our recommendation: if they come here, they should go there.

NARA'S ON-SITE SUPPORT FOR THE WHITE HOUSE AT PRESENT

The President's Daily Diary

Beginning with the Nixon Administration and continuing to the present, NARA archivists have collected the information and prepared the President's Daily Diary. The NARA staff working on the Nixon project found that it required 2 ½ people to create a diary as complete and accurate as possible. During subsequent Administrations support for this project has dropped to two and currently to one person. Having been the first archivist to work on this and having been largely responsible for its initial format, degree of completeness and accuracy, I can attest that the Nixon project's experience with the staffing requirements have, sadly, only been confirmed in the following Administrations. Thus, I would strongly recommend that additional personnel resources be provided for this very important task as soon as possible.

These records, along with those that comprise the President's Briefing Papers, constitute the two most important series of records, bar none, at a Presidential library. No one would dispute that the Administration's historical trail starts with the President and his daily activities. Without these "maps", the path cannot be followed, the story cannot be told.

Weekly Compilation of Presidential Documents

Since at least the Johnson Administration, a NARA team of varying numbers, generally two people, has collected and edited relevant information, passing it to GPO on a weekly basis for publication of this document. Each year, NARA subsequently coordinates with GPO to publish this information in book form as The Public Papers of President... Both the weekly and the annual editions are essential research sources for anyone interested in the Presidency. Both are considered the definitive word on what a President said or wrote in his official speeches, remarks, messages and statements. ORM recommends that this project be continued.

National Security Council - Access Management

Since the Carter Administration, a NARA team, averaging three people, has reviewed security classified NSC and White House documents of past Administrations in response to requests for their release. This effort involves considerable coordination with departments and agencies where many of the records were created and classified, and with NARA's various Presidential libraries where the records are now deposited. NARA's contribution to the declassification effort is greatly enhanced by this team working under the NSC umbrella. ORM recommends that this project be continued.

NARA'S OFF-SITE SUPPORT OF THE WHITE HOUSE AT PRESENT

NARA's Office of Presidential Libraries provides significant daily support to several White House operations. In addition, each of these undertakings will contribute at the end of the Administration to a smoother transfer of the records and a quicker transition from merely an Arkansas storage facility for the President's records to a Presidential library serving the former President and the public. The White House should encourage NARA to continue to provide this support.

It provides courtesy storage and expeditious retrieval for rapidly increasing numbers of records. The impact of this project, while little known nor appreciated beyond the offices involved, has relieved the White House of an enormous storage problem. The following offices are greatly indebted to NARA for its assistance:

- 1) the Office of Records Management
with more than 6,000 boxes,
- 2) the White House Gift Unit
averaging considerably more than the 10,000 gifts per year of the previous Administration, and
- 3) the White House Communications Agency (WHCA)
with more than 4,000 audio and more than 10,000 video recordings which are taped both live and off-the-air.
- 4) the National Security Council
with several hundred boxes of material

It provides reference service to the public for:

- 1) video recordings that have been released by the Office of Media Affairs. Requests for these are received daily.
- 2) the records of the President's Task Force for Health Care Reform. NARA went to unprecedented lengths to make available storage and reference space at its College Park facility when these records were first opened to the public.

It reviews and approves the disposal of certain categories of material in accordance with an agreement between the White House, NARA, and Congress. This is no small matter. By the end of this Administration, the White House will have disposed of more than 30,000 boxes of this material which is almost exclusively incoming mail that was not answered or answered by form response. This Administration is on track with the previous two. It will dispose of approximately the same quantity of material as it will take to the library. Were it not for this program, the record holding areas of these libraries would have had to been twice as large!

STAFFING RECOMMENDATIONS FOR NOW

During this Administration, ORM has asked both the White House and NARA to assign another individual to ORM. Our recommendation remains under study. Now that we are into the second term, I believe that action on this proposal merits even more serious attention. I would stress that the individual should have previous Presidential library experience, be at least at the GS-11 pay grade and preferably higher, and be committed to transferring to the Clinton Library. While assigned to ORM, this individual would become familiar with the records, the Complex, and the White House staff, all extremely priceless assets later at the library. The individual would work closely with Lee and me in all aspects of ORM's mission focusing primarily on preparing for the transfer of the records and the establishment of the library.

The White House would need to decide to whom this individual reports for daily assignments. This matter has caused confusion and worse in previous Administrations. The White House decided, in the last two instances, that the NARA archivist should report to the White House Office of Records Management. No problems arose as a result. I would strongly recommend this arrangement, having experienced the pitfalls of the other option.

The individual should soon be joined by two or more NARA archivists committed to transferring to the Library. They, too, would use this opportunity to become familiar with the records, the Complex, and the White House staff. Sooner, preferably to later, archivists with specialties will be needed in certain fields such as library science, computer technology, and museum curatorship. The Reagan Library has benefitted greatly from one staff member's NSC expertise. This individual had worked in the NSC Secretariat for a period of time before switching to NARA and going to California. Given the importance of foreign policy issues in every administration, I would strongly recommend that NSC Secretariat staff be canvassed to determine if there is anyone interested in going to Little Rock.

As with a professional expansion sports team, a group of experienced archivists must form the core of the staff if the new library intends to be an early success. Untrained, inexperienced local recruits won't do. You must attempt to draw from the pool of archivists at the other Presidential libraries. The sooner that group can be assembled, the sooner it can start developing a level of cohesion and an understanding of the "game plan", and the sooner the President's records can be processed efficiently once they arrive at the library. Then, they can be much more easily and quickly researched to assist the President write his memoirs, a project that many consider the first order of business at a new library.

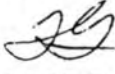
STAFFING RECOMMENDATIONS FOR A PRESIDENTIAL LIBRARY

No new library should think small when establishing personnel levels. More is better. Now is better than later. No existing library has enough staff. The most recent libraries, particularly, struggle to persuade NARA to lend a sympathetic ear to their personnel needs. The most opportune time to gain Congressional and NARA support to staff the library occurs during the President's White House years. Former Presidents don't wield nearly the influence: their families and friends even less in most instances. The following listing of personnel levels at the various libraries may be revealing. It should be noted that the size of each library's staff does not correlate with the quantity of records in the library nor the length of each President's public service. This information is taken from a 1985 NARA telephone listing. NARA can provide current figures.

Hoover 19
Roosevelt 24
Truman 35
Eisenhower 30
Kennedy 44
Johnson 26
Nixon 27 (Current)
Ford 21
Carter 26
Reagan 21
Bush 10

December 8, 1998

MEMORANDUM FOR: PHILLIP CAPLAN
STAFF SECRETARY

FROM: TERRY GOOD 
OFFICE OF RECORDS MANAGEMENT

RE: PREPARING FOR A CLINTON LIBRARY

Planning for a Presidential Library is a long process with many components. Whether a President serves one or two terms plays a very significant role in this planning. Fortunately, planning for this President's library can proceed at a more orderly pace, without all the uncertainties surrounding a reelection and the possibility of an November eviction notice to be off the premises two months later.

Last week, I mentioned briefly two Presidential Library projects; a survey of the records in offices within the Complex, and the actual boxing and transfer of the records to NARA.

Staffing the library, another NARA project, equally important to the success of a library, has reached that point where the White House can now contribute.

As it often does, NARA is in the process of bringing on board a number of archivists to be trained, along with some current employees, for careers within the Presidential Library system. From among this pool NARA hopes that a few of these individuals will prove to be viable candidates for the Clinton Library. As has been the case in several previous Administrations, these candidates will be prepared to spend time at the White House, under the guidance of a White House office.

Unless disapproved by the White House, NARA proposes that these archivists be on-site for a number of months during which each would have opportunities to work in selected offices to develop knowledge of the records and how they are created and maintained, invaluable knowledge at the Presidential library. Having worked with Capricia Marshall's Office on some matters relating to the First Family's personal papers, NARA has broached this project with that office and received a favorable response. Lee Johnson and I are strong proponents of this particular project and would be prepared to contribute to its implementation if asked.

I have prepared the following memo for NARA, recommending that archivists be assigned to a number of White House offices where records are created and maintained at the office-wide level rather than at the individual staff level.

In order to meet the requirements of the OA Security Office, NARA assures me that the archivists would possess Top Secret or above clearances, or be in the process of getting them. There have been tentative discussions between the OA Security Office and the NARA Security Office to iron out the details.

Since this project focuses on the Presidential records, it seems logical that your office be apprised of it, given the Staff Secretary's key role in record keeping. Further, it seems logical that ORM play a role in assisting the archivists to become familiar with the creation and maintenance of records within the White House, given our mission.

If you are agreeable, I will send this memo to NARA and proceed to arrange for archivists to spend time in those offices on this list that are amenable to this project. NARA would be prepared to assign an archivist in January for a period of three or more months, depending upon the success of the project. Other archivists would be assigned before the first rotation ends. At the moment there are three individuals being considered. The first individual would be John Keller, who has been in the Office of Presidential Libraries for several years. He has the clearances and has been one of the NARA people with whom we have worked on a daily basis. I would be happy to introduce him to you.

APPROVE _____

LET'S TALK _____

DRAFT

DATE

MEMORANDUM FOR: NANCY SMITH
OFFICE OF PRESIDENTIAL LIBRARIES

FROM: TERRY GOOD
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RE: ASSIGNMENT OPTIONS

As a follow up to our meeting of yesterday, the following offices would be possible options in considering White House offices to which a NARA staff person might be assigned. Time in these offices would provide the Clinton Library archivist with on site exposure to the workings of the White House and the records that are being created.

Office of Records Management

First Lady's Office

East Wing

West Wing (?)

OEOB

National Security Office

Correspondence Office

Presidential Letters

Presidential Messages

Mail Analysis

Presidential Inquiries/Greetings/Comments/Volunteers

Electronic Mail

Agency Liaison

Scheduling Office

Photo Office

Executive Clerk's Office

Office of Legislative Affairs

Correspondence Office

Presidential Diarist

Military Office

Press Office

OEOB

West Wing (?)

Presidential Personnel (?)

Office of Administration

EOP Data Center (?)

DRAFT

My selections are based in part on my beliefs that these offices:

- generate records of unusual volume and/or value at the Presidential Library
- create/maintain records at the office level in addition to the individual level
- are staffed with people who would probably be amenable to allowing a NARA person observe/work in the office
- have the office space to accomodate a NARA person

There are many other policy offices that I have not listed, largely because the record creating/processing function is primarily performed at the individual not the office level. I am uncertain that a NARA staff person assigned to these offices could gain a sense of the office's mission and records without needing to spend time in each office of each individual commissioned staff person. This strikes me as beyond the scope of this project.

Offices that fall into this category include:

- Advance Office
- Office of Cabinet Affairs
- Communications
- Counsel's Office
- Intergovernmental Affairs
- Management and Administration
- White House Operations
- Political Affairs
- Public Liaison
- Staff Secretary's Office

Any West Wing assignments would require a USSS West Wing pass. I would recommend that you discuss this matter with Capricia Marshall or Nancy Hernreich and Janice Kearney. I can pursue the OEOB pass request. Obviously, however, if the NARA staff person were given a "blue" pass entitling him/her to West Wing access, that would be good for the entire complex.

Carol:

Jan 4

Phil told me that he
had reviewed the original
before the holidays.

Neither Lee nor I
have received it back.

Could it still be
in the Staff Sec's office
?

Terri
This is what I reviewed. I don't know
more if got sent. Bottom line ... I'm not
comfortable leaving this memo sent
until we discuss it further.
I also need to discuss
it with a few
other people.
Phil

December 8, 1998

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- Duties
- Supervision
- location
- pass/access/clearance issues
- interviews
- time table
- updates to me

• Diarist

•