

National Archives



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June 15, 1999

Ms. Nancy Hernreich
Deputy Assistant to the President and
Director of Oval Office Operations
The White House
Washington, D.C. 20500

Dear Nancy:

I want to apologize for my delay in sending you this information. In one of our phone conversations, I mentioned the importance of early solicitation of personal papers of staff members and associates of the President and First Lady for the Clinton Presidential Library. Now is an excellent time to begin soliciting these personal papers before they are donated to other institutions.

I am enclosing a letter and package of information regarding the solicitation of personal papers which NARA provided last year to Nicole Seligman. The package provides sample solicitation letters and deeds of gift used for donation of personal paper collections to a number of Presidential Libraries. We feel that it is important to begin to solicit the personal papers of officials who have already left as well as planting the idea with those who are still with the administration.

For donors who are willing to begin transferring these materials, my staff can store these personal papers on courtesy storage for eventual transfer to the Clinton Library. We would be pleased to pick up these materials from the donors.

Please let me know if I can answer any questions or provide additional assistance.

Sincerely,

Nancy Kegan Smith

NANCY KEGAN SMITH
Director,
Presidential Materials Staff

National Archives at College Park



8601 Adelphi Road College Park, Maryland 20740-6001

cc John P
Gannas
Bruce
Cheryl
Janis

August 13, 1998

Ms. Nicole Seligman
Williams & Connolly
725 12th Street, N.W.
Washington, D.C. 20005

Dear Ms. Seligman:

I enjoyed my recent lunch with you, Skip Rutherford, and Dave Peterson and thought the idea of beginning to solicit personal papers for the future Clinton Presidential Library an excellent one.

I am enclosing some sample solicitations letters and deeds of gift used for donation of personal paper collections to various Presidential Libraries. We feel that it is particularly important to solicit the personal papers of high-level Clinton officials who have already left the Clinton administration. Traditionally, the solicitation of personal papers has either been done by a senior aide to the President, or by the Archivist of the United States. The Foundation could do the solicitation, but it should be for donation to the future Clinton Library. NARA's Office of Presidential Libraries can store these papers for eventual transfer to the Clinton Library if people are willing to begin donating their papers.

Here is a sample of the substantive text of a solicitation letter that could be used:

One of the priority concerns as we look to the creation of the Clinton Presidential Library is the acquisition of documentary materials that will inform future generations of the work of this Administration. The President has announced that the Library, which will be part of the National Archives and Records Administration (NARA), will be at Little Rock. Planning for the building has begun and we have been advised that there are some preparations for the Library that should begin now. I am writing to you today to request that you consider donating your personal papers to NARA for eventual deposit in the future Clinton Presidential Library.

The official records of Administration officials are, as a matter of law, either Federal records or Presidential records, depending on the organizational location of the official. This solicitation letter is not directed at these official records which are already governed by statute, but rather at personal materials which fall outside the definition of official records.

These personal materials might include extra copies of your official records, personal diaries or journals, political materials, or the documentation of your career prior to the Clinton Administration. Personal papers may be donated to the government through individual deeds from donors and are subject to restrictions imposed by the donor. Donations might occur now or be scheduled for some point in the future.

I believe that the Clinton Presidential Library will be a prestigious research institution dedicated to the study of this significant period in our nation's history. The ten existing Presidential Libraries are considerably enriched and complemented through donated historical collections.

I urge you to consider the advantages of donating such papers to the NARA for eventual placement in the future Clinton Presidential Library. Please let me know if you have any questions or need any assistance on this issue and I will be happy to put you in touch with the appropriate NARA official.

I hope the enclosed sample deeds and deeds are helpful. If you have questions concerning them, please contact Nancy Smith, of my office, at (301) 713 - 6025. Ms. Smith, who is an archivist with extensive experience in Presidential papers, compiled the materials being sent to you. She currently serves as Access Officer for Presidential Holdings.

Sincerely,



CHRISTOPHER M. RUNKEL
Acting General Counsel

Enclosures

cc: David F. Peterson
Assistant Archivist for Presidential Libraries

SAMPLE SOLICITATION LETTERS

DRAFT

December 20, 1994

«nametitle»

«corpname»

«address»

«citystatezip»

, Dear «dear»:

Now that the groundbreaking for the George Bush Presidential Library has taken place and construction is underway, we are turning our attention to the material that this facility will house. The story of the Bush Administration is in part the record of the public policy decisions which you initiated, nurtured, and implemented as a member of the Bush Cabinet. Therefore, I am writing you on behalf of President Bush to request the donation to the future Bush Presidential Library the personal papers you have accumulated throughout the course of your public life. Your personal papers will become part of the permanent collection of the Library and will be of immeasurable value to future historians and other scholars who seek to enhance public understanding of the life of our country during the time when we were privileged to provide leadership to its national government.

The President's own official Vice-Presidential and Presidential records as well as his personal papers currently are stored at the Bush Presidential Materials Project in College Station, Texas. As you know, the Bush Presidential Library Center will be constructed on the campus of Texas A&M University and is scheduled to open to the public in 1997. A staff of professional archivists from the National Archives are organizing and preparing the papers and memorabilia for research and exhibit at the Library. These archivists will ensure that your papers will be managed in accordance with your wishes. If you would prefer to limit access to your papers for a designated period of time, for example, the Library will honor that request.

All of us associated with the project are especially excited about the research opportunities which will be an integral part of the educational programs of the Bush Presidential Library Center. I hope you will join us in this venture by donating your personal papers to the Library. If you have questions or need assistance in packing or shipping any material, Dr. David Alsobrook, Director of the Bush Materials Project in College Station, will be happy to assist you. He can be reached at (409)260-9552. Or if you prefer, you can work directly through my office at Texas A&M University.

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BUSH LIBRARY OFC

003/003

December 20, 1994

Page 2

Thank you for consideration of this request. It was good seeing so many of the Cabinet members at the groundbreaking event. I know that President Bush was pleased and touched.

Best wishes for a happy and prosperous 1995.

Sincerely yours,

Don W. Wilson
Executive Director



Bush Presidential Materials Project

701 University Drive, East Suite 300 College Station, Texas 77840-1899
Tel. (409)260-9552 FAX (409)260-9557

October 4, 1994

The Honorable Barbara Hackman Franklin
Suite 506
2600 Virginia Avenue, NW
Washington, DC 20037

Dear Ms. Franklin:

President Bush has informed us of your interest in donating your personal papers to the future George Bush Presidential Library. As you know, the Bush Library will be constructed on the campus of Texas A&M University and is scheduled to open to the public in 1997. The Library's archival collections will include Mr. Bush's Vice-Presidential and Presidential records (including his White House Staff's files) as well as his personal papers and those of Mrs. Bush, Cabinet officers, and Senior White House Staff. The Bush Library, in cooperation with Texas A&M University, will be a major center for scholarly research and conferences.

We are interested in obtaining any personal papers which relate to your service as Secretary of Commerce and with the State Department, the United Nations, the Republican National Committee, and the Bush-Quayle Campaign. These materials will be rich resources for future generations of scholars who will write the histories of the Bush Administration.

Our trained staff of professional archivists will preserve and inventory any personal papers which you wish to donate to the Bush Library. We also will draft a deed of gift which will allow you to establish the terms of access for your papers. We can discuss your deed of gift in greater detail after we have worked out the logistics of transferring your papers to College Station. Our archivists with the Office of Presidential Libraries at the National Archives can assist you in preparing your papers for shipment to Texas.

I realize that you may have questions about your deed of gift and the kinds of personal papers which we are seeking for the Bush Library. Please contact me at your convenience, and we can discuss these matters in detail.

Your collection will be a very valuable addition to our archival holdings. I can assure

you that your papers will be given the best professional care in our custody and will be heavily utilized by future scholars. I look forward to hearing from you soon.

Sincerely,



DAVID E. ALSOBROOK

Acting Director

Bush Presidential Materials Project

cc: President George Bush
Dr. Don W. Wilson



JIMMY CARTER

April 30, 1981

To Ambassador Andy Young

The story of the Carter Administration is in part the record of the public policy decisions which you initiated, influenced and executed as a member of the Cabinet. For this reason, I am writing you to request the donation to the Carter Library of the papers you have accumulated throughout the course of your public life. These papers would become a part of the permanent collection of the Carter Library and would be of immeasurable value to historians in the future who seek to enhance public understanding of the life of our country during the time we were privileged to provide leadership to its national government.

My own Presidential Papers have been deeded to the National Archives and Records Service. They are temporarily stored in Atlanta pending transfer to the future library. My experience with the Archives staff to date makes me confident that my Papers will continue to be organized and maintained by a superb group of professionals, whose careful labors will increase the value of my Papers to researchers and scholars. I am certain you would have the same sense of satisfaction about the custody and care of your own papers, should they be entrusted to the National Archives, as well. I have advised Dr. James O'Neill, Assistant Archivist of the United States, that I would be writing to you. He would be happy to respond to any questions you may have regarding the procedures and consequences of a donation of papers to the government.

Page 2

I look forward to hearing from you after you have had an opportunity to give this matter your consideration.

Rosalynn joins me in extending personal regards to you and your family.

Sincerely,



The Honorable Andy Young
100 Colony Square
Atlanta, Georgia 30361



GERALD R. FORD

April 3, 1990

Dear Bill:

The Gerald R. Ford Library has been open now for almost ten years on the University of Michigan campus in Ann Arbor. The Library is a major research center for scholars as they analyze and interpret the people and events that have shaped the last quarter century. In addition, the Library is a major education center for students—teaching future leaders the process and discipline of research.

I am committed to increasing the value of the Library as a research and education center. A principal way to make the Library even better is to expand its holdings documenting the recent past, especially the 1970s and the Ford Presidency.

Your papers, preserved under your name, would significantly complement and enhance the Library's current holdings. Your outstanding role in initiating the deregulation of the airlines, railroads and the trucking industry should be documented in the Ford Library. Your papers as Secretary of Transportation in my Administration would be invaluable in the Ford Library. I do hope you can be helpful.

The Ford Library is staffed by dedicated, experienced archivists. You can count on them preserving and handling your papers with professionalism and integrity. They are ready to assist donors in any way possible, from arranging the packing and shipping of your papers to any reference questions you might have on your collection. They will ensure that your collection is managed in accordance with your wishes. If you would prefer to limit access to your donation for a period of time, for example, the Library will honor that request.

(Continued on Page Two)

The Honorable William T. Coleman
April 3, 1990
Page Two

I consider it a high privilege to be involved with creating a lasting historical legacy for future generations. I am especially proud of the Ford Library's research and education services and programs. I hope you will join me, and be part of the Ford Library and this important legacy. Library Director Frank E. Mackaman will be contacting you in the next several weeks to provide more details on the Library and the procedures for donating papers.

Betty and I look forward to seeing Lovida and you at the Ford Administration Reunion in Washington on June 4th.

Warmest, best wishes,

The Honorable William T. Coleman
555 13th Street, N.W.
Suite 500 West
Washington, D.C. 20004

THE WHITE HOUSE

WASHINGTON

January 6, 1989

Dear Midge:

As my Administration nears its completion, one of our foremost obligations will be to review ways to perpetuate our record of achievement and to make it as accessible to the public as we can. I'm proud of all that Mac did to make our policies a success, and I know that you are, too. If we are to pass on our work as a living legacy to future generations, however, we must ensure that an accurate and complete account of this significant period in our Nation's history is readily available.

As you know, plans are now underway for the construction of the Ronald Reagan Presidential Library in California. It is our goal that this facility contain a comprehensive collection of documents to assist future historians in studying the vital issues of our day. That's why I'm asking you, as both a favor to me and an act of service to the objectives we shared, to consider donating Mac's personal papers to the Reagan Presidential Library. The personal papers of Cabinet members are essential to such a collection, especially in an Administration that has sought fundamental changes in the direction of national governance.

Such a donation will help reinforce for years to come the guiding themes and principles of this era in American political history. It will, I believe, help underscore in vivid terms the work Mac and I, and our entire team, devoted to the cause of limited government and human freedom. I deeply appreciate your considering my request.

Nancy joins me in sending you our heartfelt thanks and best wishes.

Sincerely,

Mrs. Malcolm Baldrige
2101 Connecticut Avenue, N.W.
Washington, D.C. 20008



SAMPLE DEEDS OF GIFT

May 9, 1997

MEMORANDUM FOR EXECUTIVE OFFICE OF THE PRESIDENT STAFF

FROM: Charles F.C. Ruff
Counsel to the President

SUBJECT: Presidential Records

The Presidential Records Act, 44 U.S.C. §§ 2201-07, imposes certain requirements regarding Presidential documents. This Guidance will first summarize the White House policies regarding the statute, and then discuss them in more detail.

Summary of White House Policies Regarding the Presidential Records Act

- The purpose of the Presidential Records Act is to document the performance of the President's constitutional, statutory and ceremonial duties.
- To accomplish this purpose, the Act requires the preservation of all original Presidential records. You do not have to keep identical copies.
- You need not keep "nonrecord" materials, such as notes for your own use, rough drafts not circulated to others, or call and visitor logs.
- You should file Presidential Records -- those pertaining to the performance of the President's duties -- separately from your personal records.
- When you leave the White House, send the Office of Records Management all original Presidential Records you have.
- Unless they have been publicly released, you may not take copies of Presidential Records when you leave, without permission from Counsel's Office.
- If you have any questions whether particular documents are Presidential Records, contact Robert Weiner in Counsel's Office (6-6297).
- This Guidance addresses your obligations under the Presidential Records Act. In addition, the White House has received subpoenas and document requests. You must preserve all materials that are covered by such subpoenas or requests.

GUIDELINES FOR THE PRESIDENTIAL RECORDS ACT

I. What are Presidential Records?

Presidential Records must meet two tests:

1. They must be **created or received** by the President, his immediate staff, or others in the EOP whose job is to advise and assist the President, and
2. They must relate to or directly affect the performance of the President's constitutional, statutory, ceremonial or other official duties.

II. What units in the EOP generate Presidential Records?

Records of the following units which meet the two tests above are Presidential Records:

White House Office	Council of Economic Advisors
National Security Council	President's Intelligence Oversight Board
Office of Policy Development	President's Foreign Intelligence Board
National Economic Council	

Records of the Office of the Vice President are treated in the same manner as Presidential Records. Records of other units in the Executive Office of the President are not Presidential Records, but may be subject to the Federal Records Act if they were created or received by employees of the agency and reflect the agency's activities or otherwise contain information of value.

III. What types or forms of records are included as Presidential Records?

A Presidential Record may be in any physical form, including: "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." E-mails and documents existing only on computer are also included.

IV. What materials are not Presidential Records?

The following are not Presidential Records:

1. Personal records.
2. Nonrecord materials.
3. Official records of an agency.
4. Stocks of publications and stationery.
5. Extra copies of documents produced only for convenience or reference, when the copies are clearly identified as such.

V. What are “personal records?”

Personal records have a “purely private or nonpublic character” and do not relate to or affect the President’s official duties. Personal records may include:

1. Diaries, journals, and the like if they are not prepared, used or circulated for government business.
2. Materials gathered by a staff member before joining government service, if not used for government business.
3. Materials relating solely to the staff member’s private affairs, such as financial records, insurance forms, and outside professional associations.
4. Personal photographs.
5. Materials relating to the election of others to federal, state, or local office, which have no relation or direct effect on the performance of the President’s official duties.

VI. Are political documents Presidential Records?

Under the statute, materials regarding the political activities of the President and his staff which do not relate to or directly affect the performance of the President’s official duties are not Presidential Records. Neither are materials relating exclusively to the President’s own election. Because it sometimes can be difficult to judge which documents fall into these categories, you should consult the Office of White House Counsel regarding the records you may remove.

VII. What are “nonrecord materials?”

The following types of materials may not be Presidential Records:

1. Preliminary drafts not circulated to persons besides the authors.
2. Preliminary drafts, work sheets, and notes if they are reflected in the final product and they do not document the development or implementation of policy.
3. Shorthand and other notes once they are transcribed or converted to formal documents which are verified for accuracy and completeness.
4. Scratch pads, visitor and call logs, and similar nonsubstantive documents.

VIII. What are your obligations regarding the creation of Presidential Records?

The Presidential Records Act requires that staff members adequately document the performance of the President’s constitutional, statutory, and ceremonial duties. The decision whether to memorialize information rests in the first instance with each staff member.

IX. How should you maintain Presidential Records?

Maintain Presidential Records in organized files. Label and keep personal records separate from Presidential Records, and do not make personal records available to other staff for official business.

If your office has both Presidential and Federal Records, keep them separate. You may have to disclose Federal Records under the Freedom of Information Act. Presidential Records are not subject to such disclosure.

X. Can you destroy Presidential Records?

No. Presidential Records are the property of the United States, and may be disposed of only in accordance with procedures established by the Archivist.

One narrow exception: If your office receives certain recurring types of papers, including form letter public mail, unsolicited public mail not reviewed or answered by anyone in the White House, anonymous public mail, or enclosures in public mail, the White House Records Management Office will provide guidance regarding when you may dispose of those materials. Consult that Office before disposing of any such records.

XI. What happens to Presidential Records?

During his term, the President retains custody and control of Presidential Records.

At the end of the Administration, Presidential Records go to the Archives. Some will become subject to disclosure five years later. The President can restrict public access to certain documents, such as classified materials, documents related to appointments to federal office, or trade secrets, for up to 12 years. The materials then become publicly available as limited by any constitutional or other privilege.

XII. What can you take with you when you leave the EOP?

You may not take Presidential Records with you at the end of your employment. You also may not take copies of Presidential Records unless the records have been publicly released, or you have received permission from Counsel's Office. You may not remove classified documents from your office at any time without complying with the rules applicable to those materials. You may take political documents only with the approval of Counsel when you leave the EOP. You may also take personal records with you.

When a staff member leaves the White House or the EOP, he or she must deliver all Presidential Records to the White House Records Management Office (or leave the records in his or her office). NSC staff should provide their records to the NSC Records Management Office.

XIII. Who should you ask about the Presidential Records Act?

If you have questions regarding the coverage or interpretation of the Act, call Robert Weiner in the Office of White House Counsel (6-6297). Direct your questions about records maintenance and disposition of files to the White House Office of Records Management (or, for the Office of the Vice President, to the Vice President's records management staff, and for the NSC, the NSC Records Management Office).

THE WHITE HOUSE
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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:

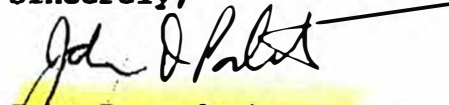
In accordance with the requirements of the Presidential Records Act, 44 U.S.C. (c) (1), I propose to dispose periodically of the following categories of Presidential records:

- 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.

When is this done?
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

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National Archives



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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 HUSKAMP PETERSON
Acting Archivist
of the United States

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

*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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Should be (f.)

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

- 70.10 Scope of part.
- 70.12 Application.
- 70.14 Definitions.

Subpart B—Actions Taken on Behalf of Former Presidents

- 70.20 Designation of person or persons to act for former President.
- 70.22 When Archivist may act for former President.

Subpart C—Disposal of Presidential Records

- 70.30 Disposal of Presidential Records by incumbent President.
- 70.32 Disposal of Presidential Records in the custody of the Archivist.

Subpart D—Access to Presidential Records

- 70.40 Identification of restricted records.
- 70.42 Denial of access to public; right to appeal.
- 70.44 Exceptions to restricted access.
- 70.46 Notice of intent to disclose Presidential Records.

Subpart E—Presidential Records Compiled for Law Enforcement Purposes

- 70.50 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.

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

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.

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 (a) of this section, shall include the following:

A reasonably specific description of the records scheduled for disposal;

A concise statement of the reason for disposal of the records.

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

0.40 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 specify, 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 designated 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.

Sec. 2

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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. Function. Executive orders, subject for legislative public confidence.

(b) The Commission shall provide a

Sec. 3. Administration. Director of the Office provide the Commission require for purp

(b) Members of work on the Commission, membership of subsistence the extent fund

(c) The Attorney availability of administrative services may be necessary.

Sec. 4. Counsel. Commission's report, periodic report laws, Executive

Sec. 5. General. Provisions of the law amended, except the Commission accordance with guidelines General Service

(b) The Commission extended.

THE WHITE HOUSE
January 25, 1989

Editorial note: For announcement on 1989, see the *Week*.

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.

5

3 CFR, 1989 Comp.

Cite Chapter I entries in this volume

3 CFR

thus: 3 CFR 100.735-1

Users may be telephoned to the GPO office
at 783-3238 from 8:00 a.m. to 4:00 p.m.
Monday-Friday (except holidays).

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Superintendent of Documents

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Thank you for your order

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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.

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\privilege]

National Archives



Washington, DC 20408

Date : January 5, 1996
Reply to : NKS/mek
Attn of : NL (Nancy Kegan Smith) and GC (Amy E. Krupsky) A&K
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 ¶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.

§ 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 ¶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.

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THE WHITE HOUSE
WASHINGTON

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MAY 5, 1993

MEMORANDUM FOR ALL WHITE HOUSE AND OTHER EXECUTIVE OFFICE OF THE
PRESIDENT STAFF

FROM: THOMAS F. MCLARTY, III *Tm*
CHIEF OF STAFF

RE: PRESIDENTIAL AND FEDERAL RECORDS

Attached are two memoranda concerning Presidential and federal records -- the records we create and receive in the Executive Office of the President.

All personnel in the White House and other offices in the Executive Office of the President should review these memoranda carefully and comply with the guidance set forth therein.

Thank you for your cooperation.

Attachments

THE WHITE HOUSE
WASHINGTON

May 5, 1993

MEMORANDUM FOR ALL EXECUTIVE OFFICE OF THE PRESIDENT STAFF

FROM: JOHN D. PODESTA *JDP*
Assistant to the President and
Staff Secretary

STEPHEN R. NEUWIRTH *SN*
Associate Counsel to the President

RE: Presidential Records

The offices within the Executive Office of the President generate two categories of records: "Presidential Records" and Federal Records." A separate memo from David Watkins and Bruce Overton has been circulated today concerning "federal records."

This memorandum sets forth guidance on the creation, maintenance and disposition of "Presidential records" -- records "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."

It is important that all staff in the Executive Office of the President review this memorandum carefully. The failure to designate documents and other materials properly can have serious implications, including possibly subjecting those materials to public disclosure under the Freedom of Information Act during the President's term of office.

I. UNITS WITHIN THE EXECUTIVE OFFICE OF THE PRESIDENT
THAT GENERATE PRESIDENTIAL RECORDS

All records of the White House Office, the Office of Policy Development, the National Economic Council, the Council of Economic Advisors, the President's Intelligence Oversight Board

and the President's Foreign Intelligence Advisory Board are Presidential records.

As discussed below, records of the Office of the Vice President are Vice Presidential records and are treated under the Presidential Records Act in the same manner as Presidential records. The records of the Office of the Vice President are not federal records.

The records of the National Security Council staff are Presidential records if they were received or created by or for the President, the Assistant to the President for National Security Affairs, the Deputy Assistant to the President for National Security Affairs, the White House Office, or a unit or an individual within the NSC in advising or assisting the President, and are not official records of the NSC. All other NSC records are federal records.

Records produced or received by the Director of the Office of Science and Technology Policy in his role as Science Advisor to the President are Presidential records; all other OSTP records are federal records.

Records of the Office of Management and Budget, the Office of the United States Trade Representative, the Council on Environmental Quality, and the Office of Administration are federal, not Presidential, records.

II. Types of Records Covered by the Act

The Presidential Records Act defines "documentary materials" as "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." 44 U.S.C. § 2201(1).

The Act defines "Presidential records," in turn, to mean:

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.

44 U.S.C. § 2201(2).

Under this definition, Presidential records are documentary materials that meet two tests. First, the materials must have been created or received by the President, his immediate staff, or a unit or individuals (including volunteers) in the EOP whose function it is to advise and assist the President. Second, the records must relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Presidential records may be in any physical form, including paper, film and disk. The method used to record information may be manual, mechanical, photographic, electronic, or any combination of these or other technologies.

A document created by personnel in a White House office, or an EOP office that advises and assists the President, normally is a Presidential record once it is circulated to others in the course of conducting activities which relate to or have an effect upon the carrying out of Presidential duties. Moreover, even documents that are not circulated can be Presidential records if, in the judgment of the office at issue, those documents are needed to conduct business that relates to or has an effect upon the carrying out of Presidential duties.

Materials received by personnel in the White House office, or in EOP offices that advise and assist the President, similarly become Presidential records when they are received in the course of conducting activities which relate to or have an effect upon the carrying out of Presidential duties. Materials received may be Presidential records whether they have been transmitted in person, by messenger, by mail, by electronic communication, or by any other means.

At the same time, several types of documentary materials are not subject to the Presidential Records Act. The Act expressly excludes documentary materials that are (1) official records of an agency; (2) stocks of publications and stationery; and (3) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

The Act also excludes "personal records," defined to include 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." Personal records may include:

- 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;
- 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;
- papers and other materials accumulated by a staff member before joining government service and not used in the course of transacting government business;
- materials that relate to a staff member's private affairs, such as personal financial records, insurance forms, and materials relating to an individual's professional activities and outside business and political pursuits;
- personal photographs;
- 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.

Further examples of materials not covered by the Presidential Records Act may include items such as those listed below:

- preliminary drafts, that are not circulated to any other individual, of correspondence, reports, and studies;
- preliminary drafts, work sheets and informal notes that contain information reflected in final documents and that do not document policy development or execution;

- tickler, follow-up or suspense copies of correspondence, provided there are copies of such documents in the official files;
- newspaper clippings or news summaries, that have not been annotated, or organized or arranged for some official purpose;
- copies of printed or processed materials, such as operating and procedural manuals, directives, and notices, distributed for the information and use of office employees;
- shorthand and other notes that have been transcribed or converted to formal documents that have been verified for accuracy and completeness; and
- catalogs, trade journals, and other publications that are received from other government agencies, commercial firms, or private institutions and that are maintained for reference purposes.

It is important to remember, however, that certain documents in the categories listed above may be Presidential records -- particularly given that, in the White House, drafts, working papers and other similar materials often document policy development, significant decisions, or other matters related to the carrying out of Presidential duties, as discussed below.

III. Requirements for creation and maintenance of Presidential records

When advising or assisting the President in carrying out his duties, White House and EOP employees are responsible for complying with the Presidential Records Act and related regulations.

The law imposes an affirmative obligation on staff members to document adequately the performance of the President's constitutional, statutory and ceremonial duties. Where appropriate, staff members should document -- through notes, minutes or memoranda -- meetings, conversations and other business in connection with, or related to, the carrying out of the President's duties.

Presidential records should be maintained in organized files. For offices creating both Presidential and federal records, it is critical that staff members carefully segregate Presidential and federal records. Federal records are subject to

the Federal Records Act and may be subject to public disclosure under the Freedom of Information Act during the President's term of office. Presidential records, by contrast, are not subject to the Federal Records Act and are not subject to the provisions of the Freedom of Information Act during the President's term of office. Those offices (such as the National Security Council) that create or receive both Presidential records and federal records should file them separately with a clear indication of which records are Presidential and which are federal.

In addition, staff members should, to the extent possible, ensure that any files containing particularly sensitive records are clearly marked to reflect that fact. Designations for files containing sensitive records may include:

- (1) "classified information";¹
- (2) "information the release of which may be prejudicial to the maintenance of good relations with foreign nations";
- (3) "sensitive personal information" (*i.e.*, information the release of which may be embarrassing to the individuals mentioned or to their families);
- (4) "sensitive law enforcement materials";
- (5) "trade secrets or sensitive commercial or financial information"; and
- (6) "information subject to attorney-client or attorney work product privileges."

Finally, personal records should be clearly labeled, kept apart from Presidential records (and federal records) and not made available to other staff in connection with any official purpose.

IV. Electronic Presidential records

Increasingly, Presidential records may be created electronically. Records may be generated on word processing or electronic mail ("e-mail") systems, or on electronic databases.

¹ Please note that nothing in this memorandum should be construed to override existing Executive Orders setting forth who may designate specific documents as classified and what terms must be used in connection with such designations.

Records generated electronically must be incorporated into an official recordkeeping system. Thus, no word processing or e-mail document that is a Presidential record should be deleted unless it has been (a) printed and placed in an appropriate file, or (b) preserved in an appropriate electronic system. Questions concerning the record status of electronically generated materials should be directed to the White House Records Management Office. That office will periodically monitor electronic systems to ensure that correct records status determinations have been made.

As is the case for all record matters, the White House Records Management Office will continue to work with the White House Counsel's Office to coordinate policy and practices with respect to electronic Presidential records.

V. Disposition and destruction of Presidential records

Presidential records are the property of the United States and may be disposed of only in accordance with procedures established by the Archivist of the United States. The Presidential Records Act prohibits the disposal of Presidential records unless those records no longer have administrative, historical, informational, or evidentiary value. Moreover, before disposing of any Presidential records, the President must notify the Archivist who, under certain clearly defined circumstances, will notify appropriate Congressional committees.

The White House Records Management Office will provide guidance concerning disposal of certain recurring types of papers, including form letter public mail, unsolicited public mail that is not reviewed by any person in the White House with decision-making authority and not answered by any member of the White House staff, anonymous public mail, and enclosures received in public mail -- most of which may be destroyed after notification to the Archivist of the United States or the Archivist's representative.

Offices that have these recurring types of disposable material should coordinate all disposal procedures through the Office of Records Management. Under no circumstances should such material be disposed of without prior approval of the White House Records Management Office. (Prior approval is not necessary for the destruction of exact duplicates of documents which are being retained, or for unmarked copies of officially published documents, such as printed reports.)

The White House Office of Records Management serves as a central file for all Presidential records. Its primary role is to manage, process, maintain and store records for the daily use

of the President and all the policy units in the White House. Concurrently, it preserves these same records to ensure a comprehensive history of the Administration. All EOP staff members are encouraged to consult with this office for guidance on the creation and maintenance of files and on procedures for appropriate and systematic filing of documents.

VI. Legal control of Presidential records

Presidential records remain in the custody and control of the President during his term of office and are not subject to disclosure under the Freedom of Information Act during that term. As noted above, federal records are, by contrast, subject to the FOIA public disclosure provisions.

Upon completion of the Administration, the Archivist acquires custody of Presidential records. Many of these records will become available to the public under the FOIA five years after the end of the President's term of office. The President, however, may assert control over public access to certain categories of information -- generally including classified materials, documents related to appointments to federal offices, items specifically exempted from disclosure by other statutes, trade secrets or commercial information, confidential communications requesting or submitting advice between the President and his advisers (or between such advisers), and information implicating personal privacy concerns -- for up to twelve years after the end of the President's term. After twelve years, public access to these categories of documents is governed by the FOIA, subject to any Constitutional privilege against disclosure.

VII. Records that may be retained by staff members upon departure from office

Staff members may not remove Presidential records, or copies of such records, from their offices at any time, except in connection with an official function. Classified Presidential records may not be removed from the office at any time without compliance with the rules applicable to such materials. Records used in an official capacity should be returned to proper files immediately after such use.

When a staff member leaves the White House or another office in the EOP, he or she must deliver all Presidential records to the White House Records Management Office (or leave records in his or her office for pick-up). Staff members are not entitled to retain copies of any Presidential records for

personal use, except copies of documents that have already been publicly released.

Federal records should be left at the appropriate agency, and disposed of in accordance with the advice set forth in the federal records guidance memorandum from David Watkins and Bruce Overton.

Purely personal, unclassified materials may be removed from the office by staff members at any time, subject to any agency procedures regulating such removal. If, during the course of service at the White House, a staff member wishes to store personal (including private political) materials at the White House Office of Records Management, the staff member must clearly designate those materials as "personal."

VIII. Records in the Office of the Vice President

The Presidential Records Act expressly provides that records of the Office of the Vice President are Vice-Presidential records and are to be treated under the Presidential Records Act in the same manner as Presidential records. Thus, materials created or received in the Office of the Vice President should be treated in accordance with the guidance set forth above. The Office of the Vice President has its own records management staff, and personnel in the Office of the Vice President should consult with that staff for additional guidance regarding the filing and disposition of Vice President's Office records.

The Presidential Records Act further provides that "[t]he authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist 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."

IX. Training

The White House Office of Records Management and other appropriate personnel will be providing records management training in the near future.

* * *

The foregoing is designed to provide general guidance with respect to the Presidential Records Act. Specific questions of coverage or interpretation should be addressed to the White House Counsel's office. Assistance in records maintenance and

disposition can be obtained from the White House Office of Records Management (or, in the case of the Office of the Vice President, from the Vice President's records management staff).

THE WHITE HOUSE

WASHINGTON

May 5, 1993

MEMORANDUM FOR ALL EXECUTIVE OFFICE OF THE
PRESIDENT STAFF

FROM: DAVID WATKINS *DW*
Assistant to the President for
Management and Administration

BRUCE OVERTON *BO*
General Counsel,
Office of Administration

RE: Federal Records

INTRODUCTION

The offices within the Executive Office of the President generate two categories of records: "Presidential Records" and "Federal Records."

Records are "Presidential" if they 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 official or ceremonial duties of the President." Such Presidential records are subject to the provisions of the Presidential Records Act, 44 U.S.C. § 2201. Presidential records remain in the custody and control of the President during his term of office and are not accessible to the public until five years after the end of the Administration, at the earliest. The treatment of Presidential records will be addressed in a separate memorandum issued today by the White House Office.

It is the purpose of this memorandum to discuss the identification, maintenance and disposition of "federal" records. Materials are "federal records" if (1) the materials have been created or received by agency personnel in connection with their official duties in a federal agency, and (2) the materials are appropriate for preservation as evidence of the agency's activities or because they contain information of value. Federal records are subject to the provisions of the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. Unlike Presidential records, federal records are accessible to the public during the

Administration's term, unless exempt from disclosure under the provisions of the Freedom of Information Act.¹

The Federal Records Act imposes certain legal obligations with respect to the creation and receipt, custody and maintenance, and disposition of federal records. The responsibilities apply regardless of whether the records are generated in paper form or by automated systems.

It is critical that staff members in offices, such as the National Security Council, that create or receive both federal and Presidential records, file those records separately in clearly designated files. Once a document is filed as a federal record, it becomes subject to the Federal Records Act and may be subject to public disclosure under the Freedom of Information Act. Presidential records, by contrast, are not subject to the Federal Records Act and are not subject to the provisions of the Freedom of Information Act during the President's term of office. Personal records (defined and discussed below) also should be segregated, and filed separately, from official records.

¹ All records of the White House Office, the Office of Policy Development, the National Economic Council, the Council of Economic Advisers, the President's Intelligence Oversight Board and the President's Foreign Intelligence Advisory Board are Presidential records.

The records of the Office of the Vice President are treated in the same manner as Presidential records under the Presidential Records Act. The records of the Office of the Vice President are not federal records.

Records of the National Security Council staff are Presidential Records if they were received or created by or for the President, the Assistant to the President for National Security Affairs, the Deputy Assistant to the President for National Security Affairs, the White House office, or a unit or an individual within the NSC in advising or assisting the President, and not official records of the NSC.

Records produced or received by the Director of the Office of Science and Technology Policy in his role as Science Advisor to the President are Presidential records and should be segregated as such. Other records of the OSTP are federal records.

Records of the Office of Management and Budget, the Office of the United States Trade Representative, the Council on Environmental Quality, and the Office of Administration are federal, not Presidential records.

The guidance that follows will assist EOP staff in complying with the Federal Records Act, which is designed to ensure that documentation of official activities is adequately created and preserved. See 44 U.S.C. § 3101. As explained below, not every document that you create or receive will be subject to the Federal Records Act, and it is therefore important to review this guidance to understand when Federal Records Act obligations do apply. In preparing this guidance, we have consulted with officials of the National Archives and Records Administration.

DEFINITION OF FEDERAL RECORDS

The Federal Records Act defines federal records as:

[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.

-- 44 U.S.C. § 3301.

Under this definition, federal records are documentary materials that meet two tests. First, the materials must have been created or received by agency personnel in connection with their official duties in a federal agency. Second, the materials must be appropriate for preservation as evidence of the agency's activities or because they contain information of value. Federal records may be in any physical form, including paper, film and disk. The method used to record information may be manual, mechanical, photographic, electronic, or any combination of these or other technologies.

A document created in any agency normally becomes a federal record once it is circulated to others in the course of conducting agency business, or once it is placed in files accessible to others. Moreover, even documents that are not circulated can become federal records if, in the judgment of the agency, those documents are needed to conduct agency business -- and whether or not those documents are accommodated by current filing systems employed by the agency.

Materials received by agency personnel are federal records when they are received in the course of official business. Materials received can become federal records whether they have been transmitted in person, by messenger, by mail, by electronic communication, or by any other means.

At the same time, certain types of documentary materials are not subject to the Federal Records Act. The Act specifically excludes (1) library and museum materials created, or acquired and preserved, solely for reference or exhibit purposes; (2) extra copies of documents kept only for convenience of reference; and (3) stocks of publications and processed documents. These and other types of transitory or duplicate records are considered "nonrecord" because they are not "appropriate for preservation" as defined in the Act. Such materials are not needed to provide full and accurate documentation of an agency's policies, decisions, procedures, and program activities. These materials need not be maintained in official files, and, unlike federal records, may be destroyed when no longer needed and without prior approval of the National Archives and Records Administration.

Other examples of "nonrecord" materials not covered by the Federal Records Act may include:

- Preliminary drafts, that are not circulated to any other individual, of correspondence, reports, and studies.
- Preliminary drafts, work sheets and informal written notes that contain information reflected in final documents and that do not document policy development or execution.
- Tickler, follow-up or suspense copies of correspondence, provided there are copies of documents in the official files.
- Newspaper clippings or news summaries, particularly if they are not annotated.
- Copies of printed or processed agency materials, such as operating and procedural manuals, directives, and notices, distributed for the information or use of agency employees.
- Shorthand and other notes that have been transcribed or converted to formal documents that have been verified for accuracy and completeness.
- Catalogs, trade journals, and other publications that are received from other government agencies,

commercial firms, or private institutions and that are maintained for reference purposes.

In addition, certain "personal papers" fall outside the scope of the Federal Records Act. Personal papers are documentary materials that are not used in the transaction of agency business. Examples include:

- Papers and other materials accumulated by a staff member before joining government service.
- Materials that relate to a staff member's private affairs, such as personal financial records, insurance forms, and materials relating to an individual's professional activities and outside business and political pursuits.
- Personal photographs.
- Materials that may refer to official duties but are not directly used to carry out those duties. These include diaries, personal calendars, journals, and notes intended for an individual's personal use (memory aids and personal observations on work-related matters).²

It is important to remember, however, that certain informal documents may be federal records. In the Executive Office of the President, to a greater extent than in many other government offices, drafts, notes, background materials or working papers can be considered federal records because they document policy development, significant decisions, major activities, or other matters basic to an understanding of the office and its role in government operations. Such materials should be treated as federal records and maintained in official files if they were circulated for review or clearance, and if they have been modified substantively.

When it is difficult to determine whether documents or other records should be treated as federal records, you should tentatively treat them as federal records and contact the appropriate EOP agency records management office for a final determination. Legal questions will be referred by the records management office to appropriate counsel.

² For further information on personal papers, consult Personal Papers of Executive Branch Officials: A Management Guide, published by the National Archives and Records Administration. Copies are available in the Office of Administration, Records Management Office.

RECORDS CREATION AND MAINTENANCE REQUIREMENTS

When acting in their capacity as employees of a federal agency, such agency employees are responsible for complying with the Federal Records Act and related regulations.

The law requires that adequate and proper records be created and preserved to document the organization, functions, policies, decisions, procedures and essential transactions of the agency. The law also specifically requires that records be kept for appropriate periods if they can be used to protect the legal and financial rights of the Government or individuals directly affected by the agency's activities.

In order to ensure that agency records contain an adequate and proper account of policy development, implementation and decision-making, each employee must document those discussions, meetings and telephone conversations that are necessary to understand these functions. Where appropriate, in formal settings, minutes or notes should be taken for the purpose of including them in official files.

All staff members are responsible for complying with procedures that result in adequate and proper records creation and maintenance. All materials meeting federal records criteria must be incorporated into appropriate agency files or records systems. EOP staff members should consult with the appropriate EOP agency records management office to address any questions concerning the creation and maintenance of federal records.

ELECTRONIC FEDERAL RECORDS

Increasingly, federal records may be created electronically. Records may be generated on word processing, or electronic mail ("e-mail"), systems or other computer applications.

Records generated electronically must be incorporated into an official recordkeeping system. Thus, no word processing or e-mail document that is a federal record should be deleted unless it has been (a) printed and placed in an appropriate file, or (b) preserved in an appropriate electronic system.

On January 6 and 11, 1993, in the case of Armstrong v. Executive Office of the President, United States District Judge Charles R. Richey directed the National Archives and Records Administration to work with components of the EOP to develop further recordkeeping guidance both for e-mail communications in the EOP and for disposition of EOP electronic federal records generally. Pursuant to these orders, and until further

instructions, the following special rules should be observed by components of the EOP that generate federal records:

1. Material may not be deleted from any e-mail file unless (a) the material has been retained in full on a back-up tape or other comparable medium, and (b) the retained version includes both full text and all available transmittal information; and
2. EOP staff members with records management responsibility must monitor the implementation of guidance on federal records (including the status of records) to ensure consistent application of the court's order.

Questions concerning the status of electronic records, or the application of these rules to particular computer systems, should be directed to the appropriate EOP agency records management office. Those offices will periodically monitor electronic records systems to ensure that correct records status determinations have been made.

DESTRUCTION OR REMOVAL OF FEDERAL RECORDS

Federal records, as defined by the Federal Records Act, may not be destroyed, or permanently removed from appropriate official files, without the prior approval of the National Archives and Records Administration.

Federal records should be maintained in organized files and may not be damaged or altered by any staff member. Nor may federal records be temporarily removed from official files except for official purposes, and only if returned to the official files upon completion of that official function.

Policies and procedures governing the disposition of federal records are prescribed by the National Archives and Records Administration and are incorporated into the EOP records management program. Further information concerning these policies and procedures should be obtained from the appropriate EOP records management office.

REMOVAL OF NONRECORD AND PERSONAL MATERIALS

Purely personal, unclassified materials may be removed from the office by staff members at any time, subject to any agency procedures regulating such removal.

Unclassified nonrecord materials, with the exception of copies of records, may be removed with the prior approval of an agency official with records management responsibility.

Except where expressly authorized by appropriate agency officials, copies of federal records, regardless of the reason for which they have been duplicated, may not be taken by staff members for any purpose other than an official purpose related to the staff members' official duties and responsibilities.

No classified materials may be removed from the office at any time, without compliance with the rules applicable to such materials.

TRAINING

EOP agency records management offices and other appropriate personnel will be providing records management training for all employees who generate or receive federal records.

DIRECTORY OF SERVICES

AGENCY & OFFICE DESCRIPTIONS

FORMS

LEGAL & ETHICAL REGULATIONS

ACRONYMS

**WHITE
HOUSE**



S T A F F M A N U A L

1 9 9 7

Federal Register

The Federal Register is a daily publication of Federal rules and notices published by the National Archives. Copies of the Federal Register and the Weekly Compilation of Presidential Documents are received by many White House offices and are also available in all three libraries.

Files (see also Tab B - Records Management, Office of)

The Presidential Records Act, 44 U.S.C. §§ 2201-07, imposes certain requirements regarding Presidential documents. The purpose of the Presidential Records Act is to document the performance of the President's constitutional, statutory and ceremonial duties. To accomplish this purpose, the Act requires the preservation of all original Presidential records. You do not have to keep identical copies. You need not keep "nonrecord" materials, such as notes for your own use, rough drafts not circulated to others, or call and visitor logs. In addition, official records of an agency and stocks of publications and stationery are not considered Presidential Records. You should file Presidential Records – those pertaining to the performance of the President's duties – separately from your personal records.

When you leave the White House, send the Office of Records Management all original Presidential Records you have. Unless they have been publicly released, you may not take copies of Presidential Records when you leave, without permission from Counsel's Office. If you have any questions about whether particular documents are Presidential Records, contact the Counsel to the President (Room 128, OEOB, x67900).

In addition to the provisions of the Presidential Records Act, the White House receives subpoenas and document requests. You must preserve all materials that are covered by such subpoenas or requests.

Framing

The General Services Administration operates a framing shop on premises to support official framing requests of Executive Office of the President staff members. All requests for framing of official items must be submitted to the White House Administrative Office (Room 1, OEOB, x62500) with a Facility Request form (see Tab C).

Items framed for official use become the property of the White House and must remain on the premises.

- **Executive Clerk's Office:** (Room 5, OEOB, x62226) The Executive Clerk's Office is responsible for the preparation and disposition of all official Presidential documents, such as nominations to the Senate, commissions of appointment, Executive Orders, proclamations, messages to Congress and memoranda from the President to units of the Executive Branch.

In addition, the office serves as the official point of Presidential receipt of formal documents from Congress, such as joint resolutions, enrolled bills, and Senate confirmation resolutions. The Office is charged with maintaining the official White House record of Presidential action on subjects mentioned above.

- **Records Management:** (Room 80, OEOB, x62240) The Office of Records Management (ORM) is open from 7:00 a.m. until 10:30 p.m., Monday through Friday and from 9:00 a.m. to 4:00 p.m., on Saturday. ORM is often open beyond these hours to accommodate staff demands. ORM staff may be reached through the White House Switchboard (x61414) at any time. White House Office staff members are encouraged to consult with the Director and Deputy Director for guidance on the creation and maintenance of files and appropriate filing procedures. As stated in the Presidential Records Act of 1978, complete ownership, possession, and control of Presidential records is administered by the United States Government. To ensure compliance with this Act, all staff should confer with ORM and White House Counsel's Office regarding the creation, maintenance and disposition of all documentation.

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
?

Irrig.
Teng-
This is what I reviewed. I don't know
where it got sent. Bottom line ... I'm not
comfortable having this memo sent
until we discuss it further.
I also need to discuss
it with a few
other people.
Phil

DRAFT

THE WHITE HOUSE

WASHINGTON

March 18, 1981

MEMORANDUM FOR EDWIN MEESE, III
JAMES A. BAKER, III

FROM: FRED F. FIELDING

SUBJECT: Policy on removal of records by departing
White House staff

The Presidential Records Act, which became effective Inauguration Day, imposes statutory restrictions on records of the Reagan Administration and succeeding administrations which did not apply to earlier Presidents. Under the terms of the Act, White House Office records and those of other elements in the Executive Office of the President whose function is to advise and assist the President, are the property of the United States government. There is an affirmative duty to maintain records and the records may not be removed or destroyed without permission of the Archivist of the United States. The Act itself does not prohibit destruction or removal of "extra copies" of records. The decision whether departing staff members may remove extra copies of documents they have worked on (other than classified documents) is essentially a matter of policy for the Administration to determine.

The policy on removal of extra copies of records should be determined at the beginning of the Administration. This will avoid any later disappointment or confusion based on false expectations and will provide consistent policy for those who leave early in the Administration and those who remain until the end. Moreover, the departure at this time of consultants carried over from the transition raises the specific question of whether they may take with them extra copies of documents on which they worked.

While the President has the latitude to permit staff members to remove extra copies of documents, it is my recommendation that he prohibit this practice. The Presidential Records Act permits a President to impose controls on public access to certain categories of documents generated during his Administration for a period of twelve years after he leaves office. These access restrictions, however, do not apply to records or portions of records which are already in the "public domain." To the extent former staff members have possession of copies of presidential records, the President's ability to prevent their release into the public domain is limited.

page two
March 18, 1981

If you concur in this recommendation, I will prepare a memorandum to staff advising them of the policy prohibiting removal of copies of presidential records.

Approve _____ Disapprove _____

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 23, 1981

MEMORANDUM TO: H.P. GOLDFIELD
DIANNA HOLLAND
RICHARD HAUSER

FROM: WILLIAM F. MATTHEWS

SUBJECT: PRESIDENTIAL RECORDS ACT

After reading Marie Allen's February 9 memorandum on this subject which touched upon a number of matters that have fallen within our area of responsibility, I feel compelled to offer some views which may shed some additional light on this topic.

To assist you in quickly spotting areas of agreement and disagreement, I will follow Marie's format.

TAB A

(1) Agree.

(2) Agree. The Office of Records Management (ORM) is, of course, willing to assume the responsibility for working with all EXOP units that maintain Presidential records. In fact this would simply be an expansion of our support to several additional offices that heretofore have maintained their own records management systems. For those EXOP units that generate both Federal and Presidential records, we would coordinate with the Office of Administration records management officers with whom we have developed close rapport over the years. I might add that our success would be to a large degree dependent on the support we would receive from the President's Counsel.

(3) Agree. However, we would mention in passing that while Marie's draft is prepared for the signature of the Chief of Staff, this responsibility could just as easily belong to the Counsel to the President or the Director of ORM as long as the delegation of authority was made. I might even suggest that ORM is more appropriate in light of its long and generally close relationship with NARS.

Furthermore, at our initiative for the past three years, ORM has been transferring to NARS for disposal records fitting three of the four categories. Unless the PRA specifies otherwise, we see no reason to transfer this rather routine procedure to a policy office.

TAB A (Continued)

(4) May we be so bold as to suggest that the Director of ORM might just be the logical official to whom to delegate this authority and responsibility? An advantage of giving this duty to ORM insures that there will be no break in carrying out the Act's obligation during changes in Presidential Administrations. Marie's suggestion that it be a senior official is not in reality all that necessary for we don't believe the Act's requirements to be that difficult to carry out. (See (5) for further comments on this). I might add that the checkout procedure for resigning White House and Domestic Policy staff for the last two Administrations included a stop at ORM to insure that no Presidential Papers were being removed. Thus, for what it is worth, the Counsels for these two Presidents have seen fit to place this responsibility with ORM.

(5) Disagree. While we suspect that Marie's educational campaign -- with its handbook, training courses, and office visits -- would impress some people on the Hill with NARS' efforts to meet its PRA obligations, we are fairly certain, based on our experience with the White House and Domestic Policy staffs at all levels, that it simply (sadly) isn't a realistic or practical White House approach. Furthermore, our reading of the PRA doesn't lead us to believe that it merits such an educational campaign as Marie proposes. As a matter of fact, it requires few significant changes in traditional records management practices at the staff office level: simply continue to maintain documentation of the office's activities, separate personal from Presidential files, and don't destroy or take any of the latter home with you.

As for anticipated and more difficult questions regarding the legal status of staff diaries, telephone logs, and political files, we are optimistic that meetings with Counsel and Mary Lawton will produce simple and straightforward guidelines that can be incorporated into a PRA memorandum and sent to the contact people in all EXOP offices maintaining Presidential records.

In her cover memorandum, Marie has drawn particular attention to a draft handbook that she wrote, mentioning that it was later revised. The "good quick summary" she refers to is our effort to satisfy the guidelines given ORM by the policy staff member overseeing the project. However, I defer to you whether either is satisfactory. Quite possibly, you may wish to draft a totally new set of instructions.

TAB A (Continued)

(6) Agree.

TAB B

Agree.

TAB C

We would agree with the general thrust of this draft memorandum. Overlooking temptations to make semantic changes, we would, naturally, prefer to substitute for paragraphs 2,3, and 4 the "good quick summary" entitled "Laws and Regulations pertaining to Presidential Records" found at TAB F. Additional succinct guidelines could be added (as mentioned in TAB A (5)) to cover the questions regarding diaries, telephone logs, and political files. As for paragraph 5, I believe that ORM can handle most if not all of the EXOP office contacts without troubling NARS for assistance. As mentioned earlier, we have contacts with several now, and can easily establish contacts with others. And now that Mary Lawton is fully cognizant with the PRA, the very technical and legal questions that might arise can be resolved in-house.

The second draft memorandum is satisfactory except, as stated above, NARS need not be called on for assistance.

TAB D

Agree.

TAB E

See my comments under TAB A (3).

We would assume that the Vice President's staff and Counsel would decide how to handle the entire PRA implications for the Vice President. We could, of course, coordinate records disposal projects if the VP's staff wished.

TAB F

We will take total credit or blame for the substance and tone of the memorandum describing ORM's "one stop shopping" concept.

The next two sections have already been treated in TAB A (5).

CONCLUSION

Is this Act really so unusually important: does it rank head and shoulders above most other statutes requiring Presidential adherence to the degree that the White House feels compelled to request a full-time NARS presence in the complex?

The President and NARS have so much more to gain by reverting back to the original reason for detailing to the White House archivists from its Office of Presidential Libraries. Let them come here to begin familiarizing themselves with the people and papers so that at the Administration's conclusion when it is time to transfer the records to a Presidential library (in California?) there will be a knowledgeable cadre of archivists ready to move out there with them.

Leave records management to ORM.

76
THE WHITE HOUSE

WASHINGTON

September 26, 1980

MEMORANDUM REGARDING PRESIDENTIAL RECORDS ACT

The Presidential Records Act, 44 USC 2201 et seq., becomes effective January 20, 1981. If it is to be implemented effectively decisions must be reached soon on certain issues raised by the Act. The task force studying the matter has recommended decisions on a number of issues, and has identified other policy questions which require decision.

Tentative Decisions

1. Application of Act to gifts received from domestic sources -- Act extends to logs or records showing receipt of gifts but not to gifts themselves.
2. Records of the Vice President as President of the Senate -- these are Senate records not subject to the Act.
3. Presidential records vs. federal records -- The records listed below are Presidential records; all others in the Executive Office of the President are federal records.
 - o White House Office (including residence),
 - o Domestic Policy Staff (except for the Drug Abuse Policy section),
 - o Intelligence Oversight Board,
 - o National Security Adviser to the President, Deputy National Security Adviser and Presidential Acquisitions file of NSC,
 - o Presidential advisory files of Office of Science and Technology,
 - o Presidential advisory files of Office of Administration,
 - o Presidential advisory files of Council on Wage and Price Stability.
 - o CEA
4. Documents which do not constitute records -- The following lists are subject to the guidance of the record managers based on the guidance contained in the NARS definitions for federal agencies:

MEMORANDUM
September 26, 1980

- o diaries, journals or notes which are prepared only for personal use and are not circulated to others,
- o stocks of publications,
- o extra copies of documents which are on file,
- o drafts of circulated for comment or annotated by other than the originating office,
- o political memoranda related solely to the President's re-election campaign, including memos received from the DNC.

All other documents, including logs or datebooks required to be maintained, annotated drafts of speeches, briefing cards prepared for the President or Vice President, are Presidential records. (Note the classification of phone logs or datebooks as presidential records may be determined in part by the rank of the person to whom they pertain.)

5. Policy responsibility -- Chief of Staff should sign major policy statements, Counsel to provide legal interpretation and Special Assistant for Administration assume responsibility for administration.
6. Records Management Responsibility -- White House Office of Records Management to have responsibility for all Presidential records in the EOP.
7. Disposal of Records -- White House Office of Records Management will prepare the disposal schedule for transmission by Hugh Carter to Archives. Mike Berman will handle for the Vice Presidential records.
8. Records Handbook -- Matthews will prepare, Berman will adapt for the Vice President. After review by Lawton, Pickman, and Berman, the Matthews handbook will be distributed by cover memo of the Chief of Staff.
9. Training -- Hugh Carter's office will be responsible for conducting training for the staff.

Remaining Policy Issues

- A. File Break -- The task force rejected a total file break (encompassing such things as routine correspondence). Tentatively we discussed a partial file break which would identify the sensitive types of records in each office over which the President might wish to exert maximum control.

MEMORANDUM

September 26, 1980

1. Frank Matthews will attempt to identify possible categories of sensitive files.
 2. The file break issue should be summarized and discussed in the senior staff meeting.
 3. Hugh Carter should attempt to ascertain whether the President cares about exerting complete or partial control over first term records that differs from the control authorized in the Act.
- B. Removal of copies of records by departing staff -- This is a separate policy issue covered in a separate memorandum. However, the Records Act has an impact on how the policy is resolved.
- C. Restriction statement on second term records. This is also the subject of a separate memo. The tentative draft restriction letter asserts maximum control permitted by law but leaves open the possibility of later refinement.