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FOIA MARKER

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Record Group/Collection: George H.W. Bush Presidential Records
Collection/Office of Origin: National Security Council
Series: H-Files
Subseries: IF Transition Files

OA/ID Number: 99016
Folder ID Number: 99016-009

Folder Title:
[NSC: Reagan-Bush Transition Background Materials - Volume III - January 1989] [3]

Stack:	Row:	Section:	Shelf:	Position:
V	0	0	0	0

KW Mann's
markup

UNCLASSIFIED

CLASSIFICATION

CIRCLE ONE BELOW

IMMEDIATE

PRIORITY

ROUTINE

MODE

SECURE FAX #

ADMIN FAX # 28

PAGES 7

DIG 171102

RELEASER

FROM/LOCATION

1. Mona Butler

TO/LOCATION/TIME OF RECEIPT

1. Steve Padema Ker

2. T68 1717.52

3.

4.

5.

6.

7.

INFORMATION ADDRESSES/LOCATION/TIME OF RECEIPT

1.

2.

REMARKS: PI: 27
UNION ROOM

SPECIAL INSTRUCTIONS/REMARKS:

UNCLASSIFIED

CLASSIFICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTT ARMSTRONG, et al.,

Plaintiffs,

v.

GEORGE H.W. BUSH, et al.,

Defendants.

Civil Action No.
89-0142 (JCR)

DESCRIPTION OF THE PROFS SYSTEM

"PROFS" is the term used to refer to an IBM computer system available for use on mainframe computers. Two independent PROFS systems are utilized by components of the Executive Office of the President (EOP): one by the staff of the National Security Council (NSC) and the other by other EOP components. Declaration of George Van Eron, filed Feb. 6, 1989, (Van Eron Decl.) ¶ 3; Declaration of Dennis Keating, filed Feb. 6, 1989, (Keating Decl.) ¶ 3.

The NSC system became fully operational in approximately April 1985. Van Eron Decl. ¶ 3. It is maintained by the White House Communications Agency, a joint services Department of Defense activity. Id. ¶ 1. As of January 19, 1989, approximately 92 PROFS USERIDS¹ ~~had been~~ ^{were active} issued to members of the NSC staff. Defendants' Responses to Plaintiffs' Interrogatories to Defendants Bush and the National Security Council (Def. Interr.) No. 5(a)(1).

¹ define USERID.

The other EOP components share a PROFS system managed by the Information Resource Management Division (IRMD) of the Office of Administration (EOP system). Keating Decl. ¶ 3. The EOP system became operational in November 1986. Id. As of December 30, 1988, the following numbers of USERIDs had been issued to EOP components:

- Unassigned, available to systems users - 47²
- Office of Administration - 154
- White House Office - 70
- Office of the Vice President - 13
- Office of Science and Technology Policy - 10
- Office of Management and Budget - 3
- Office of Policy Development - 4
- United States Trade Representative - 4
- Council on Environmental Quality - 1
- Others - 1

Def. Interr. No. 5(b)(ii).

[Describe in more detail than we already have how PROFS functions from a technical standpoint, but in as simple terms as possible. For example, aside from the backup, is current data maintained on some type of disk or tape? Do all users have computer terminals and keyboards? Is PROFS a software package, a total hardware and software system, or what? Can the PROFS terminal (PC?) be used for things other than PROFS (e.g. word processing)? How is a note or other data entered into the system and sent? Is the recipient alerted by some type of "beep" or does a note just show up in some type of "inbox." Some of these points may fit into the following paragraphs.] Include: 58% of the space on the EOP PROFS system is allocated for system space.

² explain this category: Systems users are IRMD personnel who are responsible for maintaining the system?

[what is system space?]. 41% if the space on the EOP PROFS system is allocated as user disk space [define user (disk) space]. For the NSC system, 25% of the space is available for "programming" and 75% of the space is available for "user information." [can we use the same terms for EOP and NSC?] The NSC PROFS system is cleared to handle classified information. Van Eron Decl. ¶ 5.

The primary function of the PROFS systems for all EOP components is to serve as a means of informal electronic communication among the various individuals who have access to the system. Van Eron Decl. ¶ 5 and Ex. 2; Riggle Decl. ¶ 6; Keating Decl. ¶¶ 8, 9. The creation and transmittal of "electronic mail" usually called "notes" is the mostly commonly used function on the EOP and NSC PROFS systems. Notes are a means of sending short messages to another user. The average note is three paragraphs long, Becker Decl. ¶ 6, [some of this ¶ is from Eddie Becker and his exhibits -- can we agree?] and will appear on one page when printed in hard copy? When a user sends a note, PROFS ^{ordinarily} keeps a copy automatically in the sender's "note log." Becker Decl. Ex. 1 at 2. The note is transmitted to the recipient's electronic "incoming mail." Id. The recipient can do several things with a note, including reply to it, file it in his own electronic "note log," erase it, and/or print a hard copy. Id. When printed, the hard copy of a note will contain the USERID and name of the sender, the date and time of transmittal, the USERID [and name?] of [all?] recipients, and the

*Do you
know
how
to
keep a
copy?*

text of the note [anything else to add?]. Keating Decl. ¶ 10. If the sender has used the nickname or distribution list functions,³ the USERID, rather than the nickname or distribution list code would appear on a hard copy of the note. Def. Interr. No. 13 (a)-(d).

The EOP PROFS system has a "Document Transfer" function that permits a user to transmit a "document" from his own personal computer or word processor through the PROFS system to other users. Documents are usually longer and more formal than notes. The EOP PROFS system is not used to create or edit documents. Creation and revision of the document is done on the personal computer or word processor of the sender and recipient. .0005% of the space on the EOP PROFS system is allocated for documents.

The NSC PROFS system has the capacity for users to create, as well as transmit, documents. The document function is little used because the process is "clumsy, slow, and not user friendly." Van Eron Decl. ¶ 5; Becker Decl. ¶ 6. ~~Document storage on the NSC PROFS system constitutes .021% of the space on that system.~~ *the NSC PROFS system is available for document storage purposes.*

The calendar function is used by some individuals for scheduling purposes. Individual users can authorize other users to have access to all, or parts of, their personal calendar. For

³ The nickname function is a user aid by which a user can assign a "nickname" to another user for convenience as an abbreviation as an easier identifier to remember than the user name [USERID]. The distribution list is a user-created file of a group of individuals to whom the user frequently sends notes. Inter. No. 13 (a)-(d).

the EOP system, .0005% of the user space is allocated for the calendar function. For the NSC system, ? % of user space is allocated for the calendar function. [Anything to add?] All notes, documents, and calendars created and transmitted on the PROFS system can be printed out on paper or "hard copy." Keating Decl. ¶ 14.

The EOP components, the NSC, and individual staff members have used different functions of the PROFS system with varying frequency. Def. Interr. Nos. 7(a)-(c), 29. It is impossible to quantify the frequency of usage for particular functions and the frequency with which users printed in hard copy data entered into the system without polling each user and/or reviewing each entry item by item. Id.

Both the EOP and NSC PROFS systems have "backup procedures," in which "snapshots" of the system are taken at a given point in time. Van Eron Decl. ¶ 6 and Ex. 2; Keating Decl. ¶ 17. If the system fails mechanically, causing current data to be lost, the backup tape can be used to retrieve data that had been recorded on the tape. Similarly, if a user inadvertently deletes information, the information can be retrieved if it was captured on a backup tape. Def. Interr. No. 21. The backup tapes have no functional purpose for the NSC and the EOP other than to guard against loss of data through mechanical failure or inadvertent deletion.

A backup tape of the NSC PROFS system is made on a daily basis. These backup tapes are written over or recycled after

seven days, except Saturday's tapes, which are retained for two weeks before they are recycled. Van Eron Decl. Ex. 2. A backup tape of the EOP system is made nightly at midnight. Keating Decl. ¶ 17. The nightly back-up tapes are retained for four to six weeks before the tapes are recycled. *Id.* ¶ 18. PROFS notes created and deleted by both the sender and recipient between the hours when backup tapes are made would not be included on any backup tape. Keating Decl. ¶ 17; Van Eron Decl. Ex. 2.

31 tapes for the EOP System, made between December 31, 1988 and January 20, 1989, have been preserved as a result of this lawsuit. At a minimum, there are approximately 2 million pages of information on the 31 tapes. Approximately 144 tapes for the NSC System made between January 1, 1989 and January 20, 1989 have been preserved.⁴ Data reflected on these tapes could date back to when the respective PROFS systems became operational, if that data had not been deleted by individual users.

Respectfully submitted,

JOHN R. BOLTON
Assistant Attorney General

JAY B. STEPHENS
United States Attorney

DAVID J. ANDERSON

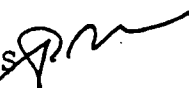
ELIZABETH A. PUGH

⁴ In addition [how many?] NSC PROFS backup tapes made November 15, 22, and 29, 1986 and February __, 1987, have been preserved as a result of Iran-Contra inquiries.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 20, 1989

MEMORANDUM FOR MICHAEL DONLEY

FROM: PAUL SCHOTT STEVENS 
SUBJECT: Compliance with Temporary Restraining Order

On January 19, 1989, the United States District Court for the District of Columbia enjoined us "from destroying, erasing, recycling, or in any way altering what is commonly known as the PROFS computer tapes for the National Security Council and the Executive Office of the President or in any way deleting or destroying the information contained in the back-up files of the PROFS Computer System." (Tab A) Out of an excess of caution and to demonstrate maximum good faith, I ask that you take the following steps.

-- I hereby confirm George Van Eron's oral instructions to you at approximately 6:23 p.m. on January 19, 1989, to stop all deletions, if any in progress, from the WHSSS system.

-- I hereby direct that WHSSS continue making a full-system back-up tape of all existing NSC data from the main frame computer disk, as requested by Nicholas Rostow last night.

-- All existing back-up tapes as of the time of the court order (6:10 p.m., January 19, 1989) and all back-up tapes created subsequently pursuant to this directive must be preserved intact in a secure manner.

-- WHSSS should make a complete, contemporaneous record of all steps taken, including noting all participants in the process, in carrying out this action.

-- When the full-system back-up is complete such that all existing NSC data is preserved in a retrievable form, WHSSS shall prepare an affidavit for signature by someone having knowledge of the technical actions required and taken and who can certify that all existing NSC data has been preserved as required by the court order and by these instructions. The affidavit shall set forth all steps taken as well as the certification with respect to the preservation of all existing NSC data. As soon as the back-up tape has been created, the affidavit should be prepared and submitted to the Office of NSC Legal Adviser.

-- When all existing NSC data has been preserved in the manner set forth above, WHSSS should prepare the main frame computer disk for use by the Bush Administration.

Attachment
Tab A - Restraining Order

FILED

JAN 19 1989

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES F. DAVEY, Clerk

R. SCOTT ARMSTRONG, et al.)
)
 Plaintiffs,)
)
 v.)
)
 PRESIDENT OF THE UNITED STATES)
 OF AMERICA, et al.)
)
 Defendants.)

Civil Action No. 89-0142
(J. Charles Richey)

TEMPORARY RESTRAINING ORDER

Plaintiffs' Motion for Temporary Restraining Order was heard in open court on January 19, 1989. Upon consideration of said motion, the Complaint filed therewith, the Memorandum of Points and Authorities attached thereto, the Affidavit of plaintiff R. Scott Armstrong, and oral argument of counsel for the parties, the Court finds that plaintiffs have made a threshold showing that they are likely to suffer immediate and irreparable harm affecting a vital public interest unless a restraining order is entered against the defendants and they have also made a showing of probable success on the merits.

IT IS THEREFORE ORDERED by the Court that the defendants, the President, Vice-President, Executive Secretary of the National Security Council, and the agents, servants, employees, attorneys of the Council, and all persons in active concert of participation with them are hereby enjoined from destroying,

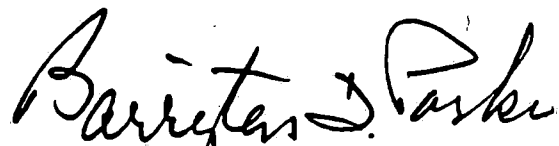
erasing, recycling, or in any way altering what is commonly known as the PROFS computer tapes for the National Security Council and the Executive Office of the President or in any way deleting or destroying the information contained in the back-up files of the PROFS Computer System.

Plaintiffs shall not be required to post security because defendants will not suffer costs or damage even if it is determined that they were wrongfully restrained pursuant to Civil Rule 65(c).

IT IS FURTHER ORDERED that this Order shall expire within ten (10) days after entry unless extended for good cause shown by the Court; and

IT IS FURTHER ORDERED that counsel shall appear before Judge Charles Richey no later than January 25, 1989 for further scheduling and plaintiffs shall file a Motion for Preliminary Injunction on January 24, 1989.

ISSUED at 6:10 o'clock p.m. on January 19, 1989.



Barrington D. Parker
United States District Judge

United States District Court
for the District of Columbia
A TRUE COPY

JAMES F. DAVEY, CLERK.

By 
Deputy Clerk

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

January 20, 1989

MEMORANDUM FOR PAUL SCHOTT STEVENS

FROM: NICHOLAS ROSTOWN *N*.

SUBJECT: Directive to WHSSS in Connection with TRO

As you are aware, the National Security Archive and other plaintiffs obtained a temporary restraining order enjoining us "from destroying, erasing, recycling, or in any way altering what is commonly known as the PROFS computer tapes for the National Security Council and the Executive Office of the President or in any way deleting or destroying the information contained in the back-up files of the PROFS Computer System." (Tab II)

WHSSS assures us that all existing NSC data on the system hard disk may be copied onto back-up tapes without destroying, altering, or otherwise losing data. It is the unanimous view of Assistant Attorney General Bolton, Deputy Counsel to the President Brady and myself that this copying should be undertaken out of an excess of caution and to demonstrate maximum good faith.

We therefore recommend that you sign the attached memorandum (Tab I) to Michael Donley directing WHSSS to preserve on back-up computer tapes all existing NSC data, to maintain a contemporaneous record of all actions taken in this regard, and to make an affidavit that all existing NSC data has been preserved in a usable form. Once these steps have been completed, and in reliance on WHSSS representation that all existing NSC data has been preserved, your memorandum authorizes WHSSS, as a final step, to prepare the system for use by the Bush Administration.

RECOMMENDATION

That you sign the memorandum attached at Tab I.

George Van Eron concurs. *gve*

Approve *PN*

Disapprove _____

Attachments

Tab I - Memorandum to Michael Donley
Tab II - Order and Pleadings

*Discussed w/ CLP
1/20/89 @ 7PM
-PN*

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

January 20, 1989

MEMORANDUM FOR PAUL SCHOTT STEVENS

FROM: NICHOLAS ROSTOWN *N.*

SUBJECT: Directive to WHSSS in Connection with TRO

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RECOMMENDATION

That you sign the memorandum attached at Tab I.

George Van Eron concurs.

Approve *pm*

Disapprove _____

Attachments

*Discussed w/ CLP
1/20/89 @ 7PM
-pm*

Tab I - Memorandum to Michael Donley

Tab II - Order and Pleadings

FILED

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAN 19 1989

JAMES F. DAVEY, Clerk

R. SCOTT ARMSTRONG, et al.)
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 Plaintiffs,)
)
 v.)
)
 PRESIDENT OF THE UNITED STATES)
 OF AMERICA, et al.)
)
 Defendants.)

Civil Action No. 89-0142
(J. Charles Richey)

TEMPORARY RESTRAINING ORDER

Plaintiffs' Motion for Temporary Restraining Order was heard in open court on January 19, 1989. Upon consideration of said motion, the Complaint filed therewith, the Memorandum of Points and Authorities attached thereto, the Affidavit of plaintiff R. Scott Armstrong, and oral argument of counsel for the parties, the Court finds that plaintiffs have made a threshold showing that they are likely to suffer immediate and irreparable harm affecting a vital public interest unless a restraining order is entered against the defendants and they have also made a showing of probable success on the merits.

IT IS THEREFORE ORDERED by the Court that the defendants, the President, Vice-President, Executive Secretary of the National Security Council, and the agents, servants, employees, attorneys of the Council, and all persons in active concert of participation with them are hereby enjoined from destroying,

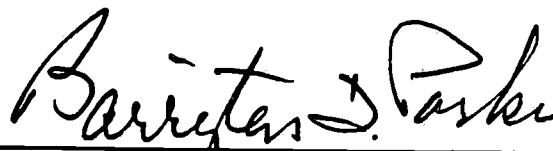
erasing, recycling, or in any way altering what is commonly known as the PROFS computer tapes for the National Security Council and the Executive Office of the President or in any way deleting or destroying the information contained in the back-up files of the PROFS Computer System.

Plaintiffs shall not be required to post security because defendants will not suffer costs or damage even if it is determined that they were wrongfully restrained pursuant to Civil Rule 65(c).

IT IS FURTHER ORDERED that this Order shall expire within ten (10) days after entry unless extended for good cause shown by the Court; and

IT IS FURTHER ORDERED that counsel shall appear before Judge Charles Richey no later than January 25, 1989 for further scheduling and plaintiffs shall file a Motion for Preliminary Injunction on January 24, 1989.

ISSUED at 6:10 o'clock p.m. on January 19, 1989.



Barrington D. Parker
United States District Judge

United States District Court
for the District of Columbia
A TRUE COPY

JAMES F. DAVEY, CLERK,

By 
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTT ARMSTRONG
2620 Quebec Street, NW
Washington, DC 20008,

SENATOR GAYLORD NELSON
3611 Calvend Lane
Kensington, MD 20895,

GARY M. STERN,
4000 Harrison Street, NW
Washington, D.C. 20015,

EDDIE BECKER
1844 Mintwood Place, NW
Washington, DC 20009,

NATIONAL SECURITY ARCHIVE
1755 Massachusetts Ave., N.W.
Suite 500
Washington, D.C. 20036,

CENTER FOR NATIONAL SECURITY STUDIES
122 Maryland Avenue, NE
Washington, DC 20002,

Plaintiffs,

v.

RONALD W. REAGAN, President
1600 Pennsylvania Ave., N.W.
Washington, D.C.,

GEORGE M. BUSH, Vice-President and
President Elect
Old Executive Office Building
Pennsylvania Ave. & 17th St., N.W.
Washington, D.C.,

THE NATIONAL SECURITY COUNCIL
Old Executive Office Building
Pennsylvania Ave. & 17th St., N.W.
Washington, D.C.,

DON WILSON, ARCHIVIST OF THE
UNITED STATES
7th & Pennsylvania Ave., N.W.
Room 111
Washington, D.C. 20408,
Defendants.

C.A. No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Nature of Action

1. This is an action under the Presidential Records Act, 44 U.S.C. § 2201, et. seq.; the Disposal of Records Act, 44 U.S.C. § 3301, et. seq.; and the Administrative Procedures Act, 5 U.S.C. § 551, et. seq. Plaintiffs seek: (1) a declaration that certain White House computer records stored in what is commonly known as the "PROFS" computer system are covered by the laws governing the National Archives and Records Administration 44 U.S.C. chapters 21-33; and (2) injunctive relief to prevent the President, the National Security Council, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them from destroying these computer records without complying with the prescribed statutory procedures for destruction of Presidential and agency records and to order the President, the National Security Council and the Archivist to comply with the laws governing the National Archives and Records Administration.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and pursuant to 28 U.S.C. §§ 1331, 1346 and 28 U.S.C. § 2201(a). Venue lies in this district under 28 U.S.C. § 1391(b) and (e).

The Parties

3. Plaintiff Scott Armstrong is a journalist, author, and foreign policy researcher, and founder and executive director of

the non-profit research institute the National Security Archive.

4. Plaintiff Gaylord Nelson is a former United States Senator and was co-author with Senator Sam Ervin of the Presidential Records and Materials Preservation Act.

5. Plaintiff National Security Archive (hereinafter, the "Archive") is a nonprofit public interest scholarly research institute and library in Washington, D.C. It is organized and operated as a division of The Fund for Peace, Inc., a New York nonprofit corporation. The Archive makes extensive use of the Freedom of Information Act ("FOIA") to obtain government documents concerning national security issues for its own research purposes and to make such documents available to scholars, journalists and other interested persons.

6. Plaintiff Center for National Security Studies (hereinafter, the "Center") is a nonprofit public interest scholarly research institute in Washington, D.C. It is organized and operated as a division of the American Civil Liberties Union Foundation and The Fund for Peace, Inc., a New York nonprofit corporation. The Center makes extensive use of the FOIA to obtain government documents concerning national security issues for its own research purposes and to make such documents available to scholars, journalists and other interested persons as part of its program of public education.

7. Plaintiff Gary Stern is a research associate at the Center for National Security Studies and has written articles,

reports, and comments on national security issues for a variety of publications.

8. Plaintiff Eddie Becker is a professional researcher specializing in documentary reconstruction of historical events. Mr. Becker is employed by documentary filmmakers, scholars, and journalist, and is a consultant at the National Security Archive.

9. Defendant Ronald W. Reagan is the President of the United States and has ultimate control over all records and information in the Executive Office of the President and the National Security Council ("NSC").

10. Defendant George M. Bush is Vice-President and President-Elect of the United States and on January 20, 1989, will have ultimate control over all records and information in the Executive Office of the President and the National Security Council ("NSC").

11. Defendant National Security Council is an "agency" of the United States and makes use of the PROFS computer system.

12. Defendant Don Wilson is the Archivist of the United States and is responsible for preserving presidential records and agency records in accordance with the laws governing the National Archives and Records Administration (NARA).

The Computer Records in the PROFS System

13. The President, his staff, and the National Security Council use what is commonly known as the PROFS computer system (hereinafter "PROFS system") to create, store, and retrieve information in the course of performing their governmental

functions. The PROFS system combines various routine office functions including the ability to send electronic mail and documents to others on the system.

14. The PROFS system is a central computer system of the White House and the National Security Council. It contains substantive information that does not exist anywhere in a paper copy but only in electronic form.

15. The PROFS system contains information that constitutes presidential records, as defined in the Presidential Records Act, 44 U.S.C. § 2201, et. seq., and agency records, as defined in the Disposal of Records Act, 44 U.S.C. § 3301, et. seq., and the Freedom of Information Act, 5 U.S.C. § 552 et. seq.

16. Based on information and belief, President Reagan and the National Security Council intend to destroy the records stored on the PROFS system beginning on Thursday, January 19, 1989, in violation of these statutes and specifically without having complied with the procedures for obtaining a determination by the Archivist of the United States, that the computer records may properly be preserved.

COUNT 1

17. Plaintiffs incorporate by reference as if fully stated herein all the statements contained in paragraphs 1 through 16 above.

18. By their aforementioned acts, defendants have or intend to violate the Presidential Records Act, 44 U.S.C. § 2201, et seq.

COUNT 2

19. Plaintiffs incorporate by reference as if fully stated herein all the statements contained in paragraphs 1 through 16 above.

[20. Defendants have or intend to violate of the Disposal of Records Act, 44 U.S.C. § 3301, et seq.

COUNT 3

[21. Defendants are in violation of the Administrative Procedures Act, 5 U.S.C. § 553, et seq.

WHEREFORE, plaintiffs pray that this Court:

1. Declare that the electronic tapes and information stored in the PROFS computer system used in the White House and the National Security Council are records governed by the provisions of the laws governing the National Archives and Records Administration (NARA), 44 U.S.C. chapters 21-33.

2. Enjoin defendants Ronald Reagan, George M. Bush, and the National Security Council and their agents, servants, employees, attorneys, and all persons in active concert or participation with them from destroying, erasing, recycling, or in any way altering what is commonly known as the PROFS tapes that exist in the National Security Council and the Executive Office of the President and the contents therein without complying with the provisions of the laws governing the National Archives and Records Administration (NARA), 44 U.S.C. chapters 21-33 and specifically not until they receive an advance determination by

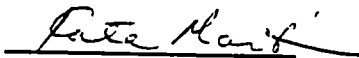
the Archivist of the United States, as to whether the computer records may properly be destroyed.

3. Order defendant Don Wilson to comply with the provisions of the laws governing the National Archives and Records Administration (NARA), 44 U.S.C. chapters 21-33, with regard to the electronic tapes and information contained in the PROFS computer system and specifically to follow the prescribed procedures regarding destruction of Presidential and agency records.

4. Award plaintiffs their costs and reasonable attorneys fees in this action; and

5. Grant such other and further relief as the Court may deem just and proper.

January 19, 1989




Kate Martin
American Civil Liberties Union
Foundation
122 Maryland Avenue, NE
Washington, DC 20002
544-5388

Attorney for Plaintiffs

Archives and Records Administration (NARA), 44 U.S.C. chapters 21-33.

As grounds for the Motion, plaintiffs assert that a Temporary Restraining Order is necessary to prevent the President and the NSC from causing plaintiffs irreparable harm by unilaterally and permanently destroying government records and to safeguard plaintiffs' right of access to the information. In support of this Motion, plaintiffs rely upon the Verified Complaint filed herewith, the Memorandum of Points and Authorities attached hereto, the proposed Temporary Restraining Order, the Affidavit of plaintiff R. Scott Armstrong, and such other matters as the Court may consider upon a hearing of this Motion.

Respectfully submitted,


Kate Martin
American Civil Liberties Union
Foundation
122 Maryland Avenue, NE
Washington, DC 20002
544-5388

Attorney for Plaintiffs

January 19, 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

R. SCOTT ARMSTRONG,
et al.,
Plaintiffs,
v.
RONALD W. REAGAN,
et al.,
Defendants.

C.A. No.

*have made a
threshold showing
that they are likely
to suffer*

TEMPORARY RESTRAINING ORDER

Plaintiffs' Motion for Temporary Restraining Order came on for hearing in open court on January 19, 1989. Upon consideration of said Motion, the Complaint filed therewith, the Memorandum of Points and Authorities attached thereto, the Affidavit of plaintiff R. Scott Armstrong, and oral argument of counsel for the parties, the Court finds that plaintiffs will suffer immediate and irreparable harm affecting a vital public interest unless a restraining order is entered against the defendants.

IT IS THEREFORE ORDERED by the Court that defendants, President Ronald Reagan, Vice-President George Bush, and the National Security Council and their agents, servants, employees, attorneys, and all persons in active concert or participation with them are hereby enjoined from destroying, erasing, recycling, or in any way altering what is commonly known as the PROFS computer tapes for the National Security Council and the

Executive Office of the President or in any way deleting or destroying the information contained in the back-up files of the PROFS Computer System.

Plaintiffs shall not be required to post security because defendants will not suffer costs or damages even if it is determined that they were wrongfully restrained pursuant to Civil Rule 65(c).

IT IS FURTHER ORDERED that this Order shall expire within ten (10) days after entry unless extended for good cause or by consent of the defendants; and

IT IS FURTHER ORDERED that plaintiffs shall be given until the _____ day of _____, 1989, to file a Motion for Preliminary Injunction and that said Motion will be heard on the _____ day of _____, 1989, at _____ o'clock ____ .m.

ISSUED at _____ o'clock ____ .m., January ____, 1989.

UNITED STATES DISTRICT JUDGE

nowhere else and which Congress has on several occasion mandated be available to members of the public.

STATEMENT OF FACTS

The Executive Office of the President (the White House) and the National Security Council (NSC) utilize what is commonly known as the PROFS computer system ("PROFS system"). The PROFS systems allows users of the system to communicate via electronic mail, that is to send memoranda and other information to other users directly through the computer. It is used to create, maintain, and retrieve information pertaining to official government activities.^{1/}

This information is maintained on an electronic storage medium, most likely magnetic tapes. These tapes have recorded all correspondence and information that has been sent or created using the PROFS system. In many instances no hard or paper copy of the information exists, the electronic tapes are the only record of the information.

The PROFS system is used by White House and NSC officials to carry out government policy. It contains presidential and agency records and any particular electronic tape may contain both Presidential records and agency records of the NSC.

The information in the PROFS system, which exists only on an electronic medium and not in any paper record can be extremely important. For example, records contained in the PROFS system

^{1/} This Statement of Facts is based on the Affidavit of R. Scott Armstrong, Attachment B hereto.

were utilized extensively by the President's Special Review Board (the Tower Commission) and the Congressional Iran-Contra Committees investigating the Iran-Contra Affair. See Report of the President's Special Review Board, at III-1 (February 26, 1987); Report of the Congressional Committees Investigating the Iran-Contra Affair, 100th Cong., 1st Sess., S. Rep. No. 100-216, H. Rep. No. 100-433, at 689-90. Independent Counsel Lawrence Walsh continues to rely on records from the PROFS system in support of criminal investigation and prosecution of government officials involved in the Iran-Contra Affair.

On January 19, 1989, plaintiffs Armstrong, the National Security Archive, and the Center for National Security Studies filed a request under the Freedom of Information Act, 5 U.S.C. § 552, for records contained in the PROFS system.

Plaintiffs Armstrong, Becker, and National Security Archive have asked for assurances that defendants do not intend to destroy the records contained in the PROFS system as part of the changeover of Administrations on January 19, 1989. Defendants have refused to give them any such assurances. Although the White House has delivered some electronic computer tapes from other computer systems to the Archivist for preservation and safekeeping, it has not delivered any tapes from the PROFS system to the Archivist.

ARGUMENT

To obtain a temporary restraining order (TRO), a plaintiff must demonstrate (1) a substantial likelihood of success on the

merits; (2) irreparable harm; (3) that more harm will result to plaintiff if the TRO is denied than will result to defendant if it is granted; and (4) in appropriate cases, how the public interest will be affected. Virginia Petroleum Jobbers Ass'n. v. F.P.C., 104 U.S. App. D.C. 106, 110, 259 F.2d 921 (1958).

Plaintiff's application for a TRO satisfies each of the foregoing tests.

A. Plaintiffs are Likely to Succeed on the Merits.

Plaintiffs are guaranteed a right of access to these government records under at least three separate statutes: The Freedom of Information Act, 5 U.S.C. § 552, et. seq.; the Presidential Records Act, 44 U.S.C. 2201, et. seq.; and the Disposal of Records Act, 44 U.S.C. 3301, et. seq. If any of these statutes applies to the requested electronic recordings, then defendants may not destroy them. See, American Friends Service Committee v. Webster, supra. The statutes create a public right of access to "agency records," in the case of the FOIA and the Disposal of Records Act,^{2/} and to "Presidential records," in the case of the Presidential Records Act.^{3/}

^{2/} The Disposal of Records Act authorizes the Archivist of the United States to establish procedures for the disposal of only those documents "that do not appear to have sufficient administrative, legal, research, or other value to warrant their further preservation by the Government." 44 U.S.C. § 3303.

^{3/} "Upon the conclusion of the President's . . . 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." 44 U.S.C. § 2203(f)(1).

Defendants do not assert any general right to destroy Presidential or agency records at the close of an administration, which would thereby frustrate this public right of access. Rather defendants argue that these electronic computer records are not like other Presidential or agency records, are not covered by the statutes, and therefore may be destroyed. But there is no authority for their position that because information is stored electronically rather than in written form, it is not covered by the statutes.

The Presidential Records Act provides that the United States "shall . . . retain complete ownership, possession, and control of Presidential records." 44 U.S.C. § 2202. It provides specific procedures that must be followed by the President and the Archivist before disposing of records during the term of his office; the statute allows only records "that no longer have administrative, historical, informational, or evidentiary value" to be disposed of. 44 U.S.C. § 2203(c).

Upon the conclusion of the President's term of Office, the Act directs the Archivist of the United States to assume responsibility for the records. "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." 44 U.S.C. § 2203(f)(2). Here, neither the President nor the Archivist have complied with the provisions of this act and, to the contrary, apparently intend to violate it by destroying the records.

But the Act applies to all "Presidential records," which "means documentary materials . . . created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President." The definition of "documentary material" covered by the Act explicitly covers materials such as the electronic tapes requested here: "The term 'documentary material' means all books . . . including but not limited to, audio, audio-visual, or other electronic or mechanical recordation." 44 U.S.C. § 2201(1) (emphasis added).

Similarly the Disposal of Records Act allows agency records to be destroyed only after the Archivist has made the required review and followed the required procedures for doing so. 44 U.S.C. §§ 3302-03 The Act applies to all "records," which

"includes all 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 Government 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, decision, procedures, operations, or other activities of the Government or because of the informational valued of data in them."

44 U.S.C. § 3301.

The agency's own interpretation confirms that such electronic tapes are governed by the provisions of the Act. See National Archives and Records Administration Bulletin, No. 89-2, November 14, 1988, Attachment B hereto.

The Freedom of Information Act provides: "[E]ach agency, upon any request for records which (A) reasonably describes such

records and (B) is made in accordance with published rules . . . shall make the records promptly available to any person." 5 U.S.C. 552(a)(3). While the statute does not define the term agency, the National Security Council is clearly an "agency" for purposes of FOIA requests. See, e.g., Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136, 156 (1980) ("National Security Council records [are] therefore subject to the [Freedom of Information] Act"); Halperin v. NSC, 452 F. Supp. 47 (D.D.C. 1978) aff'd without opinion, 612 F.2d 586 (D.C. Cir. 1980).

Thus, whether the electronic tapes belong to the Executive Office of the President or the National Security Council or both, they are in all events "Presidential" records or "agency" records. As such, they are subject to the requirements of the statutes and may not be summarily destroyed.

B. Plaintiffs Will Suffer Irreparable Injury Unless a Temporary Restraining Order is Granted.

If the electronic tapes are destroyed, plaintiffs will suffer irreparable harm. As far as plaintiffs can determine, these electronic tapes contain information that appears nowhere else. Thus if defendants destroy them, the information will be irretrievably lost to plaintiffs, as well as to history. There is no doubt that such injury will be irreparable harm.

C. The Equities Favor A Temporary Restraining Order.

Weighing of the equities favors injunctive relief in this case. As shown above, in the absence of an injunction, plaintiffs will suffer irreparable harm. An injunction will restore and preserve plaintiffs' rights without detriment to defendants. Defendants will suffer absolutely no detriment from entry of an order preventing destruction of the electronic tapes pending a judicial determination of the applicability of the Presidential Records Act, the Disposal of Records Act, and the Archivist's responsibilities in connection with the tapes.

D. A preliminary Injunction will Serve the Public Interest.

Public policy could not be clearer that Presidential records belong to the public and should be preserved for review by the public pursuant to the laws, rules, and policies that have been established. Thus the public as well as the specific plaintiffs herein have an interest in the requested information. As the Iran-Contra affair demonstrates, the requested electronic tapes may contain information of the greatest importance to the process of democratic policy-making. Technological innovations have enabled the government to operate more efficiently, they should not be used as a shield to allow it to operate in secret hidden from public accountability.


In this case, implementation of this fundamental public policy depends on judicial intervention.

Conclusion

The Court should grant a temporary restraining order

enjoining defendants from destroying any electronic or other records pertaining to the PROFS system without first complying with the requirements of the Presidential Records Act and the Disposal of Records Act including review and determination by the Archivist of the historical value of maintaining the specific items of information and notice, where required to Congress or in the Federal Register of the Archivist's intentions with regard to them.

Respectfully submitted,


Kate Martin
American Civil Liberties Union
Foundation
122 Maryland Avenue, NE
Washington, DC 20002
544-5388

Attorney for Plaintiffs

January 19, 1989

White House records system including the computer communications system commonly known as the PROFS computer system ("PROFS system").

4. The requested materials are contained in the PROFS system computer backup tapes and consequently the only existing master file of one of the central filing systems of the National Security Council and the Executive Office of the President.

5. The Executive Office of the President and the National Security Council utilize the PROFS system to create, maintain, and retrieve information pertaining to official government activities. This information is maintained on an electronic storage medium, most likely magnetic tapes. In many circumstances, the information exists only in the computer memory stored on the PROFS system and no hard or paper copy has been made, or if made, has been retained. These PROFS system tapes have recorded all correspondence and messages that have been created, saved, or transmitted through the PROFS system. The same tape may contain information that could be either Presidential records or agency records.

6. The PROFS system combines various routine office functions including a word processing program, personal calendar, automatic reminders, and the ability to send electronic notes, messages and documents to others on the system.

7. The PROFS system is used by White House and NSC officials to implement government policy, and as such contains both presidential and agency records. For example, records contained

in the PROFS system were utilized extensively by the President's Special Review Board (the Tower Commission) and the Congressional Iran-Contra Committees investigating the Iran-Contra Affair. See Report of the President's Special Review Board, at III-1 (February 26, 1987); Report of the Congressional Committees Investigating the Iran-Contra Affair, 100th Cong., 1st Sess., S. Rep. No. 100-216, H. Rep. No. 100-433, at 689-90. To the best of my information and knowledge, Independent Counsel Lawrence Walsh continues to rely on information from the PROFS system in support of criminal investigation and prosecution of government officials involved in the Iran-Contra Affair.

8. Beginning in 1985, the PROFS system was were used by the members of the National Security Council and their staff. In 1986, the PROFS network expanded to "satisfy the growing requirement in the White House for internal electronic mail and document transfer between the West Wing, Old Executive Office Building and the Cabinet agencies." Solicitation for Computer Operation/Facilities Management, Executive Office of the President, March 27, 1987, p. 50.

9. The system helps to avoid an avalanche of paperwork by handling much of the information electronically without paper copies. Key to document handling are the sophisticated search and retrieval functions. "Every document in PROFS is assigned a number so that it can be located using a variety of search techniques. Information such as who wrote the document the date, the subject, and to whom the document was sent can also be used

in the search. The advantage of letting PROFS do this for you is quite obvious. You don't have to go through all your filing cabinets looking for documents that may be filed under multiple subject headings or under a filing system you know nothing about. PROFS takes care of all that for you." IBM, "Introducing the Professional Office System," November 1985, p. 10-11.

10. The Iran-Contra Affair illustrated the importance of information stored in the PROFS system. Despite repeated attempts by NSC staff to shred the paper record and delete the computer record, the PROFS backup system on magnetic tape allowed investigators to reconstruct much of the Iran-Contra-related activity. A sampling of these PROFS notes is attached as Exhibit 4 hereto. The Iran-Contra PROFS records demonstrate that in effect, the capabilities of the PROFS system for transmitting, indexing, filing, and retrieving contemporaneous records created a new and powerful central filing system which recorded the daily business of the White House and National Security Council at the highest levels -- but only in electronic and not in paper form.

11. The Tower Commission stated that these PROFS messages "provide a first-hand, contemporaneous account of events." Report of the President's Special Review Board, February 26, 1987, p. III-1. As examples of the central role of the PROFS system in the NSC staff's decisionmaking process, copies of three PROFS messages declassified during the Iran-Contra investigations are attached.

12. Despite the clear historical significance of and public interest in the information captured by the PROFS system, I have been told by representatives of the National Archives and Records Administration (NARA) that those PROFS system tapes other than those used by the Iran-Contra Committees and the Independent Counsel have not been and will not be preserved as a "permanent record" of the Reagan Administration.

13. The head of the Office of Presidential Libraries of NARA, John Fawcett, told me on January 18, 1989, that the only PROFS messages that are retained as "presidential records" are those printed out by White House and NSC staff and maintained in paper form. According to Fawcett, NARA considers all PROFS system tapes other than those provided for the Iran-Contra Committees and the Independent Counsel not to be "Presidential records" or "agency records."

14. This practice has been implemented by specific guidelines issued to White House and NSC staff by the National Archives, despite current rulemaking-in-progress that indicates the Archives' intention to explore methods of retention and preservation of electronic records. Notice of Proposed Rulemaking, NARA, November 8, 1988.

15. Even if White House and NSC staff are diligent above and beyond the call of duty in printing out copies of any PROFS message they considered historically or administratively significant -- a practice which the Iran-Contra Affair demonstrates has not been the norm, and which, on knowledge and

belief, I believe is still not the norm -- the resulting paper file is by definition not a complete record of White House and National Security Council business, certainly when compared to the value of the complete backup file maintained electronically.

16. Additionally, according to Mr. Fawcett, the backup tapes, which represent the master file of PROFS messages, are not ordinarily preserved -- since they are not considered "presidential records" under the Archive's guidance or the White House and NSC practice -- and indeed may be re-used on the mainframe computer and thus overwritten by subsequent PROFS messages. Any overwritten sections of the magnetic tapes are then lost to subsequent retrieval, much as a recording on a cassette tape gets erased when something new is recorded over it. Many or even most of these magnetic tapes may already have been overwritten and thus destroyed.

17. However, at least one set of magnetic tapes -- the one in use as of January 19, 1989, and those from the immediate prior period -- does exist and contains current PROFS messages which have not been overwritten. Since the mainframe computer presumably employs multiple magnetic tapes for storage, a number of additional magnetic tapes containing PROFS messages may also still exist in retrievable form.

18. According to Mr. Fawcett, January 19, 1989 represents the "breaking point" for the preservation of Reagan Administration records, and the beginning of a new system for preservation of the next administration's records. My counsel has asked for and

not received assurance that the PROFS tapes will not be destroyed. I have been informed by NARA counsel that the White House has delivered some computer tapes from other computer systems to the National Archives, but has not delivered any PROFS tapes. Therefore, I believe that January 19, 1989, may be the last opportunity to preserve the magnetic tapes which comprise the PROFS system's master backup file, and thus the only complete record of a vital central filing system in the White House and National Security Council.

19. In an attempt to preserve these records, I have made the aforementioned overlapping Freedom of Information Act requests to the Executive Office of the President, the National Security Council and the National Archives and Records Administration. In and of themselves, however, these FOIA requests may not guarantee the preservation of these vital records.

I declare under penalty of perjury that the foregoing statements are true and correct.


R. Scott Armstrong

DATE: January 19, 1989

THE NATIONAL SECURITY ARCHIVE

SUITE 500 1755 MASSACHUSETTS AVENUE, N.W. WASHINGTON, D.C. 20036 (202) 797-0882

IN ALL CORRESPONDENCE PLEASE REFER
TO ARCHIVE FILE NO. 890035NAR001

January 18, 1989

Ms. Trudy Peterson
Assistant Archivist of the United States
National Archives and Records Administration
Washington, DC 20408

RE: Freedom of Information Act Request

Dear Ms. Peterson,

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Section 552, et seq. (as amended), I hereby request disclosure of the materials and documents described on the attachment to this letter for inspection and possible copying. I note for your information that we are making this FOIA request to preserve the materials in question which we understand might otherwise be improperly destroyed. In this vein, I have made possibly overlapping requests to the Executive Office of the President, the National Security Council and the National Archives and Records Administration. Once we have received assurances that the information will be properly preserved, we are willing to dramatically narrow the scope of the request for materials to be actually copied and provided.

If you regard any of these materials as non-records under the FOIA, I request that you retain copies of all such materials until we have had an opportunity to clarify your interpretation through litigation or congressional action. Similarly, if you regard any of these materials as exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. In this connection I note that you are required under the FOIA to release any reasonably segregable nonexempt portions of documents containing information you regard as exempt. Section 552(b). To permit an intelligent, informed decision whether or not to file an administrative appeal of any denial decision, you are also requested to describe withheld records (or portions thereof) and explain the logical and factual basis for exemption claims. See Mead Data Central, Inc. v. Department of the Air Force, 566 F.2d 242, 251 (D.C. Cir., 1977).

This request is made on behalf of the National Security Archive, a nonprofit public interest research institute and library located in Washington, D.C. and the Center for National Security Studies, a nonprofit public interest research facility located in Washington, D.C. The Archive and the Center are both organized and operated as a division of The Fund for Peace, Inc., a nonprofit corporation that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and has been acknowledged by the Internal Revenue Service since November 19, 1962 to be "organized and operated exclusively for educational purposes."

The fee waiver provisions under section 552(a)(4)(A) of the FOIA were recently amended by the Freedom of Information Reform Act. The Reform Act's fee provisions became effective on April 25, 1987 and rewrote section 552(a)(4)(A) to create categories of requesters entitled to fee waivers. Pub.L. 99-570, Sec. 1803,

1804. One category consists of "educational or noncommercial scientific institution[s] whose purpose is scholarly or scientific research" and another consists of representatives of the "news media." 5 U.S.C. 552 (a)(4)(A)(ii)(II). Requesters in these groups receive an automatic waiver of all search and review fees, irrespective of the nature or contents of the documents requested. They can be charged standard duplication costs (in excess of the first one hundred copied pages), but these charges may also be waived in certain circumstances.

On May 11, 1987 the Archive submitted a comprehensive memorandum to your agency providing documentation under penalty of perjury which establishes that the Archive is entitled to fee waivers under the categories of educational or noncommercial scientific institutions and representatives of the news media within the meaning of the Reform Act. To summarize, the Archive's purpose is to enrich public policy debate by making available records pertaining to important, mostly contemporary issues of major public concern in the areas of foreign, defense, intelligence, and international economic policy.

Documents obtained by the Archive, including the records requested in this letter, are carefully analyzed, indexed and organized into document sets in the Archive's collection. Document sets are available for inspection and copying by scholars, journalists, Members of Congress and Congressional staffs, present and former public officials, other public interest organizations, and the general public at the Archive's Washington office. In addition, information in the documents will be disseminated across the country through distribution of comprehensive document indices to university and other research libraries and through the Archive's publications.

As the executive director of the Archive, I regularly use records such as those sought in this request in research on foreign and national security matters. In addition, the Archive and the Center both make all records available to a broad range of scholars, journalists, public interest organizations, members and the staff of Congress, and members of the general public.

I therefore request that you waive all search and reproduction fees pursuant to section 552(a)(4)(A), as amended. If you determine that the Archive does not fall within one of the two categories of requesters described above, this request would also qualify for favored treatment under the "all other requesters" category because disclosure of the information in the requested documents is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the Archive within the meaning of the Reform Act. See 5 U.S.C. 552(a)(4)(A)(iii). Should you decline to waive all fees, however, we are prepared to pay you normal search fees (and reproduction fees, if I decide to copy the records produced). Our willingness to pay fees is subject to our rights to appeal and litigate the fee waiver question, and payment would be deferred until exhaustion of such rights. I further ask that if you decline to waive fees that you set forth your reasons for doing so in writing and that you obtain our authorization before incurring search costs in excess of \$100.

In order to expedite the release of the listed documents, I request that you disclose them as they become available to you, without waiting until all the

documents have been assembled. If you have any questions that I might be able to answer regarding the identity of the records, their location, or the scope of the request, please call me. I look forward to receiving your response within the statutory time period.

Yours very truly,

Scott Armstrong
Executive Director

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01/18/1989

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Copies of all tapes, discs, and/or other storage formats for the PROFS System serving the Executive Office of the President and/or the National Security Council, and all information contained therein, as well as all records in whatever format derived from the PROFS System, from the date of the installation of said system to the end of the Reagan Administration. (The requester is prepared to narrow the scope of this request upon consultation.)

THE NATIONAL SECURITY ARCHIVE

SUITE 500 1755 MASSACHUSETTS AVENUE, N.W. WASHINGTON, D.C. 20036 (202) 797-0882

IN ALL CORRESPONDENCE PLEASE REFER
TO ARCHIVE FILE NO. 890034EOP001

January 18, 1989

Ms. Nell Doering
Chief, Records & Publications
Executive Office of the President
2200 New Executive Office Bldg.
Washington, DC 20503

RE: Freedom of Information Act Request

Dear Ms. Doering:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Section 552, et seq. (as amended), I hereby request disclosure of the materials and documents described on the attachment to this letter for inspection and possible copying. I note for your information that we are making this FOIA request to preserve the materials in question which we understand might otherwise be improperly destroyed. In this vein, I have made possibly overlapping requests to the Executive Office of the President, the National Security Council and the National Archives and Records Administration. Once we have received assurances that the information will be properly preserved, we are willing to dramatically narrow the scope of the request for materials to be actually copied and provided.

If you regard any of these materials as non-records under the FOIA, I request that you retain copies of all such materials until we have had an opportunity to clarify your interpretation through litigation or congressional action. Similarly, if you regard any of these materials as exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. In this connection I note that you are required under the FOIA to release any reasonably segregable nonexempt portions of documents containing information you regard as exempt. Section 552(b). To permit an intelligent, informed decision whether or not to file an administrative appeal of any denial decision, you are also requested to describe withheld records (or portions thereof) and explain the logical and factual basis for exemption claims. See Mead Data Central, Inc. v. Department of the Air Force, 566 F.2d 242, 251 (D.C. Cir., 1977).

This request is made on behalf of the National Security Archive, a nonprofit public interest research institute and library located in Washington, D.C. and the Center for National Security Studies, a nonprofit public interest research facility located in Washington, D.C. The Archive and the Center are both organized and operated as a division of The Fund for Peace, Inc., a nonprofit corporation that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and has been acknowledged by the Internal Revenue Service since November 19, 1962 to be "organized and operated exclusively for educational purposes."

The fee waiver provisions under section 552(a)(4)(A) of the FOIA were recently amended by the Freedom of Information Reform Act. The Reform Act's fee provisions became effective on April 25, 1987 and rewrote section 552(a)(4)(A)

to create categories of requesters entitled to fee waivers. Pub.L. 99-570, Sec. 1803, 1804. One category consists of "educational or noncommercial scientific institution[s] whose purpose is scholarly or scientific research" and another consists of representatives of the "news media." 5 U.S.C. 552 (a)(4)(A)(ii)(II). Requesters in these groups receive an automatic waiver of all search and review fees, irrespective of the nature or contents of the documents requested. They can be charged standard duplication costs (in excess of the first one hundred copied pages), but these charges may also be waived in certain circumstances.

On May 11, 1987 the Archive submitted a comprehensive memorandum to your agency providing documentation under penalty of perjury which establishes that the Archive is entitled to fee waivers under the categories of educational or noncommercial scientific institutions and representatives of the news media within the meaning of the Reform Act. To summarize, the Archive's purpose is to enrich public policy debate by making available records pertaining to important, mostly contemporary issues of major public concern in the areas of foreign, defense, intelligence, and international economic policy.

Documents obtained by the Archive, including the records requested in this letter, are carefully analyzed, indexed and organized into document sets in the Archive's collection. Document sets are available for inspection and copying by scholars, journalists, Members of Congress and Congressional staffs, present and former public officials, other public interest organizations, and the general public at the Archive's Washington office. In addition, information in the documents will be disseminated across the country through distribution of comprehensive document indices to university and other research libraries and through the Archive's publications.

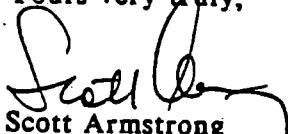
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I therefore request that you waive all search and reproduction fees pursuant to section 552(a)(4)(A), as amended. If you determine that the Archive does not fall within one of the two categories of requesters described above, this request would also qualify for favored treatment under the "all other requesters" category because disclosure of the information in the requested documents is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the Archive within the meaning of the Reform Act. See 5 U.S.C. 552(a)(4)(A)(iii). Should you decline to waive all fees, however, we are prepared to pay you normal search fees (and reproduction fees, if I decide to copy the records produced). Our willingness to pay fees is subject to our rights to appeal and litigate the fee waiver question, and payment would be deferred until exhaustion of such rights. I further ask that if you decline to waive fees that you set forth your reasons for doing so in writing and that you obtain our authorization before incurring search costs in excess of \$100.

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documents have been assembled. If you have any questions that I might be able to answer regarding the identity of the records, their location, or the scope of the request, please call me. I look forward to receiving your response within the statutory time period.

Yours very truly,


Scott Armstrong
Executive Director

890034EOP001

01/18/1989

3667

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THE NATIONAL SECURITY ARCHIVE

SUITE 500 1755 MASSACHUSETTS AVENUE, N.W. WASHINGTON, D.C. 20036 (202) 797-0882

IN ALL CORRESPONDENCE PLEASE REFER
TO ARCHIVE FILE NO. 890033NSC001

January 18, 1989

Ms. Nancy V. Menan
Director, FOI Office
National Security Council
375 Old Executive Office Building
Washington, DC 20506

RE: Freedom of Information Act Request

Dear Ms. Reger,

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Section 552, et seq. (as amended), I hereby request disclosure of the materials and documents described on the attachment to this letter for inspection and possible copying. I note for your information that we are making this FOIA request to preserve the materials in question which we understand might otherwise be improperly destroyed. In this vein, I have made possibly overlapping requests to the Executive Office of the President, the National Security Council and the National Archives and Records Administration. Once we have received assurances that the information will be properly preserved, we are willing to dramatically narrow the scope of the request for materials to be actually copied and provided.

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to create categories of requesters entitled to fee waivers. Pub.L. 99-570, Sec. 1803, 1804. One category consists of "educational or noncommercial scientific institution[s] whose purpose is scholarly or scientific research" and another consists of representatives of the "news media." 5 U.S.C. 552 (a)(4)(A)(ii)(II). Requesters in these groups receive an automatic waiver of all search and review fees, irrespective of the nature or contents of the documents requested. They can be charged standard duplication costs (in excess of the first one hundred copied pages), but these charges may also be waived in certain circumstances.

On May 11, 1987 the Archive submitted a comprehensive memorandum to your agency providing documentation under penalty of perjury which establishes that the Archive is entitled to fee waivers under the categories of educational or noncommercial scientific institutions and representatives of the news media within the meaning of the Reform Act. To summarize, the Archive's purpose is to enrich public policy debate by making available records pertaining to important, mostly contemporary issues of major public concern in the areas of foreign, defense, intelligence, and international economic policy.

Documents obtained by the Archive, including the records requested in this letter, are carefully analyzed, indexed and organized into document sets in the Archive's collection. Document sets are available for inspection and copying by scholars, journalists, Members of Congress and Congressional staffs, present and former public officials, other public interest organizations, and the general public at the Archive's Washington office. In addition, information in the documents will be disseminated across the country through distribution of comprehensive document indices to university and other research libraries and through the Archive's publications.

As the executive director of the Archive, I regularly use records such as those sought in this request in research on foreign and national security matters. In addition, the Archive and the Center both make all records available to a broad range of scholars, journalists, public interest organizations, members and the staff of Congress, and members of the general public.

I therefore request that you waive all search and reproduction fees pursuant to section 552(a)(4)(A), as amended. If you determine that the Archive does not fall within one of the two categories of requesters described above, this request would also qualify for favored treatment under the "all other requesters" category because disclosure of the information in the requested documents is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the Archive within the meaning of the Reform Act. See 5 U.S.C. 552(a)(4)(A)(iii). Should you decline to waive all fees, however, we are prepared to pay you normal search fees (and reproduction fees, if I decide to copy the records produced). Our willingness to pay fees is subject to our rights to appeal and litigate the fee waiver question, and payment would be deferred until exhaustion of such rights. I further ask that if you decline to waive fees that you set forth your reasons for doing so in writing and that you obtain our authorization before incurring search costs in excess of \$100.

In order to expedite the release of the listed documents, I request that you disclose them as they become available to you, without waiting until all the

documents have been assembled. If you have any questions that I might be able to answer regarding the identity of the records, their location, or the scope of the request, please call me. I look forward to receiving your response within the statutory time period.

Yours very truly,

Scott Armstrong
Executive Director

890033NSC001

01/18/1989

3666

Copies of all tapes, discs, and/or other storage formats for the PROFS System serving the Executive Office of the President and/or the National Security Council, and all information contained therein, as well as all records in whatever format derived from the PROFS System, from the date of the installation of said system to the end of the Reagan administration. (The requester is prepared to narrow the scope of this request upon consultation.)

Exhibit 4

Report of the Congressional Committees Investigating the

Iran-Contra Affair

Appendix A: Volume 1
Source Documents

Daniel K. Inouye, *Chairman*,
Senate Select Committee
Lee H. Hamilton, *Chairman*,
House Select Committee

U.S. Senate Select Committee
On Secret Military Assistance to Iran
And the Nicaraguan Opposition

U.S. House of Representatives
Select Committee to Investigate
Covert Arms Transactions with Iran

November 13, 1987.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed.

November 17, 1987.—Ordered to be printed.

Washington : 1988

Chapter 6 Footnote 76

From: NSKCM --CPUA
To: NSOLN --CPUA

Date and time: 09/03/83 21:54:39
JOHN M. POINDENTER

UNCLASSIFIED

N 3265

NOTE FROM: ROBERT MCFARLANE
SUBJECT: Reply to Hamilton on Ollie's Activities

I have sent you both separately a draft letter I have composed to answer Lee Hamilton's letter on Ollie's activities. One or two annotations are appropriate. The reference to "insert #1" refers to paragraph one of page two of your draft letter. "insert #2" refers to the second paragraph of page two. Please do not share either this note or the separate draft with anyone. Will prepare a smooth version of it for me Wednesday morning. Please bring me any edits you have. Ollie, don't send me any PROFS notes about it. Many thanks.

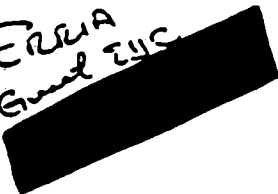
6-76

500 x 4
over

Partially Declassified/Released on 1/20/88
under provisions of E.O. 12356
J. S. Reger, National Security Council

UNCLASSIFIED

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ERUUA
Grand 245


10/15/83
10/16/83
67

FILE: 8077

WHITE HOUSE, COMMUNICATIONS AGENCY

Chapter 12, Footnote 69

UNCLASSIFIED

~~SECRET~~

N 12122

[REDACTED]

NSO FROM: NSDCR --CPWA TO: NSOLE --CPWA

02/27/60 16102123

*** Reply to memo of 02/27/60 00150

~~SECRET~~

NSO FROM: ROBERT MCFARLANE

Subject: How are things?
Sayer Clinic. Well done--if the world only knew how many times you have kept a semblance of integrity and gumption in US policy, they would make you Secretary of State. But they can't know and would complain if they did--such is the state of democracy in the late 20th century. But the situation was terribly promising. So you know I do not hold Garbanifer in high regard and so am particularly glad to hear of apparent authority.

I have just gotten a note from John asking whether or not I could go some time next week and that the President is on board. I agreed. So Hunter does and get some rest; let this word come to you in channels, but pack your bags to be ready to go in the next week or so. Incidentally, I have had periodic requests from Mike to assist in getting Vincent Garbanifer to come to Wilmington

I have refused. Surely if they have any real bona fides they too get a case in Tehran from the Deian embassy or elsewhere else. I do not intend to tell Mike any of this new info. Recommend against your doing so.

Grave Sala.

How are things?

[REDACTED]

Released on 5/6/87
L.A. 17356
Project, Internal Security - Communist

1178

12-60

UNCLASSIFIED

405

FILP: 0070

UNITED STATES COMMUNICATIONS AGENCY

Chapter 12, Footnote 60

UNCLASSIFIED

~~SECRET~~

N 12122

[REDACTED]

NSO PGM: 0300N --CPUB
TO: 0300B --CPUB

TO: 0300B --CPUB

02/27/06 16:02:23

see reply to note of 02/27/06 08:50

~~SECRET~~

NOTE FROM: BOBBY McFARLANE
Subject: How are things?

Boyer Ollie, well done--if the world only knew how many times you have kept a semblance of integrity and gumption to US policy, they could make you Secretary of State. But they can't know and would complain if they did--such is the state of democracy in the late 20th century. But the situation was terribly promising. In you know I do not hold Corbin for in high regard and so am particularly glad to hear of apparent authority.

I have just gotten a note from John asking whether or not I could go down this next week and that the President is on board. I agreed. So boomer does not get some rest; let this word come to you in channels, but pack your bags to be ready to go in the next week or so. Incidentally, I have had periodic requests from Mike to assist in getting Vladimir Korbin to come to Washington. I have refused. Surely if they have any real bona fides they can get a visa in Tehran from the Syrian embassy or somewhere else. I do not intend to tell Mike any of this nor info. because against your doing so.

Brave tale.
You are kidding?

[REDACTED]

Declassified on 5/6/87
E.O. 12958
NSA, National Security Council

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12-60

UNCLASSIFIED

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UNCLASSIFIED

Shultz will buy into this tomorrow when JAF briefs him. With the grace of the good Lord and a little more hard work we will very soon have five AMTIS boxes and he on our way to a much more positive relationship than one which bestows 20% for life.

12-1 value our friendship and confidence very highly and did not seem to infer that you had revealed those exchanges. My feeling that you not indicate same to me I was only inferring that I had not told him anything of it so as not to compromise myself at a point in time when he needs to be absolutely certain that this can work. He is, as only you can know, under tremendous pressure on this matter and very concerned that it go according to plan. My part in this was easy compared to his. I only had to deal with one occasion. He has to deal with

the cabinet. Many thanks for yr trust. Warm regards, North
Exchanges
NSC FROM: WHOLE --CPWA TO: NSMCR --CPWA
For: NSMCR --CPWA

02/27/86 20122:22

*** Reply to note of 02/27/86 16:02

-- SECRET --

NOTE FROM: GLENN ROSEN
Subject: How are things?
In reading things out of sequence due to fatigue. Many thanks for yr note. Have responded to most of this in my reply to exchange - before I read this one. It concerns re Mike and shared here. With to the passing of info. He seems well but poses a significant problem. Sir says he has info that Mike has a financial relationship w/ Corba, Diprodi and perhaps Schulman. If true, this is not good. He also knew that Corba talks Mike everything and that is an additional reason to get Corba out of the long range picture ASAP. He will still need to have him involved in the 7000 transactions since he manages the financial end for the Israeli/US Europe. He ought to get quietly out of there about how to handle Mike so that he does not start talking out of his mouth (if that's a word). Have asked JAF for a session w/ you and Dick Secord as soon as possible after Dick returns tomorrow night to see where he is settling up an area delivery for the Mic resistance. A one of many talents of Secord is. Must be off. He supposed to make a speech on aiding the Mic resistance to a group of supporters. Best regards. North
How are things?

[REDACTED SECTION]

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From
To: NS
Re
NOTE: I
Subject
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any wa
that h
to do-

By E

From NSRCM --CPUA
To: NSOLN --CPUA

Chapter 12, Footnote 62
Date and time 02/27/86 21:37-8

*** Reply to note of 02/27/86 20:11

UNCLASSIFIED

41077

1363

NOTE FROM: ROBERT MCFARLANE

Subject: Exchanges

No sweat GI. I just sent a separate note about not shar9ing with John because I had forgotten to put it in the other note. And I fully understand the narrow path he is trying to walk between those who want to go balls out for the wrong reasons (Regan) and those who don't want to do it at all (GPS and Cap). So play

it any way you must. As for my commitments don't worry about them; set it up any way you wish that it works for them. I only mentioned it to John to ask that he try to give me a heads up soon so that I can cancel--which I am glad to do--with some grace.

12-62

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Declassified on: 27 June 1987
under provisions of E.O. 13526
By B. Smith, Acting Property Control

1205

UNCLASSIFIED

AKW026704

OLWOOD BOX 27-5
ADG 4/2/87

UNCLASSIFIED

From: NSRCM --CPCA
To: NSOLN --CPUA

Date and time 03/10/86 22:14:24

*** Reply to note of 03/10/86 21:10

N 41078

1364

~~SECRET~~

NOTE FROM: ROBERT MCFARLANE
Subject: How's It Going?

Roger Ollie. I guess I'm a little puzzled about the Iranian wiring diagram. From whom are we getting the word concerning a meeting in the Gulf? Is Gorba involved in that dialogue or is that info coming through the Israelis? It strikes me that it is probably OK to keep Gorba in the dark--to the extent that is possible to do so if there is another channel. Gorba is basically a self-serving mischief maker. Of course the trouble is that as far as we know, so is the entire lot of those we are dealing with. The Soviet threat is the strategic menace and I would guess that they would like to avoid having Russians in Iran. But it is going to take some time to get a feel for just who the players are on the contemporary scene in Teheran. So the sooner we get started the better.

I would be glad to meet to talk about the Marine Corps. I will be having lunch with Paul Nitze this Friday. How about right after that at about 2:00pm in your office?

Frankly, I would expect the heat from the Hill to become immense on you by summer. Consequently it strikes me as wise that you leave the White House. At the same time, there will be no one to do all (or even a small part of what) you have done. And if it isn't done, virtually all of the investment of the past five years will go down the drain.

How's this for a self-serving scenario: 1. North leaves the White House in May and takes 30 days leave. 2. July 1st North is assigned as a fellow at the CSIS and (lo and behold) is assigned to McFarlane's office 3. McFarlane/North continue to work the Iran account as well as to begin to build other clandestine capabilities so much in demand here and there. Just a knee jerk suggestion.

12-83

8 July 87
CLASSIFIED BY E.O. 12958
EXCEPT WHERE SHOWN OTHERWISE

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AKW026705

UNCLASSIFIED

OLWOOD Box 34-6
JDA 4/2/87

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-83

1364

17/61 [REDACTED] WITH HOUSE COMMUNICATIONS AGENCY

UNCLASSIFIED

Chapter 12
Footnote 24

12-84

Finally, on a new subject: wd very much like to have a one-on-one w/ you in the next few days if at all possible. I have been advised by HQMC that they have cut orders for me to go to 2d MAJIBV this summer. This is a situation (like so many others) fraught w/ opportunity and risk. I, quite frankly don't know what to do about the situation, but will have to take some kind of action in the next few weeks. Wd very much appreciate yr good counsel on the merits/liabilities of such an assignment and advice on how to proceed. Warm regards and many thanks to both you and Joanny for the beautiful flowers.

How's It Going?
NSB FROM: NSBCB --CPBA TO: NSOLS --CPBA 03/10/86 09:00:10
To: NSOLS --CPBA

*** Reply to note of 03/10/86 09:150

NOTE FROM: BOBBY MCPHILLAN

Subject: How's It Going?
Bobby: many thanks.

How's It Going?
NSB FROM: NSOLS --CPBA TO: NSBCB --CPBA 03/10/86 07:23:30
To: NSBCB --CPBA

*** Reply to note of 03/10/86 22:110

NOTE FROM: OLIVER DOSTER

Subject: How's It Going?
My gut response on yr scenario re Doeth's personal situation is that I like it. There is a question as to how to make it all happen, but it wd be good to discuss w/ you 21000 Friday. Have blocked name on my sched. Looking forward to it. In re the Gerbe probs: He is aware of the fish etc and is basically carrying our water on the etc since he is still the only access we have to the Iranian political leadership. It wd be useful, I believe, for you to talk w/ George Case, the Agency's Iran expert. He shares our concern that we may be dealing only w/ those who have an interest in arms sales and their own personal financial gain and believes the "Russians are coming" approach is about the only way to broaden the perspective. Wd wd do well to explore other contacts if they can be opened.

[REDACTED] George is going to see what we have on this so that we can assess whether it wd be useful to make such an approach. He advises that if we were able to get to [REDACTED] w/ this message we might be able to make some headway. Will advise. If you wd like to meet w/ George, pls let me know and I will arrange. Warm regards.

How's It Going?
NSB FROM: NSBCB --CPBA TO: NSOLS --CPBA 03/10/86 22:10:20
To: NSOLS --CPBA

*** Reply to note of 03/10/86 21:110

NOTE FROM: BOBBY MCPHILLAN

Subject: How's It Going?
Bobby: Oliver, I guess I'm a little puzzled about the Iranian string diagram.

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1211

Chapter 12, Footnote 127

12-126

12-127

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From: NSJMP --CPUA
To: NSOLN --CPUA

Date and time 04/16/86 19:02.42

N 9212

*** Reply to note of 04/16/86 16:40

~~--- SECRET ---~~

NOTE FROM: JOHN POINDEXTER
Subject: PRIVATE BLANK CHECK

You may go ahead and go, but I want several points made clear to them. There are not to be any parts delivered until all the hostages are free in accordance with the plan that you laid out for me before. None of this half shipment before any are released crap. It is either all or nothing. Also you may tell them that the President is getting very annoyed at their continual stalling. He will not agree to any more changes in the plan. Either they agree finally on the arrangements that have been discussed or we are going to permanently cut off all contact. If they really want to save their asses from the Soviets, they should get on board. I am beginning to suspect that doesn't have such authority.

cc: NSPBT --CPUA PAUL THOMPSON

5/6/87
EO 12.03
Security Council

UNCLASSIFIED

426

INFORMATION SYSTEMS UNIT
WHITE HOUSE COMMUNICATIONS AGENCY
BUILDING 94, WASHINGTON NAVY YARD, ANACOSTIA
WASHINGTON, D.C. 20374-0940

20 January 1989

MEMORANDUM FOR RECORD

SUBJECT: Temporary Restraining Order -- 19 January 1989

1. At approximately 1110 on 20 January 1989 CPT Bob Risney and MSG Kelly Williams met with Mr. Nicholas Rostow, Legal Adviser to the NSC, and represented to him that, to the best of their knowledge and belief, the sets of backup tapes that are in existence provide a full and complete capability for restoring all data on the NSC PROFS computer system existing as of approximately 1817, 19 January 1989, and subject to the Temporary Restraining Order entered at 1810 on 19 January 1989. Additionally, all sets of backup tapes in existence as of 19 January 1989 for the NSC PROFS system will be retained. All existing NSC data thus is preserved unaltered.
2. All such referenced tapes have been physically isolated and secured. No access will be permitted without Mr. Rostow's written permission.
3. Based on the representation set forth in paragraph 1 hereof, Mr. Rostow authorized WHCA to take all actions necessary to prepare the NSC PROFS computer system for the Bush Administration. These include purging user accounts on the NSC PROFS system and the continuation of archival processing.

Nicholas Rostow
Nicholas Rostow, NSC Legal Adviser

Kelly Williams
Kelly Williams, WHCA

Robert G. Risney
Robert G. Risney, WHCA

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

January 20, 1989

MEMORANDUM FOR KENNETH NICKEL

FROM: PAUL SCHOTT STEVENS *PS*

SUBJECT: Compliance with Temporary Restraining Order

On January 19, 1989, the United States District Court for the District of Columbia enjoined us "from destroying, erasing, recycling, or in any way altering what is commonly known as the PROFS computer tapes for the National Security Council and the Executive Office of the President or in any way deleting or destroying the information contained in the back-up files of the PROFS Computer System." (Tab A) Based on conversations among Nicholas Rostow, Legal Adviser to the National Security Council, Major William Hilton (WHCA), Kelly Williams (WHCA), and David Anderson, Department of Justice, I understand that WHCA can preserve all existing NSC data in a retrievable form by a full system back-up and that WHCA has the capacity to restore this data. We shall rely on this representation in court.

To comply fully with all terms in the court order, I hereby confirm previously issued instructions and request that WHCA undertake the following actions:

- I hereby confirm George Van Eron's oral instructions to Major Hilton at 6:23 p.m. on January 19, 1989, to stop all deletions, if any in progress, from the PROFS system.
- I hereby direct that WHCA continue making a full-system back-up tape of all existing NSC data from the main frame computer disk, as requested by George Van Eron last night.
- All existing back-up tapes and "dumps" as of the time of the court order (6:10 p.m., January 19, 1989) and all back-up tapes and dumps created subsequently pursuant to this directive must be preserved intact in a secure manner.
- WHCA should make a complete, contemporaneous record of all steps taken, including noting all participants in the process, in carrying out this action.

-- When the full-system back-up is complete such that all existing NSC data is preserved in a retrievable form, WHCA shall prepare an affidavit for signature by someone having knowledge of the technical actions required and taken and who can certify that all existing NSC data has been preserved as required by the court order and by these instructions. The affidavit shall set forth all steps taken as well as the certification with respect to the preservation of all existing NSC data. As soon as the back-up tape has been created, the affidavit should be prepared and submitted to the Office of NSC Legal Adviser. .

-- When all existing NSC data has been preserved in the manner set forth above, WHCA should purge the main frame computer disk in order to prepare it for use by the Bush Administration.

Attachment

Tab A - Restraining Order

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

January 20, 1989

MEMORANDUM FOR PAUL SCHOTT STEVENS

FROM: NICHOLAS ROSTOW *N*
SUBJECT: Directive to WHCA in Connection with TRO

As you are aware, the National Security Archive and other plaintiffs obtained a temporary restraining order enjoining us "from destroying, erasing, recycling, or in any way altering what is commonly known as the PROFS computer tapes for the National Security Council and the Executive Office of the President or in any way deleting or destroying the information contained in the back-up files of the PROFS Computer System." (Tab II)

WHCA assures us that all existing NSC data on the system hard disk may be copied onto back-up tapes without destroying, altering, or otherwise losing data. It is the unanimous view of Assistant Attorney General Bolton, Deputy Counsel to the President Brady and myself that this copying will comply with all the terms of the court order.

We therefore recommend that you sign the attached memorandum (Tab I) to the White House Communications Agency directing it to preserve on back-up computer tapes all existing NSC data, to maintain a contemporaneous record of all actions taken in this regard, and to make an affidavit that all existing NSC data has been preserved in a usable form. Once these steps have been completed, and in reliance on WHCA's representation that all existing NSC data has been preserved, your memorandum authorizes WHCA, as a final step, to purge the hard disks and prepare them for use by the Bush Administration.

RECOMMENDATION

That you sign the memorandum attached at Tab I.

George Van Eron concurs.

Approve *PN*

Disapprove _____

Attachments

Tab I - Memorandum to WHCA
Tab II - Order and Pleadings

Discussed w/ CLP 1.20.89 @ 7PM PN

FILED

JAN 19 1989

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES F. DAVEY, Clerk

R. SCOTT ARMSTRONG, et al.)
)
 Plaintiffs,)
)
 v.)
)
 PRESIDENT OF THE UNITED STATES)
 OF AMERICA, et al.)
)
 Defendants.)

Civil Action No. 89-0142
(J. Charles Richey)

TEMPORARY RESTRAINING ORDER

Plaintiffs' Motion for Temporary Restraining Order was heard in open court on January 19, 1989. Upon consideration of said motion, the Complaint filed therewith, the Memorandum of Points and Authorities attached thereto, the Affidavit of plaintiff R. Scott Armstrong, and oral argument of counsel for the parties, the Court finds that plaintiffs have made a threshold showing that they are likely to suffer immediate and irreparable harm affecting a vital public interest unless a restraining order is entered against the defendants and they have also made a showing of probable success on the merits.

IT IS THEREFORE ORDERED by the Court that the defendants, the President, Vice-President, Executive Secretary of the National Security Council, and the agents, servants, employees, attorneys of the Council, and all persons in active concert of participation with them are hereby enjoined from destroying,

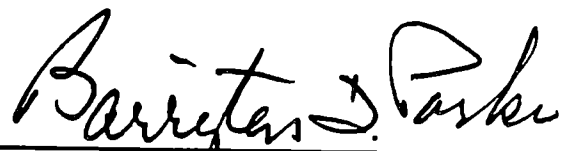
erasing, recycling, or in any way altering what is commonly known as the PROFS computer tapes for the National Security Council and the Executive Office of the President or in any way deleting or destroying the information contained in the back-up files of the PROFS Computer System.

Plaintiffs shall not be required to post security because defendants will not suffer costs or damage even if it is determined that they were wrongfully restrained pursuant to Civil Rule 65(c).

IT IS FURTHER ORDERED that this Order shall expire within ten (10) days after entry unless extended for good cause shown by the Court; and

IT IS FURTHER ORDERED that counsel shall appear before Judge Charles Richey no later than January 25, 1989 for further scheduling and plaintiffs shall file a Motion for Preliminary Injunction on January 24, 1989.

ISSUED at 6:10 o'clock p.m. on January 19, 1989.



Barrington D. Parker
United States District Judge

United States District Court
for the District of Columbia
A TRUE COPY

JAMES F. DAVEY, CLERK.

By 
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTT ARMSTRONG
2620 Quebec Street, NW
Washington, DC 20008,

SENATOR GAYLORD NELSON
3611 Calvend Lane
Kensington, MD 20895,

GARY M. STERN,
4000 Harrison Street, NW
Washington, D.C. 20015,

EDDIE BECKER
1844 Mintwood Place, NW
Washington, DC 20009,

NATIONAL SECURITY ARCHIVE
1755 Massachusetts Ave., N.W.
Suite 500
Washington, D.C. 20036,

CENTER FOR NATIONAL SECURITY STUDIES
122 Maryland Avenue, NE
Washington, DC 20002,

Plaintiffs,

v.

RONALD W. REAGAN, President
1600 Pennsylvania Ave., N.W.
Washington, D.C.,

GEORGE M. BUSH, Vice-President and
President Elect
Old Executive Office Building
Pennsylvania Ave. & 17th St., N.W.
Washington, D.C.,

THE NATIONAL SECURITY COUNCIL
Old Executive Office Building
Pennsylvania Ave. & 17th St., N.W.
Washington, D.C.,

DON WILSON, ARCHIVIST OF THE
UNITED STATES
7th & Pennsylvania Ave., N.W.
Room 111
Washington, D.C. 20408,
Defendants.

C.A. No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Nature of Action

1. This is an action under the Presidential Records Act, 44 U.S.C. § 2201, et. seq.; the Disposal of Records Act, 44 U.S.C. § 3301, et. seq.; and the Administrative Procedures Act, 5 U.S.C. § 551, et. seq. Plaintiffs seek: (1) a declaration that certain White House computer records stored in what is commonly known as the "PROFS" computer system are covered by the laws governing the National Archives and Records Administration 44 U.S.C. chapters 21-33; and (2) injunctive relief to prevent the President, the National Security Council, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them from destroying these computer records without complying with the prescribed statutory procedures for destruction of Presidential and agency records and to order the President, the National Security Council and the Archivist to comply with the laws governing the National Archives and Records Administration.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and pursuant to 28 U.S.C. §§ 1331, 1346 and 28 U.S.C. § 2201(a). Venue lies in this district under 28 U.S.C. § 1391(b) and (e).

The Parties

3. Plaintiff Scott Armstrong is a journalist, author, and foreign policy researcher, and founder and executive director of

the non-profit research institute the National Security Archive.

4. Plaintiff Gaylord Nelson is a former United States Senator and was co-author with Senator Sam Ervin of the Presidential Records and Materials Preservation Act.

5. Plaintiff National Security Archive (hereinafter, the "Archive") is a nonprofit public interest scholarly research institute and library in Washington, D.C. It is organized and operated as a division of The Fund for Peace, Inc., a New York nonprofit corporation. The Archive makes extensive use of the Freedom of Information Act ("FOIA") to obtain government documents concerning national security issues for its own research purposes and to make such documents available to scholars, journalists and other interested persons.

6. Plaintiff Center for National Security Studies (hereinafter, the "Center") is a nonprofit public interest scholarly research institute in Washington, D.C. It is organized and operated as a division of the American Civil Liberties Union Foundation and The Fund for Peace, Inc., a New York nonprofit corporation. The Center makes extensive use of the FOIA to obtain government documents concerning national security issues for its own research purposes and to make such documents available to scholars, journalists and other interested persons as part of its program of public education.

7. Plaintiff Gary Stern is a research associate at the Center for National Security Studies and has written articles,

reports, and comments on national security issues for a variety of publications.

8. Plaintiff Eddie Becker is a professional researcher specializing in documentary reconstruction of historical events. Mr. Becker is employed by documentary filmmakers, scholars, and journalist, and is a consultant at the National Security Archive.

9. Defendant Ronald W. Reagan is the President of the United States and has ultimate control over all records and information in the Executive Office of the President and the National Security Council ("NSC").

10. Defendant George M. Bush is Vice-President and President-Elect of the United States and on January 20, 1989, will have ultimate control over all records and information in the Executive Office of the President and the National Security Council ("NSC").

11. Defendant National Security Council is an "agency" of the United States and makes use of the PROFS computer system.

12. Defendant Don Wilson is the Archivist of the United States and is responsible for preserving presidential records and agency records in accordance with the laws governing the National Archives and Records Administration (NARA).

The Computer Records in the PROFS System

13. The President, his staff, and the National Security Council use what is commonly known as the PROFS computer system (hereinafter "PROFS system") to create, store, and retrieve information in the course of performing their governmental

functions. The PROFS system combines various routine office functions including the ability to send electronic mail and documents to others on the system.

14. The PROFS system is a central computer system of the White House and the National Security Council. It contains substantive information that does not exist anywhere in a paper copy but only in electronic form.

15. The PROFS system contains information that constitutes presidential records, as defined in the Presidential Records Act, 44 U.S.C. § 2201, et. seq., and agency records, as defined in the Disposal of Records Act, 44 U.S.C. § 3301, et. seq., and the Freedom of Information Act, 5 U.S.C. § 552 et. seq..

16. Based on information and belief, President Reagan and the National Security Council intend to destroy the records stored on the PROFS system beginning on Thursday, January 19, 1989, in violation of these statutes and specifically without having complied with the procedures for obtaining a determination by the Archivist of the United States, that the computer records may properly be preserved.

COUNT 1

17. Plaintiffs incorporate by reference as if fully stated herein all the statements contained in paragraphs 1 through 16 above.

18. By their aforementioned acts, defendants have or intend to violate the Presidential Records Act, 44 U.S.C. § 2201, et seq.

COUNT 2

19. Plaintiffs incorporate by reference as if fully stated herein all the statements contained in paragraphs 1 through 16 above.

[20. Defendants have or intend to violate of the Disposal of Records Act, 44 U.S.C. § 3301, et seq.

COUNT 3

[21. Defendants are in violation of the Administrative Procedures Act, 5 U.S.C. § 553, et seq.

WHEREFORE, plaintiffs pray that this Court:

1. Declare that the electronic tapes and information stored in the PROFS computer system used in the White House and the National Security Council are records governed by the provisions of the laws governing the National Archives and Records Administration (NARA), 44 U.S.C. chapters 21-33.

2. Enjoin defendants Ronald Reagan, George M. Bush, and the National Security Council and their agents, servants, employees, attorneys, and all persons in active concert or participation with them from destroying, erasing, recycling, or in any way altering what is commonly known as the PROFS tapes that exist in the National Security Council and the Executive Office of the President and the contents therein without complying with the provisions of the laws governing the National Archives and Records Administration (NARA), 44 U.S.C. chapters 21-33 and specifically not until they receive an advance determination by

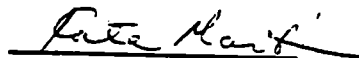
the Archivist of the United States, as to whether the computer records may properly be destroyed.

3. Order defendant Don Wilson to comply with the provisions of the laws governing the National Archives and Records Administration (NARA), 44 U.S.C. chapters 21-33, with regard to the electronic tapes and information contained in the PROFS computer system and specifically to follow the prescribed procedures regarding destruction of Presidential and agency records.

4. Award plaintiffs their costs and reasonable attorneys fees in this action; and

5. Grant such other and further relief as the Court may deem just and proper.

January 19, 1989



Kate Martin
American Civil Liberties Union
Foundation
122 Maryland Avenue, NE
Washington, DC 20002
544-5388

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----)	
R. SCOTT ARMSTRONG,)	
et al.,)	
Plaintiffs,)	
v.)	
RONALD W. REAGAN,)	C.A. No.
et al.,)	
Defendants.)	
-----)	

PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER


Plaintiffs R. Scott Armstrong, Eddie Becker, Gary M. Stern, National Security Archives, and Center for National Security Studies respectfully move this Court, pursuant to Federal Rule of Civil Procedure 65(b) to issue a Temporary Restraining Order against defendants President Ronald Reagan, Vice-President George Bush, and the National Security Council (NSC) and their agents, servants, employees, attorneys, and all persons in active concert or participation with them.

The relief requested by the motion is to enjoin the President and the NSC from destroying certain computer records commonly known as the PROFS system. The narrow issue raised by this motion is whether the President and the NSC can be temporarily enjoined from destroying government computer records in advance of a judicial determination as to whether destruction of the records is in violation of the law and whether they should be preserved in accordance with the laws governing the National

Archives and Records Administration (NARA), 44 U.S.C. chapters 21-33.

As grounds for the Motion, plaintiffs assert that a Temporary Restraining Order is necessary to prevent the President and the NSC from causing plaintiffs irreparable harm by unilaterally and permanently destroying government records and to safeguard plaintiffs' right of access to the information. In support of this Motion, plaintiffs rely upon the Verified Complaint filed herewith, the Memorandum of Points and Authorities attached hereto, the proposed Temporary Restraining Order, the Affidavit of plaintiff R. Scott Armstrong, and such other matters as the Court may consider upon a hearing of this Motion.

Respectfully submitted,


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544-5388

Attorney for Plaintiffs

January 19, 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

R. SCOTT ARMSTRONG,
et al.,
Plaintiffs,

v.

RONALD W. REAGAN,
et al.,
Defendants.

C.A. No.

*have made a
threshold showing
that they are likely
to suffer*

TEMPORARY RESTRAINING ORDER

Plaintiffs' Motion for Temporary Restraining Order came on for hearing in open court on January 19, 1989. Upon consideration of said Motion, the Complaint filed therewith, the Memorandum of Points and Authorities attached thereto, the Affidavit of plaintiff R. Scott Armstrong, and oral argument of counsel for the parties, the Court finds that plaintiffs will suffer immediate and irreparable harm affecting a vital public interest unless a restraining order is entered against the defendants.

IT IS THEREFORE ORDERED by the Court that defendants, President Ronald Reagan, Vice-President George Bush, and the National Security Council and their agents, servants, employees, attorneys, and all persons in active concert or participation with them are hereby enjoined from destroying, erasing, recycling, or in any way altering what is commonly known as the PROFS computer tapes for the National Security Council and the

Executive Office of the President or in any way deleting or destroying the information contained in the back-up files of the PROFS Computer System.

Plaintiffs shall not be required to post security because defendants will not suffer costs or damages even if it is determined that they were wrongfully restrained pursuant to Civil Rule 65(c).

IT IS FURTHER ORDERED that this Order shall expire within ten (10) days after entry unless extended for good cause or by consent of the defendants; and

IT IS FURTHER ORDERED that plaintiffs shall be given until the _____ day of _____, 1989, to file a Motion for Preliminary Injunction and that said Motion will be heard on the _____ day of _____, 1989, at _____ o'clock ____ .m.

ISSUED at _____ o'clock ____ .m., January ____, 1989.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

R. SCOTT ARMSTRONG,
et al.,
Plaintiffs,

v.

RONALD W. REAGAN,
et al.,

Defendants.

C.A. No.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs seek a temporary restraining order enjoining defendants Ronald Reagan, George Bush, and the National Security Council from destroying any electronic computer tapes or other materials that contain information concerning the functioning of the White House, contrary to the requirements of the Presidential Records Act, the Disposal of Records Act, and the Freedom of Information Act as administered by the Archivist of the United States and the National Archives and Records Administration. See American Friends Service Committee v. Webster, 485 F. Supp. 222 (D.D.C. 1980) aff'd 720 F.2d 29 (D.C. Cir. 1983).

Defendants apparently intend to destroy these electronic tapes, which are the only existing record of many important communications within the White House and specifically within the National Security Council at the close of the Reagan Administration on January 19, 1989. Doing so will destroy an invaluable historical and political record that is available

nowhere else and which Congress has on several occasion mandated be available to members of the public.

STATEMENT OF FACTS

The Executive Office of the President (the White House) and the National Security Council (NSC) utilize what is commonly known as the PROFS computer system ("PROFS system"). The PROFS systems allows users of the system to communicate via electronic mail, that is to send memoranda and other information to other users directly through the computer. It is used to create, maintain, and retrieve information pertaining to official government activities.^{1/}

This information is maintained on an electronic storage medium, most likely magnetic tapes. These tapes have recorded all correspondence and information that has been sent or created using the PROFS system. In many instances no hard or paper copy of the information exists, the electronic tapes are the only record of the information.

The PROFS system is used by White House and NSC officials to carry out government policy. It contains presidential and agency records and any particular electronic tape may contain both Presidential records and agency records of the NSC.

The information in the PROFS system, which exists only on an electronic medium and not in any paper record can be extremely important. For example, records contained in the PROFS system

^{1/} This Statement of Facts is based on the Affidavit of R. Scott Armstrong, Attachment B hereto.

were utilized extensively by the President's Special Review Board (the Tower Commission) and the Congressional Iran-Contra Committees investigating the Iran-Contra Affair. See Report of the President's Special Review Board, at III-1 (February 26, 1987); Report of the Congressional Committees Investigating the Iran-Contra Affair, 100th Cong., 1st Sess., S. Rep. No. 100-216, H. Rep. No. 100-433, at 689-90. Independent Counsel Lawrence Walsh continues to rely on records from the PROFS system in support of criminal investigation and prosecution of government officials involved in the Iran-Contra Affair.

On January 19, 1989, plaintiffs Armstrong, the National Security Archive, and the Center for National Security Studies filed a request under the Freedom of Information Act, 5 U.S.C. § 552, for records contained in the PROFS system.

Plaintiffs Armstrong, Becker, and National Security Archive have asked for assurances that defendants do not intend to destroy the records contained in the PROFS system as part of the changeover of Administrations on January 19, 1989. Defendants have refused to give them any such assurances. Although the White House has delivered some electronic computer tapes from other computer systems to the Archivist for preservation and safekeeping, it has not delivered any tapes from the PROFS system to the Archivist.

ARGUMENT

To obtain a temporary restraining order (TRO), a plaintiff must demonstrate (1) a substantial likelihood of success on the

merits; (2) irreparable harm; (3) that more harm will result to plaintiff if the TRO is denied than will result to defendant if it is granted; and (4) in appropriate cases, how the public interest will be affected. Virginia Petroleum Jobbers Ass'n. v. F.P.C., 104 U.S. App. D.C. 106, 110, 259 F.2d 921 (1958).

Plaintiff's application for a TRO satisfies each of the foregoing tests.

A. Plaintiffs are Likely to Succeed on the Merits.

Plaintiffs are guaranteed a right of access to these government records under at least three separate statutes: The Freedom of Information Act, 5 U.S.C. § 552, et. seq.; the Presidential Records Act, 44 U.S.C. 2201, et. seq.; and the Disposal of Records Act, 44 U.S.C. 3301, et. seq. If any of these statutes applies to the requested electronic recordings, then defendants may not destroy them. See, American Friends Service Committee v. Webster, supra. The statutes create a public right of access to "agency records," in the case of the FOIA and the Disposal of Records Act,^{2/} and to "Presidential records," in the case of the Presidential Records Act.^{3/}

^{2/} The Disposal of Records Act authorizes the Archivist of the United States to establish procedures for the disposal of only those documents "that do not appear to have sufficient administrative, legal, research, or other value to warrant their further preservation by the Government." 44 U.S.C. § 3303.

^{3/} "Upon the conclusion of the President's . . . 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." 44 U.S.C. § 2203(f)(1).

Defendants do not assert any general right to destroy Presidential or agency records at the close of an administration, which would thereby frustrate this public right of access. Rather defendants argue that these electronic computer records are not like other Presidential or agency records, are not covered by the statutes, and therefore may be destroyed. But there is no authority for their position that because information is stored electronically rather than in written form, it is not covered by the statutes.

The Presidential Records Act provides that the United States "shall . . . retain complete ownership, possession, and control of Presidential records." 44 U.S.C. § 2202. It provides specific procedures that must be followed by the President and the Archivist before disposing of records during the term of his office; the statute allows only records "that no longer have administrative, historical, informational, or evidentiary value" to be disposed of. 44 U.S.C. § 2203(c).

Upon the conclusion of the President's term of Office, the Act directs the Archivist of the United States to assume responsibility for the records. "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." 44 U.S.C. § 2203(f)(2). Here, neither the President nor the Archivist have complied with the provisions of this act and, to the contrary, apparently intend to violate it by destroying the records.

But the Act applies to all "Presidential records," which "means documentary materials . . . created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President." The definition of "documentary material" covered by the Act explicitly covers materials such as the electronic tapes requested here: "The term 'documentary material' means all books . . . including but not limited to, audio, audio-visual, or other electronic or mechanical recordation." 44 U.S.C. § 2201(1) (emphasis added).

Similarly the Disposal of Records Act allows agency records to be destroyed only after the Archivist has made the required review and followed the required procedures for doing so. 44 U.S.C. §§ 3302-03 The Act applies to all "records," which

"includes all 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 Government 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, decision, procedures, operations, or other activities of the Government or because of the informational valued of data in them."

44 U.S.C. § 3301.

The agency's own interpretation confirms that such electronic tapes are governed by the provisions of the Act. See National Archives and Records Administration Bulletin, No. 89-2, November 14, 1988, Attachment B hereto.

The Freedom of Information Act provides: "[E]ach agency, upon any request for records which (A) reasonably describes such

records and (B) is made in accordance with published rules . . . shall make the records promptly available to any person." 5 U.S.C. 552(a)(3). While the statute does not define the term agency, the National Security Council is clearly an "agency" for purposes of FOIA requests. See, e.g., Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136, 156 (1980) ("National Security Council records [are] therefore subject to the [Freedom of Information] Act"); Halperin v. NSC, 452 F. Supp. 47 (D.D.C. 1978) aff'd without opinion, 612 F.2d 586 (D.C. Cir. 1980).

Thus, whether the electronic tapes belong to the Executive Office of the President or the National Security Council or both, they are in all events "Presidential" records or "agency" records. As such, they are subject to the requirements of the statutes and may not be summarily destroyed.

B. Plaintiffs Will Suffer Irreparable Injury Unless a Temporary Restraining Order is Granted.

If the electronic tapes are destroyed, plaintiffs will suffer irreparable harm. As far as plaintiffs can determine, these electronic tapes contain information that appears nowhere else. Thus if defendants destroy them, the information will be irretrievably lost to plaintiffs, as well as to history. There is no doubt that such injury will be irreparable harm.

C. The Equities Favor A Temporary Restraining Order.

Weighing of the equities favors injunctive relief in this case. As shown above, in the absence of an injunction, plaintiffs will suffer irreparable harm. An injunction will restore and preserve plaintiffs' rights without detriment to defendants. Defendants will suffer absolutely no detriment from entry of an order preventing destruction of the electronic tapes pending a judicial determination of the applicability of the Presidential Records Act, the Disposal of Records Act, and the Archivist's responsibilities in connection with the tapes.

D. A preliminary Injunction will Serve the Public Interest.

Public policy could not be clearer that Presidential records belong to the public and should be preserved for review by the public pursuant to the laws, rules, and policies that have been established. Thus the public as well as the specific plaintiffs herein have an interest in the requested information. As the Iran-Contra affair demonstrates, the requested electronic tapes may contain information of the greatest importance to the process of democratic policy-making. Technological innovations have enabled the government to operate more efficiently, they should not be used as a shield to allow it to operate in secret hidden from public accountability.


In this case, implementation of this fundamental public policy depends on judicial intervention.

Conclusion

The Court should grant a temporary restraining order

enjoining defendants from destroying any electronic or other records pertaining to the PROFS system without first complying with the requirements of the Presidential Records Act and the Disposal of Records Act including review and determination by the Archivist of the historical value of maintaining the specific items of information and notice, where required to Congress or in the Federal Register of the Archivist's intentions with regard to them.

Respectfully submitted,


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American Civil Liberties Union
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544-5388

Attorney for Plaintiffs

January 19, 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

R. SCOTT ARMSTRONG,
et al.,
Plaintiffs,

v.

RONALD W. REAGAN,
et al.,

Defendants.

C.A. No.

AFFIDAVIT OF R. SCOTT ARMSTRONG

I, R. Scott Armstrong, declare:

1. I am a plaintiff in the above-captioned lawsuit and make this affidavit in support of plaintiffs' motion for a Temporary Restraining Order.
2. I am a journalist, book author, foreign policy researcher, founder and Executive Director of the National Security Archive, a non-profit research institute and library of government documentation. On behalf of the National Security Archive and the Center for National Security Studies, I have filed, on January 19, 1989, three Freedom of Information Act requests for specific materials currently held by the Executive Office of the President and the National Security Council. Copies of those requests are attached as exhibits 1-3 hereto.
3. In conjunction with my work at the National Security Archive and my research on national security and foreign policy issues and on the functioning of the White House and the National Security Council, I have developed an extensive knowledge on the

White House records system including the computer communications system commonly known as the PROFS computer system ("PROFS system").

4. The requested materials are contained in the PROFS system computer backup tapes and consequently the only existing master file of one of the central filing systems of the National Security Council and the Executive Office of the President.
5. The Executive Office of the President and the National Security Council utilize the PROFS system to create, maintain, and retrieve information pertaining to official government activities. This information is maintained on an electronic storage medium, most likely magnetic tapes. In many circumstances, the information exists only in the computer memory stored on the PROFS system and no hard or paper copy has been made, or if made, has been retained. These PROFS system tapes have recorded all correspondence and messages that have been created, saved, or transmitted through the PROFS system. The same tape may contain information that could be either Presidential records or agency records.
6. The PROFS system combines various routine office functions including a word processing program, personal calendar, automatic reminders, and the ability to send electronic notes, messages and documents to others on the system.
7. The PROFS system is used by White House and NSC officials to implement government policy, and as such contains both presidential and agency records. For example, records contained

in the PROFS system were utilized extensively by the President's Special Review Board (the Tower Commission) and the Congressional Iran-Contra Committees investigating the Iran-Contra Affair. See Report of the President's Special Review Board, at III-1 (February 26, 1987); Report of the Congressional Committees Investigating the Iran-Contra Affair, 100th Cong., 1st Sess., S. Rep. No. 100-216, H. Rep. No. 100-433, at 689-90. To the best of my information and knowledge, Independent Counsel Lawrence Walsh continues to rely on information from the PROFS system in support of criminal investigation and prosecution of government officials involved in the Iran-Contra Affair.

8. Beginning in 1985, the PROFS system was were used by the members of the National Security Council and their staff. In 1986, the PROFS network expanded to "satisfy the growing requirement in the White House for internal electronic mail and document transfer between the West Wing, Old Executive Office Building and the Cabinet agencies." Solicitation for Computer Operation/Facilities Management, Executive Office of the President, March 27, 1987, p. 50.

9. The system helps to avoid an avalanche of paperwork by handling much of the information electronically without paper copies. Key to document handling are the sophisticated search and retrieval functions. "Every document in PROFS is assigned a number so that it can be located using a variety of search techniques. Information such as who wrote the document the date, the subject, and to whom the document was sent can also be used

in the search. The advantage of letting PROFS do this for you is quite obvious. You don't have to go through all your filing cabinets looking for documents that may be filed under multiple subject headings or under a filing system you know nothing about. PROFS takes care of all that for you." IBM, "Introducing the Professional Office System," November 1985, p. 10-11.

10. The Iran-Contra Affair illustrated the importance of information stored in the PROFS system. Despite repeated attempts by NSC staff to shred the paper record and delete the computer record, the PROFS backup system on magnetic tape allowed investigators to reconstruct much of the Iran-Contra-related activity. A sampling of these PROFS notes is attached as Exhibit 4 hereto. The Iran-Contra PROFS records demonstrate that in effect, the capabilities of the PROFS system for transmitting, indexing, filing, and retrieving contemporaneous records created a new and powerful central filing system which recorded the daily business of the White House and National Security Council at the highest levels -- but only in electronic and not in paper form.
11. The Tower Commission stated that these PROFS messages "provide a first-hand, contemporaneous account of events." Report of the President's Special Review Board, February 26, 1987, p. III-1. As examples of the central role of the PROFS system in the NSC staff's decisionmaking process, copies of three PROFS messages declassified during the Iran-Contra investigations are attached.

12. Despite the clear historical significance of and public interest in the information captured by the PROFS system, I have been told by representatives of the National Archives and Records Administration (NARA) that those PROFS system tapes other than those used by the Iran-Contra Committees and the Independent Counsel have not been and will not be preserved as a "permanent record" of the Reagan Administration.

13. The head of the Office of Presidential Libraries of NARA, John Fawcett, told me on January 18, 1989, that the only PROFS messages that are retained as "presidential records" are those printed out by White House and NSC staff and maintained in paper form. According to Fawcett, NARA considers all PROFS system tapes other than those provided for the Iran-Contra Committees and the Independent Counsel not to be "Presidential records" or "agency records."

14. This practice has been implemented by specific guidelines issued to White House and NSC staff by the National Archives, despite current rulemaking-in-progress that indicates the Archives' intention to explore methods of retention and preservation of electronic records. Notice of Proposed Rulemaking, NARA, November 8, 1988.

15. Even if White House and NSC staff are diligent above and beyond the call of duty in printing out copies of any PROFS message they considered historically or administratively significant -- a practice which the Iran-Contra Affair demonstrates has not been the norm, and which, on knowledge and

belief, I believe is still not the norm -- the resulting paper file is by definition not a complete record of White House and National Security Council business, certainly when compared to the value of the complete backup file maintained electronically.

16. Additionally, according to Mr. Fawcett, the backup tapes, which represent the master file of PROFS messages, are not ordinarily preserved -- since they are not considered "presidential records" under the Archive's guidance or the White House and NSC practice -- and indeed may be re-used on the mainframe computer and thus overwritten by subsequent PROFS messages. Any overwritten sections of the magnetic tapes are then lost to subsequent retrieval, much as a recording on a cassette tape gets erased when something new is recorded over it. Many or even most of these magnetic tapes may already have been overwritten and thus destroyed.

17. However, at least one set of magnetic tapes -- the one in use as of January 19, 1989, and those from the immediate prior period -- does exist and contains current PROFS messages which have not been overwritten. Since the mainframe computer presumably employs multiple magnetic tapes for storage, a number of additional magnetic tapes containing PROFS messages may also still exist in retrievable form.

18. According to Mr. Fawcett, January 19, 1989 represents the "breaking point" for the preservation of Reagan Administration records, and the beginning of a new system for preservation of the next administration's records. My counsel has asked for and

not received assurance that the PROFS tapes will not be destroyed. I have been informed by NARA counsel that the White House has delivered some computer tapes from other computer systems to the National Archives, but has not delivered any PROFS tapes. Therefore, I believe that January 19, 1989, may be the last opportunity to preserve the magnetic tapes which comprise the PROFS system's master backup file, and thus the only complete record of a vital central filing system in the White House and National Security Council.

19. In an attempt to preserve these records, I have made the aforementioned overlapping Freedom of Information Act requests to the Executive Office of the President, the National Security Council and the National Archives and Records Administration. In and of themselves, however, these FOIA requests may not guarantee the preservation of these vital records.

I declare under penalty of perjury that the foregoing statements are true and correct.


R. Scott Armstrong

DATE: January 19, 1989

THE NATIONAL SECURITY ARCHIVE

SUITE 500 1755 MASSACHUSETTS AVENUE, N.W. WASHINGTON, D.C. 20036 (202) 797-0882

IN ALL CORRESPONDENCE PLEASE REFER
TO ARCHIVE FILE NO. 890035NAR001

January 18, 1989

Ms. Trudy Peterson
Assistant Archivist of the United States
National Archives and Records Administration
Washington, DC 20408

RE: Freedom of Information Act Request

Dear Ms. Peterson,

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Section 552, *et seq.* (as amended), I hereby request disclosure of the materials and documents described on the attachment to this letter for inspection and possible copying. I note for your information that we are making this FOIA request to preserve the materials in question which we understand might otherwise be improperly destroyed. In this vein, I have made possibly overlapping requests to the Executive Office of the President, the National Security Council and the National Archives and Records Administration. Once we have received assurances that the information will be properly preserved, we are willing to dramatically narrow the scope of the request for materials to be actually copied and provided.

If you regard any of these materials as non-records under the FOIA, I request that you retain copies of all such materials until we have had an opportunity to clarify your interpretation through litigation or congressional action. Similarly, if you regard any of these materials as exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. In this connection I note that you are required under the FOIA to release any reasonably segregable nonexempt portions of documents containing information you regard as exempt. Section 552(b). To permit an intelligent, informed decision whether or not to file an administrative appeal of any denial decision, you are also requested to describe withheld records (or portions thereof) and explain the logical and factual basis for exemption claims. See Mead Data Central, Inc. v. Department of the Air Force, 566 F.2d 242, 251 (D.C. Cir., 1977).

This request is made on behalf of the National Security Archive, a nonprofit public interest research institute and library located in Washington, D.C. and the Center for National Security Studies, a nonprofit public interest research facility located in Washington, D.C. The Archive and the Center are both organized and operated as a division of The Fund for Peace, Inc., a nonprofit corporation that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and has been acknowledged by the Internal Revenue Service since November 19, 1962 to be "organized and operated exclusively for educational purposes."

The fee waiver provisions under section 552(a)(4)(A) of the FOIA were recently amended by the Freedom of Information Reform Act. The Reform Act's fee provisions became effective on April 25, 1987 and rewrote section 552(a)(4)(A) to create categories of requesters entitled to fee waivers. Pub.L. 99-570, Sec. 1803,

1804. One category consists of "educational or noncommercial scientific institution[s] whose purpose is scholarly or scientific research" and another consists of representatives of the "news media." 5 U.S.C. 552 (a)(4)(A)(ii)(II). Requesters in these groups receive an automatic waiver of all search and review fees, irrespective of the nature or contents of the documents requested. They can be charged standard duplication costs (in excess of the first one hundred copied pages), but these charges may also be waived in certain circumstances.

On May 11, 1987 the Archive submitted a comprehensive memorandum to your agency providing documentation under penalty of perjury which establishes that the Archive is entitled to fee waivers under the categories of educational or noncommercial scientific institutions and representatives of the news media within the meaning of the Reform Act. To summarize, the Archive's purpose is to enrich public policy debate by making available records pertaining to important, mostly contemporary issues of major public concern in the areas of foreign, defense, intelligence, and international economic policy.

Documents obtained by the Archive, including the records requested in this letter, are carefully analyzed, indexed and organized into document sets in the Archive's collection. Document sets are available for inspection and copying by scholars, journalists, Members of Congress and Congressional staffs, present and former public officials, other public interest organizations, and the general public at the Archive's Washington office. In addition, information in the documents will be disseminated across the country through distribution of comprehensive document indices to university and other research libraries and through the Archive's publications.

As the executive director of the Archive, I regularly use records such as those sought in this request in research on foreign and national security matters. In addition, the Archive and the Center both make all records available to a broad range of scholars, journalists, public interest organizations, members and the staff of Congress, and members of the general public.

I therefore request that you waive all search and reproduction fees pursuant to section 552(a)(4)(A), as amended. If you determine that the Archive does not fall within one of the two categories of requesters described above, this request would also qualify for favored treatment under the "all other requesters" category because disclosure of the information in the requested documents is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the Archive within the meaning of the Reform Act. See 5 U.S.C. 552(a)(4)(A)(iii). Should you decline to waive all fees, however, we are prepared to pay you normal search fees (and reproduction fees, if I decide to copy the records produced). Our willingness to pay fees is subject to our rights to appeal and litigate the fee waiver question, and payment would be deferred until exhaustion of such rights. I further ask that if you decline to waive fees that you set forth your reasons for doing so in writing and that you obtain our authorization before incurring search costs in excess of \$100.

In order to expedite the release of the listed documents, I request that you disclose them as they become available to you, without waiting until all the

documents have been assembled. If you have any questions that I might be able to answer regarding the identity of the records, their location, or the scope of the request, please call me. I look forward to receiving your response within the statutory time period.

Yours very truly,

Scott Armstrong
Executive Director

000000000001

01/18/1989

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Copies of all tapes, discs, and/or other storage formats for the PROFS System serving the Executive Office of the President and/or the National Security Council, and all information contained therein, as well as all records in whatever format derived from the PROFS System, from the date of the installation of said system to the end of the Reagan Administration. (The requester is prepared to narrow the scope of this request upon consultation.)

THE NATIONAL SECURITY ARCHIVE

SUITE 500 1755 MASSACHUSETTS AVENUE, N.W. WASHINGTON, D.C. 20036 (202) 797-0882

IN ALL CORRESPONDENCE PLEASE REFER
TO ARCHIVE FILE NO. 890034EOP001

January 18, 1989

Ms. Nell Doering
Chief, Records & Publications
Executive Office of the President
2200 New Executive Office Bldg.
Washington, DC 20503

RE: Freedom of Information Act Request

Dear Ms. Doering:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Section 552, et seq. (as amended), I hereby request disclosure of the materials and documents described on the attachment to this letter for inspection and possible copying. I note for your information that we are making this FOIA request to preserve the materials in question which we understand might otherwise be improperly destroyed. In this vein, I have made possibly overlapping requests to the Executive Office of the President, the National Security Council and the National Archives and Records Administration. Once we have received assurances that the information will be properly preserved, we are willing to dramatically narrow the scope of the request for materials to be actually copied and provided.

If you regard any of these materials as non-records under the FOIA, I request that you retain copies of all such materials until we have had an opportunity to clarify your interpretation through litigation or congressional action. Similarly, if you regard any of these materials as exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. In this connection I note that you are required under the FOIA to release any reasonably segregable nonexempt portions of documents containing information you regard as exempt. Section 552(b). To permit an intelligent, informed decision whether or not to file an administrative appeal of any denial decision, you are also requested to describe withheld records (or portions thereof) and explain the logical and factual basis for exemption claims. See Mead Data Central, Inc. v. Department of the Air Force, 566 F.2d 242, 251 (D.C. Cir., 1977).

This request is made on behalf of the National Security Archive, a nonprofit public interest research institute and library located in Washington, D.C. and the Center for National Security Studies, a nonprofit public interest research facility located in Washington, D.C. The Archive and the Center are both organized and operated as a division of The Fund for Peace, Inc., a nonprofit corporation that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and has been acknowledged by the Internal Revenue Service since November 19, 1962 to be "organized and operated exclusively for educational purposes."

The fee waiver provisions under section 552(a)(4)(A) of the FOIA were recently amended by the Freedom of Information Reform Act. The Reform Act's fee provisions became effective on April 25, 1987 and rewrote section 552(a)(4)(A)

to create categories of requesters entitled to fee waivers. Pub.L. 99-570, Sec. 1803, 1804. One category consists of "educational or noncommercial scientific institution[s] whose purpose is scholarly or scientific research" and another consists of representatives of the "news media." 5 U.S.C. 552 (a)(4)(A)(ii)(II). Requesters in these groups receive an automatic waiver of all search and review fees, irrespective of the nature or contents of the documents requested. They can be charged standard duplication costs (in excess of the first one hundred copied pages), but these charges may also be waived in certain circumstances.

On May 11, 1987 the Archive submitted a comprehensive memorandum to your agency providing documentation under penalty of perjury which establishes that the Archive is entitled to fee waivers under the categories of educational or noncommercial scientific institutions and representatives of the news media within the meaning of the Reform Act. To summarize, the Archive's purpose is to enrich public policy debate by making available records pertaining to important, mostly contemporary issues of major public concern in the areas of foreign, defense, intelligence, and international economic policy.

Documents obtained by the Archive, including the records requested in this letter, are carefully analyzed, indexed and organized into document sets in the Archive's collection. Document sets are available for inspection and copying by scholars, journalists, Members of Congress and Congressional staffs, present and former public officials, other public interest organizations, and the general public at the Archive's Washington office. In addition, information in the documents will be disseminated across the country through distribution of comprehensive document indices to university and other research libraries and through the Archive's publications.

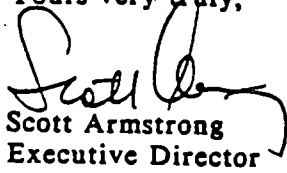
As the executive director of the Archive, I regularly use records such as those sought in this request in research on foreign and national security matters. In addition, the Archive and the Center both make all records available to a broad range of scholars, journalists, public interest organizations, members and the staff of Congress, and members of the general public.

I therefore request that you waive all search and reproduction fees pursuant to section 552(a)(4)(A), as amended. If you determine that the Archive does not fall within one of the two categories of requesters described above, this request would also qualify for favored treatment under the "all other requesters" category because disclosure of the information in the requested documents is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the Archive within the meaning of the Reform Act. See 5 U.S.C. 552(a)(4)(A)(iii). Should you decline to waive all fees, however, we are prepared to pay you normal search fees (and reproduction fees, if I decide to copy the records produced). Our willingness to pay fees is subject to our rights to appeal and litigate the fee waiver question, and payment would be deferred until exhaustion of such rights. I further ask that if you decline to waive fees that you set forth your reasons for doing so in writing and that you obtain our authorization before incurring search costs in excess of \$100.

In order to expedite the release of the listed documents, I request that you disclose them as they become available to you, without waiting until all the

documents have been assembled. If you have any questions that I might be able to answer regarding the identity of the records, their location, or the scope of the request, please call me. I look forward to receiving your response within the statutory time period.

Yours very truly,



Scott Armstrong
Executive Director

890034EOP001

01/18/1989

3667

Copies of all tapes, discs, and/or other storage formats for the PROFS System serving the Executive Office of the President and/or the National Security Council, and all information contained therein, as well as all records in whatever format derived from the PROFS System, from the date of the installation of said system to the end of the Reagan administration. (The requester is prepared to narrow the scope of this request upon consultation.)

THE NATIONAL SECURITY ARCHIVE

SUITE 500 1755 MASSACHUSETTS AVENUE, N.W. WASHINGTON, D.C. 20036 (202) 797-0882

IN ALL CORRESPONDENCE PLEASE REFER
TO ARCHIVE FILE NO. 890033NSC001

January 18, 1989

Ms. Nancy V. Menan
Director, FOI Office
National Security Council
375 Old Executive Office Building
Washington, DC 20506

RE: Freedom of Information Act Request

Dear Ms. Reger,

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Section 552, et seq. (as amended), I hereby request disclosure of the materials and documents described on the attachment to this letter for inspection and possible copying. I note for your information that we are making this FOIA request to preserve the materials in question which we understand might otherwise be improperly destroyed. In this vein, I have made possibly overlapping requests to the Executive Office of the President, the National Security Council and the National Archives and Records Administration. Once we have received assurances that the information will be properly preserved, we are willing to dramatically narrow the scope of the request for materials to be actually copied and provided.

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Yours very truly,

Scott Armstrong
Executive Director

890033NSC001

01/18/1989

3666

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Exhibit 4

Report of the Congressional Committees Investigating the

Iran-Contra Affair

Appendix A: Volume 1
Source Documents

Daniel K. Inouye, *Chairman*,
Senate Select Committee
Lee H. Hamilton, *Chairman*,
House Select Committee

U.S. Senate Select Committee
On Secret Military Assistance to Iran
And the Nicaraguan Opposition

U.S. House of Representatives
Select Committee to Investigate
Covert Arms Transactions with Iran

November 13, 1987.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed.

November 17, 1987.—Ordered to be printed.

Washington : 1988

Chapter 6 Footnote 76

From: NSACM --CPUA
To: NSOLN --CPUA

Date and time 09/23/83 21:54:09
JOHN M. POINDEXTER

UNCLASSIFIED

N 3265

NOTE FROM: ROBERT MCFARLANE
SUBJECT: Reply to Hamilton on Ollie's Activities

I have sent you both separately a draft letter I have composed to answer Lee Hamilton's letter on Ollie's activities. One or two annotations are appropriate. The reference to "insert #1" refers to paragraph one of page two of your draft letter. "insert #2" refers to the second paragraph of page two. Please do not share either this note or the separate draft with anyone. I will prepare a smooth version of it for me Wednesday morning. Please bring me any edits you have. Ollie, don't send me any PROFS notes about it. Many thanks.

6-76

500 x 4
200

Partially Declassified / Released on 1/20/88
under provisions of E.O. 12958
J. S. Reger, National Security Council

UNCLASSIFIED

4265

ERUA
Grand EUS
[Redacted]

10/16/87

FILE: 8077

UNITED HOUSE COMMUNICATIONS SERVICE

Chapter 12, Footnote 60

N 12122

-- SECRET --

UNCLASSIFIED

[REDACTED]

MSG FROM: USBCR --CPWA TO: USOLB --CPWA
TO: USOLB --CPWA

02/27/66 161021Z

*** Reply to note of 02/27/66 00:50

-- SECRET --

MSG FROM: USBCR USFASLANE

Subject: You are things?

Super Ollie, Well done--if the world only knew how many times you have kept a semblance of integrity and gumption to US policy, they could make you Secretary of State. But they can't know and would complain if they did--such is the state of democracy in the late 20th century. But the mission was terribly promising. So you know I do not hold Corbinifer in high regard and am particularly glad to have of apparent authority.

I have just gotten a note from John asking whether or not I could go some time next week and that the President is on board. I agreed. So hush: down and get some rest; let this word come to you in chevron, but pack your bags to be ready to go in the next week or so. Incidentally, I have had periodic requests from Mike to assist in getting Vincent Corbinifer to come to Antarctica

I have refused. Surely if they have any real bona fides they can get a word in chevron from the Cuban embassy or somewhere else. I do not intend to tell Mike any of this nor info. Recommend against your doing so.

Grave Sala.

You are things?

[REDACTED]

Declassified on 5/6/17
Executive Order 12958
Authority: 32 CFR 1.5

1178

12-60

UNCLASSIFIED

405

FILPI 0072

WHITE HOUSE COMMUNICATIONS AGENCY

Chapter 12, Footnote 60

UNCLASSIFIED

-- SECRET --

N 12122

[REDACTED]

02/27/60 16:02:23
02/27/60 16:02:23
02/27/60 16:02:23

02/27/60 00:150

-- SECRET --

NOTE FROM DONALD MCPHILLAN

Subject: See see things
Nayer Dille, well done--if the world only knew how many times you have kept a
semblance of integrity and simplicity to US policy, they could make you
Secretary of State. But they can't know and would complain if they did--such
is the state of democracy in the late 20th century. But the situation was
terribly promising. As you know I do not hold Corbinian in high regard and so
am particularly glad to hear of
approval authority.

I have just gotten a note from John asking whether or not I could go some time
next week and that the President is on board. I agreed. So Hunter does and get
some rest; let this word come to you in channels, but pack your bags to be
ready to go in the next week or so. Incidentally, I have had periodic requests
from Mike to assist in getting Vincent Corbinian to come to Switzerland. I have
refused. Surely if they have any real bona fides they too get a word in Tehran
from the Dean embassy or somewhere else. I do not intend to tell Mike any of
this nor info. Reconciled against your doing so.

Bravo Mike.
You are the best!

[REDACTED]

Classified on 5/4/87
by [redacted] of L.A. 12355
[redacted] Council

1178

12-60

UNCLASSIFIED

(405)

UNCLASSIFIED

403

FILE: 0077 [REDACTED] 40 [REDACTED] HOUSE COMMUNICATIONS AGENCY

UNCLASSIFIED

Chapter 12
Footnote 61

SS N 12120

MSG FROM: OLIVER BOSTA
 Subject: How are things?
 Just returned last night from city of Frankfurt. It nothing else
 the meeting serves to emphasize the need for direct contact with those people
 rather than continue the process by which we deal through intermediaries like
 Gorbachev. Because CIA wd not provide a translator for the session, we used
 Albert Kahn, an AMCI who runs the European operation for the session, we used
 resistance support activity. accompanied so that I wd have someone
 along who wd provide an "objective" account.

Throughout the session, Gorbachev intentionally distorted much of the
 translation and had to be corrected by our men on occasion on questions that
 finally had Albert translate both ways. Assessment of my 4 agreement
 we reached as follows: has authority to state his own decisions on
 matters of great import. --He does not have to check back w/ Yezov on
 decisions taken. --The govt. of Iraq is terrified of a new Soviet threat.
 --They are seeking a rapprochement but are filled w/ fear & distrust. --All
 hostages will be released during 1st during the next meeting. --They want most
 city urgently and have suggested Gusho Ia. oil Bader Abbas. --They are less
 interested in Iraq/Iraq war than we originally believed. --They want technical
 advice more than arms or intelligence. --Tech advice shd be on commercial &
 military assistance - not oil tactics --They committed to end anti-U.S.
 terrorism. --VMA noted the problems of reaching this intermediation & proper
 dir. contact /noted that this was first US/COI contact in more than 5 yrs.
 Important /noted that there were sov. cover/threats that we were aware of
 increased that there were sov. cover/threats that we were aware of
 half all of this could be so such much, I believe that we may well be on the
 verge of a major breakthrough - not only on the hostages/terrorism but on the
 relationship as a whole. So need only to go to this meeting which has no
 agenda other than to listen to each other to release the hostages and start
 the process. Have briefed both JAP and Casey -- neither very enthusiastic
 despite North summary along lines above. Believe that you shd be
 chartered to go early next w/ - or maybe this weekend - but don't know how to
 make this happen. Have not told JAP that this note is being sent. Help. Pls
 call me. include pt earliest convenience. Warm, but fatigued regards, Bosta

MSG FROM: USCLD --CPWA TO: USDCB --CPWA 02/27/86 20:01:50
 To: USDCB --CPWA

*** Reply to note of 02/27/86 16:03

MSG FROM: OLIVER BOSTA
 Subject: Exchange
 Trace the minutes of this meeting, out w/ Casey, JAP, Clair George
 and all have now agreed to press on. Believe we are indeed headed in the right
 direction. Just finished lengthy session w/ JAP he indicated that he has
 raised substance to you and has given no dates that you are not avail.

Will endeavor to attend. city so that those do not conflict but noted to JAP
 that it was their call as to date of mtg. Just rec'd msg in Secord via secure
 device we are using. has again reaffirmed that once we have set a
 date we shall have a very pleasant surprise. Rich & I believe that they may be
 proposing to release one of the hostages early. Rich also indicated that pt
 counterpart at the city wd be Stefan Jank. Rich crowd you see with God willing

1179

12-61

UNCLASSIFIED

403

UNCLASSIFIED

Shultz will buy into this transaction when JMF brief him, with the grace of the good Lord and a little more hard work so will very soon have the SECRES book and be on our way to a much more positive relationship than one which hatters you for lives.

I value our friendship and confidence very highly and did not mean to infer that you had revealed those exchanges. My feeling that you not indicate more to me I was only inferring that I had not told him anything of it as he is out to compromise myself at a point in time when he needs to be absolutely certain that this can work. He is, as only you can know, under tremendous pressure on this matter and very concerned that it go according to plan. My part in this was very small compared to his. I only had to deal with our session. He has to deal with

the cabinet. Many thanks for yr trust. Warm regards, North

NSC 7000: 02015 --CPUSA TO: NSDCR --CPUSA
TO: NSDCR --CPUSA

02/27/06 20:22:22

... Reply to note of 02/27/06 16:02

-- SECRET --

NOTE FROM: Oliver North
Subject: See see things?

Re reading things out of sequence due to fatigue. Many thanks for yr note. Have responded to most of this in my reply to exchanged - before I read this one. It concerns re Mike and shared here. Since re the passing of info, he seems well but poses a significant problem. Mike says he has info that Mike has a financial relationship w/ Corbo, Dipredi and perhaps Schulman. If true, this is not good. He also has that Corbo tells Mike everything and that is an additional reason to get Corbo out of the long range picture ASAP. He will still need to have his involved in the Yous transaction since he manages the financial end for the Israelians Europe. He ought to get quietly and think about how to handle Mike so that he does not start talking out of disagreement (if that's a word). Have asked JMF for a session w/ you and Dick as soon as possible after Dick returns tomorrow night in case there be in getting up an area delivery for the Mic resistance. A one of many talents of Secret is. Best be off. He appeared to make a speech on aid; the Mic resistance to a group of supporters. Best regards. North

[REDACTED]

UNCLASSIFIED

404

From: NS
To: NS
Re: NS
NOTE: F
Subject: NS
No sue
I had
path h
reason
play
it an
any ur
that h
to do-

By E

From NSRCM --CPLA
To: NSOLN --CPLA

Chapter 12, Footnote 62
Date and Time 02/27/86 21:37-8

404

Re: Reply to note of 02/27/86 20:11

~~SECRET~~
UNCLASSIFIED^N 41077 1363

NOTE FROM: ROBERT MCFARLANE

Subject: Exchanges

No sweat GI. I just sent a separate note about not sharing with John because I had forgotten to put it in the other note. And I fully understand the narrow path he is trying to walk between those who want to go balls out for the wrong reasons (Regan) and those who don't want to do it at all (GPS and Cap). So play

it any way you must. As for my commitments don't worry about them; set it up any way you wish that it works for them. I only mentioned it to John to ask that he try to give me a heads up soon so that I can cancel--which I am glad to do--with some grace.

12-62

UNCLASSIFIED

1205

DECLASSIFIED ON: 27 June 1987
under provisions of E.O. 12958
by B. [unclear] Security Council

~~SECRET~~
UNCLASSIFIED

AKW026704

OLWOOD 8/25/85
RDB 4/2/87

UNCLASSIFIED

From: NSRCM --CPCA
To: NSOLN --CPUA

Date and time 03/10/86 22:14:24

Reply to note of 03/10/86 21:10

N 41078

1364

~~SECRET~~

NOTE FROM: ROBERT MCFARLANE

Subject: How's It Going?

Roger Ollie. I guess I'm a little puzzled about the Iranian wiring diagram. From whom are we getting the word concerning a meeting in the Gulf? Is Gorba involved in that dialogue or is that info coming through the Israelis? It strikes me that it is probably OK to keep Gorba in the dark--to the extent that is possible to do so if there is another channel. Gorba is basically a self-serving mischief maker. Of course the trouble is that as far as we know, so is the entire lot of those we are dealing with. The Soviet threat is the strategic menace and I would guess that they would like to avoid having Russians in Iran. But it is going to take some time to get a feel for just who the players are on the contemporary scene in Teheran. So the sooner we get started the better.

I would be glad to meet to talk about the Marine Corps. I will be having lunch with Paul Nitze this Friday. How about right after that at about 2:00pm in your office?

Frank, y. I would expect the heat from the Hill to become immense on you by summer. Consequently it strikes me as wise that you leave the White House. At the same time, there will be no one to do all (or even a small part of what) you have done. And if it isn't done, virtually all of the investment of the past five years will go down the drain.

How's this for a self-serving scenario: 1. North leaves the White House in May and takes 30 days leave. 2. July 1st North is assigned as a fellow at the CSIS and (lo and behold) is assigned to McFarlane's office 3. McFarlane/North continue to work the Iran account as well as to begin to build other clandestine capabilities so much in demand here and there. Just a knee jerk musing.

12-83

8 July 87
E.O. 12958
by E. [unclear] National Security Council

1969

AWO26705

UNCLASSIFIED

OLWOOD Box 34-6
4/2/87
ADD

UNCLASSIFIED

Chapter 12
Footnote 24

12-84

Finally, on a new subject of very such like to have a one-on-one w/ you in the next few days if at all possible. I have been advised by NSIC that they have cut orders for me to go to 24 44017 this summer. This is a situation (like so many others) fraught w/ opportunity and risk. I, quite frankly don't know what to do about the situation, but will have to take some kind of action in the next few weeks. wd very much appreciate yr good counsel on the merits/liabilities of such an assignment and advice on how to proceed. Warm regards and many thanks to both you and Jenny for the beautiful flowers.

See's It Going?
NSO FROM: NSIC --CPA TO: NSOLB --CPA 03/10/86 09:00:10
TO: NSOLB --CPA

*** Reply to note of 03/10/86 00:50

NOTE FROM: ROBERT MCPHAILAN

Subject: See's It Going?

Reper: many thanks.

See's It Going?

NSO FROM: NSOLB --CPA TO: NSIC --CPA 03/11/86 07:23:30
TO: NSIC --CPA

*** Reply to note of 03/10/86 22:10

NOTE FROM: OLIVER BOSTE

Subject: See's It Going?

My gut response on yr scenario re Bost's personal situation is that I like it. There is a question as to how to make it all happen, but it wd be good to discuss w/ you 2100 Friday. Have blocked some on my sched. Looking forward to it. In re the Gorba prob: He is aware of the high stg and is basically carrying our water on the stg since he is still the only access we have to the Iranian political leadership. It wd be useful, I believe, for you to talk w/ George Cave, the Agency's Iran expert. He shares our concern that we may be dealing only w/ those who have an interest in area sales and their own personal financial gain and believes the "Russians are coming" approach is about the only way to broaden the perspective. We wd do well to explore other contacts if they can be opened.

George is going to see what we have on this so that we can assess whether or not it wd be useful to make such an approach. He

advises that if we were able to get to [redacted] or [redacted] w/ this message we might be able to make some headway. Still advise. If you wd like to meet w/ George, pls let me know and I will arrange. Warm regards.
North 87

See's It Going?
NSO FROM: NSIC --CPA TO: NSOLB --CPA 03/10/86 22:10:20
TO: NSOLB --CPA

*** Reply to note of 03/10/86 21:10

NOTE FROM: ROBERT MCPHAILAN

Subject: See's It Going?

Reper Oliver. I guess I'm a little puzzled about the Iranian string diagram.

UNCLASSIFIED

1193

1211

Chapter 12, Footnote 127

12-126

12-127

UNCLASSIFIED

From: NSJMP --CPUA
To: NSOLN --CPUA

Date and time 04/16/86 19:02:42

N 9212

*** Reply to note of 04/16/86 16:40

~~SECRET~~

NOTE FROM: JOHN POINDENTER
Subject: PRIVATE BLANK CHECK

You may go ahead and go, but I want several points made clear to them. There are not to be any parts delivered until all the hostages are free in accordance with the plan that you laid out for me before. None of this half shipment before any are released crap. It is either all or nothing. Also you may tell them that the President is getting very annoyed at their continual stalling. He will not agree to any more changes in the plan. Either they agree finally on the arrangements that have been discussed or we are going to permanently cut off all contact. If they really want to save their asses from the Soviets, they should get on board. I am beginning to suspect that doesn't have much authority.

cc: NSPBT --CPUA PAUL THOMPSON

5/6/87
CLASSIFIED BY EO 12958
DATE 5/6/87 BY [illegible]

UNCLASSIFIED

426

12-159

~~SECRET~~
UNCLASSIFIED

Chapter 12
Textnote 163

NOTE FROM JOHN POINDREAN
Subject: Iran
GOOD MORNING. LPT'S DISCUSS AT LUNCH.

Iran
MSG FROM: NSOLN --CPUA TO: NSJNP --CPUA
To: NSJNP --CPUA

05/06/86 08:07:06

*** Reply to note of 05/06/86 00:55

Originally Declassified/Released on July 1987
Under provisions of E.O. 12356
by M. Reger, National Security Council

~~SECRET~~

NOTE FROM: OLIVER NORTH
Subject: Iran

Done. I believe we have succeeded. Deposit being made tomorrow (today is a bank holiday in Switzerland). Release of hostages set for week of 19 May in sequence you have specified. Specific date to be determined by how quickly we can assemble requisite parts. Thank God - No answers prayers. V/R, North

Iran
MSG FROM: NSOLN --CPUA TO: NSJNP --CPUA
To: NSJNP --CPUA

05/06/86 08:02:59

*** Reply to note of 05/06/86 01:00

~~SECRET~~

NOTE FROM: OLIVER NORTH
Subject: CONTRA PROJECT

Yes, in general terms. He is supportive, as is Elliott. It is, to say the least, a high risk option - but it may be the only way we can ever get this thing to work. It is also important for you to know that [redacted] sent his [redacted] to see us with the following offer: The Israelis wd be willing to put 20-50 Spanish speaking military trainers/advisors into the CBY if we want this to happen. They wd do this in concert with an Israeli plan to sell the A-129 fighter to Honduras as a replacement for the 20 yr old A-199 which [redacted]

(1457) 23+24
MP 9/27/85
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1221

12-163

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Scott Armstrong, et. al.,)	
)	
Plaintiffs)	
)	Civil Action No.
v.)	89-0142 (JCR)
)	
Ronald W. Reagan, et. al,)	
)	
<u>Defendants</u>)	

Declaration of George Van Eron

I, George Van Eron, declare and say as follows:

1. I am currently the Director of the National Security Council (NSC) Secretariat. I have worked in the NSC Secretariat since November 1969 and I became Director in 1979. The NSC Secretariat is the information management office for the NSC. Among my responsibilities is to act as NSC staff liaison officer with the White House Communications Agency (WHCA). WHCA is the joint services Department of Defense activity which is charged with, among other responsibilities, providing certain computer services to the NSC staff.

2. I make this declaration based upon personal knowledge and belief and upon information made available to me in the course of my duties by other employees at the NSC and by WHCA employees.

3. The "PROFS" computer system" is the user term referring to one computer system available for use on WHCA's mainframe computer. A "PROFS" system was installed for use by the NSC staff on a pilot project basis in February 1982. In approximately April of 1985, the system became fully operational and available to most members of the NSC professional and support staff.

4. As set up for use by NSC staff members, the PROFS system has the capability to perform three primary functions: creation and transmittal of so-called "electronic mail"; creation and transmittal of formal documents that would then become part of the computer's data base; and creation and maintenance of an individual user's calendar. In addition, the PROFS system has the capability to perform other relatively minor functions, such as the "reminder function" which alerts the user to scheduled meetings/appointments and a function which includes the NSC staff telephone directory.

5. NSC staff members have used PROFS for messages about telephone calls, scheduling appointments, and to convey other types of routine information that in the past would have been

transmitted on the telephone.¹ Over the past few years, NSC staff members have come to use electronic mail a great deal in their daily work. It is far quicker than regular inter-office mail and it is less intrusive than a telephone call because the user can send the message and the recipient can read the message whenever convenient. Moreover, since the system is cleared to handle classified information, it often can be used to exchange information more easily than a "secure" telephone call. It saves time and enhances the efficiency of both the NSC professional staff and the NSC support staff. NSC staff members have used the "document" creation function very little because it was seen as clumsy, slow and not user friendly and most staff members already had word processing capabilities at individual work stations.

6. Backup tapes of the NSC "PROFS" system are in effect "snapshots" of the information in the WHCA computer space maintained for NSC use taken at a particular point in time. See Exhibit 2. The back-up procedures outlined in Exhibit 2 are still in place.

The standard procedure regarding departing staff members electronic mail accounts was that approximately thirty days after

¹In addition, the Assistant to the President for National Security Affairs (the "National Security Adviser"), and his assistants and secretaries used the calendar function to keep track of his schedule. Although these calendars are kept as a matter of convenience in scheduling, copies of both the electronic phone logs and calendars of General Colin Powell and Mr. Frank Carlucci were sent to the Reagan Library during the transition. Some staff members also have used the calendar function.

the staff member's departure, the NSC Secretariat would make the necessary arrangements for WHCA to delete the staff member's electronic mail file. Not all deletions, however, took place within the thirty day time frame because of the Iran/Contra matter and because of a lack of clear delineation between pre-December 1986 and post-December-1986 use of the PROFS which made application of the thirty day time frame difficult to implement in practice.

The "PROFS" backup tapes for November 15, 22 and 29, 1986 and a "PROFS" backup tape made in February 1987 were retained by WHCA. These tapes contain information relevant to the Iran/Contra matter. These tapes continue to be preserved because of the ongoing criminal investigation/prosecutions of Iran/Contra related-matters. If any data on the tapes is determined to be federal or presidential record material, the data will either be turned over to the National Archives or retained by the NSC at the conclusion of the criminal cases.

7. The functions of the NSC staff and adequate recordkeeping were among the subjects discussed in the Reagan Administration's National Security Decision Directive No. 266. See Exhibit 6.

During the Reagan Administration, the NSC Secretariat maintained a number of recordkeeping systems to process and track NSC presidential and agency records. See Exhibit 1. Members of the NSC staff were given instructions about their obligations

regarding the creation and maintenance of NSC agency and presidential records. See Exhibits 1, 3, & 4.

8. Members of the NSC staff also were given specific written instructions regarding the use of electronic mail, see Exhibit 2, and their obligations under the Federal and Presidential Record Acts with regard to electronic mail messages, see Exhibit 5.

I declare under penalty of perjury that the foregoing statements are true and correct, to the best of my knowledge, information and belief.

2/6/89
Date

George Van Eron
George Van Eron

WASHINGTON

January 15, 1987

MEMORANDUM FOR NSC STAFF

FROM: FRANK C. CARLUCCI

SUBJECT: Document Control Procedures

To follow up my remarks to you at the January 2 staff meeting, I would like to emphasize that the orderly flow of action and information documents based upon effective staff and interagency coordination is critical to a complete and objective presentation of views.

The Office of the Executive Secretary (Grant Green and Bob Pearson) is the sole channel for all material addressed to me or to Colin Powell. All papers, regardless of sensitivity or classification, will come through the Executive Secretary. Appropriate measures are being taken to ensure the proper handling of such documents. A special "dummy" system for extremely sensitive items has been established and will be outlined in a separate memo to you from Grant Green.

The following procedures are to be instituted, effective immediately:


- I. The Executive Secretary will continue to task papers for production by the staff. Colin and I have asked our front office staff to pass taskings to you through the Executive Secretary.
- II. All material is to be submitted and logged through the Executive Secretary. You are requested not to bring documents directly to the front office. If an advance copy is forwarded, please advise Grant or Bob. All "eyes only" NSC documents for me or Colin are to be delivered to Grant Green or Bob Pearson.
- III. I want to have the full and frank views of all staff members on matters of importance to the President. Therefore, any staff officer may forward his or her views on a particular subject in an information memo through the Senior Director and the Executive Secretary.

Ensuring the highest quality product for the President requires discipline in our document management process. I have tasked Grant and his team to ensure that decision documents reflect a frank, open and full presentation of policy options and to ensure that such information is shared among all those with policy responsibility. I look to each of you to cooperate in this process.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

January 15, 1987

MEMORANDUM FOR NSC STAFF MEMBERS

FROM: GRANT S. GREEN 

SUBJECT: Document Control Procedures

In an effort to improve the orderly flow of action and information items to and from the President, the Assistant to the President for National Security Affairs, the NSC staff and the departments and agencies, and to ensure the necessary accountability, all papers will be logged and their progress tracked through the NSC Secretariat's document control system.

As a first step, departmental couriers are being instructed to deliver all material previously delivered to individual NSC staff members in OEOB to the Secretariat in Room 381 OEOB. There it will be handled by properly trained and cleared personnel in accordance with appropriate security regulations and forwarded promptly to the appropriate staff member (s).

The procedure for delivery of material to the White House West Wing Ground Floor remains unchanged.

Sensitive intelligence material will continue to be delivered to the Secretariat Coordinator in Room 300 OEOB.

All papers to and from Mr. Carlucci will come through my office. If time pressures do not permit adherence to normal procedures, handcarry the package to my office for immediate delivery to the front office. The copies will be used to complete the control process.

A special category of "X" items has been established to handle those items of particular sensitivity which are not handled in System IV. The logging and control procedures will be based on a dummy sheet prepared by staff officers. A detailed procedure for handling "X" items is attached. Use of the "X" designator will be monitored to prevent its abuse.

Attachment
a/s

X ITEM PROCEDURES

When a staff officer decides that additional protection is required beyond the standard security classifications, the following procedures will be followed:

1. The officer's secretary will call the Secretariat (ext. 6534) and ask for an X number. If the item has already been logged and numbered, he/she will ask that the number be made an X number and that any copies retained by NSC/S be returned to him or her.
2. NSC/S will assign the next log number, followed by an X, and await further information on the item.
3. The X number will be typed on the item in the upper right-hand corner and a dummy sheet prepared in accordance with the sample attached giving only such information as is required for future identification.
4. The dummy sheet will be sent to NSC/S as its record of the item. No copies of the document itself will pass through NSC/S.
5. The original and all copies of the document will be handcarried to the Executive Secretary.
6. NSC/S will be notified as the item moves through the offices: e.g., #1234X has been returned to staff officer for revision; #1234X has been sent to the President; President has signed #1234X, etc. This movement will be recorded on the dummy sheet, including the file location when action on the item has been completed.

ACTION

January 15, 1987

SIGNED

MEMORANDUM FOR FRANK C. CARLUCCI

FROM: GRANT S. GREEN

SUBJECT: Information Accountability and Quality Control

RECOMMENDATION

That you sign the memo to the staff at Tab I.

Approve Disapprove

That you approve my signing the memo to the staff at Tab II.

Approve Disapprove


That you approve my signing the memo to agency counterparts at Tab III.

Approve Disapprove

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

March 5, 1987

MEMORANDUM FOR THE NSC STAFF

FROM: GRANT S. GREEN, JR. 

SUBJECT: PROFS and A1

The following is provided in response to questions from new incoming staff regarding PROFS and the electronic mail systems.

PROFS (on the IBM system) and A1 (on the VAX system) are the two basic computer systems that allow members of the NSC staff to communicate information electronically among each other. PROFS/A1 is an internal electronic system that is used for information that would otherwise be handled by phone. Items requiring staff action should be typed, logged, and processed through the normal record systems, i.e., Systems I, II and IV.

Should you be tasked for action via PROFS/A1, the PROFS/A1 note should be printed and made part of the package forwarded for action by the principals.

Each note should be appropriately classified. If it contains SCI information, special category, or compartmented intelligence, so specify.

White House Communications Agency (WHCA) takes a daily snapshot of PROFS data files on all USERIDS. These are "written over" after seven days except Saturday's snapshot, which is retained for two weeks and then "written over." The Technical Support Staff for the VAX uses essentially the same "write-over" procedures, but monthly.

WHCA responses to requests for access to NSC data are coordinated with the NSC.

Attached for your convenience is a brief PROFS/A1 users fact sheet. Should you have further questions or computer problems, please call George Van Eron, ext. 7386.

Attachment

PROFS/A1 User fact sheet

P R O F S / V A X

PROFS (IBM) and ALL-IN-1 (Vax/A1) is an internal electronic system, cleared to the SCI level.

Every effort should be taken to keep information stored in the system to a minimum. Please review your NOTELOG and files frequently and retain only those items needed for future reference.

Enter the appropriate classification at the top of each note or document. If it contains special category or compartmented information, so specify.

The PROFS in-basket and A1's 'Reading New Mail' function is used to receive incoming notes and/or documents. You should not retain notes in the PROFS in-basket. You should file or delete your notes as soon as possible. The more notes in your PROFS in-basket, the slower is machine response time.

A1 automatically files your notes in a 'read' file.

NOTELOGS & 'Read File'

Notelogs and 'Read Files' are used to store the notes you have filed plus all of your outgoing notes. You should review information stored in the system each week and retain only those notes that are needed.

DOCUMENTS

Documents are more formal than PROF notes and require a knowledge of some special functions. If you expect to use this feature, please contact the PROFS or A1 administrators on ext. 6330 or 5132, respectively.

HELP

There is a user assistance feature already built into both PROFS and A1. It is called HELP. In PROFS, you access the HELP feature through PF9 from any PROFS screen. This will give you access to an on-line USERS guide.

In addition, there is a "Helpme" assist facility which provides access to a variety of useful programs, e.g., NOTELOG maintenance, RECALL note feature, set-up calendar access, create nicknames, send a reminder, etc.

In A1, you simply use the yellow gold key on the upper right part of the keyboard together with the letter H. This feature will display an easy-to-read users guide that will explain the features you are interested in.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

May 19, 1988

MEMORANDUM FOR THE NSC STAFF

FROM: PAUL SCHOTT STEVENS 

SUBJECT: Records

It is important that you begin now to review documents in your custody in preparation for the eventual transfer of all official records to a depository at the end of the administration. You do not want to wait until November to begin this process.

Regardless of your personnel status during and after the transition, all presidential and NSC records of the Reagan Administration, including those convenience files in the possession of staff officers, will be reviewed and retired or stored before the start of the new administration.

All data stored electronically will be subject to a similar process of review and disposition.

The schedule for implementing the program outlined in this memorandum takes into account the somewhat slower pace that normally characterizes the summer months, the availability of additional personnel resources in the Secretariat to assist staff officers in organizing their files, and the hope that most of this work can be completed before the busier months of the fall and the transition. Clearly some directorates will have heavier schedules than others and the deadlines indicated are meant to be suggestive of the pace and progress we would like to achieve.

I. Personal Records: (Phase I, Deadline: June 15, 1988)

No later than June 15, 1988, all of the files you believe are personal in nature should be segregated from official records and available for review prior to being removed from the complex. This is in your interest. In more hectic days ahead, your personal files could be inadvertently mingled with official records. I will ask each staff officer to certify completion of this requirement.

Once your personal files are ready, please inform Brenda Reger (or, in her absence, Nancy Menan), the staff of whose directorate will review them and authorize their release. Under no circumstances should any records be removed from the complex absent such authorization.

It is also recommended that any personal mail you are now receiving at the office be redirected to your home address so that it will not be lost during the transition period.

The definition of what constitutes a personal record is very narrow and only will relate to a very small number -- or perhaps none -- of the documents in your files. Documents produced in the course of your normal duties are considered to be official records and must be formally retired at the end of the Administration.

Personal files are described in the Presidential Records Act as:

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.

Attached is an excerpt from the White House Staff Manual which provides additional information on personal and presidential records.

To qualify as personal, a record must be unclassified and may not relate to White House or NSC business. Some examples are: personal correspondence, personal financial records and personal photos. Again, these items must be filed separately and may be removed only after approval by the staff of the Information Policy directorate.

II. Official Records: (Phase II, Deadline: August 15, 1988)

No later than August 15th, all official records in your custody should be assembled, in an orderly fashion, and prepared for transfer to the Secretariat for retirement or storage. It is recommended that you transfer to the Secretariat as soon as possible all files that you no longer need. Secretariat staff will contact your office and help you box these records.

The following steps should be taken immediately to prepare your office files for transfer:

1. All originals of LOGGED items must be returned to the Secretariat. These are either presidential or federal records and must be retained by the NSC or the National Archives. This includes outstanding X system items that should be sealed in an "EYES ONLY" envelope and given to the Executive Secretary for appropriate disposition.

2. To help ensure that retired official records include a complete set of materials originated or utilized under your tenure, copies may be retained among your retired official files of those original records turned over to the Secretariat for disposition.

3 Under no circumstances may any original official records/files be destroyed. This is strictly prohibited by law.

A. Chron Files:

Most staff members maintain CHRON (also identified as convenience or subject files) copies of materials that they have originated and that have been processed, in the various systems, through the Secretariat. Chron files may include other materials (such as reports from other agencies). These files should be assembled and maintained in good order.

Those files to be retained are traditionally sent to the appropriate presidential library to document the employee's contribution as a member of the president's staff. It is in your best interest to ensure that these files are maintained in good order, both for the historical record and also in the event that you later wish to gain access to the files. Such access is limited to those files that you created.

An employee may not retain copies of classified documents. Copies of unclassified documents he or she originated may be retained only after review and approval by the Information Policy directorate and after the original record has been returned to and accounted for by the Secretariat.

It is strongly recommended that you begin to review your files and to maintain them in a manner that allows both easy identification and separation later this year.

B. Special Cases:

Intelligence Documents

All serial-numbered intelligence documents, including publications coming from the intelligence community such as NIEs or DIA appraisals, MUST be returned to the Secretariat for disposition. They cannot be destroyed by you or left in your chron files.

Freedom of Information

All FOI/EO cases should be acted upon immediately and returned with your recommendations, to the Office of Information Policy for final disposition.

Pre-NSC Service

Classified materials brought to the NSC by detailees from other agencies, which predate your service on the NSC staff, must be maintained separately from all other records/files. These materials must be so identified and may only be removed from the NSC in accordance with established procedures authorized by the Information Policy directorate.

III. Wrap-Up: (Phase III, Deadline: December 1, 1988)

No later than December 1, 1988, you should have in your possession only the current month of files in your office. All X items, FOI/EO cases (completed) and intelligence documents should be returned to the Secretariat.

Bob Perito, George Van Eron, and the Secretariat staff will be available to answer any questions you may have and otherwise to assist you throughout this effort. Your cooperation in this important undertaking will be greatly appreciated.

Attachment

government business. Personal documents and files should be segregated and stored separately from official records.

The ownership, maintenance and disposition of Presidential documents are governed by the Presidential Records Act, 44 U.S.C. §§ 2201-07 (the "Act") The Act's requirements must be followed by White House and Executive Office staff. Pending issuance of regulations by the Archivist of the United States, the following guidance should be followed with respect to these records.

II. Units of the Executive Office of the President Covered by the Act

All records of the White House Office, the Office of Policy Development, the Council of Economic Advisers and the Intelligence Oversight Board are Presidential records.

I. Types of Records Covered by the Act

The Act defines "Presidential records" to include not only the official documents written and received by the President but also the official records created or received by his staff. While the Act requires that staff members adequately document the performance of the President's constitutional, statutory and ceremonial duties, the decision whether information should be memorialized in the first instance remains with each staff member. For example, it is within the discretion of a staff member to dispose of scratch pads, unimportant notes to one's secretary and the like, provided this is done contemporaneously and is based upon a determination that creation of a record is not required in the circumstance. "Presidential records" encompass any form of memorializing information, including but not limited to written documents, models, pictures, films and audio and electronic recordings. Records relating to political activities which are undertaken in the course of carrying out the President's official or ceremonial duties are Presidential records (e.g., political briefing papers for official trips and official meetings are Presidential records. Records relating to political activities not associated with the President's official duties are not Presidential records (e.g. materials for political and campaign-related meetings and trips.)

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 records of the National Security Council staff are federal records if they were received or created in connection with the work of the statutorily-created National Security Council (including any interagency groups convened under National Security Council auspices). Additionally the NSC's internal administrative records are federal records. The records of the National Security Council staff are Presidential records if they were received or created for the President, the Assistant to the President for National Security, his Deputy or a member of the White House staff independently of any meeting or policy and staff actions of the NSC or its various groups.

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

III. Maintenance of Presidential Records

The law imposes an affirmative obligation on staff members to document adequately the performance of the President's constitutional, statutory and ceremonial duties. Staff members are urged to document the performance of their duties and preserve these records in complete and orderly files. Personal records should be kept apart from official records and clearly labeled as such. Moreover, those officials or units which maintain both Presidential records and federal records should file them separately with a clear indication of whether they are Presidential or federal.

Private papers, which staff members might keep in their offices, such as insurance claim forms or purely personal correspondence, are personal, not Presidential records. Personal records include phone logs, visitor logs, notes, diaries or journals that are kept by a staff member exclusively for his or her own use and reference, are not accessible to others on the staff and are not used for transacting

Presidential, federal and personal records can be obtained from the Office of the Counsel to the President. Assistance in establishing file systems can be obtained from the White House Office of Records Management.

IV. Disposition and Destruction of Presidential Records

Once a decision is made to memorialize and maintain information as a Presidential record it becomes 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 Act prohibits the disposal of Presidential records unless those records no longer have administrative, historical, informational, or evidential value. Moreover, before disposing of any records the President must notify the Archivist and under some circumstances appropriate Congressional committees.

The White House Office of Records Management ("ORM") maintains records disposal schedules, which have been approved by the Archivist, for certain recurring types of disposable papers, such as form letter public mail, anonymous public mail, unsuccessful and unsolicited applications for employment, and enclosures received in public mail. If you have a recurring type of disposable material in your office, you may wish to request that ORM enter it on the records disposal schedule. Before you dispose of any documents, contact ORM to determine whether the category of items involved has been approved for disposal. Such prior notice is not necessary for destruction of exact duplicates of documents which are being maintained, or for copies of officially published documents, such as printed reports, etc.

ORM can also arrange for storage of records which are to be preserved, but for which there is no longer a current need. Offices are encouraged to develop systematic records retirement schedules, reserving filing space for those records for which there is a current need.

V. Legal Control of Presidential Records

Presidential records remain in the custody and control of the President during his term of

the Freedom of Information Act. In contrast, federal records are accessible to the public under the provisions of the Freedom of Information Act.

Upon completion of the Administration, the Archivist acquires custody of Presidential records. However, the President may assert control for twelve years over public access to certain categories of records. Basically, these categories are: (a) security classified items; (b) documents related to appointments to Federal office; (c) items specifically exempted from disclosure by other statutes; (d) trade secrets and commercial or financial information; (e) confidential communications requesting or submitting advice between the President and his advisers, or between such advisers; and (f) personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Thereafter, public access is determined by the Freedom of Information Act, subject in all cases to the President's right to invoke any Constitutional privilege against disclosure.

VI. Records that May be Retained by Staff Members Upon Departure

To insure that the President maintains the maximum controls permitted by law, staff members may not remove copies of Presidential records from their offices either now or at the end of the Administration. When a staff member leaves the White House, he or she shall deliver all files and records to ORM at the White House or, in the case of the National Security Council staff, to the Executive Secretariat of the National Security Council. Federal records shall be left with the appropriate agency. Staff members may remove only those records which are purely personal.

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 Counsel's Office. Assistance in records maintenance and storage can be obtained from the White House of Records Management.

Presidential, federal and personal records can be obtained from the Office of the Counsel to the President. Assistance in establishing file systems can be obtained from the White House Office of Records Management.

IV. Disposition and Destruction of Presidential Records

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The White House Office of Records Management ("ORM") maintains records disposal schedules, which have been approved by the Archivist, for certain recurring types of disposable papers, such as form letter public mail, anonymous public mail, unsuccessful and unsolicited applications for employment, and enclosures received in public mail. If you have a recurring type of disposable material in your office, you may wish to request that ORM enter it on the records disposal schedule. Before you dispose of any documents, contact ORM to determine whether the category of items involved has been approved for disposal. Such prior notice is not necessary for destruction of exact duplicates of documents which are being maintained, or for copies of officially published documents, such as printed reports, etc.

ORM can also arrange for storage of records which are to be preserved, but for which there is no longer a current need. Offices are encouraged to develop systematic records retirement schedules, reserving filing space for those records for which there is a current need.

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To insure that the President maintains the maximum controls permitted by law, staff members may not remove copies of Presidential records from their offices either now or at the end of the Administration. When a staff member leaves the White House, he or she shall deliver all files and records to ORM at the White House or, in the case of the National Security Council staff, to the Executive Secretariat of the National Security Council. Federal records shall be left with the appropriate agency. Staff members may remove only those records which are purely personal.

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 Counsel's Office. Assistance in records maintenance and storage can be obtained from the White House of Records Management.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

March 28, 1988

ACTION

MEMORANDUM FOR PAUL SCHOTT STEVENS

FROM: ROBERT PERITO *RP*

SUBJECT: Disposition of Records

It is important that the staff begin organizing their files in preparation for the presidential transition. Attached at Tab I is a memorandum for your signature directing the staff to begin this process.

In support, Van is planning to have Brian, Art and two others available to assist the staff in organizing and retiring their files. Additional part-time staff is being hired now in order to have the resources necessary to support this project.

George Van Eron, *JE* Brenda Reger, *Brenda* Mary Dix, *MD* Michael Donley, and Nicholas Rostow concur.

RECOMMENDATION

That you sign the memorandum to the staff at Tab I.

Approve *RP*

Disapprove _____

Attachment

Tab I - Memorandum to the Staff

November 4, 1988

MENAN

MEMORANDUM FOR THE NSC STAFF

FROM: PAUL SCHOTT STEVENS *PS*
SUBJECT: Disposition of Records

This is MUST reading. It is important that you begin now to review documents in your custody in preparation for the eventual transfer of all official records to a depository at the end of the administration.

Regardless of your personnel status during and after the transition, all presidential and NSC records of the Reagan Administration, including those convenience files in the possession of staff officers, will be reviewed and retired or stored before the start of the new administration.

All data stored electronically will be subject to a similar process of review and disposition.

I. Personal Records (Phase I. Deadline: November 5, 1988)

We had hoped that, by this date, any files a staff member believes to be personal in nature would have been segregated from official records and made available for the review that must take place prior to any files' being removed from the complex. If you have not attended to this, please do so immediately.

Once your personal files are ready, please inform Nancy Menan, whose staff will review them and authorize their release, if appropriate. I repeat, under no circumstances may any records be removed from the complex absent such authorization.

It is also recommended that any personal mail you are now receiving at the office be redirected to your home address so that it will not be lost during the transition period.

The definition of what constitutes a personal record is very narrow and will only relate to a very small number--or perhaps none--of the documents in your files. Documents produced in the course of your normal duties are considered to be official records and must be formally retired at the end of the Administration.

I. Personal Records (continued)

Personal files are described in the Presidential Records Act as:

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.

Attached is an excerpt from the White House Staff Manual which provides additional information on personal and presidential records.

To qualify as personal, a record must be unclassified and may not relate to White House or NSC business. Some examples are: personal correspondence, personal financial records and personal photos. Again, these items must be filed separately and may be removed only after approval by the staff of the Information Policy directorate.

II. Official Records (Phase II. Deadline: November 15, 1988)

No later than November 15th, all official records in your custody should be assembled, in an orderly fashion, and prepared for transfer to the Secretariat for retirement or storage. It is recommended that you transfer to the Secretariat as soon as possible all files that you no longer need. Secretariat staff will contact your office and help you box these records.

The following steps should be taken immediately to prepare your office files for transfer:

1. All originals of LOGGED items must be returned to the Secretariat. These are either presidential or federal records and must be retained by the NSC or the National Archives. This includes outstanding X system items that should be sealed in an "EYES ONLY" envelope and given to the Executive Secretary for appropriate disposition.
2. To help ensure that retired official records include a complete set of materials originated or utilized under your tenure, copies may be retained among your retired official files of those original records turned over to the Secretariat for disposition.
3. Under no circumstances may any original official records/files be destroyed. This is strictly prohibited by law.

A. Chron Files

Most staff members maintain CHRON (also identified as convenience or subject files) copies of materials that they have originated and that have been processed in the various systems, through the Secretariat. Chron files may include other materials (such as reports from other agencies). These files should be assembled and maintained in good order.

Those files to be retained are traditionally sent to the appropriate presidential library to document the employee's contribution as a member of the president's staff. It is in your best interest to ensure that these files are maintained in good order, both for the historical record and also in the event that you later wish to gain access to the files. Such access is limited to those files that you created.

An employee may not retain copies of classified documents. Copies of unclassified documents he or she originated may be retained only after review and approval by the Information Policy Directorate and after the original record has been returned to and accounted for by the Secretariat.

It is strongly recommended that you begin to review your files and to maintain them in a manner that allows both easy identification and separation later this year.

B. Special Cases

Intelligence Documents

All serial-numbered intelligence documents, including publications coming from the intelligence community such as NIEs or DIA appraisals, MUST be returned to the Secretariat for disposition. They cannot be destroyed by you or left in your chron files.

Freedom of Information

All FOI/EO cases should be acted upon immediately and returned with your recommendations to the Office of Information Policy for final disposition.

Pre-NSC Service

Classified materials brought to the NSC by detailees from other agencies, which predate your service on the NSC staff, must be maintained separately from all other records/files. These materials must be so identified and may only be removed from the NSC in accordance with established procedures authorized by the Information Policy directorate.

III. Wrap-Up (Phase III. Deadline: December 1, 1988)

No later than December 1, 1988, you should have in your possession only the current month of files in your office. All X items, FOI/EO cases (completed) and intelligence documents should be returned to the Secretariat.

Bob Perito, George Van Eron, and the Secretariat staff will be available to answer any questions you may have and otherwise to assist you throughout this effort. Your cooperation in this important undertaking will be greatly appreciated.

Attachment

Excerpt from White House Staff Manual

tion of Presidential documents are governed by the Presidential Records Act, 44 U.S.C. §§ 2201-07 (the "Act"). The Act's requirements must be followed by White House and Executive Office staff. Pending issuance of regulations by the Archivist of the United States, the following guidance should be followed with respect to these records.

I. Types of Records Covered by the Act

The Act defines "Presidential records" to include not only the official documents written and received by the President but also the official records created or received by his staff. While the Act requires that staff members adequately document the performance of the President's constitutional, statutory and ceremonial duties, the decision whether information should be memorialized in the first instance remains with each staff member. For example, it is within the discretion of a staff member to dispose of scratch pads, unimportant notes to one's secretary and the like, provided this is done contemporaneously and is based upon a determination that creation of a record is not required in the circumstance. "Presidential records" encompass any form of memorializing information, including but not limited to written documents, models, pictures, films and audio and electronic recordings. Records relating to political activities which are undertaken in the course of carrying out the President's official or ceremonial duties are Presidential records (e.g., political briefing papers for official trips and official meetings are Presidential records. Records relating to political activities not associated with the President's official duties are not Presidential records (e.g. materials for political and campaign-related meetings and trips.)

Private papers, which staff members might keep in their offices, such as insurance claim forms or purely personal correspondence, are personal, not Presidential records. Personal records include phone logs, visitor logs, notes, diaries or journals that are kept by a staff member exclusively for his or her own use and reference, are not accessible to others on the staff and are not used for transacting

II. Units of the Executive Office of the President Covered by the Act

All records of the White House Office, the Office of Policy Development, the Council of Economic Advisers and the Intelligence Oversight Board are Presidential 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 records of the National Security Council staff are federal records if they were received or created in connection with the work of the statutorily-created National Security Council (including any interagency groups convened under National Security Council auspices). Additionally the NSC's internal administrative records are federal records. The records of the National Security Council staff are Presidential records if they were received or created for the President, the Assistant to the President for National Security, his Deputy or a member of the White House staff independently of any meeting or policy and staff actions of the NSC or its various groups.

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

III. Maintenance of Presidential Records

The law imposes an affirmative obligation on staff members to document adequately the performance of the President's constitutional, statutory and ceremonial duties. Staff members are urged to document the performance of their duties and preserve these records in complete and orderly files. Personal records should be kept apart from official records and clearly labeled as such. Moreover, those officials or units which maintain both Presidential records and federal records should file them separately with a clear indication of whether they are Presidential or federal.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20505

December 20, 1988

MEMORANDUM FOR THE NSC STAFF

FROM: PAUL SCHOTT STEVENS *pm*

SUBJECT: Review of Computer Files for Presidential and Agency Records

As you are aware, members of the NSC staff have an ongoing responsibility to create written records pursuant to the Federal and Presidential Records Acts. The Federal Records Act requires the creation of records reflecting "the organization, functions, policies, decisions, procedures and essential transactions" of an agency, and the Presidential Records Act requires the documentation of "the activities, deliberations, decisions, and policies" that reflect the performance of the President's constitutional duties.

Consistent with longstanding NSC policy and practice, information meeting the definition of a federal or presidential record is required to be formally entered into the Secretariat's record systems and may not be maintained solely in staff convenience files or in electronic mail or other computer files.

With the end of the Administration approaching, it is prudent to remind you of your obligations under the Federal and Presidential Records Act. I anticipate that there are no federal or presidential records maintained in your computer files that are not also to be found in our formal records systems. Incident to the change of Administration, such computer files may no longer be accessible after January 20, 1989. Therefore, in order to guard against the inadvertent loss of any record, however, I ask that you review your computer files prior to your departure or January 20, 1989, whichever comes first. Should you identify therein any federal or presidential record, as defined above, that you believe may not be contained in the Secretariat systems, please forward it in hard copy to George Van Eron for appropriate action.

Any questions should be addressed to the Legal Adviser's Office.

THE WHITE HOUSE

WASHINGTON

SYSTEM II
90249

March 31, 1987

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF THE INTERIOR
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF COMMERCE
THE SECRETARY OF LABOR
THE SECRETARY OF HEALTH AND HUMAN SERVICES
THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY OF TRANSPORTATION
THE SECRETARY OF ENERGY
THE SECRETARY OF EDUCATION
THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
THE DIRECTOR OF CENTRAL INTELLIGENCE
THE CHIEF OF STAFF TO THE PRESIDENT
THE COUNSEL TO THE PRESIDENT
THE ASSISTANT TO THE PRESIDENT FOR POLICY
DEVELOPMENT
CHAIRMAN, JOINT CHIEFS OF STAFF
DIRECTOR, ARMS CONTROL AND DISARMAMENT AGENCY
ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION
DIRECTOR, UNITED STATES INFORMATION AGENCY
ADMINISTRATOR OF VETERANS AFFAIRS

SUBJECT: Implementation of The Recommendations of The
President's Special Review Board

The President has formally approved the attached National Security Decision Directive on the implementation of the recommendations of the President's Special Review Board (Tower Board). This NSDD is unclassified and was provided to Congress in connection with the President's March 31, 1987 message.


Frank C. Carlucci

Attachment
NSDD 266

WASHINGTON

March 31, 1987

NATIONAL SECURITY DECISION
DIRECTIVE NUMBER 266IMPLEMENTATION OF THE RECOMMENDATIONS OF
THE PRESIDENT'S SPECIAL REVIEW BOARD

The President's Special Review Board submitted its Report on February 26, 1987. I addressed the Nation on March 4 and announced first, that I endorse the Board's recommendations; and second, that I intend to go beyond the Board's recommendations to put the National Security Council (NSC) process in even better order. This Directive spells out the specific steps I have approved to implement the letter and spirit of the Board's recommendations.

Many steps were taken even prior to the issuance of the Board's Report. The NSC staff was rebuilt and made subject to proper management discipline. A directive was issued on my instruction to prohibit the NSC staff itself from undertaking covert operations. A comprehensive legal and policy review of such operations, ordered by me, was already far advanced. Proper procedures for consultation with the Congress were reaffirmed and are being observed.

In light of the Board's Report, additional measures are required. This Directive sets forth the specific timetable according to which I expect all such measures to be completed. It is of utmost importance that the NSC -- including all members of, and advisors to, the NSC, the Assistant to the President for National Security Affairs, the NSC staff, and all other participants in the NSC process -- act decisively to accomplish my objectives fully.

I shall inform Congress of the nature and progress of these Executive branch efforts prior to the end of March; I also shall call upon Congress to heed the balance of the Board's recommendations, namely:

-- that no substantive change be made in the provisions of the National Security Act dealing with the structure and operation of the NSC system;

-- that the position of Assistant to the President for National Security Affairs not be made subject to Senate confirmation; and

-- that Congress replace the existing Intelligence Committees of the Senate and House of Representatives with a new joint committee with a restricted staff to oversee the intelligence community.

These recommendations of the Board, which are addressed to Congress, I also strongly endorse.

I. Model for the National Security Council System

The structure and procedures of the National Security Council shall incorporate all aspects of the model of the NSC system described in the Report of the President's Special Review Board as the Board's principal recommendation. This directive implements that recommendation in each of the following respects:

- organizing for national security, including provision of appropriate guidelines to participants in the NSC process;
- the role and functions of the Assistant to the President for National Security Affairs;
- the nature and responsibilities of the NSC staff; and
- the NSC and interagency process.

A. Organizing for National Security

The National Security Council shall be the principal forum for consideration of national security policy issues requiring presidential decision. The function of the NSC shall be as set forth in the National Security Act of 1947, as amended. Broadly speaking, the NSC shall advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable Executive departments and agencies to cooperate more effectively in matters involving the national security.

Participation in the NSC shall be as provided by law and this Directive. Statutory members of the NSC are the President, the Vice President, the Secretary of State, and the Secretary of Defense. Other heads of Executive departments and agencies and senior officials within the Executive Office of the President shall participate in the NSC as provided in this Directive.

The Director of Central Intelligence and the Chairman of the Joint Chiefs of Staff are statutory advisors to the NSC. The Director of Central Intelligence shall advise the NSC with respect to coordinating intelligence activities of Executive departments and agencies in the interest of national security and as otherwise provided by law. The Chairman of the Joint Chiefs of Staff shall be principal military advisor to the President, the Secretary of Defense, and the NSC.

The Directors of the United States Arms Control and Disarmament Agency and United States Information Agency are special statutory advisors to the NSC. The Director of the Arms Control and Disarmament Agency shall be principal advisor to the President, the Secretary of State, and the NSC on arms control and disarmament matters. The Director of the United States Information Agency shall be principal advisor to the President, the Secretary of State, and the NSC on international informational, educational, and cultural matters.

The Secretary of State shall be the President's principal foreign policy advisor. As such, the Secretary shall be responsible for the formulation of foreign policy, subject to review within the NSC process and the President's guidance as appropriate, and for the execution of approved policy. I assign to the Secretary of State authority and responsibility, to the extent permitted by law and this Directive, for the overall direction, coordination, and supervision of the interdepartmental activities incident to foreign policy formulation, and the activities of Executive departments and agencies of the United States overseas. Such activities shall not include those of United States military forces operating in the field under the command of a United States area military commander, and such other military activities as I elect, as Commander in Chief, to conduct exclusively through military or other channels. Activities that are internal to the execution and administration of the approved programs of a single department or agency and that are not of such nature as to affect significantly the overall United States overseas program in a country or region are not considered to be activities covered within the meaning of this Directive.

The Secretary of Defense shall be the President's principal defense policy advisor. As such, the Secretary shall be responsible for the formulation of general defense policy, subject to review within the NSC process and the President's guidance as appropriate, for policy related to all matters of direct and primary concern to the Department of Defense, and for the execution of approved policy. I assign to the Secretary of Defense authority and responsibility, to the extent permitted by law and this Directive, for the overall direction, coordination, and supervision of the interdepartmental activities incident to defense policy formulation.

The Director of Central Intelligence shall be the President's principal advisor on intelligence matters. As such, the Director shall be responsible for the formulation of intelligence activities, policy and proposals, subject to review within the NSC process and the President's guidance as appropriate, as set forth in law and relevant Executive orders. I assign to the Director of Central Intelligence authority and responsibility, to the extent permitted by law, Executive order, and this Directive, for the overall direction, coordination, and supervision of the interdepartmental activities incident to intelligence matters.

Although taking part in the NSC system by virtue of official positions as heads of Executive departments or agencies or as senior officials within the Executive Office of the President, all NSC participants shall sit as advisors to the President in connection with the President's exercise of authority under the Constitution and laws of the United States. In their capacity as department and agency heads, NSC participants shall ensure the effective and expeditious execution and implementation of overall national security policies established by the President. Execution and implementation of such policies shall not be the responsibility of the Assistant to the President for National Security Affairs or of the NSC staff except as the President specifically directs.

B. The Assistant to the President for National Security Affairs

The Assistant to the President for National Security Affairs ("National Security Advisor") shall have primary responsibility for day-to-day management of the National Security Council process, and shall serve as principal advisor on the President's staff with respect to all national security affairs. The National Security Advisor shall have access and report directly to the President, and shall keep the President and the Chief of Staff to the President fully and currently informed on all matters of substance.

As manager of the NSC process, the National Security Advisor shall ensure the following: that matters submitted for consideration by the NSC cover the full range of issues on which review is required; that those issues are fully analyzed; that a full range of options is considered; that the prospects and risks of each are examined; that all relevant intelligence and other information is available to NSC participants; that legal matters are addressed; and that difficulties in implementation are confronted. The National Security Advisor shall monitor policy implementation to ensure that policies are executed in conformity with the intent of presidential decisions. He shall initiate periodic reassessments of policies and operations, in light of changed circumstances or United States interests. The National Security Advisor shall keep NSC participants currently informed of presidential decisions. He shall ensure that NSC consultations and presidential decisions are adequately recorded, and that appropriate and timely preparations are made with respect to meetings convened under NSC auspices.

As the President's principal staff advisor on national security affairs, the National Security Advisor shall present his own views and advice and, at the same time, faithfully represent the views of other NSC participants.

C. The National Security Council Staff

The functions and responsibilities of the Executive Secretary of the National Security Council shall be as provided by the National Security Act of 1947, as amended. The Executive Secretary heads the NSC staff and, in accordance with applicable laws and regulations, appoints and fixes the compensation of personnel required to perform such duties as may be prescribed by the President, the NSC, or the National Security Advisor. The Executive Secretary shall establish procedures within the NSC Executive Secretariat for maximum effective support of the NSC and the National Security Advisor in performance of responsibilities assigned by the President. With the guidance and under the instruction of the National Security Advisor, the Executive Secretary shall develop and implement appropriate policies with respect to the overall size of the NSC staff, the background and experience of its members, the duration of their service, and the organization of staff offices. The objectives shall be twofold: first, an NSC staff that is small, highly competent, broadly experienced in the making of national security policy, and properly balanced from among Executive departments and agencies and persons drawn from within and outside government; and second, an NSC staff organization that imposes clear, vertical lines of control and accountability.

The Executive Secretary, through the National Security Advisor, shall recommend for my consideration specific measures designed to enhance the continuity of the functioning of the NSC, including measures to ensure adequate institutional recordkeeping from administration to administration. Specific recommendations for these purposes shall be made not later than June 30, 1987.

The NSC staff, through the Executive Secretary, shall assist the National Security Advisor in each aspect of his roles both as manager of the NSC process and as my principal staff advisor on national security affairs.

The NSC staff shall include a Legal Advisor whose particular responsibility it will be to provide legal counsel to the National Security Advisor, the Executive Secretary, and the NSC staff with respect to the full range of their activities, and to assist the National Security Advisor in ensuring that legal considerations are fully addressed in the NSC process and in interagency deliberations. The NSC Legal Advisor shall be accorded access to all information and deliberations as may be required for these purposes, and shall advise the National Security Advisor and Executive Secretary as appropriate on all matters within his responsibility. He shall work cooperatively with the Counsel to the President, the Legal Adviser of the Department of State, and with senior counsel to all other NSC members, advisors, and participants.

D. The National Security Council and Interagency Process

1. National Security Council Meetings

The National Security Council shall meet regularly to consider matters directed by the President or recommended by the National Security Advisor or by the other NSC members. The National Security Advisor shall attend all NSC meetings and shall be responsible for the agenda and conduct of such meetings under my direction. The statutory members of the NSC, and the Director of Central Intelligence and Chairman of the Joint Chiefs of Staff as statutory advisors to the NSC, shall attend NSC meetings. In addition, the Attorney General, the Secretary of the Treasury, and the Chief of Staff to the President at my invitation shall attend NSC meetings. The special statutory advisors to the NSC, the Director of the Office of Management and Budget, and the heads of other Executive departments and agencies shall be invited to attend such NSC meetings as relate to matters vested under their authority.

The National Security Advisor shall provide NSC participants advance notice of all NSC meetings and agenda therefor. To the extent practicable, the National Security Advisor shall circulate decision documents in advance of such meetings. The Executive Secretary of the NSC and the NSC staff shall assist the National Security Advisor in connection with appropriate preparations for, and follow-up to, NSC meetings, as directed by the President. Such assistance shall include preparation of meeting minutes and the development and dissemination of decision documents and, as appropriate, study directives. All decision documents shall be submitted for the President's review and action by the National Security Advisor. The National Security Advisor shall transmit decision documents to the President through the Chief of Staff to the President. National Security Decision Directives, intelligence findings, and similar decision documents shall be coordinated, in advance of their submission to the President, by the NSC Legal Advisor with the Counsel to the President.

2. The Interagency Process

To assist the NSC at large and its individual members and advisors in fulfilling their responsibilities, I previously directed or authorized the establishment of senior interagency groups and regional and functional interagency groups. The purpose of such groups was to establish policy objectives, develop policy options, make appropriate recommendations, consider the implications of agency programs for foreign policy or overall national security policy, and undertake such other activities as may be assigned by the NSC.

The NSC, through the National Security Advisor, shall review the structure of senior interagency groups and regional and functional interagency groups established pursuant to, or under authority of, presidential directives or applicable memoranda, and shall recommend all such changes thereto as may be necessary

or desirable to realize fully and promptly in practice the Special Review Board's recommended model for the NSC system, as well as all of the Board's other recommendations. These include establishment of an interagency process in which the National Security Advisor chairs the senior level committees of the NSC. The National Security Advisor shall present, for consideration by the NSC, a draft National Security Decision Directive for this purpose not later than April 30, 1987.

II. Covert Actions and Use of Non-Government Personnel

I have directed the National Security Council's Planning and Coordination Group (PCG) to review all covert action programs. This review is designed to ensure that such programs are commenced and pursued in accordance with law and are consistent with United States policy. The PCG shall complete this review on an expedited basis. It shall report its findings to the NSC on or before April 30, 1987. The NSC promptly shall review all such programs and seek my concurrence in their continuation as appropriate. The NSC, through the National Security Advisor, shall review current procedures for covert action policy approval and coordination and shall recommend such changes as may be necessary or desirable to ensure, among other things, the following:

- that proposed covert actions will be coordinated with NSC participants, including the Attorney General, and their respective recommendations communicated to the President;
- that all requirements of law concerning covert activities, including those requirements relating to presidential authorization and congressional notification, will be addressed in a timely manner and complied with fully;
- consistent with the foregoing, that covert activities will be subject to tightly restricted consideration, and measures to protect the security of all information concerning such activities will be enhanced;
- that the NSC staff itself will not undertake the conduct of covert activities; and
- that the use of private individuals and organizations as intermediaries to conduct covert activities will be appropriately limited and subject in every case to close observation and supervision by appropriate Executive departments and agencies.

This review shall take fully into account such changes as I have authorized by this Directive to the structure of the NSC. The National Security Advisor shall present, for consideration by the NSC, a revised National Security Decision Directive on procedures for covert action policy approval and coordination not later than April 30, 1987.

III. Intelligence Process

Maintaining the integrity and objectivity of the intelligence process is an important goal of the United States intelligence effort. It demands, as the President's Special Review Board has stated, careful differentiation between the respective roles of foreign intelligence, on the one hand, and policy advocacy, on the other. The Director of Central Intelligence shall provide such additional review of, guidance for, and direction to, the conduct of national foreign intelligence estimates as may be required to accomplish fully this objective. The Director of Central Intelligence shall review established procedures for the production of national foreign intelligence estimates and, not later than July 31, 1987, shall inform the NSC, through the National Security Advisor, of any modifications or additions thereto he may deem appropriate for this purpose.

IV. Reporting

The National Security Advisor shall keep me fully informed of progress on all aspects of the implementation of the recommendations of the President's Special Review Board.

Ronald Reagan

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTT ARMSTRONG, et al.,)
)
 Plaintiffs,)
)
 v.) Civil Action No.
) 89-0142 (JCR)
 GEORGE H.W. BUSH, et al.,)
)
 Defendants.)
)

DEFENDANTS' RESPONSES TO PLAINTIFFS' INTERROGATORIES
TO DEFENDANTS BUSH AND THE NATIONAL SECURITY COUNCIL
AND TO PLAINTIFFS' REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 33, Fed. R. Civ. P., defendants respond to Plaintiffs' Interrogatories to Defendants Bush and the National Security Council ("NSC") as follows:

GENERAL OBJECTIONS

1. Defendants object to the fact that plaintiffs have directed interrogatories concerning all components of the Executive Office of the President ("EOP") to President Bush. President Bush, at the time of the actions giving rise to the Complaint, was the Vice President and had direct responsibility only for the functioning of the Office of the Vice President. He would have had no knowledge or control over the record-keeping practices of other components of the Executive Office of the President. Moreover, to the extent that issues of Presidential records determinations are at issue, the relevant records are those of the Reagan administration and not President Bush.¹

¹ Nor is the NSC suable eo nomine in a case of this nature Cf. Blackman v. Guerre, 342 U.S. 512, 514-515 (1952). Nevertheless on the assumption that proper party defendants can be named and in the interest of expediting disposition of the case, but

(continued...)

2. Defendants object to each interrogatory on the grounds of relevance and unreasonable burden to the extent that judicial review of plaintiffs' claims is not available in this action and that the evidence of record is already sufficient for purposes of summary judgment. See Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss or Alternatively for Summary Judgment ("Dfs. M.D. Memo.") at 16-27. Defendants further object on the grounds that the majority of the interrogatories call for legal conclusions that are either not relevant to the case or that have been fully addressed in Dfs. M.D. Memo. or in declarations and exhibits filed in the case. Notwithstanding the foregoing, in an effort to provide the Court with the fullest possible record regarding the PROFS computer system and to expedite the resolution of this case on the merits, defendants hereby serve the following responses. In responding to any interrogatory, however, defendants do not concede the relevance or materiality of the interrogatory or the subject to which the interrogatory refers.

3. Defendants object to all interrogatories containing computer terminology on the ground that such terminology is not defined, making the question unclear.

¹(...continued)
without waiving the suability defense for other purposes, these interrogatories are being responded to.

Specific Responses

INTERROGATORY NO. 1

(a) Specify those functions performed by NSC staff pursuant to which the staff produces "records" that are subject to (i) the FOIA, and/or (ii) the Records Management Act; (b) specify those functions performed by NSC staff pursuant to which the staff produces "Presidential records."

RESPONSE

See Memorandum in Support of Defendants' Motion to Dismiss or Alternatively for Summary Judgment (Dfs. M.D. Memo.) at 5-6; Declaration of George Van Eron (Van Eron Decl.), filed with Dfs. M.D., Ex. 3 (White House Manual at E-1); Van Eron Decl. Ex. 6 (NSDD 266). National Security Decision Directive ("NSDD") 2, later replaced by NSDD 266, established the inter-agency process for the Reagan Administration called for by the National Security Act of 1947. Records received or created pursuant to these directives are NSC agency records for purposes of the FOIA. A copy of NSDD 2 is provided herewith.

INTERROGATORY NO. 2

(a) State the number of individuals on the NSC staff; (b) provide a breakdown of how many of those individuals are (i) professionals, (ii) clerical, or (iii) other, and provide a description of each such other category; and (c) provide a breakdown of how many of those individuals produce (i) only Presidential records and (ii) only agency records.

RESPONSE

As of January 19, 1989, there were approximately 184 individuals on the NSC staff, including 82 professionals and 102 members of the support staff. These figures include staff detailed from other government offices. During the Reagan Administration, all members of the NSC professional staff might have produced both agency and Presidential records.

INTERROGATORY NO. 3

State whether defendants claim that, when any member of the NSC staff, regardless of that person's position, conducts any business relating to the National Security Advisor's role as adviser to the President, the records generated or received by such staff person are not "records" subject to either the Freedom of Information Act, 5 U.S.C. § 552, et seq., or the Records Management Act, 44 U.S.C. § 3101, et seq.; (b) if this is defendants' position, state the legal and factual basis for it; (c) if this is not defendants' position, explain under what circumstances defendants claim that the members of the NSC staff generate records that are "records" subject to (i) the FOIA; and (ii) the Records Management Act.

RESPONSE

(a)-(c) Defendants object on the ground that this interrogatory calls for legal conclusions. For a statement of defendants' position see Defs. M.D. Memo. at 5-6, 19-22; Declaration of James J. Hastings (Hastings Decl.) Ex. 1.

INTERROGATORY NO. 4

(a) List all components of the EOP; (b) with respect to each such component, (i) state the number of its employees; (ii) provide a breakdown of the number of such employees who are professionals, clerical, or fall within another category and provide a description of each such category; (iv) describe the functions and responsibilities of the component and provide citations to any statutes, regulations, and Executive Orders that prescribe or describe such functions and responsibilities; (v) state whether the component creates "records" subject to (A) the FOIA and/or (B) the Records Management Act, and explain under what circumstances it creates such records; and (v) state whether the component creates "Presidential records," and explain under what circumstances it creates such records.

RESPONSE

(a)-(b)(ii): Response for the EOP (Not including the NSC):

The following figures are approximate.

<u>COMPONENT</u>	<u>TOTAL</u>	<u>PROF</u>	<u>ADM/CLER</u>
Council of Economic Advisers	32	20	12
Council on Environmental Quality	12	9	3
National Critical Materials Council	2	1	1
Office of Administration	230	108	122
Office of Management and Budget	595	439	156
Office of Policy Development	42	29	13
Office of Science and Technology Policy	58	48	10

Office of the Vice President	24	14	10
President's Foreign Intelligence Advisory Board	5	3	2
President's Intelligence Oversight Board	2	1	1
United States Trade Representative	189	126	63
White House Office	428	296	132

Professional staff positions ("PROF") are typically filled with persons with a college background and, if in the classified civil service, would be paid in two-grade intervals from GS-11. Common titles in this category are Budget Examiner; Economist; Program, Management, or Policy Analyst; Computer Specialist; Assistant, Deputy Assistant, or Special Assistant to the President; Director, Deputy Director, Associate Director, etc.

Administrative or clerical support staff positions ("ADM/CLER") provide technical, administrative, or clerical support to the Professional staff. If, in the classified civil service, they would be paid at one-grade intervals at all levels, usually with a maximum pay rate of GS-9. Common titles in this category are Secretary; Administrative or Staff Assistant; Accounting, Personnel, Payroll, or Budget Clerk or Technician; Mail Clerk and Messenger; Motor Vehicle Operator; etc.

(a)-(b)(ii): Response for the NSC - See response to Interrogatory Nos. 1-3 above.

(b)(iv) Defendants object to providing "citations to statutes, regulations, and Executive Orders that prescribe or describe" the functions and responsibilities of EOP components on

the ground that such citations are not relevant to this action and that plaintiffs can obtain such citations through their own legal research. See Plaintiffs' Opposition to Defendants' Motion to Dismiss or Alternatively for Summary Judgment (Pls. Opp.) at 17-19 and referenced exhibits.

(b)(v), (v) See Hastings Decl. Exs. 1-3; Dfs. M.D. Memo. at 5-6; Defendants' Reply to Pls. Opp. (Dfs. Reply) at 21.

INTERROGATORY NO. 5

(a) State the number of NSC staff members that use or have access to the PROFS systems at (i) the NSC and (ii) the EOP; (b) with respect to each component of the EOP, state the number of staff members who use or have access to the PROFS system at (i) the NSC and (ii) the EOP; and (c) explain who else has access to the PROFS system, other than NSC and EOP staff members.

RESPONSE

As to the NSC [(a)(i) and (b)(i)], the responses are based on the number of USERIDs issued as of January 19, 1989. As to employees of agencies and EOP components other than the NSC [(a)(ii) and (b)(ii)], the responses are based on the number of USERIDs issued as of December 30, 1988. These individuals had access to PROFS, but may not have used the system.

(a)(i) Approximately 92

(a)(ii) None

(b)(i) None (Prior to January 19, 1989, approximately 5 staff members of the Office of the Vice-President had USERIDs)

(b)(ii) Unassigned, available to systems users - 47
Office of Administration - 154
White House Office - 70
Office of the Vice President - 13
Office of Science and Technology Policy - 10
Office of Management and Budget - 3
Office of Policy Development - 4
United States Trade Representative - 4
Council on Environmental Quality - 1
Others - 1

(c) PROFS USERIDs for the EOP system have been issued to 69 users in 24 federal agencies outside the Executive Office of the President. The percentage of computer resources used by these users is very small. It constitutes approximately 8% of total connect time. No NSC PROFS system USERIDs have been issued outside the Executive Office of the President; however, a few FBI agents were given very controlled access to the PROFS system for limited purposes with respect to the Iran/Contra investigations.

INTERROGATORY NO. 6

(a) State whether the information recorded on the PROFS computer tapes is representative of the kind of information that is normally generated on the PROFS system by (i) the NSC staff and (ii) the EOP staff; and (b) if the information is not representative, explain in what respects it is not, and explain the reasons that it is not.

RESPONSE

Because individual use of the PROFS system varies, it is impossible to state whether the information on the backup tapes is "representative of the kind of information that is normally generated on the PROFS system." PROFS backup tapes are only a "snapshot" of the system at a given point in time. See Van Eron Decl. ¶ 6 and Ex. 2; Declaration of Dennis Keating (Keating Decl.) ¶ 15.

INTERROGATORY NO. 7

(a) State whether the PROFS system is used as a substitute for interoffice mail by (i) the NSC and/or (ii) the EOP; (b) if so, explain under what circumstances it is so used and describe the frequency with which the system is so used (e.g., on a daily basis, once a week, several times a month, rarely, etc.); (c) state whether any, and how much, information recorded on the PROFS computer tapes was generated as a substitute for interoffice mail; (d) state whether it is defendants' position that when the PROFS system is used as a substitute for interoffice mail, the information generated on the system is subject to (i) the FOIA; (ii) the Records Management Act; or (iii) the Presidential Records Act, explain the circumstances under which information is subject to each statute and explain the legal basis for your position; (e) with respect to the use of the PROFS system as a substitute for interoffice mail by the NSC and/or the EOP, set forth all information, including the basis or source of such information, that you have concerning (i) the

number of times such information transmitted or received over the system has been printed out in hard copy (A) on a daily basis, (B) on a weekly basis, (C) on a monthly basis, and (D) on a yearly basis, (ii) the circumstances under which such information has been printed out in hard copy; and (iii) identify all documents and describe all oral communications that in any way instruct the NSC staff or the EOP staff that such information should be printed out in hard copy; and (f) state whether you are able to identify all documents that constitute the hard copies of information on the PROFS computer tapes that was used as a substitute for interoffice mail, and state the number of such documents and identify the locations of them.

RESPONSE

(a)-(c) Defendants object to the use of the term "interoffice mail," which is not defined. The different components of the EOP and individual staff members have used different functions of the PROFS system with varying frequency. Many of the users of the system during the Reagan Administration are no longer employed by an EOP component. It is impossible to quantify the frequency of usage for particular functions and the frequency with which users printed in hard copy data entered into the system without polling each user and/or reviewing each entry item by item. For a description of the functions of the PROFS system at the NSC, see the Van Eron declaration and attached exhibits. For a description of the functions of the PROFS system

available to other EOP components see the declarations of Gordon Riggle and Dennis Keating.

(d) Defendants object on the grounds that the interrogatory calls for a legal conclusion and is unduly burdensome. Review of each individual "hard copy" generated from PROFS and the circumstances surrounding its creation, use, and storage would be necessary to determine whether it is a "record" within the meaning of any of these statutes.

(e)(i) See response to Interrogatory 7(a)-(c) above.

(e)(ii) Individual users are responsible for printing hard copies at their individual work stations.

(e)(iii) Specific instructions regarding record-keeping responsibilities of EOP components are attached to the Van Eron, Riggle, and Hastings declarations. In addition, a meeting was conducted in December 1988 in conjunction with the issuance of the Culvahouse Memorandum attached as Exhibit 2 to the Hastings Declaration. The purpose of that meeting was to brief representatives of relevant components of the Executive Office of the President on the substance of the memorandum. In addition, other oral communications regarding record-keeping have taken place among NSC and EOP staff members, but details regarding such communications cannot be determined.

(f) Hard copies of PROFS data that are Presidential records would be in the custody of the National Archives. Hard copies of PROFS data that are federal records would be located in the respective agency components of the EOP or at appropriate storage

facilities. These records are not filed with any reference to the fact that they were generated on the PROFS system, however.

INTERROGATORY NO. 8

(a) State whether the PROFS system is used by (i) the NSC and/or (ii) the EOP, to transmit and receive messages concerning the conduct of government business; (b) if so, explain under what circumstances it is so used and, to the extent that you have not addressed such messages in response to Interrogatory No. 7, provide all of the information requested in that Interrogatory, with respect to the use of the PROFS system to transmit and receive such messages; and (c) state the number of instances in which the NSC or EOP has sought reimbursement from staff members for their personal use of the PROFS system.

RESPONSE

(a)-(b) Defendants object to the use of the phrase "conduct of government business," which is unclear and undefined. The system is used at the discretion of each individual user. See response to Interrogatory 7(a)-(c) above.

(c) None.

INTERROGATORY NO. 9

(a) State the number of (i) NSC staff members and (ii) EOP staff members, who use the PROFS system to create and maintain (A) individual calendars for themselves and/or (B) calendars for others; (b) state whether any (i) NSC staff members and (ii) EOP staff members, who create and maintain calendars on the PROFS system, make those calendars accessible to others on the PROFS

system; (c) if so, state the number of such staff members who make their calendars accessible to others, explain the frequency with which this is done, and explain the circumstances under which staff members make their calendars accessible to others and state the purpose(s) for which such calendars are made accessible to others; (d) state whether it is defendants' position that calendars created and maintained on the PROFS system and made accessible to others in either the NSC or the EOP are not (i) agency records subject to the FOIA, (ii) records subject to the Records Management Act, or (iii) Presidential records, and explain the factual and legal basis for your position; (e) explain under what circumstances members of the (i) NSC staff and (ii) EOP staff, have been instructed to print out in hard copy calendars that are created on the PROFS system and made accessible to others at the NSC or the EOP; (f) identify all written and describe all oral instructions to the staff of the NSC or the EOP regarding their responsibilities to print out such calendars; and (g) state whether you are able to identify all documents that constitute the hard copies of calendars that are recorded in the PROFS computer tapes, and state the number of such documents and describe the locations and custodians of them.

RESPONSE

(a) The use of calendars is not centralized and is subject to the discretion of each individual user. See response to Interrogatory No. 7(a)-(c) above.

(b) Yes, at the discretion of each individual user.

(c) See response to Interrogatory No. 7(a)-(c) above.

(d) See response to Interrogatory No. 7(d) above.

(e) Copies of the calendars of former National Security Advisors General Colin Powell and Mr. Frank Carlucci are in the custody of the National Archives at the Reagan Library in California. For other EOP staff members, see response to Interrogatory 7 above.

(f) See response to Interrogatory No. 7(e)(iii) above.

(g) See response to Interrogatory No. 9(d) above.

INTERROGATORY NO. 10

(a) State the number of (i) NSC staff members and (ii) EOP staff members who use the PROFS system's calendar processing function to schedule meetings concerning the conduct of government business, and explain the frequency with which this function of the PROFS system is used for this purpose (e.g., daily, weekly, monthly, seldom); (b) state whether when the PROFS system is used to schedule meetings, such schedules may include information concerning who will attend the meetings, the date the meetings will be held, the agenda for the meeting, the place of the meeting, and/or the subject matter of the meetings; (c) state whether any (i) NSC staff members and (ii) EOP staff members, who use the PROFS system to schedule such meetings, make those schedules accessible to others on the PROFS system; (d) if so, state the number of such staff members who do so, explain the frequency with which this is done, explain the circumstances under which staff members make such schedules accessible to

others, and state the purpose(s) for which such schedules are made accessible to others; (e) state whether any and how much information recorded in the PROFS computer tapes constitutes information concerning the scheduling of meetings; (f) state whether it is defendants' position that when (i) NSC staff and (ii) EOP staff use the PROFS system to schedule meetings and then make those schedules accessible to others on the PROFS system such information does not constitute (A) agency records subject to the FOIA, (B) records subject to the Records Management Act, or (C) Presidential records, explain under what circumstances defendants claim such information does not fall within each of these categories of records, and state the basis for defendants' position; (g) explain under what circumstances members of the (i) NSC staff and (ii) EOP staff, have been instructed to print out in hard copy information concerning meetings that have been scheduled over the PROFS system; (h) identify all written and describe all oral instructions to the staff of the NSC or the EOP regarding their responsibilities to print out such information; and (i) state whether you are able to identify all documents that constitute information concerning the scheduling of meetings that is contained in the PROFS computer tapes, and state the number of such documents and identify the locations and custodians of them.

RESPONSE

(a) See response to Interrogatory 7(a)-(c) above.

(b) With the EOP system, such information may be included at the discretion of the individual user; however, agendas are not normally included. Although invitees may be identified, attendance is not.

Within the NSC staff, the PROFS system can be used to "schedule" meetings in the same way as the telephone. The NSC PROFS scheduling function cannot be used to schedule meetings with people outside of the NSC staff or to schedule official NSC meetings or NSC subgroup meetings.

(c)-(e) See response to Interrogatory 7(a)-(c) above.

(f) See response to Interrogatory 7(d) above.

(g)-(h) See response to Interrogatory 7(e)(iii) above.

(i) No.

INTERROGATORY NO. 11

(a) State the number of (i) NSC staff members and (ii) EOP staff members who use the PROFS system to draft documents, and explain the frequency with which the PROFS system is used for this purpose (e.g., daily, weekly, monthly, seldom); (b) state whether any (i) NSC staff members and (ii) EOP staff members who use the PROFS system to transmit draft documents or otherwise make the information contained in such drafts or the resulting documents accessible to others on the PROFS system; (c) if so, state the number of such staff members who do so, explain the frequency with which this is done, explain the circumstances under which staff members make the information contained in documents and drafts accessible to others and state the

purposes(s) for which such information is made accessible to others; (d) state whether any and how much information contained in the PROFS computer tapes constitutes drafts of documents or the information contained in the resulting documents; (e) state whether it is defendants' position that when (i) NSC staff and (ii) EOP staff use the PROFS system to (A) draft documents and (B) transmit or otherwise make the information in such drafts or resulting documents available to others on the PROFS systems, such information does not constitute (1) agency records subject to the FOIA, (2) records subject to the Records Management Act, or (3) Presidential records, and, if so, explain under what circumstances defendants claim that such information does not fall within each of these categories of records and state the basis for defendants' position; (f) explain under what circumstances members of the (i) NSC staff and (ii) EOP staff, have been instructed to print out in hard copy documents drafted on the PROFS system; (g) identify all written and describe all oral instructions to the staff of the NSC or the EOP regarding their responsibilities to print out such information; (h) state whether you are able to identify all documents that constitute the drafts and final documents that are recorded in the PROFS computer system, and state the number of such documents and identify the locations and custodians of them; and (i) state whether, with respect to each such document, the NSC or EOP has other documents that demonstrate who participated in the editing of the document and when such editing was done.

RESPONSE

(a)(i) NSC staff would not ordinarily create documents on PROFS. See Van Eron Decl. ¶ 5. See also response to Interrogatory 7(a)-(c) above regarding any documents that might have been created.

(a)(ii) None.

(b)-(c) See response to Interrogatory 7 above. At the NSC, staff members circulate hard copies of documents in draft or final form for review and/or formal clearance. The PROFS system is viewed as clumsy and not "user friendly" for purposes of document transmittal.

(d) At the EOP, approximately .0005% of the space on PROFS is allocated to the document storage function. At this time, that space is approximately 85% full.

At the NSC, approximately .021% of the space on PROFS is allocated to the document storage function.

(e) See response to Interrogatory 7(d) above.

(f)-(g) See response to Interrogatory 7(e)(iii) above.

(h) For both systems, see response to Interrogatory No. 7(f) above. This information could be determined through review of each PROFS document database index file.

(i) No. See response to Interrogatory 7(a)-(c) above.

INTERROGATORY NO. 12

(a) State the number of (i) NSC staff members and (ii) EOP staff members for whom the PROFS system creates a chronological log or listing that keeps track of messages, documents, or other

transmittals sent or received over the system; (b) with respect to any such files, state whether they contain information concerning (i) who the transmittal is from or to, (ii) the subject of the transmittal, (iii) the date and time of the transmittal, or (iv) comments concerning the transmittal; (c) state the purpose(s) for which such chronological files are created; (d) state whether any (i) NSC staff members and (ii) EOP staff members for whom the PROFS system creates such chronological logs or listings make them accessible to others on the PROFS system; (e) if so, state the number of such staff members for whom the PROFS system performs this function, explain the frequency with which this is done, explain the circumstances under which staff members make such chronological logs or listings accessible to others and state the purposes(s) for which such logs or listings are made accessible to others; (f) state whether any and how much information in the PROFS computer tapes constitutes the chronological logs or listings of such staff members; (g) state whether it is defendants' position that when the PROFS system creates such chronological logs or listings for (i) NSC staff and (ii) EOP staff, such information does not constitute (A) agency records subject to the FOIA, (B) records subject to the Records Management Act, or (C) Presidential records, and state whether defendants take the same position with respect to such logs or listings that are made accessible to others on the PROFS system, explain under what circumstances defendants claim such logs or listings do not fall within each of

these categories of records, and state the basis for defendants' position; (h) explain under what circumstances members of the (i) NSC staff and (ii) EOP staff, are instructed to print out in hard copy the chronological logs or listings that are created on the PROFS system; (j) identify all written and describe all oral instructions to the staff of the NSC or the EOP regarding their responsibilities to print out such information; and (k) whether you are able to identify all documents that constitute the chronological logs and listings that are recorded in the PROFS computer tapes, and state the number of such documents and identify the locations and custodians of them.

Responses for the EOP system:

Defendants object on the ground that the question is unclear.

(a) The system does not create a log for messages. As to notes, the sender and recipient users may keep a log at their own discretion. An index for documents is created for each user. A chronological log is created for uploading documents (transferring documents from user's personal computer to PROFS) and downloading documents (transferring documents from PROFS to user's personal computer).

(b)	<u>Notes</u>	<u>Documents</u>	<u>Document Transmittal</u>
(i)	yes	yes	upload - identifies sender
			download - identifies sender and recipient

(ii)	under user control	under user control	yes
(iii)	yes	no	yes
(iv)	no	no	no

(c) The purpose of note logs is decided by the individual user. Chronological logs for documents and transmittals are for system control.

(d) Unless one user gives another his password, EOP staff users cannot make note logs accessible to others on the system.

(e) See response to Interrogatory 7(a)-(c) above.

(f) Document logs are stored in document space and constitute a small part of the .0005% of the system space allocated for documents. Note and transmittal logs are stored in the 41% of the system space that is user space.

(g) See response to Interrogatory 7(d) above.

(h), (j) See response to Interrogatory 7(e)(iii) above.

(k) No.

Response for the NSC System

Defendants object on the ground that the question is unclear.

(a) The system does not create a log for messages. In the rare event a user created a document on the PROFS system, the system would create an index for such document. In ordinary use, PROFS creates an "inbox file" for PROFS notes received by a user. Once the user opens the "inbox," the user can retain, erase, or transfer the note to another file (a "notelog") as he wishes. PROFS notes sent by a user ordinarily are automatically filed in

a note log (from which the sender can transfer, erase, or retain the note); however, the PROFS user can choose not to retain in the note log a copy of the note sent. In that use of various files is a matter of individual user discretion, we cannot be more specific.

(b) The "inbox file" and any notelog files would contain information concerning (i) who the transmittal is from or to, (ii) the subject of the transmittal, and (iii) the date and time of the transmittal. The meaning of interrogatory No. (b)(iv) is unclear.

(c) Inbox files and the automatic retention of outgoing notes are a PROFS function. Creation of additional files would be a matter of individual user discretion.

(d)-(e) This would not be ordinary NSC staff practice. In order for an individual to make his inbox and notelog files available to another user, he would have to share his password and USERID. Such information would not be available on the computer. See response to Interrogatory 7(a)-(c) above.

(f) ~~Note and transmittal logs are stored in~~ Approximately 1.26% of the space on PROFS ~~(as of January 19, 1989)~~. *to users*

(g) See response to Interrogatory 7(d) above.

(h), (j) See response to Interrogatory 7(e)(iii) above.

(k) No.

INTERROGATORY NO. 13

(a) State whether any aspect of the PROFS system reflects or contains any distribution lists, or information concerning the

*was available to users for
note & transmittal logs as of
January 19, 1989.*

distribution or routing of transmittals; (b) explain what information is reflected on such a list; (c) state whether such distribution lists or the routing and distribution information identifies (i) to whom a particular transmittal was sent, (ii) the individuals authorized to receive or otherwise review the transmittal, (iii) which individual(s) retrieved the transmittal for viewing, and/or (iv) information concerning any additions or alterations to the transmittal; (d) state whether, in all cases, when a hard copy of a transmittal is printed out from the PROFS system, it reveals all of the information contained on the distribution list with respect to that particular transmittal; (e) state whether (i) NSC staff and (ii) EOP staff are instructed that when they print out a hard copy of information from the PROFS system because it constitutes either a record subject to the FOIA or the Records Management Act or a Presidential record, they must ensure that the distribution list for each such copy is also printed out; (f) if so, identify all documents that reflect such an instruction and describe all such oral instructions; (g) state whether defendants take the position that the distribution list that would demonstrate to whom an agency "record" or "presidential record" was transmitted or who was permitted to read the transmittal is information that, in and of itself, is covered by the FOIA or the Records Management Act, or is a Presidential record; and (h) if not, explain the legal and factual basis for defendants' position.

RESPONSE

Response for the NSC and EOP Systems:

(a)-(d) Defendants object to this interrogatory on the ground that "distribution list" is not defined. The system contains a full system directory of the USERIDs used to route transmittals. This "directory" is the core or baseline by which nicknames or distribution lists are used to transmit messages. In addition, there is a user aid available -- a "distribution list," which is a user-created file created for convenience when the user frequently sends notes to the same group of individuals. In addition, there is a user aid available -- a "nickname" function, which can be used by a sender (e.g. for convenience as an abbreviation or as an easier identifier to remember). If either the nickname or the distribution list function is used, when a note is printed by sender or receiver, full USERIDs ordinarily would be displayed on the hard copy. See response to Interrogatory No. 7(a)-(c) above.

Response for the NSC System:

(e)-(f) When a hard copy of a PROFS note is printed, it would ordinarily reveal the sender and all recipients. Accordingly, no additional instructions were necessary to preserve this information in record material.

(g)-(h) Defendants object on the ground that these interrogatories call for a legal conclusion. The USERID would be printed if the document is "record" material. For such data standing alone, see Defs. Reply at 12-13.

Response for the EOP System:

(e)-(f) See response to Interrogatory No. 7(e)(iii) above.

(g)-(h) Defendants object on the ground that the Interrogatory calls for a legal conclusion. See response to Interrogatory No. 7(d) above.

INTERROGATORY NO. 14

(a) State whether the PROFS system reflects information concerning who is authorized to review an individual's calendar that is created or maintained on the system; (b) state whether such authorization information is always reflected on a hard copy when calendar information is printed out; (c) if it is not, explain whether defendants take the position that information reflecting who was authorized to review an individual's calendar is, in and of itself, information that is covered by the FOIA or the Records Management Act, or is a Presidential record; (d) if not, explain the basis for defendants' position.

RESPONSE

Response for the EOP System:

(a) Yes, the PROFS system contains information concerning who is authorized to review an individual's calendar.

(b) No.

(c)-(d) Defendants object on the ground that this interrogatory calls for a legal conclusion. For a statement of defendants' position, see Dfs. Reply at 12-13.

Response for the NSC System:

(a) Yes, the PROFS system contains information concerning who is authorized to review an individual's calendar.

(b) No.

(c)-(d) Defendants object on the ground that this interrogatory calls for a legal conclusion. For a statement of defendants' position, see Dfs. Reply at 12-13.

INTERROGATORY NO. 15

(a) State whether the PROFS system contains information concerning (i) "user files," or files created by or for the individual user of the system to assist that individual in the conduct of government business or (ii) "user space," or information that reveals how much the system has been used by a particular individual to create and transmit information; (b) if so, explain what kinds of information are kept in such files and are reflected concerning the user space; (c) state whether such user file information is always reflected in the hard copies of documents that are printed out by (i) NSC staff or (ii) EOP staff; (d) state whether defendants take the position that such (i) user file information and (ii) user space information, does not, in and of itself, constitute either a record subject to the FOIA or the Records Management Act, or a Presidential record; and (e) if so, explain the basis for that position.

RESPONSE

(a) Defendants object to the use of the terms "information," "user files," and "user space," as those terms are not clearly defined. For purposes of responding to this

interrogatory, the term "information" is defined as file control data generated and maintained by the operating system. If "user file" is defined as a file created and maintained by a user of the PROFS system, such as a note log or a distribution list, the computer on which PROFS runs does contain information about "user files." If "user space" is defined as the portion of a disk drive (which is a magnetic storage device attached to the main frame computer) allocated to a particular USERID, the PROFS systems does not contain this information; however, size and location on the disk drive ("address") is information generated and maintained by operating system software on the computer on which PROFS runs. If the interrogatory refers to "information that reveals how much the system has been used by a particular individual to create and transmit information," the PROFS system does not contain this information; however, the operating system does generate and record information such as the date and time a particular USERID LOGGED-OFF the system.

(b) Information such as the size and location of the file.

(c) No, given the definitions used above.

(d)-(e) See response to Interrogatory No. 14(c)-(d) above.

INTERROGATORY NO. 16

(a) State whether members of the (i) NSC staff or (ii) EOP staff use the PROFS system to set up "nickname files," or a procedure by which the user can, by code, tell the system to transmit information to particular individuals who have access to the PROFS system; (b) if so, state how often such a procedure is

employed by (i) the NSC staff and (ii) the EOP staff; (c) state whether a hard copy of information printed from the PROFS system would necessarily reflect that a code was used to transmit the information, and, if it would, state whether the hard copy would reflect the meaning of the code, i.e., to whom the information was sent; (d) state whether it is defendants' position that such "nickname files" or codes used to transmit information over the PROFS system do not, in and of themselves, is either a record covered by the FOIA or the Records Management Act, or a Presidential record, and if so, state the basis for such position.

RESPONSE

See response to Interrogatory No. 13 above.

INTERROGATORY NO. 17

State all facts which form the basis for the statement contained in the Declaration of Gordon Riggle, ¶ 9, that "if a message had enduring value, or if it documented agency functions and transactions, the message was printed in hard copy and retained in an official file, or its substance was memorialized in a written memorandum or letter."

RESPONSE

Riggle Decl. Ex. 1 and Gordon Riggle's personal knowledge of the use of the system by himself and his staff.

INTERROGATORY NO. 18

(a) When a member of the (i) NSC staff or (ii) EOP staff creates and transmits a message over the PROFS system, who -- the sender, receiver, or both -- is responsible for deciding whether

the message (i) has "enduring value," (ii) documents "agency functions and transactions," or (iii) is a "Presidential record?"; (b) if a PROFS message is sent or made available to several members of the staff, are all members who received it responsible for making (i) independent or (ii) collective determinations of the record status of the message?; (c) identify all documents that in any way reflect instructions to either the (i) NSC staff or (ii) EOP staff explaining which staff person is responsible for determining the record status of a message transmitted over the PROFS system, and describe all oral instructions to that effect; (d) state whether defendants take the position that all members of the NSC and EOP staff interpret their responsibilities to print out hard copies of all PROFS messages that rise to the level of either a "record" or a "Presidential record" in the same way; (e) if so, state the basis for such position; (f) if not, explain how the NSC and EOP ensure that all PROFS messages that are either "records" under the Records Management Act or "Presidential records" are preserved; and (g) state whether all members of the (i) NSC staff and (ii) EOP staff who use the PROFS system, including clerical workers, make decisions as to what information transmitted or received by them constitutes either "records" subject to the Records Management Act or Presidential records.

RESPONSE

(a)-(b) Both the sender and recipients may make determinations whether a PROF note is a federal or Presidential

record. For the NSC, whether record information is a "federal record" or a "presidential record," is determined by the task for which it was generated. The function of other EOP components determines whether record information of those components is a "federal record" or a "presidential record."

(c) See Van Eron Exs. 1, 3-5; Hastings Decl. Exs. 1-3; see also response to Interrogatory No. 7(e)(iii).

(d)-(f) Clear instruction was given to staff members regarding the record status of information generated and received through any documentary form, including electronic data. Staff were expected to follow those instructions. It is impossible to state whether staff members interpreted their responsibilities "in the same way." See Pls. M.D. Memo. at 32, note 8.

(g) All staff may make decisions as to what information constitutes "records;" however, whether a "record" is a "federal" record or a "Presidential" record is determined by the task for which it was generated and/or the function of the component generating or receiving the information.

INTERROGATORY NO. 19

(a) State the factual and legal basis for the assertion on page 35 of defendants' memorandum of points and authorities in support of its motion to dismiss ("memorandum"), that "'drafts' are non-record materials outside the scope of the Federal Records Acts;" and (b) state whether, in making that assertion, defendants mean to include the Presidential Records Act.

RESPONSE

(a) See Dfs. M.D. Memo. at 33-36; see also Declaration of Claudine J. Weiher (Weiher Decl.) Ex. 1 (NARA Bulletin 89-2 and Records Management Handbook at 2); see also Riggle Decl. Ex. 1 at 7.

(b) Reagan Administration direction regarding the status of drafts of "Presidential records" is set forth in Hastings Decl. Ex. 2.

INTERROGATORY NO. 20

(a) State the factual and legal basis for defendants' claims that any information that remains on the PROFS computer tapes concerning the NSC staff's and EOP staff's functions as advisers to the President are either "personal records" or "extra copies of documents produced only for convenience or reference," within the meaning of the Presidential Records Act, 44 U.S.C. § 2201(2); (b) describe all steps that have been taken by defendants to determine that none of the information falls outside of these two categories of information; (c) state whether all such "extra copies" have been "clearly so identified" as such, as required by the Presidential Records Act and, if so, explain how this was accomplished; (d) describe the steps that were taken by defendants to ensure that all "extra copies" were "clearly so identified;" and (e) state whether it is technologically feasible to designate such "extra copies" within the PROFS system as "clearly so identified."

RESPONSE

Defendants object to the interrogatory because it does not accurately reflect defendants' statements in their motion for summary judgment. See Dfs. M.D. Memo at 17, 29 and 33 (defendants assert that some information remaining on the PROFS computer tapes may be non-record material). Moreover, this interrogatory calls for legal conclusions set forth in Dfs. M.D. Memo. at 29-32. Staff members were instructed to print out in hard copy all "Presidential records." Hastings Decl. Exs. 1-3; Van Eron Decl. Exs. 4, 5. The EOP components consider the hard copy to be the "record." Identical electronic data is a "copy" of the record. Without examining the data in each user's directory, defendants assumed for purposes of the referenced Memorandum that at least some users may have data meeting the definition of "personal records" on the PROFS system.

INTERROGATORY NO. 21

With respect to paragraph 19 of defendants' Statement of Material Facts, (a) describe the procedures that are used by (i) the NSC and (ii) the EOP to ensure that material that rises to the level of either a "record" subject to the Records Management Act or a "Presidential record" has not been "lost through mechanical failure or inadvertent deletion;" and (b) in particular, identify who is responsible for reviewing the backup tapes to ensure that such materials has not been "lost," and explain under what circumstances such a review is conducted.

RESPONSE

Plaintiffs misunderstand the backup process. The backup tapes are not reviewed for lost material. Rather, if the system fails mechanically, causing current data to be lost, the backup tape can be used to retrieve data that had been recorded on the tape if a user requests it. Similarly, if a user inadvertently deletes information, the information can be retrieved if it was captured on a backup tape.

INTERROGATORY NO. 22

Explain what is meant by the following statement made in Exhibit 2 attached to the Declaration of Van Eron: "Should you be tasked for action via PROFS/A1, the PROFS/A1 note should be printed and made part of the package forwarded for action by the principals," and, in particular, explain what is meant by (i) "tasked for action," (ii) "via PROFS/A1," and (iii) "the principals."

RESPONSE

- (a) "Tasked for action" means assigned work, e.g., to prepare a memorandum, set up a meeting, etc.
- (b) "via PROFS/A1" means through an electronic mail note.
- (c) During the Reagan Administration, "the principals" were the National Security Advisor, the Deputy National Security Advisor, and the Executive Secretary of the NSC.

INTERROGATORY NO. 23

With respect to each of the Exhibits attached hereto as Plaintiffs' Discovery Exhibits A-J, (a) state whether the

document is a hard copy of information that at one time existed on the PROFS system and explain the basis for your statement;

(b) state whether defendants take the position that the document, or any portion thereof, is (i) an "agency record" subject to the FOIA, (ii) a "record" subject to the Records Management Act, or (iii) a Presidential record, and explain the basis for each such position;

(c) state whether the document reflects all of the individuals to whom the information was distributed or who reviewed or otherwise had access to the information through the PROFS system, and, if it does reflect such information, specify how that information is so reflected;

(d) state whether the document reflects when it was transmitted and when it was received or reviewed by each individual to whom it was sent or who otherwise had access to it in the PROFS system, and if it does reflect such information, specify how that information is so reflected;

(e) state the circumstances under which the document was printed out in hard copy;

(f) state whether this document was printed out in hand copy by (i) the individual who created it and (ii) the individual(s) to whom the information was transmitted, or (iii) any other person, and state the basis for your answer;

(g) state whether the document was printed out in response to a request for information from the Congressional Select Committees investigating the Iran-Contra matter; and (h) state whether the document was ever printed out prior to such request, and, if so, state when and identify by whom.

RESPONSE

Defendants object on the grounds that the information sought is not material to the case, cannot be expected to lead to material evidence and that the questions are unclear. Defendants also object on the grounds that the interrogatory calls for legal conclusions and that answers could interfere with pending criminal proceedings.

The exhibits appear to be hard copies of data on tapes preserved in late 1986 and early 1987 in part because of the investigation of the President's Special Review Board and the ongoing criminal investigations/prosecutions into Iran/Contra matters. Van Eron Decl. ¶ 6. No one presently on the NSC staff can attest to the authenticity of the exhibits.

The data, which has been so useful in the various Iran/Contra investigations, were retained prior to any request by the FBI or other investigators, as follows. On the evening of Tuesday, November 25, 1986, the day that then Attorney General Edwin Meese publicly announced the connection between the Iran initiative and the contras, White House Communications Agency (WHCA) Master Sergeant Kelly Williams, at the direction of NSC Secretariat Director George Van Eron, as a prudent measure to secure and preserve information on the USERID account of Oliver North, changed the USERID password to Oliver North's PROFS account. After this change, Oliver North was not able to obtain access or in any way alter the information on his USERID account on the NSC PROF system.

On Friday, November 28, 1986, as a prudent measure the following steps were taken: 1. the November 15 and 22, 1986, PROFS backup were secured and preserved by WHCA; 2. on November 29, 1986, a back-up tape was made of all PROFS data existing as of that date; and 3. this new tape was secured and preserved. WHCA personnel considered the question of the WHCA back-up tapes then in existence pursuant to the then standard WHCA practice. The then standard practice for WHCA would have been to write over the back-up tapes from the Saturday night two weeks previous (15 November) the next day. In February 1987, at the request of the NSC, WHCA created and retained additional back-up tapes for the use of the various investigating entities. At all times during the various Iran/Contra investigations, the NSC staff and WHCA provided the FBI and other investigators with the technical and other support necessary.

INTERROGATORY NO. 24

With respect to Exhibit K attached hereto, which is an article from the Washington Post, dated February 14, 1989 (at A-5, col. 3), (a) state whether the "note written on an NSC computer by McFarlane on Nov. 8, 1986, "referred to therein refers to a PROFS note; (b) if so, state whether it is defendants' position that this information does not rise to the level of either a record subject to the Records Management Act or the Disposal of Records Act, or a Presidential record, and state the basis for such position; (c) state the circumstances under which the note was printed out in hard copy; (d) state whether

the note was printed out in hard copy by (i) McFarlane and (ii) the individual(s) to whom it was transmitted, or (iii) some other person, and state the basis for your answer; (d) state whether the note was printed out in hard copy in response to a request from the Congressional Select Committees investigating the Iran-Contra matter; and (h) if so, state whether the document was ever printed out prior to such request and, if so, state when and identify by whom.

RESPONSE

24. See response to Interrogatory 23 above.

INTERROGATORY NO. 25

With respect to the requirement of the Records Management Act, 44 U.S.C. § 3102(1), that the head of each agency "shall establish and maintain an active, continuing program for the economical and effective management of the records of the agency," including "effective controls over the creation and over the maintenance and use of records in the conduct of current business," (1) identify all documents that reflect those programs with respect to the NSC's and the EOP's creation, maintenance, and use of the PROFS system and the information contained on it.

RESPONSE

For basic direction regarding the use of PROFS during the Reagan administration, see exhibits to Van Eron and Riggle declarations; see also Weiher Decl. Exs. 2, 3 [General Records Schedules ("GRS") 20 and 23].

INTERROGATORY NO. 26

(a) State whether (i) the NSC and (ii) the EOP, have established and maintained a records disposition program, as required by 36 C.F.R. § 1228.10, with respect to information generated by the PROFS system; (b) state whether such disposition program includes instructions for retention of any information in the PROFS system that is considered to be (i) "temporary records," pursuant to 36 C.F.R. § 1228.12(b) and (ii) "nonrecord material," pursuant to § 1228.20(b)(5); and (c) identify all documents that reflect any such dispositions programs; (d) if defendants take the position that no such disposition schedules are required with respect to information generated by the PROFS system, state the basis for such position, particularly as it relates to the requirement that such programs include instructions for the disposition of "temporary records" and "nonrecord materials."

RESPONSE

PROFS is not a records system. At the NSC, to the extent that a record may be created using PROFS, the creator/sender is required to print a hard copy and send the hard copy to the NSC Secretariat where it is filed in either agency or presidential files depending on the task for which the document was generated. NSC agency records are periodically transferred to the National Archives and Records Administration ("NARA"). NSC Presidential records are transferred to NARA for the President's library at the end of the President's term in office.

For other EOP agency components, to the extent that information generated by the PROFS system rises to the level of an agency record, see Weiher Decl. Exs. 2, 3.

INTERROGATORY NO. 27

With respect to defendants' memorandum, the last sentence on the bottom of page 38, continuing to the top of page 39, state whether defendants take the position that an agency that is subject to the FOIA may destroy records in its possession after a FOIA request for those records is received by the agency, as long as the agency does so within the ten working days that are permitted under the statute for a response to such a request. If so, explain the legal basis for such a position.

RESPONSE

Dfs. M.D. Memorandum sets forth defendants' position.

INTERROGATORY NO. 28

Describe what has been preserved as the PROFS computer tapes, including a statement as to (a) the number of tapes that have been preserved; (b) when the tapes were made, including how many existed on January 18, 1989; (c) how many of those tapes are tapes of the NSC's PROFS system and how many are tapes of the EOP's PROFS system; (d) the time periods during which the information reflected on (i) each of the NSC PROFS tapes and (ii) each of the EOP PROFS tapes was generated; (e) a breakdown of how much of the information recorded on the system reflects (i) programming and (ii) information created by an individual

using the system; and (f) if available, provide a listing of the files contained on the tapes.

RESPONSE

Response for the EOP System

- (a) 31 tapes
- (b) December 31, 1988 - January 20, 1989; 20 tapes existed on January 18, 1989.
- (c) 31 - EOP system
- (d) Data reflected on these tapes could date back to November 1986, when the PROFS system became operational, if that data had not been deleted by individual users.
- (e) Available space on the system can be broken down into the following approximate percentages:

- (i) 58% System space
- (ii) 41% User disk space
 - .0005% Document space
 - .0005% Calendar space

At a minimum, there are approximately 2 million pages of information on the 31 tapes.

- (f) Not available.

Response for the NSC System

- (a) Approximately 144 tapes.
- (b) Dates for creation of all preserved tapes are:

1/1/88-2	1/16/88-12
1/7/88-27	1/17/88-13
1/8/88-2	1/18/88-17

1/13/88-11

1/19/88-1

1/14/88-28

1/20/88-31

(c) Approximately 144 - NSC system.

(d) Inclusive up to the date the tape was created, at user direction.

(e)(i) Space available for "programming" = 25%.

(e)(ii) Space available for "user information" = 75%.

(f) Not available.

INTERROGATORY NO. 29

(a) State the percentage of information reflected on the PROFS computer tapes that has been printed out in hard copy;

(b) state the percentage of information on such tapes that has been printed out from (i) the NSC PROFS tapes and (ii) the EOP PROFS tapes; state the percentage of information on the tapes that existed on January 18, 1989 that has been printed out; and

(d) state the percentage of information on the tapes that were made after January 18, 1989 that has been printed out.

RESPONSE

It is impossible to determine the answers to this interrogatory. Individual users are responsible for printing documents for record-keeping purposes on an on-going basis. "Records" are then placed in the appropriate federal or Presidential records file. Users may also print out nonrecord material for convenience purposes.

INTERROGATORY NO. 30

(a) State whether there are materials at the NSC and/or EOP, other than the PROFS computer tapes, that are covered by plaintiff Armstrong's FOIA request; (b) if so, identify such materials and state whether defendants take the position that any such materials do not constitute "agency records" subject to the FOIA, and state the basis for such position.

RESPONSE

Defendants have responded to plaintiffs' FOIA requests in letters dated February 1, 1989 (NSC) and February 3, 1989 and February 17, 1989 (Office of Administration), attached hereto. Those letters, along with the memoranda filed in this case, set forth defendants' position.

INTERROGATORY NO. 31

Identify each individual, other than counsel who have entered an appearance for defendants in this case, who was consulted in the preparation of the answers to these interrogatories.

RESPONSE

The factual information in responses to these interrogatories is provided by the individuals whose names appear below and individuals in their offices in consultation with appropriate counsel.

PLAINTIFFS' REQUEST FOR THE PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, defendants are requested to produce copies of the documents that have been identified in response to Plaintiffs' Interrogatories To Defendants Bush And The National Security Council, Nos. 7, 9-13, 15, 18, 25, 26 and 30, and that have been identified in response to Plaintiffs' Interrogatories To Defendant Wilson, Nos. 3, 4, 6, 9, 10 and 14.

RESPONSE

All documents that have been identified in the foregoing responses to interrogatories, that have not been previously filed in this case, are attached hereto.

I declare under penalty of perjury that, as to the NSC, the factual responses to Interrogatory Nos. 6, 7, 8, 9, 10, 11(a)-(c), (f)-(g), 12(d)-(e), (h)-(j), 13(e)-(f), 20, 23, 24, and 31 are true and correct, to the best of my knowledge, information, and belief.


Date: 9 March 1988

Brian Merchant
Brian Merchant
Deputy Director
National Security Council
Secretariat

I declare under penalty of perjury that, as to the NSC, the factual responses to Interrogatory Nos. 5, 11(d), (h), (i), 12(a)-(c), (f), (k), 13(a)-(d), 14(a)-(b), 15, 16, 21, 23, 24,

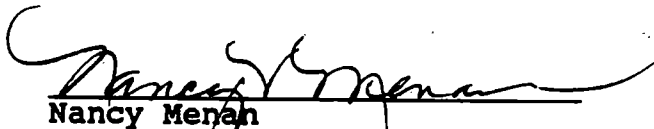
28, and 31 are true and correct, to the best of my knowledge, information, and belief.

Dated: March 9, 1989


Kelly Williams
Operations Non-commissioned
Officer for the Data Systems
Unit
White House Communications
Agency


I declare under penalty of perjury that, as to the NSC, the factual responses to Interrogatory Nos. 1, 2, 4, 18, 22, 26, 29, 30, and 31 are true and correct, to the best of my knowledge, information, and belief.

Dated: Mar 9, 1989


Nancy Menah
Senior Director
Information Policy Directorate
National Security Council

I declare under penalty of perjury that, as to the components of the Executive Office of the President other than the NSC, the factual responses to Interrogatory Nos. 4-18, 20, 21, 26, 28, 29, 30, and 31 are true and correct, to the best of my knowledge, information, and belief.

Dated: March 9, 1989


Dennis Keating
Manager, White House
Information Systems
Information Resources
Management Division
Office of Administration

As to the objections noted herein:

Respectfully submitted,

JOHN R. BOLTON
Assistant Attorney General

JAY B. STEPHENS
United States Attorney

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