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COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Kavanaugh, Brett - Subject Files

FOLDER TITLE:
PRA (Presidential Records Act) Legal Guidance [2]

FRC ID:
9694

RESTRICTION CODES

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National Archives and Records Administration
Records Management

DOCUMENTING YOUR PUBLIC SERVICE

2000 Web Edition

This is a Web version of *Documenting Your Public Service, National Archives and Records Administration Management Guide Series, College Park, MD (2000), 14 pp.*

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- What Are Federal Records?
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- What Do I Need to Do When Entering Federal Service?
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- Can I Continue to Have Access to Classified Information?
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- Where Can I Get Further Information and Assistance?
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- Appendix B: Checklist on Personal Files for Agency Officials

PREFACE

The National Archives and Records Administration (NARA) issues guidance for Federal agencies on the management of records and other types of documentary materials accumulated by Federal agencies and officials.

NARA guidance, which is available on its records management web site, www.nara.gov/records/index.html, provides information for high-level agency officials, program managers, legal counsels, records officers, and information technology managers on records creation, maintenance, and disposition. Following the guidance should assist you in achieving two important goals: (1) creating and maintaining accurate and complete records of your agency's functions and activities, and (2) properly disposing of documentary materials that are no longer needed to conduct business. By instituting good recordkeeping practices, you will provide useful resources to support and improve agency operations. You also will contribute to the body of records that provides essential evidence of Federal activities, including records that document your public service. Such records may be useful for long-term research and appropriate for preservation in the National Archives of the United States.

This guide replaces the 1992 NARA Management Guide, *Personal Papers of Executive Branch Officials*.

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INTRODUCTION

The purpose of this guide is to provide you and other high-level Government officials with basic

information to enable you to distinguish Federal records from other documentary materials, including personal files. (This guide does not apply to Presidential records created under the Presidential Records Act.) Knowledge of this guidance, careful advance planning, and maintaining separate files for personal materials will aid you when you leave public service.

Government executives like yourself create and maintain Federal records as part of your official responsibilities. You also may keep extra copies of records as well as personal files that do not relate to agency business. All of these materials may be in paper, electronic, or other formats. This guide will assist you from the outset of your Federal service in

- identifying records that must be incorporated into agency files and maintained under the control of the Government
- distinguishing records from extra or convenience copies of records
- separating extra copies of records from record copies and using agency guidance to determine the appropriate disposition of extra copies
- identifying personal files that contain information not used to conduct agency business and that may be removed at your discretion, and
- maintaining personal files separate from records under the control of the agency.

This guide also contains two appendixes. The first gives definitions of terms used in this handbook. The second is a checklist to assist you and your staff in ensuring that appropriate actions have been taken.

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WHAT ARE FEDERAL RECORDS?

By law Federal records are

- all documentary materials including:
  - letters
  - memorandums
  - completed forms
  - statistical and narrative reports
  - graphics
  - photographs
  - audio and video recordings
  - maps
  - architectural, engineering, and other drawings
- regardless of physical forms including:
  - photographic prints and negatives
  - motion picture film
  - tape recordings
  - electronic records
- made or received by an agency of the U.S. Government under Federal law or in connection with the transaction of public business, and
- preserved or appropriate for preservation as evidence of agency functions, organization, and activities or because of the value of the information they contain (44 U.S.C. 3301).

Each agency is responsible for determining if the materials it creates meet this definition of a record. Agencies need to ensure that they create and maintain records that contain a full accounting of their organization, functions, policies, and activities. Agencies also need to ensure that their records are complete and contain information needed to protect the rights of the Government and of those directly affected by Government activities. (See 44 U.S.C. 3101.)

Paper records may be originals or copies, such as file copies of outgoing correspondence or copies forwarded for action. Multiple copies of the same document may each be a record if each serves a separate administrative purpose and if they are kept in separate filing or recordkeeping systems. Moreover, if electronically created records are maintained in paper recordkeeping systems, the information necessary for a complete record must be printed. Contact your agency's records officer for further guidance.

Extra copies, such as distribution copies, stock copies, and copies maintained for convenience of reference, are not Federal records. In addition, when a record exists in multiple formats, such as in paper and electronic form, then generally both the paper and the electronic copies are considered distinct records.

Many factors contribute to the determination that documentary materials are Federal records. If the answer to any of the following questions is "yes," the document is a Federal record.

- Did the agency require creation or submission and maintenance of the document?
- Was the document used to conduct or facilitate agency business?
- If the document is a draft or preliminary document created for background or a similar purpose, does it contain unique information that explains formulation of significant program policies and decisions?
- Was the document distributed to other offices or agencies for formal approval or clearance?
- Was the document placed in an agency file?
- Is the document part of an electronic information system used to conduct Government business?
- Is the document covered by an item in an agency records schedule or regulation?

Records in the Office of the President or the Vice President or in a component of the Executive Office of the President that functions as an advisor to the President are subject to the provisions of the Presidential Records Act of 1978 (44 U.S.C. 2201 et seq.). This act defines Presidential records as distinct from Federal records and personal files, asserts Government ownership of Presidential records, and provides for their disposition. Questions related to determining whether or not documentary materials are Presidential records should be referred to the White House Counsel.

What Documentary Materials Are Not Federal Records?
The statutory definition of records (44 U.S.C. 3301) excludes three specific types of materials:

- library and museum materials made or acquired and preserved solely for reference or exhibit purposes
- extra copies of documents preserved only for convenience of reference
- stocks of publications and of processed documents.

Are Preliminary Drafts and Working Papers Federal Records?
Drafts and working papers should be filed and maintained as part of the agency's records if they

- explain how the agency formulated and executed significant program policies, decisions, actions, or responsibilities; or
- contain unique information such as annotations or comments.

Questions concerning record status should be referred to the agency records officer, legal counsel, or other designated official.

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WHAT ARE PERSONAL FILES?

The term "personal files" replaces the term "personal papers," which was previously used in NARA guidance. This term refers to documentary materials that are either

- unrelated to the conduct of agency business (e.g., files relating to political activities, personal and family matters, or social or civic activities) or
- indirectly related to agency business but outside the scope of the definition of Federal records (i.e., not used to conduct Government business).

Personal files are those materials that belong to an individual, not the agency. Certain files are clearly personal, such as those that are not used in the transaction of agency business (36 CFR 1222.36). Personal files may contain references to or comments on agency business, but they are considered personal if they are not used in the conduct of business.

Traditionally, personal files have included the following categories of material

- business or professional files created before entering Government service; files created during or relating to previously held positions, political materials, and reference files
- private files brought into, created, or received in the office; family and personal correspondence and materials documenting professional activities and outside business or political pursuits, including manuscripts and drafts for articles and books and volunteer and community service records that are considered personal, even if created or received while in office, because they do not relate to agency business
- work-related personal files including diaries, journals, notes, and personal calendars and appointment schedules; though work-related, they may be personal if they are used only as reminders and personal observations on work-related topics, not for the transaction of Government business.

The last category is the most difficult to distinguish from records because of its work-related content. Maintain personal files separately from the records of the agency. Consult the agency records officer, legal counsel, or other designated official to help determine whether files are personal or Federal records.

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WHAT DO I NEED TO DO WHEN I ENTER FEDERAL SERVICE?

You and your staff should follow these recommended recordkeeping practices.

- Establish separate files and directories for Federal records and personal materials to avoid the laborious and difficult task of reviewing voluminous materials when you are ready to leave the agency.
- Implement records management instructions issued by the agency records officer, including guidelines on records creation and procedures for filing (manually or electronically), for all types of records, including:
  - paper records
  - electronic records, including records generated with electronic mail, word processing, spreadsheet, and other desktop applications
  - audiovisual records
  - cartographic records
  - architectural and engineering records.
- Decide if you want copies of records (usually those that you have originated, reviewed, signed, or otherwise acted upon) for later use, and consult with appropriate agency officials (e.g.,

records officer, legal counsel, information security officer) to find out if the agency permits such removal.
- Make copies of Federal records for your personal use as they are being created.
- Document the substance of meetings and telephone and face-to-face conversations where decisions are made, issues are resolved, or policy is established.
- Extract Government business information from documents that contain a mix of personal and business matters and include the business information in agency files.

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WHY SHOULD I CARE ABOUT RECORDS?

You and other Government officials have an interest in ensuring that your agency establishes and follows appropriate records creation and maintenance procedures. Good recordkeeping

- contributes to the smooth operation of your agency's programs by making the information needed for decision making and operations readily available
- provides information useful to successor officials and staff for background and analysis, facilitating transitions between Administrations
- creates a complete record of your official actions that will remain with the agency for future use by agency officials and may later be transferred to the National Archives of the United States as a historical record
- ensures accountability to the Administration, Congress, and the American people
- ensures that electronic records, especially those generated by desktop applications, will be available to all authorized personnel
- protects records from inappropriate and unauthorized access
- facilitates authorized removal of materials by avoiding the need to separate Federal records from extra copies of records and personal materials when you leave office.

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HOW DO I REMOVE PERSONAL FILES AND EXTRA COPIES OF RECORDS?

You may remove personal files at your discretion without agency permission. If you are unsure whether materials are personal or Federal records, consult with the agency records officer.

When leaving Government service, you may wish to take with you

- extra copies of selected Federal records, such as materials you drafted, reviewed, or otherwise acted upon, and
- copies of public affairs records such as news clippings and photographs taken at official functions and celebrations.

Agencies may approve or disapprove requests to remove extra copies of Federal records or other Government-owned documentary materials. Approval should be granted only if all of the following conditions are met:

- Removal would not diminish the official records of the agency.
- Removal would not exceed normal administrative economies.
- The materials do not contain national security classified information.
- The information removed is not subject to the Privacy Act of 1974 (5 U.S.C. 552a).
- Disclosure of the information removed is not otherwise prohibited by law.

When determining whether to permit departing officials to remove documentary materials, the

agency should also consider the extent to which such removal could affect the agency's ability to invoke various legal privileges, and should consider the use of nondisclosure agreements in appropriate cases.

When you remove extra copies of work-related files for your personal use, a designated official of the agency should review the materials and approve their removal.

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CAN I CONTINUE TO HAVE ACCESS TO CLASSIFIED INFORMATION?

The use of classified records after leaving Government service falls under Executive Order 12958, "Classified National Security Information." The Order provides that classified information shall remain under the control of the originating agency or its successor in function. An official or employee leaving an agency may not remove classified information from the agency's control. However, you may be allowed access to records that are classified. To find out, consult with the agency information security manager concerning the arrangements that need to be made. The Order states that agencies may grant access to classified information only when the person has a security clearance at an appropriate level, has signed a nondisclosure agreement, and has a "need-to-know" the information. However, the "need-to-know" requirement may be waived for persons engaged in historical research or for presidential appointees who previously occupied policy making positions. Waivers may be granted only if the originating agency

- determines in writing that access is consistent with the interests of national security
- takes appropriate steps to protect classified information from unauthorized disclosure or compromise and ensures that the information is safeguarded in a manner consistent with the Executive order
- limits access to items that the former Presidential appointee originated, reviewed, signed, or received while in office.

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WHAT HAPPENS TO FEDERAL RECORDS?

The law provides that Federal records may only be destroyed with NARA authorization. Agencies submit records schedules to NARA that describe the records and propose recommended retention periods for each series or category of records. NARA appraises the records to determine which are "permanent," that is, records that have historical or other research value that justifies preservation as part of the National Archives of the United States. Permanent records are normally transferred to the legal custody of the National Archives before they are 30 years old, although some records, especially electronic and audiovisual records, should be transferred as soon as practical because of the fragility of the media. All records not designated as "permanent" are considered "temporary," though their retention period can be as short as a few months or as long as a century. Temporary records are destroyed at the end of the retention period specified in the schedule.

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WHERE CAN I GET FURTHER INFORMATION AND ASSISTANCE?

Contact the agency records officer, general counsel, and information security officer for policy guidance and advice.

Call the NARA Life Cycle Management Division at 301-713-6677 or send an electronic message to

records.mgt@arch2.nara.gov with questions or to request the following services:

- Briefings for agency officials
- Training services in such areas as improving the management of an agency's files
- Consultations about specific agency records maintenance problems and practices
- Determining record status
- Scheduling records for disposition

Additional guidance also is available in NARA's management guide, "Agency Recordkeeping Requirements" (1995). That guide as well as NARA records management regulations and other publications, including a NARA bulletin on "Protecting Federal Records and Other Documentary Materials from Unauthorized Removal," are available on the NARA web site at http://www.nara.gov/records/index.html.

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APPENDIX A. DEFINITIONS

Documentary materials is a collective term for records and nonrecord materials that refers to all media on which information is recorded, regardless of the nature of the medium or the method or circumstances of recording (36 CFR 1220.14).

Electronic records include numeric, graphic, and text information, which may be recorded on any medium capable of being read by a computer and which satisfy the definition of a record. This includes, but is not limited to, magnetic media, such as tapes and disks, and optical disks. Unless otherwise noted, these requirements apply to all electronic information systems, whether on microcomputers, minicomputers, or mainframe computers, regardless of storage media, in network or stand-alone configurations (36 CFR 1234.1).

Electronic information system is a system that contains and provides access to computerized Federal records and other information (36 CFR 1234.2).

Federal agency, as defined in 44 U.S.C. 2901(14), is any "executive agency or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol)."

Federal records are defined in 44 U.S.C. 3301 as "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, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library or museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included."

Permanent record means any Federal record that has been determined by NARA to have sufficient value to warrant its preservation in the National Archives of the United States. Permanent records include all records accessioned by NARA into the National Archives of the United States and later increments of the same records, and those for which the disposition is permanent on SF 115s, Request for Records Disposition Authority, approved by NARA on or after May 14, 1973 (36 CFR 1220.14).

Personal files are those documentary materials maintained in Federal offices that belong to an individual because they relate solely to an individual's own affairs or are used exclusively for that individual's convenience and were not used in the transaction of Government business.

Series means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access and use. Also called a records series (36 CFR 1220.14).

Temporary records. A temporary record is any record which has been determined by the Archivist of the United States to have insufficient value (on the basis of current standards) to warrant its preservation by the National Archives and Records Administration. This determination may take the form of:

a. A series of records designated as disposable in an agency records disposition schedule approved by NARA (Standard Form 115, Request for Records Disposition Authority); or
b. A series of records designated as disposable in a General Records Schedule (36 CFR 1220.14).

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APPENDIX B: CHECKLIST ON PERSONAL FILES FOR AGENCY OFFICIALS

		Yes	No
1.	Have you set up procedures for maintaining personal files, both those you brought with you and those you accumulate while in office, separately from Federal records ?	☐	☐
2.	Do you maintain personal files separately from Federal records in both paper (different file cabinets or file drawers) and electronic (on removable disks or in separate personal directories on a computer) formats?	☐	☐
3.	If you are at the end of your tenure, have you identified, separated, and prepared for removal personal files to ensure that you will not be removing records?	☐	☐
4.	Has your agency authorized the creation and removal of extra copies of records?	☐	☐
5.	If so, have you identified the types of work-related files in which you have an interest and established procedures for the routine copying of those materials?	☐	☐
6.	If you are getting ready to leave, have you reviewed the personal files that you wish to remove to ensure that no classified materials are included?	☐	☐
7.	Have you ensured that the materials you seek to remove do not contain security classified information, information covered by the Privacy Act, or information the disclosure of which is otherwise prohibited by law, and that your removal of the materials complies with agency policies regarding legally privileged or otherwise restricted information?	☐	☐
8.	Have you established a procedure for routinely listing the materials that you will be removing from your office for approval by your agency?	☐	☐

9. If you are getting ready to leave, have you arranged for the designated official, such as the records officer, legal counsel, or other official, to review the materials, including extra copies of records, that you plan to remove? ☐ ☐

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Records Management Home Page

National Archives and Records Administration home page
URL: http://www.nara.gov /records/pubs/dyps.html
webmaster@nara.gov
Last updated September 28, 2000

PRA
(OVP)

July 20, 1993

MEMORANDUM FOR TODD CAMPBELL

FROM: KUMIKI GIBSON AND NEAL KATYAL NK

SUBJECT: OVP DOCUMENT RETENTION PROCEDURES

This memorandum addresses the procedures that the Office of the Vice President ("OVP") must follow under the Presidential Records Act, 42 U.S.C. § 2201-07 ("PRA"). We conclude that OVP must retain all documents and correspondence that have been prepared for the use of the President, the Vice President, or members of their staffs.

Discussion

The PRA governs the document retention policy of "presidential records."[1] 42 U.S.C. § 2201. Its provisions explicitly apply to the Vice President. 42 U.S.C. § 2207. Presidential records have three characteristics. First, the material must resemble or be in the form of "books, correspondence, memorandums, documents, papers, pamphlets, works of art, models, pictures, photographs, plates, maps, films, and motion pictures. . ." 42 U.S.C. § 2201(1). Second, the record must be created or received by the Vice President, his immediate staff, or a unit or individual whose function is to advise the Vice President. 42 U.S.C. § 2201(2). Third, the record must relate to or have an effect upon the fulfilling of the Vice President's constitutional, statutory, or other official/ceremonial duties. Id.

Four types of documents are exempt from the PRA: official agency records, extra copies of documents, publications and stationery, and personal records. There is no legislative history or litigation regarding "official records."

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[1] The Federal Records Act ("FRA") governs document retention requirements for executive agencies. It does not, however, apply to the OVP: "The President, the Office of Vice President, and the components of the EOP whose sole responsibility is to advise the President are subject to the PRA and create presidential records. The components of the EOP that have statutory responsibility (such as the Office of Management and Budget and Council on Environmental Quality) are subject to the FRA and create 'federal records.'" Armstrong v. Bush, 924 F.2d 282, 286 n.2 (D.C. Cir. 1991).

Personal records, under the PRA, refer to materials or portions of materials "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." 42 U.S.C. § 2201(3). This means that private documents (such as diaries) are not presidential records. "Materials relating to private political associations" and campaign documents are also considered personal records. 42 U.S.C. § 2201(3). On the other hand, materials that have both an official and a personal purpose (such as telephone logs) are considered presidential records.

Under the PRA, the Vice President has an affirmative duty to ensure that "activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented . . . ." 42 U.S.C. § 2203(a). During his term, the Vice President may dispose of presidential records that no longer have administrative, historical, informational, or evidentiary value if the Vice President obtains the views of the Archivist in writing before disposal. The Archivist has the option of notifying Congress if either (1) the particular records are of interest to Congress or (2) such consultation is in the public interest. 42 U.S.C. § 2203(d). While the Archivist has the authority to notify Congress, neither the Archivist nor the Congress has the power to override or veto the Vice President's decision to dispose of certain records. The PRA simply requires that notice be given to the Archivist; it does not require the Archivist's consent.

OVP is therefore required to adhere to the following document-retention procedures:[2]

1) OVP must retain all documents, briefings, and other correspondence relating to official business. OVP need not preserve personal documents (such as private e-mail notes), official agency records, extra copies of documents, and stocks of publications and stationery. Preliminary drafts may be considered presidential records if they reflect policy development or significant decisions relating to the fulfillment of the Vice President's duties.

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[2] These procedures are consistent with the requirements outlined by the White House Counsel's office. See Memorandum from John D. Podesta and Stephen R. Neuwirth to All EOP Staff (Presidential Records) (attached hereto).

E 5391

2) OVP must create and implement back-up systems to preserve such material. OVP may want to consider creating an e-mail and document system where boxes could be checked for personal correspondence. OVP may have a strong policy reason for maintaining paper copies instead of computer records since facts within computer records are much easier to access by keyword searches.

3) OVP must consult with the Archivist and the White House Records Management Office to devise a system for document retention. An established, on-going relationship with the Archivist could be of mutual benefit.

Please let us know if you need any additional information or research on this issue.

cc: Michael Gill

Attachments

PRA

THE WHITE HOUSE

WASHINGTON

May 9, 1997

MEMORANDUM FOR EXECUTIVE OFFICE OF THE PRESIDENT STAFF

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

SUBJECT: Presidential Records

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

Summary of White House Policies Regarding the Presidential Records Act

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

GUIDELINES FOR THE PRESIDENTIAL RECORDS ACT

I. What are Presidential Records?

Presidential Records must meet two tests:

1. They must be created or received by the President, his immediate staff, or others in the EOP whose job is to advise and assist the President, and

2. They must relate to or directly affect the performance of the President's constitutional, statutory, ceremonial or other official duties.

II. What units in the EOP generate Presidential Records?

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

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

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

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

A Presidential Record may be in any physical form, including: "books, correspondence, memorandums, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, audio, audio-visual, or other electronic or mechanical recordations." E-mails and documents existing only on computer are also included.

IV. What materials are <u>not</u> Presidential Records?

The following are not Presidential Records:

1. Personal records.

2. Nonrecord materials.

3. Official records of an agency.

4. Stocks of publications and stationery.

5. Extra copies of documents produced only for convenience or reference, when the copies are clearly identified as such.

V. **What are "personal records?"**

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

1. Diaries, journals, and the like if they are not prepared, used or circulated for government business.

2. Materials gathered by a staff member before joining government service, if not used for government business.

3. Materials relating solely to the staff member's private affairs, such as financial records, insurance forms, and outside professional associations.

4. Personal photographs.

5. Materials relating to the election of others to federal, state, or local office, which have no relation or direct effect on the performance of the President's official duties.

VI. **Are political documents Presidential Records?**

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

VII. **What are "nonrecord materials?"**

The following types of materials may not be Presidential Records:

1. Preliminary drafts not circulated to persons besides the authors.

2. Preliminary drafts, work sheets, and notes if they are reflected in the final product and they do not document the development or implementation of policy.

3. Shorthand and other notes once they are transcribed or converted to formal documents which are verified for accuracy and completeness.

4. Scratch pads, visitor and call logs, and similar nonsubstantive documents.

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

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

IX. How should you maintain Presidential Records?

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

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

X. Can you destroy Presidential Records?

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

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

XI. What happens to Presidential Records?

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

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

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

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

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

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

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

National Archives and
Records Administration
Washington, DC 20408

NARA BULLETIN

NO. 2000-03

May 16, 2000

TO: Heads of Federal agencies

SUBJECT: Protecting Federal records and other documentary materials from unauthorized removal

EXPIRATION DATE: This bulletin will remain in effect until May 31, 2002.

1. Why is NARA issuing this bulletin? The purpose of this bulletin is to remind heads of Federal agencies that official records must remain in the custody of the agency.

a. Federal records may be destroyed or removed from Government custody only with the approval of the Archivist of the United States (44 U.S.C. Chapter 33). If an agency knows of any actual or potential threat (e.g., removal, alteration, or destruction) to records, it should contact NARA. NARA will assist the agency in working with the Department of justice to recover alienated records (44 U.S.C. 3106).

b. In addition, only with the agency's permission may departing officials remove extra copies of records. Officials may remove documentary materials that are of a purely personal nature when they leave public service. This reminder is needed at this time, given the upcoming change in presidential administration.

2. What materials are Federal records?

As defined in 44 U.S.C. 3301, records are documentary materials that agencies create and receive while conducting business that provide evidence of the agency's organization, functions, policies, decisions, procedures, and operations, or because they contain information of value. Records may be in paper, film, tape, disk, or other physical form. They may be generated manually, electronically, or by other means.

3. Are there Federal documentary materials that do not qualify as records?

Materials such as library or museum materials, extra copies of records kept solely for convenience of reference, and stocks of publications and processed documents are excluded from the definition of "record" (44 U. S. C. Chapter 33). These work-related materials, though excluded from the definition of "record," nevertheless belong to and are controlled by the Government (36 CFR 1222.34(f)).

4. Does the Government control personal documentary materials that I may bring into the office?

Federal records management requirements do not apply to personal materials that are brought to or accumulated at work. Personal materials include family and personal correspondence and materials documenting professional activities and outside business or political pursuits. These materials belong to the individual, and the Government exerts no control over them.

5. How should I maintain the documentary materials in my office to distinguish and separate the different types of materials?

a. Federal records need to be maintained in agency files or electronic recordkeeping systems. Agency personnel need to know how to ensure that records are incorporated into files or electronic recordkeeping systems, especially records that were generated electronically on personal computers. Only records needed for current operations, such as open case files, should be maintained at an individual's desk.

b. Depending on access restrictions, agencies may permit personnel to keep extra copies for convenience of reference in their offices and on their personal computers. However, you must get the agency's permission if you want to remove any of these materials for personal use (36 CFR 1222.42).

c. Maintain personal materials separately from records and extra copies of records so that you will not have to separate them when you leave your position.

6. What do I do with records and other documentary materials that I no longer need?

Records are maintained in agency files and other recordkeeping systems. When a record is finalized, when a case file is closed, or at another appropriate time, follow established procedures for incorporating it into the appropriate recordkeeping system. Records must be maintained in recordkeeping systems so that they will be integrated, either physically or intellectually, with related records and where they will be accessible to all staff who may need them. Records must remain in the custody of the agency, and may not be removed for nonofficial uses.

7. May I remove documentary materials from the agency?

a. You are likely to have extra copies of records kept for convenience of reference in your office or workstation. You may remove such copies for personal use only with the approval of a designated official of the agency, such as the records officer or legal counsel. Copies of records that are national security classified or otherwise restricted must remain under the control of the agency. If the agency permits removal, they must be transferred to a facility that has an appropriate level security storage area (36 CFR 1222.42).

b. You may remove personal materials maintained separately from both records and extra copies of records. Consult the agency records officer if records, extra copies of records, and personal materials are intermingled.

8. What must I do to implement this bulletin?

You should notify officials and employees that there are criminal penalties for the unlawful removal or destruction of Federal records (18 U.S.C. 2071) and the unlawful disclosure of national security information (18 U.S.C. 793, 794, and 798). You should also provide guidance on the handling of records containing other information exempt under FOIA (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a), and other information restricted by law.

Federal records

National Archives at College Park

8601 Adelphi Road College Park, Maryland 20740-6001

May 16, 2000

Protecting Federal Records From Unauthorized Removal

TO: Heads of Federal Agencies

With the upcoming transition in presidential administrations, I want to remind you about the need to protect against removal of Federal records and ask for your assistance in ensuring that all Federal records created or received by your agency remain in the agency. As a presidential appointee, your records and those of other high level officials at your agency are particularly important. These records are likely to have continuing usefulness to the Government, as well as a high potential for future research use.

The enclosed NARA Bulletin 2000-03 explains the basic principles governing the protection of records and the removal of extra copies of records and personal materials. The bulletin also refers to more detailed guidance and explains how to obtain it. It is particularly important that officials understand that their personal computers are likely to contain Federal records that must be properly maintained and left with the agency when the official moves on. At a minimum, virtually every official will create and receive email that are Federal records.

Many officials are interested in removing documentary materials for personal use or to donate to a research institution. Be aware that records in your possession and the possession of your staff belong to your agency and must remain there upon departure. However, it may be suitable to remove copies of records when approved by a designated official of your agency. Other institutions may be interested in copies of records that you handled while in Federal service, along with personal materials relating to your career. You and other officials at your agency should be familiar with the regulations prohibiting the removal of records, and the controls that regulate removing extra copies.

PRA
(mil)

THE WHITE HOUSE

WASHINGTON

August 8, 2000

MEMORANDUM FOR COMMANDER, WHITE HOUSE COMMUNICATIONS AGENCY
PRESIDENTIAL PILOT
DIRECTOR, PRESIDENTIAL CONTINGENCY PROGRAMS
COMMANDING OFFICER, HMX-1
DIRECTOR, WHITE HOUSE MEDICAL UNIT
COMMANDING OFFICER, CAMP DAVID
DIRECTOR, SPECIAL PROGRAMS OFFICE
MILITARY AIDES TO THE PRESIDENT
CHIEF, U.S. ARMY TRANSPORTATION AGENCY (WH)
DIRECTOR, SECURITY OFFICE
DIRECTOR, AIRLIFT OPERATIONS
FOOD SERVICE COORDINATOR

FROM: JOSEPH J. SIMMONS IV
DEPUTY ASSISTANT TO THE PRESIDENT AND
DIRECTOR, WHITE HOUSE MILITARY OFFICE

SUBJECT: Preservation and Archival of Presidential Records

As we near the end of President Clinton's second term in office, the White House Military Office (WHMO) must ensure Presidential records are properly managed and archived in accordance with the Presidential Records Act. Vice Presidential records are also subject to the provisions of the Presidential Records Act.

The Presidential Records Act, 44 U.S.C. Chapter 22 § 2201, specifies Presidential records as materials created or received by the President, his immediate staff, or an office or individual in the Executive Office of the President who advises and assists the President. Also, records relating to or having an effect upon the President in carrying out his constitutional, statutory, official or ceremonial duties.

Specific guidance on disposition and custody of presidential records is attached for your review. Presidential records may be in any physical form i.e. paper, pamphlets, works of art, models, pictures, photographs, maps, films, motion pictures, included but not limited to, audio, audiovisual, or other electronic or mechanical recording methods.

It is critical that WHMO units search, identify and clearly mark Presidential and Vice Presidential records. The Office of Records Management will be scheduling visits to each WHMO unit to ensure a smooth transition of these records.

Should you have any questions pertaining to these matters, please call Dr. Gerald Suarez at 7-1222.

Attachment

DOCUMENTING YOUR PUBLIC SERVICE

Amy E. Krupsky
Office of the General Counsel
National Archives and Records Administration

Office of Government Ethics Conference
September 13, 2000

Federal records
Presidential records
personal files
leaving Federal service
entering Federal service

The National Archives and Records Administration (NARA) issues guidelines for Federal agencies on the management of records and other types of documentary materials accumulated by Federal agencies and officials.

NARA's web site (www.nara.gov/publications/recmgmt.html), provides information on records creation, maintenance, and disposition.

Documenting Your Public Service will be available soon. This guide will replace the 1992 NARA Management Guide, *Personal Papers of Executive Branch Officials*.

WHAT ARE FEDERAL RECORDS ?

By law Federal records are:

all documentary materials regardless of physical form made or received by an agency of the U.S. Government under Federal law or in connection with the transaction of public business, and

preserved or appropriate for preservation as evidence of agency functions, organization, and activities or because of the value of the information they contain.

(44 U.S.C. 3301)

Each agency is responsible for determining if the materials it creates meet this definition of a record. Records should contain a full accounting of agency's organization, functions, policies, and activities.

Agencies also need to ensure that their records contain information needed to protect the rights of the Government and of those directly affected by Government activities.

(See 44 U.S.C. 3101)

Paper records may be originals or copies. Multiple copies of the same document may each be a record if each serves a separate purpose and if they are filed separately.

If electronically created records are maintained in paper recordkeeping systems, the information necessary for a complete record must be printed.

Extra copies, such as distribution copies, stock copies, and copies maintained for convenience of reference, are not Federal records.

When a record exists in multiple formats - paper and electronic - generally both paper and electronic copies are considered distinct records.

Records of the President or the Vice President or in a component of the EOP that functions as an advisor to the President are subject to the Presidential Records Act of 1978 (44 U.S.C. 2201 et seq.)

Presidential records are distinct from Federal records and personal files. Questions related to Presidential records should be referred to the White House Counsel.

Are Preliminary Drafts and Working Papers Federal Records?
Drafts and working papers should be filed and maintained as part of the agency's records if they:

explain how the agency formulated and executed significant program policies, decisions, actions, or responsibilities; or contain unique information such as annotations or comments.

WHAT ARE PERSONAL FILES?

The term "personal files" replaces the term "personal papers" which was previously used in NARA guidance.

This term refers to documentary materials that are either: unrelated to the conduct of agency business, e.g., files relating to political activities, personal and family matters, or social or civic activities; or

indirectly related to agency business but outside the scope of the definition of Federal records, i.e., not used to conduct Government business.

Personal files are those materials that belong to an individual, not the agency. Personal files are not used in the transaction of agency business (36 CFR 1222.36).

Personal files may contain references to or comments on agency business, but they are considered personal if they are not used in the conduct of business.

HOW DO I REMOVE PERSONAL FILES AND EXTRA COPIES OF RECORDS?

You may remove personal files at your discretion without agency permission. If you are unsure whether materials are personal or Federal records, consult with the agency records officer.

When leaving Government service, you may wish to take with you

extra copies of selected Federal records, such as materials you drafted, reviewed, or otherwise acted upon.

Agencies may approve or disapprove requests to remove extra copies of Federal records or other Government-owned documentary materials.

Approval should be granted only if all of the following conditions are met.

Removal would not diminish the official records of the agency.

Removal would not exceed normal administrative economies.

The materials do not contain national security classified information.

The information removed is not subject to the Privacy Act of 1974 (5 U.S.C. 552a)

the agency should consider its ability to invoke various legal privileges and should consider the use of nondisclosure agreements in appropriate cases

WHAT DO I NEED TO DO WHEN I ENTER FEDERAL SERVICE?

You should follow these recordkeeping practices.

Establish separate files and directories for Federal records and personal materials.

Implement records management instructions issued by the agency

Decide if you want copies of records and make copies as created.

Document the substance of meetings, telephone and face-to-face conversations where decisions are made, issues are resolved, or policy is established.

WHERE CAN I GET FURTHER INFORMATION AND ASSISTANCE?

Contact the agency records officer, general counsel, and information security officer for policy guidance and advice.

NARA Life Cycle Management Division

301-713-6677

records.mgt@arch2.nara.gov

with questions or to request:

- Briefings for agency officials
- Training
- Consultations about specific problems and practices
- Determining record status
- Scheduling records for disposition

Additional guidance also is available on NARA's web site at

www.nara.gov/records/index.html.

TO: Bush-Cheney Presidential Transition Team

FROM: Michael Toner

DATE: January 17, 2001

RE: Transition Records Policy

This memorandum sets out the policy for handling all transition records. The policy applies to and should be reviewed carefully by all transition employees and volunteers.

1. Transition Records: All papers and documents generated in the course of the transition remain the property of the transition and should not be treated as personal property, during or after the transition. Transition records generally are not subject to public disclosure through the Freedom of Information Act ("FOIA") because the transition is not a federal "agency" under the terms of FOIA (FOIA requires disclosure only of non-exempt "agency" records). However, transition records may become subject to disclosure under FOIA if they are sent to a federal agency during the transition (including to GSA), or if the records are retained by a transition employee who is subsequently appointed to a government position and the records are used for government business.

Members of the Transition Team should not send any transition record to any federal agency unless specifically authorized to do so by Clay Johnson and the Transition Counsel's Office. Members of the Transition Team that go on to serve in the administration should not commingle transition records with records of the federal department or agency in which they serve and should not otherwise use transition records for official government business without prior authorization from the Transition.

2. Personal Records / Non-Transition Records: Records that are of a purely personal nature, having no relation to the transition, should be kept separately from transition records. Records that relate to the campaign, the recount, or to any other pre-transition work should likewise be kept separately from transition records.

For purposes of this policy, the term "transition records" includes all papers, documents, e-mails, and other materials, in whatever form, that have been or will be prepared or received by the transition for the purpose of carrying out transition business (other than records received from government departments or agencies).

If you have questions about any aspect of this policy or about the handling of particular transition records, please consult the Transition Counsel's Office.

Memorandum to Bush-Cheney Transition Employees

From: Transition Counsel's Office

Re: Transition Gift Rules and Pre-Inaugural Parties for Transition Staff

Date: January 10, 2000

A number of individuals and groups are reportedly interested in sponsoring events honoring Bush-Cheney transition staff.

The Bush-Cheney Transition Gift Policy permits transition employees to accept gifts up to $20 in value, provided that the aggregate value of gifts received from any one person or organization does not exceed $50 and the gift does not come from a prohibited source (*i.e.*, from a person seeking a job with the federal government or from a person regulated by or having a matter before an agency within the scope of the transition employee's responsibilities). Gifts from family members or from close personal friends that are unrelated to the transition employee's transition activities may be received by the employee without regard to the $20 ($50 aggregate) limit.

Consistent with these rules, events can be held during Inauguration week honoring or featuring transition employees. For widely attended events, as long as no single individual or entity underwrites the cost of the event at a rate of more than $20 per attendee (including the honored individual), the gift is permissible. Thus, if a reception will be for 100 guests, each sponsor could donate up to $2000 for the reception.

In an instance where a transition employee's former law firm or professional association wants to sponsor a pre-inaugural event in the employee's honor, it may do so without regard to the $20 ($50 aggregate) individual limit, so long as that entity is unrelated to the employee's transition activities.

If you have any questions about this subject, please do not hesitate to contact the Transition Counsel's Office at x37761.

POLICY STATEMENT CONCERNING IDENTIFICATION OF TRANSITION CONTACTS AND INFORMATION DISCLOSURE TO TRANSITION PERSONNEL

The Presidential Transition Act directs all government officials to take appropriate lawful steps to promote an orderly transition. The President would like this to be the smoothest transition ever. To effect an orderly transition, the President-elect and his associates must become knowledgeable about current government policies and operations so that they can begin making informed decisions immediately upon taking office. This policy statement addresses the procedures for identifying individuals charged with transition responsibilities and for disclosing information to transition personnel. It implements a Memorandum of Understanding entered into between the Director of the President's Transition Team and the Chairman of the President-Elect's Transition Team, a copy of which is attached.

I. Identification of Transition Contacts

In order to protect interests of the President and the President-elect and to avoid unnecessary interference with ongoing government operations, it is important that Departments and agencies verify that the individuals who seek access to government information or employees are, in fact, legitimate members of the President-elect's Transition Team. Consequently, the Departments and agencies should, before they have any dealings with individuals representing themselves as members of the President-elect's Transition Team, establish that the individuals' names appear on the official register of the President-elect's Transition Team. The Chairman of the President-elect's Transition Team has agreed to provide to the Director of the President's Transition Team the names of all officially authorized individuals, along with written assurance that the individuals have agreed to abide by the Transition's Code of Ethical Conduct and have thereby represented that they have no conflict of interest that precludes them from working on the matters they have been authorized to work on by the President-elect's Transition Team. The Director of the President's Transition Team will provide an updated copy of that register to the Departments and agencies on a daily basis. If an individual contacts a Department or agency on behalf of the Transition who is not listed on that register as authorized to work with that Department or agency, please contact the Office of the Director of the President's Transition Team for guidance.

II. Transition Point of Contact

The official transition contact previously designated by each Department and agency will serve as the point of contact for providing other contacts, information and services to authorized members of the President-elect's Transition Team. Thus, any meetings with the President-elect's Transition Team members should be authorized by that contact, and any materials provided

to the President-elect's Transition Team members should likewise be authorized by that contact.

III. Disclosure of Information Not Available to the General Public

As a general matter, most of the information needs of the President-elect's Transition Team can be met by providing them with access to public information. In limited circumstances, however, it will be necessary to provide specified transition personnel with access to information or records not available to the general public. Such material may be protected by constitutional, statutory or common law privileges, or its distribution may otherwise be restricted by law. In addition, provision of such information may raise issues under the Government's standards of conduct, which preclude government employees from allowing the improper use of non-public information to further the private interests of another through knowing unauthorized disclosure.

In order to protect these interests, the following procedures should be observed in disclosing information not available to the general public to members of the President-elect's Transition Team.

A. General Procedures for Disclosure of Information Not Available to the General Public

Before providing information not available to the general public to a member of the President-elect's Transition Team, Departments and agencies should expeditiously:

- Brief the Transition member on the importance of maintaining the constitutional, statutory and/or common law safeguards afforded the non-public information;

- Clearly label non-public records provided to Transition personnel with a warning against subsequent disclosures to unauthorized individuals, including unauthorized members of the Transition Team.

- Specifically advise Transition members that non-public information provided to them cannot be shared with other Transition personnel unless they meet the requirements for access to that information.

- Require the Transition member to sign a statement representing that, to that member's knowledge, he or she has no financial

interest or imputed financial interest that would be directly and predictably affected by a particular matter to which the information is pertinent.[1] The Department or agency may require such additional information from the Transition member as the Department or agency deems necessary, in light of the proposed disclosure.

- Where advisable, prohibit the Transition member from removing records containing non-public information from the offices of the Department or agency.

Upon request from the Department or agency, the President-elect's Transition will provide a statement indicating the Transition member's need for access to the non-public information. The statement of need will be provided by a Cluster Coordinator, Deputy Cluster Coordinator, or Lead Agency Liaison.

After a disclosure of information not available to the general public is made, Department or agency personnel should make a written record of the disclosure, including a description of the non-public information, the identity of the person to whom the disclosure was made, and a summary of the steps taken to protect against subsequent disclosure of the information.

B. Classified Information

Before providing any classified information to a member of the President-elect's Transition, pursuant to Executive Order 12356, Departments and agencies must establish the following:

- That member has the security clearances necessary to have access to that information, and
- That member has signed the requisite non-disclosure agreement.

C. Attorney-Client Material

Information protected by the attorney-client privilege should not be disclosed to any member of the Transition. The Department of

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[1]The terms "financial interest," "imputed financial interest," "direct and predictable effect," and "particular matter" have the same meaning here as in 18 U.S.C. 208 and the regulations interpreting those terms set out in 57 Fed. Reg. 35051 et seq (to be codified 5 C.F.R part 2635.

Justice advises that disclosure of such information may waive this privilege.

D. Privacy Act Material

To avoid any possible violation of the Privacy Act, Departments and agencies should not disclose official personnel folders, performance evaluation information, or information from a resume or Form SF-171 Personal Qualification Statement without the express written consent of the affected employee.

E. Material Subject to Other Statutory Protections

The above list does not exhaust the list of statutory protections that may preclude disclosure of material. Departments and agencies should, of course, abide by other applicable statutory restrictions on disclosure of information.

F. Issues Relating to This Policy Statement

Any issues between members of the President-elect's Transition Team and Departments and agencies should be addressed, in the first instance, by discussion between the Department's or agency's transition contact and the Lead Agency Liaison, Deputy Cluster Coordinator, or Cluster Coordinator.

Attachment

MEMORANDUM OF UNDERSTANDING
REGARDING TRANSITION PROCEDURES,
IDENTIFICATION OF TRANSITION CONTACTS,
AND ACCESS TO NON-PUBLIC GOVERNMENT AND TRANSITION INFORMATION

(1) The Administration and the President-elect's Transition Team agree that, in order to effect an orderly transition of power in accord with the Presidential Transition Act, as amended, the President-elect and certain of his associates must become knowledgeable about current government policies and operations so that they can begin making informed decisions immediately upon taking office.

(2) The Administration and the President-elect's Transition Team enter into this memorandum of understanding in order to establish an orderly process for identifying individuals charged with transition responsibilities, to ensure that the Government's standards of conduct are observed, to protect the confidentiality of non-public government information made available to the President-elect's Transition Team during the transition period, to preserve the constitutional, statutory and common law privileges that attach to such information in the possession of the Executive Branch, and to protect the confidentiality of transition information made available to the Government.

(3) The Chairman of the President-elect's Transition Team will furnish in writing to the Director of the President's Transition Team the name of each individual authorized by the President-elect's Transition to work with particular Departments and agencies. The Chairman of the President-elect's Transition Team will also indicate in writing that each individual on the list has met the applicable public disclosure requirements of the Presidential Transition Act, as amended, has agreed to abide by the Transition's Code of Ethical Conduct, and has thereby represented that he or she has no conflict of interest that precludes the individual from working on the matters the Transition has authorized the individual to work on with that Department or agency. The Director of the President's Transition Team will forward these names to the appropriate Departments and agencies. The Director of the President's Transition Team will also provide in writing to the Chairman of the President-elect's Transition Team the names of individuals in the Departments and agencies responsible for transition matters.

(4) The Administration will conduct its transition activities with the President-elect's Transition Team through the contacts authorized by the Transition Team, and the President-elect's Transition Team will initiate its transition activities with the Administration involving a particular Department or agency by contacting the individual designated by the President's Transition Team Director and will go through that individual with respect to other contacts it wishes to make or information it wishes to seek.

(5) In some limited circumstances, it may be necessary to provide specified transition personnel with access to non-public information that is protected by constitutional, statutory or common law privileges, and material whose distribution is otherwise restricted by law. The President's Transition Team Director has advised the President-elect's Transition Team that agency personnel will take the steps required by law, including the Executive Branch standards of conduct, the Privacy Act and the attorney-client privilege, to protect such information. In particular, a government employee may not allow the improper use of nonpublic information to further his own private interest or that of another by knowing unauthorized disclosure. 57 Fed. Reg. 35060, to be codified at 5 C.F.R. 2635.703.

(6) In order to facilitate a smooth transition and provide a mechanism for expeditiously addressing any concerns, including ethical, privacy and privilege concerns, regarding access to non-public information as described in paragraph (5), the Director of the President's Transition Team and the Chairman of the President-elect's Transition Team will each designate in writing an official or officials authorized to confer in order to resolve such concerns informally.

(7) The President's Transition Director further advises that, before providing any classified information to a member of the President-elect's Transition, pursuant to Executive Order 12356, Departments and agencies must establish the following:

- o That member has the security clearances necessary to have access to that information, and
- o That member has signed the requisite non-disclosure agreement.

(8) The President's Transition Director advises that, before providing non-public information as described in paragraph (5) to a member of the President-elect's Transition authorized to receive it under the guidelines established in this memorandum, Departments and agencies will expeditiously:

- Brief the Transition member on the importance of maintaining the constitutional, statutory and/or common law safeguards afforded the non-public information;

- Clearly label non-public records provided to Transition personnel with a warning against subsequent disclosures to unauthorized individuals, including unauthorized members of the Transition Team.

- Specifically advise Transition members that non-public information provided to them cannot be shared with other Transition personnel unless they meet the requirements for access to that information.

- Require the Transition member to sign a statement representing that, to that member's knowledge, he or she has no financial interest or imputed financial interest that would be directly and predictably affected by a particular matter to which the information is pertinent. The Department or agency may require such additional information from the Transition member as the Department or agency deems necessary, in light of the proposed disclosure.

- Where advisable, prohibit the Transition member from removing records containing non-public information from the offices of the Department or agency.

Upon request from the Department or agency, the President-elect's Transition will provide a statement indicating the Transition member's need for access to the non-public information. The statement of need will be provided by a Cluster Coordinator, Deputy Cluster Coordinator, or Lead Agency Liaison.

After such a disclosure is made, Department or agency personnel shall make a written record thereof.

(9) It may also be necessary for members of the President-elect's Transition Team to share with the Administration information that they wish to be kept confidential. Accordingly, to the extent permitted by law, the Administration agrees to protect the confidentiality of information provided to it on a confidential basis by the President-elect's Transition Team.

(10) Any disagreements between the Administration and the President-Elect's Transition Team concerning the subject matter of this memorandum that are not resolved informally pursuant to paragraph (6) or otherwise will be referred by the Administration to Andrew Card and by the President-Elect's Transition Team to Vernon Jordan.

(11) To the extent permitted by law, the Administration with respect to its subordinates and the President-elect's Transition Team with respect to its subordinates state that they intend to take appropriate steps to discipline any person who fails to comply with the terms of this agreement.

Andrew H. Card, Jr.

Dated: 12-5-92

Vernon Jordan, Jr.

Dated: 12/5/92

MEMORANDUM OF UNDERSTANDING REGARDING TRANSITION PROCEDURES, IDENTIFICATION OF TRANSITION CONTACTS, AND ACCESS TO NON-PUBLIC GOVERNMENT AND TRANSITION INFORMATION

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(2) The Administration and the President-elect's Transition Team enter into this memorandum of understanding in order to establish an orderly process for identifying individuals charged with transition responsibilities, to ensure that the Government's standards of conduct are observed, to protect the confidentiality of non-public government information made available to the President-elect's Transition Team during the transition period, to preserve the constitutional, statutory and common law privileges that attach to such information in the possession of the Executive Branch, and to protect the confidentiality of transition information made available to the Government.

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(5) In some limited circumstances, it may be necessary to provide specified transition personnel with access to non-public information that is protected by constitutional, statutory or common law privileges, and material whose distribution is otherwise restricted by law. The President's Transition Team Director has advised the President-elect's Transition Team that agency personnel will take the steps required by law, including the Executive Branch standards of conduct, the Privacy Act and the attorney-client privilege, to protect such information. In particular, a government employee may not allow the improper use of nonpublic information to further his own private interest or that of another by knowing unauthorized disclosure. 57 Fed. Reg. 35060, to be codified at 5 C.F.R. 2635.703.

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(7) The President's Transition Director further advises that, before providing any classified information to a member of the President-elect's Transition, pursuant to Executive Order 12356, Departments and agencies must establish the following:

- That member has the security clearances necessary to have access to that information, and
- That member has signed the requisite non-disclosure agreement.

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- Brief the Transition member on the importance of maintaining the constitutional, statutory and/or common law safeguards afforded the non-public information;

- Clearly label non-public records provided to Transition personnel with a warning against subsequent disclosures to unauthorized individuals, including unauthorized members of the Transition Team.

- Specifically advise Transition members that non-public information provided to them cannot be shared with other Transition personnel unless they meet the requirements for access to that information.

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Upon request from the Department or agency, the President-elect's Transition will provide a statement indicating the Transition member's need for access to the non-public information. The statement of need will be provided by a Cluster Coordinator, Deputy Cluster Coordinator, or Lead Agency Liaison.

After such a disclosure is made, Department or agency personnel shall make a written record thereof.

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Andrew H. Card, Jr.

Dated: 12-5-92

Vernon Jordan, Jr.

Dated: 12/5/92

transition

The Office of Presidential Transition

December 7, 1992

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

FROM: ANDREW H. CARD, JR. Andy Card
DIRECTOR OF THE PRESIDENT'S TRANSITION TEAM

SUBJECT: Transition Contacts and Information Disclosure Policies

On December 1, I sent you a memorandum in which I promised additional guidance regarding our policy on transition contacts and disclosure of information not available to the general public to members of the President-elect's Transition Team as soon as we had reached agreement with the President-elect's Transition Team on these points. Those procedures have now been agreed upon, and I have attached a copy of a statement of policy on these issues, as well as the Memorandum of Understanding that statement implements. I urge you to make sure that this policy is followed scrupulously, and appreciate your assistance in this and other transition matters.

cc: Transition Office Contacts

Attachment

POLICY STATEMENT CONCERNING IDENTIFICATION OF TRANSITION CONTACTS AND INFORMATION DISCLOSURE TO TRANSITION PERSONNEL

The Presidential Transition Act directs all government officials to take appropriate lawful steps to promote an orderly transition. The President would like this to be the smoothest transition ever. To effect an orderly transition, the President-elect and his associates must become knowledgeable about current government policies and operations so that they can begin making informed decisions immediately upon taking office. This policy statement addresses the procedures for identifying individuals charged with transition responsibilities and for disclosing information to transition personnel. It implements a Memorandum of Understanding entered into between the Director of the President's Transition Team and the Chairman of the President-Elect's Transition Team, a copy of which is attached.

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In order to protect interests of the President and the President-elect and to avoid unnecessary interference with ongoing government operations, it is important that Departments and agencies verify that the individuals who seek access to government information or employees are, in fact, legitimate members of the President-elect's Transition Team. Consequently, the Departments and agencies should, before they have any dealings with individuals representing themselves as members of the President-elect's Transition Team, establish that the individuals' names appear on the official register of the President-elect's Transition Team. The Chairman of the President-elect's Transition Team has agreed to provide to the Director of the President's Transition Team the names of all officially authorized individuals, along with written assurance that the individuals have agreed to abide by the Transition's Code of Ethical Conduct and have thereby represented that they have no conflict of interest that precludes them from working on the matters they have been authorized to work on by the President-elect's Transition Team. The Director of the President's Transition Team will provide an updated copy of that register to the Departments and agencies on a daily basis. If an individual contacts a Department or agency on behalf of the Transition who is not listed on that register as authorized to work with that Department or agency, please contact the Office of the Director of the President's Transition Team for guidance.

II. Transition Point of Contact

The official transition contact previously designated by each Department and agency will serve as the point of contact for providing other contacts, information and services to authorized members of the President-elect's Transition Team. Thus, any meetings with the President-elect's Transition Team members should be authorized by that contact, and any materials provided

to the President-elect's Transition Team members should likewise be authorized by that contact.

III. Disclosure of Information Not Available to the General Public

As a general matter, most of the information needs of the President-elect's Transition Team can be met by providing them with access to public information. In limited circumstances, however, it will be necessary to provide specified transition personnel with access to information or records not available to the general public. Such material may be protected by constitutional, statutory or common law privileges, or its distribution may otherwise be restricted by law. In addition, provision of such information may raise issues under the Government's standards of conduct, which preclude government employees from allowing the improper use of non-public information to further the private interests of another through knowing unauthorized disclosure.

In order to protect these interests, the following procedures should be observed in disclosing information not available to the general public to members of the President-elect's Transition Team.

A. General Procedures for Disclosure of Information Not Available to the General Public

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After a disclosure of information not available to the general public is made, Department or agency personnel should make a written record of the disclosure, including a description of the non-public information, the identity of the person to whom the disclosure was made, and a summary of the steps taken to protect against subsequent disclosure of the information.

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Before providing any classified information to a member of the President-elect's Transition, pursuant to Executive Order 12356, Departments and agencies must establish the following:

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- That member has signed the requisite non-disclosure agreement.

C. Attorney-Client Material

Information protected by the attorney-client privilege should not be disclosed to any member of the Transition. The Department of

[1]The terms "financial interest," "imputed financial interest," "direct and predictable effect," and "particular matter" have the same meaning here as in 18 U.S.C. 208 and the regulations interpreting those terms set out in 57 Fed. Reg. 35051 et seq (to be codified 5 C.F.R part 2635.

Justice advises that disclosure of such information may waive this privilege.

D. Privacy Act Material

To avoid any possible violation of the Privacy Act, Departments and agencies should not disclose official personnel folders, performance evaluation information, or information from a resume or Form SF-171 Personal Qualification Statement without the express written consent of the affected employee.

E. Material Subject to Other Statutory Protections

The above list does not exhaust the list of statutory protections that may preclude disclosure of material. Departments and agencies should, of course, abide by other applicable statutory restrictions on disclosure of information.

F. Issues Relating to This Policy Statement

Any issues between members of the President-elect's Transition Team and Departments and agencies should be addressed, in the first instance, by discussion between the Department's or agency's transition contact and the Lead Agency Liaison, Deputy Cluster Coordinator, or Cluster Coordinator.

Attachment

ABC:PMB:jk
ABCulvahouse, Jr.
PMBryan
Chron.

THE WHITE HOUSE

WASHINGTON

December 2, 1988

MEMORANDUM FOR WHITE HOUSE STAFF

FROM: ARTHUR B. CULVAHOUSE, JR.
COUNSEL TO THE PRESIDENT

SUBJECT: Disclosure of Information and Records to Members of the President-elect's Transition Staff

Attached for your information is a copy of the Policy Statement Concerning Information Disclosure to Transition Personnel that has been circulated to the Cabinet and agency heads of the Executive Branch. As government officials charged with protecting sensitive government information, you should follow the guidance provided in that memorandum for deciding which records and information may be made available for persons who assist the President-elect during the transition period.

Because the records of members of the White House Office staff and certain others */ are Presidential records which are subject to the terms of the Presidential Records Act (and not federal records subject to the Freedom of Information Act), certain additional protections as specified below must be accorded those records in order to preserve for the President his right to protect sensitive information from public disclosure.

- With respect to Presidential records, only information and copies of documents that are already in the public domain should be disclosed to an authorized member of the President-elect's transition team without the express authorization of the President. For purposes of this memorandum only, "public domain" information and records include not only those that have been widely disseminated to the public but those that have been provided to the Congress and to select members of the public.

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*/ The requirements of the Presidential Records Act apply to all records of the White House Office, the Office of Policy Development, the Council of Economic Advisers, the President's Foreign Intelligence Advisory Board and the President's Intelligence Oversight Board. Those requirements also apply to certain records of the National Security Council and to records produced or received by the Director of the Office of Science and Technology Policy in his role as science advisor to the President.

- Original copies of Presidential records should not be provided to an authorized member of the transition under any circumstances (such original copies are to be deposited with the National Archives pursuant to the Presidential Records Act).

- Copies of Presidential records not currently in the public domain should be provided to an authorized member of the transition only with the express authorization of the President. Likewise, non-publicly-available information contained in Presidential records should not be orally shared with an authorized member of the transition in the absence of the President's authorization. To ensure that the information needs of the President-elect's transition team are met in an expeditious fashion, White House offices should, as soon as possible, submit to the Counsel to the President written requests to disclose to the transition the general classes of Presidential records and non-publicly-available information they believe will be of use to the transition. Counsel's Office will compile from those requests a single generic request, submit it to the President for authorization, and notify the affected offices as to whether such authorization has been granted.

Attachment

PRA
(authorization)

THE WHITE HOUSE

WASHINGTON

December 23, 1988

RECEIVED 23 DEC 88 16:28

ACTION
MEMORANDUM FOR THE PRESIDENT

FROM: ARTHUR B. CULVAHOUSE, JR.
COUNSEL TO THE PRESIDENT

SUBJECT: Authorization to Provide or Retain Copies of Presidential Records

I. ISSUES:

A. Information for the President-elect's Transition Team: In order to preserve your rights under the Presidential Records Act to protect sensitive government information, Counsel's Office has issued guidance prohibiting the White House staff and relevant members of the Executive Office of the President from providing to the Office of the President-elect copies of Presidential records (or information contained in those records) not currently in the public domain without your express authorization. Your authorization is now being sought.

B. Precedents for the Next Administration: Relatedly, as a matter of efficient government, it makes sense for many White House offices to leave for their successors copies of Presidential records. In order to leave such precedents, however, while protecting your prerogatives under the Presidential Records Act, your authorization is necessary and is again being sought.

II. BACKGROUND:

A. Information for the President-elect's Transition Team: In order to provide specified members of the President-elect's transition staff with needed access to non-public government information or records while preserving the important constitutional and statutory protections accorded such information, two policy statements were issued: (1) the first was issued to the Cabinet and agency heads for information and records covered by the Federal Records Act and Freedom of Information Act and (2) the second, which also incorporated the terms of the first by reference, was issued to the White House Staff and relevant staff members of the Executive Office of the President for information and records covered by the Presidential Records Act. The guidance provided with respect to the information or records covered by the Presidential Records Act specified that copies of Presidential records (and the information

contained in them) not currently in the public domain should be provided to an authorized member of the transition only with your express authorization. In compliance with that guidance, various offices in the White House and Executive Office of the President have submitted to the Office of the Counsel to the President written requests for your authorization to disclose to the transition the general classes of Presidential records and non-publicly-available information they believe will be of use to the transition. Those requests are attached to this memorandum at TAB A.

In general, those requests seek authorization to provide access to three classes of Presidential records: (1) useful precedents and information for recurring matters that reflect the learning of the office and would be inefficient to require the new Administration to reinvent, such as precedents on how to handle gifts to the President or requests for him to serve as the Honorary Chairman of Charitable organizations; (2) documents that continue to be applicable to ongoing government activities, such as Executive Orders, NSDD's, and Office of Legal Counsel legal memoranda; (3) documents or matters of ongoing concern, such as Canada Free Trade, certain technology transfer matters, POW-MIA issues. The requests for your authorization are, of necessity, generic and each office head will continue to have a fair amount of discretion to determine which records or information to provide to the Transition.

B. Precedents for the Next Administration: Under the Presidential Records Act, the originals of all Presidential records are to be transferred to Archives upon the completion of the President's term of office. Nothing in the law precludes retention of copies in White House offices, however, and while care must be taken to ensure that particularly sensitive materials are not made public by the new Administration, the need to pass on to our successors useful learning on a variety of subjects argues strongly for retaining copies of certain records. As is to be expected, with one exception (the President's Intelligence Oversight Board made two separate requests) the materials that each office is requesting your authorization to provide to the transition are the same materials for which they are requesting your authorization to retain copies for their successors.

III. RECOMMENDATION:

We recommend that you authorize the relevant offices whose requests are attached to this memorandum to make available to the Transition and/or to retain for their successors the classes of Presidential records specified in their requests, subject to the understanding that the head of each office will take responsibility for ensuring that only useful and appropriate records

in the authorized classes are provided or retained. If you approve this recommendation, Counsel's Office will so inform those offices.

IV. DECISION

RR Approve _____ Disapprove _____ Approve as Amended

Attachments

PRA

THE WHITE HOUSE

WASHINGTON

January 31, 1989

MEMORANDUM FOR EXECUTIVE OFFICE OF THE PRESIDENT STAFF

FROM: C. BOYDEN GRAY
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Records Act Guidance

The requirements governing the ownership, maintenance and disposition of Presidential documents under the Presidential Records Act, 44 U.S.C. §§ 2201-07 (the "Act") are listed in summary on this cover page, and are explained in more detail in the material that follows.

I. SUMMARY OF PRESIDENTIAL RECORDS ACT REQUIREMENTS

(a) Staff members must adequately document the performance of the President's constitutional, statutory and ceremonial duties.

(b) Staff members must preserve the original of any Presidential record. Duplicate copies may be destroyed.

(c) Staff members should preserve their Presidential records in complete and orderly files and should keep their non-Presidential records -- that is, their personal records, federal records or non-record materials -- segregated from their Presidential records, preferably through the use of separate filing systems.

(d) Staff members departing from the White House must turn over to the Office of Records Management the originals of all Presidential records in their possession.

(e) Staff members are prohibited from taking copies of any Presidential records with them when they depart from the White House, unless those records have clearly been made public previously (e.g., copies of press releases).

(f) Staff members may dispose of "non-record" materials such as notes of meetings, rough drafts not circulated to others, visitor logs, duplicate copies, etc.; however, because such records contain official information, staff members are prohibited from removing them (or copies of them) from the White House.

II. 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. "Presidential records" encompass any form of memorializing information, including but not limited to written documents, models, pictures, films and audio and electronic recordings.

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 materials that do not rise to the level of a record, such as scratch pads, unimportant notes to one's secretary, phone logs, visitor logs, notes of meetings, etc., provided this is based upon a determination that creation of a record is not required in the circumstance. However, if non-record material is not disposed of contemporaneously, you must be careful to ensure that it is kept by you exclusively for your own use and not made accessible to others on the staff; making non-record material accessible to others on the staff will convert it into "record" material.

Records relating to political activities which are undertaken in the course of carrying our 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 diaries or journals that are kept by a staff members exclusively for his or her own use and reference, are not accessible to others on the staff and are not used for transacting government business. Personal documents and files should be segregated and stored separately from official records.

III. 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, the President's Intelligence Oversight Board and the President's Foreign Intelligence Advisory 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. 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.

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.

IV. 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.

Assistance in distinguishing between 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.

In addition, staff members should, to the extent possible, ensure that any files that they have which contain particularly sensitive information are clearly labelled to reflect that fact. Under the terms of the Presidential Records Act, as well as available constitutional and common law privileges, most of the sensitive Presidential records can be protected, at least for a specified time period, from public access. While Archivies personnel, in consultation with President Bush or his designees, will review all Presidential records and segregate out at least those records that are to be protected under the Presidential Records Act, to avoid inadvertant release of sensitive information it is useful for those who created them, to the extent possible, to mark those files. Possible file labels may include:

(1) "Classified information" (in general, this label should be unnecessary as classified files should already be clearly marked).

(2) "Information the release of which may be prejudicial to the maintenance of good relations with foreign nations" (the vast bulk of such information should be classified and therefore would fall within category Number 1 above).

(3) "Sensitive personal information" (i.e., information the release of which may be embarrassing to the individuals mentioned or to their families).

(4) "Sensitive information involving the confidential advice requested by or provided to the President or his advisers."

(5) "Sensitive law enforcement materials."

(6) "Trade secrets or sensitive commercial or financial information."

(7) "Information subject to attorney-client or attorney work product privileges."

V. 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") will maintain records disposal schedules, which are 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.

VI. LEGAL CONTROL OF PRESIDENTIAL RECORDS

Presidential records remain in the custody and control of the President during his term of Office and are not accessible to the public under 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.

VII. 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.

PRA

From (Staff Manual)

1991

PRESIDENTIAL RECORDS ACT

The requirements governing the ownership, maintenance and disposition of Presidential documents under the Presidential Records Act, 44 U.S.C. sections 2201-07 (the "Act") are listed in summary and are explained in more detail in the material that follows.

Summary of Presidential Records Act Requirements

- Staff members must adequately document the performance of the President's constitutional, statutory, and ceremonial duties.

- Staff members must preserve the original of any Presidential record. Duplicate copies may be destroyed.

- Staff members should preserve Presidential records in complete and orderly files and should keep non-Presidential records that is, personal records, Federal records or non-record materials segregated, preferably through the use of separate filing systems.

- Staff members departing from the White House must turn over to the Office of Records Management the originals of all Presidential records in their possession.

- Staff members are prohibited from taking copies of any Presidential records with them when they depart from the White House, unless those records have clearly been made public previously (e.g.,, copies of press releases).

- Staff members in some instances may dispose of "non-record" materials such as notes of meetings, rough drafts not circulated to others, visitor logs, duplicate copies, etc.; however, because such records contain official information, staff members are prohibited from removing them (or copies of them) from the White House.

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. "Presidential records" encompass any form of memorializing information, including but not limited to written documents, models, pictures, films and audio and electronic recordings.

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 materials that do not rise to the level of a record, such as scratch pads, unimportant notes to one's secretary, phone logs, visitor logs, notes of meetings, etc., provided this is based upon a determination that creation of a record is not required in the circumstance. However, if non-record material is not disposed of contemporaneously, staff members must be careful to ensure that it is kept by them exclusively for their own use. It should not be made accessible to others on the staff; making non-record material accessible to others on the staff will convert it into "record" material.

Records relating to political activities that 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 are personal, not Presidential records. Personal records include 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 government business. Personal documents and files should be segregated and stored separately from official records.

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, the President's Intelligence Oversight Board, and the President's Foreign Intelligence Advisory 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. 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.

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.

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 that maintain both Presidential records and Federal records should file them separately with a clear indication of whether they are Presidential or Federal.

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

In addition, staff members should, to the extent possible, ensure that any files that they have which contain certain types of particularly sensitive information are clearly labeled to reflect that fact. Under the terms of the Presidential Records Act, as well as available constitutional and common law privileges, most of such sensitive Presidential records will be protected, at least for a specified time period, from public access. Archives personnel, in consultation with the President or his designees, will review all Presidential records and segregate out those records that are to be protected under the Presidential Records Act. However, to avoid inadvertent release of sensitive information, it would be

useful for those who created them, to the extent possible, to mark those files. Possible file labels may include:

- "Classified information" (in general, this label should be unnecessary as classified files should already be clearly marked).

- "Information the release of which may be prejudicial to the maintenance of good relations with foreign nations" (the vast bulk of such information should be classified and, therefore, would fall within category Number 1 above).

- "Sensitive personal information" (information the release of which may be embarrassing to the individuals mentioned or to their families).

- "Sensitive information involving the confidential advice requested by or provided to the President or his advisers."

- "Sensitive law enforcement materials."

- "Trade secrets or sensitive commercial or financial information."

- "Information subject to attorney-client or attorney work product privileges."

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 are 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 that are being maintained, or for copies of officially published documents, such as printed reports, etc.

ORM can also arrange for storage of records that 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.

Legal Control of Presidential Records

Presidential records remain in the custody and control of the President during his term of office and are not accessible to the public under 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 12 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.

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 that 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 may be obtained from the White House Office of Records Management.

THE WHITE HOUSE

WASHINGTON

November 5, 1992

MEMORANDUM FOR ALL STAFF IN THE EXECUTIVE OFFICE OF THE PRESIDENT

FROM: C. BOYDEN GRAY
COUNSEL TO THE PRESIDENT

SUBJECT: Disposition of Presidential Records

As we begin the transition to a new administration, it is important for each of us to keep in mind the requirements of the Presidential Records Act. Those requirements are summarized in the attached pages from the White House Office Staff Manual. Two points, however, deserve particular emphasis now.

First, the Act prohibits destruction of any "Presidential records." This term does not include "non-record" materials such as scratch pads, unimportant notes to one's secretary, phone and visitor logs, or informal notes (of meetings, etc.) used only by the staff member. It does, however, encompass virtually any other form of memorializing information created or received by the President or his staff, including but not limited to written documents, models, pictures, films and audio or electronic recordings. Doubts should be resolved in favor of preservation.

Second, except for records that have previously been made public, staff members may not take copies of Presidential records -- or any non-record materials containing official information -- with them when they leave.

My office and the Office of Records Management will provide more specific guidance on the disposition of Presidential records during the next few days.

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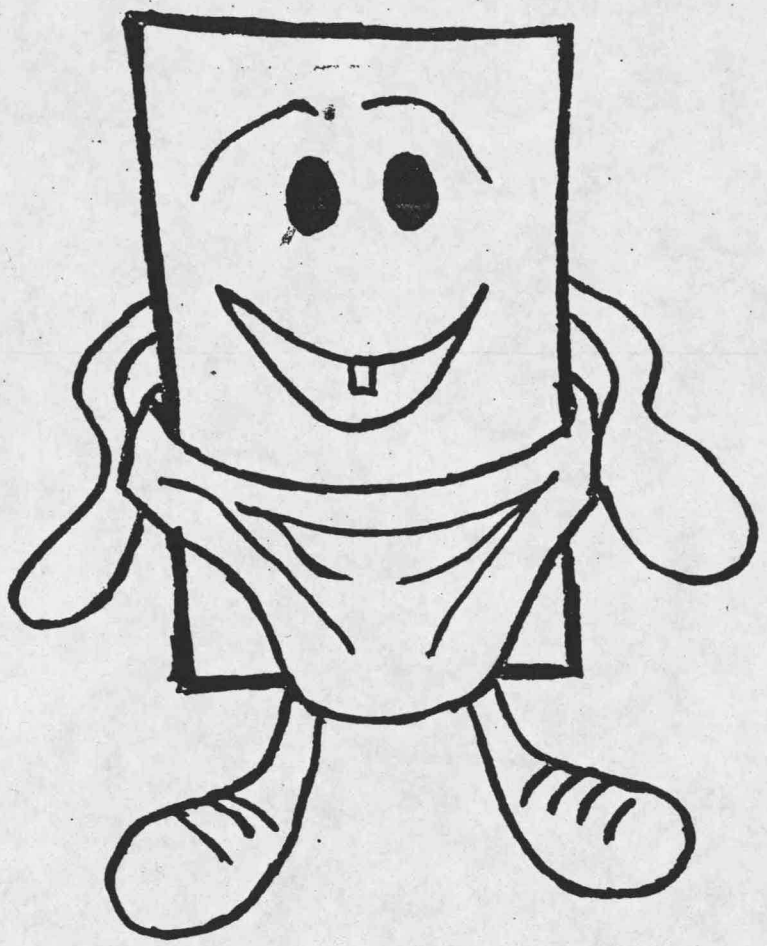
RECORDS MANAGEMENT PROGRAM

FILES MAINTENANCE MANUAL

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION

INFORMATION MANAGEMENT AND SERVICES DIVISION



CREATION OF RECORDS

PART I

CREATION OF RECORDS

CHAPTER 1

RECORDS

1. Definition (44 U.S.C. 3301)

"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, decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and of stocks of publications and of processed documents are not included."

2. Permanent Records

Permanent records are those records appraised by the National Archives and Records Service (NARS) as being worthy of preservation in the National Archives of the United States. These records have value for historical or other research purposes and document the organization, functions, policies, decisions, procedures, operations, or other activities of the Federal agency that produced them or contain pertinent information with which the agency dealt.

3. Temporary Records

Temporary records are official records that do not have continuing value. Specifically, they are records common to several or all agencies that will not, at the end of specified periods of time, have sufficient administrative, legal, fiscal, historical or other value to warrant their further preservation by the U.S. Government. These are commonly called "housekeeping" records. Disposition of these "housekeeping" records are mandatory under P.L. 95-440 (92 Stat. 1063). General Records Schedules (FPMR 101-11.4) have been developed by NARS to cover records relating to civilian personnel, fiscal functions, accounting,

d. Correspondence

(1) Definition (FPMR 101-11.206-2). "Correspondence is a generic term including letters, form letters, telegrams, memorandums, endorsements, summary sheets, postal cards, memo routing slips, and other written communications."

(2) Types of Correspondence

(a) Substantive. This correspondence consists of program-related memoranda, letters and all other forms of correspondence pertinent to the functions and responsibilities of an organization. This correspondence provides supportive background and substance to program or subject records.

(b) Nonsubstantive. This correspondence consists of routine requests for information and replies, not involving policy decisions or requiring special compilations for research, requests for publications, photographs, and other information materials including transmittal letters or form letters.

e. Other Media. Documents and data that are recorded for information purposes on machine-readable media, such as magnetic tapes, computer punch cards, disc packs, drums, and various other media.

Documents and information are also converted to microforms, such as microfilm or videotape, microfiche, roll film, microfilm strips, microfilm chips, computer output microfilm (COM), and other types of miniaturization.

6. Responsibilities

a. The head of each EOP agency, office, and division is responsible for:

(1) Making and preserving records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the office and designed to furnish the information necessary to protect the legal and financial rights of the Federal Government and of persons directly affected by the activities of the office.

(2) Maintaining proper care, control, and identification of records during current use.

obliterates, falsifies, or destroys the same, shall be fined not more than $2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. (June 25, 1948, ch. 645, 62 Stat. 795.)"

10. Security Classified Records

At the time of origin, all classified material will indicate specifically when downgrading or declassification will occur. (See respective agency security regulations; Executive Order 11652, March 8, 1972, implemented by National Security Council Directive of May 17, 1972; and Executive Order 12065, dated July 3, 1978, effective December 1, 1978).

CHAPTER 2

NONRECORD MATERIALS

1. Definition (FPMR 101-11.401-3(d))

"Nonrecord materials, such as extra copies of documents preserved for convenience of reference, stocks of processed documents, preliminary worksheets, and similar papers that need not be made a matter of record, shall not be incorporated in the official files of the agency. To the maximum extent possible, materials not required for record purposes shall be disposed of; it should not be sent to file. In cases where transitory files of such materials are established and maintained in filing equipment, such files shall be controlled by means of instructions in the records control schedule."

2. Types of Nonrecord Material

a. Extra copies of record materials retained solely for convenience of reference.

b. Information and reference copies of correspondence and other papers on which no action is necessary.

c. Preliminary drafts of letters, memoranda, reports, studies, preliminary worksheets, and informal notes that do not add significant data or substance to the preparation of an official record.

d. Shorthand notes, including stenographic notebooks and stenotype tapes, that have been transcribed.

e. Abstracts of correspondence, route slips, and letters of transmittal that do not contain significant information.

f. Stocks of publications and processed documents maintained for distribution purposes.

g. Catalogues, trade journals, and other publications or printed material received from other government agencies, commercial firms, or private institutions that require no action or supplement the official record.

CHAPTER 3

PERSONAL PAPERS

1. Definition (FPMR 101-11.202-2 (d))

"Papers of a private or nonofficial character which pertain only to an individual's personal affairs that are kept in the office of a Federal official will be clearly designated by him as nonofficial and will at all times be filed separately from the official records of his office. In cases where matters requiring the transaction of official business are received in a private personal correspondence, the portions of such correspondence that pertains to official business will be extracted and made a part of the official files."

2. General

a. The definition of personal papers covers material pertaining solely to an individual's private affairs. In other words, correspondence designated "personal," "confidential," or "private," etc., but relevant to the conduct of public business, is nonetheless an official record subject to the provisions of Federal law pertinent to the maintenance and disposal of such records. Official records are public records and belong to the Federal Government rather than to the official or employee.

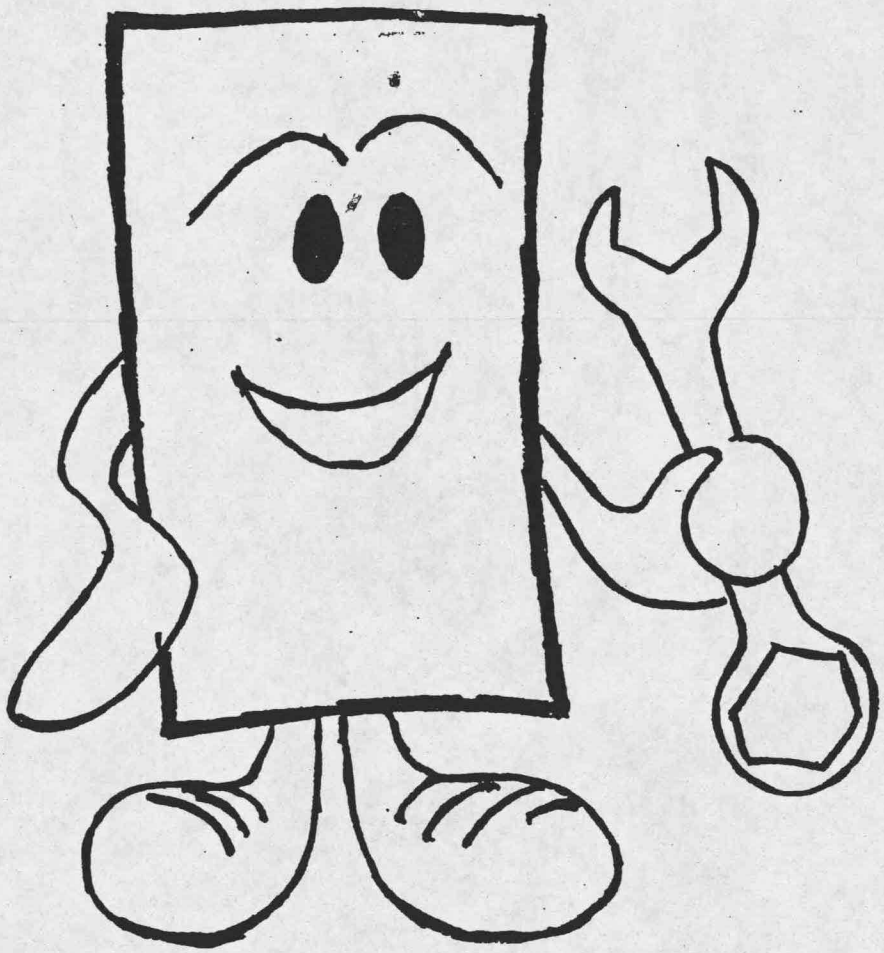
b. A government official may accumulate, for convenience of reference, extra copies of papers and other materials that he or she has drafted, reviewed, or otherwise acted upon. Officials may be permitted to retain these extra copies, provided that such retention would not: (1) diminish the official records of the agency; (2) violate confidentiality required by national security, privacy, or other interests protected by law; or (3) exceed normal administrative economies.

3. Types of Personal Papers

a. Invitations not related to government business.

b. Bank statements.

c. Personal resumes.



MAINTENANCE OF RECORDS

PART II

MAINTENANCE OF RECORDS

CHAPTER 4

OFFICIAL FILE STATIONS

1. Definition

An official file station is a centrally located group of filing cabinets and safes where the official records of an office or division are maintained in a retrievable manner. The official records in the file station should completely document all actions of an office or division as evidence of its responsibilities for specific functions or program areas.

2. Establishment

An official file station will be established and maintained within each organizational element of the EOP. A file station may be created for an entire office or division, or a separate file station may be set up for each branch within an office or division. A station may not be established without the approval of the EOP Direct Services Branch.

3. Responsibility

A unit staff member will be assigned the responsibility for proper maintenance of each file station and will act as liaison with the Information Management and Services Division on all matters concerning records.

4. Advantages of Centrally Located Official File Stations

a. Documentation. All related subject matter will be filed together, not scattered throughout the offices.

b. File System. All filing systems will be standardized and consolidated instead of there being several different systems within the same office.

c. Filing. Cost effectiveness will be achieved by reduction of file personnel and equipment. Personnel filing time will be reduced and the filing of duplicate copies throughout the office eliminated.

CHAPTER 5

FILES ARRANGEMENT

1. General

A records system may be defined as an orderly arrangement of files that provides easy and accurate access to documentation used on a current basis and an organizational or functional pattern for those records that are noncurrent. Most categories of EOP records lend themselves to alphabetical filing schemes. This means that the file folder labels are arranged alphabetically by the first letters of the key word or words of the label title.

2. Administrative Records

The administrative category identifies material that relates to the internal organization and management of an office or division. Administrative records include data on day-to-day activities on matters of personnel, organization, and operations, such as:

Organization
Objectives
Work plans

The following three folders are to be kept for reference purposes and should be located in the first cabinet and drawer of each file station preceding the administrative records.

Record control schedules
Files description list
File lists of retired records

3. Program or Subject Records

The material in this group reflects an organization's responsibility to review, manage, or provide assistance to its assigned agencies and/or other major functional areas. The kinds of items included in this group should be program-related memoranda, memoranda to and from the heads of agencies and others, studies, correspondence, and other written communications pertinent to the activities, operations, and responsibilities of the organization.

Logistics, Communications, and Government Competition with Business

Communications, ADP and Utilities
Acquisition
Utilities, Purchase
Motor Vehicles
Parking, Employees
National Supply System

Procurement Regulations

Contracts, Types of
Grants and Assistance Programs
Profit

4. Budgetary Records

Budgetary records are prepared or received in accordance with actions that are directly related to the established budget process, that is, associated with the formal stages of the preparation, formulation, and execution of the Federal budget.

The standard file folder titles identified below are to be used on all budgetary files in the EOP. In instances where the assigned title, description, or file classification of material will not fit into a predetermined category, contact the EOP Direct Services Branch for assistance.

File Folder Title	Description of Material
Allowance Letter	OMB's official letter to EOP agency heads advising them of the amounts that will be recommended to Congress for the ensuing fiscal year.
Apportionment and Reapportionment Schedules, SF 132	These records will include requests submitted to OMB on SF 132; correspondence, memoranda, and any supporting material.

Director's Review Spring Planning Review Presidential Review	These records consist of materials on annual budget estimates, including nonoral review materials generated for presentation to the Director of OMB and the President. Appropriate notes of action will be documented in the final copies of the books, and any other related papers will also be included.
Economic Outlook/ Projections	This material generally consists of items prepared early in the review process. The records should include any studies that reflect upon the relationship between government finances and future economic conditions. The material is sometimes referred to as future outlook or long-term projections.
Estimate Submissions ("official set")	Records consist of agency submissions, correspondence and memoranda, appropriation language sheets, exhibits and appendices, and related papers.
Rescissions and Deferrals	These records will cover rescissions, proposals, and deferrals, including agency requests; correspondence, memoranda, and other supportive material; and special messages to Congress.

The procedure identified under White House referrals should be followed.

b. Dossiers

(1) Legislative Records. The legislative material is made up of two groups. The first, legislative records, includes materials created or received as part of the OMB legislative clearance process. These records are maintained by the Legislative Reference Division under a code classification scheme that is a functional arrangement of the files.

The code classification scheme, primarily used in the OMB Director's Office records and the Legislative Reference Division dossiers, is characterized by broad functional categories that attempt to cover the scope of all government agencies and programs. A few of the more widely used categories from this system are shown below:

Administrative (internal).....B
U.S. Government in general.....E
Institutional Administration.....F
Fiscal and Monetary Administration.....G
International Affairs in general.....K
National Security and Defense.....M
Outer Space, Territory, and Natural Resources.....P
Population and Social Welfare.....R
Economic Enterprise (agriculture, industry, commerce, and labor).....T

It should be noted that in addition to the areas mentioned above, the system could easily be adapted to other areas that generate or receive record material on a wide range of subjects.

An official legislative record file may be found among the records of a program area. When this occurs, the file should be removed and returned to the Legislative Reference Division. The program area may, however, keep a duplicate for reference purposes.

The second group, legislative items, is material accumulated because of a need to analyze the impact of certain legislation upon a particular program. This type of legislative material should be maintained by the program area and filed by specific subjects.

CHAPTER 6

FILES MAINTENANCE

1. Files Defined (FPMR 101-11.305-2)

"A file is basically a paper or folder of papers, but the term is used to denote papers, photographs, photographic copies, maps, machine-readable information, or other recorded information regardless of physical form or characteristics, accumulated or maintained in filing equipment, boxes, or machine-readable media, or on shelves, and occupying office or storage space. Stocks of publications and blank forms are excluded."

2. Daily Filing

Current record material should be filed daily. Daily filing is more advantageous than weekly or other periodic filing because the records most frequently asked for are those that have been recently prepared or received. When workload does not permit daily filing, the material should be placed in a "to be filed" box located on top of a file cabinet within the official file station.

3. Sorting

Sort record material by subject or file designation using the files description list (see item 18) as a guide. Dispose of all extra copies, abstracts of correspondence, route slips, and letters of transmittal that do not add any significant information to that contained in the transmitted material.

Remove paper clips and rubber bands. Staple (in the upper left-hand corner) related papers together in chronological order with the most recently dated material on top.

4. Assembling

The record material should be inspected before filing for completeness. To assure sufficient documentation, all directly related records should be properly assembled. This means filing together the incoming letter, a copy of the reply (yellow copy), attachments or enclosures, and any other related papers.

b. Helps to reduce the volume of material in the file cabinets by permitting periodic purging of the nonrecord files.

c. The filing of nonrecord material separately assists in the timely retirement of record material.

9. Files Cutoff Procedures

Files will be cutoff at regular intervals. This periodic cutoff of files will prevent the unnecessary accumulation of inactive records in the current areas. The retention periods on the records control schedules are designated for either two- or four-year intervals, and the records are retired in two- or four-year blocks.

a. The program files will be maintained by calendar years with either two- or four-year cutoff dates. The dates should coincide with the dates of the Administration. Also, program files may be kept by fiscal year (October 1 to September 30).

b. The budgetary files will be maintained by the pertinent fiscal year. However, those files on apportionments (SF 132) and reports on budget execution (SF 133) will be filed by the current fiscal year.

10. Guide Cards

Guide cards are used to separate file folders by groups, categories, subjects, etc., and are considered "signposts" because they are immediately visible and narrow the areas of search when retrieving folders. Guide cards also support folders in a file drawer.

11. File Folders

Folders are used to protect and keep related papers together. Each file folder should have a proper description of the file classification on the file label.

a. The type of folder approved for use in the EOP is the standard kraft, straight cut. Letter-size folders should be used for all papers whenever feasible; a few documents of legal-size material often can be easily folded to letter size. When legal-size material cannot be folded, the legal-size folder should be used.

d. Yellow labels should be used for all nonrecord materials.

e. If several folders covering the same subject are used, number each folder consecutively and indicate the inclusive dates on each folder.

16. Chargeout Card

The use of the chargeout card is recommended when staff members from other offices or units borrow the files. The chargeout card identifies when and what records are removed from their proper location, by whom and to where, and also lessens the chance of a lost or misfiled folder.

17. Transfer of Functional Responsiblities Between Offices or Divisions

The EOP Direct Services Branch should be contacted for instructions before the permanent tranfer of records from one office or division to another as a result of official functional changes.

18. Files Description List

A files description list is an up-to-date, accurate listing of all official file folders identified by title and inclusive dates located within a file station or file cabinet.

a. Files description lists will be kept in the first cabinet and drawer of each file station or file cabinet, and a copy of the most recent list will periodically be provided to the EOP Direct Services Branch for inventory purposes.

b. The list should be used by the staff of an office to help identify and locate files quickly.

c. The files description list can be helpful when refiling and should reflect proper classification to prevent misfiles. New subjects should be added to the files description list as soon as new file folders and labels are prepared.

19. File Cabinets

The efficient and economical utilization of file cabinets is an important element of proper management. To achieve this objective, the EOP Direct Services Branch will review the

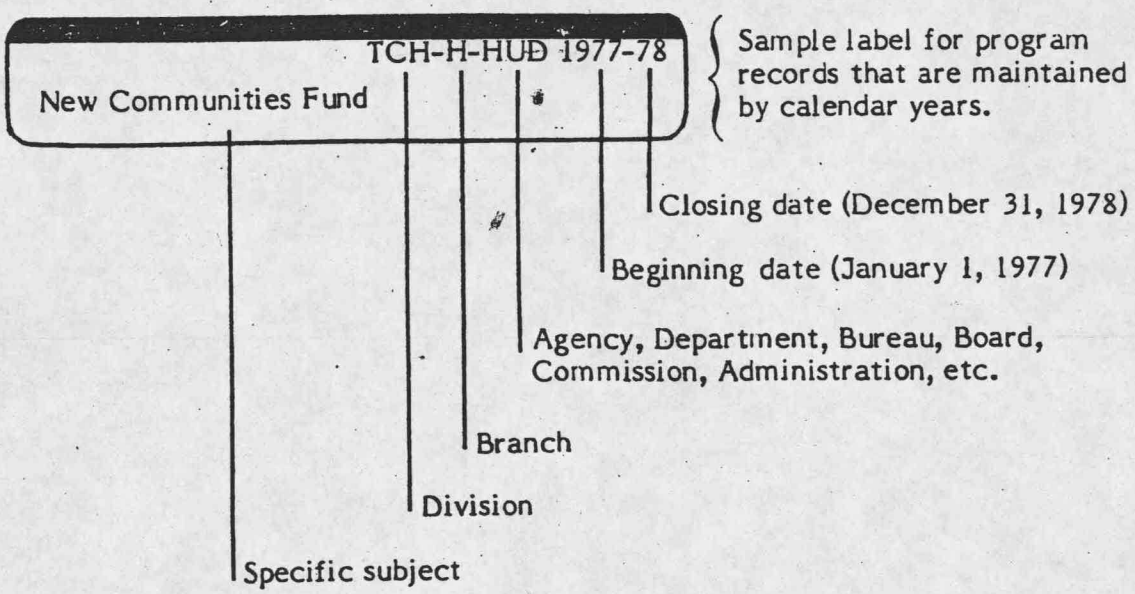
CHAPTER 7

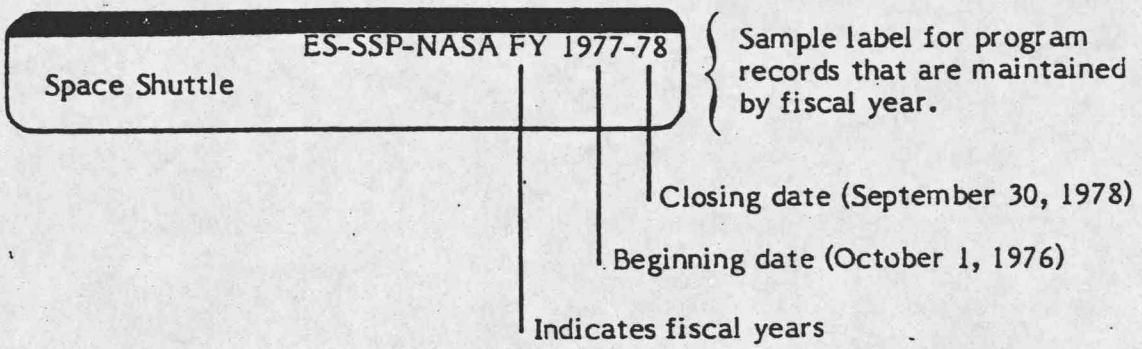
EXHIBITS

FOLDER LABELS

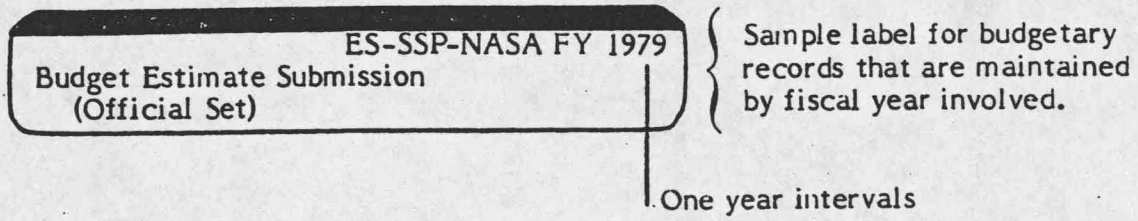
All folder labels will be placed on the left-hand side of the file folder. Yellow labels will be used for all nonrecord materials.

a. Program Records. The program records will be maintained by calendar years, with two year cut-off dates. The dates will coincide with the dates of the Administration, and will always end on an even year. Also, program files may be kept by actual fiscal year.





b. Budgetary Records. The budgetary records will be maintained by the fiscal year involved at one year intervals. However, those files on apportionments (SF 132), and reports on budget execution (SF 133) will be filed by actual fiscal year.



Drawer Labels

The drawer label will show the file title, the years covered and the segment of the particular file included in the drawer.

TCH-HUD (Retire 6-30-80)

Housing & Urban Development

A to P

1977-1978
Program Records
(Official Records)

TCH-HUD (Retire 6-30-80)

Housing & Urban Development

FY 1978
Budgetary Records

(Official Records)

TCH-T

Administrative Records

1977-1978

(Temporary)

TCH-T

John D. Doe
Reference File

A-Z
1977-78

(Nonrecord)

GC

John D. Doe
Reference File

A-Z
1977-78

(Nonrecord)

TCH-T

John D. Doe
Personal Papers

1977-1978

(Nonrecord)

OUT

IDENTIFICATION OF RECORD (NUMBER, TITLE AND/OR SUBJECT, DATE OF FILE OR DOCUMENT)	CHARGED TO (PERSON & OFFICE)	DATE CHARGED OUT

OPTIONAL FORM 23
FEB 1962
GSA Circular No. 259

CHARGEOUT RECORD

5023-101

GPO e43—16—80979-1 386-299

DATE CHARGED OUT | CHARGED TO (PERSON & OFFICE) | IDENTIFICATION OF RECORD (NUMBER, TITLE AND/OR SUBJECT, DATE OF FILE OR DOCUMENT)

OUT

RETIREMENT OF RECORDS

PART III

DISPOSITION OF RECORDS

CHAPTER 8

RECORDS CONTROL SCHEDULES

1. Formulation of Records Control Schedules (FPMR 101-11.401-3)

"Each Federal agency shall compile and maintain on a current basis a records control schedule for all major groups of records in its custody having importance in terms of content, bulk, or space and equipment occupied. For all newly created Federal agencies such schedules shall be completed within one year after creation of the agency."

2. Provisions of Records Control Schedules

Records control schedules provide for:

a. The destruction on site, after minimum retention periods, of those temporary records and reference materials not having sufficient value to justify further retention;

b. The transfer to the Washington National Records Center of inactive temporary records that cannot be destroyed on site but need not be retained in expensive office space and equipment. Such records will be maintained by the records center pending destruction;

c. The retention as current records in office space and equipment of the minimum volume of records consistent with efficient operation; and

d. The identification of permanent records that will be transferred to the records center and/or offered to the National Archives and Records Service.

3. Program for Records Scheduling

The Information Management and Services Division records scheduling, disposal, and retirement program is designed to promote the prompt and orderly reduction of the quantity of records in the Executive Office of the President. Records control schedules have been developed by the EOP Direct

CHAPTER 9

RECORDS RETIREMENT

1. Standards and Procedures

a. A copy of the approved records control schedule will be provided to each agency, office, and division within the EOP and will be filed in front of the files description list folder in the official file station.

b. The EOP Direct Services Branch will notify the EOP record liaisons when records are eligible for retirement in accordance with the records control schedules. This determination will be made by dates (calendar or fiscal) and specific categories; i.e., administrative, budgetary, program or subject, project, and other groups of records that are identified on the records control schedules. Records located within the EOP offices that are not covered in the agency's schedules will be reviewed by the EOP Direct Services Branch for appropriate disposition.

In addition to the records control schedules, the OMB offices have instructions for the disposition and retirement of OMB budgetary records in the OMB Examiner's Handbook, Section 991.

c. Estimate the volume (linear inches) of records for retirement to determine the number of record boxes needed, and inform the EOP Direct Services Branch that a records retirement project has been started.

2. Preparation of Files before Retirement

The instructions in the "Files Maintenance" chapter illustrate the ideal methods of maintaining the files on a current basis to avoid any difficulties in preparing the files for retirement.

3. Inventory Lists and Boxing of Records

A separate inventory list (original and three copies) will be prepared for each group of permanent or temporary records that is identified on the records control schedule (e.g., budgetary, program, etc.). Each group of records will be boxed separately, and the inventory list will coincide with the arrangement of the files in the boxes. Do not indicate

CHAPTER 10

INFORMATION AND RECORDS RETRIEVAL

1. General

The primary purpose for the retention of records is to preserve information that may be needed at some future date. Record keeping would be a futile process if the information requested were not properly documented and readily accessible when needed for administrative, fiscal, legal, or historical purposes. Complete documentation and accountability of all official records is essential to EOP staff to effectively and efficiently perform the duties of the Office and to respond promptly to Freedom of Information and Privacy Act requests.

2. Procedures for Requesting Records

The agency, division, or branch copy of the inventory list will be used to request records from the EOP Information Center. When requesting a file, call the EOP Information Center and furnish the following:

a. Name of caller and telephone number.

b. Agency, division, and branch.

c. The Federal Record Center (FRC) number (located in the upper right-hand corner) from the inventory list.

d. The box number (annotated) on the inventory list.

e. The specific file folder title(s).

f. The date(s).

g. The name of the individual to whom the records should be charged.

When the FRC number or the file folder title is unknown, the following information should be provided to the EOP Information Center:

a. Type of document (letter, memorandum, report, etc.).

b. Subject or title.

CHAPTER 11

EXHIBITS

National Archives

Washington, DC 20408

JAN 15 1993

The Honorable Paul Bateman
Deputy Assistant to the President
for Management and
Director, Office of Adminstration
725 Seventeenth Street, NW
Washington, DC 20503

Dear Mr. Bateman:

On January 6, 1993, Judge Charles R. Richey of the United States District Court for the District of Columbia issued an order in Armstrong v. Executive Office of the President, Civ. Action No. 89-142 (CRR), directing me to take all necessary steps to preserve, without erasure, all electronic federal records generated at defendant agencies to date. An amended order of January 11, 1993, further ordered that defendants are enjoined from removing, deleting, or altering information on their electronic communications systems until such time as action is taken pursuant to Section 2905 of the Federal Records Act to prevent the destruction of Federal Records including those saved on the backup tapes pursuant to the two temporary restraining orders entered in this case.

As a result of these orders, the National Archives and Records Administration has been in continuous contact with the Department of Justice, the defendant agencies and the White House Counsel's Office. The Department of Justice and defendant agencies have assured me that all electronic communications on the various communications systems covered by the court's injunction will be preserved until the resolution of this lawsuit. I understand that defendants are filing an Emergency Motion for Stay Pending Appeal in the United States District Court for the District of Columbia today which may affect defendants' obligations in this case. I will advise you further if there are any modifications to defendants' obligations.

On January 7, 1993, our General Counsel met with Department of Justice attorneys, to discuss the court's decision and the manner in which the defendant agencies and I can comply with the orders of the court. On January 12, 1993, the General Counsel and the Deputy Archivist met with representatives of the National Security Council, the Office of Administration and the White House Counsel's Office to discuss our response to the court's orders. On January 13, 1993, the Director of the Agency Services Division, Office

of Records Administration, and other staff of the National Archives met with records management personnel at the Office of Administration and the National Security Council to begin the process of providing guidance to enable those entities to come into compliance with the court's orders. On January 14, 1992, our General Counsel met again with representatives from the defendant agencies and the Department of Justice to discuss procedures for implementing the court's orders. In addition to these meetings, our General Counsel and a member of his staff have had numerous telephone conversations with the Department of Justice and attorneys at the defendant agencies relating to this matter.

The National Archives intends to work closely with the staff of your agency to develop guidelines and disposition schedules which will assist you in complying with the court's orders and your continuing records management responsibilities under the Federal Records Act.

I have also notified the Attorney General and Congress that I am prepared to take all necessary action to comply with the orders of the district court in this case.

I request that you distribute this letter to all affected EOP components other than those components that "solely advise the President."

Sincerely,

/S/

DON W. WILSON
Archivist of the United States

cc: White House Counsel

undated
PRA

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

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

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

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

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

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

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

Four basic elements of the PRA:

① Ownership by the United States of presidential [Section 2202]

② Management of presidential (and V-P) records, including disposal [Section 2203]

- ➢ during an Administration (President)
- ➢ post-Presidency (Archivist of the United States)

③ Access to presidential records by public [Section 2204]

- ➢ restrictions for up to 12 years, specified by President before leaving office
- ➢ Freedom of Information Act exemptions (except Exemption 5) and procedures
- ➢ notice to former and incumbent Presidents of proposed disclosures [EO 12667]

④ Special access - judicial process; current business of incumbent President; congress; former President [Section 2205]

Court decisions addressing the PRA:

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

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

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

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

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

Background on Presidential Records Act Notifications
Received by the Office of White House Counsel

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

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

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

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

3. **WHAT IS THE NOTIFICATION TELLING COUNSEL?**

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

4. **WHAT IS THE AVAILABILITY OF PRESIDENTIAL RECORDS?**

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

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

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

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

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

(B) The National Archives will notify Counsel's Office of any subpoena, court order or Congressional request. A copy of the notice goes to the Assistant Attorney General for Legal Counsel

(on behalf of the Attorney General). The notice is in writing and, in accordance with NARA's regulations, gives Counsel 30 days to object

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

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

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

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

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

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

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

8. **WHERE ARE THE LIBRARIES AND RECORDS?**

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

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

For legal or archival guidance on access to Presidential records, Counsel should contact either Gary M. Stern, General Counsel, at 301-713-6025, ext. 251, or Nancy Kegan Smith, Director of the Presidential Materials Staff, at 202-501-5700.

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

Presidential Documents

Executive Order 12667 of January 18, 1989

Presidential Records

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ronald Reagan

THE WHITE HOUSE,
January 18, 1989.

PRESIDENTIAL RECORDS [1]

(44 U.S.C. Chapter 22)

Sec.
2201. Definitions.
2202. Ownership of Presidential records.
2203. Management and custody of Presidential records.
2204. Restrictions on access to Presidential records.
2205. Exceptions to restriction on access.[2]
2206. Regulations.
2207. Vice-Presidential records.

§ 2201. Definitions

As used in this chapter—

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

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

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

(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e) [3] of title 5, United States Code); (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

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

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

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

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

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

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

§ 2202. Ownership of Presidential records

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

§ 2203. Management and custody of Presidential records

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

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

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

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[1] Section 3 of Pub. L. 95-591 (Nov. 4, 1978, 92 Stat. 2523) provided that this chapter applies to any Presidential records created on or after January 20, 1981.

[2] So in original. Does not conform to section catch line.

[3] Section 552(e) of title 5 was redesignated section 552(f) of title 5 by section 1802(b) of Pub. L. 99-570.

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

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

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

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

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

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

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

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

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

§ 2204. Restrictions on access to Presidential records

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

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

(2) relating to appointments to Federal office;

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

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

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

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

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

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

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

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

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

exempt from the provisions of subsection (c) until the earlier of—

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

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

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

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

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

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

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

§ 2205. Exceptions to restricted access

Notwithstanding any restrictions on access imposed pursuant to section 2204—

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

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

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

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

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

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

§ 2206. Regulations

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

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

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

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

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

§ 2207. Vice-Presidential records

Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records. The duties and responsibilities of the Vice President, with respect to Vice-Presidential records, shall be the same as the duties and responsibilites of the President under this chapter with respect to Presidential records. The authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist under this chapter with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a

non-Federal archival depository. Nothing in this chapter shall be construed to authorize the establishment of separate archival depositories for such Vice-Presidential records.

CHAPTER XII—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

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SUBCHAPTER E—PRESIDENTIAL RECORDS

PART 1270—PRESIDENTIAL RECORDS

Subpart A—General Provisions

Sec.
1270.10 Scope of part.
1270.12 Application.
1270.14 Definitions.

Subpart B—Actions Taken on Behalf of Former Presidents

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Subpart C—Disposal of Presidential Records

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

Subpart D—Access to Presidential Records

1270.40 Identification of restricted records.
1270.42 Denial of access to public; right to appeal.
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1270.46 Notice of intent to disclose Presidential records.

Subpart E—Presidential Records Compiled for Law Enforcement Purposes

1270.50 Consultation with law enforcement agencies.

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

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

Subpart A—General Provisions

§ 1270.10 Scope of part.

These regulations implement the provisions of the Presidential Records Act of 1978, Pub. L. No. 95-591, 92 Stat. 2523-27, as amended by Pub. L. No. 98-497, sec. 107(b)(7), 98 Stat. 2287 (1984) (codified at 44 U.S.C. 2201-07), by setting forth the policies and procedures governing preservation, protection, and disposal of, and access to Presidential and Vice-Presidential records created during a term of office of the President or Vice President beginning on or after January 20, 1981. Nothing in these regulations is intended to govern procedures for assertion of, or response to, any constitutionally based privilege which may be available to an incumbent or former President.

§ 1270.12 Application.

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

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

§ 1270.14 Definitions.

For the purposes of this part—

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

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

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

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

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).
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ory* has the meaning given it by 44
C. 2101(1).
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dent whose function is to advise
assist the Vice President, in the
course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the Vice President. The term includes documentary materials of the kind included under the term *Presidential records*.

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

Subpart B—Actions Taken on Behalf of Former Presidents

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

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

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

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

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

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

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

§ 1270.22 When Archivist may act for former President.

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

Subpart C—Disposal of Presidential Records

§ 1270.30 Disposal of Presidential records by incumbent President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subpart D—Access to Presidential Records

§ 1270.40 Identification of restricted records.

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

(b) The Archivist shall restrict public access to the information contained in those records identified as affected until—

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

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

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

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

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

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

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

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

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

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

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

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§ 1270.44 Exceptions to restricted access.

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

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

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

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

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

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

§ 1270.46 Notice of intent to disclose Presidential records.

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

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

(i) Be in writing;

(ii) Identify the particular records with reasonable specificity;

(iii) State the reason for the disclosure; and

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

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

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

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

(iii) Specify the date of the request.

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

(1) Be in writing;

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

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

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

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

Subpart E—Presidential Records Compiled for Law Enforcement Purposes

§ 1270.50 Consultation with law enforcement agencies.

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

PostMaster 12/11/2000 05:55:19 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: PRESERVATION OF STAFF RECORDS

MEMORANDUM TO THE STAFF OF THE WHITE HOUSE OFFICE, THE OFFICE OF THE VICE PRESIDENT, THE NATIONAL SECURITY COUNCIL, THE OFFICE OF POLICY DEVELOPMENT, THE COUNCIL OF ECONOMIC ADVISERS, AND THE PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

FROM: JOHN PODESTA, CHIEF OF STAFF

DATE: DECEMBER 7, 2000

RE: PRESERVATION OF STAFF RECORDS

Many staff members are now in the midst of indexing their files and preparing them to be sent to the White House Office of Records Management. I appreciate the time that staff members are taking to perform this extremely important task.

In order to facilitate completion of this task, attached is a copy of the memorandum regarding the preservation of staff records covered by the Presidential Records Act that was first circulated in September. The Act covers both Presidential and Vice Presidential records. Note in particular Appendices 2 and 3, which are authorization forms regarding copies of Presidential records you wish to take with you when you leave. Although Appendix 3 was available at your ethics training and transition briefings, it was not previously attached to the memorandum. Sign Appendix 2 if you wish to take copies of any Presidential records with you for personal use. You must also sign Appendix 3 and if you wish to show a Presidential record to a third party, for example, as a writing sample. Send the completed forms to the Office of White House Counsel. Copies of only limited kinds of Presidential records may be kept by staff, as described in more detail in the memorandum.

If you have questions about getting your files ready for Records Management or about what documents may be taken with you when you leave, call Records Management at 456-2240 or the Office of White House Counsel at 456-7909.

WHITE HOUSE OFFICE TRANSITION COORDINATORS

EOP Office	Transition Coordinator	Backup Coordinator
Advance Office	Roger Kiley	
AIDS Policy	Cheryl Bauerle	
Cabinet Affairs	Raj Adlakha	Anne Bovaird
Chief of Staff	Michele Ballantyne	Drew Gardiner
Communications	Todd Cohen	
Conference Center	Sheila Smith	
Correspondence	Matt Sonne	
Counsel	Jane Schaffner	
Domestic Policy Council	Sarah Lucas	
Environmental Initiatives	Angela Mizeur	
Executive Clerk	Tim Saunders	
First Lady	Eric Woodard	
Intergovernmental Affairs	Scott Beale	Alison Cantu
Intern Program	Kendee Yamaguchi	
Legislative Affairs	Josh Ackil	
Management & Administration	Kelli McClure	Brooks Scoville
Millennium Council	Jane Englestad	Beth Mohsinger
Military Office	Gerald Suarez	
National Economic Council	Christopher Wanken	
One America	Adrian Miller	
Oval Office	Betty Currie	Justin Cooper
Photography	Marilyn Jacanin	
Political Affairs	Jaimme Collins	
Presidential Personnel	Pete Dagher	
Press	Missy Owens	
Public Liaison	Joe Ratner	
Records Management	Terry Good	Lee Johnson
Scheduling	Carrie Street	
Special Envoy to the Americas	Sharon Liggett	
Speechwriting	Josh Gottheimer	
Staff Secretary	Carol Cleveland	
Telephone Service	Kathy McKeown	
Travel	Archana Ayyappan	
Visitors	Holly Thoden	Elizabeth Jones
White House Operations	Faye Granger	Edd Olds

APPENDIX 1

DEPARTURE AGREEMENT
REGARDING COPIES OF PRESIDENTIAL RECORDS

Agreement between President William J. Clinton and _____ (hereinafter "Staff Member"), dated _____.

1. Staff Member understands and acknowledges that "Presidential records" are documentary materials which relate to or have an effect upon the performance of the President's constitutional, statutory, ceremonial and official duties, including but not limited to written documents, models, pictures, films and audio and electronic recordings, and which either originated in or were received by staff within the following components of the Executive Office of the President:

White House Office
Office of the Vice President
National Security Council
Office of Policy Development
Council of Economic Advisers
President's Foreign Intelligence Advisory Board

2. Staff Member hereby requests permission to remove from existing "office convenience" files extra copies of Presidential records created or received by Staff Member, other than those containing:

(1) classified information;
(2) confidential communications to or from the President or his senior advisors;
(3) law enforcement information;
(4) information in personal files or similar files, and any other personal information the disclosure of which might constitute an unwarranted invasion of personal privacy;
(5) trade secrets or sensitive commercial or financial information; or
(6) any other information the disclosure of which is prohibited by law.

3. In consideration of President Clinton's approval to remove extra copies as set forth in paragraph 2, Staff Member accepts the obligation set forth in paragraphs 4, 5, and 6.

4. To the extent he or she has not already done so, Staff Member hereby agrees to deliver to the White House Office of Records Management the originals and all copies of any Presidential records in Staff Member's possession or control, other than those extra copies set forth in paragraph 2, or those extra copies which the Staff Member has been authorized to leave behind for the incoming Administration, prior to the termination of Staff Member's employment as a member of the Clinton Administration.

5. Staff Member hereby agrees to seek, and to wait for the receipt of, written approval by President Clinton or his designee before publishing or disclosing to any third person any materials which contain the complete or partial text or content of any non-public Presidential record or copy of such record. President Clinton agrees that his approval shall not be conditioned on reviewing or approving any comment the Staff Member plans to make about such record and shall be limited solely to the publication or disclosure of the complete or partial text or content of such paper.

6. Nothing contained herein limits a Staff Member's right to disclose the complete or partial text or content of Presidential record in response to a valid and enforceable subpoena, provided that, before disclosure, Staff Member gives reasonably prompt notice of the issuance of such a subpoena to President Clinton and to counsel for the incumbent President. If either decides to object on grounds of the President's (or former President's) constitutional or statutory authority to control the release of such material, Staff member agrees to defer disclosing the material subject to the objection until such objection has been withdrawn or judicially

resolved.

7. This agreement may be enforced by proceedings for injunction or damages or both.

Date	Name of Departing Staff Member
	William J. Clinton
	By:
Date	His Authorized Representative

APPENDIX 2

DEPARTURE AGREEMENT REGARDING COPIES OF PRESIDENTIAL RECORDS

I hereby request permission to remove from the White House or Executive Office of the President copies of the following presidential records. I have inserted a brief description and attached copies of the documents. (Requests will not be granted if these steps are not followed.)

It is understood that I may show the document(s) attached to this Agreement to a third party. For example, the document(s) may be used as a writing sample. I further understand that neither I nor any other entity or individual may receive any kind of payment or compensation in connection with the dissemination of the document(s) attached to this Agreement.

_____ _____

Date Name of Departing Staff Member

_____ _____

Date Approved on Behalf of President Clinton

APPENDIX 3

PRA

THE WHITE HOUSE

WASHINGTON

MEMORANDUM TO THE STAFF OF THE WHITE HOUSE OFFICE, THE OFFICE OF THE VICE PRESIDENT, THE NATIONAL SECURITY COUNCIL, THE OFFICE OF POLICY DEVELOPMENT, THE COUNCIL OF ECONOMIC ADVISERS, AND THE PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

FROM: JOHN PODESTA, CHIEF OF STAFF

RE: PRESERVATION OF STAFF RECORDS

DATE: SEPTEMBER 14, 2000

As we are now in the last year of the Clinton Administration, this is a good time for all staff in the Executive Office of the President to review the laws governing the disposition of their files as they continue to archive all appropriate material. Archiving the files that have been created during this Administration is an extremely important task. Staff files and donated personal records will be the nucleus of the Clinton Presidential Library. These records will be critically important to scholars and historians for many years to come.

The attached memorandum describes White House policy for departing staff regarding the appropriate treatment of your files. Listed below are some of the principal points for staff in the above-listed offices to bear in mind as you archive your files.

- The Presidential Records Act requires the preservation of Presidential records. Almost all work-related material created or received by personnel in the above offices will be a Presidential record. Do not discard Presidential records, although you do not have to preserve identical copies.

- Vice Presidential records should be treated in the same manner as Presidential records, although they are maintained separately.

- You may take copies of Presidential records when you leave only when all of the following conditions are met: The document must be a copy, not an original.

It must not be classified, and it must not contain confidential communications to or from the President or his senior advisors, material from personnel files and personal information the disclosure of which might constitute an unwarranted invasion of personal privacy, trade secrets, law enforcement information, or any other information the disclosure of which is prohibited by law. Each staff member who wishes to remove any copies of Presidential records must sign the agreement attached to this memorandum as Appendix B.

- You do not need to preserve work-related but "non-record" material, such as certain notes for your own use and drafts not circulated to others. You may take such material with you when you leave, but only subject to the conditions given above.

- Personal records should be filed separately from Presidential records. Materials relating to a political campaign generally are personal records. You may take personal records with you, or discard them, when you leave. However, consider donating to the Archives any personal records that will create a fuller record of the accomplishments of the Clinton Administration for future historians.

- Continue to send Presidential records not needed for ongoing business to Records Management. Print out or copy to a diskette any Presidential records that exist only in your computer for inclusion with your records (do not include Lotus Notes email unless you have been instructed otherwise).

- Do not discard any of your files that you know are covered by subpoenas or document requests.

Each office within the White House Office has one or more Transition Coordinators who will be trained to assist you in the appropriate indexing and disposition of your files. A list of the WHO Transition Coordinators is attached to this memorandum. Staff in other EOP offices may call the Office of Records Management, counsel within their office, White House counsel at 6-7909, or counsel in the Office of the Vice-President at 6-7022, with any specific questions.

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FE010

National Archives

Washington, DC 20408

MAY 11 1993

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

Dear Mr. Podesta:

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

(1) Certain categories of public mail to the President, the First Lady and their staffs including anonymous correspondence, correspondence with an incomplete address, mail from prolific writers, and public opinion mail.

(2) Copies of press releases, press conference and briefing transcripts, personnel announcements, mass mailings and other internal publications that are distributed widely. As you stated in your letter, a record copy of each of these items should be retained in the originating White House office.

(3) Publications, brochures, clippings and other types of enclosures in public mail, when there is no immediate or historical importance to the materials.

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

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

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

Sincerely,

Trudy Huskamp Peterson

TRUDY HUSKAMP PETERSON
Acting Archivist
of the United States

THE WHITE HOUSE

WASHINGTON

April 22, 1993

Dear Dr. Peterson:

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

- o certain categories of public mail to the President, the First Lady and their staffs including anonymous correspondence, correspondence with an incomplete address, mail from prolific writers, and public opinion mail. Samples, when appropriate, will be retained.

- o copies of press releases, press conference and briefing transcripts, personnel announcements, mass mailings and other internal publications that are distributed widely. Record copies of each is retained by the originating office within the White House.

- o publications, brochures, clippings and other types of enclosures in public mail, when there is no immediate or historical importance to the materials.

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

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

Sincerely,

John D. Podesta
Assistant to the President
and Staff Secretary

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

001634 PF [redacted]
PERMANENT FILE

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THE WHITE HOUSE
WASHINGTON

FE010

March 8, 1982

Dear Dr. Warner:

In accordance with the requirements of the Presidential Records Act, 44 U.S.C. 2203 (c) (1), the President proposes to dispose periodically of the following categories of Presidential records:

- public mail to the President, the First Lady and their staffs including anonymous correspondence, correspondence with an incomplete address, mail from prolific writers, and public opinion mail. A sample will be retained by Records Management.

- copies of press releases, press conference and briefing transcripts, personnel announcements, mass mailings and other internal publications that are distributed widely. One copy will be retained by Records Management.

- publications, brochures, clippings and other types of enclosures in public mail, when there is no immediate or historical importance to the materials.

- unsuccessful and unsolicited applications for employment, including correspondence, resumes, letters of recommendation and other similar materials.

I would like to obtain your views on this proposal. I would suggest that as a means of carrying out this plan on a continuing basis that members of the Office of Records Management would work with your designee in reviewing sample boxes of the materials involved. The materials would then be turned over to you for destruction.

I would appreciate your consideration of this proposal and a response at your earliest convenience.

Sincerely,

John F. W. Rogers
Deputy Assistant to the
President for Management

Dr. Robert Warner
Archivist of the United States
The National Archives
Washington, D.C. 20408

cc: Biff Henley
cc: Emily Ford - JFWR Chron.
cc: Central Files w/attachment

STATEMENT OF DEPOSIT OF PRESIDENTIAL RECORDS

All documentary materials in my custody constituting Presidential records, as defined in the "Presidential Records Act of 1978," have been delivered to the Office of Records Management or retained by my office.

_____ _____

Date **Signature**

_____

Office

Checked out by: _____