

October 9, 2020

Hon. David S. Ferriero
Archivist of the United States
700 Pennsylvania Ave. NW
Washington, DC 20408

Re. Preservation of presidential records

Dear Mr. Ferriero,

The undersigned organizations write to urge you to publicly detail the steps that the National Archives and Records Administration (NARA) is taking with the White House to fulfill all the obligations that the Presidential Records Act (PRA) and Federal Records Act (FRA) mandate. The proper preservation of records is essential for executive branch accountability and oversight. We recognize that records preservation is an immense undertaking that requires long-term planning and action. Since the upcoming election creates the potential for a presidential transition, the public needs assurances that NARA and the White House are taking all necessary steps to preserve a complete and accurate historical record of the current administration.

Many of the organizations signing this letter have advocated for records preservation for decades, regardless of which party controlled the executive branch¹. Nearly four years into the current administration, we are alarmed and deeply concerned by the Trump administration's failure to honor its legal responsibility to create and preserve records. Reportedly President Trump rips up his papers² and had concealed documents detailing meetings with foreign leaders³. Agency leaders have shown similar disregard for records creation and preservation. Secretary of State Michael Pompeo refused to recover and preserve records from a meeting between President Trump and President Putin in 2017⁴. Former Administrator of the Environmental Protection Agency (EPA) Scott Pruitt systematically prevented the EPA from creating or releasing records⁵. These actions subvert the public's right to know and obstruct future efforts to hold the administration accountable. Given the administration's past actions and the monumental undertaking that presidential records preservation entails, we are extremely concerned about the potential loss of records if NARA does not act to the fullest extent of its authority to ensure preservation of records as mandated by the PRA and FRA.

¹ <https://www.openthegovernment.org/openthegovernment-org-and-24-organizations-write-to-support-passage-of-h-r-5811-the-electronic-message-preservation-act/>; <https://www.openthegovernment.org/wp-content/uploads/other-files/otg/Managing%20The%20Public's%20Records.pdf>;

<https://www.openthegovernment.org/otg-supports-quist-nomination-to-codify-preservation-of-presidential-tweets/>

² <https://www.politico.com/story/2018/06/10/trump-papers-filing-system-635164>

³ https://www.washingtonpost.com/world/national-security/trump-has-concealed-details-of-his-face-to-face-encounters-with-putin-from-senior-officials-in-administration/2019/01/12/65f6686c-1434-11e9-b6ad-9cfd62dbb0a8_story.html

⁴ <https://www.americanoversight.org/groups-sue-pompeo-for-refusing-to-address-trumps-unlawful-efforts-to-hide-putin-meeting-notes>

⁵ <https://www.cnbc.com/2018/02/22/epa-and-scott-pruitt-sued-over-federal-records-laws.html>

To address these concerns, we urge NARA to make public the communications it has had with the White House to support records preservation. This includes any efforts to make sure administration staff and officials at all levels are aware of obligations and best practices for records preservation. This also includes any communication calling on the White House to carry out the early transfer of permanent electronic records to NARA (recognizing that legal custody of those documents remains with the administration)⁶. The early transfer of records in no way indicates any assumption of a transition after a first term. Calling on the White House to use this early transfer authority — codified by 2014 amendments to the PRA and FRA — will make for a smoother records preservation process, regardless of whether a presidential transition occurs in 2021 or 2025.

We also urge NARA to share its own efforts to make sure records are properly preserved. This includes NARA's current and planned efforts to determine the volume of records for preservation, and preparation efforts underway to receive and store records. Without assurance or evidence of efforts at this stage, the public is left to infer that NARA not fulfilling its fundamental obligation to preserve our nation's history.

Presidential records are one of the most important resources the public has to hold its government officials accountable. NARA's efforts to promote proper creation and preservation of records are crucial to ensuring the public's right to a full and factual set of records after a presidential transition. We urge NARA to provide an update on coordination efforts with the White House, and to request an update from the White House about its preservation efforts. If the White House does not share that information with you, we urge NARA to report that failure to Congress. As all of us with a stake in a transparent and accountable government would agree, presidential records are one of the most important resources the public has to hold our government officials accountable -- and the time to ensure their proper preservation is now.

Sincerely,

American Oversight
American-Arab Anti-Discrimination Committee (ADC)
Citizens for Responsibility and Ethics in Washington (CREW)
Defending Rights and Dissent
Demand Progress
Electronic Privacy Information Center (EPIC)
Federation of American Scientists
First Amendment Coalition
Government Accountability Project
Government Information Watch
National Coalition Against Censorship
National Security Archive
National Security Counselors
Open The Government
Project On Government Oversight (POGO)

⁶ <https://www.archives.gov/press/press-releases/2015/nr15-23.html>