



Minority Staff
Committee on Government Reform
U.S. House of Representatives
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FACT SHEET

The Release of Clinton Administration Records by the Bush Administration

President Bush and Vice President Cheney have taken a different approach to the release of records from the Clinton White House than they have taken to the release of their own records or the records from the Reagan White House. In the case of records from the Bush Administration, such as the records of the White House energy task force, the President and the Vice President have vigorously opposed release. President Bush has also interceded to block the timely release of records from the Reagan White House. In contrast, President Bush has approved the release of thousands of pages of records from the Clinton White House, including e-mails from the Office of the Vice President and records of presidential pardon decisions.

I. Records of the Cheney Energy Task Force

The General Accounting Office has requested limited records from the White House energy task force, headed by Vice President Cheney. The information being sought by GAO is the identity of outside parties that the task force met with, the dates of the meetings, and the subject matters discussed.¹

The Bush Administration has opposed disclosing this information to GAO. According to the President and the Vice President, their opposition to release is a matter of principle. The Vice President has stated that “[w]hat’s really at stake here is the ability of the President and the Vice President to solicit advice from anybody they want in confidence.”² Similarly, the President has stated that “[i]t’s not only important for us, for this administration, it’s an important principle for future administrations.”³

¹Letter from David Walker, Comptroller General of the United States, to Rep. J. Dennis Hastert (Aug. 17, 2001).

²Interview with Vice President Cheney, Fox News Sunday (Jan. 27, 2001). The Vice President also said, “What I object to, and what the President’s objected to, and what we’ve told the GAO we won’t do, is make it impossible for me or future vice presidents to ever have a conversation in confidence with anybody without having, ultimately, to tell a member of Congress what we talked about and what was said.” *Id.*

³*Bush Says Releasing Energy Documents Would Hinder White House*, Agence France-Presse (Jan. 28, 2002).

II. Records from the Reagan White House

The Bush Administration has also resisted disclosure of records of the Reagan Administration. In January 2001, new documents from the Reagan Administration became eligible for release under the Presidential Records Act.⁴ The National Archives and Records Administration (NARA) recommended to former President Reagan and current President Bush that 68,000 pages of deliberative materials from the Reagan Administration be released. President Reagan did not object to the release. Nevertheless, the Bush Administration instructed NARA to delay the release of these records three times.⁵ On January 3, 2002, President Bush allowed the release of 8,000 pages of these records.⁶ The Bush Administration continues to withhold 60,000 pages of these records.⁷

The Bush Administration has explained that its repeated delays in turning over the Reagan records are necessary in order to “review the many constitutional and legal questions raised by potential release of sensitive and confidential Presidential records.”⁸ According to one press report, aides to President Bush have privately suggested that they believe twelve years is too short a time for presidential documents to be withheld from the public.⁹

III. Records from the Clinton White House

The reluctance of the Bush Administration to release records from the current Administration and the Reagan Administration contrast with its approach to the release of records from the Clinton White House. President Bush has approved the release of thousands of pages of sensitive documents from the Clinton White House. The Clinton records that have been released fall into two main areas: (1) White House e-mails and (2) records of presidential pardons.

⁴The Presidential Records Act provides that most presidential records become eligible for release after 12 years. 44 U.S.C. § 2204.

⁵Letter from Alberto Gonzales, Counsel to the President, to John Carlin, Archivist of the United States (Mar. 23, 2001); Letter from Alberto Gonzales, Counsel to the President, to John Carlin, Archivist of the United States (June 6, 2001); Letter from Alberto Gonzales, Counsel to the President, to John Carlin, Archivist of the United States (Aug. 31, 2001).

⁶*White House: For the Record*, National Journal (Jan. 12, 2002).

⁷*White House: For the Record*, National Journal (Jan. 12, 2002).

⁸Letter from Alberto Gonzales, Counsel to the President, to John Carlin, Archivist of the United States (Aug. 31, 2001).

⁹*White House: For the Record*, National Journal (Jan. 12, 2002).

A. Release of Clinton White House E-Mails

In September 2001, Rep. Dan Burton wrote to NARA to obtain e-mails from the Clinton White House relating to over 100 nongovernmental persons, entities, and events.¹⁰ Rep. Burton's request covered e-mails relating to persons and companies believed to have had influence over the Administration, such as the Lippo Group and the Daihatsu International Trading Corporation. Rep. Burton wanted these e-mails to determine whether the listed persons and entities had exercised inappropriate influence on President Clinton or Vice President Gore.¹¹

The procedure for a president to assert privilege claims with respect to presidential records released by NARA is governed by an executive order that President Bush signed on November 1, 2001.¹² Under the terms of this executive order, NARA gives the incumbent President a chance to review the materials to be released and a right to assert a privilege claim to block release.¹³

The Bush Administration did not raise any objection to the release of the e-mails from the Clinton White House. As a result, NARA provided approximately 2,000 pages of e-mails to the House Committee on Government Reform on November 21, 2001.¹⁴ NARA's letter expressly states that "[t]he incumbent President has . . . agreed to this release." The letter further says that both President Clinton and Vice President Gore reviewed the materials and also did not object.

The documents released to the Committee with the Bush Administration's approval include a wide variety of sensitive communications among White House officials, as well as communications between White House officials and outside persons or groups. For example, the

¹⁰Letter from Rep. Dan Burton to John W. Carlin, Archivist of the United States (Sept. 6, 2001).

¹¹As Rep. Burton indicated in his campaign finance report, his investigation sought to answer the question of whether "foreign sources of any kind [were] buying access to the White House." House Committee on Government Reform, *Investigation of Political Fundraising Improprieties and Possible Violations of Law*, 105th Cong., v. 1, 8 (1998) (H. Rept. 105-829).

¹²Executive Order 13233, signed by President Bush on November 1, 2001, which replaced Executive Order 12667, signed by President Reagan on January 18, 1989.

¹³"With respect to [requests from Congress], the former President shall review the records in question and, within 21 days of receiving notice from the Archivist, indicate to the Archivist his decision with respect to any privilege. The incumbent President shall indicate his decision with respect to any privilege within 21 days after the former President has indicated his decision. Those periods may be extended by the former President or the incumbent President for requests that are burdensome. The Archivist shall not permit access to the records unless and until the incumbent President advises the Archivist that the former President and the incumbent President agree to authorize access to the records or until so ordered by a final and nonappealable court order." Executive Order No. 13233 (Nov. 1, 2001).

¹⁴Letter from Amy E. Krupsky, Associate General Counsel, National Archives and Records Administration, to David Kass, Committee on Government Reform (undated).

e-mails include:

- E-mails to Vice President Gore from his staff;
- E-mails between senior staff in the Office of the Vice President regarding meetings between Vice President Gore and nongovernmental parties;
- E-mails between staff in the Office of the Vice President regarding contacts with nongovernmental parties; and
- E-mails from outside the White House.

The costs of producing the e-mails from the Clinton White House are extraordinary because the e-mails have to be reconstructed from back-up tapes. During 2001, the production of these e-mails cost the taxpayer over \$3.5 million.¹⁵ It also required the expenditure of over 54,000 hours of staff and computer consultant time.¹⁶

Rep. Burton's efforts to obtain these White House e-mails began in February 2000, when press reports first surfaced that technical problems in the White House e-mail system may have prevented the Clinton White House from providing all e-mails that were responsive to Committee document requests and subpoenas.¹⁷ To date, over 2.9 billion e-mails have been restored.¹⁸ Approximately 3,000 pages of these restored e-mails have been considered responsive to Committee requests and provided to the Committee. NARA has indicated that it will continue to produce more e-mails.¹⁹

¹⁵By the end of 2000, costs associated with the reconstruction project were over \$8.4 million. Letter from Mark F. Lindsay, Assistant to the President for Management and Administration, to Rep. Jim Kolbe (Dec. 29, 2000). These costs grew to over \$12 million by the end of 2001. Letter from Phillip D. Larsen, Special Assistant to the President, to Rep. Ernest J. Istook, Jr. (Dec. 31, 2001).

¹⁶By the end of 2000, the Administration had expended over 62,500 hours on the e-mail project. Letter from Mark F. Lindsay, Assistant to the President for Management and Administration, to Rep. Jim Kolbe (Dec. 29, 2000). By the end of 2001, the number of hours devoted to the project had risen to over 117,000. Letter from Phillip D. Larsen, Special Assistant to the President, to Rep. Ernest J. Istook, Jr. (Dec. 31, 2001).

¹⁷See Letter from Rep. Dan Burton to Beth Nolan, Counsel to the President (Feb. 16, 2000).

¹⁸Letter from Phillip D. Larsen, Special Assistant to the President, to Rep. Ernest J. Istook, Jr. (Mar. 30, 2001).

¹⁹Letter from Amy E. Krupsky, Associate General Counsel, National Archives and Records Administration, to David Kass, Committee on Government Reform (undated) (stating "[w]ith respect to the emails containing the term 'Democratic National Committee' or 'DNC,' we have located approximately 12,000 emails for the year 1998 alone. We would like to discuss this large volume of responsive emails with you before proceeding further.").

B. Release of Clinton White House Pardon Records

Under the Bush Administration, NARA has also made five separate productions of documents to the Committee on Government Reform from the Clinton White House relating to presidential pardons. In total, 2,475 pages of documents have been produced to the Committee. These documents were produced on February 22, 2001, April 30, 2001, June 7, 2001, July 20, 2001, and July 27, 2001.

The release of these documents was governed by an executive order from President Reagan that was issued in 1989.²⁰ Under the terms of this order, President Bush was given an opportunity to review the materials before release and assert a claim of privilege.²¹ The order also allowed President Clinton an opportunity to review the materials before release and assert a claim of privilege.

President Bush did not raise any objections to the release of these pardon-related materials. In its transmittal letters, NARA stated:

In accordance with the [Presidential Records Act], its implementing regulations, 36 C.F.R. § 1270.46, and Executive Order 12667, NARA notified both the White House Counsel and Bruce Lindsey, the designated representative of former President Clinton, of these requests. Neither one has objected to the release of this information to the committee.²²

The documents released by NARA with the assent of the Bush Administration include extraordinarily sensitive presidential records, as well as records of contacts with outside parties seeking to influence pardon decisions:

- **Notes of Conversations Between President Clinton and a Foreign Head of State.** In August 2001, NARA allowed Committee staff to review and transcribe verbatim notes of three telephone conversations between President Clinton and former Israeli Prime Minister Ehud Barak on December 11, 2000, January 8, 2001, and January 19, 2001, relating to the pardon application of Marc Rich. NARA informed Committee staff that the Bush Administration had waived state secret privilege, perhaps the most unassailable

²⁰Executive Order 12667. This order was replaced in November 2001 by Executive Order 13233 issued by President Bush.

²¹Executive Order 12667. President Bush's November 2001 executive order preserves the right of the incumbent president to block the release of records by asserting a claim of privilege.

²²*E.g.*, Letter from Amy E. Krupsky, Associate General Counsel, National Archives and Records Administration, to David Kass, Committee on Government Reform (Feb. 22, 2001).

form of executive privilege, to cooperate with the Committee's investigation.²³

- **Pardon Applications.** NARA produced the written submissions of applicants seeking pardons. These included pardon petitions and private letters in support of their applications.
- **Phone Records.** NARA produced computerized phone logs detailing conversations between President Clinton and outside individuals.
- **WAVES Records.** NARA produced WAVES records, which identified visitors cleared for access to the White House complex.

The Government Reform Committee is continuing its investigation of President Clinton's pardons. At this time, however, all Committee requests to NARA for pardon-related documents have been satisfied.

²³Oral communication between NARA legal staff and minority staff of the Government Reform Committee (Aug. 2001).