

# United States Senate

WASHINGTON, DC 20510

May 19, 2017

The Honorable David S. Ferriero  
Archivist of the United States  
National Archives and Records Administration  
700 Pennsylvania Avenue NW  
Washington, D.C. 20408

Dear Mr. Ferriero:

I write with ongoing interest in current efforts to verify the maintenance and preservation of presidential records as required by the Presidential Records Act (the Act).<sup>1</sup> The education, training, and technical assistance offered by the National Archives and Records Administration (NARA) is essential to ensure that the President, the White House Counsel, and other personnel understand their obligations to document and preserve the full scope of written, audiovisual, and other communications under the Act, as these records are ultimately held in the public trust.<sup>2</sup>

In ensuring compliance with the Act's recordkeeping requirements, NARA has itself acknowledged the technical challenges presented by the increasingly widespread use of electronic records.<sup>3</sup> With this in mind, NARA encourages the White House to take advantage of their significant expertise in the design and management of electronic records systems in order to mitigate the risk of potentially costly delays when these records are permanently transferred to NARA upon the end of an Administration.<sup>4</sup>

As you are likely aware, on May 12, 2017, President Trump posted the following statement on Twitter: "James Comey better hope that there are no 'tapes' of our conversations before he starts leaking to the press!"<sup>5</sup> Although the White House has yet to confirm or deny the existence of the specific recordings suggested by the President's tweet, any such audio material recorded "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" is clearly subject to the Act's requirements.<sup>6</sup>

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<sup>1</sup> 44 U.S.C. § 2201 *et seq.*

<sup>2</sup> 44 U.S.C. § 2202.

<sup>3</sup> National Archives and Records Administration, *Guidance on Presidential Records* (2016) (<https://www.archives.gov/files/presidential-records-guidance.pdf>).

<sup>4</sup> *Id.*

<sup>5</sup> Donald J. Trump (@realDonaldTrump), Twitter post (May 12, 2017, 8:26 a.m.) (<https://twitter.com/realDonaldTrump/status/863007411132649473>).

<sup>6</sup> 44 U.S.C. § 2201(2).

In order to better understand the general state of compliance with the Act and the Administration's efforts to implement efficient and effective electronic records systems, I ask that you please provide answers to the following questions no later than June 9, 2017:

1. Would audio recordings of the President's conversations in the White House on matters that relate to or have an effect on the carrying out of his constitutional, statutory, or other official duties, made at the behest of the President or someone acting on his behalf, constitute records subject to the Presidential Records Act's preservation requirements?
2. You confirmed in a March 30, 2017 letter to Senator Claire McCaskill and Senator Tom Carper that NARA has provided introductory guidance to attorneys employed by the Office of the Counsel to the President regarding compliance with the Presidential Records Act. Has any staff member from the White House or offices within the Executive Office of the President consulted with or sought additional guidance from NARA regarding the Act since this time? Please provide a list of all staff who have consulted with NARA since January 20, 2017, and a copy of any additional training materials that have been furnished since March 30, 2017.
3. Has any staff member from the White House or offices within the Executive Office of the President consulted with or sought guidance from NARA regarding the applicability of the Presidential Records Act to audiovisual records, such as the audio recordings that were referenced in the President's tweet posted on May 12, 2017? If so, please provide a copy of any such written guidance or describe the nature of any verbal communications between NARA and White House staff on this topic.
4. Has any staff member from the White House or offices within the Executive Office of the President sought technical assistance from NARA regarding the design, development, or management of electronic records systems? If so, do any of these systems involve the preservation of audio recordings?
5. Is NARA aware of the current use by the White House or the Executive Office of the President of any record management systems, including electronic records systems, intended to preserve audio recordings for the purposes of the Presidential Records Act?
6. Has any staff from the White House or offices within the Executive Office of the President sought to authorize the routine disposal of bulk electronic records, in accordance with 36 CFR § 1270.30? If so, do the electronic records covered by these authorities include digital audio recordings?

As a member of the Committee on Homeland Security and Governmental Affairs, I would expect that any recorded conversations and records pertaining to the dismissal of former Federal Bureau of Investigation Director Comey of which the President or his staff expresses an interest in disposing would be of special interest to Congress, pursuant to 44 U.S.C. § 2203.

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If you have any questions regarding the above request, please contact Zachary Schram of my staff at [Zachary\\_Schram@hsgac.senate.gov](mailto:Zachary_Schram@hsgac.senate.gov) or at (202) 224-5543. Thank you in advance for your attention to this matter.

Sincerely,



Gary C. Peters  
Ranking Member  
Subcommittee on Federal Spending Oversight  
and Emergency Management  
Committee on Homeland Security  
and Governmental Affairs