

United States Senate

WASHINGTON, DC 20510

May 19, 2017

Donald F. McGahn II
Counsel to the President
The White House
Washington, DC 20500

Dear Mr. McGahn:

The Presidential Records Act (the Act) establishes that records created or received by the President, Vice President, their immediate staff, and other individuals in the Executive Office of the President (EOP) who advise or assist the President are to be maintained for their eventual preservation by the National Archives and Records Administration (NARA), as these records are ultimately held in the public trust.¹ This Act vests the responsibility for preserving and maintaining the full scope of written, audiovisual, electronic, and other covered Presidential records with the President himself.²

In ensuring compliance with the Act's recordkeeping requirements, NARA has acknowledged the technical challenges presented by the increasingly widespread proliferation of electronic records.³ With this in mind, NARA encourages White House staff to take advantage of NARA's 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.⁴

As you know, 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!"⁵ Should such tapes exist, they would constitute 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" and therefore be subject to the Act's preservation requirements.⁶

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. Are the President's conversations being surreptitiously recorded in the White House by or at the behest of the President himself or anyone acting on his behalf? If so, what steps are you taking to preserve the recordings as required by the Presidential Records Act?

¹ 44 U.S.C. § 2201 *et seq.*

² 44 U.S.C. § 2203(a).

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

⁴ *Id.*

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

⁶ 44 U.S.C. § 2201(2).

2. Has any staff member from the White House or offices within the Executive Office of the President received training or guidance from NARA with respect to the Presidential Records Act? If so, please provide a list of the staff in attendance and a copy of any training materials.
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. Are the White House and/or offices within the Executive Office of the President currently employing record management systems, including electronic records systems, intended to preserve audio recordings for the purposes of the Presidential Records Act?
6. Has any staff member 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 FBI 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. If you have any questions regarding the above request, please contact Zachary Schram of my staff at 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