95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 95–1487
2d Session } { Part I

PRESIDENTIAL RECORDS ACT OF 1978

AUGUST 14, 1978.—Ordered to be printed

Mr. BROOKS, from the Committee on Government Operations, submitted the following

REPORT

[To accompany H.R. 13500 which, on July 17, 1978, was referred jointly to the Committee on Government Operations and the Committee on House Administration]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Operations, to whom was referred the bill (H.R. 13500) to amend title 44 to insure the preservation of and public access to the official records of the President, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 2, line 21, strike out "an effect" and insert in lieu thereof "a direct effect".

Page 3, line 22, insert "direct" immediately before "effect".

Page 5, line 9, strike out "and", and on line 13 strike out "; and" and everything that follows through line 18 and insert in lieu thereof a period.

Page 5, line 12, strike out "days" and insert in lieu thereof "calendar days of continuous session of Congress" and, immediately after line 18, insert the following:

> For the purpose of this subsection, 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.

Page 10, line 19, insert "civil or" immediately before "criminal".

Page 12, strike out line 14 and everything that follows through line 20; on line 21, redesignate paragraph (3) as paragraph (2); and on page 13, line 3, redesignate paragraph (4) as paragraph (3).

EXPLANATION OF AMENDMENTS

The first two amendments clarify that in order for documentary materials involving the political activities of the President or his staff to be considered "Presidential records", the activities in question must relate to or have a "direct" effect upon the carrying out of the official or ceremonial duties of the President. These changes were made so that the act would not impinge on the President's first amendment right to free speech or political association by including as government property records that might have a tangential effect upon his or his staff's official or ceremonial responsibilities, but consist of purely personal political communications.

The third amendment strikes a provision which would have required microfilming prior to destruction of all materials that the President proposed to discard because they had no administrative, informational, historical, or evidentiary value. The only exception to this requirement was for routine or ceremonial mail to or from persons acting individually. The committee was concerned that the cost of microfilming would have discouraged proper records disposal, in that it might be less expensive to keep all materials regardless of their documentary worth.

The fourth amendment clarifies that information concerning the disposal of Presidential records must be provided to the Congress 60 legislative days, rather than 60 calendar days, in advance of action by the White House.

The fifth amendment provides that records which are otherwise barred from release under one of the six restrictive categories the former President may slelect from, shall be available pursuant to a subpoena or other court order for civil as well as criminal proceedings.

The last amendment deletes a provision which would have provided for the appointment of the Archivist of the United States by the President, with the advice and consent of the Senate, for a term of 10 years with removal for good cause only. The provision posed a dilemma with strong constitutional overtones. Because the Archivist is an executive branch official, limitations in any form on the authority of the President to remove him would be constitutionally suspect. [*See Myers* v. *U.S.*, 47 S. Ct. 21 (1926) and *Humphrey's Executor* v. *U.S.* 55 S. Ct. 869 (1935).] He cannot be designated a quasi-judicial or quasi-legislative official because the actual control of Presidential papers must remain within the executive branch. [*Nixon* v. *Administrator of General Services*, 97 S. Ct. 2777 (1977).]

PURPOSE

The purpose of H.R. 13500 is (1) to establish the public ownership of records created by future Presidents and their staffs in the course of discharging their official duties; and (2) to establish procedures governing the preservation and public availability of these records at the end of a Presidential administration. The legislation would terminate the tradition of private ownership of Presidential papers and the reliance on volunteerism to determine the fate of their disposition. Instead, the preservation of the historical record of future Presidencies would be assured and public access to the materials would be consistent under standards fixed in law. The primary function of Presidential libraries

remains unchanged. The libraries are to continue to provide information about their holdings and to make records available to researchers upon request on an impartial basis. The legislation becomes effective for records created or received during the term of office of the President beginning on or after January 20, 1981.

Summary of Major Provisions

The provisions of the bill are in three basic categories: (1) definition and declaration of ownership of Presidential records; (2) public access to Presidential records after a President leaves office; and (3) records management procedures during and after a President's term.

Presidential records are defined as those records created or received by the President and his aides, the purpose of which is the advise and assist the President in the performance of his official duties. The definition of Presidential records was designed to encompass those records which currently fall outside the scope of the Freedom of Information Act (FOIA) 5 U.S.C. section 552. See, e.g., *Soucie* v. *David*, 448 F. 2d 1068 (1971) and H. Rept. No. 93–876, 93d Cong., 2d sess. 13 (1974). The intent is that all records which are neither agency records subject to FOIA nor personal records would fall within the ambit of Presidential records. Personal records are defined as those materials which are neither developed in connection with nor utilized during the transaction of Government business.

The legislation declares Presidential records to be Government property and provides that immediately upon the conclusion of a President's tenure in office these records are transferred to the custody of the Archivist of the United States. The Archivist is given the responsibility for the placement of the records in a Presidential library or other federally operated facility.

An outgoing President would be permitted to place mandatory restrictions of up to 10 years on the availability to the general public of certain types of information. The six restrictive categories are modeled after several of the exemptions of the Freedom of Information Act. But unlike the FOIA exemptions which may be applied in a discretionary fashion by federal agencies, the statutorily permitted restrictions chosen by the former President are binding and must be observed. The six types of information that may be restricted are: data classified for national defense reasons pursuant to Executive order; material related to Presidential appointments; material exempted from disclosure by another statute; trade secrets and confidential business information; confidential communications between the President and his advisers; and information whose disclosure would result in a clearly unwarranted invasion of personal privacy.

The President is given the option of choosing to impose some, all, or none of the restrictive categories; or of being more selective and designating particular records or portions thereof which fall within the six categories. Additionally, he could vary the term of years for each category, picking for example, 6 years for one, 8 for another, and zero for a third.

The Freedom of Information Act, with its procedural requirements and provision for judicial review, would govern the public availability of all Presidential records not subject to mandatory restrictions. For example, there is no mandatory restriction category for investigatory

files compiled for law enforcement purposes, but such records would be exempt from public disclosure under the seventh exemption of the FOIA, 5. U.S.C. section 553(b)(7). The Freedom of Information Act would also govern access to previously restricted information once the mandatory Presidential restriction was no longer in effect. The term of a mandatory restriction would end (1) when the period of up to 10 years selected by the outgoing President has passed, (2) when a restriction is lifted with the former President's consent at a date earlier than the one he had initially chosen, or (3) when it has been determined by the Archivist that information contained in records covered by a Presidential restriction has been placed in the public domain through publication by the former President, his White House aides, or his associates.

The Archivist would be given up to 5 years from the end of a President's tenure in office to complete archival processing of the records. During this period the Archivist would be under no legal compulsion to make documents available to the general public. Once processed, the Archivist's determinations whether particular documents fell within a mandatory restriction imposed by the former President would not be subject to judicial review during the term of the restriction. The Archivist would, however, be required to establish an administrative appeal procedure which would require a written determination within 30 working days on whether access to a record was properly denied on the grounds that it came within a mandatory restriction.

Although materials would be closed to the general public during the term of a Presidentially imposed mandatory restriction, the materials would be accessible to an incumbent President or the Congress when not otherwise available and necessary to conduct the ongoing business of Government; and would also be accessible under demand of supena or other judicial process. Accessibility would be subject to any rights, defenses, or privileges a former or sitting President or others might assert, however.

To facilitate the compiling of a complete record and the orderly transfer of materials, the President is encouraged to implement sound records management practices and is required as far as practicable to make and separate personal papers from Presidential records. The President is required to adequately document the performance of his functions and may not dispose of Presidential records without first obtaining the written views of the Archivist concerning their historical value. A records disposal schedule, accompanied by the Archivists' comments, must then be submitted to Congress 60 legislative days in advance of actual disposal.

Finally, the legislation provides for the similar treatment of Vice-Presidential records. Although it allows the Archivist discretion in selecting the depository, it does not authorize the Archivist to establish separate depositories for Vice-Presidential records.

Committee Vote

H.R. 13500, as amended, was reported by the Committee on Government Operations by a vote of 33 ayes and 2 nayes, with a quorum present.

HEARINGS

H.R. 13500 is a clean bill incorporating changes made by the Government Information and Individual Rights Subcommittee in H.R. 13364, an earlier version of the Presidential Records Act of 1978. H.R. 13364 was a compromise between two earlier bills, H.R. 10998 and H.R. 11001, on which the subcommittee held 4 days of hearings in early 1978.

DISCUSSION

In his treatise, "The Records of A Nation," [1] H. G. Jones wrote that—

> To recognize the constitutional independence of the Presidency is not to establish a sound premise for the conclusion that presidential records are the private property of the incumbent, whether in or out of office. On the contrary, it would seem that if any proposition collides with constitutional principles it is that the President should be exempted from the legal obligation that rests upon other officials in government to protect and refrain from appropriating to personal use records produced or received into custody by virtue of the exercise of a public office. To assume otherwise would be to vest in the highest office of the land, or in his heirs or descendants, the right to sell, to destroy, to disclose, to refuse to disclose, or otherwise to dispose of documents of the highest official nature involving information that, if improperly, prematurely, or irresponsibly revealed, could not only wreck private lives, but also endanger the security of the nation.

From the founding of the country until 1974, however, the tradition of treating Presidential records as the personal property of a President was never seriously challenged. In enacting the Presidential Libraries Act of 1955,[2] Congress merely encouraged Presidents to deposit the records of their administrations within Presidential libraries or other Government-operated facilities, but did not require them to do so. That act also allowed Presidents to specify the terms under which access to any papers deposited with the Government would be permitted. Volunteerism is the basis of this existing system with respect to both the preservation and public availability of Presidential records.

In 1974, shortly after his resignation, President Nixon concluded an agreement with Arthur F. Sampson, Administrator of General Services, regarding the disposition of the materials of his Presidency.[3] Partly because the agreement provided for eventual destruction of the tape recordings made by President Nixon, Congress objected to the agreement and abrogated it by passing the Presidential Recordings and Materials Preservation Act of 1974.[4] This act gave custody of the materials to the GSA and banned destruction of the tapes or any other items.

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[1] H. G. Jones, "The Records of a Nation," 161–2 (1969).
[2] 69 Stat. 695 (1955), 44 U.S.C. sec. 2101, 2107–08.
[3] H. Rept. No. 93–1507, app. (1974).
[4] Public Law 93–526, 88 Stat. 1695 (1974).

The Supreme Court in 1977 upheld the constitutionality of the act in *Nixon* v. *Administrator of General Services*. Writing for a 7-to-2 majority, Justice Brennan declared:

> Congress can legitimately act to rectify the hit-or-miss approach that has characterized past attempts to protect these substantial [Government and public] interests [in the records].[5]

Although the 1974 act concerned itself only with materials of the Nixon administration, the Court's decision upholding the act nonetheless established principles that would govern legislation dealing more broadly with control of and access to Presidential papers. The following areas of the Court's opinion in *Nixon* are relevant to the bill considered in this report:

1. Separation of Powers.—The Court found that Congress did not breach the separation of powers in ceding control of the papers to the General Services Administration, inasmuch as the executive branch remained in full control of the Nixon materials with their release permitted only when not barred by some applicable privilege inherent in the Executive branch. Were Congress to give control of the papers to some entity outside the executive branch, the Court might well find such legislation unconstitutional.

2. Presidential Privilege.—The Court restated its holding of *United States* v. *Nixon* [6] that the President has a qualified privilege in the confidentiality of his communications. The Court further said that the privilege survives the particular President's tenure and may be invoked by him after he has left office. The Court noted, however, that "the privilege is not for the benefit of the Presiden as an individual but for the benefit of the Republic." [7] As such, the Court continued, "the expectation of confidentiality of Executive communications thus has always been limited and subject to erosion over time after an administration leaves office." [8]

3. Right of Privacy.—The Court found that Mr. Nixon's legitimate expectation of privacy in his materials which did not relate to the conduct of his Presidential duties must be viewed in the context of his status as a public figure, his lack of any expectation of privacy in the overwhelming majority of the materials, the important public interest in preservation of the materials, and the limited intrusion of the screening process which would determine which materials were public and which were private. The Court found no merit in the privacy claim. The Court also noted that Nixon, like his predecessors, "made no systematic attempt to segregate official materials from personal or private materials." [9] It suggested that such segregation would have further minimized the likelihood of any privacy infringement.

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[5] 97 S. Ct. 2795 (1977).
[6] 418 U.S. 683 (1974).
[7] 97 S. Ct. at 2793.
[8] *Id.* at 2794.
[9] *Id.* at 2796.

4. First Amendment.—The Court agreed that involvement in partisan politics is closely protected by the first amendment and that compelled disclosure in itself can seriously infringe on privacy and belief guaranteed by the first amendment. But the Court said a compelling public need that cannot be met in a less restrictive way will override those interests, particularly when the free functioning of national institutions is involved. The Court equated the first amendment claim to the broader privacy claim, implying that the closer the relationship between a President's partisan political activities and his conduct of Presidential duties, the less a Presidential Records Act intrudes on first amendment interests.

5. Standards of Control and Access.—The Court repeatedly referred to the specific statutory access guidelines in the 1974 act and the GSA regulations promulgated prusuant to that act as being determinative in the protection of constitutinal and legal rights. This supports the view that legislation should include detailed standards of control and access.

6. Ownership.—The Court concluded that the question of ownership was irrelevant to the issues before it. Therefore, it reserved judgment on the question of whether, under the existing law, legal title lies with a President or the Government.

DISCUSSION OF HEARINGS

During 4 days of hearings in 1978, the Government Information and Individual Rights Subcommittee received testimony on two proposals dealing with the preservation and availability of a President's papers once the President has left office. Under consideration by the subcommittee were H. R. 10998 and H. R. 11001.[10]

Basically, the bills:

Declared official papers of any President whose term began on or after January 20, 1981 to be government property;

Distinguished between official and personal papers;

Imposed records management requirements during the incumbency of future Presidents in order to assure creation and maintenance of the fullest possible documentation of White House activities; and

Provided a scheme for public access to those records at the end of an administration.

H.R. 10998 would have applied Freedom of Information Act standards to govern public access immediately upon conclusion of a President's tenure. H.R. 11001 would have allowed the former President unlimited control over the access restrictions to be placed on his administration's records for 15 years after leaving office.

The principal issue, and the one on which all of the witnesses were in agreement, was that action should be taken by Congress to declare a President's official records the property of the United States. No definitive legal decision is currently available concerning the ownership of these papers. This is largely because, with the exception of the

[10] The Presidential Records Act of 1978: Hearings Before a Subcommittee of the House Committee on Government Operations, 95th Cong., 2d Sess. (Feb. 23 and 28, Mar. 2 and 7, 1978).

Nixon Presidential materials, the nearly 600-year tradition of Presidents removing their papers has never been seriously challenged. On policy grounds, however, the witnesses were in general harmony that that which is generated, created, produced or kept by a public official in that administration and performance of the powers and duties of a public office belongs to the Government and may not be considered private property of the individual.

The Department of Justice witness testified that action by Congress to prospectively declare a President's official papers public property would not be subject to serious challenge. This is dispite the earlier 1974 opinion by Attorney General Saxbe [11] that Presidents owned their White House records, which was used to buttress the agreement between President Nixon and General Services Administrator Sampson. The National Study Commission on Records and Documents of Federal Officials, set up in the wake of the dispute over the Nixon papers by title II of Public Law 93–526, strongly recommended legislation to settle the ownership question in favor of the public.[12]

Both bills before the subcommittee shared this premise. The major difference centered around the means of controlling public access to the Presidential records entrusted to the Archivist at the end of an administration. At issue was balancing ready availability of the records against the prospect that premature disclosure might have a "chilling effect" on Presidents and the frankness of advice they could expect from their staffs. Although the chill concept was acknowledged to be a subjective one, with few specifics to point to, it was generally felt that failure to recognize its possibility might eventually diminish the completeness of the written record created and left by Chief Executives.

On the other hand, it was felt important that once having declared the President's papers to be Government records, they be governed to the extent feasible by the same statutory standards controlling Cabinet members' records and all other Government records. Consistency in application of the rules seemed critical.

The majority of the witnesses urged recognition of some period of time after a President leaves office to control access—but to do so in a manner that would not show favoritism to particular Government insiders or scholars. It was urged as well that due consideration be given to the expectation of confidentiality of Executive communications to avoid the prospect of a constitutional infirmity.

Some form of statutory access provisions, rather than leaving the choice entirely up to the former President, was considered necessary to shield the Archivist from unnecessary pressure. The Archivist, it was felt, would be susceptible to possible pressure from the incumbent

[11] 43 Op. Attorney General No. 1 (Sept. 6, 1974).

[12] Report of the National Study Commission on Records and Documents of Federal Officials, at 29 (1977). The Commission pointed to the profound problems created by the voluntary nature of the Presidential Libraries Act and the tradition of treating the papers as personal property. The Commission noted in its Memorandum of Findings on Existing Custom or Law, Fact and Opinion (March 31, 1977), at p. 39: "[B]y custom the only files left for an incoming administration, other than those units of the Executive Office covered by the Federal Records Act, have been the Precedent File in Central Files, the Administrative Office files, and the card file in the Records Office. There are numerous instances in which an incoming administration has been handicapped by the lack of records or documents of its predecessor." A number of Presidents or their heirs have retained physical control over significant Presidential materials for varying lengths of time. For example, the files maintained by President Eisenhower's personal secretary were retained by the General at his Gettysburg residence and were deposited in the Eisenhower Library only after his death, nearly 10 years after he left office. Report, at p. 16.

President to release embarrassing and inappropriate material concerning a predecessor or rival, and from the predecessor to withhold materials when no sound policy reason for doing so would be evident. The unlimited right to restrict access would also allow the outgoing President to close availability entirely during a set period; to permit trusted researchers to view the materials to the exclusion of others; and set mandatory restrictions which would be akin to assertions of privilege over the materials against the public.

The hearing record and subsequent communications indicated that 16 of the 18 witnesses felt that a period of 10 years or less in which the President could assert some restrictions would be sufficient to accommodate these policy and legal concerns. The statutory restrictions which the President might impose were modeled after the Freedom of Information Act's exemptions and the restrictions Presidents had traditionally included in the deeds of gifts which had accompanied their donations of papers to the Government.

The Archivist of the United States asked that there be a period of from 3 to 5 years after the President left office before public access would be allowed, to permit adequate time for his staff to arrange, screen, describe and process the huge set of records turned over.

The bill eventually adopted, H.R. 13500, sets a 5 year or less period for such archival processing; allows up to 10 years after leaving office for the ex-President to control access through statutorily-provided restrictions to certain categories of information; and applies the Freedom of Information Act to all Presidential records after archival processing which do not fall within the Presidentially-imposed mandatory restrictions, and to all Presidential records by the end of 10 years.

COST ESTIMATE

H.R. 13500 does not provide any new budget authority; its costs would be financed from future appropriations for the National Archives and Records Service. Although the bill declares certain materials to be Government property and establishes statutory standards for providing public access, no major change is anticipated in the daily operation of the Presidential Library system. The basic purpose of the system—to preserve, describe, and render reference service on Presidential papers and collections in a library setting—remains unchanged.

The committee's cost estimate is consistent with that of the Congressional Budget Office, which appears below. No other cost estimates were received from any Federal agency.

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., July 14, 1978.

Hon. RICHARDSON PREYER,
Chairman, Subcommittee on Government Information and Individual Rights, Committee on Government Operations, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed

H.R. 13364, the Presidential Records Act of 1978, as ordered reported by the House Subcommittee on Government Information and Individual Rights, July 13, 1978.

Based on this review, it appears that no additional cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

ROBERT A. LEVINE,
(For Alice M. Rivlin, Director).

INFLATIONARY IMPACT

H.R. 13500 would have no inflationary impact in the operation of the national economy.

OVERSIGHT FINDINGS

The Congress examined to a limited extent the general treatment of Presidential records in its consideration of the Presidential Records and Recordings Preservation Act of 1974, Public Law 93–526, 88 Stat. 1695, placing the records of the Nixon Presidency in the custody of the U.S. Government (*See* H. Rpt. No. 93–1507), and in subsequent consideration of the regulations issued by the General Services Administration to implement that act. (Committee on House Administration, Hearings on GSA regulations to implement Title I of the Presidential Recordings and Materials Preservation Act, 94th Cong., 1st Sess., May 22, and June 3, 1975; Senate Committee on Government Operations, Hearings on GSA regulations implementing Presidential Recordings and Materials Preservation Act, 94th Cong., 1st Sess., May 13, 1975; House Report Nos. 94–1485 and 94–560; and Senate Report Nos. 94–748, 94–368, and 93–1181).

The committee concluded that, based on its hearings, the current legal situation involving Presidential records and their disposition necessitated the legislative remedies which were incorporated in this act.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This section provides that the bill may be cited as the "Presidential Records Act of 1978."

SECTION 2. RECORDS MANAGEMENT PRESERVATION AND PUBLIC AVAILABILITY

Subsection (a) of this section amends Title 44 of the United States Code by adding Chapter 22—Presidential Records.

Section 2201 defines terms used in Chapter 22.

(1) "Documentary material" is defined to include all types of written, recorded verbal or visual communications regardless of the form or medium. The definition is an expansion upon the traditional notion of the form a government record may assume, but still relies heavily on the definition of ther term "record" in 44 U.S.C. section 301 and the practice that has evolved in the administration of Chapter 29 of that title. To the extent that certain categories of documentary materials are not considered to be records under that chapter, the

same categories of materials generated or received by the President and his aides would generally also fall outside the ambit of what constitutes a record.

(2) "Presidental records" is defined to mean any documentary material connected with the execution of the constitutional, statutory or other official and ceremonial duties of the President, either created or received by the President, his immediate personal staff, or units or individuals within the Executive Office whose function is to advise and assist the President. This includes documentary material involving political activities related to or having a direct effect upon the President's official or ceremonial duties. The term does not include agency records subject to the Freedom of Information Act, stocks of publications, extra copies of documents, or personal records.

The act does not modify the applicability of the Freedom of Information Act (5 U.S.C. Section 552) to White House and Executive Office records of a particular administration during its tenure. That is, it does not redefine the term agency to include entities not now covered by the FOIA. The Conference Report for the 1974 Freedom of Information Act amendments stated that "[w]ith respect to the meaning of the term 'Executive Office of the President' the conferees intend the result reached in *Soucie* v. *David*, 448 F.2d 1067 (C.A.D.C. 1971). The term is not interpreted as including the President's immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President." H. Rpt. No. 93–1380, 93d Cong., 2d Sess. 13 (1974). (*See also* Hearings appendix, "Applicability of the Freedom of Information Act to the Executive Office of the President.")

The term "presidential records" is intended, however, to encompass all White House and Executive Office records, except those of a purely private or nonpublic nature, which, as a consequence of the Conference Report language, fall *outside* the scope of the FOIA because they are not agency records. In other words, that which is now subject to FOIA would remain so and that which is *not* now subject to FOIA would be subject to the Presidential Records Act including those provisions of the latter act which in specified circumstances specially apply the FOIA to these non-agency records after a President leaves office.

(3) "Personal Records" is defined to mean those documentary materials which do not relate to the performance of the President's duties. Included in this term are materials Involving private political association, and diaries, journals and their functional equivalents that are not utilized in transacting government business.

Defining the types of documentary materials falling within the ambit of either "presidential" or "personal" records is of primary importance to the act. The definitions of these terms must be both mutually exclusive and all encompassing. Furthermore, in order to properly protect a President's privacy interests and his first amendment associational rights there must be a careful delineation of how, why and by whom documents are created and maintained. The term "presidential records" has, therefore, been couched in terms of "materials created or received . . . in the course of conducting activities which relate to or have an effect upon the carrying out or constitutional, statutory or other official or ceremonial duties of the President." The scope of this term is very broad since a great number of what

might ordinarily be construed as one's private activities are, because of the nature of the presidency, considered to be of a public nature, *i.e.*, they affect the discharge of his official or ceremonial duties.

Among the lines that would be drawn as a consequence,' are: (1) when the President's spouse or other family member or associate serves as a de facto member of the President's staff, the documents which reflect such service are included in the ambit of Presidential records; and (2) almost all of the President's political activities relate to or have a direct effect on his official duties and, as such, records reflecting these activities would be included within the scope of what constitutes a Presidential record.

While the need to protect the President's first amendment right of freedom of political association is clear, an examination of the nature of political activities in which a President becomes involved shows that few are truly private and unrelated to the performance of his duties. For example, political activities of a President might fall into the following categories: public activities as leader of his party; actions taken privately as head of his political party involving the exchange of advice and information affecting the fortunes of his party, particular candidates for office, or his legislative program; actions involving his own campaign and related fund-raising efforts seeking re-election as President; and actions involving the exercise, as a private citizen, of his political preferences by voting or making campaign contributions. Records pertaining to activities in all but the last category would appear generally to fall within the ambit of Presidential records without presenting a serious threat of infringement of the President's first amendment right to free association.

(4) "Archivist" is defined to mean the Archivist of the United States.

(5) "Former President" is defined to mean each President whose Presidential records are subsequently administered under the provisions of this chapter.

SECTION 2202. OWNERSHIP OF PRESIDENTIAL RECORDS

This section provides that the ownership, possession and control of those "documentary materials" which fall within the ambit of "Presidential records" shall be with the United States and shall be administered in accordance with provisions of the chapter.

SECTION 2203. MANAGEMENT AND CUSTODY OF PRESIDENTIAL RECORDS

Subsection (a) provides that an incumbent President shall implement records management practices to assure that the carrying out of the constitutional, statutory and other official and ceremonial duties of the President are adequately documented and that such documentary materials are treated as Presidential records in accordance with the records management provisions of the section.

Subsection (b) provides that, to the extent practicable, documentary materials be categorized and filed as either Presidential or personal records as they are produced or received in the White House or Executive Office. The requirement is expected to involve relatively little burden because the volume of truly personal material is considered minuscule.

Subsection (c) provides that an incumbent President may dispose of those Presidential records he considers to have no administrative, historical, informational or evidentiary value. However, he must first obtain the views of the Archivist and transmit these views, along with the proposed disposal schedule, to the Congress at least 60 legislative days in advance of taking action. This requirement is based on the maxim that "those closest to the making of history are often the least able to judge the singificance of their actions."

The section gives the Archivist authority to examine any or all of the records the incumbent President proposes to keep or destroy, in order to properly comment on their value. It is anticipated that the actual examination will only involve a sampling of those records about which there is question. There is no requirement, nor is there an expectation that the Archivist will find it necessary to review each and every document proposed for disposal.

The records schedules to be filed with the Congress are to follow the model of schedules currently filed with the Archivist by Federal agencies pursuant to Title 44. Once a schedule of destruction or maintenance for a particular category of documents has been established, materials falling within the category will continue to be disposed of accordingly unless later amended. The Congress is not given a veto over the disposal schedule filed by the President. The filing is solely for notification though the Congress would have its traditional means of voicing objection to particulars in the proposal directly to the President, or ultimately by passing legislation to block the destruction of certain records.

Subsection (d)(1) provides that immediately upon the conclusion of a President's tenure in office responsibility for custody, control, preservation, and accessibility of Presidential records transfers to the Archivist.

Subsection (d)(2) directs the Archivist to deposit the Presidential records under his control in a Presidential library or other archival depository operated by the United States. The Archivist is authorized to designate a library director (after consulting with the President to whose administration the records pertain) who shall be responsible for the records processing and care. The requirement that the Archivist consult with the former President about the appointment is included to allow the ex-President, as long as he is living, some voice regarding the person who is to administer the access restrictions of his Presidency, particularly during the 10-year maximum period of mandatory Presidential access restrictions. This is not authority for the former President to veto an appointment made or proposed by the Archivist, however.

Subsection (d)(3) authorizes the Archivist to dispose of those Presidential records in his custody which he judges to have no administrative, historical, informational, or evidentiary value. He must, however, publish notice in the *Federal Register* of the proposed disposal and the details of the proposed disposal schedule 60 days in advance of taking action.

Inasmuch as the notice in this case represents a final agency action under 5 U.S.C. section 553, public inspection of the documents slated for disposal is anticipated during the 60 day period. Such inspection is crucial to any effort aimed at enjoining the proposed action.

SECTION 2204. RESTRICTIONS ON ACCESS TO PRESIDENTIAL RECORDS

Subsection (a) provides that prior to leaving office a President may impose mandatory restrictions of up to 10 years on the public availability of certain types of information contained in the Presidential records of his administration. The types of information to which access may be restricted are set forth in paragraphs 1–6, as follows:

(1) Information authorized by an Executive order to be kept secret in the interest of national defense or foreign policy [The scope of this category is comparable to the (b)(1) exemption of the FOIA];

(2) Information pertaining to Presidential appointments to Federal office [no comparable FOIA exemption exists];

(3) Information which is specifically exempted from disclosure by another statute [The scope of this category is comparable to the (b)(3) exemption of the FOIA];

(4) Trade secrets and privileged or confidential commercial and financial information [The scope of this category is comparable to the (b)(4) exemption of the FOIA];

(5) Confidential communications between the President and/or his advisers [The scope of this category is not comparable to the (b)(5) exemption of the FOIA dealing with inter and intra-agency memorandums and letters. The courts have interpreted the fifth exemption of the Freedom of Information Act to compel the release of all policy and advice memoranda which formed the basis for an agency decision once the decision has been made. Under the provision in this act, on the other hand, the President may bar the release of pre-decisional advice submitted in confidence by or between his official and unofficial advisers many years after a decision was reached. However, these confidential communications would be publicly made available upon the termination of the mandatory restrictive period set by the former President, unless an appropriate FOIA exemption other than (b)(5) were available. This is because the material falling within the scope of the provision here, § 2205(a)(5) of the Presidential Records Act, would not qualify as an agency record for protection under the FOIA's exemption for inter- and intra-agency memorandums. As noted elsewhere, the term agency is defined for FOIA purposes as not "including the President's immediate staff or units in the Executive office whose sole function is to advise and assist the President."]; and

(6) Information the disclosure of which would result in a clearly unwarranted invasion of personal privacy [The scope of this category is comparable to the (b)(6) exemption of the FOIA].

These are the only categories of records of his administration to which the outgoing President may restrict public access. He is given no authority to impose additional restraints beyond those itemized in subsection (a).

The authority granted to the President under this act to establish mandatory restrictions of up to 10 years on public disclosure of certain types of information should not be construed as a reflection of the Congress' views on the extent to which a former President may assert a constitutionally based privilege. The selection of the 10-year period represents an attempt to formulate a statutory access

policy which balances the objectives of assuring early public availability with the concern that the premature dislosure of sensitive presidential records will eventually result in less candid advice being placed on paper and a depleted historical record. The President was not given this authrority because of any right he had in the data, but to accommodate the practical concerns about possible chill on advice. The restrictions provided follow closely the restrictive categories chosen by previous Presidents in drawing up donor agreements entrusting the records of their administration to the government.

Subsection (b)(1) requires that the Archivist identify and limit access to records in accordance with restrictions imposed by a President prior to his leaving office. The Archivist's authority to limit access in accordance with mandatory Presidential restrictions ends upon (A)(i) consent by the former President to lift a restriction he had previously imposed, or (ii) the expiration of the time periods of up to 10 years designated by the President under subsection (a) for certain categories of data.

It is anticipated that the Archivist will process the former administration's papers in a manner roughly similar to current practices. Detailed processing will involve going through the records page by page and applying to the information contained in them the restrictive categories chosen by the former head of state. Where only a portion of a record is determined to be exempt from disclosure, the record must be disclosed with the reasonably segregable restricted portion deleted. This follows the segregability requirement contained in the Freedom of Information Act, 5 U.S.C. 552(b). (See description of the requirement in S. Rept. No. 93–854, Amending the Freedom of Information Act, 93d Cong., 2d Sess., May 16, 1974, at 31.) It is also expected that the Archivist will follow past practice in applying the restrictive categories in former Presidents' deeds of gift, and negotiate with the ex-President or his representative on an on-going basis to lessen the number of years chosen for particular mandatory restriction categories, to eliminate entire categories, or to permit release of particular records otherwise restricted, when there is no longer a policy reason to justify continued withholding. This is similar to the Attorney General's May 5, 1977, policy instructions to agency Freedom of Information Act officers that they release materials even though they fall within one of the FOIA's legal exemptions unless demonstrable harm to private or public interests can be shown. [The Attorney General's letter is reproduced in 123 Congressional Record S7763 (daily ed. May 17, 1977) (remarks of Sen. Kennedy).] The distinction here is that the Archivist has no authority to release information which falls within restrictive categories chosen by the former President without the former President's consent.

Under subsection (b)(1)(B), a third means for the termination of mandatory Presidential restrictions is provided whereby the Archivist determines, during the term of a restriction, that information falling within the restricted category has been placed in the public domain through publication by the former President or his aides or associates. The word "associates" is meant to include unofficial advisers to the President.

The termination of a mandatory Presidential restriction, regardless of the cause, does not render a previously restricted record automatically available to the public. It simply means that the record in question

would be subject to availability under the Freedom of Information Act.

Subjection (b)(2) provides that for those records which do not contain information falling within a restriction imposed by the President under subsection (a), the Archivist is not obligated to make them available to the public until the earlier of (A) 5 years from the date on which he obtained the records, or (B) when he completes processing all of the Presidential records he has assumed custody of from the earlier administration, or logically distinguishable subunits of those files.

Subsection (b)(3) establishes that the final determination as to whether particular records fall within a mandatory Presidential restriction is to be made by the Archivist. Although the subsection provides for consultation with the former President in this process, current practice is expected to continue whereby the former President is consulted in situations requiring his personal assessment of the nature of a particular document, or when there is negotiation over the continued validity of certain restrictions he has imposed. The actual identification and segregation of materials pursuant to the restrictions is left to the Archivist. The subsection also provides that when a Presidential restriction is in effect, a determination by the Archivist regarding access is not subject to judicial review, except where initiated by the former President, However, the Archivist is directed to establish an administrative appeal procedure whereby individuals denied access to records on the basis of their being Presidentially-restricted will receive a written determination by the Archivist within 30 working days of receipt of appeal. The Archivist has already provided an administrative appeal mechanism consistent in most respects with the requirement here. See General Services Administration Handbook, "Presidential Libraries," NAR P 1856.1 CHGE 8 (February 16, 1977) at chapter 6.12.

Subsection (c) provides that when records are no longer subject to withholding under a mandatory Presidential restriction, and when the grace period provided for archival processing of unrestricted records has ended, the records shall be administered in accordance with the Freedom of Information Act.

For example, a record involving the Presidential appointment of an individual to Federal office might be subject to mandatory withholding if a President so chose; however, once the mandatory restriction was no longer in effect, the same document, or parts thereof, could only be withheld under existing FOIA exemptions. Similarly, a law enforcement investigative record that contained no information subject to being withheld under the President's mandatory restrictions could be withheld from the very outset under the seventh exemption of the FOIA.

While Presidential records are not currently covered by the Freedom of Information Act, they effectively become agency records for the purposes of this provision in applying FOIA requirements to them. As discussed above, however, since Presidential records as defined by this act are not actually agency records under the FOIA, they may not be withheld from public release by the Archivist under the fifth exemption of the Freedom of Information Act, dealing with inter- and intra-agency records.

Subsection (d) provides that upon the death or disability of a President or former President any discretion or authority he may have had under the chapter will be exercised by the Archivist, unless the President or former President has specifically provided otherwise. Written notice of the fact the President has so provided must be given to the Archivist in advance of occurrence of death or disability.

However, since the selection by the President of mandatory restrictions on access must take place "prior to the conclusion of his term in office" under section 2204(a), this authority may not be delegated to the Archivist or to any other individual to exercise after the President has died or left office under the terms of the 25th amendment. In situations where the President has not chosen access restrictions while still in office, therefore, the Freedom of Information Act would be the sole governance on public availability of the Presidential records of that administration.

SECTION 2205. EXCEPTIONS TO RESTRICTED ACCESS

This section sets forth the parties to whom, and situations in which, access will be granted to otherwise restricted Presidential records. They would be available:

(1) To the Archivist and his staff for the purpose of archival processing;

(2) Subject to any rights, defenses and privileges which the United States or any party may invoke, (A) under subpena or other judicial process issued in connection with any civil or criminal investigation or proceeding. (It is anticipated that when the substance of a record sought under this provision is particularly sensitive, the court will exercise discretion and review the document *in camera* to determine its relevance.); (B) to the incumbent President when needed for official business and the information was not available from other sources; and (C) to either House of Congress or, to the extent within its jurisdiction, any committee or subcommittee thereof, if such records contained information needed for the conduct of its business was not otherwise available. (This provision is not intended to modify the legal and constitutional rights of parties concerning the availability of Presidential or Executive branch records.); and

(3) To the former President to whose administration the records pertain, or to his designated representative.

SECTION 2206. REGULATIONS

This section authorizes the Archivist to promulgate such regulations as necessary to carry out the provisions of the new chapter. Specifically required are regulations addressing the requirement of public notice for proposed destruction of Presidential records held by the Archivist, and notice to the former President when access is sought under section 2205(2) to materials he has restricted.

It should be noted that no requirement of formal notice or consultation with the former President has been included for access to materials beyond the 10-year period of mandatory restrictions. Just as the power of a former Chief Executive to assert a claim of privilege

dissipates over time once he has left, so too should the obligation of actual notice to the ex-President in advance of disclosure of previously protected Presidential records. While predisclosure notice is not required, however, the act does not preclude notice or consultation once the papers become subject to FOIA. The practice which has grown around the Freedom of Information Act's implementation recognizes the authority of agencies to consult with interested parties prior to FOIA disclosures. It is anticipated that since the outgoing President has had a hand in selecting the library director overseeing his administration's collection, consultation will occur.

SECTION 2207. VICE PRESIDENTIAL RECORDS

This section establishes that the Vice President has the same authority and responsibility with respect to his records, as does the President with respect to Presidential records. It is possible, therefore, that the Vice President may designate different access provisions to his records than those specified by the President for his.

The authority and responsibility of the Archivist also applies with respect to Vice Presidential records. It is expected that the Vice Presidential records of an individual who subsequently becomes President will be deposited with the records of his administration. However, the Archivist is vested with discretion as to the facility in which the papers will be placed. The Vice Presidential records of an individual who does not subsequently serve as President might be deposited by the Archivist in (1) the Presidential library containing the records of the administration under which he served as Vice President, (2) another Federal depository, or (3) a non-Federal depository, upon determination that such placement is in the public interest. This discretion is not intended to authorize the establishment of separate Federal depositories for Vice Presidential records, however.

Subsection (b)(1) of the bill conforms the table of chapters of title 44 by inserting reference to new chapter 22—Presidential records.

Subsections (b)(2) and (3) comform provisions in sections 2107 and 2108(c) of Title 44, respectively.

SECTION 3. EFFECTIVE DATE

This section provides that the act will be effective with respect to Presidential records created or received during a Presidential term of office beginning on or after January 20, 1981. Article II, section 1 of the Constitution provides that "he [the President] shall hold his office during a term of four years." Therefore the individual who takes the oath of office on January 20, 1981, is deemed to take office on that date, regardless of his previous service in that office.

CHANGES IN EXISITING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in exisiting law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 44—UNITED STATES CODE

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Chapter 21.—ARCHIVAL ADMINSTRATION

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§ 2107. Material accepted for deposit.

When the Administrator of General Services considers it to be in the public interest he may accept for deposit—

(1) the papers and other historical materials of a President or former President of the United States, or other official or former official of the Government, and other papers relating to and contemporary with a President or former President of the United States, subject to restrictions agreeable to the Administrator as to their use; and

(2) documents, including motion-picture films, still pictures, and sound recordings, from private sources that are appropriate for preservation by the Government as evidence of its organization, functions, policies, decisions, procedures, and transactions.

This section not apply in the case of any Presidential records which are subject to the provisions of chapter 22 of this title.

§ 2108. Presidential archival depository.

(a) * * *

* * * * * * *

(c) When the Administrator considers it to be in the public interest, he may exercise, with respect to papers, documents, or other historical materials deposited under this section, or otherwise, in a Presidential archival depository, all the functions and responsibilities otherwise vested in him pertaining to Federal records or other documentary materials in his custody or under his control. The Administrator, in negotiating for the deposit of Presidential historical materials, shall take steps to secure to the Government, as far as possible, the right to have continuous and permanent possession of the materials. Papers, documents, or other historical materials accepted and deposited under section 2107 of this title and this section are subject to restrictions as to their availability and use stated in writing by the donors or depositors, including the restriction that they shall be kept in Presidential archival depository. The restrictions shall be respected for the period stated or until revoked or terminated by the donors or depositors or by persons legally qualified to act on their behalf. Subject to the restrictions, the Administrator may dispose by sale, exchange, or otherwise, of papers, documents, or other materials which the the Archivist determines to have no permanent value or historical interest or to be surplus to the needs of a Presidential archival depository. *Only the first two sentences of this subsection shall apply to Presidential records as defined in section 2201(2) of this title.*

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TITLE 44.—PUBLIC PRINTING AND DOCUMENTS

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Chapter 22.—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 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) 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 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, and

(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.

(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 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—

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

(2) copies of the disposal schedule of such Presidential records and of such views are submitted to each House of the Congress at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date.

For the purpose of this subsection, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not is session because of an adjournment or more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

(d)(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.

(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 10 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 aides or associates.

(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 that initiated by such President. 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) 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, and for the purposes of such section such records shall be deemed to be records of the National Archives and Records Service of the General Services Administration. Access to such record shall be granted on nondiscriminatory terms.

(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.

§ 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 Service of the General Services 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 subpena 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 the 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(d)(3); and

(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).

§ 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 responsibilities 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 sgall be construed to authorize the establishment of separate archival depositories for such Vice-Presidential records.

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