

BACKGROUND ON THE PRESIDENTIAL RECORD ACT
*Implementation by the Incumbent President and the National Archives and Records
Administration (NARA)*

The Presidential Records Act (PRA) and the incumbent President

- The Presidential Records Act of 1978, as amended (PRA) permanently changed the tradition of handling Presidential papers, while at the same time incorporating checks and balances for the records of the highest official in the government. As its first order of business, the PRA changed the legal ownership of official Presidential papers from private to public; but it did so prospectively, so that the PRA only applies to the records of Presidents and Vice Presidents who take office starting on January 20, 1981. For this reason, the Presidential historical materials at NARA's Presidential libraries are now governed by three distinct legal instruments: donors' deeds of gift for Hoover, Roosevelt, Truman, Eisenhower, Kennedy, Johnson, Ford, and Carter; the Presidential Recordings and Materials Preservation Act for Nixon; and the PRA for Reagan, George H.W. Bush, Clinton, George W. Bush, Obama and all subsequent Presidents.
- The PRA defines presidential records as all records generated or received by the president or his staff "in the course of conducting activities which relate to or have an effect upon the carrying out of constitutional, statutory or other official or ceremonial duties of the President." These records are transferred to the Archivist of the United States at the end of the Presidential administration to be placed in a Presidential library run by NARA. In addition, Vice Presidential records are treated in the same manner as Presidential records (except that the Archivist may deposit these records in an approved non-federal facility).
- The PRA places the responsibility for the custody and management of incumbent Presidential records with the President, but only allows for the disposal of incumbent Presidential records after obtaining the written views of the Archivist of the United States.
- An incumbent President also has the authority to invoke six restrictions to public access of his records for a period of 12 years following the end of his administration.
- Finally, the PRA grants an incumbent President the authority to request access to Presidential records of former administrations that are needed for the conduct of on-going business of the incumbent. It also, as codified in section 2208 of the PRA and NARA's regulations, provides an opportunity for the incumbent and former Presidents to conduct a privilege review prior to public release of Presidential records. Additionally, NARA's regulations establish the procedures for the incumbent and former Presidents to review material before it is provided to Congress or the Courts.

The Presidential Records Act (PRA) and the National Archives

- Legal and physical custody of Presidential records transfers to NARA at the end of each Presidential administration and the records are placed in a presidential library run by NARA.
- Once Presidential records are in the legal custody of NARA, trained archivists begin the decades-long process of reviewing these tens of millions of pages of records to determine which ones can be made available to the public. In addition to the six Presidential restrictions a President can choose to invoke, Presidential records are also subject to closure under eight of the nine FOIA exemptions. (The PRA mandates that the FOIA (b)(5) exemption, which allows for the withholding of deliberative and other privileged records, shall not apply to Presidential records.)
 - Four PRA restrictions mirror the FOIA exemptions for classified information, other statutory exemptions, trade secrets, and personal privacy. As such, these PRA restrictions withhold no more information than would be withheld under the identical FOIA exemption.
 - Two PRA restrictions are unique. One of these restrictions applies to information containing “confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers.” This is known as the “confidential advice” or “P5” restriction (and is similar to the FOIA (b)(5) exemption). A second Presidential restriction is for information “relating to appointments to Federal office,” and is known as the “appointments” or “P2” restriction.
- Five years after the end of the presidency, Presidential records are subject to public disclosure through the Freedom of Information Act (FOIA) or through affirmative openings by NARA. NARA can choose to propose to open discrete groups of records before five years, and has done so to make records available for the opening of a Presidential library.
- The PRA mandates that NARA cannot disclose any Presidential record without first providing notice to both the former and incumbent Presidents, through their designated representatives, so that they have the opportunity to review the records in order to decide whether to assert a constitutionally based privilege.