

## Notification Procedures

NARA provides the White House Counsel's Office, on behalf of the incumbent President, notifications of requests for access to and/or release of Presidential or Vice Presidential records in NARA's custody. The notification is required by the Presidential Records Act of 1978, as amended, 44 U.S.C. 2201-2209 and NARA's regulations, 36 C.F.R. § 1270.44-46. The purpose of providing the White House with such notification is to give the Counsel, on behalf of the incumbent President, the opportunity to review the records and consider whether to invoke a constitutionally based privilege in order to restrict access to or release of Presidential or Vice Presidential records in the Archivist's legal custody.

### Notification Types

Notifications will be one of two types. First, NARA will notify the incumbent President of any intent to release Presidential records to the general public, known as "regular notification." Second, NARA will notify the incumbent President of any intent to provide access to or release of Presidential records in response to a request by Congress, the Courts, or other Executive branch agencies for records that are not available to the public under the exceptions to restricted access provisions of the PRA, 44 U.S.C. § 2205(2), known as "special access notification."

- ***Regular notifications***

Once NARA has completed a page-by-page review of a group of records to determine which material must be withheld under applicable PRA restrictions and/or FOIA exemptions, NARA will notify the incumbent President of our intent to publicly release the remaining processed records not properly restricted from release. This notification includes the following:

- number of pages processed
- number of pages restricted from release
- number of pages proposed for opening
- general topic of request
- brief narrative description of the records being proposed for release

NARA provides a simultaneous written notification to the representative of the living former President. If the notification pertains to Vice Presidential records, the appropriate former Vice President is also notified, if his former President is still living. 44 U.S.C. 2208 stipulates that both the former and incumbent Presidents have 60 calendar days (which can be extended once by 30 calendar days) to assert a claim of privilege. (A new Administration has an initial six-month period to review all such notices.) Absent an assertion of privilege, NARA will release the records at the expiration of that time. If a constitutionally-based privilege is invoked, NARA will not release the record until so required by a final court order or the privilege claim is withdrawn.

- ***Special Access notifications***

*Request from the courts or Congress* – In accordance with the PRA, NARA responds to Congressional special access requests only from the House or Senate as a whole or from a chair of a committee or subcommittee. NARA responds to requests or orders from the federal courts that are signed by a judge. NARA will inform the former President and the incumbent President of the receipt of such a request and, if responsive documents are located, NARA will provide notice to the former and incumbent Presidents of our intent to release these records to the courts or Congress. The PRA and NARA's regulations outlined in 36 C.F.R. §1270.44 govern this notification process, which states that both the former and incumbent President have 30 calendar days to determine if they intend to claim a Constitutionally-based privilege. If requests are of a time-sensitive nature, the Archivist may shorten the time period allowed for review. Once NARA has clearance from both the former and incumbent Presidents, copies of the responsive documents will be provided to the requester. Occasionally, the former or incumbent President will place restrictions on this access, such as not providing copies, but allowing read access only, which NARA will implement.

*Request from the incumbent President (including on behalf of other Executive branch agencies)* – NARA will inform the former President of the receipt of the request and of our intent to search for responsive documents. Once responsive documents are located, NARA will provide a notification to the former President of our intent to release these records to the incumbent President. Because the current administration has requested copies of these records for its own use, there usually is no need to notify the incumbent President for a privilege review. Instead, the responsive records, or access to them, are provided directly to the current administration once the former President has approved their release in accordance with the PRA and NARA's regulations outlined in 36 C.F.R. §1270.44. Occasionally, however, the incumbent President puts conditions on access requests by other agencies. In these instances, NARA will meet any conditions stipulated by the incumbent President before releasing the documents to the requester.

## **Exceptions to the Notification Procedures**

With certain exceptions, NARA will notify the incumbent President of our intent to release or provide access to Presidential and Vice Presidential records not already in the public domain. NARA does not notify the incumbent President when providing Presidential records directly to a former President, former Vice President or his designated representative(s). Additionally, the George W. Bush and Obama administrations waived their privilege review of NSC Presidential records created prior to the Reagan administration that were transferred to NARA as Clinton Presidential records in response to the *Armstrong v. EOP III* ruling that NSC records are not subject to FOIA, and therefore are subject only to the PRA (90 F.3d 553 (D.C. Cir. 1996)). Finally, the Obama Administration waived its privilege review of most Reagan and George H.W. Bush Presidential records and most Bush Vice Presidential records.