



THE WHITE HOUSE
WASHINGTON

February 1, 2022

David Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Ave., N.W.
Washington, D.C., 20408

Dear Mr. Ferriero,

I write in response to your communication of January 18, 2022, informing us that former President Trump has made claims of executive privilege with regard to a subset of documents requested by the House Select Committee to Investigate the January 6th Attack on the United States Capitol that you provided to the White House for review on December 16, 2021. You have requested President Biden's views with respect to the disclosure of those documents to the Committee and on the former President's claims of privilege. President Biden has considered the former President's claims, and I have engaged in consultations with the Office of Legal Counsel at the Department of Justice.

The Supreme Court has recognized the authority of a former President, in certain circumstances, to assert claims of the presidential communications privilege, which encompasses certain communications made in connection with the President's exercise of the responsibilities of his office. *See Nixon v. GSA*, 443 U.S. 425, 449 (1977). Many of the records as to which the former President has made a claim of privilege in this set of documents, however, were communications concerning the former Vice President's responsibilities as President of the Senate in certifying the vote of presidential electors on January 6, 2021. Although those records qualify as Vice-Presidential records under the Presidential Records Act and therefore are subject to the provisions of the Act concerning exceptions to restricted access, *see* 44 U.S.C. § 2207, 2205, they are not subject to claims of the presidential communications privilege.

In any event, to the extent any of the documents in question could be subject to a claim of executive privilege of any sort, including by the former President, President Biden has determined that an assertion of such a privilege is not justified and is not in the best interests of the United States. As I wrote in my letter to you on October 8, 2021:

[T]he insurrection that took place on January 6, and the extraordinary events surrounding it, must be subject to a full accounting to ensure nothing similar ever happens again. Congress has a compelling need in service of its legislative functions to understand the circumstances that led to . . . the most serious attack on the operations of the Federal Government since the Civil War. . . . Constitutional protections of executive privilege should not be used to shield, from Congress or the public, information that reflects a clear and apparent effort to subvert the Constitution itself.

Accordingly, President Biden does not uphold the former President's claims asserting executive privilege. President Biden therefore instructs you, in accord with Section 4(b) of Executive Order 13489, to provide to the Select Committee the pages identified as privileged by the former President. In light of the urgency of the Select Committee's need for the information, the President further instructs you to provide those pages 30 days after your notification to the former President, unless prohibited by court order. If the 30-day period expires on a weekend or holiday, you should provide the records to the Select Committee on the next business day.

Some of the documents in question involved litigation in which certain parties were represented by the Department of Justice. In order to protect longstanding Executive Branch interests, production of those records should be *in camera*. My staff will provide a complete list of records for *in camera* review. Moreover, in any documents you produce to the Committee, you should redact non-responsive content in otherwise responsive records as appropriate.

Sincerely,



Dana A. Remus
Counsel to the President