

Memorandum of Understanding Regarding the Work to Complete Transfer of George W. Bush Electronic Records

**MEMORANDUM OF UNDERSTANDING BETWEEN THE NATIONAL ARCHIVES AND RECORDS
ADMINISTRATION AND THE OFFICE OF ADMINISTRATION, EXECUTIVE OFFICE OF THE
PRESIDENT, CONCERNING THE CONTINUATION AND COMPLETION, AFTER JANUARY 20,
2009, OF ACTIVITIES TO COMPLETE TRANSFER OF GEORGE W. BUSH ELECTRONIC RECORDS
INCLUDING PHYSICAL SPACE PROVIDED FOR NARA BY OA**

DATED JANUARY 16, 2009

I. Purpose

The purposes of this Memorandum of Understanding ("MOU") are (1) to outline space, equipment and resource considerations for the continuance of transition activities concerning Executive Office of the President electronic records following the end of the George W. Bush Administration, and (2) to ensure that after 12:00 noon January 20, 2009, the National Archives and Records Administration ("NARA") shall have sole legal custody of all George W. Bush Administration electronic records that are governed by the Presidential Records Act ("PRA"), 44 U.S.C. chapter 22.

II. Continuance of Transition Activities

Following the end of the George W. Bush Administration on January 20, 2009, authorized personnel and contractors from the Office of Administration ("OA"), Executive Office of the President ("EOP"), will work with NARA to complete activities associated with the transfer of George W. Bush electronic records. These activities include, but are not limited to, the sorting by EOP component of email captured in the Microsoft Exchange Journal to PST processes from January 2003 to January 20, 2009 ("the sorting project"), extracting the emails from PST files and putting them into EML files, and de-duplicating multiple copies of the same email within each EOP component, prior to being transferred to NARA's Electronic Records Archives ("ERA") facility in West Virginia for ingestion into NARA's Electronic Records Archives. Limited assistance from authorized personnel and contractors is also required for a small number of applications for which data extractions need to be performed following the January 20th transition.

OA will procure space necessary in its offsite data center through June 2009 to complete these activities. NARA shall maintain physical control of this space and authorize entry only to the personnel needed to complete this work. NARA will maintain full oversight of personnel accessing the space

provided to NARA. All personnel entering the NARA controlled space shall sign a log book upon entry and exit. The log book shall be maintained by NARA.

OA will place any OA equipment needed to assist in these activities in the NARA controlled space on or before January 20, 2009. At the conclusion of this effort in June 2009, OA will remove its equipment from the NARA controlled space after OA has forensically cleaned all George W. Bush electronic records from the equipment.

As soon as possible, and no later than January 20, 2009, OA shall transfer to NARA three sets of backup physical media, which are being maintained for any necessary recovery purposes and as required by continuing litigation: (1) a complete set of disaster recovery back-up tapes, (2) copies of the subset of those tapes made by the OA email restoration vendor, and (3) workstation hard drives removed from PRA EOP component workstations (from which all Presidential record information has also been copied and transferred to NARA on other media), along with requisite documentation to accomplish a full and complete recovery should it be required. This media shall be maintained in the NARA controlled space. An inventory of all such media shall be provided to NARA. This media is being transferred to NARA for security storage pending completion of transition activities and for purposes of continuing litigation. When the transition activities are completed, and all relevant litigation concluded, the disposition of this media will be handled by NARA in accordance with standard archival procedures under the PRA and the Federal Records Act ("FRA"), 44 U.S.C. chapters 21, 29, 31 and 33.

III. Legal Custody of George W. Bush Administration Electronic Records

NARA by law shall assume full legal custody of all George W. Bush Administration PRA records at noon January 20, 2009. Due to the Microsoft Exchange Journal to PST processes from January 2003 to January 20, 2009, there are two distinct records categories of Exchange email records being transferred to NARA, all created by the George W. Bush Administration EOP after January 1, 2003: (1) records of President Bush and the EOP offices that create presidential records, which are governed by the PRA and (2) records of EOP components that create federal records, which are governed by the FRA.

A. Legal Custody of Presidential Records

On January 20, 2009, legal custody of all PRA email messages shall transfer to the Archivist of the United States. A copy of all other electronic records not associated with the continuing transition activities shall be transferred to NARA. Any access to PRA records by OA staff, OA contractors, or any other party shall be controlled exclusively by NARA and shall be governed by the PRA, NARA regulations, and Executive Order 13233 (or any successor order). These records shall remain George


W. Bush Presidential and Cheney Vice Presidential records after 12:00 noon, January 20, 2009, notwithstanding their physical location or the limited access to them by OA, OA contractors, or third parties, as described above.

NARA shall be responsible for responding to requests for documents or information and conducting searches of the George W. Bush PRA email records in response to special access requests and subpoenas pursuant to the PRA that are made by investigative authorities or other requesting parties. NARA shall be responsible for developing search terms and search strings to be used in conducting a search of these records. OA shall provide NARA with all necessary assistance in the event that NARA is required to conduct searches of emails in their original PST format before they have been ingested into ERA.

B. Legal Custody of Federal Records

In contrast to the presidential records discussed above, copies of all PST files containing federal records shall be transferred into NARA's physical custody until the email sorting process mentioned above is completed. These FRA records shall remain in the exclusive legal custody of the EOP FRA components.

Once the sorting project is completed, a sorted copy of FRA email records shall be placed on OA equipment in the NARA controlled space and returned to OA custody. The Federal EOP components shall be responsible for responding to and conducting searches of all federal record emails, including requests under the Freedom of Information Act, congressional requests, subpoenas and other authorized requests until such records are formally accessioned into the National Archives by means of a fully effectuated SF 258, in accordance with 36 C.F.R. section 1228, subpart L. Until all the activities associated with the transfer of George W. Bush electronic records are complete, NARA will provide OA with access to the FRA PST files in order to perform any required searches.



Signed on Behalf of the Office of Administration

Date 1/16/09



Date 1-16-09

Signed on Behalf of the National Archives and Records Administration

NOTE: The Presidential Records Act records referenced above include those for the White House Office, the Office of the Vice President, the Council of Economic Advisers, the National Security Council, the Office of Policy Development, the President's Intelligence Advisory Board, and the Office of Administration. The Federal Records Act records referenced above include those for the Council on Environmental Quality, the Office of Management and Budget, the Office of National Drug Control Policy, the Office of Science and Technology Policy, and the Office of the United States Trade Representative.