

George W. Bush Presidential Library

Collection: Counsel's Office, White House

Series: Kavanaugh, Brett - Subject Files

Folder Title: [Records Management at the
NSC]

Withdrawn/Redacted Material

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Draft	Records Management at the NSC	4	N.D.	P5;

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

[Records Management at the NSC]

FRC ID:

9692

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

THE WHITE HOUSE
WASHINGTON

2/21/01

Brett,

We would like to distribute this to the NSC staff but seek your concurrence/comments first. Attached is our memo from the last administration.

Thank you.

Joek Scharfen

6-9116
NSC-Legal

Withdrawal Marker

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For a complete list of items withdrawn from this folder, see the
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FRC ID:

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2018-0016-P

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March 21, 1994

1994
MemoACTION

MEMORANDUM FOR NSC STAFF

FROM: WILLIAM H. ITOH *W. Itoh*

SUBJECT: Electronic Communications Systems (Electronic Mail)

All National Security Council employees have ongoing responsibilities to create, maintain, and preserve records of their activities pursuant to the Federal Records Act (44 U.S.C., Chapters 29, 31, and 33) or the Presidential Records Act (44 U.S.C., sections 2201-2207), or both. Traditionally, the NSC has treated some of its records as federal and some as Presidential and filed them separately. The proper scope of that distinction (including definitions of relevant terms) is now in litigation. Until that question is resolved, we will retain copies of all record messages in a way that permits appropriate designation and filing of them at a later time by the staff of Records Management.

This memorandum provides guidance for fulfilling the NSC's legal obligations as they apply to records (either Presidential or federal) that are created on electronic communications systems. The guidance applies to the e-mail, word processing, and calendar functions of the VAX All-in-One and CC:Mail systems (which includes All-in-1 word processing documents sent via e-mail) and the calendar function of the PROFS (OfficeVision) system, as well as the e-mail, word processing, and calendar functions of the new e-mail system to be introduced later this year.

The staff of the NSC create records electronically, including by the use of electronic communications systems. The NSC preserves electronic mail messages that are records by filing them electronically and transferring them to magnetic tape in a software-independent format for long term preservation. The NSC also preserves essential transmission data for these records electronically, including the name of the sender and each addressee, plus the date and exact time of transmission, which are recorded with the text of each message. "Read receipts" that identify when a message is "opened" by each addressee also are preserved whenever requested.

Successful implementation of this policy requires each NSC employee to do five things: (1) determine the record/nonrecord status of any e-mail message at the time of creation (or, for word processing documents, at the time of transmission); (2) request read receipts whenever it is important to confirm the receipt of a message by a certain time; (3) for the time being, ensure that read receipts are preserved by printing them, attaching them to the originating message, and sending them to

Records Management for filing; (4) print and file designated calendars and calendar authorization files monthly; and (5) print and file draft word processing documents that qualify as records. All other tasks associated with the proper maintenance and disposition of e-mail records will be performed by the staff of Records and Access Management and Systems and Technical Planning or WHCA.

DETERMINING RECORD STATUS

Electronic mail documents in the NSC (like all other documentary materials) fall into one of two categories: records or nonrecord materials (which includes personal materials). The only records management judgment that NSC staff must make when using e-mail is to determine whether a message is record or nonrecord in nature.

The Presidential Records Act defines Presidential records as:

documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual in 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. (44 U.S.C. 2201(2))

Under this definition, Presidential records are documentary materials that meet all three of the following tests. First, the materials must have been created or received by the President, his immediate staff, or a unit or individual in the EOP whose function it is to advise and assist the President. Second, the materials must be created or received by such a unit or individual in the course of conducting activities that relate to or have an effect upon the carrying out of the President's constitutional, statutory, or other official or ceremonial duties. Third, they must not be federal records, which are specifically excluded from coverage by the Presidential Records Act.

The Federal Records Act defines federal records as:

All books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States under federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. (44 U.S.C. 3301)

Under this definition, electronically recorded data that satisfy two tests are federal records. First, the data must have been

created or received by agency personnel in connection with the transaction of public business. Second, they must be preserved or appropriate for preservation as evidence of the agency's activities or because they contain information of value.

"Preserved" in the context of the NSC's e-mail systems means that the data are deliberately filed, stored, or otherwise systematically maintained for future use, including being stored in electronic files, folders, or logs.

Numeric, graphic, or text data that satisfy either of these two definitions are records, regardless of the medium on which they are recorded or the type of computer system on which the data are recorded or transmitted. Thus, electronic messages or documents that satisfy either definition (Presidential or federal) are records. This includes:

- messages or documents containing information developed in preparing position papers, reports and studies;
- messages or documents reflecting official actions taken in the course of conducting NSC business;
- messages or documents conveying information on NSC programs, policies, decisions, and essential transactions;
- messages or documents that convey statements of policy or the rationale for official decisions or actions;
- messages or documents memorializing oral exchanges, such as meetings or telephone conversations, during which policy was discussed or formulated or other activities of the NSC were planned, discussed, or transacted.

Preliminary drafts of final documents, rough notes, and similar materials must be maintained for purposes of adequate and proper documentation if (1) they contain unique information, such as annotations or comments, that help explain the formulation and execution of basic policies, decisions, actions, or responsibilities, and (2) they were circulated or made available to employees other than the creator for the purpose of approval, comment, action, or to keep staff informed about NSC business.

This guidance about determining the record status of preliminary drafts transmitted via e-mail also applies to word processing documents shared on a network. Because drafts of such shared documents may be records, their record status must be reevaluated as changes are made. Substantive updates to such drafts that constitute records must be preserved by printing and filing with the final paper copy while minor changes do not need to be preserved. Such substantive updates should identify the author, recipient(s), and date of the draft, as well as similar data documenting substantive updates.

When the same information appears in two different documents, both documents may be records. Moreover, multiple copies of the same document may all be records if they are used for different purposes in the conduct of official business or filed in different files. More than one office may take action on, or otherwise use, copies of a document, and in such cases each copy of the document is a record.

Nonrecord or Personal Materials.

Certain types of documentary materials created within the NSC are considered "nonrecord" because they do not meet the conditions of record status as explained above or because they are excluded from the status of records by statute. This includes:

- reminders about meetings and appointments that contain no information of value about such events;
- telephone messages (unless the message contains information of value);
- invitations to unofficial social functions during office hours;
- preliminary drafts of correspondence, memoranda, reports, and studies that are not circulated to any other individual;
- preliminary drafts, work sheets, informal notes, and similar materials that contain the same information reflected in final documents and that do not document policy development or execution.
- notes about exclusively personal matters, such as private political or professional activities.

Monitoring Record Status Designations

To assist the NSC staff in making proper record status determinations, the staff of Records and Access Management will periodically examine a sample of all electronic mail messages and documents transmitted via e-mail, including those designated as nonrecord materials. The purpose of the examination is to identify any problems in interpreting this guidance for distinguishing between record and nonrecord materials. The selected messages and documents will be examined monthly in order to correct improper designations as promptly as possible.

Materials designated as nonrecord that are saved for the purpose of monitoring do not become federal records simply because they are retained for that purpose. However, if the Records and Access Management staff, in the course of the monitoring review, determine that the content of the materials show that the

nonrecord designation of a particular message or document is incorrect, the staff shall redesignate it as a record. The staff of Records Management will report their findings to me at least once annually and recommend any needed changes in current guidance or procedures.

No copies of electronic mail documents (either electronic or paper) may be removed from the NSC unless they are determined to be exclusively personal materials. If a departing staff member wishes to retain such documents, the staff of Records and Access Management must review the documents before authorizing their removal.

PRESERVING ELECTRONIC MAIL MESSAGES

To facilitate the preservation of e-mail messages that are records, you are required to indicate whether the message is Record (R) or Nonrecord (N) each time you create a message or, for All-in-1 word processing documents, when you send the document. (For the NSC's new e-mail system you also will be required to make the same R/N determination whenever you respond to a nonrecord message.) You should make that determination by following the guidelines in this memorandum for identifying records, nonrecord materials, and personal materials (a personal message should be labeled nonrecord (N)). CC:Mail users should make the same determination for any message broadcast on the Bulletin Board function. When in doubt, designate a message as a record.

If you designate a message as a record, a copy automatically will be routed to Records Management for incorporation into the appropriate records system. Also, any response to a record message automatically will be labeled a record. All messages in individual e-mail accounts will be purged from the All-in-One and CC:Mail systems after one month, with the exception of extra copies placed in your "personal folder" because they need to be retained for more than one month for personal convenience.

Transmission and Receipt Data

All electronic mail messages contain certain "transmission data" regarding the sender, addressee(s), and transmission (date and exact time) of a document. The transmission information associated with an electronic mail message that is designated a record also must be preserved as a record. Consequently, all e-mail messages routed to Records Management as records will be filed electronically with the following transmission data included: the name of the sender and all recipients and the date and time of transmission.

Additionally, if you request a read receipt for an electronic mail record, the read receipt is also a record and must be preserved with the message. You should request read receipts

whenever it is necessary to confirm that an addressee has read a message by a certain time, such as when you assign tasks with a deadline or need concurrence by a definite time. To the extent feasible, WHSSS will program the e-mail system to capture such read receipts electronically. However, until further notice, and as previously instructed in Will Itoh's 5/27/93 memorandum, you should print out read receipts whenever you request them, attach them to the originating message, and forward such materials to Records Management for filing.

PRESERVING CALENDARS

Calendars created on the NSC's electronic mail systems that contain information about government business may also be records. They are records if they are circulated to others or placed in files that allow others in the NSC to access and view the calendars in connection with official business. Calendars that are not circulated to others, and are not made accessible to others, do not need to be preserved, and they may be updated, changed, or deleted at the individual's discretion. The NSC manages calendars on these systems that are records as follows:

1. Electronic calendars relating to the activities of the APNSA, the DAPNSA, the Staff Director, the Executive Secretary, the Deputy Executive Secretary, and Senior Directors are meant to be shared with NSC employees other than the individual's secretary and, therefore, must be treated as records. They should be printed out monthly by an NSC staff member with designated responsibility for printing the calendar and forwarded to Records Management for permanent preservation. Entries in these calendars may not be deleted or destroyed prior to printing. When printing calendars for preservation, also print and file a list of the individuals who had authorized access to the calendar for the previous month.

2. Calendars of other employees that contain information about NSC activities will be retained on the computer system for two years. Entries in the calendars, and associated data regarding authorized access, may not be deleted or destroyed during those two years unless the calendar has been previously printed and forwarded to Records Management.

This memorandum supersedes all previous guidance on electronic mail issued prior to January 6, 1993, as well as the instructions on Electronic Federal Records on page 6 of the May 8, 1993 memo on "Federal Records." I cannot emphasize too strongly the importance of staff compliance with this guidance in order to ensure that the NSC fulfills its legal obligations regarding the

creation and preservation of federal and/or Presidential records. If you have any questions about this guidance, please contact the Office of Records and Access Management (53576) or the Office of the Legal Adviser (66538).