

October 16, 2020

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White House Counsel  
1600 Pennsylvania Avenue, N.W.  
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Archivist of the United States  
National Archives and Records Administration  
700 Pennsylvania Avenue, N.W.  
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Re: Potential Violations of the Presidential Records Act by Peter Navarro

Dear Messrs. Cipollone and Ferriero:

Citizens for Responsibility and Ethics in Washington (“CREW”) writes to notify you of recent activity by Peter Navarro concerning a Twitter account he used for official purposes in his capacity as Director of the White House Office of Trade and Manufacturing Policy (“OTMP”). The same day CREW filed a Hatch Act complaint against Mr. Navarro based in part on his politically-charged tweets, Mr. Navarro apparently deactivated his Twitter account. He then launched a new account under different username, which, unlike his prior account, makes no reference to his White House role, and includes no disclaimer that tweets will be archived pursuant to the Presidential Records Act (“PRA”). Mr. Navarro continues, however, to tweet from this new account about matters relating to his official duties, just as he did from his old account. Because Mr. Navarro’s actions may violate the PRA, we urge you to investigate this matter, ensure preservation of all Presidential records from his Twitter accounts, and take any appropriate disciplinary action against him in accordance with the PRA.

### **Factual Background**

By Executive Order issued April 29, 2017, President Trump established the OTMP within the White House Office.<sup>1</sup> The OTMP is responsible for advising “the President on innovative strategies and promot[ing] trade policies consistent with the President’s stated goals,” serving “as a liaison between the White House and the Department of Commerce and undertak[ing] trade-related special projects as requested by the President,” and helping to “improve the performance of the executive branch’s domestic procurement and hiring policies, including through the implementation of the policies described in Executive Order

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<sup>1</sup> Exec. Order No. 13,797, 82 Fed. Reg. 20,821 (Apr. 29, 2017).

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13788 of April 18, 2017 (Buy American and Hire American).”<sup>2</sup> Peter Navarro was appointed as the OTMP’s first Director, a position he continues to hold.<sup>3</sup> Mr. Navarro’s full title is “Assistant to the President and Director of the Office of Trade and Manufacturing Policy.”<sup>4</sup>

In March 2020, Mr. Navarro began using a Twitter account with the username “@PeterNavarro45” for official government purposes.<sup>5</sup> He used the account primarily to promote the Trump Administration’s trade and manufacturing policy as part of his duties as OTMP Director.<sup>6</sup> He also used the account to attack President Trump’s political rivals and support his reelection (the latter of which is the subject of a Hatch Act complaint recently filed by CREW).<sup>7</sup>

Until late September 2020, Mr. Navarro’s Twitter account profile included his official White House portrait, listed his official title, provided a link to the White House website, and included the disclaimer that “Tweets may be archived: <http://wh.gov/privacy>.”<sup>8</sup>



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<sup>2</sup> *Id.*

<sup>3</sup> The White House, Peter Navarro, Assistant to the President and Director of the Office of Trade and Manufacturing Policy, <https://www.whitehouse.gov/people/peter-navarro/>.

<sup>4</sup> *Id.*

<sup>5</sup> Peter Navarro (@PeterNavarro45), Twitter (as captured on Sept. 23, 2020), <http://web.archive.org/web/20200923022503/https://twitter.com/PeterNavarro45>.

<sup>6</sup> *See id.*

<sup>7</sup> *See, e.g.*, CREW, Navarro Should be Terminated for Hatch Act Violations, Oct. 5, 2020, <https://www.citizensforethics.org/press-release/crew-complaint-navarro-should-be-terminated-for-hatch-act-violations/>.

<sup>8</sup> Peter Navarro (@PeterNavarro45), Twitter (as captured on Sept. 23, 2020).

As of September 26, however, Mr. Navarro conspicuously removed the disclaimer about the potential archiving of tweets.<sup>9</sup>



Then, on October 5—the same day CREW filed a Hatch Act complaint against Mr. Navarro based in part on his politically-charged tweets—he apparently deactivated his @PeterNavarro45 account, rendering his prior tweets inaccessible on Twitter.<sup>10</sup>



<sup>9</sup> Peter Navarro (@PeterNavarro45), Twitter (as captured on Sept. 26, 2020), <http://web.archive.org/web/20200926220746/https://twitter.com/PeterNavarro45>.

<sup>10</sup> Lachlan Markay (@lachlan), Twitter (Oct. 5, 2020), <https://twitter.com/lachlan/status/1313177789458198528> (“Peter Navarro’s twitter account (@peternavarro45) appears to have been deleted.”); Sylvan Lane, [Watchdog group says top Trump trade adviser should be fired for Hatch Act violations](https://thehill.com/policy/finance/519720-watchdog-group-says-top-trump-trade-adviser-should-be-fired-for-hatch-act), *The Hill*, Oct. 5, 2020, <https://thehill.com/policy/finance/519720-watchdog-group-says-top-trump-trade-adviser-should-be-fired-for-hatch-act> (“The original account appeared to be deleted Monday . . . making Navarro’s alleged previous tweets inaccessible.”).

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One journalist noted that looking up the @PeterNavarro45 account’s “unique [Twitter] ID number confirms that it was deleted, not changed to a different handle.”<sup>11</sup>

As of October 7, Mr. Navarro was back on Twitter with a new username, “@RealPNavarro.”<sup>12</sup>



**Peter Navarro**

@RealPNavarro

Author, Death By China

📍 Washington, DC 🔗 [peternavarro.com](https://peternavarro.com)

Unlike the former @PeterNavarro45 account, the @RealPNavarro account includes no reference to Mr. Navarro’s official title, no link to the White House webpage, and no disclaimer about potential archiving of tweets.<sup>13</sup> The @RealPNavarro account appears to include the tweets previously made from the @PeterNavarro45 account, but it is unclear whether all prior tweets and communications were carried over to the new account. The two accounts also appear to have roughly the same number of followers (between 45,000-47,500). Despite the changed username and account profile description, Mr. Navarro continues to use the @RealPNavarro account in the same way as the @PeterNavarro45 account—*i.e.*, to promote the Trump Administration’s trade and manufacturing policy, and to attack the president’s political opponents.

<sup>11</sup> Lachlan Markay (@lachlan), Twitter (Oct. 5, 2020), <https://twitter.com/lachlan/status/1313179725175705603>.

<sup>12</sup> See Peter Navarro (@RealPNavarro), Twitter, <https://twitter.com/RealPNavarro>.

<sup>13</sup> Compare *id.*, with Peter Navarro (@PeterNavarro45), Twitter (as captured on Sept. 23, 2020).

### **The Presidential Records Act**

The PRA “establish[es] the public ownership of records created by . . . presidents and their staffs in the course of discharging their official duties.”<sup>14</sup> The statute broadly defines “Presidential records” to include “documentary materials, or any reasonably segregable portion thereof, created or received by the President, the President’s immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise or 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.”<sup>15</sup> Such records “can be in any media, including textual, audiovisual, and electronic.”<sup>16</sup>

The PRA restricts the disposal of Presidential records. It provides that the “President may dispose of . . . Presidential records . . . that no longer have administrative, historical, informational, or evidentiary value” only if two conditions are met: “(1) the President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records; and (2) the Archivist states that the Archivist does not intend to take any action under subsection (e) of this section [regarding consultation with Congress about disposal decisions].”<sup>17</sup> As the D.C. Circuit Court of Appeals has recognized, “[d]isposal decisions matter because [P]residential records—if not previously discarded, that is—become available for public release several years after a president leaves office.”<sup>18</sup>

The PRA also restricts White House employees’ use of “non-official electronic message account[s]” to create or send Presidential records.<sup>19</sup> Specifically, the statute prohibits covered White House employees from “creat[ing] or send[ing] a Presidential . . . record . . . using a non-official electronic message account unless” the employee either “copies an official electronic messaging account . . . in the original creation or transmission of the Presidential record,” or “forwards a complete copy of the Presidential . . . record to an official electronic messaging account . . . not later than 20 days after the original creation or transmission of the Presidential . . . record.”<sup>20</sup> The statute broadly defines “electronic messaging account” to mean “any account that sends electronic messages.”<sup>21</sup> An “intentional violation” of this requirement, “as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the

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<sup>14</sup> *CREW v. Trump*, 924 F.3d 602, 603 (D.C. Cir. 2019) (quoting H.R. Rep. No. 95-1487, 95th Cong. at 2 (1978)).

<sup>15</sup> 44 U.S.C. § 2201(2).

<sup>16</sup> NARA, Guidance on Presidential Records, <https://www.archives.gov/files/presidential-records-guidance.pdf>.

<sup>17</sup> 44 U.S.C. § 2203(c); *see also* NARA, Guidance on Presidential Records, at 6 (“The Archivist must provide his views in writing before the President and Vice President may dispose of any incumbent Presidential records.”).

<sup>18</sup> *CREW*, 924 F.3d at 604 (citing 44 U.S.C. § 2204(b)(2)).

<sup>19</sup> 44 U.S.C. § 2209.

<sup>20</sup> *Id.* § 2209(a).

<sup>21</sup> *Id.* § 2209(c)(3).

case may be,”<sup>22</sup> and may include removal, suspension, reduction in grade or pay, or furlough.<sup>23</sup>

On February 22, 2017, the White House Counsel issued a memorandum to “remind all [White House] personnel of their obligation to preserve and maintain [P]residential records, as required by the Presidential Records Act.”<sup>24</sup> The memo confirms that Presidential records include “electronic communications that are created or received in the course of conducting activities related to the performance of the President’s duties,” even when “sent from or received on non-official accounts.”<sup>25</sup> It adds that “[P]residential records are the property of the United States. You may not dispose of [P]residential records. . . . The willful destruction or concealment of federal records is a federal crime punishable by fines and imprisonment.”<sup>26</sup>

White House policy further provides that “for the sole purpose of complying with the Presidential Records Act, the White House archives *some* information that users submit or publish when engaging with the White House through official White House pages or accounts on third-party websites.”<sup>27</sup> The policy states that “on Twitter, the White House automatically archives ‘tweets’ from official White House accounts, and may capture ‘mentions’ (tweets from other users to official White House accounts).”<sup>28</sup>

### **Potential PRA Violations Relating to Navarro’s Twitter Accounts**

Mr. Navarro’s recent actions relating to his Twitter accounts may violate the PRA and, at a minimum, appear to be designed to evade the PRA’s preservation requirements. As a threshold matter, tweets, direct messages, and other communications from any of Mr. Navarro’s Twitter accounts—including both the former @PeterNavarro45 account and the new @RealPNavarro account—qualify as Presidential records insofar as they relate to Mr. Navarro’s duties as Assistant to the President and Director of the OTMP, a component of the White House Office.<sup>29</sup> It is immaterial whether Mr. Navarro labels his Twitter account as official (as with the @PeterNavarro45 account) or personal (as with the @RealPNavarro account), because, as noted, the PRA extends to Presidential records created or sent from “non-official” accounts. What matters is the content of Mr. Navarro’s communications and their nexus to his White House position, not how he labels his account.

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<sup>22</sup> *Id.* § 2209(b).

<sup>23</sup> *See* 5 U.S.C. §§ 7501-7504, §§ 7511-7515, §§ 7541-7543.

<sup>24</sup> White House Memorandum, Presidential Records Act Obligations, Feb. 22, 2017, [https://www.archives.gov/files/foia/Memo%20to%20WH%20Staff%20Re%20Presidential%20Records%20Act%20\(Trump,%202002-22-17\)\\_redacted%20\(1\).pdf](https://www.archives.gov/files/foia/Memo%20to%20WH%20Staff%20Re%20Presidential%20Records%20Act%20(Trump,%202002-22-17)_redacted%20(1).pdf)

<sup>25</sup> *Id.* at 2.

<sup>26</sup> *Id.* at 3; *see also* 18 U.S.C. § 2071.

<sup>27</sup> The White House, Privacy Policy, <https://www.whitehouse.gov/privacy-policy/> (emphasis added).

<sup>28</sup> *Id.*

<sup>29</sup> *See* NARA, Guidance on Presidential Records, at 5 (listing “The White House Office” among the “components of the Executive Office of the President that create Presidential records”).

As the above chronology shows, Mr. Navarro treated his @PeterNavarro45 account as an official White House account for several months, and explicitly acknowledged that the account was subject to White House archiving pursuant to the PRA. He then conspicuously deleted the archiving disclaimer, and thereafter deactivated the account, seemingly without advance notice to NARA regarding any disposal of Presidential records. Days later, he opened a new, nominally personal account under the username @RealPNavarro, which he uses in the same way as his old, official account. There is no assurance that all Presidential records from the @PeterNavarro45 account were appropriately preserved before it was deactivated. Nor is there any indication that the White House is archiving Presidential records from the new @RealPNavarro account. And insofar as Mr. Navarro is using the “non-official” @RealPNavarro account to create or send Presidential records without taking steps to ensure those records are properly archived, he is in violation of the PRA and potentially subject to disciplinary action.<sup>30</sup>

Mr. Navarro’s actions also highlight apparent gaps in the White House’s PRA archiving policy.<sup>31</sup> As noted, White House policy states that for purposes of complying with the PRA, the White House archives “some” information from third-party websites, but it fails to specify the criteria the White House uses to determine what information to archive. The policy also says the White House automatically archives tweets from “official White House accounts,” but, again, does not specify what qualifies as an “official White House account,” so there is no assurance that even the @PeterNavarro45 account was subject to automatic archiving under White House policy (and the non-official @RealPNavarro account is plainly not subject to such archiving, underscoring the need for Mr. Navarro himself to ensure PRA compliance with respect to records from that account). Moreover, the policy is underinclusive since it only requires archiving of “tweets” and “mentions,” not direct messages and other non-public communications stored in Twitter accounts that may also qualify as Presidential records.

These issues, unfortunately, are symptomatic of a broader pattern of PRA violations at the highest levels of the White House. From President Trump’s reported “habit of ripping up documents after he’s done with them,”<sup>32</sup> to Jared Kushner’s routine use of “WhatsApp to communicate with foreign leaders and conduct government business,”<sup>33</sup> this White House has long skirted the PRA’s critical records-preservation requirements. We urge you to break from this trend by taking prompt and appropriate action to address Mr. Navarro’s conduct.

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<sup>30</sup> See 44 U.S.C. § 2209; White House Memorandum, Presidential Records Act Obligations, Feb. 22, 2017.

<sup>31</sup> See The White House, Privacy Policy, <https://www.whitehouse.gov/privacy-policy/>.

<sup>32</sup> Alana Abramson, Richard Nixon Is the Reason President Trump’s Aides Have to Repair Documents He Rips Up, *Time*, June 11, 2018, <https://time.com/5308542/trump-presidential-records-nixon/>.

<sup>33</sup> Kevin Collier, Jared Kushner's use of WhatsApp raises concerns among cybersecurity experts, *CNN*, Mar. 23, 2019, <https://www.cnn.com/2019/03/23/politics/kushner-whatsapp-concerns/index.html>.

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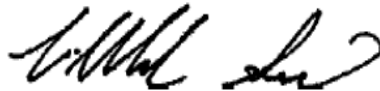
**Conclusion**

The “PRA changed the legal ownership of the official records of the President from private to public.”<sup>34</sup> To ensure that Presidential records rightfully belonging to the public are preserved, we respectfully request that you investigate Peter Navarro’s recent activity concerning his Twitter accounts, ensure preservation of all Presidential records from those accounts, and take any appropriate disciplinary action against Mr. Navarro in accordance with the PRA.

Sincerely,



Noah Bookbinder  
Executive Director



Nikhel Sus  
Senior Counsel

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<sup>34</sup> NARA, Guidance on Presidential Records, at 5.