

August 3, 2020

BY FACSIMILE: (202) 357-5901

David S. Ferriero
Archivist of the United States
700 Pennsylvania Avenue, N.W.
Washington, D.C. 20408

Dear Mr. Ferriero:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that you take all necessary steps to ensure that if there is a presidential transition following the 2020 election, the Trump administration complies fully with its obligation to preserve records that both the Presidential Records Act (“PRA”), 44 U.S.C. §§ 2201-2209, and the Federal Records Act (“FRA”), 44 U.S.C. § 2115(b), mandate. As Archivist of the United States, you bear the critical responsibility of ensuring the preservation of our nation’s history. The National Archives attests to the importance of this responsibility in graphic relief with such phrases as “What is Past is Prologue” and “Study the Past” etched on the exterior of the building. But to study the past we must know what happened, and that is where records come into play.

Unfortunately, from the outset of the Trump administration, there have been deep-seated concerns about the shortcomings and, in too many cases, the outright failures of agencies and the White House to adequately create and preserve records. For example, as we wrote to you nearly three years ago, EPA Administrator Scott Pruitt ignored, if not outright flouted, his responsibilities under the FRA by acting in near total secrecy and preventing the EPA from creating records that document its essential policies, decisions, procedures and transactions. The EPA changed its recordkeeping policies only after we filed a lawsuit against the agency and Administrator Pruitt alleging violations of the FRA. Similarly, as our letter to you of July 6, 2018 outlines, both the U.S. Department of Homeland Security and the U.S. Department of Health and Human Services blatantly violated the FRA by destroying records linking immigrant children to their parents, leading to separations that in many cases became permanent because of the inability of the agencies to link separated parents and children. Further, as the impeachment proceedings revealed in part, Secretary of State Mike Pompeo has participated in “shadow,” off-the-books diplomacy with countries like Ukraine, Russia, and Saudi Arabia in an apparent attempt to conceal from the American public diplomatic actions that are taken to advance the personal and political interests of the President. As a result, no records exist explaining what the President discussed and agreed to with adversaries such as Russian President Vladimir Putin.

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For his part, the President revealed his disregard for the PRA's recordkeeping requirements early on by ripping up papers once he was done with them, requiring aides to literally "sift through large piles of shredded paper and put them back together" with tape.¹ From the beginning of this administration, White House staff communicated about presidential and federal business using encrypted messaging applications with a disappearing function that prevents the preservation of their electronic messages.² And in many of his one-on-one meetings with foreign leaders, President Trump prohibited the creation of any transcript of what was said, even going so far as to confiscate his interpreter's notes after a meeting with President Putin in July 2017.³ The Chairs of the House Committee on Oversight and Reform, the House Committee on Foreign Affairs, and the House Permanent Select Committee on Intelligence expressed their concerns with these actions, noting in a March 4, 2019 letter to Secretary Pompeo that if true, they "raise profound national security, counterintelligence, and foreign policy concerns" and "undermine the proper functioning of government, most notably the [State] Department's access to critical information germane to its diplomatic mission and its ability to develop and execute foreign policy that advances our national interests."⁴

These actions also deprive the American public of its historical legacy and hinder meaningful oversight and efforts to hold this administration accountable. If President Trump serves only one term, we face the very real prospect of a post-election record destruction on a much larger scale from an administration that has not hesitated to hide the truth from the American public. In the past three plus years we have witnessed an unprecedented and repeated attack on the rule of law by the President and those acting in concert with him. It is far from hyperbolic to assume this conduct will include wide-scale document destruction to prevent the public and congressional overseers from learning about his misconduct and worse.

The PRA and its complement, the FRA, represent Congress' decision that a country with a government of the people, by the people, and for the people cannot survive if the people do not have access to its historical record. To make Congress' vision a reality, it is imperative that you undertake a review of all steps agencies and the White House are taking to preserve their records. We understand the limitations on your authority vis-à-vis the President and presidential records while he is in office. Nevertheless, we urge you to request a full accounting from the White House as to what the President and his staff are preserving, and if such an accounting is not made, to disclose that fact to Congress. With each passing

¹ Annie Karni, [Meet the guys who tape Trump's papers back together](https://www.politico.com/story/2018/06/10/trump-papers-filing-system-635164), *Politico*, June 10, 2018, <https://www.politico.com/story/2018/06/10/trump-papers-filing-system-635164>.

² See, e.g., Mara Gay, [Messaging App Has Bipartisan Support Amid Hacking Concerns](https://www.wsj.com/articles/messaging-app-has-bipartisan-support-amid-hacking-concerns-1485215028), *Wall Street Journal*, Jan. 24, 2017, <https://www.wsj.com/articles/messaging-app-has-bipartisan-support-amid-hacking-concerns-1485215028>.

³ Peter Baker, [Trump and Putin Have Met Five Times, What Was Said Is a Mystery](https://www.nytimes.com/2019/01/15/us/politics/trump-putin-meetings.html), *New York Times*, Jan. 15, 2019, <https://www.nytimes.com/2019/01/15/us/politics/trump-putin-meetings.html>.

⁴ The letter can be found at https://intelligence.house.gov/uploadedfiles/03-04-19_engel-cummings-schiff-letter-to-secretary-pompeo-requesting-white-house-putin-interview-documents.pdf.

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day, we risk an even greater loss of records documenting what the administration is doing and why. Leaving these matters to the unchecked discretion of the President cannot be an option.

Thank you for your prompt attention to this urgent matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish extending to the right.

Noah Bookbinder
Executive Director

cc: Chairwoman Carolyn B. Maloney and Ranking Member James Comer,
House Committee on Oversight and Reform
Chairman Ron Johnson and Ranking Member Gary C. Peters,
Senate Committee on Homeland Security and Government Affairs