

Congress of the United States
Washington, DC 20515

November 10, 2020

Mr. Pat A. Cipollone
Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Record and Document Preservation Requirements

Dear Mr. Cipollone:

As the Trump Administration prepares for the transition of power to the new Biden Administration, we write to remind you that all Executive Office of the President employees and officials must comply with record preservation obligations set forth in federal law and preserve information relevant to congressional oversight.

The Presidential Records Act provides that presidential records belong to the American people.¹ It is the duty of President Trump to preserve these records by taking all necessary actions regarding “activities, deliberations, decisions, and policies that reflect the performance of the President’s constitutional, statutory, or other official or ceremonial duties” so that “such records are preserved and maintained as Presidential records” in accordance with the law.²

The Presidential Records Act requires that at the end of a president’s term, the National Archives and Records Administration “shall assume responsibility for the custody, control, and preservation of, and access to the Presidential records of that President.”³ The President is also required to preserve all presidential records until they are transferred to the Archives. President Trump may not dispose of any presidential records unless he first requests permission from the Archivist of the United States.⁴ This law applies to “materials 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.”⁵

¹ See 44 U.S.C. § 2202 (requiring that the “United States shall reserve and retain complete ownership, possession, and control of Presidential records”).

² See 44 U.S.C. § 2203(a).

³ See 44 U.S.C. § 2203(g).

⁴ See 44 U.S.C. § 2203(c).

⁵ See 44 U.S.C. § 2201.

It is imperative that you and President Trump remind all employees, detailees, officials, and all other individuals—paid and unpaid—in the Executive Office of the President of their responsibilities and ensure that they take appropriate measures to collect, retain, and preserve all documents, communications, and other records in accordance with federal law, including the Presidential Records Act, Federal Records Act, and related regulations.⁶ This includes electronic records and messages involving official business that are sent using both official and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software.⁷ We urge you to ensure that President Trump and Executive Office of the President employees and officials do not inappropriately alter, conceal, or destroy any official records or materials.

In addition, we request that you and President Trump preserve all information relating to investigations conducted during the 116th Congress, including all oversight requests or demands from Congress. Specifically, this preservation request should be construed as an instruction to preserve all documents, communications, and other information, including electronic information and metadata, that is or may be potentially responsive to a congressional inquiry, request, investigation, or subpoena that was initiated, continued, or otherwise undertaken during the 116th Congress. For purposes of this request, “preserve” means securing and maintaining the integrity of all relevant documents, communications, and other information, including electronic information and metadata, by taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, mutation, or negligent or reckless handling that could render the information incomplete or inaccessible. This includes preserving all compilations of documents that have already been gathered in response to requests, even if copies of individual documents may still exist elsewhere.

We also request that that you:

1. Exercise reasonable efforts to identify and notify all relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, and consultants who may have access to potentially relevant information that they should preserve and return such information to the Executive Office of the President;
2. Exercise reasonable efforts to identify, recover, and preserve any potentially relevant electronic information that has been deleted or marked for deletion but is still recoverable;

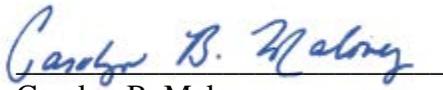
⁶ See, e.g., 44 U.S.C. §§ 2201-2209 (Chapter 22, Presidential Records); 44 U.S.C. §§ 3101-3107 (Chapter 31, Records Management by Federal Agencies); 44 U.S.C. §§ 3301-3314 (Chapter 33, Disposal of Records); 36 C.F.R., Chapter XII, Subchapter B (Records Management); 36 C.F.R., Chapter XII, Subchapter E (Presidential Records).

⁷ See 44 U.S.C. §§ 2209 (electronic messages of the President, Vice President, and covered employees); 44 U.S.C. § 2911 (electronic messages of other federal officers and employees).

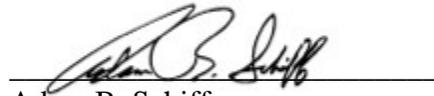
3. Remind all relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, and consultants that any presidential or federal records sent or received using a nonofficial account must be forwarded to an official account for proper archiving; and
4. If it is the routine practice of any relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, or consultants to destroy or otherwise alter potentially relevant information, either halt such practices as they relate to the potentially relevant information or arrange for the preservation of complete and accurate duplicates (including metadata) of such documents, communications, or other information.

Thank you for your cooperation in this matter.

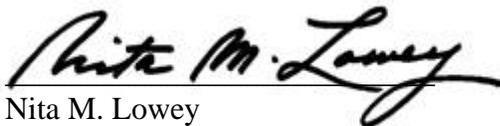
Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence



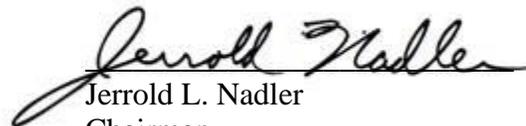
Nita M. Lowey
Chairwoman
Committee on Appropriations



James P. McGovern
Chairman
Committee on Rules



Richard E. Neal
Chairman
Committee on Ways and Means



Jerrold L. Nadler
Chairman
Committee on the Judiciary



Eddie Bernice Johnson
Chairwoman
Committee on Science, Space
and Technology



Frank Pallone, Jr.
Chairman
Committee on Energy and
Commerce



Zoe Lofgren

Chairperson

Committee on House Administration

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable Kay Granger, Ranking Member
Committee on Appropriations

The Honorable Tom Cole, Ranking Member
Committee on Rules

The Honorable Kevin Brady, Ranking Member
Committee on Ways and Means

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Frank D. Lucas, Ranking Member
Committee on Science, Space and Technology

The Honorable Greg Walden, Ranking Member
Committee on Energy and Commerce

The Honorable Rodney Davis, Ranking Member
Committee on House Administration