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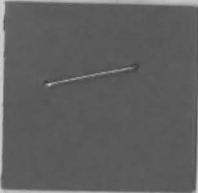
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Monday 10/13/75

2:45 Barry said Irving Goldbloom will be calling you
about the GSA Regs.

They talked





Thursday 10/9/75

Meeting

12:05 Barry would like to see you when it's convenient to get your approval on the GSA regs.



General
Services
Administration

*Berry
has a copy*

OCT 8 1975

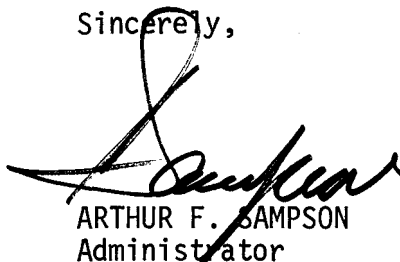
Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D. C. 20500

Dear Mr. Buchen:

Senate Resolution 244, passed on September 11, 1975, disapproved regulations governing access by the public under Public Law 93-526. Pursuant to our responsibility under the law, GSA is required to submit new regulations. Attached for your review are our revised regulations and a copy of the Senate Staff Committee on Government Operations recommendations relative to GSA's original proposed regulations governing public access to the Nixon Presidential materials.

I would appreciate any comments you or your staff may have regarding the proposed revisions. Lance Swann of my staff will coordinate the revisions and can be reached on 343-6611.

Sincerely,



ARTHUR F. SAMPSON
Administrator

Enclosures



Washington, DC 20405

Index of Changes to Public Access Regulations (PL 95-526)

<u>Section Reference</u>	<u>Short Title</u>	<u>Page #</u>	<u>Revision or Addition</u>
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105-63.401-2(d)	Segregation and Review	H-8	Revision
103-63.401-2(h)	Segregation and Review	H-10	Revision
105-63.401-4(d)	Appeals	H-12	Revision
105-63.402-1(a)(4)	Abuses of Governmental Power	H-14	Revision
105-63.402-1(b)	Abuses of Governmental Power	H-15	Revision
105-63.402-2(b)	General Historical Significance	H-15	Revision
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105-63.404-(d)	Reproduction of Tapes	H-19	New

Revised wording or new wording appears on unnumbered page immediately following referenced page.



Lance B. Swann
10-6-75
343-7486

DRAFT

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- 105-63.104(c) Abuses of governmental power popularly identified under the generic term Watergate.
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§105-63.104 *Definitions.*

For the purposes of this Part 105-63, the following terms have the meaning ascribed to them in this §105-63.104.

(a) Presidential historical materials. The term "Presidential historical materials" (also referred to as "historical materials" and "materials") shall mean all papers, correspondence, documents, pamphlets, books, photographs, films, motion pictures, sound and video recordings, machine-readable media, plats, maps, models, pictures, works of art, and other objects or materials made or received by former President Richard M. Nixon or by members of his staff in connection with his constitutional or statutory duties or political activities as President and retained or appropriate for retention as evidence of or information about these duties and activities. Excluded from this definition are documentary materials of any type that are determined to be the official records of an agency of the Government; private or personal materials; stocks of publications, processed documents, and stationery; and extra copies of documents produced only for convenience of reference, when they are clearly so identified.

(b) Private or personal materials. The term "private or personal materials" shall mean those papers and other documentary or commemorative materials in any physical form relating solely to a person's family or other nonpublic activities and having no connection with his constitutional or statutory duties or political activities as President or as a member of the President's staff.

(c) Abuses of governmental power popularly identified under the generic term "Watergate." The term "abuses of governmental power popularly identified under the generic term 'Watergate'" (also referred to as "abuses of governmental power"), shall mean those

alleged acts, whether or not corroborated by judicial, administrative or legislative proceedings, which allegedly were conducted, directed or approved by Richard M. Nixon, his staff or persons associated with him in his constitutional, statutory or political functions as President, and (1) are or were within the purview of the charters of the Senate Select Committee on Presidential Campaign Activities or the Watergate Special Prosecution Force; or (2) are circumscribed in the Articles of Impeachment adopted by the House Committee on the Judiciary and reported to the House of Representatives for consideration in House Report No. 93-1305.

(d) General historical significance. The term "general historical significance" shall mean having administrative, legal, research or other historical value as evidence of or information about the constitutional or statutory duties or political activities of the President, which an archivist has determined is of a quality sufficient to warrant the retention by the United States of materials so designated.

(e) Archivist. The term "archivist" shall mean an employee of the General Services Administration who, by education or experience, is specially trained in archival science.

(f) Agency. The term "agency" shall mean an executive department, military department, independent regulatory or nonregulatory agency, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government, including the Executive Office of the President. For purposes of §105-63.302 only, the term "agency" shall also include the White House Office.

(g) Administrator. The term "Administrator" shall mean the Administrator of General Services, or his delegate as provided herein or by separate instrument.

(h) Initial archival processing. The term "initial archival processing" shall mean the following generic acts performed by archivists with respect to the Presidential historical materials: shelving boxes of documents in chronological, alphabetical, numerical or other sequence; surveying and developing a location register and cross-index of the boxes; arranging materials; reboxing the documents and affixing labels; producing finding aids such as folder title lists, cross-indexes, and subject lists; reproducing and transcribing tape recordings; reviewing the materials to identify items that appear subject to restriction; identifying items in poor physical condition and assuring their preservation; and identifying materials requiring further processing.

(i) Staff. The term "staff" shall mean those persons whose salaries were paid fully or partially from appropriations to the White House Office or Domestic Council, or who were detailed on a nonreimbursable basis to the White House Office or Domestic Council from any other Federal activity; or those persons who were otherwise designated as assistants to the President, in connection with their service in that capacity; or any other persons whose files were sent to the White House Central Files Unit or Special Files Unit, for purposes of those files.

(j) National security classified information. The term "national security classified information" shall mean any matter which is security classified under existing law, and has been or should be designated as such.



SUBPART 105-63.4 - ACCESS BY THE PUBLIC

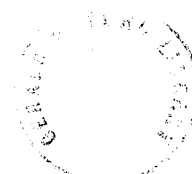
§105-63.400 *Scope of subpart.*

This subpart sets forth policies and procedures concerning public access to the Presidential historical materials of Richard M. Nixon.

§105-63.401 *Processing period.*

(a) For 30 calendar days following the effective date of the regulations in this subpart or the vacation of court orders preventing their implementation, whichever is later (hereinafter, the "effective date"), the Administrator will refrain from archival processing of any of the Presidential historical materials in the Administrator's custody and control to permit any person to take such action as he deems appropriate to protect his legal rights. During this 30-day period, the Administrator will limit activity involving the materials to authorized accesses under Subpart 105-63.3 of this part.

(b) At the end of the 30-day period described in paragraph (a) of this section, the Administrator will commence the initial archival processing of the materials. As soon thereafter as is possible, the Administrator will open for public access all of the materials in the Administrator's custody and control which are neither restricted pursuant to §105-63.402 nor subject to outstanding claims or petitions seeking such restriction. The Administrator will open for public access each integral file segment of the materials upon completion of initial archival processing on that segment. Insofar as practicable, the Administrator will give priority in such initial archival processing to materials relating to abuses of governmental power as defined in §105-63.104(c).



§105-63.401-1 *Rights and privileges; right to a fair trial.*

(a) Within 90 calendar days from the effective date, any person claiming the need to protect an opportunity to assert a legal or constitutional right or privilege which would prevent or limit public access to any of the materials shall notify the Administrator in writing of the claimed right or privilege and the specific materials to which it relates. After consultation with appropriate Federal agencies, the Administrator will notify the claimant by certified mail, return receipt requested, of his decision regarding public access to the pertinent materials. If that decision is adverse to the claimant, the Administrator will refrain from providing public access to the pertinent materials for at least 30 calendar days from receipt by the claimant of such notice.

(b) Within 90 calendar days from the effective date, officers of any Federal, State, or local court and other persons who believe that public access to any of the materials may jeopardize an individual's right to a fair and impartial trial should petition the Administrator, setting forth the relevant circumstances that warrant withholding specified materials. After consultation with appropriate Federal agencies, the Administrator will notify the petitioner by certified mail, return receipt requested, of his decision regarding public access to the pertinent materials. If that decision is adverse to the petitioner, the Administrator will refrain from providing public access to the pertinent materials for at least 30 calendar days from receipt by the petitioner of such notice.

Delete

(c) In his discretion, the Administrator may consider claims and petitions described in paragraphs (a) and (b) of this subsection after the expiration of 90 calendar days from the effective date.

Add .401-1(c)

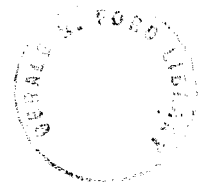
(c) The Administrator will consider claims and petitions described in paragraphs (a) and (b) of this subsection which are filed after the expiration of 90 calendar days from the effective date if:

(1) In the opinion of the Administrator, the claimant or petitioner has demonstrated good cause for his failure to file a claim or petition within the prescribed 90 day period, and,

(2) the claim or petition actually is filed within 90 calendar days after:

(a) The claimant or petitioner becomes aware of the release of such materials, or;

(b) the claimant or petitioner has reasonable cause to file such claim or petition to prevent release of such materials.



§105-63.401-2 *Segregation and review; Senior Archival Panel;
Presidential Materials Review Board.*

(a) During the processing period described in §105-63.401(b), the Administrator will assign archivists to segregate private or personal materials, as defined in §105-63.104(b). The archivists shall have sole responsibility for the initial review and determination of private or personal materials.

(b) During the processing period described in §105-63.401(b), the Administrator will assign archivists to segregate materials neither relating to abuses of governmental power, as defined in §105-63.104(c), nor otherwise having general historical significance, as defined in §105-63.104(d). The archivists shall have sole responsibility for the initial review and determination of those materials which are not related to abuses of governmental power and do not otherwise have general historical significance.

(c) During the processing period described in §105-63.401(b), the Administrator will assign archivists to segregate materials subject to restriction, as prescribed in §105-63.402. The archivists shall have sole responsibility for the initial review and determination of materials that should be restricted. The archivists shall insert a notification of withdrawal at the front of the file folder or container affected by the removal of restricted material. The notification shall include a brief description of the restricted material and the basis for the restriction as prescribed in §105-63.402.

Delete

(d) If, during the processing period described in §105-63.401(b), the archivists should discover any materials which they determine reflect an apparent violation of law which has not been the subject of prior investigation, the archivists shall bring the

cont.

Add: .401-2(d)

(d) If, during the processing period described in §105-63.401(b), the archivists should discover materials which reflect an apparent violation of law, the archivists shall bring the material to the attention of the Administrator for referral to the Department of Justice or any other appropriate agency of the United States which has responsibility for investigating a violation of law.



Delete Cont.

[material to the attention of the Administrator for referral to the Department of Justice or other appropriate action.]

(e) If the archivists are unable to make a determination required in paragraphs (a), (b), or (c) of this subsection, or if the archivists conclude that the required determination raises significant issues involving interpretation of these regulations or will have far-reaching precedential value, the archivists shall submit the pertinent materials, or representative examples of them, to a panel of senior archivists selected by the Archivist of the United States. The panel shall then have the sole responsibility for the initial determination required in paragraphs (a), (b), or (c) of this subsection.

(f) If the Senior Archival Panel is unable to make a determination required in paragraph (e) of this subsection, or if the panel concludes that the required determination raises significant issues involving interpretation of these regulations or will have far-reaching precedential value, the panel shall certify the matter and submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board.

(g) The Presidential Materials Review Board ("Board") shall consist of the following members, appointed by the Administrator:

(1) The Archivist of the United States or, on those occasions when he is unable to be present, his delegate, who shall serve as chairman;

(2) The Librarian of Congress or, on those occasions when he is unable to be present, his delegate; and

(3) A person, distinguished in archival science, history or political science, who shall not be a Federal employee or official, nominated by the Council of the Society of American Archivists.

The Board shall meet at the call of the Chairman. The Board may consult with officials of interested Federal agencies in formulating its recommendations.

Delete

(h) When the matter certified to the Board by the Senior Archival Panel involves a determination required in paragraphs (a) or (b) of this subsection, the Administrator will publish notice in the Federal Register of the materials to be considered by the Board. In order to protect the privacy of persons who may have such an interest in the materials, the notice shall consist only of a generic description and listing of the materials to be considered by the Board. Any person may intervene in the Board's consideration by petitioning the Administrator in writing within 30 calendar days of publication of notice. The Board shall submit to the Administrator its written recommendation, together with dissenting and concurring opinions, of the proper categorization and disposition of the pertinent materials. The Administrator will make the final administrative determination. If the determination of the Administrator is different from that recommended by the Board, he will state his reasons in writing. The Administrator will notify the petitioner by certified mail, return receipt requested, of the final administrative determination. The Administrator will refrain from transferring any materials in accordance with §105-63.401-5(a) as a result of the final administrative determination for at least 30 calendar days from the petitioner's receipt of such notice.

(i) When the matter certified to the Board by the Senior Archival Panel involves a determination



ADD: .401-2(h)

(h) When the matter certified to the Board by the Senior Archival Panel involves a determination required in paragraphs (a) or (b) of this subsection, the Administrator will publish notice in the Federal Register of the materials to be considered by the Board. In order to protect the privacy of persons who may have such an interest in the materials, the notice shall consist only of a generic description and listing of the materials to be considered by the Board. Any person may intervene in the Board's consideration by petitioning the Administrator in writing within 30 calendar days of publication of notice. The Board shall submit to the Administrator its written recommendation, together with dissenting and concurring opinions, of the proper categorization and disposition of the pertinent materials. The Administrator will make the final administrative determination. If the determination of the Administrator is different from that recommended by the Board, he will state his reasons in writing. The Administrator will notify the petitioner by certified mail, return receipt requested, of the final administrative determination within 60 calendar days following receipt of such petition. The Administrator will refrain from transferring any materials in accordance with §105-63.401-5(a) as a result of the final administrative determination for at least 30 calendar days from the petitioner's receipt of such notice.



required in paragraph (c) of this subsection, the Board shall recommend an initial determination to the Senior Archival Panel, which shall retain the sole responsibility for the initial determination.

§105-63.401-3 *Notice of determinations.*

The Administrator will publish in the Federal Register notice of the initial archival determinations described in paragraphs (a) and (b) of §105-63.401-2 and of the final administrative determinations described in paragraph (h) of §105-63.401-2 and paragraph (d) of §105-63.401-4. In order to protect the privacy of persons who may have such an interest in the segregated materials, the notice shall consist only of a generic description and listing of the materials that the Administrator proposes to transfer as provided in §105-63.401-5.

§105-63.401-4 *Appeals.*

(a) Within 30 calendar days of publication of the notice prescribed in §105-63.401-3, any person may petition the Administrator on the grounds that an initial archival determination described in §105-63.401-2(a) or (b) is in error.

(b) Richard M. Nixon, or his designated agent or heirs, may petition the Administrator at any time on the grounds that an initial archival determination described in §105-63.401-2(a) or (b) is in error.

(c) Upon receipt by the Administrator of a petition described in paragraphs (a) or (b) of this subsection, the archivists shall submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board.



Delete

(d) Upon consideration of appeals as described in paragraphs (a) or (b) of this subsection, the Board shall submit to the Administrator its written recommendation, together with dissenting and concurring opinions, of the proper categorization and disposition of the pertinent materials. The Administrator will make the final administrative determination. If the determination of the Administrator is different from that recommended by the Board, he will state his reasons in writing. The Administrator will notify the petitioner by certified mail, return receipt requested, of the final administrative determination. The Administrator will refrain from transferring any materials in accordance with §105-63.401-5(a) as a result of the final administrative determination for at least 30 calendar days from the petitioner's receipt of such notice.

§105-63.401-5 *Transfer of materials.*

(a) No sooner than 30 calendar days from the publication of notice prescribed in §105-63.401-3, or, in the event of a certified determination or an appeal described in §105-63.401-2(h) or §105-63.401-4, respectively, no sooner than 30 calendar days from the petitioner's receipt of notice of the final administrative determination, the Administrator will transfer sole custody and use of those materials determined, in whole, to be private or personal, or to be neither related to abuses of governmental power nor otherwise of general historical significance, to former President Nixon or his heirs or, when appropriate and after notifying Mr. Nixon or his designated agent, to the former staff member having primary proprietary or commemorative interest in the materials.

(b) Materials determined to be neither related to abuses of governmental power nor otherwise of general historical significance, and transferred pursuant to paragraph (a) of this subsection, shall upon such transfer no longer be deemed Presidential historical materials as defined in §105-63.104(a).



ADD: .401-4(d)

(d) Upon consideration of appeals as described in paragraphs (a) or (b) of this subsection, the Board shall submit to the Administrator its written recommendation, together with dissenting and concurring opinions, of the proper categorization and disposition of the pertinent materials. The Administrator will make the final administrative determination. If the determination of the Administrator is different from that recommended by the Board, he will state his reasons in writing. The Administrator will notify the petitioner by certified mail, return receipt requested, of the final administrative determination within 60 calendar days following receipt of the petition. The Administrator will refrain from transferring any materials in accordance with §105-63.401-5(a) as a result of the final administrative determination for at least 30 calendar days from the petitioner's receipt of such notice.



(c) When it has been determined that only a segment or portion of a document, recording, or other material is private or personal, or is neither related to abuses of governmental power nor otherwise of general historical significance, the Administrator will retain custody of the whole recording, document, or other material, but will restrict access to the identified segment or portion. Copies of the pertinent materials will be transferred to former President Nixon or his heirs or, when appropriate and after notifying Mr. Nixon or his designated agent, to the former staff member having primary proprietary or commemorative interest in the materials.

§105-63.402 *Restrictions.*

§105-63.402-1 *Materials related to abuses of governmental power.*

(a) The Administrator will restrict access to materials determined during the processing period to relate to abuses of governmental power, as defined in §105-63.104(c), when:

(1) The Administrator, in accordance with §105-63.401-1, is in the process of reviewing or has determined the validity of a claim by any person of the need to protect an opportunity to assert a legal or constitutional right or privilege; or

(2) The Administrator, in accordance with §105-63.401-1, is in the process of reviewing or has determined the validity of a petition by any person, of the need to protect an individual's right to a fair and impartial trial; or

(3) The release of the materials would violate a Federal statute; or

Delete

(4) The release of the materials would disclose or compromise national security classified information. However, the Administrator may waive this restriction when:

(i)(A) The requester is engaged in a historical research project; or
(B) the requester is a former Federal official who had been appointed by the President to a policymaking position and who seeks access only to those classified materials which he originated, reviewed, signed, or received while in public office; and

(ii) The requester has a security clearance equivalent to the highest degree of national security classification that may be applicable to any of the materials to be examined; and

(iii) The Administrator has determined that the heads of agencies having subject matter interest in the material do not object to the granting of access to the materials; and

Delete

(iv) The requester has signed a statement, satisfactory to the Administrator and to the heads of agencies having subject matter interest in the material, which declares that the requester will not publish, disclose, or otherwise compromise the classified material to be examined and that the requester has been made



Add .402-1(a)(4)

(4) The release of the materials would disclose national security classified information. However, the Administrator may waive this restriction when:

Add .402-1(a)(4)(iv)

(iv) The requester has signed a statement, which declares that the requester will not publish, disclose, or otherwise compromise the classified material to be examined and that the requester has been made aware of Federal criminal statutes which prohibit the compromise or disclosure of this information.



Delete cont.

aware of Federal criminal statutes which prohibit the compromise or disclosure of this information.

Delete

(b) The Administrator may restrict access to portions of materials determined to relate to abuses of governmental power when the release of those portions would tend to embarrass, damage, or harass living persons, and the deletion of those portions will not distort, and their retention is not essential to an understanding of, the substantive content of the materials.

§105-63.402-2 Materials of general historical significance unrelated to abuses of governmental power.

(a) The Administrator will restrict access to materials determined during the processing period to be of general historical significance, but not related to abuses of governmental power, under one or more of the circumstances specified in §105-63.402-1(a).

Delete

(b) The Administrator may restrict access to materials of general historical significance, but not related to abuses of governmental power, when the release of these materials would:

(1) Disclose or compromise trade secrets or commercial or financial information obtained from a person and privileged or confidential; or

(2) Constitute a clearly unwarranted invasion of personal privacy; or

Add .402-1(b)

(b) The Administrator will restrict access to any portion of materials determined to relate to abuses of governmental power when the release of those portions would constitute a clearly unwarranted invasion of personal privacy or result in the defamation of a living person: Provided, That if material relating to an abuse of governmental power refers to, involves or incorporates such personal information, the Administrator will make available such personal information, or portions thereof, if such personal information, or portion thereof, is essential to an understanding of the abuse of governmental power.

Add .402-2(b)

(b) The Administrator will restrict access to materials of general historical significance, but not related to abuses of governmental power, when the release of these materials would:

(1) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential; or

(2) constitute a clearly unwarranted invasion of personal privacy or result in the defamation of a living person; or

(3) disclose investigatory materials compiled for law enforcement purposes, but only when the disclosure of such records would:

(a) Interfere with enforcement proceedings;

(b) constitute an unwarranted invasion of personal privacy;

(c) disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security interagency investigation, confidential information furnished only by the confidential source;

(d) disclose investigative techniques and procedures, or

(e) endanger the life or physical safety of law enforcement personnel.



Delete cont:

(3) Disclose or compromise investigatory materials compiled for law enforcement purposes; or

(4) Tend to embarrass, damage, or harass living persons.

§105-63.402-3 Periodic review of restrictions.

The Administrator periodically will assign archivists to review materials placed under restriction by §105-63.402 and to make available for public access those materials which, with the passage of time or other circumstances, no longer require restriction. If the archivists are unable to determine whether certain materials should remain restricted, the archivists shall submit the pertinent materials, or representative examples of them, to the Senior Archival Panel described in §105-63.401-2(e), which shall then have the responsibility for determining if the materials should remain restricted. The Senior Archival Panel may seek the recommendation of the Presidential Materials Review Board, in the manner prescribed in paragraphs (f) and (i) of §105-63.401-2, in making its determination.

Delete

§105-63.402-4 Appeal of restrictions.

Upon the petition of any researcher who claims in writing to the Administrator that the restriction of specified materials is inappropriate and should be removed, the archivists shall submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board described in §105-63.401-2(g). The Board shall review the restricted materials, consult with interested Federal agencies as necessary, and make a written recommendation to the Administrator, including dissenting and

ADD:

§105-63.402-4 Appeal of restrictions.

Upon the petition of any researcher who claims in writing to the Administrator that the restriction of specified materials is inappropriate and should be removed, the archivists shall submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board described in §105-63.401-2(g). The Board shall review the restricted materials, consult with interested Federal agencies as necessary, and make a written recommendation to the Administrator, including dissenting and concurring opinions, as to the continued restriction of all or part of the pertinent materials. When the determination of the Administrator is different from that recommended by the Board, he will state his reasons in writing. The Administrator will notify the petitioner of the final administrative decision within 60 calendar days following receipt of such petition.

Delete cont.

concurring opinions, as to the continued restriction of all or part of the pertinent materials. When the determination of the Administrator is different from that recommended by the Board, he will state his reasons in writing. The Administrator will notify the petitioner of the final administrative decision.

§105-63.402-5 *Deletion of restricted portions.*

The Administrator will provide a requester any reasonably segregable portions of otherwise restricted materials after the deletion of the portions which are restricted under this §105-63.402.

§105-63.402-6 *Requests for declassification.*

Challenges to the classification and requests for the declassification of national security classified materials shall be governed by the provisions of §105-61.104, as that may be amended from time to time.

§105-63.403 *Reference room locations, hours, and rules.*

The Administrator shall, from time to time, separately prescribe the precise location or locations where the materials shall be available for public reference, and the hours of operation and rules governing the conduct of researchers using such facilities. This information may be obtained by writing to: Office of Presidential Libraries (NL), The National Archives, Washington, DC 20408.



§105-63.404 *Reproduction of tape recordings of Presidential conversations.*

(a) To ensure the preservation of original tape recordings of conversations which were recorded or caused to be recorded by any officer or employee of the Federal Government and which

(1) involve former President Richard M. Nixon or other individuals who, at the time of the conversation, were employed by the Federal Government; and

(2) were recorded in the White House or in the office of the President in the Executive Office Buildings located in Washington, District of Columbia; Camp David, Maryland; Key Biscayne, Florida; or San Clemente, California; and

(3) were recorded during the period beginning January 20, 1969, and ending August 9, 1974,

the Administrator will produce duplicate copies of such tape recordings in his custody for public and official reference use. The original tape recordings shall not be available for public access.

(b) Since the original tape recordings may contain information which is subject to restriction in accordance with §105-63.402, the archivists shall review the tapes and delete restricted portions from copies for public and official reference use.



(c) No researcher may reproduce or have reproduced sound recordings of the reference copies of the tape recordings described in paragraph (a) of this section.

Add para (d) see next page

§105-63.405 *Reproduction and authentication of other materials.*

(a) The copying for researchers of materials other than tape recordings described in §105-63.404 normally will be done by personnel of the General Services Administration using government equipment. With the permission of the Administrator or his designated agent, a researcher may use his own copying equipment. Permission shall be based on the determination that such use will not harm the materials or disrupt reference activities. Equipment shall be used under the supervision of GSA personnel.

(b) The Administrator may authenticate and attest copies of materials when necessary for the purpose of the research.

(c) The fees for reproduction and authentication of materials under this section shall be those prescribed in the schedule set forth in Subpart 105-61.52, or pertinent successor regulation, as that schedule is amended from time to time.

§105-63.406 *Amendment of regulations.*

The Administrator may amend the regulations of this Subpart 105-63.4 only after the proposed amendments have been placed before the Congress for 90 legislative days. Proposed amendments shall become effective upon the expiration of this period, unless the proposed amendments are disapproved by a resolution adopted by either House of Congress during such period.



Add para. .404-(d)

(d) ~~BEFORE~~ ^{AFTER} two years of the effective date, the Presidential Materials Review Board shall make a written report to the Administrator which shall evaluate the advisability of continuing the restriction imposed in paragraph (c) above. The Administrator will then determine if the restriction prescribed in paragraph (c) of this section shall be retained, revoked or modified to permit controlled reproduction of the reference copies of the tape recordings.



MEMORANDUM

July 11, 1975

TO: Committee on Government Operations

FROM: Eli E. Nobleman, Committee Counsel
Brian Conboy, Special Counsel to the Minority
Lewis Paper, Legislative Counsel to Senator Nelson

RE: Staff Recommendations Relative to Proposed GSA
Regulations Governing Public Access to the Nixon
Presidential Materials

Title I of Public Law 93-526, the Presidential Recordings and Materials Preservation Act, provides that the United States Government retain custody of the Presidential materials of former President Richard M. Nixon and that the Administrator of General Services, who is made responsible for their preservation and custody, promulgate proposed regulations governing public access to such materials, taking into account certain criteria set forth in section 104 of the Act.

The Act provides further that the Administrator, within 90 calendar days following enactment, shall submit to the Congress such proposed regulations, together with an explanatory report, and that such regulations are to become effective upon the expiration of 90 legislative days following their submission, unless they are disapproved by either House of the Congress by the adoption of a simple resolution.



The basic objectives of the Act are (1) to protect and preserve the tape recordings of conversations, and other materials, recorded or prepared in the White House, the Executive Office Building, and certain other specified places, between January 20, 1969 and August 9, 1974; (2) to make them available to the Special Watergate Prosecution Force; (3) to provide for appropriate public access to them; and (4) to make them available to Richard M. Nixon, or his designees, for copying or any other purpose consistent with the Act and with regulations promulgated by the Administrator of General Services relative to their security and preservation.

The specific criteria which the Administrator is required to take into account in developing the regulations, are set forth in section 104 of the Act, as follows:

(1) the need to provide the public with the full truth, at the earliest reasonable date, of the abuses of governmental power popularly identified under the generic term "Watergate";

(2) the need to make such recordings and materials available for use in judicial proceedings;

(3) the need to prevent general access, except in accordance with appropriate procedures established for use in judicial proceedings, to information relating to the Nation's security;



(4) the need to protect every individual's right to a fair and impartial trial;

(5) the need to protect any party's opportunity to assert any legally or constitutionally based right or privilege which would prevent or otherwise limit access to such recordings and materials;

(6) the need to provide public access to those materials which have general historical significance, and which are not likely to be related to the need described in paragraph (1); and

(7) the need to give to Richard M. Nixon, or his heirs, for his sole custody and use, tape recordings and other materials which are not likely to be related to the need described in paragraph (1) and are not otherwise of general historical significance.

On March 19, 1975, the Administrator of General Services submitted to the Congress proposed regulations, together with an explanatory report, as required by law. On May 13, 1975, following a series of discussions between GSA staff and the Committee staff, a hearing was held to afford an opportunity to the Committee to determine whether the proposed regulations are in accord with the basic objectives of the Act; and whether they conform to the specific criteria contained in section 104 of the Act and set forth above.

Appearing in support of the proposed regulations were Mr. Arthur F. Sampson, Administrator of General Services,



accompanied by Mr. Ted Trimmer, General Counsel, Dr. James B. Rhoads, the Archivist of the United States, and other members of Mr. Sampson's staff.

Senator Gaylord Nelson, principal sponsor of the Act, presented comments with respect to the proposed regulations, with special reference to those provisions which, in his judgment, appeared to be ambiguous or inconsistent with the intent of the Act, and suggested alternate language designed to eliminate inconsistencies and clarify ambiguities.

In addition, the Committee received a joint submission from the American Historical Association and the American Political Science Association, the statements from the Society of American Archivists, the Organization of American Historians and the Watergate Special Prosecution Force.

At the close of the hearings, Senator Nelson, and the Chairman of the Committee, each submitted to the Administrator a list of questions relative to various aspects of the proposed regulations; and Mr. Sampson's replies thereto have been inserted in the hearing record. Thereafter, the American Historical Association and the American Political Science Association submitted responses to some of the legal contentions contained in Mr. Sampson's replies.

After a complete review of the proposed regulations and the hearing record, we believe that most of the regulations comply



with PL 93-526 and are consistent with the intent of Congress, but that a small number of such regulations are not consistent and should be revised. Specifically, we believe that ten provisions of the proposed regulations are not acceptable in their present form and require amendment or modification.

Accordingly, we recommend that those provisions of the regulations which are not deemed acceptable or appropriate be brought to the attention of the GSA Administrator, and that a resolution of disapproval be filed and reported by this Committee with respect to those provisions of the proposed regulations which are not acceptable, in accordance with the procedures provided for in the Act.

NOTE: The statute does not expressly provide Congress with the option of approving some of the regulations and disapproving others. However, the legislative history of PL 93-526, and a memorandum from the American Law Division of the Library of Congress, make clear that either House can disapprove all, or any part of, the regulations. (A copy of the memorandum is attached). Accordingly, we recommend that the Committee disapprove only those regulations which are discussed below, thereby permitting the remaining regulations submitted by GSA to take effect. (See complete set of GSA regulations attached.)

Set forth below is an analysis of 10 provisions of the proposed regulations which, in the judgment of the staff, require amendment or modification, together with an explanation and proposed substitute language.



CHANGES PROPOSED

1. Section 105-63.206(d):

This regulation provides as follows:

1) Not public access
2)
"(d) Prior to each access which may result in the examination of Presidential historical materials that relate to matters of national security, the Administrator of General Services or his designated agent shall notify the Counsel to the President who shall be given the opportunity to examine these materials and raise any objections, defenses, or privileges to prevent or limit the proposed access."

The above provision was not placed in the public access regulations which are subject to Congressional approval. However, since this provision, as well as all other provisions of section 105-63.206 (dealing with access procedures), directly affects all public access to the Nixon Presidential materials, it must obviously be subject to Congressional approval.

Subsection (d) is troublesome in at least two respects: first, it appears to recognize a right in the Counsel to the President originally to classify national security materials, even though no such authority has been delegated to him, either by existing law or Executive Order (see E.O. 11652, Mar. 8, 1972, as amended by E.O. 11714, April 24, 1973); second, the resolution appears to allow Counsel to limit access to materials even though they have not been, and cannot be, classified under existing law.

It would appear more appropriate to refer such requests to the National Security Council which does have such authority.



To remedy these problems, it is recommended that the regulation be amended as follows:

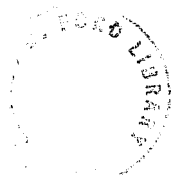
"(d) Prior to each access which may result in the examination of Presidential historical materials that relate to matters of national security, the Administrator of General Services or his designated agent shall notify the National Security Council which shall be given the opportunity to examine these materials and raise any objections, defenses, or privileges to prevent or limit the proposed access. In asserting any such objections, defense or privilege, the National Security Council shall state in writing why the material involved has been or should be properly classified under existing law or executive order: Provided, That this provision shall not be construed to allow the restriction of public access to material which is not and cannot be properly classified under existing law or executive order.

2. Section 105-63.401(c):

This regulation provides as follows:

"(c) In his discretion, the Administrator may consider claims and petitions described in paragraphs (a) and (b) of this subsection after the expiration of 90 calendar days from the effective date."

In order to evaluate this regulation, it is necessary to understand the other provisions to which it refers. Paragraph (a) allows an individual (i.e. Mr. Nixon or a former White House aide) to petition GSA, within 90 calendar days after the effective date of the regulations, to restrict access to certain presidential materials because of a legal or constitutional right or privilege possessed by the petitioner (i.e. right to privacy). Paragraph (b) allows a federal, state or local government attorney to petition the GSA, within 90

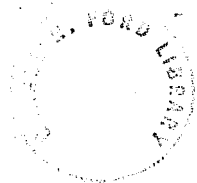


calendar days after the effective date of the regulations, to restrict access to presidential materials whose public disclosure would prejudice a particular individual's right to a fair and impartial trial.

Paragraph (c) provides that a person will have no right to have a petition considered after the 90-days have passed. While the Administrator may, in his discretion, consider petitions filed after that date, the GSA states that it will not consider any petition concerning material already made public.

This provision raises a very significant issue. Since a concerned individual is not likely to have any knowledge or reason to know that the materials include information about him which can lawfully be restricted, he may not learn of the existence such information until the 90-day period has expired. Likewise, a government attorney may not learn of the inclusion of relevant materials until the expiration of such period.

To provide adequate protection of individual rights, GSA should be required to consider a petition filed after 90 days even if the material has already been made available to the public. Otherwise, a person would be powerless to exercise his legal rights meaningfully in situations in which he may suffer a violation of a constitutional or legal right. (Although available, the materials might not have



been inspected by anyone before the late petition is filed; or if someone has already inspected the relevant materials, he may not publish them to the world.)

To remedy these problems, it is recommended that the regulation be amended as follows:

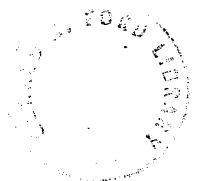
"(c) The Administrator will consider claims and petitions described in paragraphs (a) and (b) of this subsection, filed after the expiration of 90 calendar days from the effective date, where there is good cause for the failure to file the claim or petition within such 90-day period, and the claim or petition is filed within 90 calendar days after the claimant or petitioner becomes aware of the release of such materials, or has reasonable cause to file such petition or claim, to prevent release of such materials. In his discretion, the Administrator may consider other claims and petitions described in paragraphs (a) and (b) of this subsection after the expiration of 90 calendar days from the effective date."

3. Section 105-63.401-2(d):

This regulation provides as follows:

"(d) If, during the processing period described in Sec.105-63.401(b), the archivists should discover any materials which they determine reflect an apparent violation of law which has not been the subject of prior investigations, the archivists shall bring the material to the attention of the Administrator for referral to the Department of Justice or other appropriate action."

This regulation places an unnecessary qualification on the archivists' and Administrator's responsibilities. Archivists may not be familiar with all "prior investigations;" and even if they were, the prior investigation may be on-going or capable of being re-opened. Therefore, the archivists should



refer all information bearing on potential criminal activity to the Administrator. The Administrator, in turn, should be required to forward all such material -- however innocuous in appearance -- to the Justice Department. The Administrator is in no position to evaluate the relevance of any material to any ongoing investigation which may or may not be known to him. Further, the determination of what information may be relevant to an ongoing investigation is not an appropriate function of the Administrator.

To remedy this problem, the regulation should be amended as follows:

Repetitious
do it by memo
"(d) If, during the processing period described in §105-63.401(b), the archivists should discover materials which reflect an apparent violation of ~~(criminal) law which has not been the subject of prior investigation~~, the archivists shall bring the material to the attention of the Administrator for referral to the Department of Justice ~~or other appropriate action~~. *or any other appropriate agency of the U.S. which has responsibility for investigating a violation of laws.*

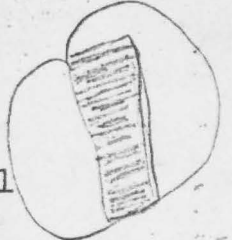
4. Section 105-63.401-1(h):

This regulation provides as follows:

"(h) When the matter certified to the Board by the Senior Archival Panel involves a determination required in paragraphs (a) or (b) of this subsection, the Administrator will publish notice in the Federal Register of the materials to be considered by the Board. In order to protect the privacy of persons who may have such an interest in the materials, the notice shall consist only of a generic description and listing of the materials to be considered by the Board. Any person may intervene in the Board's consideration by petitioning the Administrator in writing within 30 calendar days of publication of notice. The Board shall submit to the Administrator



its written recommendation, together with dissenting and concurring opinions, of the proper categorization and disposition of the pertinent materials. The Administrator will make the final administrative determination. If the determination of the Administrator is different from that recommended by the Board, he will state his reasons in writing. The Administrator will notify the petitioner by certified mail, return receipt requested, of the final administrative determination. The Administrator will refrain from transferring any materials in accordance with § 105-63.401-5(a) as a result of the final administrative determination for at least 30 calendar days from the petitioner's receipt of such notice."



The problem with this regulation is that it affords the Administrator unfettered discretion to make the final administrative determination as to which materials should be retained for public access.*/ It is ill-advised to provide the Administrator with such power for at least two reasons.

First, as the GSA report itself states, decisions regarding the retention of the Nixon presidential materials should be made on a non-partisan basis and should reflect the judgement of those trained in archival science. The GSA Administrator -- a political appointee who serves at the pleasure of the President and who normally is not trained

*/This regulation concerns only whether particular items are historically significant and therefore within the legislative definition of "presidential historical materials." This regulation does not concern the restrictions on public access, such as national security limitations. See pages 11-16 below.

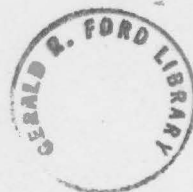


in archival science -- can add little to the substance of non-partisan, archival decisions.

The second risk in granting the Administrator unchecked power is that it would increase the risk -- both in reality and in appearance -- that partisan political concerns will govern decisions concerning the retention of the Nixon presidential materials. This is not intended as a criticism of the current Administrator. The Congress and the American people should not have to worry that in some future time, under some future circumstances, the Administrator will give in to political temptations.

To eliminate these problems, the regulation should be amended as follows:

"(h) When the matter certified to the Board by the Senior Archival Panel involves a determination required in paragraphs (a) or (b) of this subsection, the Administrator will publish notice in the Federal Register of the materials to be considered by the Board. In order to protect the privacy of persons who may have such an interest in the materials, the notice shall consist only of a generic description and listing of the materials to be considered by the Board. Any person may intervene in the Board's consideration by petitioning the Administrator in writing within 30 calendar days of publication of notice. The Board shall submit to the Administrator its written recommendation decision, together with dissenting and concurring opinions, of the proper categorization and disposition of the pertinent materials. The Administrator Board's decision will ~~make~~ be the final administrative determination. ~~If the determination of the Administrator is different from that recommended by the Board, he will state his reasons in writing.~~ The Administrator will notify the petitioner by certified mail, return receipt requested, of the



final administrative determination, within 30 calendar days following receipt of such determination. The Administrator will refrain from transferring any materials in accordance with §105-63.401-5(a) as a result of the final administrative determination for at least 30 calendar days from the petitioner's receipt of such notice."

5. Section 105-63.401-4(d):

This regulation provides as follows:

"(d). Upon consideration of appeals as described in paragraphs (a) or (b) of this subsection, the Board shall submit to the Administrator its written recommendation, together with dissenting and concurring opinions, of the proper categorization and disposition of the pertinent materials. The Administrator will make the final administrative determination. If the determination of the Administrator is different from that recommended by the Board, he will state his reasons in writing. The Administrator will notify the petitioner by certified mail, return receipt requested, of the final administrative determination. The Administrator will refrain from transferring any materials in accordance with §105-63.401-5(a) as a result of the final administrative determination for at least 30 calendar days from the petitioner's receipt of such notice."

This regulation, like section 105-63.401-1(h), affords the Administrator unfettered discretion to dispose of petitions concerning the retention of certain materials.*/ Therefore, the regulation should be amended as follows:

*/ Again, this regulation concerns only the retention of the materials and not the restrictions to be imposed on public access.



"(d) Upon consideration of appeals as described in paragraphs (a) or (b) of this subsection, the Board shall submit to the Administrator its written recommendation decision, together with dissenting and concurring opinions, of the proper categorization and disposition of the pertinent materials. For the purposes of judicial review the Administrator Board's decision will make be the final administrative determination. ~~If the determination of the Administrator is different from that recommended by the Board, he will state his reasons in writing.~~ The Administrator will notify the petitioner by certified mail, return receipt requested of the final administrative determination within 30 calendar days following receipt of such petition. The Administrator will refrain from transferring any materials in accordance with §105-63.401-5(a) as a result of the final administrative determination for at least 30 calendar days from the petitioner's receipt of such notice."

6. Section 105-63.402-1(a)(4):

This regulation provides, in pertinent part, as follows:

"(a) The Administrator will restrict access to materials determined during the processing period to relate to abuses of governmental power, as defined in §105-63.104(c), when:

* * * *

"(4) The release of the materials would disclose or compromise national security classified information. However, the Administrator may waive this restriction when:

* * * *

"(iv) The requester has signed a statement, satisfactory to the Administrator and to the heads of agencies having subject matter interest in the material, which



declares that the requester will not publish, disclose, or otherwise compromise the classified material to be examined and that the requester has been made aware of Federal criminal statutes which prohibit the compromise or disclosure of this information."

There are two principal difficulties with this regulation.

First, the regulation would restrict access to materials whose disclosure would "compromise" national security classified information. This standard is far too vague. Conceivably, it could be argued that disclosure of virtually any presidential material would "compromise" national security information. Congress should therefore rely on existing standards. Under present law, the government can classify any item when its disclosure would reveal or compromise sensitive information. (See Exec. Order 11652, Secs. 1,6,12). If the government has not classified the item, there should be no further national security restriction on access to it.

Second, if a researcher is otherwise authorized to review classified material and has signed a sworn statement that he will not disclose the sensitive material, that should be sufficient to allow him access. The sworn statement should not, in addition, have to be "satisfactory" to the Administrator or any federal agency. No standards are offered to determine when a statement would be deemed "satisfactory." Use of the term, consequently, would allow government officials arbitrarily to deny access to otherwise authorized persons.



To correct these problems, the regulation should be amended as follows:

"(a) The Administrator will restrict access to materials determined during the processing period to relate to abuses of governmental power, as defined in §105-63.104(c), when:

* * * *

(5) "(4) The release of the materials would disclose ~~or compromise~~ national security classified information. However, the Administrator may waive this restriction when:

* * * *

"(iv) The requester has signed a statement, ~~satisfactory to the Administrator and to the heads of agencies having subject matter interest in the material,~~ which declares that the requester will not publish, disclose, or otherwise compromise the classified material to be examined and that the requester has been made aware of Federal criminal statutes which prohibit the compromise or disclosure of this information."

7. Section 105-63.402-1(b):

This regulation provides as follows:

"(b) The Administrator may restrict access to portions of materials determined to relate to abuses of governmental power when the release of those portions would tend to embarrass, damage, or harass living persons, and the deletion of those portions will not distort, and their retention is not essential to an understanding of, the substantive content of the materials."

The intent of this restriction is understandable and acceptable: to protect the reputations of living persons from unnecessary embarrassment. To the extent that such concern is legitimate, this regulation seems



~~those portions would tend to embarrass, damage or harass living persons, and the deletion of those portions will not distort, and their retention is not essential to an understanding of the substantive content of the materials~~ an individual's personal affairs, such as personnel and medical files if after being given a reasonable opportunity to review the materials, the individual involved expresses, in writing, a desire to withhold such portions from public access: 7 Provided, That if material relating to an abuse of governmental power refers to, involves or incorporates such personal information, the Administrator will make available such personal information, or portions thereof, if such personal information, or portion thereof, is essential to an understanding of the abuse of governmental power."

8. Section 105-63.402-2(b):

This regulation provides as follows:

"(b) The Administrator may restrict access to materials of general historical significance, but not related to abuses of governmental power, when the release of the materials would:

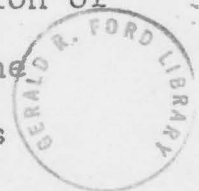
"(1) Disclose or compromise trade secrets or commercial or financial information obtained from a person and privileged or confidential; or

(2) Constitute a clearly unwarranted invasion of personal privacy; or

(3) Disclose or compromise investigatory materials compiled for law enforcement purposes; or

(4) Tend to embarrass, damage, or harass living persons."

GSA states in its report that, with the exception of paragraph (4), these restrictions were derived from the Freedom of Information Act. The problem is that GSA's



restrictions are written in terms much more vague than the FOI provisions. This is a mistake. If archivists and administrators are to apply these regulations in a manner consistent with the Act, the restrictions should be clear and specific.

As for paragraph (4), this too is too vague. It is not at all clear how this exemption is to be applied. (GSA's report contains virtually no information to communicate an understanding of how similar terms were in fact applied by custodians of other presidential papers.) In any event, this regulation seems superfluous. Any investigative or purely personal information -- which are presumably the materials GSA has in mind -- are already withheld from disclosure under other exemptions.

To remedy these problems, the provision should be amended as follows:

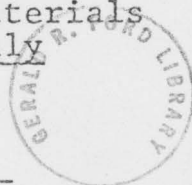
"(b) The Administrator ~~may~~ will restrict access to materials of general historical significance, but not related to abuses of governmental power, when the release of these materials would:

"(1) Disclose ~~or compromise~~ trade secrets and commercial or financial information obtained from a person and privileged or confidential; or

"(2) Disclose personnel and medical files and similar files or information when their disclosure would /c/ constitute a clearly unwarranted invasion of personal privacy; or

"(3) Disclose ~~or compromise~~ investigatory materials compiled for law enforcement purposes, but only when the disclosure of such records would

"(i) interfere with enforcement proceedings,



"(ii) constitute an unwarranted invasion of personal privacy,

"(iii) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

"(iv) disclose investigative techniques and procedures, or

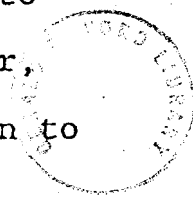
"(v) endanger the life or physical safety of law enforcement personnel."

9. Section 105-63.402-4:

This regulation provides as follows:

"Upon the petition of any researcher who claims in writing to the Administrator that the restriction of specified materials is inappropriate and should be removed, the archivists shall submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board described in §105-63.401-2(g). The Board shall review the restricted materials, consult with interested Federal agencies as necessary, and make a written recommendation to the Administrator, including dissenting and concurring opinions, as to the continued restriction of all or part of the pertinent materials. When the determination of the Administrator is different from that recommended by the Board, he will state his reasons in writing. The Administrator will notify the petitioner of the final administrative decision."

This provision is unclear in that it does not state explicitly that the Administrator has the authority to make the final administrative determination. However, it is known that it was the Administrator's intention to



vest that authority in him, and is likely to be so interpreted. Since this would vest in the Administrator unfettered discretion to make such final determination (here with respect to the limits of public access, it would be unacceptable. The Administrator is a political appointee serving at the pleasure of the President. If he has unfettered discretion to make the final decision concerning the availability of materials, there is a risk that, in reality or appearance, his decision will be influenced -- consciously or subconsciously -- by partisan political considerations.

There is no need to assume this risk. Application of the restrictions only requires a decision as to whether or not a particular item falls within one or more specified categories. This is precisely the kind of judgment which archivists are trained to make. Therefore, the final administrative determination should be made by the Presidential Materials Review Board after consultation with appropriate federal departments and agencies.

To remedy the problem here, the regulation should be amended as follows:



"Upon the petition of any researcher who claims in writing to the Administrator that the restriction of specified materials is inappropriate and should be removed, the archivists shall submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board described in §105-63.401-2(g). The Board shall review the restricted materials, consult with interested Federal agencies as necessary, and ~~make a written recommendation submit~~ to the Administrator its written decision, including dissenting and concurring opinions, as to the continued restriction of all or part of the pertinent materials. ~~When the determination of the Administrator is different from that recommended by the Board, he will state his reasons in writing.~~ For purposes of judicial review, the Board's decision will be the final administrative decision. The Administrator will notify the petitioner of the final administrative decision within 30 calendar days following receipt of the petition.

10. Section 105-63.404(c):

This regulation provides as follows:

"(c) No researcher may reproduce or have reproduced sound recordings of the reference copies of the tape recordings described in paragraph (a) of this section."

GSA states that this regulation to prohibit reproduction of the tape recordings "is to prevent unwarranted commercial exploitation of the tape recordings."

This provision is, at best, unnecessary, and at worst, inconsistent with the spirit if not the letter of the Act.

To begin with, the regulations and existing judicial procedures already protect every person's constitutional and legal rights. If Mr. Nixon, or any other person,



believes he has a constitutional or legal right to prevent reproduction of the recordings, he can petition the GSA under Section 105-63.401-1(a) or assert the right in court.*/

In evaluating this regulation, it is also necessary to consider the basic intent of the Act. That legislation was designed, within certain limitations, to provide as much public access to the materials as physically possible as quickly as possible. To that end, GSA recognizes that legitimate research requires the reproduction of printed materials; reproduction is no less necessary when the material is a tape recording. Indeed, the legitimate research need for the reproduction of tape recordings is particularly acute for two reasons: (1) the recordings provide especially invaluable and new raw data concerning

*/ It should be noted here that the U.S. District Court in Washington, D.C. rejected a petition by the television networks to release to the public the recordings used in evidence. The court was primarily concerned that release of the recordings would result in commercial exploitation and that this, in turn, might prejudice an individual's right to a fair trial (especially since some of the Watergate defendants might have to be retried). The court implicitly recognized that, at some point in the future after all the trials are completed, the recordings might be available for reproduction. United States v. Mitchell, Misc. No. 74-128 (D.D.C. April 4, 1975).



THE WHITE HOUSE

WASHINGTON

January 13, 1976

MEMORANDUM FOR

The Honorable Jack Eckerd
Administrator of General Services

As you are aware, the Order of the United States District Court for the District of Columbia, entered January 7, 1976, in Nixon v. Administrator, et al., C.A. No. 74-1852, applies at least a portion of the GSA access regulations, 41 C.F.R. 105-63, to all of the Nixon Presidential historical materials. However, these regulations are based on the assumption that GSA controls the means of access to all of the Nixon materials, a degree of control which GSA does not have at the present time. To comply with the above-referenced Order, I will notify either you or your designated agent prior to any access to materials not under GSA control, in order that your representative(s) will be present at the access and responsible for assuring compliance with the various administrative requirements of your regulations, e.g., maintenance of appropriate records called for by 41 C.F.R. 105-63.206(b).

Should you have any questions in this regard, please contact either Barry Roth or me.

P.W.B.

Philip W. Buchen
Counsel to the President



UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION

Office of General Counsel
Washington, D.C. 20405



MAR 16 1976

*Barry
has copy*

Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, DC 20500

Dear Mr. Buchen:

On January 16, 1976, we received a letter from the Honorable Rex E. Lee recommending that General Services Administration withdraw from Congressional consideration proposed regulations for public access to the Nixon Presidential materials. Those regulations had been submitted as required by the Presidential Recordings and Materials Preservation Act (PL 93-526; 88 Stat. 1695; 44 USC 2107). The reason given for recommending the withdrawal was so that we could review the regulations for possible constitutional deficiencies in light of the January 7, 1976, opinion of the U.S. District Court for the District of Columbia (sitting as a three-judge panel) in Nixon v. Administrator of GSA.

Having conducted that review, the following changes in the regulations are proposed:

1. On page H-3 of the regulations dated October 15, 1975, change subparagraph (b) to read:

(b) Private or personal materials. The term "private or personal materials" shall mean those papers and other documentary or commemorative materials in any physical form relating solely to a person's family or other nonpublic activities, including private political association, and having no connection with his constitutional or statutory duties or political activities as President or as a member of the President's staff.

2. On page H-6 of the regulations dated October 15, 1975, add the following:

§105-63.401(c) Notice of openings

(c) At least 30 calendar days prior to the opening to public access of any integral file segment of the materials, the Administrator will publish notice in the Federal Register of the proposed opening.

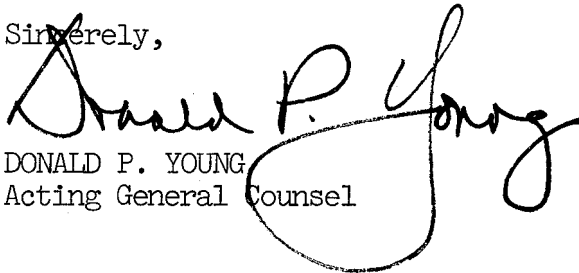


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Changes in Section G, Legal Explanation of the Public Access Regulations will be forthcoming.

Your comments and/or recommendations on the proposed changes are solicited.

Sincerely,

A handwritten signature in cursive script that reads "Donald P. Young". The signature is written in dark ink and is positioned above the typed name.

DONALD P. YOUNG
Acting General Counsel



UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION

Office of General Counsel
Washington, D.C. 20405



MAR 16 1976

Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, DC 20500

Dear Mr. Buchen:

On January 16, 1976, we received a letter from the Honorable Rex E. Lee recommending that General Services Administration withdraw from Congressional consideration proposed regulations for public access to the Nixon Presidential materials. Those regulations had been submitted as required by the Presidential Recordings and Materials Preservation Act (PL 93-526; 88 Stat. 1695; 44 USC 2107). The reason given for recommending the withdrawal was so that we could review the regulations for possible constitutional deficiencies in light of the January 7, 1976, opinion of the U.S. District Court for the District of Columbia (sitting as a three-judge panel) in Nixon v. Administrator of GSA.

Having conducted that review, the following changes in the regulations are proposed:

1. On page H-3 of the regulations dated October 15, 1975, change subparagraph (b) to read:

(b) Private or personal materials. The term "private or personal materials" shall mean those papers and other documentary or commemorative materials in any physical form relating solely to a person's family or other nonpublic activities, including private political association, and having no connection with his constitutional or statutory duties or political activities as President or as a member of the President's staff.

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(Signed) Donald P. Young

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