



PRESIDENTIAL RECORDS ACT – SUMMARY

The Presidential Records Act outlines requirements regarding the maintenance, access and preservation of presidential and vice-presidential information during and after a presidency. The PRA states that presidential records are the property of the United States and must be preserved in perpetuity.

SCOPE OF PRESIDENTIAL RECORDS

Presidential records refer to documentary 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.

- Records are assessed for preservation not by the medium used to store the information, but rather by the content of the information irrespective of whether it’s an email, a brief, an audio recording or in some other format.
- The EOP offices below are those which create presidential records. All other offices create federal records (which are governed by a different set of rules).
 - The White House Office.
 - The Office of the Vice President.
 - The Office of Policy Development.
 - The Council of Economic Advisors.
 - The National Security Council.
 - The President’s Foreign Intelligence Advisory Board.
 - The President’s Intelligence Oversight Board.
 - The National Economic Council.
 - The Office of Administration.

A president’s personal records— identified in the PRA as documents “of a purely private or nonpublic character”—are excluded from preservation requirements. These may include:

- Personal writings (such as a journal).
- Election materials.
- Materials relating to private political associations.
- Materials created by the president’s transition team prior to inauguration (unless those materials were subsequently received and used by the president post-inauguration).
 - Transition briefing materials prepared by agency officials must be kept as part of the agency’s federal records.

ROLES AND RESPONSIBILITIES

The President’s duties consist of:

- Documenting presidential records for the duration of the presidency.
 - The president must document the activities, deliberations, decisions and policies that reflect the performance of the president’s constitutional, statutory, or other official or ceremonial duties.
- Preserving presidential records of the duration of the presidency.
 - The president may request the support of the National Archives and Records Administration to maintain and preserve the records on behalf of the president.
 - The PRA provides a process for the incumbent president to seek a change in the disposal schedule of the president’s own records by obtaining the archivist’s

written approval and submitting a disposal schedule to Congress at least 60 calendar days before the proposed disposal date.

The National Archives and Records Administration duties consist of:

- Preserving presidential records after the end of a presidency.
 - After a presidency, the responsibility for the custody, control, preservation of, and access to presidential records shifts to the archivist.
 - The PRA does not provide a former president with a process for disposing of presidential records *after* leaving office. However, the archivist may dispose of a former president's records if they are deemed to have insufficient value to warrant their continued preservation.
- Making presidential records publicly available.
 - Public access is governed by a set of rules depending on the length of time that has passed since the end of presidency. See the below section for additional detail.
- Advising the incumbent president on records management practices upon request.
- Initiating an investigation into unlawful removal or destruction of records.
 - Although NARA does not have direct oversight authority over the White House records program as it does over federal agency records programs, it can initiate action with the attorney general for the possible recovery of potentially unlawful removal or destruction of records.

The Department of Justice duties consist of:

- Providing guidance to the executive branch on how to comply with the legal requirements of government information policy.
- Investigating any potential unlawful removal or destruction of records by the president.

RULES GOVERNING ACCESS TO RECORDS

Access to a former president's records is governed in terms of time passed since the conclusion of the presidency:

- Less than five years out, no public access is granted due to the archivist's processing of the records.
- Between five and 12 years out, the archivist determines PRA restrictions with the former president. The records categories for which a former president can restrict access include:
 - Records described in an executive order as in the interest of national defense or foreign policy or are otherwise classified documents.
 - Records relating to appointments to federal office.
 - Records specifically exempted from disclosure by statute.
 - Records that contain trade secrets and commercial or financial information.
 - Records of confidential communications requesting or submitting advice between the president and the president's advisers or between such advisers.
 - Records of personnel and medical files whose disclosure would constitute an invasion of personal privacy.
- After 12 years, these PRA restrictions no longer apply

Certain federal officials may access a former president's records within the 12-year time frame by gaining "special access" to presidential records for the following purposes:

- In response to a subpoena or other judicial process.

- By request of an incumbent president if such records contain information that is needed for the conduct of current business.
- By request of either house of Congress (or committee thereof) if such records contain information that is needed for the conduct of its business and that is not otherwise available.

After the 12-year time period, there may still be reasons that information is withheld from the public.

- Information will be withheld if:
 - An incumbent president invokes a claim of executive privilege over the release of a former president's records, and the attorney general and the counsel to the president decide the invocation of executive privilege is justified.
 - A former president invokes a claim of executive privilege and the current archivist, attorney general and counsel to the president decide the invocation of executive privilege is justified.
- Under the Freedom of Information Act, which governs the release of government information, other FOIA exemptions may limit the release of information (e.g., information that is prohibited from disclosure by other law).

Source

<https://fas.org/sgp/crs/secrecy/R46129.pdf>