



PROTECT the PUBLIC'S TRUST

VIA ELECTRONIC MAIL

November 4, 2022

TO: Debra S. Wall
Acting Archivist of the United States
U.S. National Archives and
Records Administration
700 Pennsylvania Ave NW
Washington, D.C. 20408

Emory A. Rounds
Director
Office of Government Ethics
1201 New York Ave NW #500
Washington, D.C. 20005

CC: The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
1331 F Street NW
Washington, D.C. 20005

The Honorable Stuart F. Delery
Counsel to the President
The White House
1600 Pennsylvania Ave NW
Washington, D.C. 20500

Bobak Talebian
Director
Office of Information Policy
U.S. Department of Justice
1331 F Street NW
Washington, D.C. 20005

Re: Potential unauthorized destruction of Presidential records

Dear Ms. Wall and Director Rounds,

Maintaining and preserving all official records pursuant to the Presidential Records Act is an important duty that is the responsibility of the U.S. National Archives and Records Administration (NARA). Outside of the unprecedented reliance on the Act to support a subpoena to search the home of a former U.S. President, the Act and its enforcement have historically received little attention. However, now that strict enforcement of the Act appears to be a high priority for the Archivist of the United States, and by extension the Department of Justice, we would like to bring to your attention a matter of serious concern as it applies to preserving the historical record of President Joseph Biden.

Protect the Public's Trust (PPT) is a non-partisan organization dedicated to promoting integrity in government and restoring the public's trust in government officials. Our project's mission is a straightforward one but it requires an enduring focus on not cherry-picking examples of misconduct but rather ensuring the evolving standards of what constitutes misconduct are evenly applied. Accordingly, we are concerned that a recent



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decision by certain White House officials to delete a tweet issued on the official @WhiteHouse Twitter feed¹ may have run afoul of the Presidential Records Act.

Background

The tweet, which was posted to the official White House account at 4:45 pm on November 1, stated: “Seniors are getting the biggest increase in their Social Security checks in 10 years through President Biden’s leadership.” After being posted, Twitter added additional context to the tweet by clarifying that the record increase was an automatic adjustment tied to the inflation rate, per a 1972 law. The U.S. inflation rate reached its highest point in 40 years in June.² Some have argued that the record Social Security increases are in fact due to inflation-inducing policies of the President. After the addition of the context, the White House deleted this tweet on November 3.

Legal Obligations under the Presidential Records Act

According to the NARA website, “the Presidential Records Act (PRA) of 1978, 44 U.S.C. §§ 2201-2209, governs the official records of Presidents and Vice Presidents that were created or received after January 20, 1981 (i.e., beginning with the Reagan Administration). The PRA changed the legal ownership of the official records of the President from private to public, and established a new statutory structure under which Presidents, and subsequently NARA, must manage the records of their Administrations.”³

Notable amendments in 2014 “place[d] the responsibility for the custody and management of incumbent Presidential records with the President” and “allow[ed] the incumbent President to dispose of records that no longer have administrative, historical, informational, or evidentiary value, *once the views of the Archivist of the United States on the proposed disposal have been obtained in writing.*”⁴ [emphasis added]

According to a recent report on the Act from the Congressional Research Service, “Presidential records may be disposed of if the President submits copies of the intended disposal schedule at least 60 calendar days before the proposed disposal date to the statutorily specified committees (44 U.S.C. §2203(d)).”⁵ Further, in the event of improper removal or disposal, an investigation must be conducted:

¹ <https://www.foxnews.com/politics/white-house-deletes-tweet-flagged-twitter-credited-biden-social-security-payment-increase>

² <https://www.cnn.com/2022/07/13/economy/cpi-inflation-june/index.html>

³ <https://www.archives.gov/presidential-libraries/laws/1978-act.html>.

⁴ *Id.*

⁵ “Presidential Records Management: Preservation and Disposal,” Morgan M. Stuessy, Congressional Research Service (Updated Aug. 9, 2022) <https://crsreports.congress.gov/product/pdf/IF/IF12056>.



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In the event of unlawful removal, defacing, or erasure of records, the related Federal Records Act (44 U.S.C. Chapters 21, 29, 31, and 33) requires the Archivist to initiate action through the Attorney General for the recovery of the records (44 U.S.C. §3106). Furthermore

In any case in which the head of a Federal agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action described in subsection (a), or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made. Thus, investigation of the unlawful removal or destruction of government and presidential records requires the joint cooperation of NARA and DOJ. The Archivist may not independently initiate action without the Attorney General.⁶

Penalties for improper disposal or removal and a log of NARA's ongoing investigation is also accounted for in the Act.

Analysis

While personal records are exempt from the preservation requirements, the Nov. 1 tweet on the official White House account is almost certainly a record that belongs to the public and subject to the Act's destruction protocols.⁷

Subsequent explanations provided by White House officials raise concerns over whether the appropriate retention process was adhered to or whether authorization to destroy an official record was received prior to the Presidential record being permanently destroyed, as required by law. One official initially indicated "the point was incomplete" and White House Press Secretary Karine Jean-Pierre elaborated further saying, "The tweet was not complete. Usually when we put out a tweet we post it with context, and it did not have that context."⁸

Whether the deleted post was an effort to boost the political prospects of those associated with the President's political party, mal-information that could constitute an attack on America's democratic institutions, or simply an ill-conceived self-promotion effort, the deletion of a public and official Presidential record must still follow the destruction

⁶ *Id.*

⁷ Indeed, previous Presidential tweets have been archived by NARA as permanent records subject to the Presidential Records Act. For instance, retrieval of lost tweets has become an issue of concern once the former President Trump's twitter feed was removed from the platform.

<https://www.politico.com/news/2021/04/07/twitter-national-archives-realdonaldtrump-479743>.

⁸ <https://www.politico.com/news/2022/11/02/white-house-twitter-context-note-00064647>.



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process laid out under the Act. This is true regardless of whether the record was “incomplete” in providing the context to achieve its desired objective.

Conclusion

Accordingly, Protect the Public’s Trust requests the following information:

- 1) A copy of the Archivist’s official letter authorizing the destruction of an official public record subject to the Presidential Records Act;
- 2) Any records that detail the timeline of the proposed record destruction consistent with a formal dated opinion from the Archivist;
- 3) If no formal dated opinion from the Archivist exists, any record detailing the intention of the White House to destroy a Presidential record or legal opinion justifying why the record was not subject to the retention process;
- 4) Any records detailing NARA’s intention or effort taken to ensure the deleted tweet is retrieved and preserved for President Biden’s permanent archive.
- 5) If the Archivist did not authorize the destruction of this record, which official did authorize its destruction?
- 6) If no such authorization for disposal or removal was provided prior to the deletion of the post, we request all records of the investigation called for under the Act and any DOJ consultation that has been initiated.

We look forward to a prompt reply in light of the serious nature of the potential violation around the President Records Act, a law with clear national security implications for all such presidential records. Thank you.

Sincerely,

Michael Chamberlain
Director
Protect the Public’s Trust