

Attorneys General of New York, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, New Mexico, Oregon, Virginia, and Washington

December 16, 2020

Pat Cipollone
White House Counsel
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Presidential Records Preservation

Dear Mr. Cipollone:

The undersigned Attorneys General of New York, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, New Mexico, Oregon, Virginia, and Washington write regarding the record preservation obligations under the Presidential Records Act, 44 U.S.C. §§ 2201-2209, the Federal Records Act, 44 U.S.C. §§ 3101-3107, and related regulations. We ask that the Office of the White House Counsel ensure that all White House personnel understand and comply with their record preservation obligations, and we request confirmation of such compliance prior to January 20, 2021.

The Presidential Records Act establishes that the American people “retain complete ownership, possession, and control of Presidential records.” 44 U.S.C. § 2202. And the Act defines those records as “documentary materials, or any reasonably segregable portion thereof, created or received” by the President or White House staff. *Id.* § 2201(2). In turn, documentary material is broadly defined to include “all books, correspondence, memoranda, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, audio and visual records, or other electronic or mechanical recordations, whether in analog, digital, or any other form.” *Id.* § 2201(1).

Additionally, to the extent that the President or White House staff uses a non-official electronic message account to create or send Presidential records, the Presidential Records Act requires the individual to copy an official account in the original creation or transmission of the record or to forward a complete copy of the record to an official account within 20 days of creation or transmission. *Id.* § 2209(a). Intentional violation of this obligation is subject to disciplinary action. *Id.* § 2209(b).

Further, the Presidential Records Act requires the President to “take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of the President’s constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are preserved and maintained as Presidential records.” *Id.* § 2203(a). The President may only dispose of Presidential records if they “no

longer have administrative, historical, informational, or evidentiary value,” and the Archivist of the United States approves of the proposed disposal in writing. *Id.* § 2203(c).

As you know, White House Counsel issued a February 22, 2017 memorandum reminding all White House personnel of “their obligation to preserve and maintain presidential records, as required by the Presidential Records Act (“PRA”).”¹ The memorandum noted that “willful destruction or concealment of federal records is a federal crime punishable by fines and imprisonment.”² In September 2017, White House Counsel reportedly reiterated these record preservation obligations and reminded staff that willful violation of those obligations could result in criminal liability.³ Our understanding is that these memoranda are the only such notices that have been sent to White House staff, and therefore, it has been more than three years since they were reminded of their record preservation obligations.

As detailed in a recently filed complaint, the President has shown an utter disregard for his recordkeeping obligations under the Presidential Records Act throughout his presidency.⁴ This includes, for example, President Trump’s practice of ripping up notes at the close of meetings, his practice of tweeting and then deleting his tweets, and his obstruction of note-taking.⁵ Additionally, it has been widely reported that Senior Advisor Jared Kushner communicates with other administration officials as well as foreign officials through WhatsApp and that Advisor to the President Ivanka Trump has used a personal email account to send emails concerning White House business.⁶ In light of these and other news reports, we have serious concerns about compliance by White House personnel with their Presidential Records Act obligations, including preservation of records and proper use of non-official electronic message accounts.

Accordingly, on behalf of our states’ residents, we strongly urge you to remind all individuals in the Executive Office of the President to collect, retain, and preserve all documents, communications, and all other records, including complete copies of records created or sent by a

¹ White House Memorandum, Presidential Records Act Obligations, Feb. 22, 2017, [https://www.archives.gov/files/foia/Memo%20to%20WH%20Staff%20Re%20Presidential%20Records%20Act%20\(Trump,%202002-22-17\)_redacted%20\(1\).pdf](https://www.archives.gov/files/foia/Memo%20to%20WH%20Staff%20Re%20Presidential%20Records%20Act%20(Trump,%202002-22-17)_redacted%20(1).pdf).

² *Id.* at 3.

³ Josh Dawsey & Bryan Bender, “National Archives warned Trump White House to preserve documents,” POLITICO, Oct. 17, 2017, <https://www.politico.com/story/2017/10/17/national-archives-trump-documents-preserve-243888>.

⁴ Complaint, *National Security Archive, et al. v. Trump, et al.*, No. 1:20-cv-03500 (D.D.C. Dec. 1, 2020), at ¶¶ 55-66, <https://www.citizensforethics.org/wp-content/uploads/2020/12/Natl-Sec-Archive-v.-Trump-Complaint.pdf>.

⁵ *Id.* at ¶¶ 56-59 (citing Annie Karni, “Meet the guys who tape Trump’s papers back together,” POLITICO, June 10, 2018, <https://politi.co/33cqS7p>; Jill Lepore, “Will Trump Burn the Evidence?,” NEW YORKER, Nov. 16, 2020, <https://bit.ly/3kZesWy>; Rachel Treisman, “As President Trump Tweets and Deletes, the Historical Record Takes Shape,” NPR, Oct. 25, 2019, <https://n.pr/3pYdhKz>; Peter Baker, “Trump and Putin Have Met Five Times, What Was Said Is a Mystery,” N.Y. TIMES, Jan. 15, 2019, <https://nyti.ms/397bQDK>; Greg Miller, “Trump has concealed details of his face-to-face encounters with Putin from senior officials in administration,” WASHINGTON POST, Jan. 13, 2019, <https://wapo.st/3fqArEy>; Report on the Investigation Into Russian Interference In the 2016 Election, Vol. II, at 117).

⁶ *See, e.g.*, Kevin Collier, “Jared Kushner’s use of WhatsApp raises concerns among cybersecurity experts,” Mar. 23, 2019, <https://www.cnn.com/2019/03/23/politics/kushner-whatsapp-concerns/index.html>; Josh Dawsey, “Kushner used private email to conduct White House business,” Sep. 24, 2017, <https://www.politico.com/story/2017/09/24/jared-kushner-private-email-white-house-243071>; Carol D. Leonnig and Josh Dawsey, “Ivanka Trump used a personal email account to send hundreds of emails about government business last year,” WASHINGTON POST, Nov. 19, 2018, <https://wapo.st/2J3zXIP>.

non-official electronic message account. We also ask that you ensure that the President and White House staff do not alter, withhold, or destroy any Presidential records. And we respectfully request that you confirm compliance with the Presidential Records Act, the Federal Records Act, and related regulations by the Executive Office of the President prior to January 20, 2021. Please also indicate whether the President has requested or obtained the view of the Archivist with respect to the disposal of any Presidential records.

Thank you for your cooperation in this matter. We look forward to receiving your response.

Sincerely,



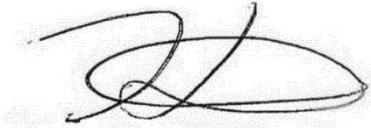
Letitia James
New York Attorney General



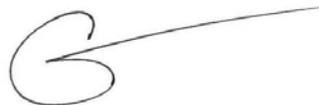
William Tong
Connecticut Attorney General



Kathleen Jennings
Delaware Attorney General



Karl A. Racine
Attorney General for the District of Columbia



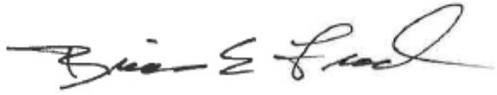
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Hawaii Attorney General



Kwame Raoul
Illinois Attorney General



Tom Miller
Attorney General of Iowa



Brian E. Frosh
Maryland Attorney General



Maura Healy
Massachusetts Attorney General



Dana Nessel
Michigan Attorney General



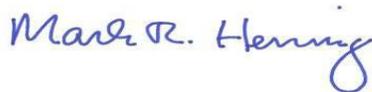
Keith Ellison
Minnesota Attorney General



Hector Balderas
New Mexico Attorney General



Ellen F. Rosenblum
Oregon Attorney General



Mark R. Herring
Virginia Attorney General



Bob Ferguson
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