



**Judicial
Watch**
*Because no one
is above the law!*

February 26, 2014

VIA CERTIFIED MAIL

FOIA Coordinator
Clinton Presidential Library
1200 President Clinton Ave.
Little Rock, AR 72201

Re: Freedom of Information Act Request

Dear Freedom of Information Coordinator:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Judicial Watch, Inc. hereby requests that the Clinton Presidential Library produce the following within twenty (20) business days:

Any and all records contained in former President Clinton's presidential archives that are currently being withheld as described in the enclosed Politico article. Judicial Watch believes that 33,000 pages of records exist that are responsive to this FOIA request and that they are being withheld purportedly pursuant to 44 U.S.C. § 2204(a)(2) and (5).

We call your attention to President Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA... The presumption of disclosure should be applied to all decisions involving FOIA.¹

The memo further provides that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nevertheless, if any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973),

¹ Freedom of Information Act. Pres. Mem. of January 21, 2009, 74 Fed. Reg. 4683.

cert. denied, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

For purposes of this request, the term “record” shall mean: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, facsimiles, papers, forms, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, or press releases; (2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail; (3) any audio, aural, visual, or video records, recordings, or representations of any kind; (4) any graphic materials and data compilations from which information can be obtained; and (5) any materials using other means of preserving thought or expression.

Judicial Watch also hereby requests a waiver of both search and duplication fees pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(II) and (a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of the news media. *Cf. National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989)(defining news media within FOIA context). Judicial Watch has also been recognized as a member of the news media in other FOIA litigation. *See, e.g., Judicial Watch, Inc. v. U.S. Department of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000); and, *Judicial Watch, Inc. v. Department of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006). Judicial Watch regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skills to turn this information into distinct works, and publishes and disseminates these works to the public. It intends to do likewise with the records it receives in response to this request.

Judicial Watch also is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Under this provision, records:

shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

5 U.S.C. § 552(a)(4)(A)(iii).

In addition, if records are not produced within twenty (20) business days, Judicial

Watch is entitled to a complete waiver of search and duplication fees under Section 6(b) of the OPEN Government Act of 2007, which amended FOIA at 5 U.S.C. § (a)(4)(A)(viii).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch's ongoing efforts to document the operations and activities of the federal government and to educate the public about these operations and activities. Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its analysis, as well as the records themselves, as a special written report. Judicial Watch will also educate the public via radio programs, Judicial Watch's website, and/or newsletter, among other outlets. It also will make the records available to other members of the media or researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public, as demonstrated by its long-standing and continuing public outreach efforts.

Given these circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch is willing to pay up to \$350.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

In an effort to facilitate record production within the statutory time limit, Judicial Watch is willing to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, Judicial Watch will also accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5170 or bmarshall@judicialwatch.org. We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,



William F. Marshall
Judicial Watch

POLITICO

The Clinton library's secret files

By: Josh Gerstein
February 25, 2014 09:00 PM EST

A trove of Clinton White House records long processed for release remains hidden from public view at the Clinton Presidential Library in Little Rock — even though the legal basis initially used to withhold them expired more than a year ago.

The papers contain confidential advice given to or sought by President Bill Clinton, including communications with then-first lady Hillary Clinton, and records about people considered for appointments to federal office.

About 33,000 pages of documents are involved, according to the National Archives, which runs the library.

(PHOTOS: Clinton controversies could emerge in library docs)

Under the **Presidential Records Act**, such records can be withheld for up to 12 years after a president leaves office. However, at the 12-year mark, those broad restrictions fall away and the once-secret presidential papers are generally subject to disclosure. For the Clinton files, that milestone came and went in January 2013.

The long-sealed records pose a delicate series of choices for the Clintons, and even President Barack Obama. They could allow disclosure of the papers, fueling new stories about old controversies like Whitewater and pardons granted as the 42nd president left office in 2001. Or they could fight to keep some or all of the files secret, likely triggering a court battle and stoking concerns that the former president and his wife are unduly secretive.

Either way, it's a potentially messy situation unfolding just as Hillary Clinton — widely considered a clear front-runner for the 2016 Democratic presidential nomination — mulls over whether to make a second bid to return to the White House.

(PHOTOS: Hillary Clinton's 50 influentials)

It's not entirely clear who's responsible for the delay, since the release process involves the library and National Archives headquarters, as well as lawyers for the former president and Obama.

Unlike collections in other hands, the withheld files at the Clinton Library are under the control of the federal government. Obama would have to choose whether to back any privilege assertion by the ex-president — a move that would be in tension with public statements Obama made as a candidate and as president, promising to improve access to presidential records. Even the long delays in accessing the files raise significant questions about whether reforms Obama imposed on his first day in office are working.

After a series of inquiries from POLITICO in recent days, an official with the current White House said Tuesday afternoon that a large batch of the formerly withheld Clinton records should emerge soon.

"The White House has cleared a significant number of P2/P5 Clinton documents ... roughly 25,000 pages," said the Obama aide, citing the legal designations originally used to withhold the records.

The aide, who asked not to be named, did not say precisely when that clearance was given. However, he added: "There have been no executive privilege assertions on Clinton materials to date."

(PHOTOS: Who's talking about Hillary Clinton 2016?)

After several days of queries, a National Archives spokesman said Tuesday evening that some — but not all — of the previously withheld records have been approved for release.

“As of today, the representatives of the former and incumbent presidents have approved the release of a majority of the approximately 33,000 pages of Clinton presidential records that were previously withheld” under the advice and appointment provisions, said Chris Isleib, director of communications for the National Archives. “Our goal is to make these records available as soon as possible, but it will take the Clinton Library and [the National Archives and Records Administration] additional time to complete the logistics of making available such a large release, including being able to make the records available on the Web.”

Isleib said the White House had extended the deadline regarding the remaining records until March 26.

An aide to former President Clinton indicated Tuesday evening that the former president's aides just learned of the current White House's signoff on some of the records.

“We were notified today by the National Archives and Records Administration that the White House had cleared over 20,000 pages of previously closed Clinton administration documents, subject to an assertion of executive privilege by the former president. We informed NARA that President Clinton did not intend to assert privilege with respect to the documents,” said the aide, who asked not to be named.

(Also on POLITICO: Hillary promotes gender equality)

Handling of historical records about the Clintons is already drawing increased scrutiny — attention that seems certain to grow in the coming months.

“Especially if you have a Hillary Clinton candidacy for president, there is going to be renewed interest in how these things are depicted, what's public and what's not. That's a debate that's about to be had,” said Brandon Rottinghaus, a University of Houston political science professor who conducted research at the Clinton Library and was frustrated that certain records relating to Clinton-era scandal management were off-limits.

Earlier this month, the conservative Washington Free Beacon published a pair of stories that sparked questions about history's ability to haunt the former first lady. One delved into records kept by late Clinton friend Diane Blair detailing many of Hillary Clinton's personal concerns about the crises that beset her husband's presidency, including his affair with Monica Lewinsky. The other article noted that papers from Bill Clinton's official files during his two terms as Arkansas governor are locked away from view at a public library in Little Rock.

The Free Beacon stories did not mention the much vaster collections at the Clinton Presidential Library: some 78 million pages of paper records and 20 million emails — only a tiny fraction of which are available for public research. However, the Republican National Committee quickly made such a link, portraying the undisclosed files as a political liability.

“The Blair archive wasn't the only locked down library in 2008 — the Clinton Library was described as ‘Little Rock's Fort Knox,’” an RNC email to reporters said, quoting a 2007 Newsday story.

As archivists at the Clinton Library have processed records for the past decade or so, they have dutifully marked the advice-related and appointment-related information so that it could be released with little additional work after the 12-year point.

However, more than 13 months after the legal restrictions expired, there are no indications that any of the formerly restricted records are available for research.

"The obvious answer is they are trying to protect Hillary and there's no question at all that there's something in that ... but the reality also is they don't have the staff," said Gettysburg College professor Shirley Warshaw, a frequent visitor to presidential libraries.

National Archives personnel have repeatedly complained that they lack the resources and personnel to complete legally required page-by-page reviews in a timely fashion. However, the formerly restricted Clinton records have already been reviewed and don't require much new effort to prepare for release.

For at least some of the records, the National Archives has formally advised representatives of Bill Clinton and Obama of the planned release, giving both parties a chance to look over the records before they would become public — and giving both parties an opportunity to slow down the process.

In September, a top archivist at the Clinton Library told POLITICO the formerly restricted material was still "work[ing] its way through the notification process."

If either Clinton or Obama objects to any release, they could try to assert executive privilege over the material, setting up a potential court fight.

The Clinton Library has not published a comprehensive list of the materials held back from prior document releases. However, information posted online indicates that a number of the withheld records come from Hillary Clinton's office.

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For example, in 2011, the library withheld ~~aa confidential advice portions or all of 785 pages of health-care-reform-related records~~ from the first lady's staff. The papers were removed from a large set of files released in response to a lawsuit from conservative watchdog group Judicial Watch.

Also withheld under the now-expired confidential advice provision were a series of documents pertaining to Clinton-era scandals such as Whitewater and the death of White House aide Vince Foster. The records held back include legal memos on such subjects from figures like Clinton personal attorney David Kendall and White House Counsel's Office lawyer Elena Kagan, who became a Supreme Court justice in 2010.

In 2007, a total of about 2,600 pages at the library were being withheld in part or in full as confidential advice, a National Archives spokeswoman told *The New York Sun*. The number apparently grew to at least about 33,000 by last year.

The expiration of the 12-year restrictions on the Clinton files is also a key test for an executive order Obama signed on his first full day in office, promising to overhaul the presidential records process and remove obstacles he said were put in place by his predecessor, President George W. Bush.

The delays in access to the processed-but-unreleased Clinton-era records are far longer than those involving comparable files from President George H.W. Bush's White House.

When the 12-year restriction on Bush's records dropped in 2005, formerly withheld records began to emerge quickly from his library in College Station, Texas. Nearly 10,000 pages of records were made available to researchers just 29 days after the 12-year mark. A total of more than 31,000 pages of formerly restricted files were released in the course of that year. Full release of the more than 68,000 pages was completed in 2009, according to the Bush library's website.

However, the expiration of the 12-year restriction on President Ronald Reagan's files led to greater delays and a messy legal fight.

About 70,000 pages were processed but restricted as confidential advice to Reagan when his papers hit the 12-year mark in 2001, according to a court filing. That looming release triggered a policy review by the incoming administration of President George W. Bush, which held up disclosure of the files.

In November 2001, Bush issued a new executive order on presidential records. Historians and other researchers denounced the order and filed suit, claiming Bush's directive would allow for unlimited delays and give former presidents or even family members of deceased presidents broad authority to block releases. A court ultimately held a portion of the Bush order illegal.

Despite the ongoing litigation, the first batch of about 8,000 pages of formerly restricted Reagan records was made public in February 2002. The release of the remaining records took place by 2004, although Reagan's representatives ultimately prevailed in withholding 11 documents totaling 74 pages. The withheld papers included a memo about pardons for Oliver North and John Poindexter, as well as a document about Nancy Reagan's use of military aircraft.

Obama's White House has boasted that his executive order would lead to greater openness at presidential libraries.

"President Obama has also ensured that White House records, even sensitive documents, will become more readily and more quickly available to the public in the future," a 2011 report on Obama's commitment to open government declared. Promising greater openness in "the near and far future," the report said Obama "rescinded" the Bush order, which had allowed "former presidents and their descendants to delay indefinitely the release of information."

Despite the thousands of pages of previously withheld records now in limbo, disclosure at the Clinton Library has not stopped altogether.

Last October, the Clinton Library did release a batch of 57,234 pages of health care reform-related records to Judicial Watch, whose lawsuit demanding access to the complete set of files was brought in 2007 and continues. No pages were withheld as confidential advice in the latest batch. In addition, that same month the library and the Central Intelligence Agency released 300 documents pertaining to the Bosnia crisis.

But researchers still complain that the clearance process Obama put in place has not worked much better than Bush's.

"The Obama executive order has probably solved some of the problem, but certainly not all," said George Lardner, a former Washington Post reporter who has done extensive research on presidential pardons. "The Obama order is easily subject to manipulation. The Obama order includes a provision that the time period for review can be extended and extended and there's no limit to it. ... The Obama order is worse than the Clinton [era] order, and certainly not that much better than the Bush order."

"For sure, you've got a delay in the process because of that three-tiered system of review," Rottinghaus said, referring to the National Archives, the former president and the current one. "The Obama administration has promised more openness and couldn't completely deliver."

If issues of access to Clinton Library files do become a political headache for Hillary Clinton in a forthcoming presidential bid, it won't be the first time.

During the 2008 presidential race, Clinton came under fire — often from Obama and his allies — for allegedly trying to keep her White House files shrouded in secrecy.

In one of the highest-profile episodes, late NBC Washington Bureau Chief Tim Russert used the forum of a televised debate in October 2007 to publicly challenge Mrs. Clinton about off-limits records from her time as first lady.

"There was a letter written by President Clinton specifically asking that any communication between you and the president not be made available to the public until 2012. Would you lift that ban?" Russert said, brandishing a copy of the letter.

"That's not my decision to make," Mrs. Clinton said. "And I don't believe that any president or first lady has. But certainly we'll move as quickly as our circumstances and the processes of the National Archives permits."

Obama leapt on the political opening, raising his hand to chime in.

"This is an example of not turning the page. We have just gone through one of the most secretive administrations in our history, and not releasing, I think, these records at the same time, Hillary, as you're making the claim that this is the basis for your experience, I think, is a problem," Obama said. "Part of what we need to do is rebuild trust in our government again. ... And that means being open and transparent and accountable to the American people."

Russert's questions infuriated Bill Clinton, who later called them "breathtakingly misleading."

"She was incidental to the letter," the former president insisted. "It was a letter to speed up presidential releases, not to slow them down."

While the purpose of the letter was to narrow the overall amount of information kept from the public, the letter does indicate that "communications directly between the President and First Lady" should be "considered for withholding," among several other categories.

Those restrictions are precisely the ones that expired last January.

Later in the campaign, the Clinton Library did release Hillary Clinton's official schedules as first lady. They contained little news and proved far less damaging politically than the

controversy over the delay in releasing them.

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