

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)
)
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Plaintiff,)
)
)
v.) Civil Action No: 1:07-cv-01267 (JR)
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)
U.S. NATIONAL ARCHIVES AND)
RECORDS ADMINISTRATION,)
)
)
)
Defendant.)
)

**SUPPLEMENTAL DECLARATION OF EMILY ROBISON IN SUPPORT OF
DEFENDANT'S STATUS REPORT AND PROCESSING SCHEDULE**

I, Emily Robison, declare as follows:

1. I am the Acting Director and the Deputy Director of the William J. Clinton Presidential Library, having served in the position of Acting Director since May 2007. My background, training, and experience is as an archivist, having been continuously employed at the Clinton Presidential Library in the capacity of Supervisory Archivist from February 2002 to August 2004, and Deputy Director from September 2004 to May 2007. In my current capacity, I supervise the staff of the Clinton Presidential Library, which include: one Supervisory Archivist who supervises eight archivists, one archives specialist, one archives technician, and a part-time student; one Curator who (as of September 4, 2007) supervises 3.6 Full-Time Equivalent (“FTE”) museum staff, one education specialist, 5.3 FTE audiovisual museum staff, and 3.1 FTE admissions clerks; one IT contractor; and five administrative staff members of the Library.

2. Pursuant to Title 44 of the U.S. Code, Chapter 21, the Clinton Presidential Library is a component of the National Archives and Records Administration (NARA), and, therefore, all staff members of the Clinton Presidential Library are also NARA staff members.

3. Due to the nature of my official duties, I am familiar with the procedures followed by the Clinton Presidential Library in responding to requests for Presidential records from its files pursuant to the provisions of the Presidential Records Act of 1978, 44 U.S.C. § 2201, et seq. (“PRA”), the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and Executive Order 13233. NARA regulations direct that FOIA requests for Presidential records of the Clinton Administration be directed to the Director of the Clinton Presidential Library for processing.

See 36 C.F.R. §§ 1250.22.

4. Specifically, I am familiar with the treatment which has been afforded the April 5, 2006 FOIA request submitted by Judicial Watch, Inc., seeking “First Lady Hillary Rodham Clinton’s calendar, to include but not limited to her daily office diary, schedule, day planner, telephone log book, and chronological file” for an eight-year time period between January 1, 1993 and January 20, 2001. That April 5, 2006 FOIA request was assigned FOIA case number 2006-0886-F.

5. I am also familiar with the above-captioned case, having previously filed a Declaration in this case on August 6, 2007. The exhibits filed in support of that Declaration are incorporated herein. This Supplemental Declaration is based on my personal knowledge, as well as on facts supplied to me by NARA staff as known to them in the course of their duties.

PRESIDENTIAL RECORDS ACT OF 1978

6. The PRA sets forth a scheme for the preservation and disclosure of Presidential and Vice-Presidential records. See 44 U.S.C. §§ 2201, 2207. “Presidential records” covered by the PRA include “documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President.” 44 U.S.C. § 2201(2). Included among “Presidential records” are documentary materials created or received by the Office of the First Lady, when those materials meet the above definition.

7. Documentary materials deemed Presidential records become the property of the United States, 44 U.S.C. § 2202, and may be disclosed to the public under limitations imposed by the PRA. Id. § 2204. The PRA imposes upon the Archivist of the United States (“Archivist”) “an affirmative duty to make [Presidential] records available to the public as rapidly and completely as possible consistent” with limitations under the PRA. Id. § 2203(f)(1). However, there is no public access to Presidential records under FOIA for a period of five years after the President leaves office. In addition, the President may, before leaving office, “specify durations, not to exceed 12 years, for which access shall be restricted with respect to information” within one of six enumerated categories: (1) classified information designated by Executive order; (2) documents relating to appointments to Federal office; (3) documents specifically exempted from disclosure by statute other than FOIA; (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential; (5) confidential communications

requesting or submitting advice, between the President and his advisers, or between such advisers; or (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. See 44 U.S.C. §§ 2204(a)(1) – (a)(6). Thus Presidential records falling into one of the six categories may be withheld for up to 12 years, even if the record is the subject of a FOIA request. The PRA provides that the Archivist's decision to withhold a record within the 12 year period under one of the six enumerated restrictions of the PRA "shall not be subject to judicial review." Id. § 2204(b)(3).

8. During his time in office, President William J. Clinton asserted his right to apply the six enumerated restrictions in 44 U.S.C. § 2204(a)(1) – (a)(6) for the full 12 year period, and we may withhold documents covered by the restrictions as currently defined in consultation with the former President.

9. In addition, the PRA incorporates the provisions of the FOIA, including the enumerated exemptions from public access contained in 5 U.S.C. § 552(b)(5), subject to the exception that the (b)(5) exemption, 5 U.S.C. 552(b)(5), is unavailable. See 44 U.S.C. § 2204(c)(1). Applicable FOIA exemptions, including but not limited to Exemption 2 for certain internal administrative records, and Exemption 7, for law enforcement records, 5 U.S.C. §§ 552(b)(2) & (b)(7), respectively, may apply to records not otherwise covered by one of the PRA restrictions. Such FOIA exemptions may also be applied to Presidential records first processed beyond the 12 year PRA restriction period. See 44 U.S.C. § 2204(c)(1). The Archivist may therefore withhold documents from disclosure under FOIA exemptions even when they are not subject to restriction under the PRA.

10. Once a Presidential Library intends to disclose Presidential records, NARA must notify the incumbent and former Presidents, through their designated representatives, in order to provide them an opportunity to review the records for any constitutionally-based privileges that may apply. 36 C.F.R. § 1270.46; see also Executive Order 13233, § 3; 44 U.S.C. § 2206.

11. In light of the constitutionally-based provisions of the PRA and Presidential Executive Order 13233, including the requirement of a Presidential notification period, NARA's regulations provide that the agency "cannot expedite requests for Presidential records." 36 C.F.R. § 1250.28(b).¹ Plaintiff did not request that NARA expedite this FOIA request.

12. NARA received legal custody of the Presidential records of former President Clinton, including records from the Office of the First Lady, on January 20, 2001. The five-year moratorium on disclosure mandated by the PRA expired on January 20, 2006, and the Clinton Presidential Library began to receive FOIA requests for documents on that date. Between January 20, 2006, and April 5, 2006 (the date of the present FOIA request, see ¶ 4), the Library received 211 FOIA requests, totaling an estimated 5,260,372 records. A total of 397 FOIA requests have been received between January 20, 2006 and September 26, 2007. From January 20, 2006 to September 26, 2007, archivists at the Library have processed 57 FOIA requests representing approximately 188,304 records. We currently have 287 pending FOIA requests, which we estimate involves the processing of approximately 10,500,000 pages of Presidential records. Any documents covered by one of the six restrictions on disclosure are not releasable until January 22, 2013, at which time those processed and restricted records that are not also subject to a FOIA exemption will be proposed for release.

¹ NARA's regulations at § 1250.28(b) reflect the provisions of prior Executive Order 12667.

EXECUTIVE ORDER 13233

13. Consistent with principles of executive privilege, Executive Order 13233 provides that the former and incumbent Presidents be afforded an opportunity to review all Presidential records, not otherwise restricted by operation of section 2204 of the PRA, prior to their public disclosure for purposes of determining whether to invoke any constitutionally-based privileges. See also 44 U.S.C. § 2204(c)(2). Executive Order 13233 further provides that the Archivist must provide notice of a request for Presidential records to the former and incumbent President and, as soon as practicable, should provide a copy of any records requested by the former or incumbent Presidents.

14. NARA has been following the requirements of Executive Order 13233 by notifying the representatives of the former and incumbent Presidents of its intent to release non-exempt records. An average of 237 days has been required for Presidential review of Clinton Presidential records.

FOIA CASE LOG NUMBER 2006-0886-F

15. After receiving Judicial Watch's April 5, 2006 FOIA request ("Request"), archivists at the Clinton Presidential Library conducted what we term a "preliminary search" to determine the approximate volume of records that could be responsive, in order to place the request in the appropriate FOIA queue. The preliminary search for relevant calendar records to Judicial Watch's request consisted of searching a series of databases in the nature of "finding aids," which collectively provide a rough index to the holdings of the Clinton Administration at the Clinton Presidential Library, as supplemented by the institutional knowledge of our Clinton Presidential Library staff archivists. One of the applications searched is a database known as

CDSS (the Clinton Document Search System), which allows Clinton Presidential Library archivists to search the description of Clinton Presidential records retired and filed in the White House Office of Records Management (WHORM) Subject Files, or folder titles of Staff Member Office Files entered into the WHORM system. This database serves as a finding aid to millions of pages of textual Clinton Presidential records. Additionally, a search was conducted of an MS Access database created by the Clinton Presidential Library staff, consisting of folder title lists as originally supplied to NARA by WHORM, constituting a less than fully comprehensive set of White House Box Inventory Lists. Finally, the preliminary search also included a search of e-mails captured by the Automated Records Management System (known as “ARMS”) for potentially responsive e-mail records.

16. The Clinton Presidential Library conducted a preliminary search of its electronic finding aids and databases for First Lady Hillary Rodham Clinton’s calendar records for the time period between January 1, 1993 and January 20, 2001. This database search suggested that there were roughly 62,600 pages of potentially responsive textual records. This figure included daily schedules for First Lady Hillary Rodham Clinton and telephone log books for the Office of the First Lady that contain, as a subset, an as-yet-undetermined number of message slips for Mrs. Clinton. In conducting the electronic search, we located no responsive records corresponding to a “daily office diary,” a “day planner,” or a “chronological file” belonging to First Lady Hillary Rodham Clinton.

17. By letter dated April 13, 2006, the Clinton Presidential Library’s Supervisory Archivist notified Judicial Watch that its Request had been received and assigned case number 2006-0886-F. As indicated above, our initial letter provided Judicial Watch with notice that a preliminary

search had found 62,600 pages of textual records. The letter also indicated that an additional 125,732 pages of electronic records could be responsive to the Request; however, our letter also indicated that the “page total is an estimate and that all pages processed might not be relevant to [the] specific topic.”

18. Since then, the Clinton Presidential Library determined that the 125,732 pages of electronic records -- which consist entirely of e-mail records not of the First Lady, but rather of two of the First Lady’s appointed schedulers on staff -- are not responsive to Judicial Watch’s Request. In addition, we have since conducted a more accurate physical search of the potentially responsive textual records and determined that these documents total approximately 30,000 pages, not 62,600 pages. The approximately 30,000 pages of textual records include 10,000 pages of daily schedules and 20,000 pages of telephone log books for the Office of First Lady. Accordingly, as set out above, we believe there to be a maximum of approximately 30,000 pages of textual records that may be responsive to the Request.

19. We further corresponded with Judicial Watch in letters dated July 25, 2006, August 9, 2006, January 16, 2007 and February 9, 2007. In the correspondence, Judicial Watch requested an estimated completion date for the Request. The Supervisory Archivist responded that the Request had been placed into a processing queue and that approximately 156 requests preceded the Request, requiring processing and review of over 2,000,000 pages of records pursuant to the PRA, FOIA and Executive Order 13233. She also noted that “[b]ecause the Clinton Library has only been processing records in response to FOIA requests for less than seven months, we do not yet have a sense of how long it will take us to process the [pending requests] . . . nor how long it will take us to process [the Request] once they reach the front of our queue.” Upon receipt of

further inquiries, similar responses from the Clinton Presidential Library were provided in subsequent correspondence.

20. The Clinton Presidential Library has 17 separate access queues, 16 for FOIA and one for mandatory review of classified documents. The queues are divided by the type of records requested (e.g., textual, electronic, audio-visual); whether the requests are deemed complex, simple, or capable of immediate processing (which correspond to our preliminary search resulting in an estimate of the request being over 5000 pages, 501-5000 pages, or under 501 pages, respectively). Within each queue, the FOIA cases are organized by date received. A matrix format is used to rotate through each of the queues; as the next-in-line FOIA request is selected from each queue, the queue from which the FOIA request is selected for processing will then go to the end of the queue line. The Clinton Presidential Library queue structure has been evolving since we began FOIA processing. In an attempt to better serve our requestors, we have added additional queues and adjusted queue requirements. Our current queue structure is the result of experience gained by conducting many FOIA request searches as well as discussions between staff at the Clinton Presidential Library, the Office of General Counsel, and the Presidential Materials Staff in Washington, D.C.

21. We have recently added an additional queue for records that are the subject of multiple FOIA requests. Because we received requests involving records relating to Mrs. Clinton's schedule prior to receipt of the original request from plaintiff Judicial Watch, and because we subsequently received two or more additional requests for similar records, we made a determination earlier in 2007 to initiate processing of a portion of the instant Request – constituting an estimated 10,000 pages – as part of our "multi-request" queue, and had thus

begun to process these records as of June 14, 2007, shortly before the filing of the Complaint in this action. The remainder of the present Request (constituting the telephone log books from the Office of First Lady) is still pending in the multi-request queue. There are currently five FOIA requests in this multi-request queue ahead of this portion of the Judicial Watch Request. Under the matrix process described in ¶ 20, in which we rotate through each of the 16 queues, however, there are 80 FOIA requests ahead of the remainder portion of the Request. Seven FOIA requests totaling approximately 165,200 pages are currently being processed by Clinton Presidential Library archival staff. As each of these FOIA requests is completed, archival staff will pull the next FOIA request to be processed from its respective queue.

22. Once processing of the first portion of the Request is completed, pursuant to the terms of the PRA and Executive Order 13233, NARA will notify the representatives of the former and incumbent President of the Clinton Presidential Library's proposed release of these records under Executive Order 13233. Notwithstanding all of the constraints the Library is operating under (see ¶¶ 24-33), consistent with the estimate given in my first declaration of a processing time of five to six months from that date, we estimate that it will take through January 2008 to complete processing of the 10,000 pages of records representing the first portion of plaintiff's request. We presently intend to process the remainder portion as it arises under the current matrix system. However, given continuing uncertainty as to how much faster we can accomplish the processing of our current backlog of FOIA requests given resource and budget constraints, we are not in a position to provide a reasonable estimate at this time as to how long it may take to process the remaining portion of the FOIA request.

23. Once our review of the first portion of the request is complete as expected in January 2008,

we will promptly follow the notification procedures set forth above. However, we are not in a position to expedite the privilege review by the former and incumbent Presidents under the terms of PRA, NARA's regulations and Executive Order 13233. Once the review process has been completed, NARA will inform Judicial Watch of the Clinton Presidential records that are available and whether any records are being withheld.

FOIA PROCESSING AT THE CLINTON PRESIDENTIAL LIBRARY

24. The Clinton Presidential Library can allocate no more than six archivists for processing all of its pending FOIA requests for textual and electronic records. Counting each archivist as a "Full Time Equivalent" or "FTE" position in government, we estimate that from January 20, 2006 until September 2007, only 51.5% of total archival FTE time was available to process FOIA requests. This processing requires not only a page-by-page, line-by-line review to ensure that all exempt information is properly identified and redacted but also the time-consuming tasks of searching for, arranging, describing, and performing basic preservation on the responsive records. Also included in this time is time required to conduct re-reviews of records as needed in response to ongoing negotiations with representatives of the former President.

25. Since January 2006, the remaining 48.5% portion of cumulative FTE time has been spent on reference services, including answering all incoming general reference requests from the public, as well as requests received from places such as the White House, the Clinton Foundation, the former President, government agencies, and others. Archivists staff the Library's textual and audio-visual research rooms when researchers are present. Archivists also spend time responding to what are called "special access" requests under 44 U.S.C. § 2205, including since January 20, 2006, four significant special access requests from the incumbent

President, and one from a federal court. Additionally, archivists spend time improving the functionality of access to electronic records, including working with contractors on upgrades to the Presidential Electronic Record Library known as “PERL.” Finally, archivists spend time working on museum exhibit issues, assisting the Curator with writing text, and dealing with a variety of administrative issues as they arise.

26. In anticipation of the opening of Clinton Presidential Library records to FOIA processing on January 20, 2006, two archivists on my staff traveled in 2005 to the George H.W. Bush Presidential Library in College Station, Texas, to review the Bush Presidential Library’s handling of FOIA requests under the Presidential Records Act. Clinton Presidential Library staff also participated in one or more training exercises held in person and via phone conferencing with NARA headquarters staff familiar with FOIA processing issues in general, including being briefed by the Director of NARA’s Presidential Materials Staff and her staff, as well as by various other NARA FOIA officials.

27. Notwithstanding all of these attempts at due diligence, the sheer total volume of records held at the Clinton Presidential Library has contributed to unanticipated delays in the Clinton Library’s ability to process FOIA requests after January 2006. For example, the Clinton Presidential Library holds an estimated 78 million pages of Presidential textual records, whereas in contrast the Reagan Presidential and Bush Presidential Libraries hold 43.8 million and 33.7 million pages of textual records governed by the PRA, respectively. The Clinton Presidential Library also legally holds an estimated 20 million presidential electronic mail records, 2 million electronic cables, and 60 other electronic systems, which is orders of magnitude greater than similar electronic records holdings elsewhere in these other Libraries and, if printed in a textual

format, would rival in size the entire volume of Presidential records generated during the eight years of the Reagan Administration. This increase in the volume of holdings and variety of formats necessarily requires more complex and time-consuming searching and pulling of records, as well as demanding greater efforts to maintain intellectual control over this vast collection of records through traditional hard copy finding aids and electronic indices of various kinds.

28. As the first Presidential Library to have a significant volume of born-electronic records, the Clinton Presidential Library has received FOIA requests for more than one million emails in the twenty months since Clinton Presidential records became subject to FOIA. While NARA is expending significant resources to address the explosion in volume of electronic records through its Electronic Records Archive project, and while upgrades in functionality have been made to the PERL system that currently holds Clinton Presidential electronic records, the Clinton Presidential Library must print electronic records to paper prior to arranging, reviewing, and describing them as textual records. Additionally, the Clinton Presidential Library archival staff has spent large amounts of staff time on an unanticipated process known as “de-hexification,” i.e., converting attachments to individual email records that cannot be read due to an unknown or unreadable file into something approaching readable form.

29. Additionally, in the first year of FOIA processing since January 2006, the Library has experienced an unexpected jump in the volume and complexity of the incoming FOIA requests themselves. In contrast to what transpired at the Reagan and Bush Presidential Libraries, we received 336 FOIA requests in the first calendar year of FOIA processing, between January 20, 2006 and December 31, 2006 – a three-fold increase over the approximately 100 FOIA requests

received during the first year of FOIA processing at the Reagan and Bush Presidential Libraries. Also, in contrast to the experience of NARA staff at those libraries, and despite the best efforts of Clinton Presidential Library staff, we have not been particularly successful in convincing FOIA requestors at our Library to work with us in substantially narrowing what often have been extremely far-ranging requests for “all” records on a number of topics, either by date, content, or by some other reasonable means.

30. NARA is aware of the unprecedented number and volume of FOIA requests received by the Clinton Presidential Library to date and has been working to address this issue. Most significantly, the Office of Presidential Libraries has submitted to the Archivist of the United States a budget request for Fiscal Year 2009 that includes funding for 15 new archivists for processing Presidential records. If funded, the Clinton Presidential Library would receive the largest number of these archival resources, and this staff would be dedicated to reducing the FOIA backlog at the library.

31. Apart from seeking additional funding for positions, we also have taken concrete steps to address our FOIA backlog. For example, as part of a government-wide effort undertaken in response to Executive Order 13392 to improve the disclosure of government information, NARA’s PRA libraries created “multi-request FOIA queues.” As referenced in ¶ 21, FOIA requests are moved to this queue when a library receives multiple requests for significant portions of the same series or sub-series of records. Once the requests are transferred to the frequently requested queue, the library will begin systematically processing the entire file or collection as opposed to individual folders. Because systematic processing is faster than FOIA processing, this assists in responding more rapidly to FOIA requesters who wish to gain access

because in lieu of making individual folders available, researchers can gain access to entire series or sub-series of records. By opening an entire series or sub-series, we will enable access to these records to future researchers without the necessity of filing a FOIA request, which would ultimately add to the existing FOIA backlog.

32. Additionally, NARA's Office of Presidential Libraries and Presidential Materials Staff, after discussions with the Supervisory Archivists of the three PRA libraries decided to undertake an in-house study in the spring of 2007 to review ways to achieve faster processing of Presidential records. As a result of this study, a one-year pilot project was initiated to implement the most promising proposals. Such proposals include halting what has been a time-consuming process of routinely referring to the originating and/or equity agencies those classified items processed in response to FOIA requests.

33. In sum, NARA and the Clinton Presidential Library are taking, and will continue to take, reasonable steps, in light of present-day resource and budget constraints, to address the important issue of improving FOIA request processing.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2 day of October, 2007.

Emily Robison
EMILY ROBISON
Acting Director
Clinton Presidential Library