



National Archives and Records Administration

8601 Adelphi Road
College Park, Maryland 20740-6001

April 1, 2004

By Facsimile 202-588-7795

Scott L. Nelson
Public Citizen Litigation Group
1600 20th Street N.W.
Washington, D.C. 20009-1001

Re: FOIA Appeal No. NGC04-004A

Dear Mr. Nelson:

I am responding to your correspondence dated February 27, 2004, in which you appealed what you characterized as a partial denial of your original Freedom of Information Act (FOIA) request dated May 7, 2002, for access to "approximately 1500 pages of records referred to in the final sentence of the third paragraph of the letter from NARA General Counsel Gary M. Stem to Ms. Joanne Drake, dated November 14, 2001." By your letter, you are specifically challenging the continued withholding of what have been previously identified as a subset of 74 pages of the above materials. You have in turn listed four bases for appeal, all of which involve your taking issue with continued assertion by former President Reagan and President George W. Bush of a constitutionally based privilege over the remaining documents being withheld.

Upon further review, I wish to make the record clear that the "74 pages" on which a constitutionally based privilege has been asserted constitute 11 separate documents, comprising 42 unique pages and 32 duplicate pages. I have appended to this letter a list of the 11 documents with identifying information as to each, including dates of creation, author and recipient, and subject heading.

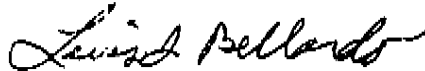
In response your FOIA appeal, NARA again contacted the legal representatives of both former President Reagan and President George W. Bush to ascertain their current views on whether any of the 42 pages would now be candidates for disclosure. The representatives for the former and incumbent presidents both have affirmed to us that they continue to maintain the assertion of a constitutionally based privilege over these pages. Accordingly, your appeal is denied under Executive Order 13233, § 3(d)(1)(i).

For your information, NARA's processes for re-reviewing closed presidential materials will be applied to the documents at issue in your FOIA appeal.

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This exhausts your administrative remedies. Under the FOIA, 5 U.S.C. 552, as made applicable by the Presidential Records Act, 44 U.S.C. 2204(c)(1), judicial review is available to you in the United States District Court for the judicial district in which you reside, or in the District of Columbia, or in the Central District of California, which is where the records are located.

Sincerely,



LEWIS J. BELLARDO
Deputy Archivist of the United States

Attachment

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Withheld Documents Under Assertions of Constitutionally-based Privilege

1. March 13, 1986 Alfred H. Kingon, "The White House, Washington, Memorandum for Donald T. Reagan, "International Economic Issues." (1 copy totaling 4 pages)
2. January 6, 1987, Donald T. Regan, Chief of Staff to the President, Memorandum for the President, "Planning for 1987." (10 pages) (3 copies totaling 30 pages)
3. December 8, 1986, Peter J. Wallison, Counsel to the President, Memorandum for Thomas F. Gibson, Special Assistant to the President and Director of Public Affairs, "Talking Points on Iran/Contra Affairs." (2 pages) (3 copies totaling 6 pages)
4. August 5, 1986, Peter J. Wallison, Counsel to the President, Memorandum for the File, "Executive Privilege, Release of Rehnquist Papers." (4 pages) (3 copies totaling 12 pages)
5. November 14, 1986, Peter J. Wallison, Counsel to the President, Memorandum for Donald T. Regan, Chief of Staff to the President, "Executive Privilege." (1 copy totaling 3 pages)
6. November 22, 1988, Arthur B. Culvahouse, Jr., Counsel the President, Memorandum for the President, "Pardon for Oliver L. North, John Poindexter, and Joseph Fernandez" (1 copy totaling 4 pages)
7. December 1, 1988, Arthur B. Culvahouse, Jr., Counsel to the President, Memorandum for the President, "Pardon for Oliver L. North, John Poindexter, Joseph Fernandez." (1 copy totaling 2 pages)
8. May 3, 1988, Arthur B. Culvahouse, Jr., Counsel to the President, Memorandum for the President, "AIDS Commission Litigation – Executive Privilege." (2 pages) (2 copies totaling 4 pages, one copy of which with annotations)
9. November 10, 1982, H.P. Goldfield, Associate Counsel to the President, Memorandum for Fred F. Fielding, Counsel to the President, "Use of Military Aircraft by Mrs. Reagan." (1 copy totaling 4 pages)
10. August 25, 1988, Arthur B. Culvahouse, Jr., Counsel to the President, Memorandum for the President, "Whether to Appeal Federal District Court Decision Allowing the PLO Observer Mission at the United Nations Office to Remain Open." (1 copy totaling 3 pages)
11. Undated Memorandum for the President from the Attorney General, "Appeal of the Decision Denying the Enforcement of the Anti-Terrorism Act of 1987." (Attachment to August 25, 1988 Culvahouse Memorandum for the President, described #11 above.) (1 copy totaling 2 pages)