

## Terms of Agreement

*CREW v. EOP, et al. & National Security Archive v. EOP, et al.*

Case Nos. 1:07-cv-01707, 1:07-cv-01577

December 14, 2009

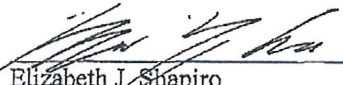
The following constitutes the full and complete agreement between the EOP Federal Records Act agencies, the Office of Administration, and the National Archives and Records Administration (NARA) (collectively "Defendants"), and Citizens for Responsibility and Ethics in Washington (CREW) and National Security Archive (collectively "Plaintiffs") to resolve and to settle the above titled cases.

1. Remaining Document Productions: Defendants have identified a set of documents pertaining to the above-titled case, but not yet produced. This set includes documents gathered in response to CREW's April 2007 FOIA requests. Based on Plaintiffs' limited review of these documents, Plaintiffs have identified a subset for processing for production to Plaintiffs. Of that subset, Plaintiffs have identified four high-priority boxes (OAA 032/OAA 033, OAA 040, OAA 027, OAA 029), and Defendants will process and produce all responsive nonprivileged materials from those boxes by January 29, 2010. Defendants will produce the remaining responsive nonprivileged documents identified in the subset on a rolling basis, but no later than March 31, 2010. Defendants additionally will provide Plaintiffs a list of categories of documents that Defendants have withheld as nonresponsive.
2. White House Counsel's Office Materials: Representatives of President Obama and former President Bush will review for executive privilege the approximately five boxes of White House Counsel's Office materials. Documents subject to valid claims of privilege, as agreed upon by representatives of both Presidents, will be removed. The remaining materials will be made available to Plaintiffs for pre-access review and possible production, following the process described in paragraph 1 of this Agreement. Any discussions with former President Bush's representatives will be completed by February 15, 2010. Defendants will complete their production of any releasable documents by March 31, 2010.
3. Documents Marked "Sensitive": Plaintiffs will identify a limited and reasonable collection of particular documents that have been marked as "SENSITIVE."
  - a. Upon such identification, Defendants will reconsider in good faith the basis and need for designating the selected documents (or particular contents thereof) as "SENSITIVE."
  - b. If Defendants determine that the documents (or contents thereof) cannot be publicly disclosed, Defendants will make every reasonable effort—at Plaintiffs' request—to produce alternative, redacted versions of the selected documents that do not require the "SENSITIVE" marking. At Plaintiffs' request, Defendants will seek the permission of any third party whose proprietary information is included in a document sought to be publicly disclosed.

If Defendants determine they are unable to provide a redacted version that does not require the "SENSITIVE" designation, Defendants must provide an explanation as to why the particular document cannot be redacted.

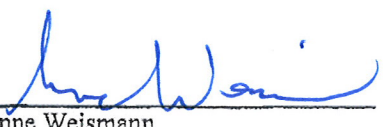
- c. The "SENSITIVE" designation may only be utilized for documents that are likely to compromise national security, jeopardize the security of the White House information technology system, or reveal proprietary information of third parties.
  - d. Plaintiffs will not publish or disclose any documents designated as "SENSITIVE" without written authorization from Defendants.
  - e. Defendants will reconsider on a periodic basis in the future—at Plaintiff's request—whether particular documents remain sensitive (i.e., as systems are replaced or updated) for a period of up to two years from the date of this agreement. This paragraph will apply to previously produced documents and to additional documents produced pursuant to paragraphs 1 and 2 of this Agreement.
4. Description of Current EOP System: Defendants will provide Plaintiffs with a publicly releasable letter describing in as much detail as possible the current EOP computer system, including its email archiving and backup systems. This document will include a detailed description of the controls in the system that prevent the unauthorized deletion of records.
- a. Prior to sending the letter, Defendants will review with Plaintiffs draft(s) of the letter and the Parties will agree upon a final version.
  - b. Defendants recognize that Plaintiffs intend to release the letter publicly, and Defendants do not object to such a release.
  - c. Defendants will produce this letter by January 15, 2010.
5. Restoration of Emails: Defendants will restore from backup tapes all the emails corresponding to the thirty-three days identified by the Plaintiffs and agreed upon by the Parties. These days are identified in the Addendum to this Agreement. If sufficient funds remain following the restoration of the thirty-three days, Defendants will use these funds to restore emails from additional days as agreed upon by the parties.
6. Preparation for Ingestion by NARA: For all of the emails that have been restored from the backup tapes during the pendency of the above-titled cases, the Defendants will take the necessary steps to prepare these emails for ingestion by NARA. The restored emails include the following:
- a. The thirty-three days identified by the Plaintiffs that will be restored by Defendants.
  - b. The twenty-one "Low PIVIT Days" previously restored by Defendants as part of the Three Phase Restoration.
  - c. The forty "Sample Days" previously restored by Defendants as part of the Three Phase Restoration.

7. NARA's Custody of Emails: NARA will maintain the restored emails identified in each subsection of paragraph 6 above as separate series of Presidential or federal records, in accordance with the legal requirements of the Presidential Records Act (PRA) and the Federal Records Act (FRA) as applied to the corresponding Presidential or federal records associated with the George W. Bush EOP. Because the restored forty "Sample Days" have not been separated into Presidential and federal components, NARA will treat this entire set as Presidential records. NARA reserves the right in the future to separate the Presidential and federal records in this set, in which case NARA will treat the federal records in accordance with the FRA.
8. Backup Tapes: NARA will retain custody of at least one copy of the backup tapes that were created or preserved for the purposes of restoring emails in this case. If, after a period of twelve (12) years from the end of the George W. Bush Administration, NARA determines that it is no longer necessary for it to retain custody of these tapes, it will follow the disposal procedures of the Presidential Records Act, 44 U.S.C. § 2203(f)(3). This agreement does not require NARA to undertake additional preservation obligations (e.g., recopying) with respect to these backup tapes.
9. Compare Process: Defendants will complete the Compare Process for the 48 low component days as currently set forth in the Microsoft Design Document.
  - a. Defendants will continue to allow Plaintiffs to engage in the comparison process, including providing input and comments into the process, both before and while the process is undertaken, and attending meetings or conference calls with the Government Contractor performing the comparison.
  - b. Defendants will complete the Compare Process and provide Plaintiffs the results of that Process by April 9, 2010.
  - c. The parties agree that the results of the Compare Process will not alter or affect, in any way, the obligations described in this agreement, including but not limited to the obligations described in paragraph 11.
10. Count: For the 40 "Sample Days" the Defendants will provide Plaintiffs with a "count" of the emails restored for each Calendar Day. For the 33 days selected by Plaintiffs, the Defendants will provide a component-by-component count of the emails for each Calendar Day.
11. Litigation: Plaintiffs will dismiss the above-titled cases with prejudice within 30 days after Defendants fulfill their obligations described in Paragraphs 1, 2, 4, 5, 9, and 10 of this Agreement.
12. Pending Court Orders: Upon dismissal of the above-titled cases, Plaintiffs agree that the pending court orders will no longer be in effect. Defendants may recycle backup tapes of the current Presidential administration in accordance with prevailing industry norms.
13. Mediation: The Parties agree that prior to the termination of the above-titled cases, they will attempt to resolve any disputes arising under this agreement through use of the United States District Court for the District of Columbia Mediation Program.



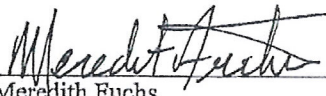
Elizabeth J. Shapiro  
Lynn Lee  
Jonathan Zimmerman  
U.S. Department of Justice  
Civil Division  
Federal Programs Branch  
20 Massachusetts Ave., N.W.  
Washington, D.C. 20530  
Tel.: (202) 305-0531  
Fax: (202) 616-8470

Dated: 12/14/09



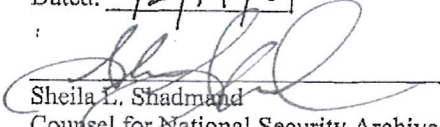
Anne Weismann  
Counsel for CREW  
1400 Eye Street NW  
Suite 450  
Washington, D.C. 20005  
Tel: (202) 408-5565  
Fax: (202) 588-5020

Dated: 12-14-09



Meredith Fuchs  
Counsel for National Security Archive  
George Washington University  
130 H Street NW  
Gelman Suite 701  
Washington, D.C. 20037  
Tel: (202) 994-7059  
Fax: (202) 994-7005

Dated: 12/17/09



Sheila L. Shadmand  
Counsel for National Security Archive  
Jones Day  
51 Louisiana Ave. N.W.  
Washington, D.C. 20001  
Tel: (202) 879 3736  
Fax: 1 202 626 1700

Dated: 12/14/2009

**ADDENDUM**

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Days identified by Plaintiffs for email restoration:

1/6/03  
9/4/03  
9/16/03  
9/30/03  
10/1/03  
10/2/03  
10/3/03  
10/4/03  
10/5/03  
10/6/03  
11/13/03  
12/18/03  
1/9/04  
1/13/04  
1/15/04  
1/19/04  
1/20/04  
1/30/04  
1/31/04  
2/1/04  
2/3/04  
2/5/04  
2/6/04  
2/9/04  
2/10/04  
2/14/05  
2/15/05  
2/16/05  
2/17/05  
4/25/05

11/19/03  
2/14/04  
3/10/05