

SEC. 3. Claim of Executive Privilege by Incumbent President. (a) Upon receipt of a notice of intent to disclose Presidential records, the Attorney General (directly or through the Assistant Attorney General for the Office of Legal Counsel) and the Counsel to the President shall review as they deem appropriate the records covered by the notice and consult with each other, the Archivist, and such other executive agencies as they deem appropriate concerning whether invocation of executive privilege is justified.

(b) The Attorney General and the Counsel to the President, in the exercise of their discretion and after appropriate review and consultation under subsection (a) of this section, may jointly determine that invocation of executive privilege is not justified. The Archivist shall be notified promptly of any such determination.

(c) If either the Attorney General or the Counsel to the President believes that the circumstances justify invocation of executive privilege, the issue shall be presented to the President by the Counsel to the President and the Attorney General.

(d) If the President decides to invoke executive privilege, the Counsel to the President shall notify the former President, the Archivist, and the Attorney General in writing of the claim of privilege and the specific Presidential records to which it relates. After receiving such notice, the Archivist shall not disclose the privileged records unless directed to do so by an incumbent President or by a final court order.

SEC. 4. Claim of Executive Privilege by Former President. (a) Upon receipt of a claim of executive privilege by a living former President, the Archivist shall consult with the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel), the Counsel to the President, and such other executive agencies as the Archivist deems appropriate concerning the Archivist's determination as to whether to honor the former President's claim of privilege or instead to disclose the Presidential records notwithstanding the claim of privilege. Any determination under section 3 of this order that executive privilege shall not be invoked by the incumbent President shall not prejudice the Archivist's determination with respect to the former President's claim of privilege.

(b) In making the determination referred to in subsection (a) of this section, the Archivist shall abide by any instructions given him by the incumbent President or his designee unless otherwise directed by a final court order. The Archivist shall notify the incumbent and former Presidents of his determination at least 30 days prior to disclosure of the Presidential records, unless a shorter time period is required in the circumstances set forth in section 1270.44 of the NARA regulations. Copies of the notice for the incumbent President shall be delivered to the President (through the Counsel to the President) and the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel). The copy of the notice for the former President shall be delivered to the former President or his designated representative.

SEC. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 6. Revocation. Executive Order 13233 of November 1, 2001, is revoked.

BARACK OBAMA.

§ 2205. Exceptions to restricted access

Notwithstanding any restrictions on access imposed pursuant to sections 2204 and 2208 of this title—

(1) the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to Presidential records in the custody of the Archivist;

(2) subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available—

(A) pursuant to subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(B) to an incumbent President if such records contain information that is needed for the conduct of current business of the incumbent President's office and that is not otherwise available; and

(C) to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available; and

(3) the Presidential records of a former President shall be available to such former President or the former President's designated representative.

(Added Pub. L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2527; amended Pub. L. 98-497, title I, § 107(b)(7), Oct. 19, 1984, 98 Stat. 2287; Pub. L. 113-187, §§ 2(a)(2)(B), 8(5), Nov. 26, 2014, 128 Stat. 2005, 2012.)

Editorial Notes

AMENDMENTS

2014—Pub. L. 113-187, § 2(a)(2)(B)(i), substituted “sections 2204 and 2208 of this title” for “section 2204” in introductory provisions.

Par. (2)(A). Pub. L. 113-187, § 2(a)(2)(B)(ii), substituted “subpoena” for “subpena”.

Par. (2)(B). Pub. L. 113-187, § 8(5)(A), substituted “the incumbent President's” for “his”.

Par. (3). Pub. L. 113-187, § 8(5)(B), substituted “the former President's” for “his”.

1984—Par. (1). Pub. L. 98-497 substituted “National Archives and Records Administration” for “National Archives and Records Service of the General Services Administration”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of this title.

EFFECTIVE DATE

Section effective with respect to Presidential records created during a term of office of President beginning on or after Jan. 20, 1981, see section 3 of Pub. L. 95-591, set out as a note under section 2201 of this title.

§ 2206. Regulations

The Archivist shall promulgate in accordance with section 553 of title 5, United States Code,

regulations necessary to carry out the provisions of this chapter. Such regulations shall include—

(1) provisions for advance public notice and description of any Presidential records scheduled for disposal pursuant to section 2203(f)(3);¹

(2) provisions for providing notice to the former President when materials to which access would otherwise be restricted pursuant to section 2204(a) are to be made available in accordance with section 2205(2);

(3) provisions for notice by the Archivist to the former President when the disclosure of particular documents may adversely affect any rights and privileges which the former President may have; and

(4) provisions for establishing procedures for consultation between the Archivist and appropriate Federal agencies regarding materials which may be subject to section 552(b)(7) of title 5, United States Code.

(Added Pub. L. 95-591, §2(a), Nov. 4, 1978, 92 Stat. 2527.)

Editorial Notes

REFERENCES IN TEXT

Section 2203(f)(3), referred to in par. (1), was redesignated section 2203(g)(3) of this title by Pub. L. 113-187, §2(c)(3), Nov. 26, 2014, 128 Stat. 2006, and subsequently redesignated section 2203(g)(4) of this title by Pub. L. 114-136, §3(1), Mar. 18, 2016, 130 Stat. 305.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective with respect to Presidential records created during a term of office of President beginning on or after Jan. 20, 1981, see section 3 of Pub. L. 95-591, set out as a note under section 2201 of this title.

§ 2207. Vice-Presidential records

Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records. The duties and responsibilities of the Vice President, with respect to Vice-Presidential records, shall be the same as the duties and responsibilities of the President under this chapter, except section 2208, with respect to Presidential records. The authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist under this chapter with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a non-Federal archival depository. Nothing in this chapter shall be construed to authorize the establishment of separate archival depositories for such Vice-Presidential records.

(Added Pub. L. 95-591, §2(a), Nov. 4, 1978, 92 Stat. 2527; amended Pub. L. 113-187, §2(a)(2)(C), Nov. 26, 2014, 128 Stat. 2005.)

Editorial Notes

AMENDMENTS

2014—Pub. L. 113-187 inserted “, except section 2208,” after “chapter” in second sentence.

¹ See References in Text note below.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective with respect to Presidential records created during a term of office of President beginning on or after Jan. 20, 1981, see section 3 of Pub. L. 95-591, set out as a note under section 2201 of this title.

CONSTRUCTION

Pub. L. 113-187, §2(a)(4), Nov. 26, 2014, 128 Stat. 2005, provided that: “Nothing in the amendment made by paragraph (2)(C) [amending this section] shall be construed to—

“(A) affect the requirement of section 2207 of title 44, United States Code, that Vice Presidential records shall be subject to chapter 22 of that title in the same manner as Presidential records; or

“(B) affect any claim of constitutionally based privilege by a President or former President with respect to a Vice Presidential record.”

§ 2208. Claims of constitutionally based privilege against disclosure

(a)(1) When the Archivist determines under this chapter to make available to the public any Presidential record that has not previously been made available to the public, the Archivist shall—

(A) promptly provide notice of such determination to—

(i) the former President during whose term of office the record was created; and

(ii) the incumbent President; and

(B) make the notice available to the public.

(2) The notice under paragraph (1)—

(A) shall be in writing; and

(B) shall include such information as may be prescribed in regulations issued by the Archivist.

(3)(A) Upon the expiration of the 60-day period (excepting Saturdays, Sundays, and legal public holidays) beginning on the date the Archivist provides notice under paragraph (1)(A), the Archivist shall make available to the public the Presidential record covered by the notice, except any record (or reasonably segregable part of a record) with respect to which the Archivist receives from a former President or the incumbent President notification of a claim of constitutionally based privilege against disclosure under subsection (b).

(B) A former President or the incumbent President may extend the period under subparagraph (A) once for not more than 30 additional days (excepting Saturdays, Sundays, and legal public holidays) by filing with the Archivist a statement that such an extension is necessary to allow an adequate review of the record.

(C) Notwithstanding subparagraphs (A) and (B), if the 60-day period under subparagraph (A), or any extension of that period under subparagraph (B), would otherwise expire during the 6-month period after the incumbent President first takes office, then that 60-day period or extension, respectively, shall expire at the end of that 6-month period.

(b)(1) For purposes of this section, the decision to assert any claim of constitutionally based privilege against disclosure of a Presidential record (or reasonably segregable part of a record) must be made personally by a former