



April 10, 2023

Via Electronic and Overnight Mail

Acting Archivist Debra Steidel Wall, C/O FOIA Officer
The National Archives and Records Administration
8601 Adelphi Road, Room 3110
College Park, MD 20740

Dr. Brett M. Baker
Office of Inspector General
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001
brett.baker@nara.gov

Biden White House “Special Access Request” for Trump Mar-a-Lago Records

Dear Acting Archivist Wall and Inspector General Baker:

This Freedom of Information Request is based on records released by the National Archives and Records Administration on March 31, 2023.¹ These emails and text messages suggest that the Archives may have misled Congress regarding the nature and extent both of its communications and coordination with Biden Administration political officials and of the Biden White House’s role in the Federal Bureau of Investigation’s raid of former President Donald Trump’s residence on August 8, 2022.

I. Background

On August 8, 2022, the FBI raided Mar-a-Lago purportedly on grounds that additional records existed there that may have contained classified information.² According to press reports, aides to President Biden “were stunned by the development and learned of it from Twitter.”³ This is surprising given the evidence

¹ See National Archives, Freedom of Information Act, Records Responsive FOIA requests related to Former President Trump’s return of 15 boxes of records from Mar-a-Lago, <http://bit.ly/3ZZUj78>.

² Maggie Haberman et al., *F.B.I. Searches Trump’s Mar-a-Lago Residence in Florida*, N.Y. TIMES (Aug. 8, 2022), <http://bit.ly/3ZQdWP6>.

³ Maggie Haberman et al., *F.B.I. Searches Trump’s Florida Home, Signaling Escalation of Inquiries*, N.Y. TIMES, (updated Sept. 6, 2022), <http://bit.ly/3MNQKyf>.

showing that the FBI obtained access to these records through a special access request from the Biden White House on behalf of the Department of Justice.

The Claim: The Archives' Office of Inspector General Made a "Referral" to the FBI

In a February 18, 2022, letter to then-House Committee on Oversight and Reform Chairwoman Carolyn B. Maloney, the Archives stated that upon discovering classified information in fifteen boxes of presidential records and material provided to it by former President Trump in January 2022, its "staff has been in communication with the Department of Justice."⁴

In an August 16, 2022, letter from Acting Archivist Wall to then-House Permanent Select Committee on Intelligence Ranking Member Michael R. Turner, the Archives provided new details regarding its communications with the Biden Department of Justice. Specifically:

When NARA identified items marked as classified national security information within the 15 boxes, NARA referred this issue to the DOJ. Since that time, the DOJ has been exclusively responsible for all aspects of this investigation, and NARA has not been involved in the DOJ investigation or any searches that it has conducted. Accordingly, NARA is unable to provide a briefing or any documents in response to your letter, and we refer you to the DOJ. Please note, however, that NARA is preserving all records related to this matter.⁵

Notably, despite the Archives' claim that it had "not been involved in the DOJ investigation," the documents show that the Archives' official responsible for administering all access requests for Presidential records, John Laster,⁶ was involved in preparing the 15 boxes for FBI review as late as August 23, 2022:⁷

⁴ Letter from David S. Ferriero, Archivist of the United States, to Rep. Carolyn B. Maloney, Chairwoman, H. Comm. on Oversight & Reform (Feb. 18, 2022), <https://bit.ly/3mjrjcX>.

⁵ Letter from Debra Steidel Wall, Acting Archivist of the United States, to Rep. Michael R. Turner, Ranking Member, H. Permanent Select Comm. on Intel. (Aug. 16, 2022), <https://bit.ly/3ZQIwYJ>.

⁶ John "Billy" Laster, in his capacity as NARA's Director of the White House Liaison Division of the Office of Legislative Archives, Presidential Libraries, and Museum Services, is "responsible for administering all access requests for Presidential records that have been transferred to NARA's custody in accordance with the Presidential Records Act (PRA), as amended, 44 U.S.C. §§ 2201-2209." Laster Decl. 1-2, ECF 21-1, *Trump v. Thompson*, No. 1:21-cv-02769-TSC (D.D.C. Oct. 30, 2021) (available at <https://bit.ly/43lxGNh>).

⁷ Message from John Laster to an unknown individual (Aug. 23, 2022, 11:47 AM) (Bates 15B001268), <https://bit.ly/41cFSL>.

John Laster Aug 23, 11:47 AM
need the case number for the FBI review

(b) (6) (b) (6) Aug 23, 11:47 AM
I think it's LW 2022-070
this is the FBI review of the 15 boxes, correct?

John Laster Aug 23, 11:47 AM
correct

(b) (6) (b) (6) Aug 23, 11:48 AM
yep, 2022-070 then

John Laster Aug 23, 11:48 AM
thx

On October 25, 2022, Acting Archivist Wall wrote to then-Ranking Members James Comer and Jim Jordan, claiming “NARA received the 15 boxes from President Trump on January 18, 2022, and then discovered that they contained classified national security information. Shortly after the discovery, NARA consulted with its Office of Inspector General (OIG), which operates independently of NARA. As DOJ has disclosed publicly in court filings, NARA’s OIG subsequently referred the matter to DOJ on February 9, 2022.”⁸ If the OIG acted independently in making a referral to the FBI, then Mr. Laster would not have involved himself in the FBI’s review of the 15 boxes in his capacity as the Director of the White House Liaison Division “responsible for all access requests for Presidential records.”⁹

Similarly, the FBI affidavit before the U.S. District Court for the Southern District of Florida that provided the probable cause for the issuance of a search warrant against Mar-a-Lago on August 8, 2022, stated, “[on February 9, 2022] the Special Agent in Charge of NARA’s Office of the Inspector General sent the NARA Referral via email to DOJ.”¹⁰ However, the evidence is that the Biden White House and the Department of Justice coordinated to obtain the Trump records, and perhaps create a pretext for a law enforcement raid, by way of a “special access request.”

⁸ Letter from Debra Steidel Wall, Acting Archivist of the United States, to Rep. James Comer, Ranking Member, H. Comm. on Oversight & Reform, and Rep. Jim Jordan, Ranking Member, H. Comm. on the Judiciary (Oct. 25, 2022), <https://bit.ly/43nYoFl>.

⁹ See Laster Decl., *supra* note 6.

¹⁰ See Affidavit in support of an application under Rule 41 for a warrant to search and seize, *In the Matters of the Search of: Locations Within the Premises to be Searched in Attachment A*, at 7-8 (S.D. FL) (unsealed August 26, 2022) (cited by Letter from Rep. James Comer, Ranking Member, H. Comm. on Oversight & Reform to Brett M. Baker, Inspector Gen., NARA (September 1, 2022) (Bates 15B001065-66), <https://bit.ly/3mjVHDR>).

The Truth: The Archives Provided the Trump Records to the FBI in Response to a Request from the Biden White House

According to Acting Archivist Wall, the Department of Justice “ask[ed] the President to request that NARA provide the FBI with access to the [fifteen] boxes,” and “[o]n April 11, 2022, the White House Counsel’s Office—affirming a request from the Department of Justice supported by an FBI letterhead memorandum—formally transmitted a request that NARA provide the FBI access to the 15 boxes for its review within seven days.”¹¹ Acting Archivist Wall later confirmed to her staff that:

At issue was the request of the White House, on behalf of the Department of Justice (DOJ), that NARA provide the FBI with access to the 15 boxes, so that the FBI and others in the Intelligence Community could examine them. When NARA receives such requests, we follow the formal process established by the PRA, our regulations at 36 C.F.R. Part 1270, and Executive Order 13489, to provide the former President an opportunity to review the responsive records for constitutionally based privileges.¹²

According to internal emails, Gary Stern, the Archives’ General Counsel, also confirmed that “the Justice Department, via the Biden White House, had made the [special access] request.”¹³

The White House Lacks Legal Authority to Access Records on Behalf of the Justice Department

There appear to be substantial discrepancies between what the Archives has told Congress and what appears in its internal communications. Regardless, the fact that the Archives was working with the Biden White House acting “on behalf of the” Department of Justice raises legal concerns. The special access statute, 44 U.S.C. § 2205, authorizes special access to an incumbent President only when access to presidential records is needed “for the conduct of current business.”¹⁴ Providing documents to the DOJ for purposes of a criminal investigation is not the “current business” of the White House. In fact, if the real party in interest was the Federal Bureau of Investigation, and the real purpose was a criminal investigation of improperly handled classified records, then, as a matter of law, the Archives should have provided the Biden Justice Department with access to the Trump records *only* “pursuant to subpoena or other judicial process issued by a court of competent

¹¹ Letter from Debra Steidel Wall, Acting Archivist of the United States, to Evan Corcoran (May 10, 2022), <https://bit.ly/3UllTL2>.

¹² E-mail from Debra Steidel Wall, Acting Archivist of the United States, to All Employees (Aug. 24, 2022, 3:34 PM) (Bates 15B001043-44), <https://bit.ly/3mjVHDR>.

¹³ E-mail from Gary M. Stern, Gen. Counsel, NARA, to Debra Wall et al. (Aug. 23, 2022, 9:53 PM) (Bates 15B001016), <https://bit.ly/3mjVHDR>. *See also* E-mail from Gary M. Stern, Gen. Counsel, NARA, to Debra Wall et al. (Aug. 23, 2022, 9:08 PM) (Bates 15B001012), <https://bit.ly/3mjVHDR>.

¹⁴ 44 U.S.C. § 2205(2)(B).

jurisdiction for the purposes of any civil or criminal investigation or proceeding.”¹⁵ Not only did the Archives apparently mislead Congress with respect to the Trump records, it seemingly violated the law in order to accommodate the partisan Biden White House.

II. Requested Records

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests access to the following records within twenty business days:

- A. All records of the criminal referral from the Archives’ Office of Inspector General to the Federal Bureau of Investigation.
- B. All records relating to the existence of a record reflecting the Office of Inspector General’s determination that a violation of Federal criminal law occurred.¹⁶
- C. All records relating to case number LW 2022-070.
- D. All records of communications between the Archives and the White House referring to a special access request for Presidential Records made under 44 U.S.C. § 2205(2).
- E. All records of communications between the Archives and/or the Office of Inspector General with the Department of Justice and any of its components referring to a special access request for Presidential Records made under 44 U.S.C. § 2205(2).
- F. All records identifying the Archives’ staff involved in providing access to the “15 boxes” referenced by Acting Archivist Wall in her email of August 24, 2022, Bates 15B001043-44, to the Federal Bureau of Investigation.
- G. All communications between the Archives and/or the Office of Inspector General with any person employed by the Department of Justice, the Federal Bureau of Investigation, and/or the Executive Office of the President regarding the “15 boxes” referenced by Acting Archivist Wall in her email of August 24, 2022, Bates 15B001043-44.
- H. All communications between the Archives and the Office of Inspector General regarding the “15 boxes” referenced by Acting Archivist Wall in her email of August 24, 2022, Bates 15B001043-44.
- I. All records of or regarding the processing of items A – G, including but not limited to all records of consultation, claims of privilege, and White House or other agency equities.

¹⁵ 44 U.S.C. § 2205(2)(A).

¹⁶ *See e.g.* 5 U.S.C. § 404(d) (Inspector General Act) (“In carrying out the duties and responsibilities established under this chapter, each Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.”).

The relevant time frame for each item is November 1, 2021, to the date of final processing.

III. Processing

Processing should strictly comply with the processing guidance in the Attorney General's Memorandum on Freedom of Information Act Guidelines.¹⁷ If you have any questions or believe further discussions regarding search and processing will facilitate more efficient production of records of interest to AFL, please do not hesitate to contact me at FOIA@aflegal.org.

IV. Fee Waiver Request

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 59,000 unique addresses, our Twitter page has 64,000 followers, the Twitter page of our Founder and President has over 423,000 followers, our Facebook page has 121,000 followers, and we have another approximately 31,700 followers on GETTR.

Per 5 U.S.C. § 552(a)(4)(A)(iii), 36 C.F.R. § 1250.28(a), AFL requests a waiver of all search and duplication fees associated with this request. The requested information specifically concerns identifiable operations and activities of the Federal Government, including how the NARA OIG has interacted with the FBI and NARA staff. Because there are concerns about compliance with statutory requirements, disclosure of the requested information would contribute significantly to public understanding. Furthermore, AFL has a demonstrated ability and intention to effectively convey the information broadly to the public; AFL's status as a representative of the news media has been recognized by other agencies for granting fee waivers, including this Department in prior requests, as well as the Departments of Defense, Education, Energy, Justice, Interior, and Homeland Security. Finally, as a non-profit organization, AFL has no identifiable commercial interest, and the request is made entirely to serve the public interest. We are, of course, available to provide additional information in writing or offline in support of this request. If AFL's request for a fee waiver is not granted in full, please get in touch with us immediately upon making that determination.

¹⁷ U.S. DEP'T JUST. (Mar. 15, 2022), <https://bit.ly/3MyaQwg>.

V. Production

To accelerate the release of responsive records, AFL welcomes production on an agreed rolling basis. Please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Sincerely,

/s/ Michael Ding

Michael Ding

America First Legal Foundation

cc: Hon. Jim Jordan, Chairman, House Committee on the Judiciary
Hon. Jerrold Nadler, Ranking Member, House Committee on the Judiciary
Hon. James Comer, Chairman, House Committee on Oversight and
Accountability
Hon. Jamie Raskin, Ranking Member, House Committee on Oversight and
Accountability
Hon. Michael Turner, Chairman, House Permanent Select Committee on
Intelligence
Hon. Jim Hines, Ranking Member, House Permanent Select Committee on
Intelligence