

PUBLIC CITIZEN LITIGATION GROUP

1600 20TH STREET, N.W.
WASHINGTON, D.C. 20009-1001

—
(202) 588-1000
FAX: (202) 588-7795

Scott L. Nelson
(202) 588-7724
SNELSON@CITIZEN.ORG

March 11, 2001

Gary M. Stern
General Counsel
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

Re: Formerly Restricted Reagan Presidential Records

Dear Gary:

As you know, one of the purposes of our pending lawsuit, *American Historical Association, et al., v. National Archives & Records Administration*, No. 1:01CV02447 (CKK) (D.D.C.), was to compel the release of the approximately 68,000 pages of records from the Reagan Presidential Library that had been withheld on the basis of the "P5" restriction as of January 20, 2001, when that restriction expired. On January 3 of this year, approximately 8,000 pages of those records were released, leaving a balance of about 60,000 still outstanding.

On February 8, 2002, the government filed its motion to dismiss our lawsuit. Accompanying that motion was a letter of the same date to you from White House Counsel Alberto Gonzales, advising you that President Bush had determined not to make any claim of privilege as to approximately 59,000 of the remaining pages of records. (Also accompanying the government's motion was a previous letter, dated November 29, 2001, from Ms. Joanne Drake, stating that as former President Reagan's representative, she was not objecting to the release of any of the documents. Apparently this is among the letters that have been withheld on purported FOIA Exemption 5 grounds from NARA's response to Bruce Craig's request for communications between NARA and President Reagan's representatives on this subject, which is the subject of a pending appeal.)

The government's motion to dismiss relied on the Gonzales letter to argue that our lawsuit was "moot" to the extent that it sought release of "the approximately 67,000 pages *made public since this action was filed*," and that our "claim for release of these *now-publicly-available records* should be dismissed" (Govt. Mem. 24, n.18) (emphasis added). In other words, the government represented to the Court that the 59,000 pages of records were "publicly-available" as of February 8, 2001.

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Upon my return to Washington following two weeks out of town, I reviewed the government's motion, and then attempted to find NARA's announcement of the release of the 59,000 pages of records. I was puzzled to find that there had been no announcement, until I learned that there in fact had been no release and that, despite the statements in the government's motion, the 59,000 pages were not yet publicly available. Now, a full month after the government told the court that the records had been "made public" and were "publicly-available," NARA continues to withhold them.

I assume that the factual misstatements in the government's motion were inadvertent and not intended to mislead the court, as the government stated in its latest brief filed Friday after I apprised counsel for the government of the discrepancy between the statement in their earlier brief and the facts. The fact remains, however, that the court was advised that these records are publicly available, yet they are not. Just as importantly, the White House's determination that no privilege will be asserted as to these records, coupled with the Reagan representative's prior disclaimer of any assertion of privilege, removes any possible legal justification for the withholding of these records even under the (unlawful) terms of the Bush Executive Order.

The government's latest brief attaches another letter from the White House Counsel, this one dated March 7, 2002, stating that the White House authorizes the release of all but 150 pages of the records. The letter asks you to make all the rest of the records "available to the public at the earliest practicable time." Despite this latest letter, NARA has still not announced an opening of either the 59,000 pages authorized in February or the additional pages authorized last week. NARA's failure to do so is in sharp contrast to its immediate announcement of plans to release the 8,000 pages whose release the White House authorized in December.

The statutory restriction of these records expired nearly 14 months ago. The possibility that 59,000 pages of the records might be subject to a valid claim of constitutionally based privilege was definitively eliminated a month ago, and the White House's latest letter eliminates any possible basis for restricting nearly 1,000 more pages. The law requires that NARA do what its lawyers told the Court it had done last month: Release the documents.

Accordingly, on behalf of my clients in the *AHA* action, I request that NARA make the nearly 60,000 pages of documents cleared by the White House available to the public forthwith, or else explain to the Court why it continues to withhold them. Please let me know, at your earliest convenience, whether and when you intend to make these records public.

Sincerely yours,

Scott L. Nelson

cc: Craig M. Blackwell