THE WHITE HOUSE

WASHINGTON

January 6, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft DOJ Report on S. 1324 and Draft CIA Report on S. 1324 and H.R. 4431 (Companion Bill); Bills to Regulate Disclosure of Information Held by the CIA

OMB has asked for our views by close of business today on proposed Justice and CIA reports on pending legislation to relieve the CIA from certain burdens associated with the processing of FOIA requests. The legislation, S. 1324 and H.R. 4431, would permit the Director of Central Intelligence to designate certain CIA operational files as exempt from the search, review, and disclosure requirements of the FOIA. The theory is that since the vast majority of such CIA files are not ultimately subject to disclosure under FOIA in any event, the Agency should not be required to go through the costly and time-consuming drill of reviewing the files for records responsive to the request. The bill has passed the Senate and is awaiting action in the House.

Both proposed reports support passage of the legislation. The CIA report reviews the major aspects of the bill, including the exceptions from exemption for (1) information on a special activity when the fact of the activity's existence is no longer classified, (2) information reviewed in the course of an investigation into possible improprieties or violations of law, and (3) information on a citizen in response to a FOIA request filed by that citizen. These are only exceptions to the possible exemption of files from review; documents in these categories would not lose any exemption from disclosure they otherwise enjoy. The CIA accepts these exceptions.

The Justice report discusses the unique problems of defending the CIA in FOIA suits, including the need to use only attorneys and staff with the appropriate clearances and the need for frequent in camera reviews by courts. The Justice report notes that the elaborate and costly procedures necessitated by the sensitive classified material almost always yield the same result: no disclosure of records.

Both the CIA and Justice proposed reports are based on previously cleared testimony delivered when the bill was considered by the Senate. I have no objections.

THE WHITE HOUSE

WASHINGTON

January 6, 1983

MEMORANDUM FOR JAMES C. MURR
CHIEF, ECONOMICS - SCIENCE - GENERAL
GOVERNMENT BRANCH, OMB

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Draft DOJ Report on S. 1324 and Draft CIA Report on S. 1324 and H.R. 4431 (Companion Bill); Bills to Regulate Disclosure of Information Held by the CIA

Counsel's Office has reviewed the above-referenced draft reports, and finds no objection to them from a legal perspective.

FFF:JGR:aea 1/6/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 6, 1983

MEMORANDUM FOR JAMES C. MURR
CHIEF, ECONOMICS - SCIENCE - GENERAL
GOVERNMENT BRANCH, OMB

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft DOJ Report on S. 1324 and Draft CIA Report on S. 1324 and H.R. 4431 (Companion Bill); Bills to Regulate Disclosure of Information Held by the CIA

Counsel's Office has reviewed the above-referenced draft reports, and finds no objection to them from a legal perspective.

FFF:JGR:aea 1/6/84
cc: FFFielding/JGRoberts/Subj/Chron

ID # 192944 CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

3R FG006-02

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) / /

Name of Correspondent: James C. MURR

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Draft D.O.J. report on S. 1324 and draft CIA report on S. 1324 and H.R. 4431 (companion bill), bills to regulate disclosure of information held by the CIA

ROUTE TO: Office/Agency (Staff Name)	ACTION: Action Code	Tracking Date YY/MM/DD	DISPOSITION: Type of Response	Code	Completion Date YY/MM/DD
CWHILL	ORIGINATOR DD	83/02/28			/ /
	Referral Note:				
CWAT18	D DD	83/02/28		S	84/01/06 CWB
	Referral Note:				
John - FYI - Peter worked on S. 1324. S.		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: See ID 183978 CU DD

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
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5/81

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

December 20, 1983

LEGISLATIVE REFERRAL MEMORANDUM 192944

TO: LEGISLATIVE LIAISON OFFICER

Central Intelligence Agency (DOJ draft report only)
National Security Council
Department of Justice (CIA draft report only)
Department of Defense

SUBJECT: Draft DOJ report on S. 1324 and draft CIA report on S. 1324 and H.R. 4431 (companion bill), bills to regulate disclosure of information held by the CIA

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than

COB FRIDAY, JANUARY 6, 1983.

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: C. Wirtz F. Fielding K. Wilson A. Donahue

Central Intelligence Agency

Washington, D.C. 20505

Honorable Jack Brooks, Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for the views of the Central Intelligence Agency (CIA) on H.R. 4431, the "Intelligence Information Act of 1983," and its companion bill S. 1324. This legislation seeks to amend the National Security Act of 1947 to provide the CIA with substantial relief from the unique search and review burdens it faces in complying with the Freedom of Information Act (FOIA). In doing so, this legislation would allow the CIA to improve its responsiveness to FOIA requesters. The CIA strongly supports enactment of this legislation.

Section 3 of this legislation provides for a new title VII to the National Security Act of 1947 (50 U.S.C. 402, et seq.). A new section 701 contains the provisions concerning the processing of FOIA requests to the CIA. Subsection 701(a) gives the Director of Central Intelligence (DCI), in furtherance of his statutory responsibility to protect intelligence sources and methods, the authority to designate as exempt from the search, review, and disclosure requirements of the FOIA, operational files located within the Directorate of Operations, the Directorate for Science and Technology, and the Office of Security. The subsection furthermore requires that the operational files within each of these components must document specified areas of intelligence information before they can be recommended by the appropriate Deputy Director or office head pursuant to the procedures in subsection 701(d). ~~and approved for designation by the DCI.~~ (Insert A) By placing the ultimate approval authority with the DCI, the legislation allows the Agency an important degree of flexibility in making designation or dedesignation decisions. In other words, while a given set of operational files may meet the criteria set forth for designation, the DCI would have the discretion not to designate certain files and, eventually, to dedesignate specific files. The legislation specifically requires the implementing regulations to provide for a review of each designation not less than once every ten years.

ignation

(A) The DCI must then provide written approval before any recommended designation becomes effective.

Two subsections of section 701 provide exceptions to the exemption of designated operational files from search and review. Subsection 701(a) contains a proviso which requires the search and review of designated operational files in response to a request for (1) information concerning a special activity when the fact of the existence of the special activity is no longer classified; or (2) information reviewed and relied upon during the course of an investigation by various enumerated entities to determine whether there has been an impropriety, or violation of law, Executive Order, or Presidential directive committed in the course of an intelligence activity. In addition, subsection 701(c) requires the search and review of both designated and nondesignated files in response to requests by United States citizens or aliens lawfully admitted for permanent residence for information on themselves pursuant to either the FOIA or the Privacy Act of 1974. The Agency accepts these as reasonable and necessary exceptions to the exemption of designated operational files from search and review.

During the course of the consideration of S. 1324 by the Senate Select Committee on Intelligence, concern was expressed over the extent to which there would be judicial review of the file designations. The result of the subsequent discussions was the addition of a new subsection (e) to the bill which sets forth the parameters of judicial review and the appropriate remedy for noncompliance with the requirements of this section. A similar provision is included in HR 4431.

We appreciate the opportunity to comment upon this legislation. With the recent passage of S. 1324 by the Senate, we look forward to consideration of this legislation by your Committee. The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Ernest Mayerfeld
Deputy Director, Office of Legislative Liaison

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Jack Brooks
Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your request for the views of the Department of Justice on S. 1324, a bill "To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, ~~and for other purposes.~~" The Department of Justice recommends enactment of the proposed legislation.

In general, the bill would amend the National Security Act by adding a new § 701 relating to disclosure of Central Intelligence Agency records to the public. Section 701(a) would exclude the operational files located in the CIA's Directorate of Operations, Directorate for Science and Technology, and Office of Security from the requirements of the FOIA to search its files and disclose any nonexempt records to any person making a request for them under the Act. The proviso to Section 701(a) and Section 701(c) would limit the scope of that exclusion, so that the CIA would continue to respond to FOIA requests for operational files with respect to (1) requests by United States citizens or resident aliens for information on themselves, (2) any special activity the existence of which is not exempt under the FOIA; and (3) the subject of a pending investigation by certain authorities of possible impropriety or violation of law, Executive order, or Presidential directive in the conduct of an intelligence activity.

Although the bill, by its terms, relates solely to information in the files of the CIA, it has significance for the Department of Justice which, of course, represents the CIA in litigation under the Freedom of Information Act ("FOIA"). The Department of Justice shares the CIA's judgment that this

proposed legislation would relieve significant burdens in responding to FOIA requests for information contained in the enumerated files. Although many agencies are burdened with FOIA requests, the compartmented nature of CIA files and the extreme sensitivity of the information contained in them pose particular difficulties in searching and processing requested material.

These difficulties are only compounded when litigation over the CIA's FOIA responses ensues. The Department can only assign to CIA cases those attorneys who have the necessary security clearances to deal with the information at issue. Working with the CIA, these attorneys must formulate the sort of public affidavit called for in Phillippi v. CIA, 546 F.2d 1009 (D.C. Cir. 1976), and Ray v. Turner, 587 F.2d 1187 (D.C. Cir. 1978), without at the same time disclosing the very information they are required to protect. Often, for the courts to appreciate the national security implications of the records at issue, extensive classified affidavits explaining their sensitivity must be filed. The courts, in turn, must struggle with the paradox of explaining the reasons for their decisions not to disclose particular information without disclosing the underlying facts.

This extensive expenditure of time and effort by senior intelligence personnel and by attorneys at the Department and the CIA, however, results in virtually no benefit to the public, and only drains the government's resources and unnecessarily increases the cost to the public of the FOIA. With respect to the records covered by S. 1324, at the conclusion of this lengthy process, the courts have almost uniformly upheld the classification of the materials at issue.

S. 1324 would end this needless waste of intelligence and litigation resources which has proven to lack any offsetting public benefit. Equally important, the bill should significantly allay the perception of those who cooperate with the CIA that the confidentiality of the information furnished by them cannot be assured.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 9, 1984

FOR: FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: H.R. 4017

OMB has asked for our views on a proposed GSA report on H.R. 4017, a bill that would terminate the authority of the Administrator of GSA to accept land, buildings, and equipment donated for use as a Presidential library. That authority is currently codified at 44 U.S.C. § 2108. The ostensible purpose of the bill is to eliminate the escalating costs associated with the maintenance and operation of Presidential libraries.

The proposed GSA letter correctly notes that H.R. 4017 would increase, not decrease government expenses. The Presidential Records Act of 1978 requires the Archivist to maintain Presidential records in an archivial facility, 44 U.S.C. § 2203(f), so H.R. 4017 would simply add the cost of acquiring such a facility to existing expenses. I have reviewed the proposed GSA report and have no objections. The objective description of the terms of the Presidential Records Act of 1978 in the report is accurate.

Attachment

THE WHITE HOUSE

WASHINGTON

January 9, 1984

MEMORANDUM FOR GREG JONES
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: GSA Report on H.R. 4017

Counsel's Office has reviewed the above referenced report, and finds no objection to it from a legal perspective.

FFF:JGR:ph 1/9/84
cc: FFFielding
JGRoberts
Subject
Chron.

THE WHITE HOUSE

WASHINGTON

January 9, 1984

MEMORANDUM FOR GREG JONES
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: GSA Report on H.R. 4017

Counsel's Office has reviewed the above referenced report, and finds no objection to it from a legal perspective.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO	John Roberts	Take necessary action	☐
	Stuart Smith	Approval or signature	☐
		Comment	☐
		Prepare reply	☐
		Discuss with me	☐
		For your information	☐
	GMJ	See remarks below	☐
FROM	Greg Jones (x3856)	DATE	1/6/84

REMARKS

RE: Former President's legislation

Any objection to the attached GSA report on HR 4017?

It looks OK to me; although I think it might be advisable for GSA to say outright that it opposes the bill.

cc: Jim Murr

OMB FORM 4
Rev Aug 70

Honorable Jack Brooks
Chairman, Committee on
Government Operations
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Your Committee requested the views of the General Services Administration (GSA) on H.R. 4017, a bill "To terminate the authority of the Administrator of General Services to accept land, buildings, and equipment as a gift to the United States for the purpose of creating a Presidential archival depository."

The purpose of H.R. 4017 is to reduce government expenditures for the Presidential library system by preventing the creation of any additional libraries. GSA is aware of the substantial costs of maintaining and operating Presidential libraries and supports reasonable attempts to reduce these costs, such as combining private funding with public support for the operations and maintenance of the libraries. We note, however, that H.R. 4017 would result in an increase, rather than a reduction, in the costs to the government.

The Presidential Records Act of 1978 provides that all records documenting official acts of the President which are created after January 20, 1981, become Federal property in the care of the Archivist of the United States at the end of the President's term of office. This Act further provides that the Archivist shall deposit all such Presidential records in an archival facility operated by the United States. If the Administrator is no longer empowered to accept donated land and buildings for housing these records, Federal funds will have to be used to acquire appropriate space. The effect of this action would be to increase the cost of administering Presidential records. We believe that this would be contrary to the public interest.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely,

THE WHITE HOUSE

WASHINGTON

January 10, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Proposed GSA Reports on H.R. 3138 and H.R. 2446

OMB has asked for our views by January 13 on proposed GSA letters to House Government Operations Committee Chairman Jack Brooks on H.R. 3138 and H.R. 2446. The former bill would amend the Presidential Libraries Act to permit GSA to accept land, buildings, and equipment for a Presidential library only if there were also donated funds sufficient to establish an endowment to cover in full the anticipated costs of operating the facility. The latter bill would mandate a central depository for records of future former Presidents, and contains other miscellaneous provisions concerning former Presidents.

GSA proposes to object to both bills. It notes that the private endowment requirement of H.R. 3138 is inappropriate, not only because the papers in question become Government property, but also because the costs of operating and maintaining a Presidential Archival facility are not stable, precluding any reasonable determination if the amount of an initial endowment is adequate. GSA also objects to the provision making the bill effective as of May 25, 1983, since it would then cover the Nixon and Carter libraries, which are in various stages of development under different rules. GSA recommends that the bill, if passed, be effective only for libraries for Presidents first taking office on or after January 20, 1985.

GSA objects to the central depository notion of H.R. 2446, contending that the current system of dispersed, donated facilities is less expensive. The proposed GSA report also criticizes the "phased construction formula" for the central depository in H.R. 2446 as based on unrealistic assumptions concerning the volume of Presidential papers and the needs of those who will be using the facility. With respect to the miscellaneous provisions concerning former Presidents, GSA recommends that a proposed 4000 square foot office limit only be applied prospectively (two of the three former Presidents exceed the limit), and that a former President be provided a temporary office in the Washington area for the period immediately after he leaves office.

H.R. 2446 would appropriate $750,000 for a former President and Vice President for transition purposes. GSA recommends setting the figure at $1 million and adding a provision requiring that the President include in his budget "for each fiscal year in which his regular term of office will expire" a proposed appropriation for carrying out this section of the Act. This suggestion would impose an odd obligation on an incumbent planning to run for a second term. Thus, if GSA's recommendation were in effect, the budget President Reagan will submit next month would have to include an appropriation for his transition out of office next year. I recommend deleting this effort to legislate pessimism. I have raised the matter with OMB, and officials there assure me they will delete the GSA proposal for reasons independent of those outlined above. OMB always objects to any effort to legislate the content of the President's budget, which is precisely what the GSA proposal would do.

The flurry of reports on Presidential libraries is, incidentally, occasioned by the imminence of hearings before Brooks' committee on this subject.

Attachment

THE WHITE HOUSE

WASHINGTON

January 10, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed GSA Reports on H.R. 3138 and H.R. 2446

Counsel's Office has reviewed the proposed GSA report on H.R. 3138, and finds no objection to it from a legal perspective. We have also reviewed the proposed GSA report on H.R. 2446. On page 3 of that proposed report, we recommend deleting the last sentence of the fourth paragraph. As a general matter we should resist, and certainly not gratuitously recommend, restrictions on the President's discretion concerning what to include in his budget. In this case there is the additional objection that the provision proposed by GSA would impose on an incumbent planning to run for a second term the uncomfortable burden of proposing an appropriation for his transition out of office.

FFF:JGR:aea 1/10/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 10, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed GSA Reports on H.R. 3138 and H.R. 2446

Counsel's Office has reviewed the proposed GSA report on H.R. 3138, and finds no objection to it from a legal perspective. We have also reviewed the proposed GSA report on H.R. 2446. On page 3 of that proposed report, we recommend deleting the last sentence of the fourth paragraph. As a general matter we should resist, and certainly not gratuitously recommend, restrictions on the President's discretion concerning what to include in his budget. In this case there is the additional objection that the provision proposed by GSA would impose on an incumbent planning to run for a second term the uncomfortable burden of proposing an appropriation for his transition out of office.

FFF:JGR:aea 1/10/84
cc: FFFielding/JGRoberts/Subj/Chron

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO	John Roberts	Take necessary action	☐
	Stuart Smith	Approval or signature	☐
		Comment	☐
		Prepare reply	☐
		Discuss with me	☐
		For your information	☐
		See remarks below	☐
FROM	Greg Jones 1/9/84	DATE	

REMARKS

May I have your comments on the attached GSA report by January 13?

Thanks.

cc: Jim Murr

OMB FORM 4
Rev Aug 70

General
Services
Administration Washington, DC 20405

Honorable Jack Brooks
Chairman, Committee on
Government Operations
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Your Committee requested the views of the General Services Administration (GSA) on H.R. 2446, a bill "To reform the laws relating to former Presidents."

H.R. 2446 attempts to mandate a central depository that would be constructed and maintained at minimal expense. The major premise of this provision is that a central facility limited in size to a formula set forth in section 102 will reduce the costs of preserving and making available Presidential historical materials.

This premise and formula have the following weaknesses:

1. Centralization would require the Government to acquire land and construct a Presidential library building or buildings at substantially higher cost than the current system of donated facilities. In fact, a comparison of costs based on the "present value" of the alternatives reveals that a central library located in the Washington metropolitan area would cost more than three times as much as the current sytem of decentralized libraries. (Based on "Presidential Library Study," General Services Administration, Office of Plans, Programs, and Financial Management, May 16, 1980.)

2. The formula attempts to consolidate functions and space utilization which are not easily and systematically consolidated. Construction of research areas would be most difficult. By the formula and because of the mandated phased construction, it would not be possible to construct a central research facility. Separate research rooms for each former President's papers will require more personnel than a central research area and prohibit the use of shared space. The same problem occurs in regard to the museum space limitation.

3. The formula assumes that the volume of historical materials produced by future administrations will be produced at predictable rates. In fact, the volume cannot be safely predicted beyond the current administration. The rate has been accelerating with each President. This phenomenon may continue, or the rate may decline with the use of automation. Being confined to a formula based on a past that is not necessarily indicative of the future creates the possibility of a facility that is either severely inadequate or embarrassingly oversized.

4. By limiting the first phase of construction to space for historical documents of two administrations, the bill virtually assures that the structure will be outgrown shortly after, if not before, it has been completed. As a result, Presidential records of future administrations routinely would be located in costly and inadequate temporary storage, while the central depository was repeatedly expanded at high cost to the Government. Phased construction would also require unnecessary expense in preparing links between new and old sections of the building and transforming exterior into interior walls. It would result in a honeycombed structure which would be difficult and expensive to maintain and administer. A more reasonable approach would be to construct a single depository building capable of caring for records accumulated over perhaps 30 years.

5. The bill fails to authorize space for staff offices and work areas, for audiovisual reproduction laboratories, and for automated equipment. Further, there is no allowance in the formula for hallways, stairways, restrooms, utility areas, and staff rest areas.

In addition to the foregoing difficulties with the main provisions of this bill, we offer the following additional comments:

1. Location. The viability of a Presidential library depends on the willing cooperation of the President. A central depository must have the full support of each President in order to obtain valuable personal historical materials related to the President's official records, including the President's own personal and political papers. It might be more difficult to obtain this necessary cooperation if the central library was at a site unacceptable to a President.

2. Assistance to Private Institutions. Section 102(c)(1) provides that the Administrator may provide technical assistance to individuals and groups for the establishment of private Presidential museums and libraries and may lend any item deposited or stored in his custody to such a private institution. The language of this section suggests that the Administrator should encourage development of competing depositories for historical materials relating to a Presidential administration ("Presidential library"). Such development would tend to encourage dispersal of the valuable historic record of an administration and would encourage deposit in private custody of sensitive personal materials relating to Government actions. This development would hinder scholarship and would be contrary to the public interest.

3. Duplication. Section 102(c)(2) states that the Administrator shall provide that "the more historically significant Presidential records are duplicated and are made available on request on a reimbursable basis." National Archives policy provides all historical materials available for research use may be duplicated on a reimbursable basis. Materials that are security classified, restricted pursuant to terms of the Presidential Records Act of 1978 or other legislation, or otherwise restricted, should not be duplicated for the public until the materials are available for research. Systematic duplication projects should be limited to series of records that have been opened for research use in their entirety.

We would also like to offer the following comments on Section 202 of the proposed legislation concerning the offices and staff of former Presidents. This section would amend the first section of the Act entitled "An Act to provide retirement, clerical assistants, and free mailing privileges to Presidents of the United States, and for other purposes," (3 U.S.C. 102 note). Section 1 of this Act as used below will refer to this section as amended by the subject bill.

Section 1(b) on page 8, lines 15-22 provides each former President a maximum of 4,000 square feet of office space. While we presently have one space assignment for each of the three former Presidents, two of these assignments exceed the proposed 4,000 square feet maximum. The largest assignment is that of former President Carter in Atlanta, Georgia with 5,679 square feet assigned. If 4,000 square feet is to be the maximum permitted, we suggest this limit be imposed on any future space assignments.

Section 1(b)(1)(A) provides a former President with one suitable office at such place within the United States as the former President may designate. We feel that in addition to providing for a permanent office for the former President that some provisions should be made to allow for temporary space in the Washington, DC area for the period immediately following the former President's term of office to assure the orderly transition of his files and records from the White House to his new office.

In Section 1(j)(1) on page 12, line 10 insert "to the Administrator of General Services" after the word "appropriated." Line 16 authorizes to be appropriated a total of $750,000 for a former President and a former Vice-President for the fiscal year in which the term of a former President expires. The latest Transition Act authorized $1 million for the outgoing administration. Under the transition for former President Carter, $861,526 of the $1 million appropriation was spent. With the increases due to inflation and other factors, the proposed figure should be raised to $1 million. Also, the bill should specify that a proposed appropriation should be included in the President's Budget similar to the provision for funds for the incoming administration, i.e., "The President shall include in the budget transmitted to Congress for each fiscal year in which his regular term of office will expire a proposed appropriation for carrying out the purposes of this section of the Act." 7

In Section 1(j)(2) on page 13, after line 3 insert "(D) The monetary allowance for each former President, equal to the annual rate of basic pay, as in effect from time to time, of the head of an executive department authorized by section (a) of the Act of August 25, 1958, as amended, is in addition to the authorization of appropriation specified in section 1(j)(2) (A), (B), and (C)."

In Section 1(j)(3) on page 13, after line 17 insert "(D) The monetary allowance for each former President, equal to the annual rate of basic pay, as in effect from time to time, of the head of an executive department authorized by section (a) of the Act of August 25, 1958, as amended, is in addition to the authorization of appropriation specified in section 1(j)(3) (A), (B), and (C)."

In Section 1(j)(4) on page 14, after line 2 insert "This is in addition to the annual authorization of appropriation for each former President as specified in 1(j) (2) and (3)."

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely,

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO		Take necessary action	☐
	John Roberts	Approval or signature	☐
	Stuart Smith	Comment	☐
		Prepare reply	☐
		Discuss with me	☐
		For your information	☐
		See remarks below	☐
FROM	Greg Jones (x3856)	DATE	1/9/84

REMARKS

Please give me your comments on the attached GSA letter by January 13, 1984. There is going to be a hearing next month before House Gov. Ops. on Presidential libraries.

cc: Jim Murr

OMB FORM 4
Rev Aug 70

General
Services
Administration Washington, DC 20405

Honorable Jack Brooks
Chairman, Committee on
Government Operations
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Your Committee requested the views of the General Services Administration (GSA) on H.R. 3138, a bill "To improve the preservation and management of Presidential records, and for other purposes."

H.R. 3138 would amend the Presidential Libraries Act (44 U.S.C. 2108) to require that the Administrator of General Services, after May 25, 1983, shall not accept title to any land, building, or equipment for the purpose of creating a Presidential archival depository unless the Administrator determines that there is available, by gift or bequests donated to the National Archives Trust Fund account for that depository, a sufficient amount in an endowment to cover, in full, the anticipated cost of maintaining the depository. The bill would also amend the Presidential Libraries Act to allow a Presidential archival depository to solicit as well as accept gifts and bequests for deposit in the depository's account in the National Archives Trust Fund.

Under existing law the Administrator of General Services is authorized to accept on behalf of the United States private donations of buildings, land, equipment, papers, museum objects, and other historical materials for the purpose of establishing a Presidential library. After receiving these facilities through private donation, the Administrator is authorized to operate, protect, and maintain these libraries from funds appropriated for that purpose by the Congress.

While we support the concept of private support for certain library activities, we believe that the requirement specified in H.R. 3138 that endowments be established to cover the full cost of maintaining the land, buildings, and equipment for a Presidential library is not feasible. While non-Federal money has always been employed in the establishment of Presidential libraries, it was never contemplated that their continuing maintenance should be based on private funding. The existing libraries were, in fact, created and developed on the basis of agreements by which the Government assumed financial responsibility for at least the basic activities of each library. The 1978 Presidential Records Act reinforces this since the "papers" once donated by a President are now Government property.

Moreover, once an endowment was established, both the principal and the annual income would tend to remain fairly stable, while the cost of maintaining the buildings, land, and equipment could escalate because of inflation or increased requirements for repairs and routine maintenance as the buildings get older. Estimating these future costs to enable the Administrator to determine the requirements for the amount of the initial endowment would be extremely difficult, if not impossible, with any degree of accuracy.

We also believe that requiring endowments for any Presidential archival depository established after May 25, 1983, is untenable. At the present time, there are two Presidential libraries, Nixon and Carter, in varying stages of development under a previously assumed set of requirements. To impose the endowment requirement on the libraries which are now in the development phase would be difficult. The planning and fund raising efforts of groups representing Presidents Nixon and Carter have been based on the assumption that the Government would assume responsibility for the full operation and maintenance of future libraries as has been past practice. Changing this assumption at this stage could have severe and detrimental effects. President Carter could choose to remove his papers from the Government's custody and control. This would deprive the Government of easy access to critical national security and domestic policy papers and might dramatically lengthen the period during which his papers would be closed to public access.

At the very least if the endowment requirement were to be legislatively mandated, it should be applied only to Presidential libraries established for Presidents first taking office on or after January 20, 1985. Groups raising private funds for libraries established after January 20, 1985, would have ample time to plan for the endowment and raise the necessary funds. It should be recognized, however, that it may not be possible to raise sufficient private funds to establish the endowment required by H.R. 3138 with the result that the President would be forced to donate his private papers to an institution willing to assume the cost of housing and maintaining them while the Government retains custody of his official papers.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely,

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

January 23, 1984

Mr. Robert Bedell
Office Management and Budget
Room 464
Old Executive Office Building
17th and Pennsylvania Avenue NW
Washington, DC 20503

Dear Mr. Bedell:

The Subcommittee on Administrative Practice and Procedure has scheduled a second hearing on the legislative veto, particularly to address the amendment that Senator Heflin and I have proposed to S. 1080, the Regulatory Reform Act.

You are invited to testify at this hearing, which will be held in Room 226 of the Dirksen Senate Office Building on Wednesday, February 8, 1984, at 10:00 a.m. Oral testimony should include a five-minute summary of your position on the issues, but a more detailed statement may be included in the record.

Seventy-five copies of your entire testimony should be submitted to the subcommittee 48 hours before the hearing.

If you wish to appear, please advise my subcommittee staff member, Veronica Gonzales, at (202)224-7703. If you are unable to appear, I would welcome a statement for the record.

Sincerely,

Chuck Grassley

Charles E. Grassley
Chairman, Subcommittee on
Administrative Practice and Procedure

CEG:vgh