



January 12, 2023

FOIA Officer  
National Archives and Records Administration  
8601 Adelphi Road, Room 3110  
College Park, MD 20740  
Fax: (301) 837-0293  
Email: [foia@nara.gov](mailto:foia@nara.gov)

**RE: FOIA Request for Records of National Archives Communications with Joe Biden Regarding Disposition of Presidential Records Act Records From 2009-2017 Term as Vice President**

Dear Sir or Ma'am:

This letter is a request ("Request") in accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice ("ACLJ")<sup>1</sup> on behalf of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request.

To summarize, this Request seeks records of all National Archives ("NARA") communications or to or from, or interactions with, Joe Biden or his surrogates concerning the disposition of records covered by the Presidential Records Act, 44 U.S.C. 2201-2207, from his term as Vice President (2009-2017), and his or his team's disposition of classified records.

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<sup>1</sup>The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

## **Background**

Pursuant to NARA FOIA regulation 36 C.F.R. §1250.20(a), this Background addresses “(1) The agencies, offices, or individuals involved; (2) The approximate date(s) when the records were created; (3) The subject, title, or description of the records sought; and (4) Author, recipient, case number, file designation, or reference number,” concerning the records requested, to the extent known.

According to CBS News, and which has since generated universal media coverage, records covered by the Presidential Records Act, and which included some number of classified records, were located at the Penn Biden Center for Diplomacy and Global Engagement, on November 2, 2022.<sup>2</sup> Since then, additional information is being reported, including that additional boxes of records have been identified in different locations,<sup>3</sup> and regarding the topics of the hidden records.<sup>4</sup>

***This FOIA Request does NOT seek the actual records discovered, but instead, all communications between the NARA and Biden or his team regarding the disposition of presidential records from his 2009-2017 term as Vice President, whether classified or unclassified, and some ancillary NARA records.***

## **Records Requested**

For purposes of this Request, the term “record” is “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government *or private* account or server, consistent with the holdings of *Competitive Enterprise Institute v. Office of Science and Technology Policy*, 827 F.3d 145, 150 (D.C. Cir. 2016) (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

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<sup>2</sup> Adriana Diaz, Andres Triay & Arden Farh, *U.S. attorney reviewing documents marked classified from Joe Biden's vice presidency found at Biden think tank*, CBS NEWS (Jan. 10, 2023), <https://www.cbsnews.com/news/biden-center-classified-documents/>.

<sup>3</sup> Anders Hagstrom, *Biden classified documents found in his Delaware garage*, Foxnews.com (Jan. 12, 2023), <https://www.foxnews.com/politics/biden-classified-documents-found-his-delaware-garage>.

<sup>4</sup> Jamie Gangel, Marshall Cohen, Evan Perez & Paula Reid, *Exclusive: US intelligence materials related to Ukraine, Iran and UK found in Biden's private office, source tells CNN*, CNN (Jan. 10, 2023), <https://www.cnn.com/2023/01/10/politics/biden-classified-documents-iran-ukraine-united-kingdom-beau-funeral/index.html>.

For purposes of this Request, the term “briefing” includes, but is not limited to, any meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person(s). For purposes of this Request, all sources, documents, letters, reports, briefings, articles and press releases cited in this Request are incorporated by reference as if fully set forth herein.

**For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is January 1, 2016, through the date of processing this FOIA Request.**

Pursuant to FOIA, 5 U.S.C. § 552, the ACLJ hereby requests that the NARA respond to the following numbered requests and produce all responsive records:

1. All records of communications or briefings between NARA personnel and Vice President Joe Biden, the Office of Vice President, or any representative, staff or assistant on his behalf, about the disposition of Vice President Joe Biden’s records or records in his custody or the custody of his Office or staff, classified or unclassified, pursuant to Presidential Records Act requirements or procedures.
2. All records of communications or briefings between NARA personnel and any Penn Biden Center for Diplomacy and Global Engagement personnel or representatives.
3. All records of communications or briefings between NARA personnel and the U.S. Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), the Office of the Director of National Intelligence (ODNI), the Central Intelligence Agency (CIA), or the National Security Agency (NSA), regarding the recently discovered documents addressed in the Background section above.
4. All records of communications or briefings between NARA personnel and the White House, from October 1, 2022, to the date this Request is processed.
5. All records of communications or briefings between NARA personnel and Counsel to the President Dana Remus, or Deputy Counsel to the President, from January 20, 2021, to the date this Request is processed.
6. All records of communications or briefings from July 1, 2022, to the date this Request is processed, between NARA personnel and Dana Remus or any Covington & Burling LLP attorney about Joe Biden or the documents identified in the Background section above.

### **CONCLUSION**

If this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to, a *Vaughn* Index.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director  
Benjamin P. Sisney, Senior Litigation Counsel  
John A. Monaghan, Senior Litigation Counsel  
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jordan Sekulow".

Jordan Sekulow  
Executive Director

A handwritten signature in black ink, appearing to read "Ben P. Sisney".

Benjamin P. Sisney  
Senior Litigation Counsel

A handwritten signature in blue ink, appearing to read "John A. Monaghan".

John A Monaghan  
Senior Litigation Counsel