



Via Certified Mail

February 7, 2018

Michael R. Pompeo
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

David Ferriero
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Dear Secretary Pompeo:

We write to bring your attention to, and express serious concern regarding, recent reports indicating that records of the U.S. Department of State (“State” or the “Department”) have been seized and possibly destroyed by President Donald J. Trump, in violation of the Federal Records Act (“FRA” or the “Act”), 44 U.S.C. §§ 3101 *et seq.* Specifically, recent news accounts describe at least one instance in which President Trump has seized notes taken by Department employees during meetings between President Trump and Russian Federation President Vladimir Putin (“Meeting Notes”), raising the possibility that the President has destroyed the only contemporaneous written record of these important diplomatic talks possessed by the United States Government. The Meeting Notes constitute federal records within the meaning of the FRA and, accordingly, they are subject to the FRA’s preservation requirements. We respectfully request that the Department take the following steps in order to carry out its obligations under the FRA: (i) notify the Archivist of the United States of the removal of the Meeting Notes; (ii) take steps to retrieve and preserve the Meeting Notes; and (iii) refer the President’s unlawful seizure of the Meeting Notes to the Attorney General. We further request that the Secretary review and, as necessary, revise the Department’s records management policy in order to prevent similar FRA violations from occurring in the future.

Factual Background

On January 13, 2018, the Washington Post reported that President Trump has “gone to extraordinary lengths to conceal details of his conversations with Russian President Vladimir Putin, including ... taking possession of the notes of his own interpreter and instructing the

linguist not to discuss what had transpired with other administration officials” following a one-on-one meeting with Mr. Putin in Hamburg, Germany, and potentially on other occasions.¹ Accordingly, it appears that “there is no detailed record, even in classified files, of Trump’s face-to-face interactions with the Russian leader at five locations over the past two years.”²

Reporting on this topic makes clear, however, that there ought to be a record of these meetings in Department files (*i.e.*, the Meeting Notes). Marina Gross—an interpreter employed by State to perform official agency functions³—accompanied President Trump into the room when the President met with Mr. Putin in Helsinki and “could be seen emerging from the meeting with pages of notes.”⁴ The names of the interpreters present at other Trump-Putin meetings have not appeared in public reporting, but, pursuant to Department policy, it is likely that they too would be Department employees performing official agency functions.⁵ Accordingly, and as discussed below, any records they created, such as Meeting Notes, would be federal records created by State Department employees carrying out agency functions and would therefore be subject to the FRA. And the alienation or destruction of those records would be strictly limited by the Act.

The President’s decision to seize, let alone possibly destroy, the State-created Meeting Notes plainly violates the FRA and triggers a statutory requirement of mandatory corrective measures by the Secretary and the Archivist.⁶

The Federal Records Act

The FRA provides that “[t]he head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, . . . and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.”⁷ The head of each agency is also required to establish a records management program

¹ Greg Miller, *Trump Has Concealed Details of His Face-to-Face Encounters With Putin From Senior Officials in Administration*, Wash. Post, Jan. 13, 2019, https://www.washingtonpost.com/world/national-security/trump-has-concealed-details-of-his-face-to-face-encounters-with-putin-from-senior-officials-in-administration/2019/01/12/65f6686c-1434-11e9-b6ad-9cfd62dbb0a8_story.html?utm_term=.b0b4da5cd947; *see also* Peter Baker, *Trump and Putin Have Met Five Times. What Was Said Is a Mystery*, N.Y. Times, Jan. 15, 2019, <https://www.nytimes.com/2019/01/15/us/politics/trump-putin-meetings.html>.

² Miller, *supra* note 1. The two leaders had private, one-on-one conversations in the following locations: Hamburg, Germany (two separate conversations); Vietnam; Helsinki, Finland; and Buenos Aires, Argentina. *See* Baker, *supra* note 1.

³ Emily Cochrane, *Who Heard What Trump Said to Putin? Only One Other American*, N.Y. Times, July 19, 2018, <https://www.nytimes.com/2018/07/19/us/politics/trump-putin-interpreter.html>.

⁴ Miller, *supra* note 1.

⁵ *See* 6 FAM 1510 (“Interpreting, translating, and other language services are provided by the Office of Language Services (A/OPR/LS) for the White House”); U.S. Dep’t State, Office of Language Services, <https://www.state.gov/m/a/ols/index.htm> (same).

⁶ Kellyanne Conway, an adviser to the President, has indicated that the records have not been destroyed, making it all the more important that the Department take immediate action to retrieve and preserve the records. *See, e.g.*, Chris Mandle, *Trump Adviser Kellyanne Conway Says President ‘Did not Destroy’ Records from Meetings with Putin*, MSN, Jan. 14, 2019, <https://www.msn.com/en-au/news/world/trump-adviser-kellyanne-conway-says-president-%E2%80%98did-not-destroy%E2%80%99-records-from-meetings-with-putin/ar-BBSfq0y>.

⁷ 44 U.S.C. § 3101.

providing “effective controls over the creation and over the maintenance and use of records[.]”⁸ For purposes of the FRA, the term “records” “includes all recorded information ... made or received by a Federal agency ... in connection with the transaction of public business and preserved or appropriate for preservation by that agency ... as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government[.]”⁹

Once created, the FRA also “strictly limits the circumstances under which records can be removed from federal custody or destroyed.”¹⁰ Each agency head must “establish safeguards against the removal or loss of records the head of such agency determines to be necessary[.]” including “making it known to officials and employees of the agency ... that records in the custody of the agency are not to be alienated or destroyed” except as permitted by the FRA.¹¹ Moreover, if the head of an agency is aware of “any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency[.]” he or she must “notify the Archivist” and “with the assistance of the Archivist . . . initiate action through the Attorney General for the recovery of records[.]”¹² If the Secretary fails to initiate an action through the Attorney General “for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action ... or is participating in, or believed to be participating in any such unlawful action,” then the Archivist is himself required to request that the Attorney General initiate an enforcement action.¹³

Meeting Notes created by Department employees—such as an interpreter from the Office of Language Services—that catalogue important and contemporaneous details of American diplomacy qualify as federal records subject to the FRA. They were created “in connection with the transaction of public business and ... [are] appropriate for preservation by that agency ... as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government”¹⁴ and so they cannot be alienated or destroyed except as allowed by the FRA. As stated above, an *ad hoc* decision by the President to seize, and possibly destroy, the Meeting Notes fails to adhere to the FRA’s processes and so violates the Act.

Moreover, where this violation is known to the Department, it must act to remedy and report the violation. Here, the Department was, or should have been, fully aware of the facts giving rise to the FRA violations detailed above soon after they occurred, given the manner in

⁸ *Id.* § 3102(1).

⁹ *Id.* § 3301(a)(1)(A).

¹⁰ *Jud. Watch, Inc. v. Kerry*, 844 F.3d 952, 953 (D.C. Cir. 2016) (citing 44 U.S.C. § 3105(1)) .

¹¹ 44 U.S.C. § 3105. Except in certain emergent situations not relevant here, the FRA requires that procedural steps, such as providing notice to the Archivist, are followed before federal records can be lawfully disposed. *See* 44 U.S.C. §§ 3301–3314 (setting forth the steps for lawfully disposing of records in various circumstances). These procedural steps are meant to achieve a methodical and orderly disposition of federal records. *See id.* Even if the records at issue here are appropriate for disposition—and, as the only contemporaneous record of important diplomatic conversations, they certainly are not—the manner in which President Trump reportedly seized the records strongly suggests that no consideration whatsoever was given to the FRA, including those portions governing disposition of records.

¹² *Id.* § 3106(a).

¹³ *Id.* § 3106(b).

¹⁴ *Id.* § 3301(a)(1)(A).

which the records were seized from Department employees. This is particularly true since, in at least one instance, then-Secretary Rex Tillerson was present at the meeting where Meeting Notes were seized by the President.¹⁵ And in any event, there can be no question that the Department is aware of the violation at this point, given the high-profile reporting and Congressional requests.¹⁶ And yet, it does not appear that sufficient steps have been taken to bring the Department into compliance with its obligations under the FRA.

To the extent the Department would seek to excuse its inaction here by a claim of ignorance, this letter serves to put State and the Archivist on notice of the FRA violation and of their duties under the Act.

* * *

We respectfully request that the Department take the following steps within sixty (60) days:

- (i) notify the Archivist of the United States of any and all instances where Meeting Notes memorializing meetings between President Trump and President Putin were seized or destroyed;
- (ii) retrieve from the President's custody any and all Meeting Notes and ensure their preservation pursuant to State's obligations under the FRA;
- (iii) refer the President's unlawful seizure of the Meeting Notes to the Attorney General for the purpose of initiating an enforcement action to recover the records and seek other appropriate redress; and
- (iv) undertake a review of the Department's records management policy, identify any shortcomings that have permitted the above-referenced violations to occur, and make any necessary revisions.

We respectfully request that the Department respond to this letter in writing within sixty (60) days to confirm that it has undertaken the steps outlined above in fulfillment of its obligations under the FRA.

To the extent the Secretary fails to take these steps, we respectfully request that the Archivist fulfill his statutory obligation to request that the Attorney General initiate an enforcement action to recover the records and seek other appropriate redress.

Sincerely,

/s/ Anne Harkavy

Anne Harkavy
Executive Director

¹⁵ *Miller, supra* note 1 (discussing President Trump "taking possession of the notes of his own interpreter" including "after a meeting with Putin in 2017 in Hamburg that was also attended by then-Secretary of State Rex Tillerson").

¹⁶ Press Release, Office of U.S. Sen. Bob Menendez, Menendez, Reed Seek Proof that Trump Kept Records of his Meetings with Putin (Jan. 16, 2019), <https://www.menendez.senate.gov/news-and-events/press/menendez-reed-seek-proof-that-trump-kept-records-of-his-meetings-with-putin>.

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