




DEPARTMENT OF STATE


Washington, D.C. 20520

July 12, 1976

MEMORANDUM

TO: A - Mr. John M. Thomas


THRU: A/O - Mr. Lawrence J. Dupre, Acting 

FROM: O/FADRC - John S. Pruden 

SUBJECT: Kissinger Files

I have reviewed L's draft memorandum of June 19 concerning the disposition of Secretary Kissinger's records. The only substantial difference I perceive between our draft and L's is one of tone and emphasis. Our draft outlined a step by step procedure to be followed to transfer the records to FADRC. L on the other hand having more familiarity with how the Secretary's records are currently being handled, describes the steps that have already been accomplished and more or less what remains to be done. While the final result of both memorandums would be the same, there are a few points in the L draft which I believe require clarification.

First, the last paragraph on page two and top of page three appears somewhat ambiguous. The premise is that the memoranda and transcripts of telephone conversations are not agency records and have not been preserved as a record of Department business. However, the reasoning that follows on page three doesn't, in our opinion, support that premise. The first phrase, "Since the papers do not appear to comprise the only existing records of government decisions and policies", seems to admit in a negative sense that they are nonetheless a record of government decisions and policies.



DECLASSIFIED

Authority NND79556

Second, the role of the FADRC research assistant referred to on page six needs to be clarified. In retrospect, a more appropriate title for the FADRC employee would be reference specialist. The primary duties of the FADRC employee will be to retrieve documents from related files for background use by the Secretary and assist in arranging and organizing the Secretary's files but not to extract information from documents or prepare bibliographic notes or references, duties which are customarily performed by a researcher in the academic community.

↑ actually
OK

Thirdly, the reference on page seven to placing documents in a security approved storage area other than Room 1239 is not clear. Does this mean another area in the building or outside the building? We have not consulted with SY regarding off site storage of classified material but it is our impression that they would not even consider approving a request for off site except perhaps for a Presidential Library.

↑
W. N. ...

Finally, implicit throughout the memorandum is the theme that the end product of this exercise will be a set of "working files" which are non-record material and consequently not subject to access under FOIA. We are not very comfortable with this position. As you know, our experience during the past few years in working with the FOIA has taught us a number of lessons. Perhaps the most significant one is to be as forthcoming as possible in responding to requests for information using reason and common sense as a guide. For example, the Executive Branch initially took the position that if a document was marked with a security classification that it was automatically exempt from disclosure. The result of that position was that the Congress amended the FOIA to require agencies to release segregable portions of material and also provided for "in camera" inspection of such documents by the court. We are not convinced that should a requester ask for access to the Secretary's working files that the position that they are a

↑

"working file" and thus non-record material and not subject to the FOIA that this position will hold. We have, for example, had a request recently from a retired ambassador who is now teaching at Georgetown University for access under the FOIA to his "working files" he had accumulated and retired to the Department from his post abroad. He wanted to give his students an opportunity to review the correspondence of an ambassador in action. The Department decided not to deny the request on the grounds that the documents were non-record material but rather that after our review it was determined that more than half of the records required protection in the interests of national security and thus providing access to only part of the collection would not be of much value to the students. The ambassador agreed. Employees of the Department have filed requests under FOIA recently for access to material on SALT, Viet-Nam, Cuba, and such general topics as Crisis Management and so forth. Researchers are currently working on biographical material from the Boheln files, S. Mennen Williams files, Christian Herter files, etc. It is not inconceivable that someone will file a request for the Secretary's "working file". L has indicated that there appears to be a legal basis to defend the position that this material is not subject to the FOIA and we believe that that argument and others must be made and we support that. However, we also believe that it is important not to convey the impression that any procedure or approach to handling such an important and perhaps controversial collection of records such as these "working files" will not eventually be tested in the courts with the possible result of some form of access.

X

not relevant

st

There is one other objection to the L draft, and that is the passing over of the Record Officer responsibilities as they are assigned to this office. As outlined in our memo to Mr. Sisco and our original draft on the

DECLASSIFIED

Authority NND79556

- 4 -

Kissinger papers, we have an obligation to participate in the screening and inventory process, and, especially after retirement of the Secretary, to have access to these records under whatever controlled procedures we can set up.

Attachment:
As stated

DECLASSIFIED
Authority NND79554



DEPARTMENT OF STATE

Washington, D.C. 20520

LIMITED OFFICIAL USE

June 21, 1976

NODIS

TO: A - John Thomas
FROM: L - Monroe Leigh
SUBJECT: Disposition of The Secretary's
Papers

May I have your comments on
the attached draft as soon as possible.

Attachment - Draft Memorandum of June 19

LIMITED OFFICIAL USE

DECLASSIFIED
Authority NND79556

D R A F T

LIMITED OFFICIAL USE

June 19, 1976

NODIS

MEMORANDUM

TO: The Secretary

FROM: M - Lawrence Eagleburger

Disposition of Your Papers and Records

This memorandum discusses the proposed procedures for handling your papers and records upon your retirement from office. The procedures would include the segregation of personal papers from government documents, as well as arrangements for appropriate storage of, and access to, your working papers here at the Department.

Nature of the Documents Involved.

There are different categories of papers ^{to} ~~that must~~ be considered. First, S/S-I maintains a separate file marked "HAK Personal." This file is not included in the Department's records/ ^{system.} It has not been reduced to microfilm, but is retained in paper form. This file has been limited to your personal correspondence -- correspondence of a personal, non-business nature. Since this file is marked "personal" and since papers in it were placed there when they were received or originated, I am advised that you will be entitled under the Department's regulations (5 FAM 417.1) to retain this file when you retire.

LIMITED OFFICIAL USE

DECLASSIFIED
Authority NND79556

LIMITED OFFICIAL USE

Second, there are various personal materials such as your appointment calendars and personal telephone lists. Your appointment calendars are placed in separate binders and designated with your initials. Again, since these materials have been designated as personal from the start, I am advised that you will be entitled to retain them under 5 FAM 417.1.

There are four file safes maintained in your office which contain your working files. All, or virtually all, of the documents in these files have duplicates either in the Department or at the White House. Your office assistants have followed a consistent practice of retaining copies of only the most essential papers, *and of* returning the originals to the originating office. The papers retained in your working files are generally ones for which you or your assistants have had some recurring need. Also included are copies of memoranda of conversations from meetings in which you personally participated.

Finally, there are ^{the} memoranda and transcripts of your telephone conversations which have been the subject of Freedom of Information Act (FOIA) requests. In responding to the FOIA requests, the Department of State, with the concurrence of the Justice Department, has taken the position

LIMITED OFFICIAL USE

DECLASSIFIED
Authority NND79556

LIMITED OFFICIAL USE

that these memoranda and transcripts are not agency records, and that they have not been preserved as a record of Department business.] Since the papers do not appear to comprise the ^{only} ~~only existing~~ ^{evidence} records of any government decisions ^{or} and policies, since they have been treated as personal and since their disclosure would raise potential questions of invasion of privacy, there apparently is a supportable basis for a claim of private ownership, subject to the requirement that any papers containing classified information be stored in a security-approved area.]

Review of Working Files

At the time of your retirement from office, or shortly before, your working files should be reviewed in order to determine whether they contain any original copies of government records. Any original record would be duplicated, the duplicate would be placed in the working files, and the original record would be returned to the appropriate office. The files would also be screened to determine whether they contained any papers of a personal, non-business nature. Such materials of a personal nature, if any, would be removed from the working files and included with your personal correspondence.

LIMITED OFFICIAL USE

Thus, at the end of the review process, your working files would not contain any original records, but only copies of records. Any original State Department records which may have been found would have been returned to the Department's records system. Any original White House records, which may have been found would similarly have been returned to the White House. Your working files would, then, serve the sole function of being an integral collection of copies of the working papers of a Secretary of State.

Physical Storage of the Working Files

Following the review process, and not later than your retirement from office, the working files would be transferred to a special room on the first floor of the Department of State building, where they would be stored in secure file cabinets within a locked room. This follows the practice of your predecessors, Secretary Rusk and Secretary Rogers, as well as that of other senior officials. At present, the Department's Document Center (FADRC) maintains 42 such collections of the files of existing and former officials.

For convenience, this storage facility would also be available for any personal papers you may wish to keep there.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

In this way, papers from your years in government - those which were personal in nature, as well as those which relate to your government actions and decisions - could be kept in one location.

Your Access to the Working Files.

Consistent with the practice toward other former officials, and under the Department's regulations (5 FAM 946), you would be afforded personal access to your working files stored here at the Department. The Department's policy of affording such access to former senior officials serves a number of important policy objectives -- it encourages retiring officials to store sensitive documents here at the Department; it also takes into account the needs of former officials who must defend, or give information concerning, their activities in office.

In addition to yourself, you may, under current Departmental procedures, designate private research assistants for access. The only limitations are that a private research assistant designated by you must have a current top secret clearance certified by the Department's Office of Security, and the research assistant must be working on your behalf and not pursuing his own independent research. In the alternative, the

LIMITED OFFICIAL USE

DECLASSIFIED
Authority NND79556

Department's Document Center (FADRC) could make a ^{reference} ~~see~~
~~search assistant~~ ^{specialist} available to you. INSERT A

Access by FADRC

Unlike the files of many other former senior officials, the collection of your working files to be stored here at the Department would not include any original records, but only copies. The original records will already have been placed in the Department's record system. For this reason, it is not foreseeable that FADRC would require any access to your collection of duplicates. If in the unlikely event that FADRC could not locate a record of which there was a duplicate in your working files, FADRC would contact you or your representative in order to obtain access.

Inasmuch as your working files would be maintained as a separate collection and would not be integrated into the Department's records system, you would have the freedom to inventory, index and organize the collection in any way that seemed useful.

Future Historical Preservation

As a single collection of the working papers of a former Secretary of State, your working files will undoubtedly have considerable historical value. Under current Departmental procedures, the Department's Document

LIMITED OFFICIAL USE

DECLASSIFIED
Authority NND79558

INSERT B →

LIMITED OFFICIAL USE

Center and Historical Office can offer technical assistance concerning the future preservation of the collection, such as by transferring it to the National Archives.

Declassification of Classified Materials

The Department's regulations of course prohibit the removal of classified material from secure storage areas. Upon a showing of ^{unusual} ~~special~~ ^{and assuming space was available,} need, the Department would consider a request to place copies of ^{some papers} ~~certain documents~~ in a security approved storage area ^{in some other city - e.g., at USUN.} ~~other than the room assigned to your working files on the first floor.~~ More generally, under 5 FAM 417.3, the Department would also consider requests ^{from you} that a document or documents from your working files be declassified so that you could remove a copy ~~of it~~ without restriction.

It should also be noted that the Department Office of Security has ^{previously} in the past approved the storage of classified materials in non-government facilities.

LIMITED OFFICIAL USE