

Representative Doug Ose
Opening Statement
Opening a New Door to History: The Presidential Records Act Takes Effect
November 6, 2001

Last February, after press accounts of President Clinton's last financial disclosure report and some furniture gifts which were ultimately returned by the Clintons to the White House residence, the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, which I chair, began an investigation of Presidential gifts. Among other records, the Subcommittee sought to examine the White House Gifts Unit's database and related records for the Clinton Administration. As a consequence, I have first-hand experience with requests, under the Presidential Records Act of 1978, for Presidential records relevant to a Congressional investigation.

President Reagan's 1989 Executive Order (E.O. 12267) expanded on the implementing regulations issued by National Archives and Records Administration (NARA). NARA's regulations were authorized by Section 2206 of the Act. The Order clarified some areas not specifically addressed in NARA's regulations. Most importantly, the Order identified only three areas where access to Presidential records could be limited -- if disclosure might impair national security, law enforcement, or the deliberative processes of the executive branch. I asked President Clinton's representative which of these three privileges, if any, could be asserted to deny my request for access to specific records. In the end, President Clinton's representative claimed no privileges for any of the requested records. As a result, NARA provided the Subcommittee with unfettered access to the requested records.

President Bush's new Executive Order (E.O. 13223), issued last Thursday, changed these access limitations. In a nutshell, law enforcement is dropped and two areas are added: "communications of the President or his advisors (the presidential communications privilege); [and] legal advice or legal work (the attorney-client or attorney work product privileges)." I am deeply concerned about the two new, broad limitations in the Order. Both - especially the Presidential communications privilege - could severely limit Congressional access to key documents in its investigations of a former Administration.

In today's hearing, I plan to question the Bush Administration's witnesses about the legal and substantive justification for this restrictive policy change. The bottom line is that the new Order appears to violate not only the spirit but also the letter of the Presidential Records Act. In 1978, Congress expressed its clear intent to make Presidential records available for Congressional investigations and then for the public after a 12-year period. This new Order undercuts the public's rights to be fully informed about how its government operated in the past.