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26 July 2018

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510-0504

Dear Ranking Member Feinstein:

Thank you for your letter of July 21, 2018, concerning the role of the National Archives and Records Administration (NARA) with respect to Presidential records relating to Judge Brett M. Kavanaugh in light of his nomination to the Supreme Court. I am also in receipt of a July 23 letter from Chairman Grassley, which addresses many of the issues raised in your letter.

From the perspective of the National Archives, we are committed to fulfilling our statutory responsibilities under the Presidential Records Act (PRA), within the limits of our resources, to any request for records relating to Judge Kavanaugh. To date, NARA has not received a request for records from the Senate or a committee or subcommittee thereof, in accordance with the PRA's exception to restricted access, section 2205(2)(c) of the PRA (44 U.S.C. 2205(2)(C)). As my staff has discussed with your staff, the authority of a committee to make requests under this subsection lies exclusively with the Chair of the committee, which NARA has carefully followed since the PRA was enacted.

NARA's George W. Bush Presidential Library has received several Freedom of Information Act (FOIA) requests for Presidential records related to Judge Kavanaugh, under section 2204(c)(1) of the PRA. We have already begun to process those requests, which we are treating on an expedited basis. Because the George W. Bush Library has a very large volume of records – comprised of his paper and email records

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from his service both in the White House Counsel's Office (WHCO) and as Staff Secretary, and records related to his nomination to the U.S. Court of Appeals – we intend to begin with a prioritized subset of the responsive records. We are also processing FOIA requests for other records related to Judge Kavanaugh. In response to these FOIA requests, our staff has to review for and withhold information subject to the applicable PRA restrictions and FOIA exemptions. Once we have completed our review, we must provide notification to the representatives of the former and incumbent Presidents in accordance with section 2208 of the PRA before we can release them to the public.

As Chairman Grassley's letter notes, NARA has provided copies of a subset of the Kavanaugh related records to the PRA representatives of former President George W. Bush, in accordance with his independent right of access under section 2205(3) of the PRA. We are aware of discussions that have taken place between the former President's representatives and the Senate Judiciary Committee, and we have had discussions with both parties, as well as with your staff, which is our normal practice. Any decisions or agreements that may be reached between former President Bush and the Committee would be independent of NARA's role and responsibilities under the PRA.

Your staff should feel free to continue to discuss these issues with my General Counsel, Gary M. Stern.

Sincerely,

A handwritten signature in black ink, appearing to read "D. S. Ferriero".

David S. Ferriero
Archivist of the United States

cc: The Honorable Charles E. Grassley
Chairman
U.S. Senate Committee on the Judiciary