

Judge Warns White House About Erasing Computers

1/15/93 GB
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A federal judge yesterday rejected a last-minute Bush administration attempt to begin destroying most computerized White House records and warned in a sharply worded order against any effort to evade his mandate.

The National Security Council had been planning to start erasing the records on its computers today in order to provide a "clean slate for the incoming administration" of President-elect Clinton, according to court papers.

U.S. District Judge Charles R. Richey ordered the National Archives last week to prevent the erasure of NSC data and other computer records in the Executive Office of the President, but the administration asked for a stay of the ruling. Justice Department lawyers, representing the White House, contended that the court was impeding "the present administration's ability to leave office with its records dispatched to appropriate federal document depositories consistent with the law."

Calling that argument "incomprehensible," Richey said there was an important difference between paper copies of White House computer messages, memos and electronic mail and the electronic records "because the paper copies do not necessarily disclose who said what to whom and when.

"The electronic version of these materials contains this information," Richey observed. "As a practical matter," he added, "one does not have to know much about computers to know that saving this [electronic] information is not going to bring the government to its knees and that it is required by law."

Administration lawyers have indicated they intend to appeal the ruling to the U.S. Court of Appeals today.

"They've made it clear that they don't want to leave anything behind," said Michael Tankersley, a Public Citizen lawyer representing the plaintiffs in the case.

The dispute is an outgrowth of a Freedom of Information suit brought four years ago by Scott Armstrong; the National Security Archive, a public interest repository of government records that Armstrong

used to head, and others. Computer records of the Reagan White House already are covered by existing orders, and the Bush White House is seeking to destroy only those it generated.

Spokesmen for the White House and the National Security Council did not respond to telephone calls seeking comment.

"It's kind of ironic," Tankersley said. "The Bush people say they're happy to save the Reagan stuff, but they refuse to save the same stuff from their own administration. It's kind of a double standard."

Richey emphasized that nothing in his orders covers President Bush's personal papers and any other presidential or "non-record material." He said his ruling would prevent deletion or erasure only of electronic records of the NSC and other White House units, such as the Office of Management and Budget, that have been held to be "federal records" under judicial control.

Voicing fears that his ruling might be skirted in some way, the judge said he was "not satisfied" that all "federal records" in the White House computers would be preserved, in part because of "inconsistencies"

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in the administration's representations to the court and in part because the White House intends to rely on its own staff rather than archivists to decide what to save and what to erase.

The White House has agreed "in part" to abide by the court's orders pending appeal by preserving computer material on backup tapes, but the administration has not set out clearly "when backup tapes would be made or have been made," Richey added.

He said the White House would shoulder a "heavy responsibility" if officials fail to preserve all the records covered by his order. He noted that some Reagan-era backup tapes already have been recycled "and the information on them lost" in violation of a 1989 order. "Allowing a stay," Richey concluded, "will only frustrate the cause of justice."

Armstrong said he feared the White House was going to exploit the "presidential record exception" to cart off far more than is justified. "It's unclear to us the Clinton people understand what's going on," he said. "They may be losing the institutional memory of the NSC and other executive offices, and they may not realize that this [lawsuit] applies to them too."