

**PRESIDENT JOSEPH R. BIDEN, JR.'S RESPONSES TO WRITTEN QUESTIONS
SUBMITTED BY THE SPECIAL COUNSEL, AS AMENDED ON NOVEMBER 10, 2023**

December 1, 2023

Response to Question 1, Part (a)

President Biden:

I do not recall.

Response to Question 2, Parts (a) through (e)

President Biden:

During my time as Vice President, I often took notes in notebooks. These notes included my thoughts and observations on personal matters, as well as on meetings and policy discussions. Like presidents and vice presidents before me, I understand these notes to be my personal property.

I do not recall the specific conversations you reference with Mr. Zwonitzer, which took place more than six years ago. As a general matter, I used my notebooks as a reference tool for some of my conversations with Mr. Zwonitzer. These conversations served as background for *Promise Me, Dad*, the book that I wrote about the final year of my son Beau's life. To the best of my knowledge, I did not loan or give my notebooks to Mr. Zwonitzer or anyone else. I may have used the word "classified" with Mr. Zwonitzer in a generic sense, to refer not to the formal classification of national security information, but to sensitive or private topics to ensure that Mr. Zwonitzer would not write about them. If I had seen any marked classified documents in my home or office between the time when I was serving as Vice President and President, I would have immediately returned them to the U.S. government.

I made no effort to hide my note-taking or my notebooks from my staff. My use of these notebooks was open and public, and aides were present in meetings during which I would write in them.

As Vice President, I may have tucked materials that I received during the day into my notebooks. I never intended to retain any marked classified documents following my vice presidency, and I do not recall encountering any marked classified documents in my notebooks in connection with my meetings with Mr. Zwonitzer or at any other time. I was unaware that marked classified documents had remained in the notebooks. To the extent that they were, it was inadvertent and unintentional.

I have no grounds to assess the accuracy or authenticity of Mr. Zwonitzer's audio recordings, which I do not possess. I have no knowledge about whether Mr. Zwonitzer deleted any audio recordings.

Counsel Statement:

As we have previously explained, based on longstanding interpretations of the Presidential Records Act and the consistent historical practice of prior presidents and vice presidents, the notebooks at issue are President Biden's personal property. As the Special Counsel is aware, at the conclusion of his vice presidency, President Biden's staff discussed his notes—including the fact that they contain classified information—and came to the same conclusion. There is therefore no basis to pose questions to the President now that presume the opposite, or that treat this issue as an open question. Such questions are not appropriate.

We also note that, as the President pointed out, your questions contain inaccurate factual implications. Question 2(b)(iii) asks the President, without factual basis, whether he “intentionally refrain[ed] from telling aides” about his notebooks “[a]t or near the end of the Obama Administration” because they might contain classified information. The President did no such thing, as he explained in his answer. We also note that this question is contrary to the facts you asserted in Question 5. Specifically, in Question 5, you reference a 2016 trip to Australia during which one of Vice President Biden's notebook was misplaced, and you assert that his staff was aware of the notebook and that some White House staff believed it contained potentially classified information. It is incongruous at best to have one question (inaccurately) suggesting that Vice President Biden hid his notebooks from staff, while simultaneously asking about staff's conclusions about a particular misplaced notebook.

We also reiterate our objections to your questions to President Biden about Mr. Zwonitzer's purported deletions of certain audio recordings. As we stated to you in our November 9, 2023 letter, you have no factual predicate for asking this question of the President and it unfairly invites inaccurate speculation and inferences. To the contrary, as the Special Counsel is aware, President Biden has cooperated fully and completely in your investigation—from his team's initial self-disclosure of the discovery of documents bearing classification markings through the facilitation of documents and witness testimony to the Special Counsel. He has continued his cooperation by answering these questions despite the fact that they are inappropriately posed.

Response to Question 3, Parts (a) through (e)

President Biden:

Prior to this investigation, I did not know that potentially classified documents related to my foreign travel as a Senator were in boxes in my Wilmington garage. I have no specific memory of these documents from my service in the Senate. I do not recall consulting them while working on *Promises to Keep*, and do not believe that I did. I do not recall ever sharing any marked classified documents with Mr. Zwonitzer, and I never would have done so intentionally.

In general, I assume that my Senate staff retained appropriate records related to my foreign travel. I do not recall how it was determined which Senate documents would be sent to my home, versus retained by the Senate or ultimately sent to the University of Delaware. To the extent that any records were classified, I expected my staff to follow the applicable rules of the Senate governing the handling of classified information.

Counsel Statement:

First, we note that a number of the potentially “classified” documents related to the President’s time as a Senator may well never have been classified. Some are marked “confidential” (a commonly used phrase in the Senate and elsewhere, not necessarily to reflect that level of classification) and bear no other indicia that their contents are in fact classified. Others have declassification dates that passed decades ago, including while President Biden was still a Senator.

Second, the fact that the President wrote about foreign travel and world leaders that he met as a Senator in *Promises to Keep*—a book about his Senate years—is entirely unremarkable.¹ These trips were well-publicized, and he spoke repeatedly about them on the Senate floor and in television appearances.² There is nothing in the book that would have required reliance on the materials that were boxed up in the President’s garage. Moreover, to our knowledge, it has never been suggested—including by your office—that *Promises to Keep* contains any classified information.

More generally, it is common for classified documents to be inadvertently retained after Members of Congress, Presidents, Vice Presidents, and other senior executive branch officials leave office. As senior Archives officials testified in March 2023, and as pointed out in the President’s personal counsel’s submission of November 8, 2023, the Archives has received more than 80 calls

¹ Additionally, *Promises to Keep* was published in 2007, while President Biden was still a United States Senator. Accordingly, even if the then-Senator had reviewed his Senate documents while writing a book, that conduct would say nothing about how the documents came to be at in his home after he left office.

We further note that a NARA senior official informed Congress that, in terms of officials inadvertently retaining classified information, historically “the most common place that things went awry were trip folders.” *Closed Hearing with National Archives* Before the H. Perm. Select Comm. on Intel., 118th Cong. 68 (Mar. 1, 2023), https://intelligence.house.gov/uploadedfiles/3.1.23_nara_briefing_transcript.pdf. “The trip details might be classified for the duration of the trip but everybody knows when they come back it is not. But in the meantime somebody got a classified bio on an official they were going to meet with. It is tucked inside the binder.” *Id.*

² See, e.g., S. REP. NO. 51-959, at 1-9 (1979) (a Senate Foreign Relations Committee report on Sen. Biden’s August 1979 delegation to the Soviet Union, which detailed the exchanges between the six Senators and the Soviet leaders on strategic arms limitation treaty negotiations); 140 CONG. REC. S4623 (daily ed. Apr. 21, 1994) (Senator Biden quoting German Chancellor Helmut Schmidt as having said to “[him] and others” that ““when America sneezes, Europe catches a cold””); 145 CONG. REC. S12377 (daily ed. Oct. 12, 1999), <https://www.govinfo.gov/content/pkg/CREC-1999-10-12/pdf/CREC-1999-10-12-pt1-PgS12329-7.pdf#page=49> (Sen. Biden’s floor speech recounting his visit to Chancellor Schmidt during the Carter Administration, including Chancellor Schmidt’s strained relations with President Carter over the potential deployment of the neutron bomb in Europe, and Chancellor Schmidt “smoking his 19th cigarette similar to Golda Meir, a chain-smoker” and “pound[ing] his hand on the table” to say “when the United States sneezes, Europe catches a cold”); *Hardball College Tour: Sen. Joseph Biden*, NBC NEWS (Jan. 16, 2003), <https://www.nbcnews.com/id/wbna3080647> (describing then-Senator Biden’s meeting with Chancellor Schmidt in similar terms); *Joe Biden Talks About Europe and NATO*, 33 NAT’L J. 405 (2001) (similar); *American Public Diplomacy and Islam: Hearing before the S. Comm. On Foreign Relations*, 108th Cong. 3 (2003), <https://www.govinfo.gov/content/pkg/CHRG-108shrg87047/pdf/CHRG-108shrg87047.pdf#page=7> (hearing in which Senator Biden discusses being asked by President Carter to meet with Chancellor Schmidt and the meeting).

since 2010 from libraries that discovered that Members of Congress or senior executive branch officials had accidentally brought them classified documents.³ We are unaware that any of these discoveries resulted in criminal investigations. The fact that similar mistakes occurred at the end of then-Vice President Biden's time in the Senate provides no basis for an inference that he intentionally retained any potentially classified documents, much less that he showed them to Mr. Zwonitzer or anyone else.

Response to Question 4, Parts (a) through (e)

President Biden:

I have no recollection about a briefing or memorandum that I may have received from Cynthia Hogan thirteen years ago. I similarly do not recall any feedback or response I provided to her about any such briefing or memorandum or any changes that were implemented afterwards.

Counsel Statement:

As explained in the White House Counsel Office's September 5, 2023 letter, the Vice President's constitutional duties require ready access to classified information in all circumstances and locations. Ms. Hogan's August 17, 2010 memorandum about the handling of classified information may have reflected her ideas about preferred or effective practices, but it did not describe any legal requirements applicable to the Vice President

Response to Question 5, Parts (a) through (c)

President Biden:

I have no recollection of misplacing a notebook during a trip to Australia. As a general matter, as Vice President, I relied on staff to ensure that all materials were properly handled and stored during foreign travel, including ensuring nothing was left behind or misplaced. It was my expectation that staff would follow proper procedures if there was ever an incident where classified materials went missing.

Counsel Statement:

According to documents produced to the Special Counsel by the Archives, the notebook referenced in Question 5(b) was misplaced during a trip to Australia in 2016, and was promptly recovered and transported back to the United States. Further, we asked the Special Counsel's Office to identify any other instances in which any of Vice President Biden's notebooks were misplaced, and it did not do so. Therefore, the use of the phrase "on at least one occasion" in this question is misleading.

³ *Closed Hearing with National Archives Before the H. Perm. Select Comm. on Intel.*, 118th Cong. 68 (Mar. 1, 2023), https://intelligence.house.gov/uploadedfiles/3.1.23_nara_briefing_transcript.pdf.

Response to Question 6, Parts (a) through (b)

President Biden:

As Vice President, I relied on my staff for many things, including the flow of paper in my office and the appropriate storage of classified material. Likewise, my staff generally managed my transition out of office. Contrary to the assertion in your question, I believe only some of my vice-presidential notecards were stored at the Archives, because some of my notecards came to reside at my Wilmington home. Consistent with the practice of my predecessors who have similarly kept their notes at their personal residences, I did not see any issue with keeping these notecards or any of my notebooks at my home, because I understand them to be my property. I do not recall the specifics as to why certain personal materials went to one location instead of another, including why some notecards were deposited at the Archives, while other notecards were not. I also do not recall the installation of an additional safe at the Naval Observatory in October 2016 or conversations with my staff on the subject.

Counsel Statement:

This question, as well as related lines of inquiry in other questions, contain statements that are inaccurate and misleading. Most notably, this question is premised on the factual assertion, “Your notecards were stored in a SCIF after the end of your vice presidency, but your notebooks were not.” This representation is incorrect, and sets up a false dichotomy between the treatment of Vice President Biden’s notecards and notebooks at the end of his Vice Presidency. While *some* of his notecards were put in a SCIF at the Archives, other notecards—like his notebooks—were kept in his personal residence, as he was entitled to do. Indeed, we understand that his staff specifically considered the question of the appropriate treatment of Vice President’s notes after he left office and concluded that he was entitled to keep them as his personal property. The Archives produced an October 18, 2016 email to you that reflects this determination. The President’s personal counsel highlighted that email to you in a October 6, 2023 submission to you, and cited it again in a November 8, 2023 submission to you.

In the same vein, an earlier question (Question 2(b)(iv)) incorrectly insinuates that President Biden might not have wanted to “relinquish control” over his notebooks by having them stored at the Archives’ SCIF. But President Biden did not relinquish control over the items stored in the Archives’ SCIF. Those items, including the subset of notecards described in this question, were governed by a deposit agreement expressly providing that (1) the items would remain President Biden’s personal property; (2) the items would be maintained confidentially; and (3) President Biden would have “free access to examine, remove, or replace any of the items of Personal Property during regular working hours.” In other words, the deposit agreement recognized President Biden’s “control” over the materials, authorizing him to visit, examine, and even remove the materials, if he so chose.

Response to Question 7

President Biden:

That statement in my June 28, 2023, remarks was intended as a joke.

Counsel Statement:

President Biden’s joke was understood not to refer to any subject within the scope of your investigation.⁴

Response to Question 8, Parts (a) through (e)

President Biden:

I left the Senate in January 2009, nearly fifteen years ago, after thirty-six years of service as a U.S. Senator. I do not recall trainings on the handling of classified information or how the rules varied between committees or in application to Senators. Both as Senator and as Vice President, I relied on—and expected—my staff to ensure that classified material was handled appropriately. Throughout my career, I have taken seriously my responsibilities and obligations to protect classified information.

Counsel Statement:

These questions inappropriately seek legal conclusions about the interpretation and application of Senate rules, and further lack any grounding in time. President Biden served in the Senate for thirty-six years and as Vice President for eight years. The Senate’s rules and procedures for handling classified information likely changed over these decades,⁵ and, at least according to the Congressional Research Service, did not apply to Senators themselves.⁶ We note, too, that it is a well-documented matter of public record that libraries have reported scores of discoveries of classified documents that Members inadvertently commingled with donated papers. The issue is so familiar to archivists, and the errors sufficiently common, that there is published, professional writing on the practices to be followed by libraries in the event of such discoveries, and the National Archives’s Information Security Oversight Office has long offered guidance on the same subject.⁷

⁴ See, e.g., Steve Benen, *Biden (Subtly) Jabs at Trump with Reference to Diplomatic Notes*, MSNBC (June 29, 2023).

⁵ See, e.g., Frederick M. Kaiser, *Protection of Classified Information by Congress*, CONGRESSIONAL RESEARCH SERVICE 2 (Aug. 31, 2011), <https://sgp.fas.org/crs/secrecy/RS20748.pdf> (noting, for example, the establishment of the Office of Senate Security in 1987, and the Senate’s first security manual issued in 1988). President Biden was elected to the U.S. Senate in 1972.

⁶ *Id.* (stating that the Senate Security Office’s standards, procedures, and requirements “cover committee and Member office staff and officers of the Senate as well as consultants and contract personnel—but not Members themselves”).

⁷ See AN AMERICAN POLITICAL ARCHIVES READER 251–52, 256, 291–95, 311–13 (Karen Dawley, et al. eds., 2009); see also, e.g., Information Security Oversight Office, *Frequently Asked Questions on Identifying and Handling Classified Records in Private Papers* (updated Mar. 8, 2013), <https://web.archive.org/web/20140420064315/http://www.archives.gov/isoo/faqs/identifying-handling-classified-records.html> (“It is not uncommon for non-governmental repositories to discover classified records among their manuscript collections.”); Information Security Oversight Office, *ISOO Notice 2023-001, Classified Records Found Outside Government Control* 1 (June 21, 2023), <https://www.archives.gov/files/isoo/notices/cogc-isoo-notice-final-06-21-2023.pdf> (stating that stating that

As to his time as Vice President, Vice Presidents are one of the two ultimate consumers of classified information and, to satisfy their national security and other constitutional obligations, they must have ready and unimpeded access to classified information at any time, no matter their location or circumstances. Therefore, as the White House Counsel's Office explained in a letter dated September 5, 2023, the typical rules related to the handling of classified information do not apply in the same way to Vice Presidents as to other White House employees. Furthermore, Vice Presidents have staff who are tasked with managing the flow of classified information to and from the Vice President, as well as the appropriate handling of that material.

Response to Question 9, Parts (a) through (d)

President Biden:

I had no knowledge that marked classified documents were at the University of Delaware until I learned about it in connection with this investigation. I do not know how any classified documents came to be at the University of Delaware, or why they were stored among unclassified Senate papers. I relied on staff to ensure that my Senate records were handled in accordance with the applicable rules.

Counsel Statement:

First, we note that a number of the potentially "classified" documents related to the President's time as a Senator may well never have been classified. Some are marked "confidential" (a commonly used phrase in the Senate and elsewhere, not necessarily to reflect that level of classification) and bear no other indicia that their contents are in fact classified, while others have declassification dates that passed decades ago, including while President Biden was still a Senator. Indeed, some of the documents found at the University of Delaware that your office is treating as potentially classified include copies of a "confidential" proposed budget for the Senate Committee on Foreign Relations from 1980, and "confidential" draft letters to the Secretary of State. We do not believe these documents are now classified, if they ever were.

Moreover, these questions are more properly directed to the staff that was responsible for the decisions about which documents to send to the University of Delaware, as well as the packing and moving of those documents.

Finally, we note again that it is common for classified material to be inadvertently mixed with unclassified documents and accidentally retained when a Member of Congress leaves office.⁸

former officials "have been known to retain papers related to their time in public service that may inadvertently contain classified national security information" and that "[o]ften, it is not until these records are donated to private archives or other institutions and formally processed that archivists and others processing these papers realize a collection contains classified information").

⁸ See, e.g., NARA: Briefing Before the H. Perm. Select Comm. On Intel., 118th Cong. (Mar. 1, 2023), https://intelligence.house.gov/uploadedfiles/3.1.23_nara_briefing_transcript.pdf (noting that, since 2010, the Archives has received more than 80 calls from libraries that discovered that Members of Congress or senior executive branch officials had accidentally given them potentially classified documents). For

On this point, drafts of the President's deposit agreement with the University of Delaware, including a draft produced to the Special Counsel by the Archives, specifically contemplated that possibility and required the University to report any classified material that might have been inadvertently included to the appropriate office, such as the National Archives.

Response to Question 10

President Biden:

I have had no inappropriate communications about this investigation with anyone, including with anyone that I knew to be a witness.

Counsel Statement:

The Special Counsel has treated the President's family members, closest aides, friends, and lawyers as witnesses in this matter. Indeed, one of the President's primary personal attorneys in this matter was interviewed by the Special Counsel's Office, rendering this question a plain intrusion into the attorney-client privilege. The question is improper on that basis alone. We also object to the question's insinuation that there is a factual basis to ask whether the President has had improper communications with witnesses. There is no basis whatsoever for such an insinuation.

instance, 98 classified documents were found in the materials that former Senator Ed Muskie donated to Bates College. *Id.* at 12.