

April 13, 2017

Ms. Anna C. Winner
Chief, Archives and Records Management Division
Defense Intelligence Agency
Bolling Air Force Base
Washington, D.C. 20340-5100

Re: Guidelines for Submission of Final Compliance Statement Under the
JFK Records Act

Dear Ms. Winner:

I am writing to clarify any confusion that may have existed regarding the goals of the Final Compliance Statement we have requested DIA submit to document its compliance with the provisions of the JFK Records Act; I apologize up front for any confusion that may have existed regarding the goals of our compliance program, or the timing of submission of DIA's Final Compliance Statement. To the extent possible, I will define in this letter the areas we wish to see addressed in DIA's Final Compliance Statement, and will explain the procedures for conducting declassification review of records under the JFK Act.

First and foremost, DIA's Final Compliance Statement should not be submitted until all identifiable actions required to comply with the JFK Act have been completed. Therefore, we are asking that you postpone submission of your Final Compliance Statement until all actions identified below are completed; our estimate of a fair and reasonable amount of time to complete these outstanding actions, including records searches and associated declassification review of records identified below, is on or about February 28, 1998.

Specific issues regarding searches for records that should be addressed in DIA's Final Compliance Statement are the various written inquiries from the Review Board staff for which no written responses have yet been received from DIA, as summarized below:

-Paragraph 4 of ARRB (Doug Horne) memo to Anna Winner dated May 14, 1997 [request that DIA locate files of the DIA Director, and conduct a search covering various subjects

specified in paragraph 3, for the years 1963-64];

-Paragraph 6 of ARRB (Doug Horne) memo to Anna Winner dated May 14, 1997 [questions about Capt. William Edwards of the DIA and Mr. George W. Bush of the DIA];

-ARRB (T. Jeremy Gunn) letter to Anna C. Winner dated July 2, 1997 [request that DIA search for files that would illuminate the activities of military attachés in Moscow from 1956-1964];

-ARRB (T. Jeremy Gunn) letter to Anna C. Winner dated July 11, 1997 [request that DIA search for files that would illuminate DIA's 17 September, 1964 tasking to the Service Secretaries regarding whether or not Lee Harvey Oswald was ever an agent of the Department of Defense or any of the military services].

The two categories of records currently identified by the ARRB that await declassification review by DIA are as follows:

-first, enclosure (1) to the ARRB (Doug Horne) memo to Anna Winner dated May 14, 1997 listed three boxes of records that were of "priority one" interest to the ARRB staff. Although ARRB's written request was that ARRB staff be allowed to examine these 3 boxes of files to search for possible assassination records, you expressed a preference at the May 14, 1997 meeting with Mr. Horne that DIA may prefer to examine these files on its own; subsequently, in a telephone call on June 30, 1997 Mr. Horne of our staff reiterated his request that DIA examine these 3 boxes of files. Although listed in enclosure (1) to the ARRB memo of May 14, 1997, their identifiers are repeated below for your convenience:

-Accession # 373-61A2056 (ONI Naval Attaché reports from 1950-1959): 1 box;

-Accession # 373-66A3216 (Army Intelligence Reports for 1963): 1 box;

-Accession # 373-66A3674 (ONI Navy Intelligence Reports for 1963): 1 box.

[The ARRB requires a written response stating that the search of these three boxes has been conducted, and indicating whether or not any assassination records have been found, as defined in paragraph 3 of ARRB's memo of May 14, 1997. If assassination records were found, then DIA must conduct declassification review of these records in accordance with the procedures outlined below, and transmit them to the ARRB for Review Board consideration.]

-second, in a September 23, 1997 meeting between ARRB staff (Jim Goslee and Manuel Legaspi) and various DIA personnel (Anna Winner, Paul Richardson, and Reserve personnel),

DIA presented to ARRB staff a 4-page listing of documents identified as possible assassination records following records searches conducted for DIA by Reserve personnel in response to the search criteria established by ARRB staff in our letter of February 6, 1997 and our memo of May 14, 1997. At this meeting, ARRB staff members starred 31 items (from a total of 161 documents identified) as responsive to the JFK Act, and requested that DIA conduct declassification review in accordance with Section 6 of the JFK Act. At this meeting you requested that procedures for such review be provided in writing, and that the documents flagged by ARRB staff (which you retain as of this writing) also be identified in writing. Accordingly, DIA's list of 161 documents, with 31 of those documents starred as responsive to the JFK Act, is appended to this letter as attachment one. The remainder of this letter shall address the procedures DIA should employ as it conducts declassification review of records under the provisions of the JFK Act.

Background on the JFK Act

The JFK Act was passed by Congress in order to ensure that all records related to the assassination of President Kennedy have been located, declassified (to the greatest extent possible), and placed into the JFK Collection at the National Archives. The Assassination Records Review Board is an independent Federal agency that is statutorily charged with the responsibility of oversight over all Federal entities on JFK assassination-related issues. All Review Board staff members are required to hold Top Secret security clearances after receiving a full field background investigation, and many hold SCI clearances, as well. The Federal agencies that have the greatest number of assassination records (the FBI and the CIA) have been working vigorously on this project for four years now and the volume of documents in the JFK Collection at the National Archives is now in the tens of thousands. All records that are being sent to the Archives are required to have affixed to them a Record Identification Form (RIF) that identifies the originating agency, basic information about the record, and the status of the record. The creation of RIFs is a JFK Act statutory requirement; RIF software is created and provided by NARA, and each agency transferring records to NARA from its files is responsible for creating the RIFs for the documents it transfers.¹ In summary, the creation of RIFs is an integral part of the document review process, and must precede transfer of each record to NARA (via the ARRB) following declassification review. [The RIFs identify each record by agency, originator, title, subject, and date, and is the tool used by researchers to find records at the Archives.]

¹RIF disks were hand-delivered to DIA by Mr. Jim Goslee of the ARRB staff during the September 23, 1997 meeting at DIA. Additional RIF software, if needed, may be obtained from Mr. Steven Tilley at NARA, at telephone (301) 713-6620.

Postponements Under the JFK Act

Whenever an agency wishes, in the terms of the JFK Act, to “postpone” (*i.e.*, redact) information, it must submit those proposed postponements to the Review Board, which then makes “formal determinations” on the release of the information. If an agency disagrees with a decision of the Review Board, its sole recourse under the JFK Act is to appeal the Review Board’s decision to the President.²

Whenever an agency wishes to postpone information from a record before the record is released to the public, the agency must identify with specificity the information to be postponed, identify the specific provision of Section 6 of the JFK Act that permits the postponement, and provide “clear and convincing” evidence to the Review Board as to why the information should be postponed. (*See* Section 6 of the JFK Act. Although previously passed to you informally, another copy of the JFK Act is provided as an enclosure to this letter for your convenience.) By way of example, the FBI, which seeks to postpone information that might identify informants, provides evidence to the Review Board that discloses whether the informant is still alive, whether the informant risks incurring harm if his name is released, and provides other evidence that might be useful to the Review Board when evaluating the proposed postponements. The Review Board takes very seriously its statutory obligation to sustain proposed postponements “*only in the rarest of cases* [where there is a] *legitimate need for continued protection of such records.*” *See* Section 2(a)(7) (emphasis added). Under this statutory standard, which presumes the release of information except in the “rarest of cases,” agencies have tended to postpone very little information and then only when they are able to provide evidence supporting the proposed postponements.³

²Thus far, only one agency, the FBI, has made an appeal to the President. After a full briefing of the issues by the FBI and the Review Board, the FBI withdrew *all* of its appeals. As a result, every formal determination made by the Review Board has been followed and every record has been made available to the public in accordance with the Board’s decisions.

³The Review Board does, however, routinely sustain postponements of Social Security numbers. No evidence need be provided for such postponements.

DIA Document Declassification Review Procedure

The following steps should be taken by DIA to review the two categories of records discussed above in accordance with JFK Act requirements:

-DIA should make a photocopy of the original record, conduct declassification review in accordance with Section 6 of the JFK Act, and **mark the proposed postponements either by highlighting them in yellow, or by clearly bracketing them.**

-DIA must create a Record Identification Form (RIF) for each document it reviews, using the DOS software and numbering disks created by NARA (*see* footnote number 1 above).

-DIA should forward to the Review Board (with RIFs attached) *by February 28, 1998*, all such photocopies, with postponements identified by brackets or highlighting, **reason codes assigned to each postponement** that identify which portion of Section 6 of the JFK Act justifies the postponement, and with **all supporting evidence for each postponement.**

-Once the Review Board staff reviews DIA's proposed postponements, the staff will notify the Review Board as to whether it concurs with your postponements or not. The Review Board will then evaluate DIA's proposed postponements, in light of ARRB staff recommendations and the evidence provided by DIA in support of those desired postponements.

-The Review Board will make **formal determinations** regarding postponements recommended by DIA, DIA will be promptly notified of the Board's decisions, and the Board will explain subsequent procedures. [The Review Board is the conduit by which DIA records will be transmitted to the Archives.] If there are no postponements recommended by DIA, or if DIA recommends postponements that are not upheld by the Board (and DIA chooses not to appeal to the President), the records involved will be transferred by the ARRB to the JFK Collection at the Archives and released in full to the public. Whenever records contain postponements following formal determinations by the Review Board, both the unredacted version and the redacted version are forwarded to the Archives by the ARRB, and initially only the redacted version is released to the public via the JFK Collection.

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Joint Declassification Sessions at the ARRB's Offices

Should DIA feel that other agencies' equities are contained in some of the records undergoing review, you should so indicate in separate correspondence attached to each record when it is transferred to the ARRB for review. We now have in place an ongoing process in our office spaces approximately once each month, in which representatives of the CIA, NSC, State Department, Joint Staff, OSD, and the Army are meeting to conduct declassification review of Defense Department, NSC and Presidential Library records under the terms of the JFK Act. You should simply review the records identified above for DIA equities as indicated, and forward them to the ARRB, where we will ensure that any other agency you perceive to hold equities in a given document will have a chance to review the record in question prior to formal determinations by the Review Board. In this way, DIA can avoid the time-consuming process of serial, sequential referrals to other agencies.⁴

I am faxing a copy of this letter to Ms. J. Buckholtz at the DIA Executive Secretariat, since that office has expressed a high degree of interest in DIA's activities in support of the JFK Act. Should you have any questions, please call me at (202) 724-0088.

Sincerely,

T. Jeremy Gunn
Executive Director and General Counsel

Enclosures

⁴In addition to using this vehicle of the "Joint Declassification Session" to expedite the declassification review of DIA's own records, DIA will in the future be invited to one or more declassification sessions to review what are perceived by others to be DIA's equities in documents submitted by other agencies participating in these sessions. Such invitations shall be considered outside the bounds of the JFK Act Compliance Program that is the subject of this letter. (Each such session lasts 2 to 3 days per month.)

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