

KEY: *italics = see additional page for Maya's comments*
 bold = new text
 ~~strikeout = deleted text~~

Billing Code 6820TD

ASSASSINATION RECORDS REVIEW BOARD

36 CFR Part 1415

Rules Implementing the Privacy Act

AGENCY: Assassination Records Review Board

ACTION: ~~Notice of proposed rulemaking (NPRM)~~ **Final Rulemaking**

SUMMARY: *Each Federal agency is required by the Privacy Act of 1974 to promulgate rules that set forth procedures by which individuals can examine and request correction of agency records containing personal information. In this notice the Review Board proposes a rule to satisfy that requirement.*

EFFECTIVE DATES: ~~To be considered, comments must be mailed, delivered in person, or faxed to the address listed below by 5 p.m. on~~

~~(Insert date 30 days after date of publication in the FEDERAL~~

~~REGISTER). This regulation is effective (Insert date 30 days after~~

~~date of publication in the FEDERAL REGISTER).~~

~~ADDRESS: Comments on these proposed regulations should be~~

~~mailed, faxed, or delivered to T. Jeremy Gunn, Acting General~~

~~Counsel, Assassination Records Review Board, 600 E Street, N.W.,~~

~~2nd Floor, Washington, D.C., 20530, FAX (202) 724 0457~~

~~(Attention: Privacy Act NPRM). All comments will be placed in the~~

~~Board's public files and will be available for inspection between 10:00~~

~~a.m. and 4:30 p.m., Mondays through Fridays (except legal holidays),~~

~~in the Board's Public Reading Room at the same address.~~

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, Acting

General Counsel, Assassination Records Review Board, 600 E Street,

N.W., 2nd Floor, Washington, D.C. 20530.

SUPPLEMENTARY INFORMATION: Section 3(f) of the Privacy Act of

1974, 5 U.S.C. 552a(f), requires each Federal agency to promulgate rules that set forth procedures by which individuals can examine and request correction of agency records containing personal information.

The Review Board, established by the President John F. Kennedy Assassination Records Collection Act of 1992, is therefore obligated to publish such regulations.

Because Privacy Act regulations are intended for use by the general public, the Review Board has tried to keep its ~~proposed~~ rule simple and straightforward. Some aspects of the Privacy Act dealing solely with the Review Board's internal procedures and safeguards may be dealt with by directive to the Review Board's staff rather than by rule.

Paperwork Reduction Act Statement

The ~~proposed~~ rule is not subject to the provisions of the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501, et seq.) because it does not contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-12, the Review Board certifies that this rule, ~~if adopted,~~ will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared, 5 U.S.C. 605(b).

Review by OMB

The Office of Management and Budget has reviewed the proposed regulation under Executive Order 12866.

List of Subjects in 36 CFR Part 1415

Privacy Act

The Proposed Regulations

Accordingly, the Review Board ~~proposes to~~ amends chapter XIV in title 36 of the Code of Federal Regulations by adding a new part 1415 to read as follows:

PART 1415--RULES IMPLEMENTING THE PRIVACY ACT

Sec.

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Authority: 5 U.S.C. 552a; 44 U.S.C. 2107.

§ 1415.5 Scope

This part contains the Review Board's regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a.

§ 1415.10 Definitions

In addition to the definitions provided in the Privacy Act, the following terms are defined as follows:

Assassination records, for the purpose of this regulation only, are records created by Government offices (other than the Review Board), entities, and individuals that relate to the assassination of President John F. Kennedy ~~as defined in 36 CFR 140010.10~~ that may, from

time to time, come into the temporary custody of the Review Board but that are not the legal property of the Review Board.

Executive Director means the principal staff official appointed by the Review Board pursuant to 44 U.S.C. 2107.8(a).

~~General Counsel means the Review Board's principal legal officer, or an attorney serving as Acting General Counsel.~~

JFK Act means the President John F. Kennedy Records Collection Act of 1992.

Privacy Act Officer means the person designated by the Executive Director to administer the Review Board's activities pursuant to the regulations in this part.

Review Board means the Assassination Records Review Board created pursuant to 44 U.S.C. § 2107.7.

System of records means a group of records that is within the

possession and control of the Review Board and from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. ~~The system of records does not include assassination records as defined above.~~ Assassination records, as defined above, are not included in the Review Board's systems of records.

§ 1415.15 Systems of records notification.

~~(a) Public notice. The Review Board will publish in the Federal Register its systems of records. The Office of the Federal Register biannually compiles and publishes all systems of records maintained by Federal agencies, including the Review Board.~~

(b) Requests regarding record systems. Any ~~person~~ individual who wishes to know whether a system of records contains a record pertaining to him or her may file a request in person or in writing.

Written requests should be directed to the Privacy Act Officer, Assassination Records Review Board, 600 E Street, N.W., Washington, D.C. 20530, and should be clearly marked "Privacy Act Request."

~~Telephone requests should be made by calling the Review Board at (202) 724-0088, and asking to speak to the General Counsel.~~

§ 1415.20 Requests by person individual for access to their own records.

(a) Requests in writing. An ~~person~~ individual may request access to his or her own records in writing by addressing a letter to the Privacy Act Officer, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530. The request should contain the following information:

- (1) Full name, address, and telephone number of requester;
- (2) Proof of identification, which should be a copy of one of the

following:

Valid driver's license, valid passport, or other current identification which contains both an address and picture of the requester;

(3) The system of records in which the desired information is contained; and

(4) At the requester's option, authorization for expenses (see § 1415.50 below).

(b) Requests in person. Any ~~person~~ individual may examine his or her own record on the Review Board's premises. To do so, the ~~person~~ individual should call the Review Board's offices at (202) 724-0088 and ask to speak to the Privacy Act Officer. This call should be made at least two weeks prior to the time the requester would like to see the records. During this call, the requester should be prepared to provide the same information as that listed in

paragraph (a) of this section except for proof of identification.

§ 1415.25 Processing of requests.

(a) Requests in writing. The Privacy Act Officer will respond to the request within ~~five~~ ~~ten~~ working days of its receipt ~~in the Review Board's offices~~ by the Privacy Act Officer. If the agency needs additional time to respond, the Privacy Act Officer will provide the requester an explanation as to why the Review Board requires an extension. The Privacy Act Officer will process all requests under both the Freedom of Information Act and the Privacy Act.

(b) Requests in person. Following the initial call from the requester, the Privacy Act Officer will determine: (1) whether the records identified by the requester exist, and (2) whether they are subject to any exemption under

§ 1415.55 below. If the records exist and are not subject to exemption, the Privacy Act Officer will call the requester and arrange an appointment at a mutually agreeable time when the records can be examined. At the appointment, the requester will be asked to present identification as stated in § 1415.20(a)(2). The requester may be accompanied by one ~~person~~ individual of his or her own choosing, and should state during this call whether or not a second individual will be present at the appointment. In the event that a second individual accompanies the requester, the requester will be asked to provide the Review Board with written consent to disclose his or her records to the second individual.

(c) Excluded information. If a request is received for information compiled in reasonable anticipation of ~~litigation~~ a civil action or proceeding, the Privacy Act Officer will ~~inform~~ determine whether to

disclose the information and will inform the requester whether this information is ~~the requester that this information is not~~ subject to release under the Privacy Act (see 5 U.S.C. 552a(d)(5)).

§ 1415.30 Appeals from access denials.

When access to records has been denied in whole or in part by the Privacy Act Officer, the requester may file an appeal in writing. This appeal should be directed to the Executive Director, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530. The appeal letter must specify those denied records that are still sought and state why the denial by the Privacy Act Officer is erroneous. The Executive Director or his representative will respond to such appeals within ~~twenty business~~ thirty working days after the appeal letter is received in the Review Board's offices, unless, for good cause shown, the Executive Director extends such

thirty day period. The appeal determination will explain the basis for continuing to deny access to any requested records and will notify the requester of his or her right to judicial review of the Executive Director's determination.

§ 1415.35 Requests for ~~correction~~ amendment of records.

(a) ~~Correction~~ Amendment requests. Any person is entitled to request ~~correction~~ amendment of a record pertaining to him or her. This request must be made in writing and should be addressed to the Privacy Act Officer, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530. The letter should clearly identify the ~~corrections~~ amendments desired. An edited copy will usually be acceptable for this purpose.

(b) Initial response. The Privacy Act Officer will acknowledge the request for amendment within ten working days of receipt of the

request. ~~Receipt of a correction amendment request will be acknowledged by the Privacy Act Officer in writing within five ten working days of receipt of the request.~~ The Privacy Act Officer will endeavor to provide a letter to the requester within thirty working days stating whether or not the request for ~~correction amendment~~ has been granted or denied. The Privacy Act Officer will amend information that is not accurate, relevant, timely, or complete, unless the record is excluded or exempt. If the Privacy Act Officer decides to deny any portion of the ~~correction amendment~~ request, the reasons for the denial will be provided to the requester. In addition, the Privacy Act Officer will inform the requester of his or her right to appeal the Privacy Act Officer's determination to the Executive Director.

§ 1415.40 Appeals from ~~correction amendment~~ denials.

(a) When ~~correction~~ amendment of records has been denied by the Privacy Act Officer, the requester may file an appeal in writing. This appeal should be directed to the Executive Director, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530. The appeal letter must specify the record subject to the appeal, and state why the denial of ~~correction~~ amendment by the Privacy Act Officer is erroneous. The Executive Director or his representative will respond to such appeals within thirty working days (subject to extension by the Executive Director for good cause) after the appeal letter has been received in the Review Board's offices.

(b) The appeal determination, if adverse to the requester in any respect, will: (1) explain the basis for denying ~~correction~~ amendment of the specified records; (2) inform the requester that he or she may file a concise statement setting forth reasons for

disagreeing with the Executive Director's determination; and (3) inform the requester of his or her right to pursue a judicial remedy under 5 U.S.C. 552a(g)(1)(A).

§ 1415.45 Disclosure of records to third parties.

Records subject to the Privacy Act that are requested by a person other than the individual to whom they pertain will not be made available except in the following circumstances:

(a) Release is required under the Freedom of Information Act in accordance with the Review Board's FOIA regulations, 36 CFR 1410;

~~(b) Prior consent for disclosure is obtained in writing from the individual to whom the records pertain~~ Pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains; or

(c) Release is authorized by 5 U.S.C. 552a(b)(1) or (3) through

(11).

§ 1415.50 Fees.

A fee will not be charged for search or review of requested records, or for ~~correction~~ amendment of records. When a request is made for copies of records, a copying fee will be charged at the same rate established for FOIA requests. See 36 CFR § 1410.35 However, the first 100 pages will be free of charge.

§ 1415.55 Exemptions.

The following records are exempt from disclosure under this regulation:

~~—(a) Review Board records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and that are in fact properly classified pursuant to such Executive Order;~~

~~— (b) Review Board records related solely to the internal personnel rules and practices of the Review Board;~~

~~— (c) Review Board records specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:~~

~~— (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or~~

~~— (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;~~

~~— (d) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Review Board.~~

(a)(1) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(1) because they contain information specifically authorized under criteria established by an Executive

Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. Accordingly, these systems of records are exempt from the following sections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(A) ARRB 4: Correspondence

(B) ARRB 7: Investigations

(C) ARRB 13: Public Contacts

(2) Exemptions from the particular subsections are justified

for the following reasons:

(A) from (c)(3) because

(B) from (d) because

(C) from (e)(1) because

(D) from (e)(4)(G), (H), and (I) because

(E) from (f) because

(b)(1) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(2) because they contain investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. Provided however, that if any individual is denied any right, privilege or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence.

Accordingly, these systems of records are exempt from the following sections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(A) ARRB 4: Correspondence

(B) ARRB 7: Investigations

(C) ARRB 13: Public Contacts

(2) Exemptions from the particular subsections are justified

for the following reasons:

(A) from (c)(3) because

(B) from (d) because

(C) from (e)(1) because

(D) from (e)(4)(G), (H), and (I) because

(E) from (f) because

(c)(1) The following systems of records are eligible for exemption

under 5 U.S.C. 552a(k)(4) because they contain records required by statute to be maintained and used solely as required by statute to be maintained and used solely as statistical records. Accordingly, these systems of records are exempt from the following sections of 5 U.S.C.

552a: (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(A) ARRB 4: Correspondence

(B) ARRB 6: FOIA Requests

(C) ARRB 7: Investigations

(D) ARRB 8: Mailing Lists

(E) ARRB 9: Media Contacts

(F) ARRB 13: Public Contacts

(2) Exemptions from the particular subsections are justified

for the following reasons:

(A) from (c)(3) because

(B) from (d) because

(C) from (e)(1) because

(D) from (e)(4)(G), (H), and (I) because

(E) from (f) because

(d)(1) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(5) because they contain investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence.

Accordingly, these systems of records are exempt from 5 U.S.C.

552a(d)(1).

(A) ARRB 4: Correspondence

(B) ARRB 9: Media Contacts

(C) ARRB 13: Public Contacts

(2) Exemptions from the particular subsection is justified for

the following reason: because

Dated: September, 1995

David G. Marwell

Executive Director

Assassination Records Review Board