

March 13, 2017

BY FAX AND U.S. MAIL

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:

Doug Horne has asked that I write to resolve any confusion that may have existed regarding the goals of DIA's Final Compliance Statement. To the extent that we have created any confusion regarding our requests or the timing of the statement, I would like to apologize to you and use this opportunity to provide as much clarification as possible. This letter will identify the areas that we wish to see addressed in DIA's Final Compliance Statement, and will explain the procedures for conducting declassification review of records under the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 (as amended) (JFK Act).

DIA's Final Compliance Statement should not be submitted until DIA has completed all of its JFK Act work. Based upon our experience with other agencies, and our awareness of the number of documents that still need to be processed by DIA, we believe that the outstanding records searches and associated declassification review of records identified below can and should be completed by February 28, 1998. We therefore request that you complete the work and submit the compliance statement by the end of February.

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Tasks to Be Completed by DIA

There are two principal tasks that need to be completed by DIA in preparation for the Final Compliance Statement: records searches and declassification review.

Searches for records. We have no record of having received responses to the following four search requests, and we ask that you conduct such searches and report the results in your Final Compliance Statement:

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]; and

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].

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

First, enclosure (1) of the memo from the ARRB (Doug Horne) to Anna Winner, dated May 14, 1997, listed three boxes of records that were of "priority one" interest to the ARRB staff. ARRB's written request asked that the ARRB staff be allowed to examine these three boxes of files to search for possible assassination records. It is my understanding, however, that you expressed a preference at the May 14, 1997 meeting with Mr. Horne that DIA examine these files on its own. Subsequently, in a telephone call on June 30, 1997, Mr. Horne reiterated his request that DIA examine these three boxes. Although listed in enclosure (1) to the ARRB memo of May 14, 1997, their identifiers are

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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 requests a written response stating that the search of these three boxes has been conducted and the results of that search, including whether any assassination records were found. (Guidance on such searches is provided in paragraph 3 of the ARRB's memo of May 14, 1997.) If assassination records are 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 the ARRB staff (Jim Goslee and Manuel Legaspi) and various DIA personnel (Anna Winner, Paul Richardson, and Reserve personnel), DIA presented to the ARRB staff a four-page listing of documents identified as possible assassination records following records searches conducted for DIA by Reserve personnel. These searches were to have been conducted in response to the search criteria established by the ARRB staff in our letter of February 6, 1997, and in our memo of May 14, 1997. At this meeting, the ARRB staff members checked 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 be flagged by the ARRB staff (which you retain as of this writing) also be identified in writing. Accordingly, DIA's list of 161 documents, with thirty-one 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 Information on Processing JFK Act Records

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.)

Postponements (i.e., redactions) 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

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.

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.

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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. I am enclosing a copy of the JFK Act 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

DIA Document Declassification Review Procedures. 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 **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. The Review Board will then

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

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evaluate DIA's proposed postponements, in light of the 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. Following the determinations, DIA will be notified promptly 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.

Joint Declassification Sessions at the ARRB's Offices. Should DIA believe 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 a monthly multi-agency declassification session at our offices in which representatives of the CIA, NSC, State Department, Joint Staff, OSD, and the Army meet 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 interest in DIA's activities in support of the JFK Act. Should you have any questions,

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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please call Doug Home at (202) 724-0088.

Sincerely,

T. Jeremy Gunn
Executive Director and General Counsel

Enclosures