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The White House
Washington, D.C. 20500

Dear Mr. Ruff:

This letter addresses the Secret Service's additional comments and arguments regarding the Review Board's release of three HSCA documents, as set forth in their correspondence to you dated June 1, 1998. The Review Board continues to believe that the Secret Service has failed to satisfy its statutory burden of proof with respect to its request for postponements in each of these documents. Below, the Review Board has set forth its response to the Service's latest round of arguments, and why, in the Board's opinion, these records should be released.

I. The Secret Service's failure to satisfy its statutory burden of "clear and convincing evidence" in support of its arguments against release of the contested names, mandates the full release of these documents.

The central issue for the President's consideration is whether or not the Secret Service has met its burden of proof pursuant to the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. Sec. 2107 ("JFK Act"). In passing the JFK Act, Congress was unambiguous in its mandate that agencies seeking to postpone information pursuant to the JFK Act must submit "clear and convincing evidence" in support of its postponements. *See* JFK Act §§6, 9(c)(1). The JFK Act sets forth only a limited number of grounds for postponement of public disclosure of records. *Id*.

Unlike other federal agencies that have sought the postponement of information (such as the FBI and CIA), the Secret Service failed to produce *any* specific information that would satisfy the standard of "clear and convincing" evidence required for postponement. Instead, the Secret Service has asserted policy reasons in support of its arguments for postponement of these names. General policy arguments do not satisfy the stringent standards for postponement mandated by the JFK Act. Thus, although the Service argues that these names should be postponed based on any one of three provisions of the JFK Act, not one of these arguments can prevail in view of the Service's failure to produce any specific evidence.

Invasion of Privacy - The Service has failed to show that release of the names it is contesting, "could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest" JFK Act Section 6(3). Although the Service did some research into whether certain of these individuals were still living, it failed to offer any other evidence with respect to the individual at issue. Ironically, the Secret Service was able to gather

specific evidence with respect to one of these individuals - but well after the Review Board had already decided the issue. (Secret Service Letter) This is evidence that the Service should have brought before the Board when it was making its final determinations with respect to the records at issue.

Confidentiality Agreement - The Service has failed to produce clear and convincing evidence that release of these names "would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual….and public disclosure would be so harmful that it outweighs the public interest." JFK Act d 6(4). Although the Review Board specifically asked the Secret Service to produce evidence of agreements with respect to privilege and/or confidentiality, the Service did not come forward with any evidence of such agreements between any individual or medical professional. The Service cannot now argue for the protection of a privilege that it cannot show to have existed. Nor can the Service *assume* that any such privilege agreements (provided they ever did exist) were not waived thirty-five years ago.

Protective Procedure - Further, the Service failed to show, pursuant to Section 6(5), how release of these names would "reveal a security or protective procedure currently utilized or reasonably expected to be utilized by the Secret Service….and public disclosure would be so harmful that it outweighs the public interest." Release of the contested names will not *reveal* a current "security or protective procedure." It is a matter of public record that the Secret Service fosters a relationship with the mental health treatment community for purposes of gleaning protective intelligence information. The fact that the Secret Service's relationship with the mental health treatment community might be damaged as a result of the release of this information, does not constitute the type of evidence contemplated by the JFK Act in support of the postponement of this information.

II. In response to the Secret Service's policy arguments, the Review Board demonstrated that a substantial portion of the information the Secret Service is seeking to protect, is already publicly available.

Much of the type of information that the Secret Service is seeking to protect is already available in the public domain. Many of these names were released in the Protective Surveys. Some of the names have been released in other documents pursuant to the Service's compliance with the JFK Act. Surprisingly, the Service agreed to release ninety of the names in the contested documents (many of whom were not well-known figures in the history surrounding the assassination of President Kennedy). Their agreement to do this clearly abrogated any privacy arguments the Service now so

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It is difficult to believe that a person would lose their job based on an act committed thirty-five years ago when the individual was in fifth grade.

The Review Board continues to find it difficult to believe that release of these thirty-five year old records will have an overarching "chilling" effect on the Service's ability to receive protective intelligence information from mental health professionals.

adamantly asserts with respect to the other names. The Review Board considers the inconsistency in the Service's position a further example of its inability to meet its burden of proof pursuant to the JFK Act. In the absence of "clear and convincing " evidence to the contrary, all of the individuals listed in these records should be treated similarly. Because the Service itself has agreed to release many of these names, the Board was compelled to release *all* of the names.

In addition, the Secret Service's latest attempt to claim they never agreed to full release of the 1938 - 1959 volumes of *The Record* is contrary to the legal documentation. In 1981, the Secret Service transferred these volumes, *without any restrictions*, to the National Archives via a signed Form 258. This and only this document governs the public access status of these records. The Service's reliance on its 1978 correspondence with the National Archives regarding transfer of Secret Service records is inapposite. *The Record* was not specifically addressed in this correspondence, and three years later, t
the 1938 - 1959 volumes were transferred outright, without restrictions. Had this not occurred, the Service's reliance on the 1978 correspondence is misplaced. The restrictions in place for release of information in 1978 have now been supplanted by the exemptions found in the Freedom of Information Act. {CITE} Thus, information that an agency may have sought to protect in the 1970's, may very well be released today in the discretion of the archivist. Given the age of the records, their historic significance, and the fact that they *do not* contain lengthy mental health treatment records, an archivist would likely release them. Also weighing in favor of the release of these records is the fact that the Secret Service disseminated The Record agency wide - without making any attempt to segregate or separate the information pertaining to the mentally ill individuals who came to the attention of the Secret Service.

Despite the Secret Service's recent attempts to change the access status of *The Record*, information in *The Record* has been open for the past seventeen years. Whether staff members at the Federal Records Center or the National Archives "cannot recall any public request for The Record" is irrelevant. The fact remains that these volumes have been open without restrictions, to the public, for many years.

Further, the National Archives cannot now close records which have been opened for so long. To do so would be in violation of the spirit of Executive Order 12958 regarding Classified National Security Information, which states that once classified information has been open to the public, it cannot then be pulled and reclassified. Cite

III. Contrary to the Secret Service's assertions, the names contained in these records are related to the history surrounding the assassination of President Kennedy.

A. The contested documents contain the names of people that the

Secret Service and the HSCA had identified as potential threats to the President.

Throughout this appeal process, the Secret Service has consistently mischaracterized the nature of the records at issue, claiming that they bear no relevance to the JFK Assassination. See Reply Letter at 2. Their position can be refuted in several ways. In her prologue to the Threat Sheets found in RIF No. 180-10065-10379, Eileen Dinneen wrote, "Upon Team IV's request for all files involving potential threats to President Kennedy's safety, 413 computer printout were released for review." See ARRB Reply, Exhibit 3. Indeed, the entire focus of Dinneen's study was on how the Secret Service gathered and assessed information on individuals who were potentially threatening to the President. It is inaccurate and dishonest for the Secret Service to state, "As a matter of clarification, these records pertain to individuals who came to Secret Service attention between March and December, 1963." (Letter at 2). Not only did these individuals come to the Secret Service's attention , they were located among the files of the Protective Research Section (PRS). In 1964, Robert Bouck testified before the Warren Commission that one of the functions of PRS was "the responsibility of attempting to detect persons who might intend harm to the President, and to control those persons or take such corrective measures as we can take security -wise on them…"Testimony of Robert Bouck Warren Commission, Vol IV, at ?.

B. The fact that some of these individuals may not have ultimately been deemed of protective concern to the President, is irrelevant to whether they are assassination records.

The Secret Service's assertion that "a majority of these individuals were not evaluated as a protective concern" is irrelevant to the importance of these records to the understanding of the events surrounding the assassination of President Kennedy. (Letter at 2). The Service's actions or lack thereof in 1963 with respect to their protection of President Kennedy, have been soundly criticized by the Warren Commission and the HSCA. Thus, the results of the Secret Service's evaluation into the potential threats of these individuals is of critical historical importance. Moreover, an examination of the names in the 413 threat sheets reveals the absence of many figures historically associated with the investigation into the assassination. This factor alone compels the release of these documents. The Secret Service's assertion that "public interest in these cases would appear to be negligible and remote from the JFK assassination" is patently false. Further, releasing some of these names and not others would invite suspicion and further inquiry from the American people - something the JFK Act was specifically enacted to prevent.

Conclusion

In conclusion, the Review Board respectfully asks that the President uphold its vote to release all of the names in the documents at issue.