

September 10, 1996

The President
The White House
Washington, D.C. _____

Dear Mr. President:

I am writing in regard to _____ [number] formal determinations made by the Assassination Records Review Board that have been appealed to you by the Federal Bureau of Investigation (including three recent appeals). (*See* Attachment A [listing all appealed records divided into (a) original, (b) 3 supplemental, and (c) those appealed but not now awaiting Presidential decisions.] All of these appeals pertain to foreign counterintelligence matters.

I would like to draw your attention to some recent events that should assist you in making your decision.

First, in the original written submissions on these documents, there was a difference of opinion between the FBI and the Review Board regarding the position of the Department of State. The Review Board is pleased to report that the Department of State has now confirmed, as originally stated by the Review Board, that it has no objection on bilateral grounds to the release of the information at issue. (*See* Attachment B State memo). Although the State Department identifies no harm in US relations with the governments at issue in the documents, the Department nevertheless has a "general" objection to the release of foreign counterintelligence information. While the Review Board understands that this is indeed the "general" position of the State Department, it should nevertheless be clear that the Department's memorandum contains no evidence or analysis that this "general" concern overcomes the specific statutory requirements for release of information under the controlling JFK Act.

Second, with respect to the FBI's three supplemental appeals, it is unquestionably clear that the information that the FBI seeks to postpone has in fact been in the public domain for many years. Two authoritative authors included the information in a book published in _____ describing the FBI's file system. (*See* Attachment C). Moreover, the FBI itself disclosed most of the information in Federal District Court in the case *American Friends Service Committee v. William H. Webster*, Civ. No. 79-1655. In that case, the FBI submitted an "Appraisal of the Records of the Federal Bureau of Investigation" on November 9, 1981 (amended on January 8, 1982) (*see* Attachment D). The information that the FBI seeks to re-classify in 1996 was voluntarily released by the FBI in 1982.

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The JFK Act and your Executive Order ____ are unequivocal on this point: once information has been officially disclosed by an agency, it cannot be reclassified.

The JFK Act provides that the President has the "sole and non-delegable authority" with respect to the final release of Executive Branch records and that your decision with regard to the records on appeal should have been made within 30 days of the announcement of the Review Board's formal determinations. It has now been more than __ days and we continue to await your decision. With all due respect, Mr. President, we urge you to make the necessary decisions as promptly as possible.

Sincerely,

David G. Marwell
Executive Director

Attachments

cc: litany

appeals/kellylet.wpd