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(unclassified when detached from Attachment B)

September 11, 1996

BY HAND

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I am writing in regard to twenty formal determinations made by the Assassination Records Review Board, which have been appealed to you by the Federal Bureau of Investigation and for which the Review Board has briefed the merits. (*See* Attachment A.)

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

First, in prior submissions, 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 previously stated by the Review Board, that it has no objection on bilateral foreign relations grounds to the release of the information at issue in thirty-seven records, including ten of the twenty records that the Review Board believes are ripe for your decision. (*See* Attachment B.) Although the State Department identifies no harm to bilateral U.S. relations, the Department nevertheless has a general objection to releasing foreign counterintelligence information. While the Review Board understands that this is the 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 -- or even takes into account -- the specific statutory requirements for release of information under the controlling law: the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 (Supp. V 1994) (JFK Act). Accordingly, we find that there is no pertinent foreign relations objection to the release of the records.

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Second, with respect to three records (124-10073-10270, 124-10073-10271, and 124-10073-10284) in the FBI's most recent appeal, it is uncontroverted that the FBI seeks to postpone information that has long been in the public domain. An authoritative, publicly available reference work on the FBI's file system contains precisely the information that the FBI wishes to keep secret. (*See* Attachment C.) Moreover, our research to date shows that the FBI itself disclosed most of this information to the public in the case *American Friends Service Committee v. William H. Webster*, Civ. No. 79-1655 (D.D.C.). (*See* Attachment D.) Information that the FBI seeks to withhold in 1996 was officially and publicly disclosed by the FBI in that court submission some fifteen years ago. The JFK Act and your Executive Order 12,958 (Sec. 1.8(c)) are unequivocal on this point: once information has been officially disclosed by an agency, it cannot be reclassified or otherwise be withheld.

Now that the State Department has communicated its position, the issues are fully ripe for your decision. The JFK Act provides that the President has the "sole and nondelegable 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 thirty days of the announcement of the Review Board's formal determinations. It has now been more than 150 days since the noticing of the earliest decisions contested before you, and we continue to await your decision. We urge you to make the necessary decisions as promptly as possible.

Sincerely,

David G. Marwell
Executive Director

Attachments

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cc: Mr. William Leary
Senior Director, Records and Access Management
National Security Council

The Honorable Louis J. Freeh
Director, Federal Bureau of Investigation

Mr. Kenneth Duncan
Bureau of Intelligence and Research
U.S. Department of State

cc (w/o att.): The Honorable Jamie S. Gorelick
Deputy Attorney General
U.S. Department of Justice

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