

December 1, 1997

VIA FACSIMILE AND FIRST-CLASS MAIL

James M. Kovakas, Esq.
Attorney In Charge for FOI/PA Unit
Civil Division
U.S. Department of Justice
901 E Street, N.W. -- Room 808
Washington, D.C. 20530

Re: United States Department of Justice Civil Division's Compliance with the
JFK Assassination Records Collection Act, 44 U.S.C. § 2107

Dear Mr. Kovakas:

Thank you for submitting the Final Declaration of Compliance for the Civil Division of the U.S. Department of Justice ("Civil Division") (dated August 20, 1997), which sets forth the Civil Division's statement regarding its compliance with the President John F. Kennedy Assassination Records Collection Act of 1992 ("JFK Act").

We have reviewed the Civil Division's Final Declaration and have concluded that Civil Division has not yet fulfilled its obligations under the JFK Act with respect to FOIA case files that involved requests for U.S. Government documents relating to President Kennedy's assassination. We request the Civil Division to undertake certain additional measures under the JFK Act and, thereafter, to re-submit its Final Declaration when this work is complete.

The Civil Division has taken the position that FOIA litigation case files, which pertain to requests for assassination records, are *not* "required to be reviewed under the JFK Act." See July 1, 1997 Letter from J. Kovakas to R. Haron. Thus, aside from one case file, the Civil Division has reported that "[n]o further review of FOIA litigation case files was undertaken." Compl. Stmt. at 3. We do not agree with the Civil Division's position regarding FOIA files under the JFK Act, and we believe it is important for the Civil Division to fulfill the mission that Congress established under the JFK Act.

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Allow me to address the Civil Division's concerns. First, the Civil Division asserts that it is "virtually impossible" to identify those FOIA cases that relate to JFK assassination records. Compl. Stmt. at 3. After you initially raised this concern, we submitted to you a list of FOIA cases that we believed related to records on the JFK assassination. The Civil Division now asserts that this list is "inaccurate and confusing" and "contain[s] cases unrelated to assassination records." See July 1, 1997 Kovakas Letter. From your letter, it appears that the Civil Division made no real effort to identify the major FOIA cases that involve Kennedy assassination materials and that more could have been done. We believe that identification of the relevant FOIA cases is not an insurmountable obstacle to application of the JFK Act.

To assist the Civil Division, we have undertaken some further investigation regarding the major FOIA cases that involve Kennedy assassination records. We have identified the following cases as examples:

1. *Weisberg v. Department of Justice*, No. 75-0226 (D.D.C.). This case involved a request for spectrographic and/or neutron activation analyses conducted by the FBI on bullet fragments and other materials at issue in the Kennedy assassination. Several FBI agents were deposed in this case with respect to the FBI Laboratory Division records relating to the JFK assassination investigation.
2. *Allen v. Department of Defense and CIA*, No. 81-2543 (D.D.C.). This case involved a request for CIA records made available to the House Select Committee on Assassinations ("HSCA") for its investigation of the JFK assassination.
3. *Allen v. Department of Justice*, No. 81-1206 (D.D.C.). This case involved a request for FBI records made available to the HSCA.
4. *Weisberg v. Department of Justice*, Nos. 78-322 and 78-420 (D.D.C.). These cases involved requests for the FBI Dallas and New Orleans field office files relating to the JFK assassination.
5. *Blakey v. Department of Justice*, No. 81-2174 (D.D.C.). This case involved a request for FBI Headquarters records relating to the JFK assassination.
6. *Lesar v. Department of Justice*, Nos. 82-3600 and 86-1547 (D.D.C.). These cases involved issues regarding the destruction of copies of FBI records relating to the JFK

assassination.

7. *Allen v. CIA*, No. 78-1743 (D.D.C.). This case involved a request for specific CIA documents relating to the Kennedy assassination. The CIA submitted an *in camera* declaration in this case.

8. *Hoch v. CIA*, No. 82-0754 (D.D.C.). This case involved a request for CIA records relating to the assassination.

9. *Assassination Archives v. CIA*, No. 88-2600 (D.D.C.). This case involved a request for JFK assassination materials that had been reviewed by George Bush while he was CIA Director and later Vice-President.

10. *Weberman v. National Security Agency*, (S.D.N.Y.). This case involved a request for NSA records regarding a telegram that Jack Ruby had sent to Cuba. NSA had submitted an *in camera* declaration in this case.

At a minimum, these are some of the major FOIA cases that relate to JFK assassination records. This should satisfy your concerns regarding identification of the relevant FOIA cases. Surely if we, without access to the records, can identify these files, then the Department of Justice is fully capable of making more complete efforts to comply with the JFK Act.

Second, the Civil Division takes the position that “it [is] unlikely that substantive records relating to the assassination would be in our FOIA case files.” Compl. Stmt. at 3. You rely, in part, on the fact that one FOIA case file was reviewed and that no assassination records were identified. Notwithstanding the Civil Division’s representation that assassination records are “unlikely” to be found, we remain concerned that assassination records may be contained, discussed, or identified within the Division’s FOIA case files. We would expect that, in defending the United States in these FOIA suits, the Civil Division would have copies of, access to, or factual information regarding the records at issue. Furthermore, these files may contain *in camera* or sealed submissions by the United States relating to the records.¹ Finally, review of these case files would provide the Review

¹ Identification, by the Civil Division, of *in camera* or sealed submissions is particularly essential for discharging the Review Board’s responsibilities under the JFK Act. In fact, the JFK Act specifically provided that the Review Board may seek “release [of] any information relevant to the assassination of President John F. Kennedy that is held under seal of the court.” 44 U.S.C. § 2107

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Board with an additional means of ascertaining whether significant agency assassination records are being identified and processed under the JFK Act.

We have considered the concerns of the Civil Division and, in order to resolve this matter of the application of the JFK Act to FOIA case files, we propose that:

1. The Civil Division make available, for informal interview(s), the attorneys most knowledgeable about the FOIA cases that we have identified. Given the complex history of these cases, some of which were appealed, interviews of the attorneys familiar with these cases would afford us the opportunity to determine several matters, including the nature of the records at issue; whether copies of these records, or other information about the records, would be found in the case files; whether there are any significant *in camera* or sealed filings; and whether the records were ultimately released or withheld. Among the attorneys that we understand worked on these cases are Quinlan Shea, Dan Metcalf, Nathan Dodell, William Cole, Henry LaHaie, and Steve Hart. We ask you to verify this and to identify any other attorneys with significant knowledge regarding these cases.
2. The Civil Division make available for inspection the case files for the FOIA cases identified herein and undertakes its best efforts to identify any other major FOIA cases involving JFK assassination records.

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3. Once the Civil Division completes its work under the JFK Act, it would submit a new Final Declaration of Compliance under oath in the form prescribed by 28 U.S.C. § 1746.² We have asked all agencies to submit their Final Declarations of Compliance under oath.

Please contact me, or our Associate General Counsel Ronald G. Haron, as soon as possible with the Civil Division's response to our proposal. Pending resolution of this

matter, we do not consider the Civil Division to have fulfilled its obligations under the JFK Act.

Sincerely,

T. Jeremy Gunn
Executive Director

² The Final Declaration you submitted on August 20, 1997 was not made under oath. To do so under 28 U.S.C. § 1746, you, as the declarant, should state at the end of the Final Declaration that "I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. on this ___ day of _____ 1997."