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ASSASSINATION RECORDS REVIEW BOARD

36 CFR Part 1400

Guidance on Interpreting and Implementing the President John F. Kennedy

Assassination Records Collection Act of 1992.

AGENCY: Assassination Records Review Board (ARRB).

ACTION: Proposed interpretive regulation.

SUMMARY: The ARRB proposes to issue regulations providing guidance on the interpretation of certain terms defined in and the implementation of the *President John F. Kennedy Assassination Records Collection Act of 1992*.

DATES: To be considered, comments must be received on or before

March 10, 1995.

ADDRESSES: Comments should be mailed to the Assassination Records Review Board at 600 E Street, NW, Second floor, Washington, D.C. 20530 or delivered in person to that address between the hours of 9:30 a.m. and 4:30 p.m., Monday through Friday (except legal holidays). Comments may also be faxed to the Board at (202) 724-0457. Comments received may be inspected in the Board's public reading room, located at the address shown above, between 10 a.m. and 3 p.m. Monday through Friday (except legal holidays). Persons wishing to inspect comments in the Board's public reading room should call the Board's office beforehand at (202) 724-0088 for further information.

FOR FURTHER INFORMATION CONTACT: Sheryl L. Walter (General Counsel), (202) 724-0088.

SUPPLEMENTARY INFORMATION:

Background

The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107 note (as amended) (ARCA), established the President John F. Kennedy Assassination Records Collection (the JFK Collection) at the National Archives and Records Administration (NARA). In establishing the process for public disclosure of all records relating to the assassination, Congress created an independent agency within the executive branch, the Assassination Records Review Board

(the Board), which consists of five citizens appointed by the President. Under the statute, the Board is empowered to decide "whether a record constitutes an assassination record." 44 U.S.C. 2107 note Sec. 7(i)(2)(A). Congress further made clear its intent that the Board "issue guidance to assist in articulating the scope or universe of assassination records." *President John F. Kennedy Assassination Records Collection Act of 1992*, S.Rep.102-328, 102d Cong., 2d Sess. (1992) at 21.

In constructing the proposed guidance set out here, the Board seeks to implement congressional intent that the JFK Collection contain "the most comprehensive disclosure of records related to the assassination of President Kennedy." *Id.* at 18. The Board is also mindful of Congress's instruction that the Board apply a "broad and encompassing" working definition of "assassination record" in order to achieve the goal of assembling the fullest historical record on this tragic event in American history and on the investigations that were undertaken in the assassination's aftermath. The Board recognizes that many agencies have already begun to organize and review records responsive to the ARCA even before the Board was appointed and began its work. Nevertheless, the Board's aim is that this guidance will aid in the ultimate assembly and public disclosure of the fullest possible historical record on this tragedy and on subsequent investigations and inquiries into it.

The Board's proposed guidance is designed to help government agencies and the Board identify and make available to the public all documents that will enhance, enrich, and broaden the historical record of the assassination of President John F. Kennedy. The Board

seeks through this guidance to fulfill Congress's "inten[t] and emphasis that the search and disclosure of records under this Act must go beyond" the records of previous commissions and committees established to investigate President Kennedy's assassination. *Id.* at 21. The Board also seeks to provide notice of the scope of its intended exercise of authority to seek additional information or records in order to fulfill its functions and responsibilities under the ARCA.

In addition, the Board proposes to create a mechanism to facilitate the Board's ongoing work and to further ensure future public access to the broadest possible historical record. This mechanism will be known as the "Catalog of Assassination Records" (COAR). The COAR is intended to be an official listing of all records determined by the Board to meet the definition of "assassination record" and included in the JFK Collection.

Request for Comments

The Board seeks public comment on its proposed interpretive regulations intended to provide guidance on the interpretation of the term assassination record, the intended scope of its exercise of authority to seek additional information or records, and its additional proposals for implementation of the ARCA.

List of Subjects in 36 CFR Part 1400

Administrative practice and procedure, Archives and records.

Accordingly, the Assassination Records Review Board hereby proposes to establish a new chapter XIV in title 36 of the Code of Federal

Regulations to read as follows:

CHAPTER XIV -- ASSASSINATION RECORDS REVIEW BOARD

Part 1400 -- GUIDANCE FOR INTERPRETATION AND IMPLEMENTATION OF THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992" (ARCA)

Sec.

- 1400.1 Interpretation of assassination record.
- 1400.2 Interpretation of additional records and information.
- 1400.3 Sources of assassination records and additional records and information.
- 1400.4 Types of materials included in scope of assassination record and additional records and information.
- 1400.5 Requirement that assassination records be released in their entirety.
- 1400.6 Originals and copies.
- 1400.7 Additional guidance.
- 1400.8 Implementing the ARCA -- Catalog of Assassination Records.

Authority: 44 U.S.C. 2107 note.

§ 1400.1 ~~Interpretation~~ Scope of assassination record.

(a) An assassination record includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report on, analyze, or interpret activities ~~and~~, events, or persons that may have led to the assassination of

President John F. Kennedy; ~~the assassination itself~~ its surrounding history; and investigations of or inquiries into the assassination.

- (b) An assassination record further includes, without limitation:
- (1) All records as defined in Sec. 3(2) of the ARCA;
 - (2) All records collected by or segregated by all federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy (for example, any intra-agency investigation or analysis of or inquiry into the assassination; any inter-agency communication regarding the assassination; any request by the House Select Committee on Assassinations to collect documents and other materials; or any inter- or intra-agency collection or segregation of documents and other materials);
 - (3) Other records or groups of records listed in the Catalog of Assassination Records, as described in §1400.8 of this chapter.

§1400.2 Interpretation of additional records and information.

The term additional records and information ~~and records~~ includes:

- (a) All documents used by government offices and agencies during their declassification review of assassination records as well as all other documents, indices, records, and other material including but not limited to those that disclose cryptonyms, code names, or other ~~identification material in assassination records~~ identifiers that appear in assassination records which, as articulated in writing by the Review Board, the Review Board

has a reasonable basis to believe may constitute an assassination record or would assist in the evaluation or interpretation of an assassination record.

- (b) All training manuals, instructional materials, and guidelines created or used by the agencies in furtherance of their review of assassination records.
- (c) All records, lists, and documents describing the procedure by which the agencies identified or selected assassination records for review.
- (d) Organizational charts of government agencies.
- (e) Records necessary and sufficient to describe the agency's:
 - (1) ~~Rrecords~~Records, policies and schedules;
 - (2) Filing systems and organization; ~~and~~
 - (3) Storage facilities and locations;
 - (4) Indexing symbols, marks, codes, instructions, guidelines, methods
and procedures; and
 - (5) search methods and procedures used in the performance of the agencies' duties.—

"

(f) Any other record, public and private, that does not fit within the scope of assassination record as described in §1400.1, but which would more likely than not enhance, enrich, and broaden the historical record of the assassination.

§1400.3 Sources of assassination records and additional records and information.

Assassination records and additional records and information may be located at, or under the control of, without limitation:

- (a) Agencies, offices, and entities of the executive, legislative, and judicial branches of the federal government;*
- (b) Agencies, offices, and entities of the executive, legislative, and judicial branches of state and local governments;*
- (c) Record repositories and archives of federal, state, and local governments, including presidential libraries;*
- (d) Record repositories and archives of universities, libraries, historical societies, and other similar organizations;*
- (e) Individuals who possess such records by virtue of service with a government agency, office, or entity;*
- (f) Persons, including individuals and corporations, who have obtained such records from sources identified in paragraphs (a) through (e) of this section;*
- (g) Federal, state, and local courts where such records are being held under seal; ~~or~~*
- (h) Foreign governments, or*
- (i) Persons, including individuals and corporations, who have created or
obtained such records from sources other than identified in paragraphs
(a) through (e) of this section.*

§1400.4 Types of materials included in scope of assassination

record and additional records and information.

The term record in assassination record and additional records and information includes, for purposes of interpreting and implementing the ARCA:

- (a) papers, maps, and other documentary material;*
- (b) photographs;*
- (c) motion pictures;*
- (d) sound and video recordings;*
- (e) machine readable information in any form; and*
- (f) artifacts.*

§1400.5 Requirement that assassination records be released in their entirety.

An assassination record shall be disclosed in its entirety except for portions specifically postponed pursuant to the grounds for postponement of public disclosure of records established in Sec. 6 of the ARCA, and no portions of any assassination records shall be withheld from public disclosure solely on grounds of non-relevance.

§1400.6 Originals and copies.

(a) For purposes of determining whether originals or copies of assassination records ~~may~~ will be made part of the President John F. Kennedy Assassination Records Collection (the JFK Records Collection) ~~to be established under the ARCA~~, the following shall apply:

- (1) ———~~In the case of papers, maps, and other documentary material, the Assassination Records Review Board (the Board) may determine that a true and~~*

~~accurate copy of the original record copies of~~
Government records, either the
signed original or original production or a reproduction
that is sufficient;

~~(2) In the case of photographs, the term record means or~~
has been treated as the official record maintained to
chronicle

government functions or activities may be placed in the
original negative if available, otherwise, the earliest generation print;

~~(3) JFK~~

Records Collection;

~~(2) In the case of motion pictures other papers, maps, and~~
other documentary material, the ~~term record means the~~
camera original if available, otherwise, the earliest
generation print;

~~(4) In the case~~ Assassination Records Review Board (the Board)
may determine that a true and accurate copy in lieu of
sound and the original ~~video recordings, the term record~~
means the original recording, if available, otherwise may be
placed in the JFK Records Collection;

~~(3) In the case of photographs, the earliest generation copy;~~

~~(5) In original negative, if available, otherwise, the ease of~~
machine readable information, the Board may determine
that earliest generation print that is a true and accurate
copy of the original is sufficient; and

~~(6) Artifacts means~~ may be placed in the JFK Records
Collection may be placed in the original object itself. JFK
Records Collection;

~~(4) In the case of motion pictures, the camera original, if~~

available, otherwise, the earliest generation print that is a true and accurate copy may be placed in the JFK Records Collection;

- (5) In the case of sound and video recordings, the original recording, if available, otherwise, the earliest generation copy that is a true and accurate copy may be placed in the JFK Records Collection;

—

~~(b) In cases where a copy~~ (6) In the case of machine-readable information, ~~as defined in paragraph (a)~~ a true and accurate copy of ~~this section above, is authorized by the original~~ (duplicating all information contained in the ~~Board to be included in the JFK Records Collection~~ original and in a format that permits retrieval of the ~~Board~~ information) may, ~~at its discretion, require a certified copy~~ be placed in the JFK Records Collection; and

- (7) In the case of artifacts, the original objects themselves may be placed in the JFK Records Collection.

- (8) To the extent records from foreign governments are included in

the JFK Assassination Records Collection, copies of the original

records shall be sufficient for inclusion in the Collection.

(b) In cases where a copy, as defined in paragraph (a) of this section above, is authorized by the Board to be included in the JFK Records Collection the Board may, at its discretion if it determines it to be necessary to ensure the integrity of the JFK Assassination Records Collection, require a certified copy. In cases where an original, as defined in paragraph (a) of this section, is required for inclusion in the JFK Records Collection the Board may, at its discretion, accept the best available copy.

In such cases that records included in the Collection, whether originals or copies, contain illegible portions, such records shall have attached thereto a certified transcription of the illegible language to the extent practicable.

(c) For purposes of implementing the ARCA, the term "original" means the actual record itself.

(d) For purposes of implementing the ARCA, the term "copy" means a true and accurate photocopy or duplication by other means appropriate to the medium of the original record that preserves and displays the integrity of the record itself.

(e) Nothing in this section shall be interpreted to suggest that additional copies of any assassination records contained in the JFK Records Collection are not also assassination records that, at the Review Board's discretion, may also be placed in the JFK Assassination Records Collection.

(f) Nothing in this section shall be interpreted to prevent or preclude copies of any assassination records, and particularly assassination records in audiovisual or machine readable formats, from being made from time to time for purposes of preservation or

from reformatting to conform to different hardware and/or software requirements.

§1400.7 Additional guidance.

(a) A government agency, office, or entity includes, for purposes of interpreting and implementing the ARCA, all current, past, and former departments, agencies, offices, divisions, foreign offices, bureaus, and deliberative bodies of any federal, state, or local government and includes all inter- or intra- agency working groups, committees, and meetings that possess or created records relating to the assassination of President John F. Kennedy.

(b) The inclusion of artifacts in the scope of the term assassination record is understood to apply solely for purposes of establishing the ~~President John F. Kennedy~~ Assassination Records Collection and for fully implementing the terms of the ARCA and has no direct or indirect bearing on the interpretation or implementation of any other statute or regulation.

~~Kennedy Assassination Records Collection and for fully implementing the terms of~~
(c) In the case of artifacts deemed to be assassination records and included in the ~~ARCA and has no direct or indirect bearing on~~ JFK Assassination Records Collection, the ~~interpretation or implementation of any other statute or regulation~~ provision to the public of photographs, drawings, or similar materials depicting the artifacts shall be sufficient to comply with the ARCA's requirement that copies of assassination records be provided to the public upon request.

~~(e) In the case~~ Additional display of or examination by the public of artifacts ~~deemed to be assassination records and included in the John FJK Assassination Records Collection~~ shall occur under the terms and conditions established by the National Archives and Records Administration to ensure their preservation and protection for posterity. ~~Kennedy Assassination Records Collection, provision to the public of photographs, drawings, or similar materials depicting the artifacts shall be sufficient to comply with the ARCA's requirement that copies of assassination records be provided to the public upon request. Other display to or examination by the public of artifacts in the John F. Kennedy Assassination Records Collection shall occur under terms and conditions established by the National Archives and Records Administration that are adequate to preserve and protect the artifacts for posterity.~~

(d) The terms and, or, any, all, and the plural and singular forms of nouns shall be understood in their broadest and most inclusive sense and shall not be understood to be terms of limitation. ~~Any records~~ Records that are identified with respect to a particular person ~~also includes any records~~ for shall include records relating to that person ~~by~~ that use or reflect their true name or any other name, pseudonym, codeword, symbol, number, cryptonym or alias used to identify that person to assure that all files on an individual or activity be made available to the Review Board. Any record described with respect to an operation or program includes any record pertaining to that program by any other name, pseudonym, codeword, symbol, number or cryptonym.

§1400.8 Implementing the ARCA -- Catalog of Assassination Records.

- (a) A Catalog of Assassination Records (COAR) shall be created as the official listing of all records determined by the Board to meet the definition of assassination record.
- (b) Notice of all decisions to include records in the COAR will be published in the Federal Register within 30 days of the decision.
- (c) In listing records or groups of records in the COAR, the Board must determine that the record or group of records will more likely than not enhance, enrich, and broaden the historical record of the assassination.

~~Dated: February 3, 1995~~

~~David G(d)~~ A complete up-to-date listing of all entries in the COAR shall be maintained, preserved, and made available for review as part of the JFK Assassination Records Collection.

Dated: April xx, 1995

David G. Marwell
Executive Director
Assassination Records Review Board