
Chapter 1a: The JFK Act--Section by Section Analysis

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Introduction.

The JFK Act is a unique and extraordinary statute. The intent of the statute has been to secure the public release of records relating to President Kennedy's assassination and, in doing so, assure the public that the Federal Government was not withholding material information about this tragic event. To accomplish this objective, Congress created an independent Presidential Board with a wide array of powers to secure and release the relevant records.

In this chapter, we provide a section-by-section overview of the JFK Act and explain how the provisions of the Act were applied in carrying out the mandate of Congress.

Overview of the JFK Act

*Section 2 — Congressional Findings, Declaration & Purposes.*¹ In Section 2, Congress set out its purposes for passing the Act. Congress declared that records relating to President Kennedy's assassination should be disclosed "to enable the public to become fully informed about the history surrounding the assassination." JFK Act, § 2(a)(2). Records relating to the assassination were to "carry a presumption of immediate disclosure." *Id.* Since such records were over 30 years old, "only in the rarest of cases is there any legitimate need for continued protection." *Id.* § 2(a)(7).

Congress declared that legislation was "necessary" to provide for an "enforceable, independent, and accountable process for public disclosure" of records on the assassination. *Id.* § 2(a)(3). Congress found that such

¹Section 1 simply notes that the Act should be cited as the "President John F. Kennedy Records Collection Act of 1992."

legislation was necessary because Congressional records on the assassination would not otherwise be opened until the year 2029 (*id.* § 2(a)(4)) and because FOIA, “as implemented by the executive branch, has prevented the timely disclosure of records” relating to the assassination (*id.* § 2(a)(5)).

Accordingly, Congress declared that a collection of records on the assassination of President Kennedy would be established at the National Archives. It would be known as the “President John F. Kennedy Assassination Records Collection,” and records in the collection would be available to the public. *See id.* § 2(b).

Section 3 — Definitions. In this section of the JFK Act, Congress set forth various definitions to ensure both that the Act had the widest application to all entities within the Federal Government and that the Act encompassed all relevant records relating to the assassination.

The JFK Act defined “assassination record” as a record “related to the assassination of President John F. Kennedy, that was created or made available for use by, obtained by, or otherwise came into possession of” the Federal Government (or state or local law enforcement offices that assisted in an investigation of President Kennedy’s assassination). *Id.* § 3(2). Congress noted specifically that “assassination records” encompassed records relating to the Kennedy assassination among the files of the Warren Commission, the Rockefeller Commission, the Pike Committee, the House Select Committee on Assassinations (the “HSCA”), the Library of Congress, the National Archives, “any Presidential Library,” “any Executive agency,” “any independent agency,” and “any other office of the Federal Government,” as well as “any state or local law enforcement office” that assisted in an inquiry into the assassination of President Kennedy. *See id.* § 3(2)(A)-(L).²

²Autopsy records donated by the Kennedy family to the National Archives pursuant to a deed of gift were specifically excluded from the definition of “assassination record” and were thereby exempted from the disclosure provisions of the Act. *See* JFK Act § 3(2).

Section 4 — The JFK Collection at the National Archives. This section set out the procedures and requirements for the establishment of the President John F. Kennedy Assassination Records Collection (“JFK Collection”) at the National Archives.

This section provided that, after passage of the JFK Act, the National Archives “shall commence establishment of a collection of records to be known as the President John F. Kennedy Assassination Records Collection.”

Id. § 4(a). The JFK Collection would consist of “record copies of all Government records relating to the assassination of President John F. Kennedy,” which would be transmitted to the National Archives pursuant to the JFK Act. *Id.* The JFK Collection would include: all “assassination records” that had been, or were required to be, transmitted to the National Archives; identification aids prepared for these assassination records; and “all Review Board records as required by this Act.” *Id.* § 4 (a)(2). In addition, the JFK Collection also would include those assassination records whose public release was to be postponed. *Id.*

Section 5 — Review, Identification, and Disclosure of Assassination Records by Government Offices. This section set out the obligations of Federal Government offices, upon passage of the Act, to identify and transmit to the National Archives all assassination records within their custody.

This section required that “each Government office . . . identify and organize its records” relating to the Kennedy assassination. *Id.* § 5(a)(1). The JFK Act mandated agencies not to destroy or alter assassination records in their custody. *Id.* § 5 (a)(2). The Act prohibited the withholding or redaction of any assassination records that were previously disclosed to the public. *Id.* § 5 (a)(3). And the Government could not withhold or redact any assassination records created outside the Government (except to protect names and identities as permitted by the Act). *Id.* § 5 (a)(4).

Within 300 days of passage of the Act, each Government office was required to review, identify and organize assassination records within its custody. *Id.* § 5(c)(1). Each Government office was required to determine which of its records were assassination records, which of its assassination

records were originated by another Government office and should be referred to that office, which of its records could be released to the public in unredacted form, and which of its records should be transmitted to the Review Board to consider suggested postponements in the release of such records, or portions thereof, under the standards of the JFK Act. *See id.* § 5(c)(2)(A)-(H). In addition, each Government office was to transmit to the Review Board any records with respect to which it had “any uncertainty” as to whether the records were “an assassination record governed by” the JFK Act. *Id.* § 5(c)(2)(F). The Review Board would then determine whether the records at issue qualified as assassination records within the meaning of the JFK Act.

Pending review and identification of its assassination records, the agency would retain custody of its records. *See Id.* § 5(b). However, this section gave the Review Board the power to obtain physical custody of the records “for purposes of conducting an independent and impartial review,” or “for an administrative hearing or other Review Board function.” *Id.* In addition, Government offices were required, under this section, to “make available to the Review Board any additional information and records that the Review Board has reason to believe it requires for conducting a review under this Act.” *Id.* § 5(c)(2)(H).

Once assassination records were identified, Government offices were required to “transmit to the Archivist, and make immediately available to the public, all assassination records that can be publicly disclosed” *Id.* § 5(e). Assassination records whose release was postponed in full or part, as approved by the Review Board, were also to be transmitted to the Archivist to be included in a “protected Collection,” which would be the non-public portion of the JFK Collection. *See Id.* § 5(e)(2).³

³In conjunction with the obligation to transmit assassination records to the National Archives, Section 5 also established an administrative requirement for indexing assassination records identified under the Act. Thus, a record identification form was to be attached to each assassination record transmitted to the National Archives. *Id.* § 5(d)(2). The Act required the Archivist to devise and prepare the “standard form of identification or finding aid” that would accompany each assassination record. *Id.* § 5(d)(1)(A). The JFK Act envisioned that these identification aids would form a “uniform system of electronic records” for all Government offices.

This section also set out the procedures for the National Archives' handling of records whose public release had been postponed (so-called "postponed records"). All such postponed records, once the postponements were approved by the Review Board, were to be transmitted to the JFK "protected Collection." *Id.* § 5(e)(2). Postponed material was to be reviewed periodically by the originating agency and the National Archives to determine whether the postponed material could be released. *Id.* 5(g)(1)&(2). However, the JFK Act mandated that all postponed assassination records shall be opened to the public no later than the year 2017 (25 years from the date of enactment of the JFK Act.) *Id.* § 5(g)(2)(D).

Continuing to postpone release after 2017 could only be effected if "the President certifies" that (1) "continued postponement is made necessary by an identifiable harm to the military, defense, intelligence operations, law enforcement, or conduct of foreign relations" and (2) "the identifiable harm is of such gravity that it outweighs the public interest in disclosure." *Id.* Absent such certification, all postponed records or portions of records in the JFK Collection will presumptively be released in 2017.

Section 6 — Grounds for Postponing Public Disclosure of Assassination Records.

This section set forth the substantive grounds upon which the release of a record, or portion of a record, could be postponed. The standards for postponement were narrowly defined and, in fact, were much more stringent than the standards for withholding documents under FOIA. A detailed overview of these postponement standards, as applied by the Review Board, is set forth in Chapter 4 of this Report. The JFK Act set out five possible grounds for postponement. Thus, release of information in an assassination record could be postponed if one of these grounds could be demonstrated by the agency through "clear and convincing evidence." The allowable bases for postponement were as follows:

Id. § 5(d)(a)(B). To the extent that any assassination records were in the custody of the National Archives and already open to the public at the time of the Act, such records were not required to have identification forms prepared. *See Id.* § 5(d)(3).

(1) *Threat to National Security.* Release of information could be postponed if disclosure posed a “threat” to the country’s “military defense, intelligence operations, or conduct of foreign relations” of “such gravity” that it would “outweigh[] the public interest” and “would reveal (A) an intelligence agent whose identity currently requires protection; (B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government, and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or (C) any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States” (*id.* §6(1));

(2) *Disclosure of Confidential Informant.* Release of information could be postponed if disclosure would reveal the “name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person” (*id.* § 6(2));

(3) *Invasion of Privacy.* Release of information could be postponed if disclosure “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” (*id.* §6(3));

(4) *Understanding of Confidentiality.* Release of information could be postponed if disclosure “would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest” (*id.* §6(4)); or

(5) *Protective Procedures.* Release of information could be postponed if disclosure “would reveal a security or protective

procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another Government agency responsible for protecting Government officials, and public disclosure would be so harmful that it outweighs the public interest” (*id.* § 6(5)).

Thus, under this section, an agency had to demonstrate to the Review Board that it met one of the criteria allowing for postponement of release of information.

Section 7 — Establishment and Powers of the Review Board. This section is perhaps the cornerstone of the JFK Act in that it created a truly independent Presidential Board that would oversee the Federal Government’s implementation of the Act, including the securing and release of records relating to President Kennedy’s assassination. The JFK Act included provisions to ensure the independence of the Review Board and to ensure that its decisions would have public confidence.

Under this section, the President was to nominate five citizens “to serve as members of the Review Board to ensure and facilitate the review, transmission to the Archivist, and public disclosure of Government records related to the assassination of President John F. Kennedy.” § 7(b)(1). The persons nominated were to be “impartial private citizens” who were not presently employed by the Federal Government and had not “had any previous involvement with any official investigation or inquiry conducted by a Federal, state, or local government, relating to the assassination of President John F. Kennedy.” *Id.* § 7(b)(5)(A). The persons nominated were to be “distinguished persons of high national reputation in their respective fields who are capable of exercising . . . independent and objective judgment.” *Id.* § 7(b)(5). They were to include one professional historian and one attorney (*id.* § 7(b)(5)(c)), and the President was to consider recommendations from the American Historical Association, the Organization of American Historians, the Society of American Archivists, and the American Bar Association (*id.* § 7(b)(4)(A)). After appointment by the President, the nominees were to be confirmed by the Senate. *See id.* §7(d). The appointed members of the Review Board were not to be

removed from the Board except by “impeachment and conviction” or by action of the President for specific cause and with a report to Congress specifying the basis for removal. *See* § 7(g).

Having set out the parameters for establishing an independent Board, section 7 then delineated the Board’s responsibilities and powers. The Review Board was given the power to identify, secure, and release records relating to President Kennedy’s assassination. *See id.* § 7(i). Thus, the Review Board was given the authority to “render decisions” on (1) “whether a record constitutes an assassination record” and (2) “whether an assassination record or particular information in an assassination record qualifies for postponement of disclosure under this Act.” *Id.* §

The Review Board was also given power to obtain additional information that would assist it in identifying and securing records relating to the assassination. These provisions, as enacted and applied, permitted the Review Board to seek out particular records that might not otherwise have been located by the agencies. Furthermore, these provisions allowed the Board to make, in many cases, an independent determination as to the relevance of particular records. In this manner, the JFK Act did not give agencies total unilateral discretion to decide what was covered by the JFK Act, and the Review Board did not have to defer to agencies’ determinations as to what records were deemed related to the JFK assassination.

To carry out its responsibilities, the Review Board was given the authority to:

- (1) “direct Government offices” to “organize [their] assassination records” and to transmit assassination records to the Archivist, including portions of assassination records (*id.* § 7(j) (A) & (B));
 - (2) “obtain access to assassination records that have been identified and organized by a Government office” (*id.* §7(j)(C)(i));
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(3) “direct a Government office to make available to the Review Board, and if necessary investigate the facts surrounding, additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities under this Act” (*id.* §7(j)(C)(ii));

(4) “request the Attorney General to subpoena private persons to compel testimony, records, and other information relevant to its responsibilities under this Act” (*id.* §7(j)(C)(iii));

(5) “require a Government office to account in writing for the destruction of any records relating to the assassination of President Kennedy” (*id.* §7(j)(D));

(6) “receive information from the public regarding the identification and public disclosure of assassination records” (*id.* §7(j)(E)); and

(7) “hold hearings, administer oaths, and subpoena witnesses and documents” (*id.* § 7(j)(F)).

In addition, the Review Board was authorized to issue “interpretive regulations.” *See id.* § 7(n). Indeed, the Review Board issued FOIA and Sunshine Act regulations, as well as regulations further clarifying the definition of an assassination record within coverage of the JFK Act.

Finally, section 7 imposed upon the Review Board certain responsibilities upon finishing its work. Thus, “[u]pon termination,” the Review Board was required to submit a final report to the President and Congress. *See id.* §7(o)(2). In addition, the “Review Board shall transfer all of its records to the Archivist for inclusion in the Collection, and no records of the Review Board shall be destroyed. *Id.* §7(o)(3).

Section 8 — Review Board Personnel. This section provided for the establishment of an Executive Director and staff that would perform the work of, and report to, members of the Review Board. Under this section, the Review Board would appoint an Executive Director. Like the individual Board members, the Executive Director would not be a present employee of the Federal Government or affiliated with any prior official investigation of the Kennedy assassination. The same requirement was specified with respect to Board staff (other than administrative personnel). *See id.* § 8. The Executive Director would serve as the Board’s liaison to Government offices, would coordinate the Board’s review of records, and would be responsible for administering the Board’s official activities. *See id.* § 8(a)(4). The statute made clear that the Executive Director would “have no authority to decide or determine whether any record should be disclosed to the public or postponed for disclosure.” *Id.* § 8(a)(4)(D). That power resided with the Board.

Section 9 — Review of Records by the Review Board. This section set forth procedural requirements in connection with the Review Board’s consideration of, and determinations regarding, the postponement of records.

This section first provided that the Board “shall direct that all assassination records be transmitted to the public” absent “clear and convincing evidence” that the record is not an assassination record or is not otherwise qualified for postponement under the JFK Act. *Id.* § 9(c). To the extent that the Review Board authorized a postponement, it was directed to provide for alternative forms of release, including summaries or substitute records. In addition, the Review Board was to seek release of segregable parts of records. *See id.* § 9(c)(2).

To the extent that the Review Board postponed release of a record in whole or in part, it was to prepare a report to the National Archives describing the Board’s action and justification for the postponement and identifying the date when the postponed portion of the record may be released. *See id.* § 9(c)(3). To comply with this portion of the JFK Act, the Review Board established procedures for creating a “Final Determination

Form” for each postponed record. This form identified the legal justification for postponement, under the JFK Act, and gave the date when the postponed portion could be released. [Check FDFs.]

In addition to notifying the National Archives, the Review Board was required to notify the originating agency and the public (through notice in the *Federal Register*) of any Board determination to designate a record as an assassination record for public disclosure or to postpone release of any portion of an assassination record. *See id.* § 9(c)(4).

While the JFK Act authorized the Review Board to make final and binding determinations concerning disclosure or postponement of disclosure of a record, the Act provided that the President could reconsider any Board determination: “After the Review Board has made a formal determination concerning the public disclosure or postponement of disclosure of an executive branch assassination record or information within such a record, . . . the President shall have the sole and nondelegable authority to require the disclosure or postponement of such record or information under the standards set forth in section 6 [of the JFK Act]” *Id.* § 9(d). Thus, if agencies disagreed with a Review Board determination to disclose a record, the affected agency could appeal to the President to withhold release of the contested record. At the time of this Report, three appeals of Review Board decisions had been brought to the President during the tenure of the Board. One of the appeals had been withdrawn by the agency (the FBI), while the other two appeals are still before the President and await his decision (Secret Service and FBI).

Finally, section 9 has required the Review Board to submit, to the President and Congress, annual reports regarding its work to the President and Congress. In the report, the Review Board is to apprise the President and Congress of its activities, including financial expenditures, progress on public release of records, projections for completion of the Review Board’s work, issues regarding agency cooperation, postponement decisions, volume of records reviewed and postponed, and suggestions for additional legislative measures. *See id.* § 9(f).

Section 10 — Disclosure of Other Materials. This section addressed public release, under the JFK Act, of certain special categories of records that may relate to the assassination.

First, this section authorized the Review Board to request the Attorney General to petition any court for the release of information that may be under seal or that may be subject to grand jury secrecy rules. In addition, Congress expressed its sense that the Attorney General “should assist the Review Board in good faith” to unseal any records that the Board determines to be relevant to the Kennedy assassination. *See id.* § 10(a) & (b).⁴

Second, this section also expressed the sense of Congress that the Secretary of State should contact the Republic of Russia in an effort to secure public release of records of the Government of the former Soviet Union, including KGB records, that may relate to the assassination. The Review Board worked with the State Department to approach the Governments of Russia and Belarus regarding KGB records on Oswald. The Secretary of State was also urged to contact other foreign governments that might have records relating to the assassination. *See id.* § 10(b)(2).

Section 11 — Rules of Construction. Section 11 was essential in articulating how the JFK Act was to be interpreted in light of other laws and regulations relating to disclosure of Federal Government records.

Congress clearly emphasized the supremacy of the JFK Act over other laws that might preclude disclosure of assassination-related records. Thus, when operation of the JFK Act required public disclosure of a record, the Act would “take precedence over any other law . . . , judicial decision construing such law, or common law doctrine that would otherwise prohibit such transmission or disclosure” *Id.* § 11(a). The only records not

⁴For example, the Review Board sought the assistance of the Attorney General in lifting the seal on certain FBI surveillance (known as BRILAB) of Carlos Marcello. It has been alleged that Mr. Marcello, a New Orleans organized crime figure, was involved in the Kennedy assassination.

subject to this “supremacy clause” were IRS tax-related records in which Section 6103 of the IRS Code precluded disclosure and records donated to the United States under a deed of gift whose terms precluded disclosure.

This section further provided that the JFK Act would not impair any rights under FOIA. *See id.* § 11(b). In addition, the JFK Act was not to be construed as limiting the authority of the President, an executive agency, the Congress, or any other Federal Government entity from publicly disclosing its records. *See id.* § 11(d). Finally, the JFK Act was made applicable to both Houses of Congress and would be treated as rules of the House and Senate that superseded prior, inconsistent Congressional rules that might preclude disclosure. *See id.* § 11(e).

Section 12 — Termination of Effect of Act. This section provided that the provisions of the JFK Act pertaining to the operation of the Review Board would cease to be effective when the terms of the Review Board has expired. *See id.* § 12(a). However, all remaining provisions of the JFK Act would continue in force: “The remaining provisions of this Act shall continue in effect until such time as the Archivist certifies to the President and the Congress that all assassination records have been made available to the public in accordance with this Act.” This provision is significant because it underscores the continuing obligation of Federal agencies to release records on the assassination after the Board’s term expires.
