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ASSASSINATION RECORDS REVIEW BOARD

36 CFR Part 1402

*Rules Implementing the Freedom of Information Act*

**AGENCY:** Assassination Records Review Board.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Assassination Records Review Board (the "ARRB" or "Board") proposes the following set of regulations to discharge its responsibilities under the Freedom of Information Act (FOIA). The FOIA generally (1) establishes basic requirements regarding how the public may request access to agency records and regarding waiver or reduction of fees the agency would otherwise assess for the response to the records request, (2) establishes categories of records that are exempt for various reasons from public disclosure, and (3) establishes basic requirements for federal agencies regarding their processing of and response to requests for agency records. The Board invites comments from interested groups and members of the public on these proposed regulations.

**DATES:** To be considered, comments must be mailed, delivered in person, or faxed to the address listed below by 5 p.m. on (Insert date 30 days after date of publication in the FEDERAL REGISTER).

**ADDRESS:** Comments on these proposed regulations should be mailed, faxed or delivered to the Assassination Records Review Board, 600 E Street NW, 2nd Floor, Washington, DC 20530. The Board's fax number is (202) 724-0457. All comments received within the comment period will be placed in the Board's public files and will be available for inspection between 10 a.m. and 4:30 p.m. Monday through Friday (except on legal holidays), in the Board's Public Reading Room at the same address.

**FOR FURTHER INFORMATION CONTACT:**

T. Jeremy Gunn, Acting General Counsel, Assassination Records Review Board, 600 E Street NW, 2nd Floor, Washington, DC 20530, (202) 724-0088.

**SUPPLEMENTARY INFORMATION:**

**Background and Statutory Authority**

This proposed rule complies with the requirements of the Freedom of Information Act, 5 U.S.C. § 552, as amended by the Freedom of Information Reform Act of 1986, Pub. L. 99-570, Title I, sections 1802, 1803, 100 Stat. 3207-48, 3207-49, to issue implementing regulations. In particular, proposed §§1402.106 and 1402.107 implement the Reform Act of 1986 and the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedules and Guidelines, 52 FR 10012. This proposed rule also incorporates President Clinton's Memorandum on the administration of the Freedom of Information Act, issued on October 4, 1993, which calls upon agencies to comply with the letter and spirit of the Act's commitment to openness and to its sound administration.

Further, this proposed rule incorporates the presumption of openness that was a driving force behind enactment of the Board's enabling legislation, the "President John F. Kennedy Assassination Records Collection Act of 1992," 44 U.S.C. § 2701 note (1992). In that act, Congress prescribed the establishment of a collection of records to be known as the President John F. Kennedy Assassination Records Collection, to be housed at the National Archives and Records Administration (NARA) and currently located at NARA's facility in College Park, Maryland. Congress also mandated that the Board have an initial term of two years, with an option for the Board upon majority vote to extend for an additional year if its work is not completed within the two year period. *Id.* at Sec. 7(o)(1). Congress also required that "[u]pon termination and winding up, the Review Board shall transfer all of its records to the Archivist for inclusion in the Collection, and no record of the Review Board shall be destroyed." *Id.* at Sec. 7(o)(3). Thus, while the public may file FOIA requests with the Board during the term of its existence, the public should also be aware of the opportunity to examine and obtain copies of the Board's records as a part of the JFK Records Collection at the National Archives and Records Administration.

Other key aspects of this proposed rule include the following:

- (1) The Board would establish, consistent with 5 U.S.C. § 552, two categories of ARRB agency records: records available through the Public Reading Room (§1402.103(b)) and records not available through the Public Reading Room (§1402.105).
- (2) Procedures for requesting or examining Public Reading Room records (§1402.103).

- (3) Procedures for filing a FOIA request (§1402.104).
- (4) Procedures, based upon the provisions of 5 U.S.C. § 552, for processing FOIA requests, including prescribed response times (§1402.108).
- (5) Procedures for administrative appeal of denials of FOIA record requests or of requests for fee waivers or reductions. (§1402.109).
- (6) Procedures for handling requests for classified information (§1402.110).

It is the Board's intention to implement these regulations so as to avoid any unnecessary barriers to public access to information and to ensure that principle of openness in government is applied in each and every decision made under the FOIA, while also minimizing the burden to the Board's small staff. It is also the Board's hope that persons seeking information or records from the Board will consult with the Designated FOIA Officer or other Board staff before invoking the procedures in the proposed regulations. To the extent permitted by law, the Board will make records available which it is otherwise authorized to withhold under 5 U.S.C. § 552 whenever it determines that such disclosure is in the public interest.

#### **Paperwork Reduction Act Statement**

The proposed rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. § 3501, *et seq.*) because it does not contain any information collection requirements within the meaning of 44 U.S.C. § 3502(4).

#### **Regulatory Flexibility Act Certification**

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. § 601-612), the Board certifies that this rule, if adopted, will not have a

significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared, 5 U.S.C. § 605(b). Whatever economic impacts may result to small entities were already considered by Congress in enacting and amending the FOIA or by OMB in Promulgating the Uniform Fee Schedules and Guidelines.

### **List of Subjects in 36 CFR Part 1402**

Freedom of Information.

### **The Proposed Regulations**

Accordingly, chapter 1402 of title 36 of the Code of Federal Regulations is proposed to be amended by adding a new part 1402 to read as follows:

### **PART 1402--PUBLIC INFORMATION AND REQUESTS**

Sec.

1402.101 Scope

1402.102 Definitions; words denoting number, gender, and tense.

1402.103 Requests for Board records available through the Public Reading Room.

1402.104 Board records exempt from public disclosure.

1402.105 Requests for Board records not available through the ARRB's Public Reading Room (FOIA requests).

1402.106 Requests for waiver or reduction of fees.

1402.107 Fees for record requests.

1402.108 Processing of FOIA requests.

1402.109 Procedure for appeal of denial of requests for Board records and denial of requests for fee waiver or reduction.

1402.110 Requests for classified records.

1402.111 Requests for privileged treatment of documents submitted to the Board.

1402.112 Computation of time.

Authority: 5 U.S.C. § 552

### **§1402.101 Scope.**

This part contains the Board's regulations implementing the Freedom of Information Act, 5 U.S.C. § 552.

### **§1402.102 Definitions; words denoting number, gender and tense.**

- (a) Agency record is a record in the possession and control of the Board that is associated with Board business. Agency records do not include records such as:
- (1) Publicly available books, periodicals, films, sound or video recordings, photographs, or other publications that are owned or copyrighted by nonfederal sources;
  - (2) Personal records in the possession of Board personnel that have not been circulated, were not required by the Board to be created or retained, and may be retained or discarded at the author's sole discretion, or records of a personal nature that are not associated with any Board business; or
  - (3) Non-substantive information and information unrelated to Board business in the calendar or schedule books of the Chairman or Members of the Board, uncirculated except for typing or recording purposes.

Records that originated in another federal agency are not generally considered to be agency records. At any given time, the Board will

*hold records from other agencies for the purpose of reviewing the records under the President John F. Kennedy Assassination Records Collection Act of 1992.*

- (b) Board or ARRB means the Assassination Records Review Board.*
- (c) Chairman means the Chairman of the Board.*
- (d) Designated FOIA Officer means the person designated by the Board to administer the Board's activities pursuant to the regulations in this part. The Designated FOIA Officer shall also be the Board officer having custody of or responsibility for agency records in the possession of the Board and shall be the Board officer responsible for authorizing or denying production of records upon request filed pursuant to §1402.105.*
- (e) General Counsel means the chief legal officer of the Board.*
- (f) Member means a member of the Board.*
- (g) In determining the meaning of any provision of this part, unless the context indicates otherwise: the singular includes the plural; the plural includes the singular; the present tense includes the future tense; and words of one gender include the other gender.*

**§1402.103 Requests for Board records available through the Public Reading Room.**

- (a) A Public Reading Room will be maintained at the Board's headquarters and will be open between 10 a.m. and 4:30 p.m., Monday through Friday, except on legal holidays. Documents may be obtained in person or by written, faxed or telephonic request from the Public Reading Room by reasonably describing the records sought.*
- (b) The public records of the Board that will be available (if and when such records are created) for inspection and copying upon request in*

*the Public Reading Room include:*

- (1) The Board's rules and regulations;*
- (2) Statements of policy adopted by the Board;*
- (3) Transcripts of public hearings and any Board correspondence related thereto;*
- (4) Board orders, decisions, notices, and other actions;*
- (5) Board correspondence, except that which is exempt from mandatory public disclosure under §1402.104;*
- (6) Copies of all unclassified filings, certifications, pleadings, records, briefs, orders, judgments, decrees, and mandates in court proceedings to which the Board is a party and the correspondence with the courts or clerks of court;*
- (7) Copies of all unclassified or not otherwise restricted filings, certifications, pleadings, records, briefs, orders, judgments, decrees, and memoranda in appeals to the President of the United States;*
- (7) Index of the documents identified in this section, but not including drafts thereof; and*
- (8) Annual reports to Congress in which the Board's operations during a past fiscal year are described;*
- (9) Administrative staff manuals and instructions to staff to the extent that such manuals or instructions affect a member of the public.*

**§1402.104 Board records exempt from public disclosure.**

*The following records are exempt from public disclosure:*

- (a) (1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national*

- defense or foreign policy, and
- (2) Which are in fact properly classified pursuant to such Executive Order;
- (b) Records related solely to the internal personnel rules and practices of an agency;
  - (c) Records specifically exempted from disclosure by statute, provided that such statute:
    - (1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
    - (2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;
  - (d) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Board;
  - (e) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
  - (f) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:
    - (1) Could reasonably be expected to interfere with enforcement proceedings,
    - (2) Would deprive a person of a right adjudication,
    - (3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,
    - (4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record of

information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

- (5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to result in circumvention of the law, or
- (6) Could reasonably be expected to endanger the life or physical safety of any individual; and
- (g) Assassination records during the period they are under review by the Board.

**§1402.105 Requests for Board records not available through the Public Reading Room (FOIA Requests).**

- (a) Upon the request of any person, the Board shall make available for public inspections and copying any reasonably described agency record in the possession and control of the Board, but not available through the Public Reading Room, subject to the provisions of this Part. If a member of the public files a request with the Board under the FOIA for records that the Board determines are available through the Public Reading Room, the Board will treat the request under the simplified procedures of §1402.103.
- (b) (1) A person may request access to Board records that are not available through the Public Reading Room by using the following procedures:
  - (i) The request must be in writing and must describe the

records requested to enable Board personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester, including the names and titles of any Board personnel who have been contacted regarding the request prior to the submission of the written request.

- (ii) A request for all records falling within a reasonably specific and well-defined category shall be regarded as conforming to the statutory requirement that records be reasonably described. The request must enable the Board to identify and locate the records by a process that is not unreasonably burdensome or disruptive of Board operations.
- (2) The request should be addressed to Laura Denk, Designated FOIA Officer, and clearly marked "Freedom of Information Act Request." The address for such requests is : Laura Denk, Designated FOIA Officer, Assassination Records Review Board, 600 E Street, 2nd Floor, Washington, D.C. 20530. Requests must be either mailed or hand-delivered to the above address. Hand-delivered requests will be received between 8:30 and 5:00 p.m., Monday through Friday, except on legal holidays. For purposes of calculating the time for response to the request under §1402.108, the request shall not be deemed to have been received until it is in the possession of the Designated FOIA Officer or her delegee.
  - (3) The request must include:

- (i) A statement by the requester of a willingness to pay the fee applicable under §1402.107(b), or to pay that fee not to exceed a specific amount, or
- (ii) A request for waiver or reduction of fees.

No request shall be deemed to have been received until the Board has received a statement of willingness to pay, as indicated in paragraph (b)(3)(i), of this section or has received and approved a request for waiver or reduction of fees.

- (c) With respect to records in the files of the Board that have been obtained from other federal agencies:
  - (1) Where the record originated in another federal agency, the Designated FOIA Officer shall refer the request to that agency and so inform the requester, unless the originating agency agrees to direct release by the Board.
  - (2) Requests for Board records containing information received from another agency, or records prepared jointly by the Board another agencies, shall be treated as requests for Board records. The Designated FOIA Officer shall, however, coordinate with the appropriate official of the other agency. The notice of determination to the requester, in the event part or all of the record is recommended for denial by the other agency, shall cite the other agency Denying Officials as well as the Designated FOIA Officer if a denial by the Board is also involved.
- (d) If a request does not reasonably describe the records sought, as provided in paragraph (b) of this section, the Board response shall specify the reasons why the request failed to meet those requirements and shall offer the requester the opportunity to confer with knowledgeable Board personnel in an attempt to restate the request.

If additional information is needed from the requester to render the records reasonably described, any restated request submitted by the requester shall be treated as an initial request for purpose of calculating the time for response under §1402.108.

- (e) The ARRB will not be required to create new records, compile lists of selected items from its files, or provide a requester with statistical or other data (unless such data have been compiled previously and are available in the form of a record, in which event such data shall be made available as provided in this part.)
- (f) Nothing in this section shall preclude staff of the ARRB from complying with oral, unmarked, or generally stated requests for information and documents.

**§1402.106 Request for waiver or reduction of fees.**

- (a) The Board shall collect fees for record requests made under §1402.105 as provided in § 1402.107(b), unless a requester submits a request in writing for a waiver or reduction fees. The Designated FOIA Officer shall make a determination on a fee waiver or reduction request within five working days of the request coming into his possession. No determination shall be made that a fee waiver or reduction request should be denied, until the Designated FOIA Officer has consulted with the General Counsel. If the determination is made that the written request for a waiver or reduction of fees does not meet the requirements of this section, the Designated FOIA Officer shall inform the requester that the request for waiver or reduction of fees is being denied and set forth his appeal rights under §1402.109.
- (b) A person requesting the Board to waive or reduce search, review, or duplication fees shall:

- (1) Describe the purpose for which the requester intends to use the requested information;
  - (2) Explain the extent to which the requester will extract and analyze the substantive content of the agency record;
  - (3) Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;
  - (4) Describe the likely impact of disclosure of the requested records on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure;
  - (5) Describe the size and nature of the public to whose understanding a contribution will be made;
  - (6) Describe the intended means of dissemination to the general public;
  - (7) Indicate if public access to information will be provided free of charge or provided for an access or publication fee; and
  - (8) Describe any commercial or private interest the requester or any other party has in the agency records sought.
- (c) The Board shall waive or reduce fees, without further specific information from the requester if, from information provided with the request for agency records made under §1402.105, it can determine that disclosure of the information in the agency records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.
- (d) In making a determination regarding a request for a waiver or

reduction of fees, the Board shall consider the following factors:

- (1) How the subject of the requested agency records concerns the operations or activities of the Government;
- (2) If disclosure is likely to contribute significantly to public understanding of Government operations or activities;
- (3) If, and the extent to which, the requester has a commercial interest that would be furthered by the disclosure of the requested agency records; and
- (4) If the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

**§1402.107 Fees for record requests.**

- (a) Fees for records available through the Public Reading Room.
  - (1) With the exception of copies of transcripts of Board public hearings addressed in paragraph (a)(2) of this section, the fees charged shall be limited to the costs of duplication of the requested records or the cost to have them duplicated. If the Board duplicates the records, it shall not charge the requester for the associated labor costs. A schedule of fees for this duplication service shall be prescribed in accordance with paragraph (b)(7) of this section. A person may obtain a copy of the schedule of fees in person or by mail from the Public Reading Room. There shall be no charge for responses consisting of ten or fewer pages.
  - (2) Transcripts of Board public hearings are made by private contractors. Interested persons may obtain copies of public

hearing transcripts from the contractor at prices set in the contract, or through the duplication service noted in paragraph (a), of this section, if the particular contract so permits. Copies of the contracts shall be available for public inspection in the Public Reading Room.

- (3) Requests for certification of copies of official Board records must be accompanied by a fee of (\$) per document. Inquiries and orders may be made to the Public Reading Room in person or by mail.
- (b) Fees for records not available through the Public Reading Room (FOIA requests).

- (1) *Definitions.* For the purpose of paragraph (b) of this section:

*Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers commercial, trade, or profit interests as these phrases are commonly known or have been interpreted by the courts in the context of the FOIA;

*Direct costs* means those expenditures which the Board incurs in search, review and duplication, as applicable to different categories of requests, to respond to requests under § 1402.105. Direct costs include, for example, the average hourly salary and projected benefits costs of Board employees applied to time spent in responding to the request and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as cost of space, and heating or lighting the facility in which the Board records are stored.

*Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of

*graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research;*

*Noncommercial scientific institution refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry;*

*Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminations of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media may be included in this category. A "freelance" journalist may be regarded as working for a news organization if the journalist can demonstrate a solid basis for expecting publication through that organization, even though the journalist is not actually employed by the news organization. A publication contract would be the clearest proof, but the*

Board may also look to the past publication record of a requester in making this determination.

(2) *Fees*

- (i) If documents are requested for commercial use, the Board shall charge the average hourly pay rate for Board employees, plus the average hourly projected benefits cost, for document search time and for document review time, and the costs of duplication as established in the schedule of fees referenced in paragraph (b)(7) of this section.
- (ii) If documents are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the Board's charges shall be limited to the direct costs of duplication as established in the schedule of fees referenced in paragraph (b)(7) of this section. There shall be no charge for the first 100 pages of duplication.
- (iii) For a request not described in paragraphs (i) or (ii) of this paragraph the Board shall charge the average hourly pay rate for Board employees, plus the average hourly projected benefits cost, for document search time, and the direct costs of duplication as established in the schedule of fees referenced in paragraph (b)(7) of this section. There shall be no charge for document review time and the first 100 pages of reproduction and the first two hours of search time will be furnished without charge.
- (iv) If documents are mailed, requesters shall be charged fees based on the current postage or express delivery service

rates.

- (v) The Board, or its designee, may establish minimum fees below which no charges will be collected, if it determines that the costs of routine collection and processing of the fees are likely to equal or exceed the amount of the fees. If total fees determined by the Board for a Freedom of Information Act request would be less than the appropriate threshold, the Board shall not charge the requesters.
- (vi) Payment of fees must be by check or money order made payable to the U.S. Treasury.
- (vii) Requesters may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment fees. When the Board reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of request for the purpose of evading assessment of fees, the Board may aggregate any such requests and charge the requester accordingly. The Board shall not, however, aggregate multiple request on unrelated subjects from a requester.
- (viii) Whenever the Board estimates that duplication or search costs are likely to exceed (\$), it shall notify the requester of the estimated costs, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester an opportunity to confer with the Board personnel with the object of reformulating the request to meet the requester's

needs at a lower cost.

- (3) *Fees for unsuccessful search.* The Board may assess charges for time spent searching, even if it fails to locate the records, or if records located are determined to be exempt from disclosure.
- (4) *Advance Payments.*
  - (i) If the Board estimates or determines that allowable charges that a requester may be required to pay are likely to exceed (\$), the Board shall notify such requester of the estimated cost and either require satisfactory assurance of full payment where the requester has a history of prompt payment of fees, or require advance payment of the charges if a requester has no payment history.
  - (ii) If a requester has previously failed to pay a fee charged in a timely fashion, the Board shall require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Board will begin to process a new request or pending request from that requester.
  - (iii) When the Board requires advance payment under this paragraph, the administrative time limits prescribed in §1402.108(b) will begin only after the Board has received the fee payments.
- (5) *Debt collection.* The Board shall refer unpaid FOIA invoices to the General Services Administration, or other federal agency performing financial management services for the Board, for collection.
- (6) *Annual adjustment of fees.*
  - (i) *Update and publication.* The Board, by its Designated

FOIA Officer, shall promulgate a schedule of fees and the average hourly pay rates and average hourly projected benefits cost and will update that schedule once every twelve months. The (?) shall publish the schedule for public comment in the **Federal Register**.

- (ii) *Payment of updated fees.* The fee applicable to a particular Freedom of Information Act request will be the fee in effect on the date that the request is received.

#### §1402.108 Processing of FOIA requests

- (a) Where a request complies with §1402.105 as to specificity and statement of willingness to pay or request for fee waiver or reduction, the Designated FOIA Officer shall acknowledge receipt of the request and commence processing of the request. The Designated FOIA Officer shall prepare a written response:
  - (1) Granting the request,
  - (2) Denying the request,
  - (3) Granting or denying it in part,
  - (4) Stating that the request has been referred to another agency under §1402.105, or
  - (5) Informing the requester that responsive records cannot be located or do not exist.
- (b) Action pursuant to this section to provide access to requested records shall be taken within ten working days of receipt of a request for Board records, as defined in §1402.105, except that, if unusual circumstances require an extension of time before a decision on a request can be reached and the person requesting records is promptly informed in writing by the Designated FOIA Officer of the reason for

such extension and the date on which a determination is expected to be made, the Designated FOIA Officer may take an extension not to exceed ten working days. In the event of a request for fee waiver or reduction, the period for action under this paragraph begins to run from the date that the Designated FOIA Officer grants the waiver or reduction request.

- (c) For purposes of this section and §XXX.109, the term "unusual circumstances" may include but is not limited to the following:
  - (1) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which may be responsive to a single request; or
  - (2) The need for consultation, which shall be conducted with all practicable speed, with another agency pursuant to §1402.105(d).
- (d) If no determination has been made at the end of the ten day period, or the last extension thereof, the requester may deem his administrative remedies to have been exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.S. 552(a)(4). When no determination can be made within the applicable time limit, the Board will nevertheless continue to process the request. If the Board is unable to provide a response within the statutory period, the Designated FOIA Officer shall inform the requester of the reason for the delay; the date on which a determination may be expected to be made; and that the requester can seek remedy through the courts, but ask the requester to forgo such action until a determination is made.
- (e) Nothing in this part shall preclude the Designated FOIA Officer and a requester from agreeing to an extension of time for the initial

determination on a request. Any such agreement shall be confirmed in writing and shall clearly specify the total time agreed upon.

**§1402.109 Procedure for appeal of denial of requests for Board records and denial of requests for fee waiver or reduction.**

- (a) (1) A person whose request for access to records or request for fee waiver or reduction is denied in whole or in part may appeal that determination to the General Counsel within 30 days of the determination. Appeals filed pursuant to this section must be in writing, directed to the General Counsel at the address stated above and clearly marked "Freedom of Information Act Appeal." Such an appeal received by the Board not properly addressed and marked will be so addressed and marked by Board personnel as soon as it is properly identified and then will be forwarded to the General Counsel. Appeals taken pursuant to this paragraph will be considered to be received upon actual receipt by the General Counsel.
  - (2) The General Counsel shall make a determination with respect to any appeal within 20 working days after the receipt of such appeal. If, on appeal, the denial of the request for records or fee reduction is in whole or in part upheld, the General Counsel shall notify the person making such request of the provisions for judicial review of that determination.
- (b) In unusual circumstances, as defined in §1402.108(c), the time limits prescribed for deciding an appeal pursuant to this section may be extended by up to ten working days, by the General Counsel, who will send written notice to the requester setting forth the reasons for such extension and the date on which a determination or appeal is

*expected to be dispatched.*

**§1402.110 *Requests for classified records.***

*The Board may at any time be in possession of classified records received from other federal agencies. The Board shall refer requests under § 1402.105 for such records or information to the originating agency without making an independent determination as to the releasability of such documents. The Board shall refer requests for classified records in a manner consistent with Executive Order [cite new E.O.]*

**§1402.111 *Computation of time.***

*In computing any period of time under this Part, the day of the Board's action is not included. The last day of the period is included unless it is a Saturday, Sunday or legal holiday, in which case the period runs until the end of the next working day. Whenever a person has the right or is required to take some action within a prescribed period after notification by the Board and the notification is made by mail, five days shall be added to the prescribed period. Only two days shall be added when a notification is made by express mail.*

### *Proposed FOIA Fee Schedule*

**AGENCY:** *Assassination Records Review Board (ARRB)*

**Summary:** *ARRB recently published for comment its proposed regulations implementing the Freedom of Information Act. Under the proposed regulations*

*the Board would promulgate a schedule of fees for the processing of FOIA requests. This notice sets forth the Board's proposed FOIA fee interested organizations and individual members of the public.*

**DATES:** *To be considered, comments must be mailed or delivered to the address listed below by 5:00 on (Date)*

**ADDRESSES:** *Comments on the proposed fee schedule should be mailed or delivered to the ARRB, 600 E Street NW 2nd Floor, Washington, DC 20530. All comments will be placed in the Board's public files and will be available for inspection between (Times and Days) Mondays through Fridays (except on legal holidays), in the Board's Public Reading Room at the same address*

**FOR FURTHER INFORMATION CONTACT:**

*Sheryl L. Walter, General Counsel, ARRB, 600 E. Street NW, 2nd Floor, Washington, DC. 20530, (202)724-0088*

## **SUPPLEMENTARY INFORMATION:**

In its proposed FOIA regulations (X) CFR (1402.107(b)(6)) the Board provides that (\*) would promulgate a schedule of fees for processing FOIA, as amended by the Freedom of Information Reform Act of 1986, Public Law 99-570, title I, section 1802, 1803, 100 Stat. 3207-48, 3207-49, provided that the Office of Management and Budget (OMB) would issue guidance to all federal agencies on the establishment of FOIA fees. 5 U.S.C. § 552(a)(4)(A)(i). Pursuant to notice and comment, OMB issued in 1987 its Uniform Freedom of Information Act Fee Schedules and Guidelines, 52 FR 10012. Since the FOIA requires that each agency's fees be based upon its direct, reasonable costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. See 5 U.S.C. § 552(a)(4)(A)(ii), 552(a)(4)(A)(iv), and OMB's discussion at 52 FR 10015. However, OMB provided guidance on the types of costs that may properly be considered in establishing fees under the FOIA.

The Board's proposed fee schedule is consistent with the OMB guidance. The components of the proposed fees (hourly charges for search or review and charges for copies of requested documents) and based upon the Board's specific costs.

### **The Proposed Action**

Accordingly, the Board proposes to establish the following schedule of fees for services performed in response to FOIA requests:

ARRB

(Implementing X CFR 1402 (b)(6))

Search or review Charge/(\$ 00.00 per hour)

Copy charge (paper)(8.5"X11")/\$.05 per page or generally available commercial rate.

Copy charge (3.5" diskette)

*Copy charge (audio cassette)/\$3.00 per cassette.*

*Search or review charge/\$38.00 per hour*

*Coping large documents (e.g., maps, diagrams)/Actual commercial rates.*

*Privacy Act; Systems of Records*

*AGENCY: Assassination Record Review Board (ARRB)*

**ACTION:** Notice of Systems of Records

**SUMMARY:** Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. § 552a, to provide public notice of systems of records it maintains containing personal information. In this notice the Board provides the required information on two such systems of records.

**FOR FURTHER INFORMATION CONTACT:** Sheryl L. Walter, ARRB, 600 E. Street, 2nd Floor, Washington, DC. 20530

**SUPPLEMENTARY INFORMATION:** Section 552a(e) of the Privacy Act of 1974 directs each Federal agency to provide notice to the public of systems of records it maintains on individuals. This notification of two records systems is the first in a series of notices which will bring the Board (an agency established in ( ) ) into full compliance with the Privacy Act.

Future notices will describe other systems of records maintained by the Board. It is the Board's intent to be in full compliance with the Privacy Act by ( ). Any questions concerning these notices, or other Privacy Act issues, should be directed to the Office of the General Counsel.

### **Systems of Records**

#### **ARRB-1**

##### **System Name:**

Personnel Security Files.

##### **Security Classification:**

Classified and unclassified materials.

##### **System Location:**

ARRB, 600 E. Street, 2nd Floor, Washington, DC 20530.

##### **Categories Of Individuals Covered By The System:**

Employees and applicants for employment with ( ) and ( ) contractors; consultants; other individuals requiring access to classified materials and facilities.

### **Categories Of Records In The System:**

Personnel security folders and requests for security clearances, Forms SF 86, 86A, 312, ( ). In addition, records containing the following information:

- (1) Security clearance request information:
- (2) Records of security education.
- (3) Records of any security infractions;
- (4) Employee identification files (including photographs) maintained for access purposes.

### **Authority For Maintenance Of The System:**

( )

### **Routine Uses Of Records Maintained In The System, Including Categories Of Users And The Purposes Of Such Uses:**

- (1) to determine which individuals should have access to classified material.
- (2) to determine eligibility for security clearances.

### **Storage:**

Paper records.

### **Retrievability:**

By name.

### **Safeguards:**

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area.

### **Policies And Practices For Storing, Retrieving, Accessing, Retaining, And Disposing of Records In The System:**

Retention And Disposal: ( )

### **System Manager And Address:**

ARRB, 600 E. Street NW, 2nd Floor, Washington, DC 20530.

*Attention: Security Management Officer.*

***Notification Procedure:***

*Requests by an individual to determine if ( ) contains information about him/her should be directed to the General Counsel, ARRB, 600 E. Street NW, Washington, DC 20520. Required identifying information: Complete Name.*

***Record Access Procedure:***

*Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.*

***Contesting Record Procedure:***

*Same as Record Access Procedure.*

***Record Source Categories:***

*Subject individuals, Questionnaire for Sensitive Positions (SF-86)*

***System Exempted From Certain Provisions Of The Act:***

*None.*

***ARRB-2***

***System Name:***

*Administrative and Travel Files.*

***System Classification:***

*Unclassified*

***System Location:***

*ARRB, 600 E. Street NW, Washington, DC 20530*

***Categories Of Individuals Covered By The System:***

*Employees and applicants for employment with ( ), including ( ) contractors and consultants.*

***Categories Of Records In The System:***

*Record containing the following information:*

- (1) Time and attendance;
- (2) Payroll actions and deduction information requests;
- (3) Authorizations for overtime and night differential;
- (4) Credit cards and telephone calling cards issued to individuals;
- (5) Destination, itinerary, mode and purpose of travel;
- (6) Date(s) of travel and all expenses;
- (7) Passport number;
- (8) Requests for advance of funds, and voucher with receipts;
- (9) Travel authorizations;
- (10) Name, address, social security number and birth date;
- (11) Employee parking permits.

**Authority For Maintenance Of The System:**

( )

**Routine Uses Of Records Maintained In The System, Including Categories Of Users And The Purposes Of Such Uses:**

Treasury Department-To collect withheld taxes, print payroll checks, and issue savings bonds.

Internal Revenue Service-To process Federal income tax.

State and Local Government-To process state and local income tax.

Office of Personnel Management-Retirement records and benefits.

Social Security Administration-Social Security record and benefits.

Department of Labor-To process-To process Workmen's Compensation claims.

Department of Defense-Military Retired Pay Offices-To adjust Military retirement.

Savings Institutions-To credit accounts for savings made thorough payroll deductions.

*Health Insurance Carriers*—To process insurance claims.

*General Accounting Office—Audit*—To verify accuracy and legality of disbursement.

*Veteran's Administration*—To evaluate veteran's benefits to which the individual may be entitled.

*States' Department of Employment Security*—To determine entitlement to unemployment compensation or other state benefits.

*Travel Agencies*—To process travel itineraries.

***Policies And Practices For Storing, Retrieving, Accessing, Retaining, And Disposing Of Records In The System:***

***STORAGE:***

*Paper records, magnetic disk, and computer printouts.*

***Retreivablility:***

*By name, social security number, travel dates, and alphanumeric code.*

***SAFEGUARDS:***

*Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal Guidelines.*

***Retention and Disposal:***

*( )*

***System Manager And Address:***

*ARRB, 600 E. Street NW 2nd Floor, Washington, DC 20530, Attention: Sheryl Walter, General Counsel*

***Notification Procedure:***

*Requests by an individual to determine to determine if ( ) contains information about him/her should be directed to the General Counsel, ARRB, 600 E Street NW 2nd Floor, Washington, DC 20530. Required identifying information: Complete name, social security number, and date*

of birth.

**Record Access Procedure:**

Same as Notification procedures above, expect individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

**Contesting Record Procedure:**

Same as Record Access procedure.

**Record Source Categories:**

Subject individuals, timekeepers, official personnel records, GSA for accounting and payroll, OPM for official personnel records, IRS and State officials for withholding and tax information, and travel agency contract.

**System Exempted From Certain Provisions Of The Act:**

None.

**Rules Implementing the Privacy Act**

**Agency:** Assassination Records Review Board (ARRB)

**Action:** Proposed rule.

**Summary:** Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. § 552a, to promulgate rules which set forth procedures by which individuals can examine and request correction of agency records containing personal information. In this notice the Board proposes a rule to satisfy that requirement.

**Dates:** Comment period expires ( )

**Addresses:** Mail comments to: ARRB, 600E Street NW 2nd Floor, Washington DC 20530, Attention: Sheryl L. Walter, General Counsel

**For Further Information Contact:** ARRB, 600 E Street NW 2nd Floor, Washington, DC 20530, Attention: Sheryl L. Walter, General Counsel

**Supplementary Information:**

Section (f) of the Privacy Act of 1974, 5 U.S.C. § 552a (f), requires each Federal agency to promulgate rules which, in the main, set forth procedures by which individuals can examine and request correction of agency records established ( Act ). is therefore obligated to publish such regulations.

Because Privacy Act regulations are intended for use by the general public, the Board has tried to keep its proposed rule simple and straightforward. Some aspects of the Privacy Act dealing solely with the Board's internal procedures and safeguards will be dealt with by directive to the Board's staff rather than by rule. The Board sees no need to elaborate upon the Act's penalty sections in the rule, as those sections are self-executing.

The proposed rule is largely self-explanatory, and is fairly typical of other Federal agency rules in this area. The board would particularly appreciate public comment on four aspects of the rule:

(1) Is the rule consistent with the Privacy Act?

(2) Is the rule complete as regards public access to records and record correction?

(3) Is the rule clear and understandable?

(4) Is the fee provision reasonable?

#### **Paperwork Reduction Act Statement**

The proposed rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. § 3501, et seq.) because it does not contain any information collection requirements within the meaning of 44 U.S.C. § 3502(4).

#### **Regulatory Flexibility Act Certification**

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. § 601-12), the Board certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared, 5 U.S.C. § 605(b).

#### **List of Subjects in (X)CFR Part (1402)**

Privacy Act.

#### **The Proposed Regulations**

Accordingly, chapter (1402) of title (XX) of the Code of Federal Regulations is proposed to be amended by adding a part 1705 to read as follows:

#### **Chapter XVII-Defense Nuclear Facilities Safety Board**

##### **Part 1705-Privacy Act**

Sec.

1402.01 Scope.

1402.02 Definitions.

1402.03 Systems of records notification.

1402.04 Requests by persons for access to their own records.

1402.05 Processing of requests

1402.06 Appeals from access denials.

1402.07 Requests for correction of records.

1402.08 Appeals from correction denials.

1402.09 Disclosure of records to third parties

1402.10 Fees.

1402.11 Exemptions.

Authority U.S.C. > 552a(f).

### § 1402.01 Scope.

This part contains the board's regulations implementing the Privacy Act of 1974, Public Law 93-579, 5 U.S. 552a.

### § 1402.02 Definitions.

The following terms used in these regulations and defined in the Privacy Act, 5 U.S.C. § 552a(a): "agency," "individual," "maintain," "record," "system of record," "statistical record," and "routine use." The Board's use of these terms conforms with the statutory definitions. References in this part to "the Act" refer to the Privacy Act of 1974.

### § 1402.03 Systems of records notification.

(a) *Public notice.* The board has published in the **Federal Register** its system of records. The Office of the Federal Register biannually compiles and publishes all systems of records maintained by Federal agencies, including the board.

(b) *Requests regarding record systems.* Any person who wishes to know whether a system of records contains a record pertaining to him or her may file a request in person or in writing. Written requests should be directed to General Counsel, ARRB, 600 E Street NW, Washington, DC

20530. Telephone requests should be made by calling the Board at 202-724-0088, and asking to speak to the General Counsel.

**§ 1402.04 Requests by person for access to their own records.**

(a) *Requests in writing.* A person may request access to his or her own records in writing by addressing a letter to: General Counsel, ARRB, 600 E Street NW 2nd Floor, Washington, DC 20530. The request should contain the following information:

(1) Full name, address, and telephone number of requester.

(2) Proof of identification, which should be a copy of one of the following: Valid driver's license, valid passport, or other current identification which contains both an address and picture of the requester,

(3) The system of records in which the desired information is contained, and

(4) At the requester's option, authorization for expenses (see § 1402.10) below).

(b) *Requests in person.* Any person may examine his or her own record on the Board's premises. To do so, the person should call the Board's offices at 202-724-0088 and ask to speak to the General Counsel. This call should be made at least two weeks prior to the time the requester would like to see the records. During this call, the requester should be prepared to provide the same information as that listed in paragraph (a) of this section expect for proof of identification.

**§ 1402.05 Processing of requests.**

(a) *Requests in writing.* The General Counsel will acknowledge receipt of the request within five working days of its receipt in the Board's offices. The acknowledgment will advise the requester if any additional information is needed to process the request. Within fifteen working days of receipt of the request, the General Counsel will provide the requester why additional

time is needed for response.

(b) *Requests in person.* Following the initial call from the requester, the General Counsel will determine (1) whether the records identified by the requester exist, and (2) whether they are subject to any exemption under §1402.11 below. If the records exist and are not subject to exemption, the General Counsel will call the requester and arrange an appointment at mutually agreeable time when the records can be examined. The requester may be accompanied by one person of his or her own choosing, and should state during this call whether or not a second individual will be present at the appointment. At the appointment, the requester will be asked to present identification as stated in §1402.04(a)(2).

(c) *Excluded information.* If a request is received for information compiled in reasonable anticipation of litigation, the General Counsel will inform the requester that this information is not subject to release under the Privacy Act (see 5 U.S.C. § 552a(d)(5)).

#### **§ 1402.06 Appeals from access denials.**

When access to records has been denied by the General Counsel, the requester may file an appeal in writing. This appeal should be directed to the Boards Chairman, John Tunheim, 600 E. Street NW 2nd Floor, Washington, DC 20530. The appeal letter must (a) specify those denied records which are still sought, and (b) state why the denial by the General Consul erroneous. The Chairman or his designee will respond to such appeals within twenty working days after the appeal letter has been received in the Board's offices. the appeal determination will explain the basis for continuing to deny access to any requested records.

#### **§ 1402.07 Requests for correction of records.**

(a) *Correction requests.* Any person is entitled to request correction of a record pertaining to him or her. This request must be made in writing

and should be addressed to General Counsel, ARRB, 600 E Street NW 2nd Floor, Washington, DC 20530. The letter should clearly identify the corrections desired. An edited copy will usually be acceptable for this purpose.

(b) *Initial response.* Receipt of a correction request will be acknowledged by the General Counsel in writing within five working days of receipt of the request. The General Counsel will endeavor to provide a letter to the requester within thirty working days stating whether or not the request for correction has been granted or denied. If the General Counsel decides to deny any portion of the correction request, the reasons for the denial will be provided to the requester.

#### **§ 1402.08 Appeals from correction denials.**

(a) When amendment of records has been denied by the General Counsel, the requester may file an appeal in writing. This appeal should be directed to the Chairman, John Tunheim, 600 E Street NW 2nd Floor, Washington, DC 20530. The appeal letter must (1) specify the record subject to the appeal, and (2) state why the denial of amendment by the General Counsel is erroneous. The Chairman or his designee will respond to such appeals within thirty working days (subject to extension by the Chairman for good cause) after the appeal letter has been received in the Board's offices.

(b) The appeal determination, if adverse to the requester in any respect, will (1) Explain the basis for denying amendment of the specified records, (2) inform the requester that he or she may file a concise statement setting forth reasons for disagreeing with the Chairman's determination, and (3) inform the requester of his or her right to pursue a judicial remedy under 5 U.S.C. § 552a(g)(1)(A).

#### **§ 1402.09 Disclosure of Records to third parties.**

Records subject to the Privacy Act that are requested by an person other

than the individual to whom they pertain will not be made available except in the following circumstances:

(a) Their release is required under the Freedom of Information Act in accordance with the Board's FOIA regulations, (XX CFR part (1402;)

(b) Prior consent for disclosure is obtained in writing from the individual to whom the records pertain; or

(c) Release is authorized by 5 U.S.C. § 552a(b)(1) or (3) through (11).  
(§ 1402.11) Exemptions.

## **Rules Implementing the Government in the Sunshine Act**

**AGENCY:** Assassination Record Review Board (ARRB)

**ACTION:** Rulemaking (ARRB)

**SUMMARY:** The Assassination Records Review Board ("Board") was established by the ( ) Act (.) This NPRM initiates the Board's first rulemaking. All of the Board's regulations will eventually be codified in X CFR Chapter XXX.

This rulemaking being undertaken in response to (the decision of the United States Court of Appeals for the District of Columbia Circuit that the Board is an "agency" generally convened by) the Government in the Sunshine Act. ( ) The Sunshine Act relates to meetings of agencies of the United States government that are headed by collegial body composed of two or more members, a majority of whom are appointed by the President with the advice and consent of the Senate. The Act provides that "meetings", as specifically defined in the statute, shall be held in public except where stated exemptions apply. The board invites comments from interested groups and members of the public on these proposed rules implementing the Sunshine Act.

**DATES:** To be considered, comments must be mailed or delivered to the address listed below by (5 p.m. on January 30, 1991.)

**ADDRESSES:** Comments on the proposed rule should be mailed or delivered to the Office of the General Counsel, (Sheryl L. Walter, General Counsel, ARRB, 600 E Street, North West, 2nd Floor, Washington, D.C. 20530.) All comments will be placed in the Board's public files and will be available for inspection between (8:30 a.m. and 4:30 p.m., Mondays through Fridays,) in the Boards Public Reading Room at the same address. Comments should state prominently that they are being filed in Docket No. 1402.

**FOR FURTHER INFORMATION CONTACT:**

Sheryl L. Walter, General Counsel, ARRB, 600 E Street, North West, 2nd Floor, Washington, D.C. 20530.

To discharge its responsibilities, the Board gathers as a collegial body at its Washington, DC offices, at ARRB facilities, and at other locations as appropriate. Since the Board, including its staff, is a small agency (currently authorized to fill up to equivalent of 100 full-time staff positions), member work both personally and collectively in the discharge of the Board's responsibilities under its statute.

Board activities include such matters as:

?

The Act defines meetings and sets certain requirements for advance public notice of such meetings (5 U.S.C. § 552b(e) and permits agencies to close meetings to public attendance and withhold information regarding meetings where an agency finds that any of ten exemptions enumerated in the Act applies, 5 U.S.C. § 552b(c). The Act sets forth the procedures that must be followed by agencies in invoking one of these exemptions, 5 U.S.C. § 552b(d), (f). Each agency is required to adopt, after opportunity for public comment, regulations to implement the Sunshine Act, 5 U.S.C. § 552b(g).

Consistent with the requirement of 5 U.S.C. § 552b(g), the proposed regulations implement the provisions of 5 U.S.C. § 552b(b-f). The Board's proposed rules are modeled after Sunshine Act regulations promulgated and implemented by other collegial bodies such as the National Transportation Safety Board (NTSB), the Federal Deposit Insurance Corporation (FDIC), and the National Science Board. The proposed rules closely track the statutory language of the Sunshine Act as interpreted by the Supreme

Court in *FCC v. ITT World Communications*, 466 U.S. 463 (1984). The proposed regulations also follow the exemptions set forth in the Act and fully implement the Act's procedural requirements regarding public notice of meetings, availability of transcripts or other records of meetings, and closure of meetings.

#### **Paperwork Reduction Act Statement**

The proposed rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. § 3501, *et seq.*) because it does not contain any information collection requirements with the meaning of 44 U.S.C. § 3502(4).

#### **Regulatory Flexibility Act Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. § 601-12), the Board certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared. 5 U.S.C. § 605(b). The proposed rule would not impose any obligations, including any obligations on "small entities," as set forth in 5 U.S.C. § 601(3) of the Regulatory Flexibility Act, or within the definition of "small business," as found in 15 U.S.C. § 632, or within the Small Business Size Standards in regulations issued by the Small Business Administration and codified in 13 CFR part 121. Since the impact of the proposed rule is confined to the Board, the proposed rule does not fall within the purview of the Regulatory Flexibility Act.

#### **List of the Subjects in XX CFR Part 1402**

Sunshine act.

#### **The Proposed Regulations**

Accordingly, title 10 of the Code of Federal Regulations is proposed to be amended by establishing a chapter XVII consisting of part 1704 to read as

follows:

**Chapter XVII-Assasination Records Review Board**

**PART 1704-RULES IMPLEMENTING THE GOVERNMENT IN THE  
SUNSHINE ACT**

Sec.

1704.X Applicability.

1704.X Definitions.

1704.X Open meetings requirement.

1704.X Grounds on which meetings may be closed or information may  
be

withheld.

1704.X Procedures for closing meetings, or withholding information,  
and request

by affected persons to close a meeting.

1704.X Procedures for public announcement of meetings.

1704.X Changes following public announcement.

1704.X Transcripts, recordings, or minutes of closed meetings.

1704.X Availability and retention of transcripts, recordings, and  
minutes and

applicable fees.

1704.XX Severability.

**Authority:** 5 U.S.C. § 552b; 42 U.S.C. § 2286, 2286b(c).

**§ 1402.X Applicability.**

(a) This part implements the provisions of the Government in the  
Sunshine Act (5 U.S.C. § 552b). These procedures apply to meetings, as  
defined herein, of the Members of the Assasination Records Review Board  
(Board). The Board may waive the provisions set forth in this Part to the  
extent authorized by law.

(b) Requests for all documents other than the transcripts, recordings, and minutes described in 1402.X shall be governed by Board regulations pursuant to the Freedom of Information Act (5 U.S.C. § 552).

#### **1402.2 Definitions.**

As used in this part:

*Chairman* means the Member designated by the President to serve in said position, pursuant to 42 U.S.C. § 2286(c).

*General Counsel* means the Board's principal legal officer, or an attorney serving as Acting General Counsel.

*Meeting* means the deliberations of three or more Members where such deliberations determine or result in the joint conduct or disposition of official Board business. A meeting does not include:

(1) Notation voting or similar consideration of business, whether by circulation of material to the Members individually in writing or by a polling of the Members individually by telephone.

(2) Action by three or more Members to:

(i) Open or to close a meeting or to release or to withhold information pursuant to § 1402.5;

(ii) Set an agenda for a proposed meeting(s);

(iii) Call a meeting on less than seven days' notice as permitted by § 1402.6(b); or

(iv) Change the subject matter or the determinations to open or to close a publicly announced meeting under § 1402.7(b).

(3) A session attended by three or more Members for which the purpose is to have the Board's staff or expert consultants to the Board brief or otherwise provide information to the Board concerning any matters within the purview of the Board under its authorizing statute, provided that the Board does not engage in deliberations that determine or result in

the joint conduct of disposition of official Board business on such matters.

(4) A session attended by three or more Member for which the purpose is to have the Assassination Records Review Board or other persons or organizations brief or otherwise provide information to the Board concerning any matter within the purview of the Board under its authorizing statute, provided that the Board does not engage in deliberations that determine or result in the joint conduct or disposition of official Board business on such matters.

(5) A gathering of Members for the purpose of holding informal preliminary discussions or exchange of views which do not effectively predetermine official action.

*Member* means an individual duly appointed and confirmed to the collegial body, known as "the Board."

*Presiding Officer* means the Chairman or any other Member authorized by the Board to hold meetings.

### **§ 1402.3 Open meetings requirement.**

Any meetings of the Board, as defined in § 1402.2, shall be conducted in accordance with this part. Except as provided in § 1402.4, the Board's meetings, or portions thereof, shall be open to public observation.

### **§ 1402.4 Grounds on which meetings may be closed or information may be withheld.**

Except in a case where the Board finds that the public interest requires otherwise, a meeting may be closed and information pertinent to such meeting otherwise required by §§ 1402.5, 1402.6, and 1402.7 to be disclosed to the public may be withheld if the Board properly determines that such meeting or portion thereof or the disclosure of such information is likely to:

- (a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of the Board;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. § 552): *Provided, That such statute:*

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, both only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion to personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a

criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Board, except that this subsection shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action such proposal;

(i) Specifically concern the Board's issuance of a subpoena, or the Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Board of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. § 554 or otherwise involving a determination on the record after opportunity for a hearing; or

(j) Disclose other information for which the Government in the Sunshine Act provides an exemption to the open meeting requirements of the Act.

**§ 1402.5 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.**

(a) A majority of all Members may vote to close a meeting or withhold information pertaining to that meeting. A separate vote shall be taken with respect to any action under §1402.4. A majority of the Board may act by taking a single vote with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to

any information concerning such series of meetings, so long as each meeting in such series involves the same particular subject matters and is scheduled to be held no more than thirty days after the initial meeting in such series. Each Member's vote under the paragraph shall be recorded and proxies are not permitted.

(b) Any person whose interest may be directly affected if a portion of a meeting is open may request the Board to close that portion of any of the grounds referred to in § 1402.4 (e), (f), or (g). Requests, with reasons in support thereof, should be submitted to the General Counsel, ARRB, 600 E Street NW, 2nd Floor, Washington, DC 20530. On motion of any Member, the Board shall determine by recorded vote whether to grant the request.

(c) Within one working day of any vote taken pursuant to this section, the Board shall make available a written copy of such vote reflecting the vote of each Member on the question, and if a portion of a meeting is to be closed to the public a full written explanation of its action closing the meeting and a list of all persons expected to attend and their affiliation.

(d) Before every closed meeting, the General Counsel of the Board shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provisions. A copy of such certification, together with the statement setting forth the time and place of the meeting and the persons present, shall be retained by the Board as apart of the transcript, recording, or minutes required by § 1402.8.

**§ 1402.^ Procedures for public announcement of meetings.**

(a) For each meeting, the Board shall make public announcement, at least one week before the meeting, of the:

- (1) Time of the meeting;
- (2) Place of the meeting;

- (3) Subject matter of the meeting;
- (4) Whether the meeting is to be open or closed; and
- (5) The name and business telephone number of the official designated by the Board to respond to requests for information about the meeting.

(b) The one week advance notice required by paragraph (a) of this section may be reduced only if:

(1) A majority of all Members determines by recorded vote that Board business requires that such meeting be scheduled in less than seven days; and

(2) The public announcement required by paragraph (a) of this section is made at the earliest practicable time.

(c) Immediately following each public announcement required by this section, or by §1402.7, the Board shall submit a notice of public announcement for publication in the **Federal Register**.

**§ 1402.7 Changes following public announcement.**

(a) The time or place of a meeting may be changed following the public announcement only if the Board publicly announces such change at the earliest possible practicable time. Members need not approve such change.

(b) The subject matter of a meeting or the determination of the Board to open or to close a meeting, or a portion thereof, to the public may be changed following the public announcement if:

(1) A majority of all Members determines by recorded vote that Board Business so requires and that no earlier announcement of the change was possible; and

(2) The Board publicly announces such change and the vote of each Member thereon at the earliest practicable time.

(c) The deletion of any subject matter announced for a meeting is not a change requiring the approval of the Board under paragraph (b) of this

section.

**§ 1402.8 Transcripts, recordings, or minutes of closed meetings.**

Along with the General Counsel's certification and presiding officer's statement referred to in §1402.5(d), the Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or a portion thereof, closed to the public. The Board may maintain a set of minutes in lieu of such transcript or recording for meetings closed pursuant to §1402.4(i). Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote.

**§ 1402.X Availability and retention of transcripts, recordings, and minutes, and applicable fees.**

The Board shall make promptly available to the public the transcript, electronic recording, or minutes of the discussion of any item on the agenda or of any testimony received at a closed meeting, except for such item, or items, of discussion or testimony as determined by the Board to contain matters which may be withheld under the exemptive provisions of §1402.4.

Copies of the nonexempt transcript or minutes, or transaction of such recordings disclosing the identity of each speaker, shall be furnished to any person at the actual cost of transcription or duplication. If at some later time the Board determines that there is no further justification for withholding a portion of a transcript, electronic recording, or minutes or other item of information from the public which has been previously withheld, such portion or information shall be made publicly available. The Board shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each

meeting, or a portion thereof, closed to the public for at least two years after such meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

**§ 1402.10 Severability.**

If any provision of this part or the application of such provision to any person or circumstances, is held invalid, the remainder of this part or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.