

November 27, 1996

BY COURIER

The Honorable John W. Magaw,
Bureau of Alcohol, Tobacco and Firearms
660 Massachusetts Avenue, N.W.
Washington, D.C. 20226

Re: Bureau of Alcohol, Tobacco & Firearms' Compliance with the
JFK Assassination Records Collection Act, 44 U.S.C. § 2107

Dear Mr. Magaw:

Since 1994, the Assassination Records Review Board ("Review Board") has been working with a number of Federal agencies, including the Bureau of Alcohol, Tobacco & Firearms ("ATF"), to locate and publicly release records related to the assassination of President Kennedy. These actions have been taken pursuant to The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 (Supp. V 1994) (JFK Act). We have been working with Robert L. Pritchett, Robert Hogarth, and Eric A. O'Neal of ATF and have appreciated the cooperation we have received. They have been quite cooperative in answering many of our specific inquiries directed to ATF.

The purpose of this letter is to request your agency's cooperation in assisting the Review Board in discharging its responsibility of assuring Congress and the American people that the goals of the JFK Act have been accomplished to the greatest reasonable extent. We want to assure the American people that the United States Government has identified, located, and released all records relating to the assassination of President Kennedy. Indeed, one of the paramount purposes of the JFK Act is to certify to the public that the United States Government is not withholding relevant materials related to the assassination. *See, e.g., Assassination Materials Disclosure Act*, H. R. Rep. No. 102-625, Part 1, 102d Cong. 2d Sess. (1992) ("The Federal Government's failure to release official materials has contributed to numerous conspiracy theories and fueled charges of government complicity in the assassination . . . a salutary purpose is served in opening these files [relating to the JFK assassination] to allay the suspicion of government cover-up.").

The Review Board has recently considered how it, along with the relevant federal agencies, can best demonstrate to the American public that a thorough, good faith, and diligent effort has been made to

locate and release all remaining assassination-related records within the control of the United States Government (and that the Government is not hiding any such materials from public disclosure). Pursuant to the Congressional mandate under the JFK Act to "create an enforceable, independent, and accountable process for the public disclosure of such records," 44 U.S.C. § 2107 (2)(a)(3), the Review Board seeks to have the relevant federal agencies provide a complete and specific accounting of their efforts to locate and release assassination-related records, including a full explanation for any destruction of such records.

Accordingly, the Review Board requests that each relevant agency adhere to the formal compliance program (hereinafter "JFK Act Compliance Program") outlined below and devised by the Review Board pursuant to its powers under Section 7(j)(1)(A), (B), (C), (D), and (F) of the JFK Act. We hereby request that you undertake the following measures by the dates provided (these dates were set in view of the fact that the Review Board's operations currently are scheduled to expire on September 30, 1997):

1. Designation of Agency Compliance Official (or officials) and statement of intent to comply with the JFK Act. We request that, by December 9, 1996, your agency designate an Agency Compliance Official who ultimately will be responsible for ensuring that the agency has complied with its obligations under the JFK Act, including the identification, location, and organization of assassination records and the transmission of those records to the National Archives and Records Administration ("National Archives"). Although the Review Board assumes that Robert L. Pritchett, Robert Hogarth, or Eric A. O'Neal will serve in this position, we nevertheless await your formal confirmation. If necessary, your agency may designate additional persons with knowledge of the measures that have been undertaken to locate assassination records.

We also request that by December 9, 1996, the agency convey its agreement to adhere to the compliance procedures outlined in this letter. To the extent that any compliance procedure described below appears to be unreasonable or to present difficulties that we may not have anticipated, please explain why and make alternate suggestions to us.

2. Initial Statement of Compliance. We request that the Agency Compliance Official prepare by January 6, 1997 an initial written statement of the agency's compliance with the JFK Act ("Statement of Compliance"), setting forth the steps that the agency

has taken to locate and process assassination records. The Review Board recognizes that many of the relevant federal agencies, including ATF, have previously written letters to the Review Board apprising it of their progress at various stages of identifying and processing assassination records under the JFK Act. The Statement of Compliance, while it may include information previously reported to the Board, is to be the agency's comprehensive and final report to the American public of what it has done to locate records relating to the assassination. This Statement of Compliance shall include, to the fullest reasonable extent, the following information:

- a. A complete description of all steps that your agency took to identify and locate assassination records including, but not limited to, an identification of the major record collections and files that were consulted in the agency's search, any departmental file indices consulted, the names and titles of the persons who were responsible for conducting the searches, the physical locations of the records that were searched, the off-site storage facilities (*e.g.*, Federal Records Centers) searched, the specific steps that were taken to locate and retrieve materials in archives, and any other criteria used by the agency to locate assassination records.

We appreciate that ATF has already provided the Review Board with information concerning what it did to locate assassination records. *See* November 2, 1995 Memorandum from Robert Hogarth to the Assassinations Records Review Board; February 14, 1996 Letter from Robert L. Pritchett to David G. Marwell; and May 28, 1996 Letters from Eric A. O'Neal to David G. Marwell (attached hereto). Because these responses were general in nature, we ask that ATF amplify on the responses by providing in the Statement of Compliance a more detailed explanation of the extent and scope of ATF's searches for assassination-related records.

- b. A description of the steps that the agency took in direct response to specific requests of the Review Board to locate certain additional records or information relating to the assassination. For example, the Review Board has written to ATF on prior occasions and has asked ATF to locate records relating to: the law enforcement activities of several Alcohol and Tobacco Tax Unit agents in Dealey Plaza on the day of the assassination; ATF agent Frank Ellsworth's contacts with the Warren Commission and the House Select

Committee on Assassinations ("HSCA"); documents relating to a 1963 investigation involving John Masen and others; and various other ATF records that were made available to the HSCA. *See* April 23, 1996 Letters from David G. Marwell to Robert L. Pritchett and November 1, 1996 Letter from Ronald G. Haron to Eric A. O'Neal (attached hereto). We acknowledge that ATF was cooperative in describing the searches that were done for these records, but again the descriptions of the searches were general in nature in that they merely listed the ATF entity that was searched without any specific information about the scope of the search. *See* May 28, 1996 Letters from Eric A. O'Neal to David G. Marwell (attached hereto). Therefore, we would ask that ATF include in the Statement of Compliance a more precise explanation of what was done to locate these records.

- c. To the extent that any assassination-related records have been destroyed by the agency or any agency official, a full and specific explanation of the circumstances surrounding the destruction of such records. While recognizing that ATF has explained to the Review Board its document retention and destruction policies generally, we would still ask that ATF attempt to account more specifically for the destruction of discrete assassination-related records, including those records which the Review Board has identified.
 - d. The status of remaining work that you can now identify that needs to be completed by your agency in order to comply fully with the JFK Act, including an identification of the categories of records that must be processed and transmitted to the National Archives, a description of any additional searches for files that must be done, and the projected date(s) for completion of these tasks.
3. Review Board Interview With Agency Compliance Official (or Officials). Shortly after the submission of the agency's written Statement of Compliance, we ask that the Agency Compliance Official (as well as any persons who helped prepare the agency's initial Statement of Compliance) be made available to the Review Board for an interview regarding the location of agency assassination records. The interview will be used as an opportunity to resolve any outstanding questions regarding the agency's search, including any follow-up tasks to be completed by the agency. The Review

Board anticipates that these interviews will be conducted in January and February, 1997.

4. Submission of Final Agency Declaration of Compliance. By July 1, 1997, the agency should expect to complete the process of identification, location, and declassification of its assassination records at which time it should submit to the Review Board a final declaration certifying, under oath, its compliance with the provisions of the JFK Act (the "Final Declaration of Compliance"). This final declaration shall set forth all of the information initially set forth in the initial Statement of Compliance and shall also supplement the initial Statement of Compliance by detailing any further steps that were conducted by the agency in identifying and locating assassination records. The agencies' Final Declarations of Compliance will be included in our final report to Congress.

5. Compliance Depositions. Starting on or about August 1, 1997, the Review Board, pursuant to its statutory authority, may conduct depositions, under oath, of the Agency Compliance Official along with any other agency officials with responsibility for complying with the JFK Act. The decision to take a compliance deposition of an agency will be made on a case by case basis, taking into account the importance of the agency to the work of the JFK Act and the sufficiency of the agency's efforts to account fully for its compliance with the JFK Act. In the event that the Review Board decides to commence a compliance deposition of an agency, the responsible agency designee(s) will be expected to testify under oath with respect to any and all issues relating to the agency's record search, including the scope of the search, the identity of files searched, the destruction of any relevant records, and any other matters set forth in the Final Declaration of Compliance. Any person obligated to appear for a deposition under oath shall be fully entitled to obtain legal representation.

We look forward to receiving your initial response, by December 9, that designates your Agency Compliance Official and includes your statement regarding your position with respect to the provisions outlined in this letter. To the extent that you have any

questions or suggestions regarding the Compliance Program, please do not hesitate to contact our

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General Counsel, T. Jeremy Gunn, at (202) 724-0088.

Thank you for your cooperation with our work.

Sincerely,

David G. Marwell
Executive Director

Enclosures

cc: Assassination Records Review Board
Stephen McHale, Chief Counsel, ATF
Mr. Robert L. Pritchett, Chief, Disclosure Branch, ATF
Mr. Eric A. O'Neal, Disclosure Specialist, ATF
Mr. Robert Hogarth, Records Officer, ATF