

April 17, 2017

Mr. Steven Garfinkel  
Director  
Information Security Oversight Office  
750 17th Street, N.W.  
Suite 530  
Washington, D.C. 20006

Re: Request for Original Classification Authority and Declassification  
Authority for the Assassination Records Review Board

Dear Mr. Garfinkel:

I am writing to request that the President grant original classification authority and declassification authority to the JFK Assassination Records Review Board (Review Board).

As you are aware, Congress enacted the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107 (JFK Act), establishing the Review Board to oversee a process of records identification, review, and release and to ensure agency compliance with the law.

*Under the JFK Act, all government offices (including those in the Executive and Legislative branches) are required to identify records in their possession that may relate to the assassination of President Kennedy and to determine whether these records may be released immediately or whether their release should be "postponed" under one of the provisions of the JFK Act.* The Review Board has the important task of reviewing the agencies' proposed redactions (termed "postponements" under the Act), the vast majority of which involve classified information, to determine whether the redactions should continue or whether the information should be declassified and made public. During its review, the Review Board will have physical possession of the tens of thousands of the original records that have been postponed by the originating agencies.

Because the Review Board (and its staff) is dealing with highly sensitive materials, all members of the staff have been required to undergo Sensitive Background Investigations in order to obtain both Top Secret and SCI clearances. In addition, we now operate a Sensitive Classified Information Facility (SCIF) that has been approved by the relevant agencies.

In order to implement the JFK Act efficiently and economically, and consistent with the intent of Executive Order 12958, we would like to request from the President original classification and declassification authority. Our reasons and justifications for these requests are as follows.

*Declassification Authority.* The Review Board will be reviewing tens of thousands of records for the purpose of making formal determinations whether records should continue to be classified or should be declassified. Although the JFK Act provides that the final determination on the release of records will remain with the President (44 U.S.C. 2107, sec. 9(d)), the process of releasing the records approved by the President will be significantly expedited if the Review Board has the authority to declassify the records once the presidential decision has been made. Because the thousands of records will be in the physical possession of the Review Board in its SCIF, the Act will be implemented much more efficiently and effectively without requiring any additional transfers of classified materials either back to the agencies or to the White House for action.

*Original Classification Authority.* The Review Board has essentially two reasons for seeking original classification authority. The first, which is technical, is that it is our understanding that the Review Board cannot have declassification authority if it does not possess classification authority. The second reason bears upon the Review Board's working requirements. During the course of Review Board's work, we will be taking testimony from witnesses who are in the possession of classified information. In order that there be no misunderstanding with the witnesses or the agencies about the protection of their testimony, and in order to ensure that there be no breach of national security, we believe that it is advisable and prudent that we be authorized to classify the witnesses' testimony pending formal declassification decisions. Although much of the testimony presumably will be derivative from other agencies, it will be more efficient if we are authorized to classify the material ourselves.

Any grant of original classification or declassification authority would need to be only temporary, inasmuch as there is a sunset provision in the JFK Act that presumes that the Review Board will cease to operate by October, 1997, at the latest.

Because the JFK Act is now in effect, and because the first round of Board actions in the declassification process is now underway, we believe that it would be very helpful if we could obtain a prompt resolution of this matter. I am taking the liberty of sending a copy of this letter to Marvin Krislov, Associate General Counsel to the President. Mr. Krislov has been our contact for implementing the presidential review procedures.

Mr. Steven Garfinkel  
April 17, 2017  
Page 3

Sincerely yours,

David G. Marwell  
Executive Director

cc: Marvin Krislov, Esq., Associate General Counsel to the President  
John R. Tunheim, Esq., Chairman, Assassination Records Review Board  
T. Jeremy Gunn, Esq., Acting General Counsel

Mr. Steven Garfinkel

April 17, 2017

Page 4

Under the JFK Act, U.S. government offices (both in the Executive and Legislative branches), are to identify records in their possession that relate to the assassination of President Kennedy and to make those records available to the American people. The JFK Act provides for a process by which an agency

and, ultimately, forward both the original and sanitized copies of the records to the National Archives.

(The sanitized versions will be made available to the public and the classified versions will be held in secure vaults in the National Archives).