

August 24, 1995

Mr. Joseph Backes
9 Kaine Terrace
Albany, New York 12208-1215

Dear Mr. Backes:

This letter is in response to your August 12, 1995 letter to me and your August 20, 1995 letter to Mr. Jeremy Gunn.

Letter of August 12, 1995 to Mr. Samoluk

First, Written statement as to why the August 28-29, 1995, Review Board meeting will be closed.

The Review Board executed a notation voting form on which the Review Board members voted on the question of closing the August 28-29, 1995, Board meeting. The Review Board executed this form in accordance with § 1405.5(a) of its Government in the Sunshine Act regulations proposed at 60 Fed. Reg. 32,930 (1995) (to be codified at 36 C.F.R. ch. 14) (Sunshine Act regulations). This form states the reasons that the Board voted to close the meeting. The form was signed by David Marwell, the Executive Director of the Review Board.

The Review Board also published a *Federal Register* notice of the meeting pursuant to the requirements of the Government in the Sunshine Act, 5 U.S.C. § 552b.

Both of these documents are in the Review Board's Public Reading Room. The Review Board's Freedom of Information Act regulations, 36 C.F.R. § 1410.25(a), state in pertinent part:

Upon the request of any person, the Review Board shall make

available for public inspection and copying any reasonably described Review Board record in the possession and control of the Review Board, *but not available through the Public Reading Room*, subject to the provisions of this part. (emphasis added).

Second, Written statement from the General Counsel.

The General Counsel's written statement, certifying his opinion that the August 28-29, 1995, meeting may be closed to the public, will issue shortly before the Board meets on August 28, 1995. This statement will comply with § 1405.5(d) of the Review Board's Sunshine Act regulations.

Third, Statement from the Presiding Officer.

The Presiding Officer's statement setting forth the time, place, and persons present at the closed meeting will not issue until the Board meets on August 28-29, 1995, and the Presiding Officer can state accurately who is present at the meeting. This statement will comply with § 1405.5(e) of the Review Board's Sunshine Act regulations.

Fourth, Complete transcript of the August 28 and 29, 1995, Board meeting.

Section 1405.5(f) of the Review Board's Sunshine Act regulations requires the Review Board to maintain a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting (except a meeting closed pursuant to § 1405.4(h).) Section 1405.5(f) does not, however, require that the Review Board make such transcripts or recordings immediately available to the public -- except to the extent that the records would otherwise be available under the Freedom of Information Act, 5 U.S.C. § 552.

In any case, the Review Board does not have a transcript or electronic recording for the August 28-29, 1995, meeting, as that meeting is yet to occur.

Fifth, Name of Designated FOIA Officer.

Laura Denk.

Sixth, Whether there are Reading Room documents.

Yes, the Review Board does maintain Public Reading Room documents.

Seventh, Whether the Reading Room includes the items listed in § 1405.15(b)(1) of the June 30,

1995, Notice of Proposed Rulemaking Implementing the Freedom of Information Act.

To the extent that such documents exist at this point in time, yes.

Eighth, Copies of documents that the Board voted on at the July 17 and 18, 1995, meeting.

Section 1410.10(a)(2) of the Review Board's Proposed Rules Implementing the Freedom of Information Act states:

Review Board records do not include: ... Documents owned by another Federal agency that the Review Board temporarily holds for the purpose of conducting its review under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). 60 Fed. Reg. 34,194 (1995) (to be codified at 36 C.F.R. § 1410.(a)(2)).

The CIA and FBI documents that you requested are not, therefore, Review Board records under the Freedom of Information Act. At this time, the originating agencies still hold title to the documents, even though the Review Board may be in possession of the documents or copies of the documents.

Whether or not these documents are released in their entirety is up to the President, pursuant to the JFK Act. The 30 day period within which the President is to make a decision under the law will expire on August 30th.

Ninth, cost of videotapes.

Seventy dollars per report.

Letter of August 20, 1995 to Mr. Gunn

First, I am enclosing a list of the 37 CIA documents with NARA RIF numbers and Extract CIA Numbers.

Second, the Board does not have the staff capabilities to respond to the growing number of requests for documents that the Board votes to release. As noted above, these documents are not defined as Review Board records and are available in redacted form at the National Archives. Once

documents are released in full, they can be obtained there. In addition, the number of documents that will be reviewed by the Board in the coming months will grow dramatically, making it more difficult to comply with requests. Finally, staff time is being devoted to responding to correspondence that have been described by one writer as an effort to "bug" the Board (see attachment); staff time that should be spent on the review of documents, and also perhaps could otherwise be spent on responding to document requests by serious researchers.

Third, the Board exercises careful judgment in reviewing documents, within the parameters of its obligation as articulated under The President John F. Kennedy Assassination Records Collection Act of 1992. As stated in the Federal Register notice, August, 2005 is the next date for review of Record Number 104-10015-10070. Consistent with the JFK Act, a determination on the status of the document will be made at that time.

Fourth, there were errors in the Federal Register on the three documents which you cited. Enclosed you will find the correction notice which was sent to the Federal Register for publication.

Sincerely,

Thomas E. Samoluk, Esq.
Associate Director for Communications

enclosures

