

BY HAND

May 29, 1996

The Honorable Louis J. Freeh
Director
Federal Bureau of Investigation
10th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Director Freeh:

I have just received your May 28, 1996 letter to the President regarding the Bureau's third appeal of Review Board determinations of FBI records. The Review Board will address the merits of your appeal in due course.

I write now to respond to the last paragraph of your letter, which refers to the Review Board's May 15, 1996 announcement regarding your second (May 10) appeal to the President. Your letter criticizes "the Board's habit of making public comments concerning these appeals." Your letter alleges that either the Review Board believed "their arguments would be better received in another forum" or hoped "to bring public pressure to bear on the White House." This criticism is unwarranted, and I would like to advise you of three points:

First, the Review Board's announcement, to which you refer, ***does not contain any argumentation regarding the appealed documents, but simply makes a statement of fact that the Bureau has appealed and that the Board believes the records should be released.*** (I am enclosing a copy of the announcement for your review.) As I hope you have seen in the Review Board's formal reply to your May 10 appeal, we believe that we have many substantial arguments in favor of the release of the information at issue, none of which was even mentioned in our announcement. Additionally, the release does not solicit or encourage any public response whatsoever to the Bureau's appeal.

Second, the is required to announce its formal determinations in the *Federal Register* and our actions come under close public scrutiny. By issuing our announcement, we sought to comply with the letter and the spirit of the JFK Act in a way that would not interfere with the ultimate resolution of the appeal on its merits. Under the sequence of events mandated by the JFK Act, the Board's decisions on these records were announced in the *Federal Register* on April 2, 1996, and the records therefore should have been sent to the Archives thirty days later. Our announcement simply clarified the status of records that had been publicly announced as having been reviewed and that should have been

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made available at the Archives. We know that members of the public cross-reference *Federal Register* notices against the assassination records that are at the Archives. Discrepancies are noticed and are questioned. It was thus inevitable that it would become known that thirteen noticed records were missing from the collection. *The only question was how the public would learn what had happened: through a matter-of-fact public announcement of the status of the records (as we we chose to do), or through a series of responses to inquiries about missing FBI records.* Because the latter option would carry a much greater risk of misunderstanding, we believe that the Review Board took the appropriate and responsible course in making its May 15 announcement.

Finally, your letter neglects to mention that the announcement was issued only after consultation with the Bureau and the solicitation of its comments. Once the decision was made to issue the release, my staff immediately contacted Mr. Kevin O'Brien, who heads the JFK Task Force at the FBI, and solicited his suggestions regarding the release. Although Mr. O'Brien was not offered the opportunity either to approve or to disapprove of the announcement, his concerns were taken into account in the drafting. For example, we satisfied his request that a statement be made that referred to the number of FBI documents that had been released without objection. We also offered to defer to the Bureau's preference on the timing of the release in order to place it in the context of the Bureau's release of several thousand JFK records and to give the Bureau an advance copy of the release.

Your letter to the President, unfortunately, suggests no awareness of these points, of our agency's public responsibilities, or of our attempts to deal with the issues in as professional, responsible, and accommodating manner as possible.

Let me assure you that the Review Board desires nothing more than, in the words of your letter, "to address our genuine differences on the merits, pursuant to the legislation which created the Board." Indeed, that is what the Review Board has done, and will continue to do. Please feel free to contact me if you have continuing concerns.

Sincerely yours,

David G. Marwell
Executive Director

Enclosure

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cc:

The President (w/enclosure)
The White House
Washington, D.C.

The Honorable Warren M. Christopher (w/enclosure)
The Secretary of State
United States Department of State
Washington, D.C.

The Honorable Jamie S. Gorelick (w/enclosure)
The Deputy Attorney General
United States Department of Justice
Washington, D.C.

Mr. Kevin O'Brien (w/enclosure)
JFK Task Force and FOI/PA Section
The Federal Bureau of Investigation
Washington, D.C.