

DAVID'S RESPONSE TO THE WHALEN
APPEAL IS DUE BY SEPTEMBER 9, 1996

August _____, 1996

Amy N. Rodgers, Esq.
Keller and Heckman, L.L.P.
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

Re: Freedom of Information Act Request for Documents and Other Records Relating
to Richard J. Whalen: Administrative Appeal

Dear Ms. Rodgers:

This is in response to your August 12, 1996, Freedom of Information Act (FOIA) appeal and request for additional information on the three documents that the Assassination Records Review Board (Review Board) withheld from disclosure in its July 12, 1996, response to your initial FOIA request. I am also writing in regard to your comment in the August 12 letter, in which you state that Mr. Whelan "has a valid interest in discovering the deliberative process that resulted in the seizure of his research materials."

As Executive Director of the Review Board, I am the person responsible for deciding your appeal.

In response to your request for more information about the three intra-agency memoranda that the Review Board withheld from disclosure, I have prepared the following index:

	Document Type	Creation Date	Author	Recipient	Description of Content
Doc. 1	internal memo	5/1/96	Joseph Freeman	Jeremy Gunn	Analyst's memorandum to supervisor on substantive issues related to Review Board's work and recommendations for follow-up leads. The memorandum includes minor references and citations to Mr. Whelan's papers.
Doc. 2	internal memo	6/10/96	Jeremy Gunn	File	General Counsel work-product. Memorandum clearly "Privileged Attorney-Client"

					Information.”
Doc. 3	internal memo	6/21/96	Joseph Freeman	Jeremy Gunn, David Marwell	Subsequent draft of 5/1/96 memorandum.

I have decided to withhold these three documents because they are intra-agency memoranda exempt from release under 5 U.S.C. § 552(b)(5). These materials reflect the deliberative process engaged in by Review Board staff, and are not appropriate for release in whole or in part at this time. As I am sure you can appreciate, we are engaged in an inquiry to determine the location of additional records related to the assassination of President Kennedy. At the present time, we need to keep our strategy confidential, although, as you know, all of our records ultimately will be sent to the JFK Collection at the Archives upon our termination.

With regard to your comment that Mr. Whelan has “a valid interest in discovering the deliberative process that resulted in the seizure of his research materials,” I have spoken to our General Counsel, Mr. Gunn, about his conversation to you. He said that he offered to write a memorandum to you describing the process by which we came to determine that we should examine Mr. Whelan’s papers *in lieu* of your proceeding further with the appeal, but that you declined. He said that there were no documents describing that process in existence, but that he would be willing to create a new document to make a record of the events. He stated that you decided, however, not to accept his offer as a settlement but that you wished to proceed with this appeal.

While you may file FOIA requests with the Review Board during the term of its existence, you should be aware of the opportunity to examine and obtain copies of the Review Board’s records as a part of the JFK Records Collection at the National Archives and Records Administration. Our enabling statute provides that, “[u]pon termination and winding up, the Review Board shall transfer all of its records to the Archivist for inclusion in the [President John F. Kennedy Assassination Records] Collection, and no record of the Review Board shall be destroyed.” *President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. § 2701.7(o)(3) (Supp. V 1994). Once our work is completed, all of our records, including those at issue here, will be transferred to the Archives for release to the public.

In the event that you are dissatisfied with the results of this appeal, judicial review is available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, which is also where we searched for the records that you requested.

Sincerely,

Amy N. Rodgers, Esq.
August _____, 1996
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David G. Marwell
Executive Director