

November 15, 1995

Mr. K. Brian London, Director
Office of Investigations
United States Customs Service
1301 Constitution Avenue, N.W.
Washington, D.C. 20229

Re: United States Customs Service's Compliance with the JFK Assassination Records
Collection Act, 44 U.S.C. § 2107

Dear Mr. London:

I am writing to update you on the status of our agencies' mutual work to implement *The President John F. Kennedy Assassination Records Collection Act*, 44 U.S.C. § 2107 (1992) (JFK Act), with respect to U.S. Customs' records.

Section 5(c)(1) of the JFK Act states that each Government office must "review, identify, and organize each assassination record in its custody or possession for disclosure to the public, review by the Review Board, and transmission to the Archivist." Section 5(c)(2)(A) states that, in order to partially fulfill its obligations under 5(c)(1), each Government office must "determine which of its records are assassination records."

In an attempt to determine whether U.S. Customs holds assassination records, two other members of the Review Board staff and I, along with Bruce Miller of your office, traveled to Suitland, Maryland, on November 1st and 3rd to begin to review U.S. Customs holdings at the Washington National Records Center. In the nine hours that we actually spent reviewing documents, we reviewed over 60 boxes of U.S. Customs records from the relevant time period. In so doing, we identified a number of records that fall within the scope of the definition of "assassination record" as enacted by Congress in the *President John F. Kennedy Assassination Records Collection Act*, 44 U.S.C. § 2107.3(2) (1992), and interpreted by the Review Board at 60 Fed. Reg. 33,345 (1995) (to be codified at 36 C.F.R. § 1400.)

The Review Board believes that there may be additional boxes at Suitland that contain assassination records. Although the JFK Act clearly states that it is the responsibility of each agency to ensure that

it locates all assassination records within its custody, the Review Board is willing to continue to provide assistance to U.S. Customs in fulfilling its obligations under the Act.

I have closely examined the 135 forms at the WNRC and have identified another 61 boxes that should be reviewed to determine if they contain assassination records. I anticipate that, with the Review Board's help, U.S. Customs could complete this review in 2-3 additional review days at the WNRC.

The JFK Act effectively ordered agencies to have completed the review process by August 1993. The Senate Report is even more explicit: "Government offices holding assassination records are required to begin organizing and reviewing such records upon enactment and have this work completed within ten months of enactment." S. Rep. No. 102-238, 102d Cong., 2d Sess. 18 (1992). Despite the U.S. Customs Service's delinquency in this regard, the Review Board is encouraged by your agency's willingness to complete the review process and come into compliance with the Act.

I am looking forward to talking to you to arrange a time to return to the WNRC. We appreciate the U.S. Customs Service's continued cooperation. Please do not hesitate to call if you have any additional questions.

Sincerely,

Laura Denk

cc: Ms. Gloria Marshall
Mr. Bruce Miller

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On another note, now that we have determined that U.S. Customs is holding assassination records, your agency should be aware of its obligations under the Act. Section 5 of the JFK Act contains most of the relevant provisions.

As stated above, the JFK Act requires each Government office to *review, identify, and organize* each assassination record *in its custody or possession* for disclosure to the public, review by the Review Board, and transmission to the Archivist. § 2107.5(c)(1). Records in the Federal Records Centers are still in the legal custody of U.S. Customs and are subject to this section of the Act. As Jeremy Gunn and I discussed with you in August, the statutory deadline for

To partially fulfill its obligations under section 5(c)(1), U.S. Customs must do the following:

- determine which of its records are assassination records;
- determine whether any of its assassination records are already available to the public in an unredacted form; and
- determine which of its assassination records, or particular information contained in such a record, was created by a third agency or by another Government office; and transmit the assassination record to the other agency or office.

For each assassination record that U.S. Customs possesses or controls, it must complete an electronic identification aid. Jeremy Gunn and I discussed these aids with you at our meeting in August and I assume you have contacted the Chief of the JFK Collection at the National Archives to obtain the necessary software. If you have any questions about the electronic identification aids, you can refer to section 5(d) of the JFK Act or contact Steve Tilley.

Mr. Miller indicated to us that U.S. Customs did not anticipate postponing the release of any assassination records still extant. However, if your agency does determine that certain assassination records, or information contained therein, are covered by the postponement standards set forth at section 6 of the JFK Act, you must: (1) specify on the electronic identification aids the applicable postponement provisions from section 6 of the Act, (2) organize the records, and (3) make the records available to the Review Board. §§ 2107.5(c)(2)(D) and (E).

U.S. Customs must transmit to the Archivist those assassination records that it intends to release in full. U.S. Customs is responsible for ensuring that the Archivist receives assassination records that have already been released to the public as well as those assassination records that have not yet been

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in the public domain. § 2107.5(e).

U.S. Customs may have uncertainty as to whether certain of its records are assassination records. Congress vested the Review Board with the authority to make determinations about whether records are assassination records. Thus, your agency should organize and make available to the Review Board any such records. § 2107.5(c)(2)(F).

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Although the Act does not require that the Review Board provide assistance to Government offices in the review process, the Review Board believes that, for agencies like U.S. Customs, it may be easier and less time-consuming for Review Board staff members to assist in the review process than it would be for the agency to train its own employees to carry out the provisions of the JFK Act.