

MEMORANDUM

October 8, 1997

To: T. Jeremy Gunn
Executive Director

From: Laura Denk
Chief Analyst for FBI Records

Subject: Foreign Government Information in the Assassination Records of the FBI

Introduction

Throughout the assassination records of the FBI, Review Board analysts encounter information that the FBI receives through foreign government channels. In every case where such information appears, the FBI requests that the Review Board postpone release of the information pursuant to Section 6(4) of the *John F. Kennedy Assassination Records Collection Act of 1994*, 44 U.S.C. § 2107 (Supp. V 1994) (“Section 6(4)”)¹. The FBI’s position on foreign government information is that the information is the property of the foreign government, and as such, the FBI cannot release the information without first obtaining the consent of the foreign government that provided the information.

As you know, the overwhelming majority of the FBI’s assassination records fall into one of two categories: the “core and related” files and the “HSCA subject” files. Foreign government information appears in both of these categories of records. The Review Board staff will continue to follow the Review Board’s policy of releasing as much information as possible in the “core and related” files *and* in any *assassination-related material* that appears in the “HSCA subject” files. The staff’s recommendation to the Review Board for the “core and related” should yield the fullest possible release of foreign government information in these important records. In contrast, the staff

¹Section 6(4) allows Government agencies to request that the Review Board sustain its postponements where there is clear and convincing evidence that:

the public disclosure of the assassination record would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest.

has now reviewed a number of the “HSCA subject” files and has found little foreign government information that is relevant to the assassination. Because the cost of releasing foreign government information far outweighs the benefits of releasing this information of marginal relevance, the staff recommends that the Review Board sustain postponements of foreign government information in the “HSCA subject” files provided the information is not assassination-related.

Foreign Government Information in the Core and Related Files

The FBI’s “core and related” files contain at least 250 records that contain information that the FBI received through foreign government channels. In an effort to complete the Board’s review of the core and related files, the Review Board staff met with representatives of the FBI to discuss how to obtain release of foreign information in these records.

Given that the FBI will not release foreign government information without the consent of the foreign government, the Review Board must decide the manner in which it wants to approach the foreign governments. The easiest way to release the foreign information in these FBI records is for the FBI, through its Legats, to request the foreign government at issue to release the information. There are two obvious advantages to this approach: first, in those cases where the FBI is successful in obtaining release of the information, the record at issue will be available to the public with no further action by the Review Board, and second, allowing the FBI to request release of foreign information using the same channels through which they obtain foreign information makes it possible for the FBI to maintain positive relations with their foreign contacts.

Recommendation for Foreign Government Information in Core and Related Files

The staff recommends that the Review Board allow the FBI to approach the foreign governments through its Legats, provided that the FBI provides the Review Board with an appropriate letter from Director Freeh that it would enclose with the relevant documents to the Legats. Director Freeh’s letter would explain how important release of the information is to the FBI and to the American people. In addition to materials from the FBI, the staff envisions that the Review Board will also enclose a letter to the foreign governments explaining our statute and our mission and requesting release of the records.

If the Legats are unsuccessful in their attempt to obtain consent from the foreign governments for release of the records, the Review Board will need to evaluate the individual records and determine whether to attempt to obtain consent from the foreign government for release of the records through diplomatic channels.

Presumably, an attempt to release the records through diplomatic channels would involve a

similar strategy to the one that the Review Board used with respect to the records regarding the Swiss Federal Police. Because the process of requesting release through diplomatic channels is so time-consuming for the Review Board, we cannot allow the FBI to delay in their efforts to obtain release of the records through the Legats. Accordingly, the Review Board staff notified the FBI that we will need answers from the Legats as soon as possible. In the event that answers from the Legats are not forthcoming, the Review Board staff will recommend to the Board that it request release of the most interesting records from the core and related files through diplomatic channels in November and December 1997.

Foreign Government Information in the HSCA Subject files

Assassination-Related Information within the HSCA subject files

The Review Board's April 23, 1997, Guidelines for Review of Postponements in the Segregated Collections ("April 23 Guidelines") state that when the Review Board staff locates assassination-related information in the Segregated Collections (HSCA subject files), the staff will follow the established procedures for the "core and related" files.² Thus, when the FBI team encounters *assassination-related* foreign government information in the HSCA subject files, it will follow "core and related" file procedures.

NBR Information or Records within the HSCA subject files

Where the record under review truly has no apparent relevance to the assassination, the record fits within the Review Board's definition of an "NBR" record and the staff will designate the record accordingly and follow the Review Board's guidelines for "NBR" review.

All Other Information or Records within the HSCA Subject files

²"Whenever the ARRB Staff identifies assassination-related information in a record in the Segregated Collections, the Staff shall recommend to the [FBI] that the record be designated as an assassination record that should be fully processed under the JFK Act (*i.e.*, be reviewed for postponements on a word-by-word basis under Section 6 of the JFK Act). If the agency disagrees with the ARRB Staff designation, the Staff shall notify the Review Board of the disagreement and shall make the disputed record available to the Review Board for its final determination whether the record should be fully processed under the JFK Act."

Assassination Records Review Board Guidelines for Segregated Collections and NBRs, November 13, 1996, at 2.

The vast majority of the records contained in the FBI's HSCA subject files are not assassination-related, though they do shed at least some light on issues that the HSCA explored as potentially relevant to the assassination of President Kennedy. It appears that foreign government material appears in 10-15% -- 28,000 to 42,000 pages -- of the records in the "HSCA subject" files (a conservative estimate based on files that Review Board staff have reviewed to date.)

Although negotiations between the FBI and Review Board staff are producing records with minimal redactions, staff members are unable to "negotiate" release of foreign government information due to the FBI's position that such information belongs to the foreign government.

Recommendation on Foreign Government Information in the HSCA Subject Files

If the Review Board were to adopt the same policy on marginally relevant foreign government information in the "HSCA subjects" as for the "core and related" files, the Review Board, the Review Board staff, and the FBI would likely spend much of this year approaching foreign governments to try to obtain the release of information that is of little public interest. The staff believes that the cost of release of the information outweighs the benefits of releasing this marginally relevant information in the "HSCA subject" files. Thus, the staff recommends that the Review Board make a finding that public disclosure of the foreign government information in *non-assassination-related material* in the "HSCA subject" files would be harmful enough to outweigh the public interest in the information, and thus, would warrant postponement under Section 6(4).