

MEMORANDUM

January 16, 1998

To: T. Jeremy Gunn
Executive Director

From: Laura Denk
Chief Analyst for FBI Records

Subject: Recommendations Regarding Grand Jury Information Under Seal in the Assassination
Records of the FBI

In response to your request for my recommendation on the best way to handle the grand jury information that is under seal of a court in the assassination records of the FBI, this memorandum outlines the steps that I recommend the Review Board staff take to unseal relevant records.

Background

The Review Board staff has known for some time that the FBI's assassination records contain information that is held under the injunction of secrecy of a grand jury. The language of Section 10 of the *John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. § 2107 (Supp. V 1994) ("JFK Act"), demonstrates that Congress was also aware that the Review Board would encounter sealed grand jury records in the course of its review of assassination records. Section 10 reads, in relevant part:

Sec. 10(a)(2), Materials Under Seal of Court

(A) The Review Board may request the Attorney General to petition any court in the United States to release any information relevant to the assassination. . . that is held under the injunction of secrecy of a grand jury.

(B) A request for disclosure of assassination materials under this Act shall be deemed to constitute a showing of particularized need under Rule 6 of the Federal Rules of Criminal Procedure.

In the first instance, section 10 implicitly requires the Review Board to make a determination as to when sealed grand jury information merits an approach to the Attorney General and a subsequent petition to unseal the records in Federal court.

Once the Review Board determines that certain sealed grand jury information should become part of

the Collection, the Review Board and the Department of Justice would need to meet the “particularized need” standard referenced in Sec. 10(a)(2)(B) of the JFK Act. On December 19, 1997, Review Board staff members met with FBI staff members (from the FBI’s Office of General Counsel as well as from the Historical and Executive Review Unit) to discuss sealed grand jury information in the FBI’s assassination records. In the meeting, we discussed the FBI’s guidelines for redacting information that the Bureau believes is under seal of court. We also discussed, in some detail, the “particularized need” standard set forth in Rule 6(e) in the Federal Rules of Criminal Procedure.

Recommendations

- (1) *Gather agency file numbers for all records that contain information that the FBI has identified as sealed grand jury information.*

In the core and related files, the RIFs that exist in the Review Board databases do not reflect which FBI records contain grand jury information. Fortunately, the FBI did keep track of those records that contain grand jury information. I recommend that we require the FBI to provide us with a list of all “10(a)(2)” RIFs in the core and related files by the end of January.¹

With regard to the HSCA Subject files, we have been tracking which documents contain information that the FBI has marked as “10(a)(2)” information. Thus, the Review Board staff can easily create a list of records in the HSCA Subject files that contain “10(a)(2)” information.

- (2) *Review records that contain information that the FBI has identified as sealed grand jury information and determine whether the record is important enough to merit the Review Board approaching the Attorney General to request that she file a petition to unseal the record.*

With regard to the core and related files, the FBI team will need to take the list of file numbers that the FBI provides and review each record on the list. I recommend that the entire FBI team spend several days working together, full-time, on this project in an effort to ensure that the Review Board staff makes consistent decisions about which records to pursue.

¹This would not be a new or surprising request from the Review Board to the FBI. On September 10, 1996, in Additional Information Request No. FBI-12 (Records Under Seal), we did request that the FBI “identify all of the information in FBI assassination records . . . that the FBI believes is . . . under the injunction of secrecy of a grand jury.” Thus, the request would take the form of a reminder to the FBI, rather than a new request.

With regard to the HSCA Subject files, I expect that the number of records that will merit a petition to lift the seal will drop considerably. As a practical matter, the FBI team analysts make a note of any records that they encounter in their negotiations of the HSCA Subjects that have a close nexus to the assassination. (Most of the records they encounter in the HSCA Subject files are several steps removed from the events surrounding the assassination.) I recommend that the analysts continue to look for important records that contain grand jury information and bring those relatively few records to my attention so that we can determine whether they merit a petition to lift the seal.²

(3) *Present important records to the Review Board.*

Once the Review Board staff locates records that we believe are important enough to merit further action by the Review Board, the staff will present the records to the Review Board.

(4) *Require the FBI to provide information that the Review Board requested in Additional Information Request, FBI-12.*

²Last fall, Review Board staff discovered that, in its initial processing of HSCA subject files, the FBI redacted an overabundance of information as “10(a)(2)” or “Federal grand jury” information. I initially talked to Carol Keeley about the scope of the FBI’s grand jury redactions. She provided me with the guidelines that the FBI uses to determine whether grand jury information is under court seal. We agreed that, in certain of the HSCA subjects, the processors had not used her guidelines -- instead, they had redacted more information than the guidelines suggested.

Carol and I agreed that the FBI would re-review information previously redacted as grand jury information in the core files and in the HSCA subjects to ensure that the Bureau only redacted information that they reasonably believed to be subject to the seal of a court. At the December 19, 1997, meeting, the FBI reaffirmed its commitment to re-review the files. In addition, my review of some HSCA subjects that the FBI has re-reviewed since Carol initially promised to correct the problem indicates that the Bureau is re-reviewing the records in good faith and with minimal redactions. Ron Haron and I will follow up on this issue in the FBI compliance program.

Additional Information Request, FBI-12, which I have attached hereto, requires the FBI to provide information on FBI records under court seal.³ (The FBI has not yet responded to this request.) Provided the Review Board agrees with the staff recommendation to pursue the release of the records referenced in (3) above, I recommend that we provide a list of records to the FBI and give the Bureau 15 days to provide the information that we requested in FBI-12.

(5) *Draft Motion to Unseal Records.*

Once the Review Board staff has the records in hand, along with the information requested in FBI-12, we will draft Motions to Unseal the relevant records.

(6) *Request the Attorney General's assistance in filing the Motion to Unseal Records, as suggested in Sec. 10(a)(2)(A) of the JFK Act.*

Ideally, the Review Board staff will have an opportunity to work with the Department of Justice to draft a boilerplate motion to unseal grand jury information in FBI records, so that DOJ is on board with our efforts to release the most relevant records.

³FBI-12 request that the Bureau provide, *inter alia*, the name and location of the court that placed the information under seal, any docket number and case name associated with the information, and the name of the judge who sealed the information or oversaw the grand jury.

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