

## FBI Appeals Chronology

### 8/8/95 FBI Appeal -- 9 documents

#### 8/11/95 Review Board Response

- Generally
  - FBI contested 9 of the first 10 decisions regarding its records made by the Review Board
- Clear and Convincing Evidence Standard
- Informants
  - 4/9 documents contain informant postponements
  - clear and convincing evidence standard
    - the FBI submitted written documents and made oral briefings in support of continued redaction of informant information, but it provided no evidence whatsoever regarding the particular informants at issue.
    - the FBI offered only one reason for not providing clear and convincing evidence: that it would be burdensome.
- FBI general arguments & ARRB response
  - disclosure of informant information may cause harm to existing informants;
    - speculative harm not sufficient -- if FBI provided clear and convincing evidence, Board would be willing to protect
  - disclosure of informant information will impair the Bureau's crime-fighting activities b/c it will chill coop. of existing informants and impede recruitment of new informants
    - FBI made same argument in re: the FOIA and Carl Stern (former NYT rpter; now at DOJ) used the FBI files to prove that "no harm was reported to any informant as a result of the use of the [FOIA], and there was only case in which agents believed that an informant was endangered because of released documents." In addition, FBI files on the FOIA proved that very few informants were reluctant to give info. due to fear of disclosure. 2/10/82 article in NY Times
    - FBI provided no evidence of impairment to crime-fighting activities from info. being released that is 30 years old
- disclosure of the information would breach prior promises of confidentiality
  - Congress intended that each record be judged on its own merits -- evidenced in JFK Act legis. history that said that individual records cannot be withheld based on general confidentiality concerns applicable to an entire class of documents
  - the passage of time does have the effect of diminishing the gov't's legitimate interest in keeping information confidential
  - Manual of Instructions from 1960s told agents to prepare their informants for the possibility that they would have to testify
- 3 documents -- symbol numbers -- FBI did not present informant-specific evidence

- 1 document -- name, symbol & file number -- very high public interest in the informant, who is dead, and the FBI did not present informant-specific evidence
  - “There may be some rare case where the FBI could prove, clearly and convincingly, that a “confidential relationship” with an informant who has been dead for 16 years might currently require protection under the standards of the JFK Act. For example, the FBI might be able to show that the relatives of a high-level organized crime informant could still be at risk of retaliation. But the FBI has not provided even the slightest piece of evidence that Dolsen’s case presents such extraordinary circumstances.” (p. 13 of appeal)
- Foreign Relations
  - 5/9 documents contain foreign relations postponements
  - FBI general arguments & ARRB response
    - fact of relationship is a classified secret
      - FBI publicly announced its liaison relationship with the Govt more than 30 years ago
    - FBI had not released documents demonstrating the nature of the relationship
      - FBI has released assassination records describing the relationship already
    - release of info. about the relationship would cause dramatic harm to U.S. foreign relations with the foreign government
      - FBI did not identify any harm that came from disclosure of relationship or release of documents
      - info. in the documents is of the type that we would expect Govts to share in law enforcement activities
- Balancing of Public Interest and Need to Protect
  - FBI argued that public interest is minimal in the records it wants to protect
  - our response
    - JFK Act defines them as assassination records and JFK Act specifies that public interest in releasing assassination records is compelling
    - to the extent that the JFK Act leaves room for anyone to evaluate the historical significance of the records, it is the Board and not the FBI that should exercise the discretion
    - and, the records are important, pre-assassination records about LHO

8/16/95 FBI Reply to our response

8/28/95 Review Board 2 page response to FBI’s 8/16/95 letter re: FBI appeal Informant Issue

- FBI argued that release of information tending to identify persons who gave the FBI info. in the early 1960s would not do harm in 1995
  - FBI still offered no evidence beyond general policy preferences
  - FBI argued that, despite inadvertent releases, they had never intentionally released inf. before. We said irrelevant. (We weren’t arguing that with you.) Our point was that inadvertent releases did not result in harm.

- Foreign Relations Issue
  - Review Board had shown that much of the appealed information had already been officially released
    - FBI essentially conceded that this was true, but then consulted the foreign govt, the foreign govt asked the FBI not to reveal it, and the FBI then argued that the mere fact that they asked us not to release meant that we couldn't release
  - we said this creates a paradox - if the FBI had released the records without consulting the govt, no harm would result
  - we said that although the foreign govt didn't want us to release the info was relevant in the balancing test, but in this case, the public interest in disclosure outweighed the govt's unexplained desire to protect
  
- 8/30/95 Stipulation
  - gave FBI 30 days to provide Review Board with additional evidence in support of the FBI's postponements in 15 records (Review Board withdrew its final determination and agreed to reconsider the records)
  
- 9/19/95 FBI Letter to Review Board informant issue
  - finally provided particularized evidence on 3 documents (searched for evidence on the 4th document but decided not to pursue it)
    - document 1
      - FBI interviewed informant and asked his opinion on disclosure
  
- 1/26/96 State Dept provides FBI with memo saying that disclosure of info re: foreign liaison would have an adverse impact of foreign relations
  
- 4/8/96 Date of the FBI's draft appeal that they sent -- 2 days later -- to us and to the White House -- 13 documents -- foreign counterintelligence
  
- 4/10/96 FBI sends draft of an appeal to us and to the White House
  
- 5/10/96 FBI Appeal of 13 FCI documents**
  
- 5/23/96 Review Board Response
  
- 5/28/96 FBI Appeal of 5 FCI documents -- 4 FCI and 1 privacy**
  
- 9/3/96 State Dept Memo to FBI supporting contd classification of sources and methods