

## *Introduction*

Section 6 of the *President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. § 2107 (Supp. V 1994) (“JFK Act”), provides Federal agencies with grounds for requesting the postponement of public disclosure of assassination records. Beyond the simple statement that “all Government records related to the assassination of President Kennedy should carry a presumption of immediate disclosure,” JFK Act, section 2(a)(2), the Review Board had little guidance from Congress concerning how to apply each of the grounds for postponement set forth in section 6. This chapter will explain how the Review Board analyzed and applied each of the standards for declassification listed in section 6.

Part I of the chapter will provide a chronological overview of the Review Board’s analysis and decision-making about the section 6 standards. Part II will enumerate the general principles that the Review Board established as it applied the provisions of section 6 to individual documents. Part III will discuss how the Review Board applied a relaxed set of standards to those records that it determined to be less relevant to the assassination. Included in Part III is an analysis of the postponement-by-postponement review process envisioned by the JFK Act and executed by the Review Board for assassination records. Finally, Part IV will evaluate the effectiveness of the JFK Act’s declassification standards in terms of the work that the Congress intended for the Review Board to complete.

## ***Part I***

Part I will provide a chronological overview of the Review Board's decision-making, setting forth in a general way how the Review Board moved from considering, but not voting on, any FBI and CIA documents in its [month], 1995 meeting, to considering and voting on 5,036 documents from eight agencies in its March 10, 1998, meeting.

### ***Freedom of Information Act and Executive Order [number] Similarities and Differences***

[insert discussion comparing provisions of Section 6 of JFK Act with similar parts of FOIA and Executive Order declass standards. Emphasize that the Congress believed that neither the FOIA or the EO were sufficient mechanisms for declassifying the JFK records.]

### ***Defining "Assassination Record"***

Section 3(2) of JFK Act defines "assassination records" to include records related to the assassination of President Kennedy that were "created or made available for use by, obtained by, or otherwise came into the possession of" the following groups: the Warren Commission, the four Congressional committees that investigated the assassination, any office of the Federal Government, and any State or local law enforcement office that assisted in a Federal investigation of the assassination.

[list groups -- WC, HSCA, Church, Pike, Rockefeller, Review Board records, etc. . ]

When it passed the JFK Act, Congress intended for the JFK Collection to include at least the record groups that it identified in section 3(2), but it also granted to the Review Board the authority to issue interpretive regulations -- and the JFK Act's legislative history states that Congress intended for the Review Board to carefully consider the scope of the term "assassination record."

[insert discussion of the interpretive regulation and refer to reg. as Exhibit A]

### ***Groups of Records***

#### ***FBI Records***

Once the Review Board promulgated its regulation defining "assassination record," it turned its attention to those assassination records that were clearly within the scope of the statutory definition of assassination record. Prior to the Review Board's nomination and appointment in 1994, the FBI had identified and begun to process the following assassination record groups:

#### ***The "Core and Related" files***

The "core and related" files are a group of records that the FBI gathered together in response to FOIA requests that it received in the 1970s for records relating to the assassination of President Kennedy. The "Core and Related" files include the FBI files on their investigation of the assassination of JFK, FBI files on Lee Harvey Oswald, Jack Ruby, Marina Oswald, Marguerite Oswald, George DeMohrenschildt, Ruth Paine, and Michael Paine, the FBI's "administrative" file on the investigation into the assassination that the House Select Committee on Assassinations conducted in the late 1970s. The FBI began its processing of the "Core and Related" files in \_\_\_\_\_, 1992, and opened in full \_\_\_\_\_ pages at the JFK Collection before President Clinton nominated the Review Board members.

*The "House Select Committee on Assassinations" subject files*

During the HSCA's tenure, the Committee made a number of requests to the FBI for records that the Committee believed might produce records relevant to their investigation of the Kennedy assassination. In response to the HSCA's requests, the FBI made available to the HSCA staff approximately [number] pages of FBI files. The FBI began its processing of the "HSCA Subject" files in \_\_\_\_\_, 1993, and opened in full \_\_\_\_\_ pages at the JFK Collection before President Clinton nominated the Review Board members.

*FBI records on the Congressional Committees that Investigated the Assassination*

- (c) the files relating to other investigations into the assassination by the Church, Edwards, Pike, and Rockefeller Committees
- (2) CIA assassination record categories

[Bob]

- (D) Document Review

When the Review Board first began to review assassination records, it decided that it would begin with pre-assassination records from the Lee Harvey Oswald files at the FBI and the CIA. [is this true?] But, rather than address the documents in chronological order or on a document-by-document basis, the Review Board recognized that it would need to establish declassification policy on the major issues that it would face in assassination records. Accordingly, the Review Board requested that its staff gather together groups of records that provided examples of the agency's requests to postpone a particular type of information. For instance, in FBI records, the Board determined that it would first address the issue of personal privacy postponements. In preparation for the [date] meeting, the staff gathered [number] of FBI records in which the FBI requested postponements pursuant to Section 6(3) and notified the FBI that the Review Board intended to vote on the records.

The FBI then requested an audience with the members of the Review Board so that it could present to the Board its position -- both in an oral presentation and in a "position paper." The FBI's "position papers" (attached as Exhibit B) summarized the FBI's policies in support of continued classification of certain categories of information.

In preparation for the FBI's presentations to the Board, the Review Board staff researched existing law on each of the FBI's "positions" and determined that the arguments that the FBI put forth in support of its JFK Act postponements were essentially the same arguments that the FBI offers to courts in support of its FOIA decisions. Of course, in legislating the declassification standards of the JFK Act, Congress intended for the JFK Act standards, and specifically not the FOIA standards -- to apply. Aware of Congressional intent, the Review Board rejected the FBI's general FOIA-litigation arguments on the basis that the arguments did not constitute the "clear and convincing" evidence necessary to support a request for a postponement until section 6.

[discussion of how the Review Board came to require specific, rather than general, arguments from the agencies in support of the agency's postponements.]

## ***Part II***

Summary: Part II will enumerate the general principles that the Review Board established as it applied the provisions of section 6 to individual documents.

Section 6 of the JFK Act established a framework for the Review Board to analyze agency's claims for continued protection of assassination records. The Review Board's primary purpose, as outlined in section 7(b) of the JFK Act, is to determine whether an agency's request for postponement of disclosure of an assassination record or information within an assassination record meets the criteria for postponement set forth in section 6. Section 6 consists of an introductory clause, which establishes the "clear and convincing evidence" standard, and five subsections that set forth the criteria under which the Review Board can agree to postpone public disclosure of assassination-related information. The text of Section 6 is attached as Exhibit C.

### **Introductory Clause**

*Disclosure of assassination records or particular information in assassination records to the public may be postponed subject to the limitations of this Act if there is clear and convincing evidence that --*

[discussion regarding the Board's reluctance to accept postponement of entire records]

[discussion of the Board's unwillingness to accept broad-brush arguments, but rather to define "clear and convincing" to mean "specific" evidence tailored to justify a particular postponement]

[discussion of the Board's reluctance to accept "mosaic theory" arguments as the sole basis for postponement of a record or information within a record.]

### ***Section 6(1): Intelligence agents, intelligence sources and methods, and other matters relating to the national security of the United States***

*... the threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public disclosure of the assassination record is of such gravity that it outweighs the public interest, and such public disclosure would reveal --*

*(A) an intelligence agent whose identity currently requires protection;*

*(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or*

*(C) any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States;*

[may want to add a definitional section here to define terms of the statute]

### ***FBI Issues***

#### ***Foreign Counterintelligence Postponements***

On [date], the Review Board notified the FBI that it intended to vote on [number] documents containing foreign counterintelligence information. In addition to its position paper on 1B and 1C postponements, the FBI provided to the Review Board its evidence in support of the individual postponements. After carefully considering the Bureau's arguments, the Review Board voted to release the majority of the [number] documents.

[number] days later, the FBI requested that President Clinton reverse the Review Board's decisions on the [number] documents. [Fill in history and story of appeal, including what was argued, etc. . .]

After the FBI withdrew its objections to the Review Board's decisions on the [number] documents, the FBI and the Review Board staff began to apply the following guidelines to all foreign counterintelligence postponements in the assassination records of the FBI.

### ***Human Sources in Foreign Counterintelligence (Assets)***

The Review Board evaluates the need to postpone the identity of human sources in foreign counterintelligence operations on a case-by-case basis. The Review Board considers the following factors in evaluating whether to postpone or release the identity of a particular asset:

[discussion of factors and how Board uses them, such as the passage of time, whether the source is still alive, public interest, etc...]

In its position paper, the FBI defined "intelligence source" as "any individual who has provided or is currently providing information pertaining to national security matters, the disclosure of which could reasonably be expected to result in damage to the FBI's intelligence and counterintelligence-gathering capabilities."

The FBI offered the following arguments in support of its request to keep intelligence sources' identities secret: (1) Review Board disclosure of intelligence sources would harm the FBI's ability to develop and maintain new and existing sources, because sources would reasonably believe that the Government would reveal their identities. (2) Review Board disclosure of intelligence sources may subject the sources, their friends, and their families to physical harm, ridicule, or ostracism.

[discussion of Review Board response to FBI general arguments. Need to listen to meeting tapes.]

### ***Foreign Counterintelligence Activities Generally***

As a general rule, the Review Board believes that most aspects of the FBI's foreign counterintelligence activities against Communist Bloc countries during the cold war are well-known the public, are of high public interest, and are not eligible for postponement pursuant to § 6(1) of the JFK Act.

In its position paper, the FBI defined "intelligence activities" as "intelligence gathering action or techniques utilized by the FBI against a targeted individual or organization that has been determined to be of national security interest." The FBI's primary argument in support of its request for continued secrecy for intelligence activities was that disclosure of specific information describing intelligence activities would reveal to hostile entities the FBI's counterintelligence targets, measures, and priorities, thereby allow hostile entities to develop countermeasures.

[discussion of Board's response to FBI's general argument.]

To the extent that the information in the proposed redaction does not meaningfully contribute to the understanding of the assassination, the Review Board is more willing to allow the FBI to postpone direct discussions of FCI activities against non-Communist Bloc countries. With regard to the FBI's "Segregated Collections," the Review Board stated,

It is presumed that the FBI will, at least partially, carry over its post-appeal standards for disclosing foreign counterintelligence activities targeting Communist-bloc nations. To the extent that the HSCA subjects reflect foreign counterintelligence activities against other nations that have not been addressed by the Review Board in the "core" files, the FBI will be allowed to redact direct discussion of such activities, unless the information in the proposed redaction meaningfully contributes to the understanding of the assassination.

### ***Technical Sources***

In its appeals, the FBI requested that the President override the Review Board's decisions to release information in a number of documents that related to electronic intercepts of telephone and teletype communications involving Communist Bloc officials.

The FBI's use of non-human sources or methods (*e.g.*, electronic surveillance and "black bag jobs") in foreign counterintelligence operations against Communist Bloc countries diplomatic establishments and personnel is, in many aspects, a matter of official public record. The FBI appealed to the President a number of Review Board decisions involving non-human sources or methods. The Review Board staff called to the attention of the President those prior disclosures that we believed were relevant to deciding the issues on appeal.

Originally, the FBI's position on appeal was that, at least in some cases, the symbol number and much of the information obtained from the corresponding source or method required postponement. In late 1996, the FBI withdrew the first two of its pending appeals, including some records in which the Review Board voted to release information obtained from a technical source. [interpretation of withdrawal?]

### ***Classified Symbol and File Numbers for Technical Sources (usually electronic surveillance, or ELSUR)***

As a general rule, the Review Board agrees to postpone until the year 2017 symbol and file numbers for technical sources provided that the source is still properly classified pursuant to the current Executive Order. The Review Board releases classified symbol and file numbers for technical sources if the number has been previously released in a similar context, or if the source is of significant interest to the public. The Review Board agreed that the phrases, "source symbol number" and "source file number" would be adequate substitute language.

### ***Information about Technical Sources***

The Review Board releases all general information and some specific information (or operational details) regarding technical sources on Communist Bloc countries' diplomatic establishments and personnel. "General" information is information that the FBI obtains from its technical sources on Communist Bloc countries' diplomatic establishments and personnel, including transcripts from electronic surveillance. "Specific" information is information regarding installation, equipment, location, transmittal, and routing of technical sources. The Review Board evaluates "specific" information about technical sources on a

case-by-case basis, agreeing to sustain postponements provided that the FBI proves that the “operational detail” at issue is currently utilized and not officially disclosed.

For that material that does not contribute in a meaningful way to the understanding of the assassination, the Review Board releases as much information as possible about the FBI’s use of technical sources in its foreign counterintelligence activities against non-communist bloc countries, but the Review Board will allow the FBI to protect the identity of the country that is the target of the FBI’s surveillance. The Review Board is more willing to protect specific details regarding installation, equipment, location, transmittal, and routing of technical sources where the FBI can prove that the source currently requires protection and that the Government has not officially disclosed the source.

#### ***Other Classified File Numbers***

The Review Board releases classified file numbers when they the file number reveals information about foreign counterintelligence activities against Communist Bloc countries. The Review Board has voted to protect classified file numbers where the FBI has provided particularly compelling evidence in support of its request for postponement. The primary factor that the Review Board considers in deciding to postpone a particular classified file number is whether the FBI can show that it has a current and ongoing need to protect the number.

For that material that does not contribute in a meaningful way to the understanding of the assassination, the Review Board agrees to protect classified file numbers for non-technical sources.

#### ***Information that Reveals an Investigative Interest in a Communist Bloc Diplomatic Establishment or Personnel***

The Review Board releases information that reveals that the FBI has an investigative interest in Communist Bloc countries’ diplomatic establishments or personnel. For example, the Review Board routinely releases case captions such as “FCI-R” (foreign counterintelligence-Russia), “FCI-Cuba,” “FCI-Czechoslovakia,” and “FCI-Poland.”

As a general rule, the Review Board agrees to protect information that reveals that the FBI has an investigative interest in a non-Communist Bloc foreign diplomatic establishment or in foreign personnel. In those cases where the Review Board determines

*[insert discussion of “Z-coverage” and covert examination of financial records and bank accounts as subsection of “investigative interest” section]*

#### ***CIA Issues***

##### ***Intelligence Agents***

##### ***CIA Officers***

**Names of CIA Officers who are still active or who retired under cover in potentially risky circumstances were generally protected. Names of officers who were deceased or whose connection to the CIA was public knowledge were generally released throughout the collection.** “CIA Employee” was used as substitute language, though when available, useful, and appropriate an alias or pseudonym was substituted.

Review Board members confronted the name issue in the first CIA document they reviewed but did not close the issue until two years later. The drawn out review of CIA employee names points to some of the challenges that existed in the process and to the seriousness with which those involved, both on the Review Board and at the Agency, approached the task at hand.

CIA began by defending the protection of employee names as a matter of policy. First, since many employees are “under cover,” the maintenance of that cover is critical to gathering intelligence. CIA contended that the identification of a name can identify the cover provider and jeopardize operations. Second, although the majority of names are of retired CIA employees, CIA has a confidentiality agreement with them. Many of these former employees objected to release of their former Agency affiliation, suggesting that such release might jeopardize business relationships or threaten personal safety. Initially, CIA wished to argue these as general principles for the protection of all employee names. But the Review Board determined that the merits of these arguments could only be determined on a case-by-case basis. Gradually the CIA began to provide supporting evidence of the postponement of individual names. CIA’s initial refusal to provide evidence on individual names was met, not with the wholesale release of names by the Board, but with a firm but patient insistence that the Agency meet the requirements of the Act. Names of a few individuals who were of central importance to the JFK story were released early in the process, but for others the Board gave the Agency a number of additional opportunities to provide specific evidence. For example, December 1995 was the first name day, a Board meeting at which the Agency was to provide evidence for names encountered in records during the previous six to seven months. CIA offered a generalized blanket response. Realizing that the personal safety of individuals could be at issue, Board members gave CIA more time to provide evidence. Other name days were set in May 1996 and May 1997. As deadlines for submission of evidence approached, CIA agreed to release some of the names, but in most cases, continued to offer less than satisfactory evidence on those they wished to protect. By May of 1996 the position of the Board on names of CIA employees was as follows: There is a presumption that the true name of a CIA employee should be opened. However, the name should be protected if the individual retired under cover or abroad if the individual objects to the release, in which case the presumption shifts to release unless an individual is important to the assassination story. The name may also be postponed if the Agency is able to identify an ongoing operation in which the individual has been involved or if it can be demonstrated that the person is still active for the Agency. The Board gave the Agency until May 1997 to provide evidence on the remaining names. Over the year, the list of pending names grew as review expanded from the Oswald 201 file to the Sequestered Collection.

When the name issue was finally resolved in July 1997, the names were viewed in two categories: those with high public interest and those with a reduced level of public interest. High public interest names included all those that appeared in the 201 file and those that appear frequently in the collection and/or considered important to understanding the assassination. Progress had already been made. Fifty-eight of the 83 names in the 201 file that had been pending at some point were released by this date. CIA had begun to provide specific and convincing evidence on names. The Board voted to protect a number of names and released a few additional names. Those names with lower public interest outside of the core collection were postponed with a reduced level of scrutiny than those more central to the assassination story.

Thus, the Review Board considered the names of CIA officers on a case-by-case basis when the individuals were seen as having high public interest as part of the story of the Assassination of President Kennedy. High public interest was determined by a substantive connection to the assassination story or by the appearance of the name in CIA’s core assassination files, notably Oswald’s 201 file. The Board demanded specific evidence of the need to protect the individual. It was presumed that employee names would be released if their identities were important to the assassination story unless the CIA could provide

convincing evidence of the need for protection. This evidence included the current status and location of the individual and the nature of the work he or she did for the Agency.

This approach was the most practical given the limited time and resources available to complete review of the files. The Review Board would have preferred to review each name at the same high level of scrutiny.

On the other hand, the CIA was compelled to release many more names than they would have desired. Though protracted and selective, the review of CIA employee names forced the CIA forced to take a careful look at them and weigh the need to postpone each name, and it allowed the Review Board to carefully weigh evidence on names of import.

### *Scelso*

**The true name of the individual known by the pseudonym of John Scelso was protected but will be opened in full on either May 1, 2001 or three months after the decease of the individual, whichever comes first.**

The postponement of the true name of John Scelso was an instance when public interest was very high, but the evidence to support postponement outweighed it. John Scelso was a throw away alias used by the CIA employee who was head of WH3 during the period immediately after the assassination of President Kennedy. His name appears on hundreds of documents, many of which were the product of the Agency's extensive post-assassination investigation that spanned the globe. The Board was inclined to release Scelso's true name, but the Agency argued strongly against release. As an interim step, "Scelso" was inserted as substitute language. CIA provided evidence on the current status of the individual, shared correspondence sent by him, and even arranged an interview between him and a Review Board staff member. At the May 1996 Board meeting, Board members determined that the evidence was persuasive, but still wanted to insure that his true name would be revealed as soon as was prudent. Their solution was the release in five years or upon his decease.

### *Identifying Information*

**Identifying information was approached using the same standards applied to true names. If it was determined that the identity of the officer required protection, specific identifying information was protected, however generic information may have been released.**

### *Sources and Methods*

#### *Sources, Assets, Informants, Identifying information*

**Sources, Assets, Informants and the Identifying information that describes them were reviewed under standards similar to those for CIA officers. Names that carry a high level of public interest were subjected to close scrutiny. The Board protected the identity of foreign nationals unless they are of high public interest in relation to the assassination story, in which case CIA was required to provide specific evidence of the need to postpone. Sources, assets and informants in this country were protected if CIA could demonstrate that ongoing operations could be harmed by release of the individual's name. If none of these criteria could be met the name of the individual was released. In addition, names of individuals whose connection to the CIA was a matter of public knowledge, especially if previously released in US government records, were released.**

The Board's decision to protect the name of Sources, assets, and informants in cases where the identity of the source is of reduced public interest was based on two factors: the concern that, since CIA sources generally live outside the United States, they risk harm if their identities were revealed. In records where

the identity of the source is of possible public interest in relation to the assassination story or is important to understanding information related to the assassination, the CIA was required to provide additional evidence to support the protection of the source's identity. The Board protected the sources for ten years except in cases where it might be inferred that the source was committing treason. In these cases, the name and identifying information for the source was protected until 2017.

### *Pseudonyms*

**Pseudonyms were released with only a few exceptions. In some instances pseudonyms were used as substitute language for the individual's true name.**

### *Crypts*

**Crypts or digraphs are generally releasable within the JFK collection and in related records. All US government crypts are released. "LI" crypts, especially those in the core files, are generally releasable. "AM" crypts are generally releasable. For all other crypts, the digraph is usually protected and the rest of the crypt is released. A few exceptions to these guidelines exist. For these, CIA was required to present specific evidence of the need to protect.**

Early phases of the review of crypts highlighted the cultural differences between the Agency and the Review Board. For the Agency, crypts were an operational method that required protection despite the fact that CIA had years ago replaced most of the crypts at issue. For the Review Board, crypts, having been conceived as a code to obscure an identity or an operation discussed in a document, could presumptively be released without compromising the identity or the operation. Some push and shove in the early months of Board deliberations brought the two entities to a middle ground where CIA yielded to the release of most crypts and digraphs in the JFK context and the Review Board acknowledged that some sensitive crypts required protection.

Early in the review process the CIA argued for the protection of all crypts, even those such as ODENVY- the crypt for the FBI- which were no longer used and which had been inadvertently released in other records. The Board quickly rejected this postponement. For other crypts, the burden of proof was on the Agency, and they began to identify the crypts for the Board. Those that might be sensitive were tabled at the early meetings so that CIA could provide additional information. At one point CIA complained that the research necessary to identify all the crypts was cumbersome. But since the Act requires that agencies provide clear and convincing evidence, CIA continued to reveal the identities to the Board. Next, after the release of a number of LI-crypts -LI was the digraph for Mexico City at the time of the assassination- CIA argued for the postponement of all "LI" series crypts on the grounds that mosaicing would allow researchers to piece together the puzzle and discern the identity being protected by the crypt. The Board rejected this argument, and CIA provided more detailed evidence for crypts they considered more sensitive. When faced with crypts that refer to sensitive operations, the Board opted for a contextual treatment of crypts. Crypts for some sensitive operations may be released in many circumstances, but in other contexts when release of the crypt may reveal the sensitive operation, it was postponed.

The crypt-by-crypt review was productive and necessary for core records, but soon it became clear that this would not be possible for the entire collection since hundreds or thousands of different crypts appear in the assassination related records of the CIA. The solution was the postponement of the digraph and release of the rest of the crypt for crypts outside of the LI, AM, and OD series. Thus, the majority of crypts in the collection were released in full or released with the digraph protected. Sensitive crypts for which CIA has provided convincing evidence are protected in full; For AM and LI crypts in non-core files, the digraph may have been protected when [a] the crypt appears next to a true name that has been released; [b] when

the crypt appears next to specific identifying information; [c] when convincing evidence has been provided of the need to protect.

### *Slugline*

**The slugline is releasable according to the same criteria applied to crypts and digraphs.**

The slugline is a routing action indicator, the components of which are crypts, that appears just a couple of lines above the text in CIA cables. At the very beginning of the review process, the CIA had argued to postpone the slugline even when the crypts in the slugline were released elsewhere. An example can be found in the slugline RYBAT GPFLOOR. RYBAT is a crypt that means secret, and GPFLOOR was the crypt CIA gave to Oswald in the post-assassination investigation. In a number of records CIA was willing to release the RYBAT indicators at the top and bottom of the record and GPFLOOR when it appeared in the text but requested postponement of the slugline RYBAT GPFLOOR. This was a knee jerk reaction by CIA. When asked why it should be postponed the response was a simplistic, CIA cannot reveal the slugline. The Agency had no reason to protect the slugline other than habit, and when the Act forced the CIA to consider this aspect of their culture of secrecy, the only reasonable response was release.

### *Surveillance Methods*

**CIA surveillance methods, the details of their implementation and the product produced by them are generally releasable in the context of the JFK story, except when convincing evidence has been provided that they are politically or operationally sensitive.** When postponed, the language substituted for this type of redaction was “Surveillance Method,” “Operational Details,” or “Sensitive Operation.”

Since surveillance, notably teletaps and photo operations, were a central part of the Oswald Mexico City story, the Review Board addressed them early in process during review of Oswald’s 201 file. CIA attempted to defend postponement of surveillance as a current method that requires continued protection. The Board’s response was that the fact CIA has used the type of surveillance methods employed in Mexico City is common knowledge and that officially acknowledging the use of these methods in Mexico City in 1963 does not necessarily imply that the operations continue today. The Board concluded that the public interest far outweighed any possible risk to national security and directed release of the information. However, in records that may have revealed sensitive aspects of an operation, those aspects were postponed if CIA was able to provide specific and convincing evidence.

### *CIA Installations*

**All CIA installations related to the Mexico City story are releasable from 1960 through 1969. With the exception of a few installations for which CIA has provided convincing evidence of sensitivity, all remaining installations from the date of the Assassination to the publication of the Warren Commission Report are releasable in the context of the Assassination story. In Oswald’s 201 file, again with the exception of a few installations for which CIA has providing convincing evidence of sensitivity, all installations are releasable from 01/01/61 through 10/01/64. Outside of these time frames, CIA installations are protected.**

The Review Board chose substitute language for these postponements that will allow researchers to track individual CIA installations through the JFK collection without revealing the exact location of the installation. To accomplish this, the world was divided into five regions: Western Hemisphere, Western Europe, Northern Europe, East Asia/ Pacific, and Africa/ Near East/ South Asia. Then a number was

added to each different location in the region. Thus, substitute language such as "CIA Installation in Western Hemisphere 1" serves as a place holder for a particular installation in all CIA related records in the collection.

From the beginning the Review Board displayed an inclination to release CIA installations. During first phase of review of CIA records, Review Board members examined documents related to the Mexico City story. In this context, they voted to release CIA installations over only minor objections from the Agency.

But as the context broadened to the world wide sweep that the CIA made after the assassination, the location issue became more contentious. CIA argued for postponement but produced only a minimal amount of evidence to defend the postponements. Having been offered insufficient evidence, the Board voted for the release of all CIA installations that appeared in records they reviewed at the January 1996 meeting. CIA responded by assembling an appeal package. The suggestion of appeal sharpened the debate. Anticipating an appeal, Board members stressed the importance of communicating to the White House their frustration with the sketchy evidence initially provided. They wanted to make informed responsible decisions but were hampered by receipt of incomplete evidence. And Board members worried that precious time might be squandered on the review of just a few records if they could not obtain complete evidence in a timely manner. Further, since CIA records were among the first reviewed by the Board, they were concerned that their handling of CIA issues would be scrutinized by other agencies. Ultimately, the Agency provided a complete evidence package that convinced the Board members of the sensitivity of a small number of CIA installations. However the Board believed that public interest related to the assassination story weighed heavily for release of CIA installations during a period of time that has arguable relevance to that story. Board members didn't want to make this an "Oswald issue," so they established a time frame broader than the Oswald story. With the noted exceptions, CIA installations referenced in the 201 file were released from 01/01/61 through 10/01/61 and those that appear in the rest of the collection the were released from the date of the assassination to the end of the Warren Commission.

The installation issue exemplifies two recurring themes in the review process. The first is that layers of evidence that were slowly added by the Agency. The CIA would initially provide only minimal evidence of a postponement. Without clear and convincing evidence, the Board voted to release the information. The CIA then responded with a more comprehensive evidence packet sometimes accompanied by a threat of appeal to the president. While this pattern was frustrating and slowed the early stages of the review process, the larger issues were sorted out and addressed. CIA's reluctance to share complete information may have been motivated by a concern that they were sharing secrets beyond the immediate assassination story or a fear that the Review Board might not act responsibly with the information. But the submission of evidence became more dependable when CIA understood that the Board would use the evidence as mandated by the act and that such evidence was required if postponements were to be sustained. The second theme is that appeal to the president loomed large but was something that both the Agency and the Review Board wished to avoid. The Board was willing to review additional evidence even though they had given CIA ample opportunity to present it before they reviewed the records. This was motivated by a desire to accomplish a responsible review, but possibly also by a wish to avoid an appeal to the president. CIA provided the additional evidence, and often released additional information. The release may have been an admission that the information was not as sensitive as they had argued, but it may also have been an attempt to avoid appeal to the president. The check provided by appeal to the president was never utilized in the review of CIA records, but it did influence the review of those records.

#### *Prefixes (Cable, Dispatch, Field Report)*

**Cable Prefixes, Dispatch Prefixes and Field Report Prefixes were released when the installations to which they refer were released and protected when the installation to which they refer were protected.** Substitute language for cable prefixes parallels that was applied to CIA installations, for

example: "Cable Prefix for CIA Installation in Western Hemisphere 1." Language for the other prefixes was "Dispatch Prefix" and "Field Report Prefix."

### *CIA Job Titles*

**CIA Job Titles were released except when their disclosure might reveal the existence of an installation that is protected or the identity of an individual that requires protection.**

### *File Numbers*

**All file numbers that refer to Mexico City, except those for which CIA has provided convincing evidence of their sensitivity, are releasable. All remaining country identifiers ( the first segment before the hyphen) are protected with the exception of all "15" and "19" files. 201 file numbers are generally releasable in the context of the JFK assassination story.**

### *Domestic Facilities*

**References to domestic CIA facilities which are a matter of official public record were released. Domestic facilities not publicly acknowledged were protected if CIA provided evidence of their sensitivity or if they are of peripheral interest to the assassination story.**

[Comment, Explanation]

### *Official Cover*

**In Congressional documents, cover information was released unless the information might reveal details of the scope of official cover or important details about the mechanisms of official cover that were not generally known to the public. Information was released if the CIA or another agency of the Executive Branch was able to demonstrate that it has taken affirmative official action to prevent the disclosure of such information in the past and that its release in a particular record would cause identifiable damage to national security. In Executive Branch documents and in documents derived from Executive Branch documents, substitute language such as "official cover" or "details of official cover" was used in lieu of the actual cover or the details of official cover. The cover status of certain high-profile individuals was released when disclosure has previously been permitted by affirmative official acts of the Executive Branch of the US government. Cover status of other individuals was disclosed only to the extent that they were important to the assassination story. They were handled on a case-by-case basis.**

Substitute language: "Official Cover," "Details of Official Cover," "Location."

[Comment, Explanation]

## **Section 6(2)**

*the public disclosure of the assassination record would reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person*

FBI initially used 6(2) along with 6(4) to protect informant names and identifying information. Section 6(2) clearly requires that the Bureau prove that the informant is living and that the informant faces a substantial risk of harm if the information is released.

Because section 6(2) requires such specific evidence, the FBI quickly realized that section 6(4) offered a better rubric for requesting that the Board postpone informant names and identities.

So, the FBI categorically has decided to rely on Section 6(4) for informant postponements, and not Section 6(2) -- even though most of the records, as originally processed by the FBI, refer to both subsections in support of informant postponements.

Despite the Bureau's position that it need not prove that informants were alive, the standards set forth by section 6(2) clearly did affect on the Board's decision making on informants. See the analysis of section 6(4) below.

## **Section 6(3)**

*the public disclosure of the assassination record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest*

*[may want to include a definitional section here]*

### ***FBI Issues***

General rule: Postpone only where the person affected is adequately shown to be still living and the intrusion on privacy would truly be substantial.

Routine Postponement: Social Security Numbers

core files -- one issue appealed

segregated collection -- effect of little-no public interest in the information (e.g. 13 year old rape victim's name in a "see" reference file)

### ***CIA Issues***

## **Section 6(4)**

*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;*

[may want to include definitional section here]

## ***FBI Issues***

### ***Informant Postponements***

#### ***Symbol Number Informants***

In support of its argument to keep the symbol and file numbers for informants secret, the FBI argued that the “mosaic theory” justified postponement of any portion of an informant’s symbol number. The Review Board rejected the mosaic theory as the sole basis for postponement of symbol numbers, or for any other particular postponement issue, simply because the mosaic theory itself contains no limiting principle. However, the JFK Act requires the Review Board to balance any incrementally greater risk that the release of further information will lead to disclosure of (and harm to) the informant against the public interest in relasing the information. In striking this balance, the Review Board gives great weight to the public interest in the information provided. In the “core and related” files, the Review Board did not postpone the information provided by symbol number informants even though it would postpone the numeric portion of the symbol number.

The Review Board has consistently released the prefixes and suffixes of informant symbol numbers, even in cases where it sustains the “numeric” part of the symbol number. Thus, for the hypothetical symbol number “NY 1234-C,” “NY” and “-C” would be released, even if the Review Board sustained postponement of the “1234.” After the Review Board’s action, researchers would know that the informant was run by the New York City field office and reported on criminal (rather than “security”) cases, but may not know the informant-specific numeric portion of the symbol number. In the “core and related” files, the Review Board did not postpone any part of a “T-symbol” number. In the “Segregated Collection” files, the Review Board would only postpone “T-symbol” numbers where Indeed, to its credit, the FBI began to unilaterally release these “temporary symbols” under the JFK Act after the Review Board’s first few discussions about informant

#### ***“PROTECT IDENTITY REQUESTED”***

**Where an individual provided information to the FBI and requested that the FBI protect his or her identity, but the FBI provides no evidence of an ongoing confidential relationship with the individual, the FBI will release the name of the individual unilaterally.**

When the FBI first began to present evidence to the Review Board in defense of its attempts to protect its sources of information, it asked that the Review Board protect the identity of any individual who requested confidentiality when providing information to the Bureau. The Review Board rejected the FBI’s argument and voted to release the names pursuant to Section 6(4) of the JFK Act,

Section 6(4) requires that the agency provide clear and convincing evidence that disclosure would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual. In these cases: (1) the Review Board does not consider these types of sources as sources with an “understanding of confidentiality

currently requiring protection.” We know that FBI agents often offer confidentiality as a matter of course to people that they talk to, whether or not the individual requests or requires confidentiality (e.g. agents have come to our offices of to do follow-up security checks on our co-workers and offered us confidentiality), (2) without evidence of an ongoing relationship, the Review Board does not consider these types of sources

*Persons who gave the FBI information to which they had access by virtue of their employment*  
Initially, the FBI’s policy was to protect “the identities of persons who gave the FBI information to which they had access by virtue of their employment,” regardless of whether “their providing the information . . . involve[d] a breach of trust,” provided that the person in question requested confidentiality. Moreover, the FBI implied that, even where a request for confidentiality is not explicit on the face of the document, the identities of such persons will be withheld in cases where their providing the information to the FBI involved a “breach of trust”: (e.g., a phone company employee who gives out an unlisted number.) The Review Board rejected the FBI’s argument.

*“Negative Contacts”*

“Negative Contact” informants are those informants who were contacted, but who provided no information, regarding either the assassination or persons, groups, or events related to the assassination

“positive contacts”

names

informant identifying information

specific textual informant identifying information

general textual informant identifying information

***Effect of Prior Release of Informant’s Relationship with the FBI***

Where a person’s informant relationship with the FBI has already been made public, the Review Board continues to release the fact of the relationship.

The Review Board staff made an effort to track the names and symbol numbers of FBI informants whose relationships with the FBI had already been made public. When Review Board staff members encountered informant names or symbol numbers that were eligible for postponement, staff members researched whether the name or symbol number had already been released.

If the name of an informant in a particular record had already been released in a context that *disclosed the informant relationship with the FBI*, then the staff recommended that the Review Board release the name.

If an informant symbol number in a particular record had already been released in a context where the same informant symbol number was providing the same information as in the record at issue, the staff recommended that the Review Board release the symbol number.

## EFFECT of HIGH PUBLIC INTEREST

**In some cases, the fact that a particular individual had an informant relationship with the FBI was sufficiently important to warrant recommending release under circumstances where the general rules would otherwise point toward sustaining the postponement.**

Foreign Liaison

### Section 6(5)

*the public disclosure of the assassination record would reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another Government agency responsible for protecting Government officials, and public disclosure would be so harmful that it outweighs the public interest.*

### **III. *Weighing of the Public Interest in Evaluating Agencies' Requests for Postponements Pursuant to Section 6***

- A. Core and Related Files and Records Obtained as a Result of Requests for Additional Information
  - 1. all are considered to be of high public interest
  - 2. some records so significant that public interest outweighed otherwise valid grounds for postponement
    - a. examples
- B. Segregated Collections
  - 1. Relaxed Standards
- C. NBR Records

### **IV. *JFK Act -- Section 10 -- Materials Under Seal of Court.***

- A. Records Under Seal that are not Grand Jury records
  - 1. Title III records
- B. Grand Jury Material
  - 1. *see* ARRB guidelines for review of grand jury material

### **V. *JFK Act -- Section 11***

- A. Information protected by § 6103 of the Internal Revenue Code

### ***Part III***

Discussion how the Review Board applied a relaxed set of standards to those records that it determined to be less relevant to the assassination. Included in Part III is an analysis of the postponement-by-postonement review process envisioned by the JFK Act and executed by the Review Board for assassination records.

each of the subsections of section 6.] Finally, the chapter will explain how the standards were applied very strictly to those records that the Review Board considered to be of high relevance to the assassination and in a more relaxed manner to those records that the Review Board considered to be of lesser relevance to the assassination.

### ***Part IV***

Evaluation of the effectiveness of the JFK Act's postponement standards in terms of the work that the Congress intended for the Review Board to complete.

*Exhibits*

- Exhibit A** Interpretive Regulation Defining Assassination Record
- Exhibit B** FBI “position papers”
- Exhibit C** Text of JFK Act, Section 6

## **Exhibit C**

### ***Section 6: Grounds for postponement of public disclosure of records.***

Disclosure of assassination records or particular information in assassination records to the public may be postponed subject to the limitations of this Act if there is clear and convincing evidence that --

(1) the threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public disclosure of the assassination record is of such gravity that it outweighs the public interest, and such public disclosure would reveal --

(A) an intelligence agent whose identity currently requires protection;

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or

(C) any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States;

(2): the public disclosure of the assassination record would reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person

(3): the public disclosure of the assassination record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest

(4): 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;

(5): the public disclosure of the assassination record would reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another Government agency responsible for protecting Government officials, and public disclosure would be so harmful that it outweighs the public interest.

## Review Board Meeting Chronology

8/23/93 end of 300 day review period established by the JFK Act

as of

4/12/94 Board's first meeting -- FBI had reviewed and transferred to NARA records on Oswald, Ruby, the Warren Commission, Marina Oswald, Marguerite Oswald, George DeMohrenschildt, and the Rockefeller Commission. FBI had promised NARA that they would soon transfer records from the JFK Assassination Investigation files.  
Expressed a need to define assassination record

7/12/94 Meeting

- Bill Joyce wrote to ~ 55 agencies to ask about the process of review of records. Had rec'd approx. 20 responses by 7/12/94. (min. p. 6)
- Still concerned about defining assassination record -- definitely want to do that before going into a document-by-document analysis (min. p. 8)
- By 7/12/94, FBI had sent entire JFK Assassination Investigation file to NARA and the Pike Comm. records (min. p. 9)

10/11/94 Public Hearing, Washington, D.C.

- Considered defn. of "assassination record"

11/18/94 Public Hearing, Dallas, Texas

- Considered defn. of "assassination record"

12/13-14/94 Public Meeting, Washington, D.C.

- Announced that they were hoping to begin review of documents by Feb. or March of 1995 (min. p. 5-6)
- Consider defn. of "assassination record" and specifically whether artifacts would be included in the defn.

1/25/95 Closed Meeting

- Board discussed proposed interpretive regulations for publication in the Fed. Reg.
- Board discussed personal privacy information in 4 Warren Commission records and deferred final decision on the records

3/6-7/95

Meeting

- Briefing book to Board on personal privacy issues; General Counsel provided a memorandum that identified several types of information potentially implicating privacy concerns and reviewed how government
  - discussion of overall scope and intent of section 6(3)
  - discussed privacy issues presented in 18 sample documents
- Review Board made no decision on these records

3/24/95 Boston Public Hearing

5/2-3/95 Meeting (tape)

- open meeting: finalization of defn of assassination record
- Informant Issue discussed

5/18/95 Closed Meeting (tape)  
-analysis and discussion of 2 CIA documents

6/7/95 Closed Meeting (tape)

6/27-28/95 New Orleans Public Meeting  
(need to listen to tape for closed parts)

7/17-18/95 Closed Meeting (tape)

8/2-3/95 Closed Meeting

8/28-29/95 Closed Meeting