

replace “postponement” with “declassification”

Introduction

>introductory paragraph

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), Congress did not provide the Review Board much guidance on 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 grounds for postponement 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-postonement 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 postponement standards in terms of the work that the Congress intended for the Review Board to complete.

Part I

Chronological overview of the Review Board's decision-making, setting forth in a general way how the Review Board moved from considering _____ FBI and CIA documents with privacy redactions in its _____, 1995 meeting, to considering and voting on _____ documents from _____ agencies in its _____, 1998 meeting.

I(A) Defining "Assassination Record"

The first issue that consumed the Board's time was defining the term "assassination record."
<research the background>

I(B) Freedom of Information Act Similarities and Differences

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.

While not identical, the section 6 postponement standards are similar to several of the FOIA exemptions, including FOIA exemptions (b)(1)(A) (national security classified), (b)(6) and (b)(7)(C) (personal privacy), and (b)(7)(D) (confidential sources).

History:

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 (need to listen to tape)

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

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

6/7/95 Closed Meeting (need to listen to 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

When the Review Board first began to consider declassification issues, it decided that it would consider the records on an issue-by-issue basis. The first postponement issue that the Review Board considered was Section 6(3) of the JFK Act -- personal privacy. In preparation for the _____ meeting, the staff gathered _____ of FBI records in which the FBI requested postponements pursuant to Section 6(3). The General Counsel prepared a briefing to the Review Board on privacy issues -- analyzing FOIA and Privacy Act law -- along with the JFK Act -- and provided the Review Board with alternatives on how to address personal privacy postponements under the JFK Act.

The next issue

Part II

Enumeration of general principles that the Review Board established as it applied the provisions of section 6 to individual documents.

Section 6 Grounds for Postponement of Public Disclosure of Records

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 --

Definitions

Board's Definition of "Assassination Record"

overarching definition

FBI assassination record categories

core and related files

identified by FBI; FBI began processing before Review Board came into existence

records identified in response to ARRB requests for addl info

identified by Review Board; FBI processed at our request
(see Chapter 6 for more detailed discussion of how these decisions were made)

HSCA subjects

identified by FBI; FBI began processing before Review Board came into existence

other Congressional Committees

most identified by FBI and FBI began processing before Review Board came into existence

CIA assassination record categories

NSA assassination record categories

records or particular information in records

Board reluctant to accept postponement of entire records

clear and convincing evidence

specific evidence

(at beginning, agencies presented broad-brush arguments -- provide examples of FBI position papers -- Review Board interpreted "clear and convincing" to mean "specific" evidence tailored to justify a particular postponement and not broad arguments tailored to cover a broad range of

postponements)
mosiac theory

Section 6(1)

Section 6(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;

Definitions

6(1)(A)

defn of "intelligence agent"
defn of "identity currently requires protection"

6(1)(B)

defn of "intelligence source or method"
defn of "currently utilized, or reasonably expected to be utilized"
defn of "which has not been officially disclosed"

6(1)(C)

defn of "currently relating to the intelligence operations"
defn of "currently relating to the conduct of foreign relations of the U.S."

FBI Issues

Overarching Issues

effect of high public interest

reject claims of conceivable or speculative harm to national security

FCI Postponements

FCI Activities Against Communist Bloc Countries

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.

Specific Issues

Classified Symbol Numbers for Technical Sources (ELSUR): The Review Board agrees to postpone classified symbol numbers for technical symbol sources until the year 2017.

Information about Technical Sources: The Review Board releases general information regarding technical sources on Communist Bloc countries' diplomatic establishments and personnel. "General information" is defined as information received from technical sources on Communist Bloc countries' diplomatic establishments and personnel, including transcripts. In some cases, the Review Board sustains postponements of any specific technical information regarding installation, equipment, location, transmittal, and routing of technical sources.

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:

- *
- *
- *

Other Classified File Numbers: As a general rule, the Review Board releases classified file numbers to the extent that they reveal 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.

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 a 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." In addition, the Review Board releases information that reveals (B) example -- checking of the Diplomatic List or other publicly available sources

(f) **misc.**

- (i) almost everything on Solo
- (ii) code names Sam Survey, Viaduct, Tumbleweed

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 FCI activities targeting Communist-bloc nations. To the extent that the HSCA subjects reflect "FCI" 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.

Counterintelligence Against Other Countries

- (1) General Rule: the FBI may redact direct discussion of FCI activities against countries not previously considered by the Review Board, but only if the information in the proposed redaction does not meaningfully contribute to the understanding of the assassination.
 - (a) all postponed material in records that are closely related to the assassination will be submitted to the Review Board
 - (b) the following standards apply ONLY to material that does not meaningfully contribute to the understanding of the assassination
- (2) Specific Issues
 - (a) **classified symbol numbers for technical sources (ELSUR)**
 - (i) postpone entire symbol number until 2017
 - (ii) substitute language “source symbol number”
 - (b) **information about technical sources**
 - (i) release as much information as possible (paying particular attention to releasing the substance of a document), but protect the country that is the target of the FBI’s surveillance UNLESS the tech. is of heightened public interest
 - (ii) again, may refer to Engineering Section any specific, technical information regarding installation, equipment, location, transmittal, routing of ELSUR
 - (c) **human sources in foreign counterintelligence (assets)**
 - (i) may be appropriate to postpone
 - (ii) evaluate on case by case basis as with domestic informants, but allow FBI more room to postpone; Carl will fill out “FCI Postponement Evidence Form” if it is a difficult issue
 - (d) **other classified file numbers**
 - (i) protect UNLESS the subject of the file is of heightened public interest
 - (e) **information that reveals an investigative interest**

- (i) AS A GENERAL RULE, protect information that reveals only an investigative interest in foreign establishments or personnel UNLESS the

COVERT EXAMINATION OF FINANCIAL RECORDS AND BANK ACCOUNTS

“Z-COVERAGE”

CIA Issues

agent names

NSA Issues

agent names

Targeting Information

Times

Geographic Locations

Transmission Methods

Site Locations

Routing Indicators

Production Indicators

Dissemination Information

Unit Numbers and Locations

Foreign Government Information

Personal Privacy Issues

General Sources and Methods

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

Definitions

“unwarranted invasion of personal privacy”

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

NSA Issues

Personal privacy 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;

Definitions

understanding of confidentiality

cooperating individual

foreign government

FBI Issues

INFORMANTS

EFFECT of PRIOR RELEASES

Where a person's informant relationship with the FBI has already been made public, the Review Board did not vote to sustain postponements claimed to "conceal" such a 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.

"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

symbol number informant

Prefixes and Suffixes: 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.

T-symbols: In no case has the Review Board postponed any part of a "T-symbol" in the core files -- indeed, to its credit, the FBI unilaterally released these "temporary symbols" under the JFK Act.

informant identifying information

specific textual informant identifying information

general textual informant identifying information

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.

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.