

Comments on FOIA regs:

- (1) "publicly available"
 - NARA suggests that we define "publicly available" (e.g. materials available from Federal agency, a depository library, a commercial source, etc...)
 - clarify whether it modifies entire sentence or just the phrase "books, periodicals, films, sound or video records, photographs"
 - look at 44 U.S.C. § 3301 to determine whether to use that language re: "materials acquired and preserved solely for reference purposes"
 - OR say that "materials maintained in ARRB's reference library are not Review Board records for FOIA purposes."
- (2) "Documents owned by another Federal agency that the Review Board temporarily holds for the purpose of conducting its review under the JFK Act..."
 - NARA says that the sentence makes it seem that these records are not FOIAble at all.
 - NARA says we should include a part that tells FOIA requesters to "direct FOIA requests for such documents to the originating agency."
- (3) § 1410.20(a)-(c) refers to "Review Board records."
 - NARA suggests that the reference simply be to "records" or "information."
- (4) § 1410.20
 - NARA says this section should contain a statement that "any reasonably segregable information in otherwise exempt documents will be released." See 5 U.S.C. § 552(b) (last sentence.)
 - NARA says that, unless modified by a reference to segregability, the proposed language in some of the subsections suggests that entire records will be withheld.
- (5) § 1410.20(e) "in litigation with the Review Board"
 - Should change it to "in litigation with the agency".
 - NARA says to use the broader statutory language, as the proposed language may unnecessarily limit the Board in its application of this exemption.
- (6) § 1410.25(e) states that the Review Board "will not be required to ... provide a requester with statistical or other data."
 - Clarify that the "the Board is not required to create statistical or other data that it does not otherwise possess."
 - NARA says that otherwise, the regulation looks like the Board is trying to deny statistical data that it does not have a legal basis to deny.
- (7) § 1410.20 exemptions
 - Daniel S. Alcorn, COPA, suggests that we indicate that the FOIA statutory

exemptions are not mandatory bars to disclosure - thus, say that “the Board may withhold records within the exemption categories.”