

September 27, 1995

Thomas J. McIntyre
Senior Attorney
Office of Information and Privacy
U.S. Department of Justice
Flag Building, Suite 570
1310 G Street, N.W.
Washington, D.C. 20530

Re: August 23, 1995, Introduction to Freedom of Information Act Seminar and President *John F. Kennedy Assassination Records Collection Act of 1992*

Dear Mr. McIntyre:

I am an attorney who works with the JFK Assassination Records Review Board. On August 23, 1995, I attended the Introduction to the Freedom of Information Act course at the DEA building in Pentagon City. Overall, I found the course to be most helpful to my administrative law work here at the Review Board. However, I left the seminar somewhat concerned that you may have misled some of the seminar attendees with your comments about agency obligations with regard to JFK assassination records.

First, you stated that one of the main reasons that FOIA responses at the FBI were so backlogged was because the FBI pulled a number of FOIA employees out of the FOIA office to work on the JFK records. In reality, the Inspector in Charge of the JFK Task Force at the FBI told me in July and again in August that, when the JFK Task Force began its work, it took **five** employees from the FOIA section. As the Task Force's work has progressed, there has been a *maximum of fifteen* FOIA employees working on JFK records at any given time. Nor were all of these FOIA section employees document processors. With 185/200 FOIA employees available to process all of the non-Kennedy assassination requests, the FBI needs to point to more than the JFK Act to explain its backlog.

Second, you stated that agencies had processed the JFK assassination records under the FOIA, but that Congress "in its infinite wisdom" had passed the JFK Act in 1992, requiring the agencies to process the records yet again. As a matter of clarification, one of the main reasons that Congress passed the JFK Act was because the FOIA was an ineffective and insufficient (and tremendously

expensive) means of getting assassination records to the public. The demand for the complete opening of all records relevant to the assassination of President Kennedy and the motives and actions of U.S. institutions and personnel has, as you certainly know, clogged FOI offices and is symptomatic of a widespread lack of confidence in what our Government does and say. As a result of this demand, and in an effort to create a responsible, cost-effective, and efficient system for the release of these records, Congress passed the JFK Act.

A helpful way of understanding the differences between the FOIA and the JFK Act as it relates to assassination records is to consider the position of an individual researcher who would like to review certain documents. If the individual filed a FOIA request with the FBI on April 11, 1994, the same day that the Review Board was confirmed by the Senate, she would not receive a response from the FBI until the spring of 1999.

Meanwhile, the Review Board:

- hires an Executive Director and a staff,
- builds offices,
- establishes contacts with all Federal agencies with assassination records,
- reviews all identifiable assassination records,
- notifies the public of release of the records,
- transfers the records to the JFK Collection at the National Archives (where the document becomes available to the public, presumably in unredacted form), and
- *closes the agency* pursuant to the sunset provision in the JFK Act.

Two years after the Review Board closes down, the single requester FOIA will receive from the FBI a response letter and some heavily redacted documents processed under the FOIA standards.

My concerns stem from the fact that there were approximately 150 individuals registered for the seminar, 80 of whom work for agencies that hold assassination records. The Review Board is charged with enforcing the JFK Act. One way that we enforce the Act is to talk to officials in each Federal Agency and ask for their cooperation. The overwhelming majority of the people who we talk to are FOIA people. Congress only allocated about \$2 million per year for enforcement of the JFK Act throughout the Federal Government. We work on a low budget and we are already asking other agencies to scrape together employees to work on implementation of the Act. Thus, when a Senior Attorney at the Office of Information and Privacy in the Department of Justice announces to a room full of FOIA people essentially that he thinks it is really unwise for Congress to require agencies to re-process assassination records under a new set of standards, it impedes our law enforcement ability and reveals short-sightedness on the part of OIP. The idea is that once this is done, it will be completely done because all the records that exist will be available. Ideally, when we go out of business, the FOIA officers at all of these agencies can create a form letter for JFK related requests that basically says, "Call the National Archives. All the records are available there." I suspect it will be at that moment that we will find out exactly what *is* causing the backlog at the FBI and other

agencies, because their normal scapegoat will be gone.