

August 28, 1995

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I have the honor of submitting to you the enclosed two-page response of the JFK Assassination Records Review Board to the Federal Bureau of Investigation's August 16, 1995 letter regarding the FBI's appeal of the Review Board's formal determinations.

Our response explains that the Bureau has abandoned some of its original arguments, failed to acknowledge that it already has released much of the material that it now wishes to keep secret, and that it continues to ignore the clear standards of The President John F. Kennedy Assassination Records Collection Act of 1992.

We respectfully urge you to consider carefully the memoranda supplied both by the Bureau and by the Review Board. We are confident that if you apply the standards as set forth in the law, you will order that the records at issue be opened in full.

Sincerely yours,

David G. Marwell
Executive Director

Enclosure

ASSASSINATION RECORDS REVIEW BOARD
RESPONSE TO THE
FBI'S AUGUST 8, 1995 APPEAL OF FORMAL DETERMINATIONS
AND LETTER DATED
UNDER THE JFK ASSASSINATION RECORDS COLLECTION ACT

August 28, 1995

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On August 16, 1995, the Federal Bureau of Investigation responded to the arguments submitted by the JFK Assassination Records Review Board regarding the Bureau's decision to appeal the Review Board's formal determination to open nine previously redacted documents.¹ The Bureau's letter is as remarkable for what it does not say as for what it says.

Arguments abandoned by the Bureau.

Foreign relations issue. In its opening memorandum, the Bureau principally argued that the release of any of the foreign relations information at issue would cause [quote dramatic language.] damage to the United States. [citations] The Bureau did not disclose, however, that much of the material it sought to protect has long been in the public domain. The Review Board's Reply showed not only that most of the "sensitive" information not only is already a matter of public record -- *most of it was officially released by the FBI itself.* The Bureau's letter does not deny *any* of the factual assertions made by the Review Board regarding the Bureau's prior releases of this information. The Review Board's position stands unchallenged: most of the information already has been released by the Bureau and is a matter of public record.

Moreover, the Bureau's August 16 letter ignored the Review Board's challenge to show any harm that resulted from the prior releases of the information. The FBI's response failed to provide any evidence of any harm resulting from the prior releases, and, *a fortiori*, it failed to find any proof of the dramatic harms of which it had warned. The conclusion is inescapable: *the Bureau has no evidence that the release of the information would cause the damage that it originally asserted.*

Arguments misstated by the Bureau.

Foreign relations issue. Having abandoned the thrust of its first memorandum -- that serious harm would befall the United States if the information were disclosed -- the Bureau now suggests that the redacted information may continue to be postponed simply because foreign governments object to its release. The Bureau does not, as it cannot, assert that this new rule can be found anywhere in the governing JFK Act. Having failed to show that any harm would result from disclosure -- which was its burden under the law -- it now resorts to the simple declamation that a foreign objection is a sufficient basis for sidestepping the JFK Act.

¹[Cite chronology.]

Informant issue: "particularized evidence" versus "clear and convincing evidence." The August 16 letter mischaracterizes the Review Board's position. The FBI wrongly attributes to the Review Board the position that postponements can be sustained only when there is a "particularized showing." This was not the Review Board's position; it was the position enunciated by the FBI's own Director in 1992, and apparently abandoned in 1995. The Review Board simply stated -- as does the JFK Act -- that the FBI must provide "clear and convincing evidence" in support of its proposed redactions. The Bureau's August 16 letter, like its August 8 memorandum, offers no evidence whatsoever supporting its position. Rather than responding to the language of the JFK Act or citing the obligations it imposes, the letter simply restated the Bureau's internal institutional policies.

Informant issue: willingly compromised informants. The Review Board's August 11 memorandum showed that, in the past, the Bureau has released information that identified informants, and then challenged the Bureau to show any harm that resulted from the prior releases. Rather than answering the Review Board's challenge to provide the evidence of harm, the Bureau strongly, albeit irrelevantly, argued that it had never intentionally released information that would have compromised informants. The Review Board does not question the FBI's intentions, it questions only whether the Bureau satisfied its burden under the JFK Act. The Review Board finds that the Bureau did not.

The genuine issue is whether the release of information identifying persons who informed for the Bureau thirty years ago would compromise any Bureau activities in 1995. The FBI has provided no evidence whatsoever to support its assertions.

The Review Board respectfully urges that its formal determinations be upheld by the President and that the people of the United States have an opportunity to consider the information so-long withheld by their government.

Arg. 1: we missed the most salient point: foreign objection. Even when shown disclosures, they still don't consent.

Seek to protect future relationship.

Arg. 2: Board asserts that "disclosure cannot be based on anything less than a particularized showing." The Board did not say this -- the FBI Director did. The Board asked only for clear and convincing evidence.

Arg. 3 while FBI will release info, "we have not willingly compromised" informants.

"We disagree strongly, however, **with the Board's position that there is no need to protect [the informant's] status as a confidential source** since disclosure would, in our view, compromise the FBI's credibility with current sources and, thereby, undermine current understandings to the detriment of future national interest⁵."

Arg 4: Agree with need for document by document inquiry -- but should focus on interests. FBI is essentially unclear on the last point.

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