

January 6, 1997

Mr. Paul Lee
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150 Massachusetts
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Dear Mr. Lee:

I am writing in response to your memorandum dated August 31, 1996, on FBI symbol numbers.

I am the head of the team of ARRB analysts that works with FBI records, and, as such, I am intimately familiar with the Review Board's decisions on FBI records. I would like to caution that, in responding to your memorandum, I do not speak for the members of the Review Board, who might (at least in nuance or emphasis) articulate their approaches somewhat differently.

There is one point, however, to which each Review Board member would readily assent: the importance of implementing the JFK Act's presumption of full disclosure of information related to the assassination of President Kennedy. Researchers are, of course, fully justified in scrutinizing those cases where redactions are upheld. Nevertheless, an assessment of the Review Board's approach toward postponements should also include the thousands of FBI assassination records now opened in full which the Bureau had initially postponed, in whole or in part, under the JFK Act, and the many hundreds of additional records in which the *only* information that remains redacted is source-specific symbol numbers or file numbers.¹

As you know, the FBI used similar symbol numbers for both human and non-human sources. Postponements for these different types of sources present quite different issues under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). Your memorandum mostly addresses symbol numbers for human sources (which I will call "informant symbol numbers"), so I will speak to this issue in some detail, and then briefly touch on symbol numbers for non-human sources.

¹To date, the FBI has agreed to open in full nearly 1500 assassination records in which it initially asserted informant postponements, rather than attempting to defend the claimed postponements under the standards applied by the Review Board. In addition, the Review Board has voted to open in full over 600 FBI records that previously contained informant postponements.

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Clarification of Review Board Actions

Your memorandum asks for clarification of the Review Board's actions in two respects:

1. *Prefixes and Suffixes:* The Review Board has consistently released the prefixes and suffixes of informant symbol numbers, even in cases where it sustains (what we have taken to calling) 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.
2. *"T-symbols":* In no case has the Review Board postponed any part of a "T-symbol" -- indeed, to its credit, the FBI has unilaterally released these "temporary symbols" under the JFK Act.

Your memorandum also advanced several arguments for releasing informant symbol numbers in their entirety. I will try to explain the Review Board's actions in the light of your concerns.

Skepticism About the "Mosaic Theory"

Your memorandum questions whether the "mosaic theory" is a sufficient justification for postponing any part of informant symbol numbers. You suggest in this regard that "the FBI's concern is clearly *retroactive*," because the FBI routinely circulated investigative reports containing "T-symbols" outside of the Bureau. However, it appears to me that the use of *temporary* numbers to designate informants in the portions of reports that *were* disseminated outside of the Bureau, and the use of *permanent* symbol numbers in administrative pages *not* to be disseminated outside of the Bureau, suggest that the FBI was contemporaneously concerned that the recipients of these reports might deduce the identities of sources if the permanent symbol numbers were disclosed to them.² Why else

²For example, assume a hypothetical NY 4321-S, who ran a print shop that the Communist Party used for leaflets, newsletters, etc. If the FBI periodically circulated reports on the Communist Party that consistently referred to this informant as "NY 4321-S," readers might discern that NY 4321-S reported almost exclusively on printed material, and make logical deductions about his

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would the FBI take pains to ensure that recipients of its reports could not tell that the unnamed source in one report was the same as the unnamed source in a second report?

Your memorandum also expresses concern that the logic of the “mosaic theory” might extend to wholesale redaction of information provided by informants. I believe that this is a valid concern, insofar as 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 releasing the information. In striking this balance, the Review Board gives great weight to the public interest in the information provided. I do not believe that, in all of the FBI records it has voted on, the Review Board has postponed *any* information provided by a symbol number informant.³ In many cases, significant amounts of new information have been released.

Similarly, the Review Board has not assumed that the “mosaic theory” is equally applicable in all cases. For example, the Review Board has released the entire symbol number where the report is so general that it could not assist in deducing the informant’s identity.

Skepticism About the “Understanding of Confidentiality”

identity. However, if the same reports referred to the informant by T-symbols, which vary from report to report, the recipients would know only that the FBI had numerous sources of information that reported on a wide range of Communist Party activities -- printed literature being one among many.

³In a few cases, upon a sufficient showing of a current need for protection, information *about* informants that would readily lead to their identification (*e.g.*, family information, job title and place of employment) has been postponed.

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The Review Board has given some credence to the FBI's contention that the assignment of a symbol number to protect the identity of the informant is evidence of an understanding of confidentiality with the informant. Your memorandum suggests that the "understanding of confidentiality" asserted by the FBI is largely an after-the-fact fabrication intended to thwart release of information under the Freedom of Information Act (and now the JFK Act). I trust you do not dispute that the FBI sought to conceal the identities of its informants, even within the Bureau itself, long before the FOIA was passed. The use of symbol numbers to refer to informants in internal communications and the segregation of informant files in restricted-access Special File Rooms⁴ were part of this effort. In a sense, the issue is whether these precautions were wholly self-serving or whether they benefited the informants, as well as the FBI.

Your memorandum notes that security informants, as a matter of general Bureau policy, could be made available for testimony, and that, in later years, the FBI may have exaggerated the "threat" that the FOIA posed to its informant program. However, there is also evidence supporting the claim of informant confidentiality. Files for individual informants, including security informants, often document contemporaneous statements that the informant does *not* wish to testify or otherwise have his identity disclosed. The FBI seems to have honored such requests, and to have kept such individuals as informants despite their insistence on anonymity. I also am aware of one case where the Department of Justice was prepared to drop charges against several conspirators if prosecution would have compelled disclosure that one conspirator had been an FBI informant -- even after the FBI had terminated the informant relationship.

Moreover, the nature of an informant's role suggests that public disclosure could, in many cases, result in embarrassment and ostracism, if not worse. It seems likely that most people would not have taken on this role unless they expected that confidentiality would be honored. The fact that the FBI did not offer *absolute* protection in all cases does not demonstrate, to my mind, that symbol number informants had no contemporaneous basis for expecting *some* measure of confidentiality.

Your memorandum also suggests that, when any person providing information, including a symbol number informant, actually requested that the FBI keep his identity secret, this request was noted by the phrase "protect identity" or similar language. This is not my understanding of the FBI's reporting practices.

⁴See, e.g., Gerald K. Haines & David A. Langbart, *Unlocking the Files of the FBI: A Guide to Its Records and Classification System* xiii (1993).

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As I understand the procedures, when information from a symbol number informant was incorporated into a report for dissemination outside of the Bureau, the informant was assigned a T-symbol for that report, and the symbol number was provided only in the administrative pages that were not externally disseminated.⁵ Because this was the standard practice for information from symbol number informants, there was no need for the agent first recording information received from a symbol number informant to add the instruction “protect identity.” For this reason, I do not understand the lack of “protect identity” language in the report of information from a symbol number informant to evidence that the informant did not expect or desire confidentiality. Where, however, information was provided by a person who had no ongoing relationship with the FBI, the agent first recording the information added the phrase “protect identity” if he believed the person should not be identified as the source of the information in later reports that might be disseminated outside of the Bureau.⁶

The Public Interest in Disclosing Symbol Numbers

⁵When dissemination took the form of a letterhead memorandum (LHM), the informant was generally described in the LHM (*e.g.*, as “a reliable source” or “a second source”), and identified by symbol number in the accompanying “airtel,” which (like the administrative pages of a report) was not disseminated outside of the Bureau.

⁶Although the FBI initially redacted the names of many such “protect identity” sources under the JFK Act, the FBI is now releasing these names unilaterally. This change reflects two considerations: (1) the practical difficulties of proving to the Review Board a current need to protect these individuals, for whom the FBI typically does not have informant files; and (2) the fact that people who gave information to the FBI on one or a few isolated occasions are less likely to be harmed by disclosure than people who had ongoing informant relationships with the FBI.

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Your memorandum notes that redacting the “numeric” parts of informant symbol numbers prevents researchers from extracting some types of information from the records (for example, by independently assessing the reliability of informants’ reports over time). In some cases, this will be true. However, your memorandum seems to dismiss the important fact that it is precisely this process of compiling and comparing different reports from the same informant that, under the “mosaic theory,” allows deduction of the informant’s identity. Your suggestion that researchers are interested in informants’ reliability but not in their identities strikes me as implausible, in part because the latter is relevant to the former, and in part because the evidence suggests interest in both.⁷ In any case, there is an inescapable trade-off between giving researchers all information potentially relevant to an informant’s reliability and any effort to protect the informant’s identity. The Review Board has sought to strike an appropriate balance between these opposing interests.

Symbol Numbers for Non-Human Sources

As you note, the FBI’s use of several non-human sources or methods to which symbol numbers were assigned (*e.g.*, electronic surveillance and “black bag jobs”) is already a matter of official public record. Nevertheless, the FBI has appealed to the President a number of Review Board decisions involving non-human sources or methods to which symbol numbers were assigned. We have done our best to call the attention of the President to prior disclosures that we believe are 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.

Just before the holidays, 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 symbol-number source. We hope that this withdrawal portends a willingness to accede to the other Review Board decisions on this issue; however, the FBI has not yet withdrawn any further appeals.

Your memorandum raises the concern that the Review Board may postpone a symbol number for a non-human source under the mistaken assumption that it designates a human informant. I can assure you that the Review Board approaches postponements concerning human and non-human sources differently, and that the staff makes certain it knows what type of source is at issue before presenting such records for Review Board determination.

⁷See, *e.g.*, John Newman, *Oswald and the CIA* 231 (1995) (reporting interview in which Gerry Patrick Hemming opined on identity of FBI informant on Hemming’s activities).

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I wish to thank you for the careful thought you have given to this aspect of the Review Board's work.
I hope this letter addresses some of your concerns.

Sincerely yours,

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Chief Analyst For FBI Records

cc: The Members of the Review Board

David G. Marwell
T. Jeremy Gunn