

February 28, 1997

VIA FACSIMILE AND FIRST-CLASS MAIL

Mr. James M. Kovakas  
Attorney In Charge for FOI/PA Unit  
Civil Division  
U.S. Department of Justice  
901 E Street, N.W. -- Room 808  
Washington, D.C. 20530

Re: United States Department of Justice Civil Division's Compliance with the  
JFK Assassination Records Collection Act, 44 U.S.C. § 2107

---

Dear Mr. Kovakas:

Thank you for meeting with Phil Golrick and me on January 31, 1997, to discuss with you the initial Statement of Compliance that was submitted by the Civil Division and to review with you the efforts of the Civil Division generally to comply with the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 (Supp. V 1994) ("JFK Act"). We discussed several issues, as summarized below:

1. FOIA Files of the Civil Division. Since the Civil Division defends Federal agencies in suits arising under the Freedom of Information Act ("FOIA"), the Civil Division (and various U.S. Attorneys' offices) may have files for FOIA suits where the Government's disputed records relate to President Kennedy's assassination. Accordingly, it is important that the Civil Division's FOIA files be accounted for under the JFK Act. We recognize, however, that review, processing, and submission of case files accumulated after years of litigation might ultimately be burdensome and of minimal utility.

You have asked for Review Board guidance as to whether or not such FOIA records need to be processed as assassination records under the JFK Act. We have considered this matter, trying to balance the public interest in disclosure with the burden in retrieving and reviewing years of FOIA files.

Having reviewed a sample of FOIA files you made available for inspection,<sup>1</sup> it appears that much of the material, namely legal pleadings that presumably should be on file with the Federal courts, is already publicly available. Therefore, the Review Board proposes that DOJ do the following in lieu of processing all FOIA case files: (1) identify all FOIA-related litigation, referred by an agency to the Civil Division, that involve Kennedy assassination-related documents, including the case name, case number, the complaint filing date, and the federal court in which the case was filed;<sup>2</sup> (2) obtain from the courts copies of the docket sheets for the cases; (3) request the relevant courts, in writing, to permanently preserve the case files for those FOIA cases the Civil Division has identified; (4) include these materials (FOIA listing, docket sheets, and preservation request letters) in the JFK Assassination Records Collection; and (5) retrieve the Civil Division's FOIA files relating to the Kennedy assassination and review them for the purpose of locating: (a) all memoranda and writings that were *not* filed in court<sup>3</sup> and (b) all records that were submitted *in camera* or under seal to the courts. Once located, these records should then be shown to the Review Board staff for a determination whether they should be processed under the JFK Act as "assassination records."

---

<sup>1</sup> At our January 31 meeting, you made available approximately 15 boxes of files relating to FOIA litigation commenced by a researcher of the Kennedy assassination, Mr. Harold Weisberg. We inspected all the boxes, and found that almost all of the files consisted of pleadings filed in federal court or legal research materials pertaining to the FOIA.

<sup>2</sup> We have been advised by the Assassination Archives & Research Center (Mr. James Lesar) that the following individuals have brought cases involving FOIA requests for records relating to the Kennedy assassination: Harold Weisberg; Mark Allen; G. Robert Blakey; Paul Hoch; Gary Shaw; James Lesar; Anthony Summers; Sherry Ann Sullivan; Alan Fitzgibbon; John Davis; Tom Mangold; Assassination Archives & Research Center; James Campbell; Judith Exner; and Bud Fensterwald. To assist you, enclosed as Attachment A to this letter is a list of FOIA cases related to the Kennedy assassination that was provided to us by Mr. Lesar, who as you know has been involved in FOIA litigation relating to the Kennedy assassination. We have not verified the list for accuracy or comprehensiveness; this list can be probably be verified and supplemented, in part, through a search of the LEXIS or WESTLAW databases, as well as DOJ case indices.

<sup>3</sup> The Review Board would be interested, not in memoranda that analyze pure legal issues regarding FOIA, but rather in documents of a factual nature that describe or relate to the assassination records that are the subject of the litigation, or that describe the searches which were done in response to the FOIA requests, or that relate to agency or DOJ decisions to release or to withhold assassination documents.

In addition to reviewing the DOJ case files, we would request that the case docket sheets be reviewed to identify any Government pleadings filed under seal or *in camera*; to the extent those pleadings attach, describe or relate to documents withheld by the Government, or relate to the document searches conducted in connection with the FOIA request, those submissions will need to be included in the JFK Records Collection.

We have tried to develop an approach that will maximize disclosure to the public while minimizing any unnecessary or burdensome work. We believe that the procedures we have outlined above are the most reasonable and economical way to assure full disclosure of FOIA-related records pertaining to the assassination and pertaining to the U.S. Government's policies on the disclosure of such records.

2. Papers from Criminal Division File No. 129-012-3. The Civil Division will not interpose any objections to releasing a handful of documents relating to legal issues involved in the donation of certain materials by the Kennedy family to the National Archives. Those papers, which originated with a file from the Criminal Division, will be returned to that Division for release with that file.

3. Records Relating to the Department of Justice's Review of the Warren Commission Report. In 1966, then Attorney General Ramsey Clark requested a number of high-level DOJ officials to review the Warren Commission Report, including the autopsy findings. Some of the officials were in the Civil Division, including Barefoot Sanders, AAG for the Division, Carl Eardley, the 2nd Assistant reporting to Sanders, and Harland F. Leathers, Chief of the Litigation Section of the Civil Division. In 1967, Mr. Sanders had requested the Secret Service to document the chain of custody with respect to autopsy materials. *See* documents attached hereto.

Accordingly, we have asked you to locate any files, including unofficial working files, relating to the work of Messrs. Sanders, Eardley and Leathers concerning the Warren Commission Report or the autopsy findings. In addition, you said you would check for any central file created for this project, although you advised that identifying such a file may not be practicable.<sup>4</sup>

---

<sup>4</sup> You explained that the majority of Civil Division records are organized as litigation/case records and are indexed under the case name. Other non-litigation files may be classified under a "miscellaneous" category of files without any further description.

Mr. Jim M. Kovakas  
February 28, 1997  
Page 4

3. Marina Oswald v. United States Case File. You are still attempting to locate this file, which pertains to a suit brought by Marina Oswald to recover compensation for the alleged taking of the rifle used in the assassination. This file will need to be reviewed to determine whether it contains any assassination records.
  
4. Final Declaration of Compliance. The Civil Division's Final Declaration of Compliance will need to take account of these additional matters that we discussed. The Final Declaration of Compliance should be executed under oath in the form prescribed by 28 U.S.C. § 1746.

Sincerely,

Ronald G. Haron  
Senior Attorney