

VIA FACSIMILE & FIRST CLASS MAIL

October 10, 1997

The Honorable James H. Billington
Librarian of Congress
101 Independence Avenue, S.E.
Washington, D.C 20540-1000

Re: Library of Congress Compliance with the JFK Assassination
Records Collection Act, 44 U.S.C. § 2107

I am writing to request that the Library of Congress submit to the Assassination Records Review Board ("Review Board") a formal report demonstrating that it has complied with its obligations under the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 (Supp. 1997) ("JFK Act"). This formal report would detail the efforts of the Library of Congress in identifying and making available to the public records relating to the assassination of President Kennedy. The Review Board is currently obtaining comparable reports from other relevant Federal agencies, including the National Archives & Records Administration ("NARA") and the Presidential Libraries such as the John F. Kennedy and Lyndon B. Johnson Libraries.

In 1994, the Manuscript Division of the Library of Congress advised the Review Board that it had "not identified any records pertaining to the assassination of President John F. Kennedy in its classified collections," but would inform the Review Board "if we receive any classified papers relating to the assassination." See June 16, 1994 Letter from Audrey A. Walker to William Joyce (Attachment A hereto). No information was provided to allow us to assess how the Manuscript Division searched its closed records and how it concluded that there were no materials relating to the assassination. Since then, we have identified certain closed collections that *may* contain documents relating to the assassination of President Kennedy. These include collections of papers donated by: [cite examples]. Some accounting must be done to determine whether these papers, which are not open to the public, contain any materials relating to the assassination of President Kennedy.

In 1996, we asked that the Library of Congress and the Congressional Research Service ("CRS") undertake efforts to locate any records in their custody that relate to President Kennedy's assassination and to designate such records under the JFK Act. See August 13, 1996 Letters from David G. Marwell to James H. Billington (Library of Congress) and Daniel Mulhollan (Congressional Research Service) (Attachments B and C hereto). In our correspondence, we identified specific categories of

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records relating to the assassination that we had reason to believe would be in the possession of the Library of Congress and CRS.¹ In our correspondence, we also requested that the Library of Congress “designate an official at the Library who can act as a liaison with the Review Board” in order “to ensure that the Library of Congress is in full compliance with the JFK Act” (Attachment B). At present, the Library of Congress has not forwarded any documents to the JFK Assassination Records Collection (“JFK Collection”) at NARA, nor have we been apprised of what efforts were taken, if any, to locate assassination-related records within the custody or control of the Library of Congress.²

A. The Purpose for Requiring the Library of Congress to Submit a Compliance Report Under the JFK Act

The purpose of the JFK Act is to assure the American people that the United States Government has identified, located, and released all records relating to the assassination of President Kennedy. Indeed, one of the purposes of the JFK Act is to certify to the public that the United States Government is not withholding relevant materials related to the assassination. *See, e.g., Assassination Materials Disclosure Act*, H. R. Rep. No. 625, Part 2, 102d Cong. 2d Sess. 9 (1992) (“The Federal Government’s failure to release official materials has contributed to numerous

¹ In requiring the Library of Congress to identify and designate assassination records under the JFK Act, it is not our intention to require the Library to survey or identify published books and other materials that are generally available to the public. Rather, we are mostly interested in having the Library identify archival or special collections, such as manuscripts, that are unavailable elsewhere, including papers donated by government officials and other records that may remain classified or are otherwise unavailable to the public.

² On September 26, 1996, we were advised by CRS that it had “to first study the Act thoroughly and consult with appropriate congressional committees” before complying with its obligations under the JFK Act. We were also told that “the Librarian of Congress [would] respond under separate cover” to our August 13, 1996 request for compliance with the JFK Act. *See* September 26, 1996 Letter from Daniel P. Mulhollan to David G. Marwell (Attachment D hereto). Since then, we have no record of any further communications to the Review Board from either CRS or the Library of Congress (if there is such correspondence, please let us know). This underscores the need for the Library of Congress to document in a formal manner its efforts to locate any assassination-related materials in its custody.

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conspiracy theories and fueled charges of government complicity in the assassination . . . [A] salutary purpose is served in opening these files [relating to the JFK assassination] to allay the suspicion of government cover-up.”).

The Review Board has considered how it, along with the relevant Federal agencies, can best demonstrate to the American public that a thorough, good faith, and diligent effort has been made to locate and release all remaining assassination-related records within the control of the United States Government (and that the Government is not withholding any such materials from public disclosure). To make this showing to the public, the Review Board has requested the relevant Federal agencies to provide a complete and specific accounting of their efforts to locate and release assassination-related records, including a full explanation for any destruction of such records.

We specifically seek the the cooperation of the Library of Congress in assisting the Review Board in discharging its responsibility of assuring the public that the goals of the JFK Act have been accomplished to the greatest reasonable extent. The role of the Library of Congress as the national library for the United States, and thus custodian for numerous public records and papers, makes the Library of Congress vitally important to successful implementation of the law. Indeed, the JFK Act specifically identifies the Library of Congress as covered by the JFK Act. *See* 44 U.S.C. § 2107 (3)(5)(C). Therefore, it is particularly important that the Library of Congress account for its work in identifying and locating, among its holdings, those records relating to the assassination.

B. The Procedures for Documenting JFK Act Compliance by the Library of Congress

Pursuant to its Congressional mandate under the JFK Act to “create an enforceable, independent, and accountable process for the public disclosure of such records,” 44 U.S.C. § 2107 (2) (a) (3), the Review Board has requested the relevant Federal agencies to adhere to a formal compliance program (hereinafter “JFK Act Compliance Program”) outlined below and devised by the Review Board pursuant to its powers under Section 7(j)(1)(A), (B), (C), (D), and (F) of the JFK Act. We hereby request that the Library of Congress, including CRS, also participate in this program and undertake the following measures by the dates provided (these dates are set in view of the fact that the Review Board’s operations are scheduled to expire on September 30, 1998).

The Review Board requests that the procedures outlined below be followed by the Library of Congress³:

³ Throughout this letter, and for purposes of the compliance program, the Library of

1. Designation of Agency Compliance Official (or Officials) and Statement of Intent to Comply with the JFK Act. We request that, by October 27, 1997, the Library of Congress designate a Compliance Official who will be responsible for ensuring that the Library of Congress has complied with its obligations under the JFK Act, including the identification of assassination records from among its closed holdings and the transmission of those records to the JFK Collection at NARA in College Park, Maryland.

We also request that, by October 27, 1997, the Library of Congress convey its agreement to adhere to the compliance procedures outlined in this letter. To the extent that any compliance procedure described below appears to be unreasonable or to present difficulties that we may not have anticipated, please explain why and make alternate suggestions to us.

2. Initial Statement of Compliance. We request that the Library of Congress submit, by December 22, 1997, its initial written report regarding its compliance with the JFK Act. This report should set forth the steps that the Library of Congress has taken to locate and process assassination records that may reside among its holdings. The Library of Congress' initial submission will constitute a preliminary version of what will be its Final Declaration of Compliance for the American public setting forth the the efforts of the Library of Congress in identifying and releasing records relating to President Kennedy's assassination (*see* item number 4 below).

The Statements of Compliance for the Library of Congress should include, to the fullest reasonable extent, the following information:

- a. A description of the steps that the Library of Congress has taken to identify and locate assassination-related records among its holdings, particularly holdings that remain classified or that are otherwise not fully available to the public.⁴ This description should include, but is not limited to, an identification of major record collections, holdings, and files reviewed by the Library of Congress; any research or finding aids, file indices, or computerized databases that were consulted by the Library of Congress; any leads or information provided to the Library of Congress to assist it in locating assassination records in its custody; the names and titles of the persons who conducted searches of the Library's holdings; and any other criteria used by the Library of Congress to locate assassination records.
 - b. To the extent that any assassination-related records have been destroyed by the Library of Congress, a full and specific explanation of the circumstances surrounding the destruction of such records.
 - c. As of the date of the Compliance Report, the status of remaining work that needs to be completed by the Library of Congress in order to comply fully with the JFK Act, including an identification of the remaining categories of records that must be processed and transmitted to the JFK Collection, a description of any additional searches for files that must be done, and the projected date(s) for completion of these tasks.
3. Review Board Interview With Agency Compliance Officials. Shortly after the submission of the initial Statement of Compliance by the Library of Congress, we will ask that the Library's Compliance Official (as well as any persons who helped prepare the Library's initial Statements of Compliance) be made available to the Review Board for an interview regarding its searches for, and identification of, assassination records. The interview will be used as an opportunity to resolve any outstanding questions regarding the work of the Library of Congress, including any follow-up tasks to be completed. The Review Board anticipates that this interview will be conducted in January 1998.
 4. Submission of Final Declarations of Compliance. By February 23, 1998, the

Library of Congress should expect to complete the process of identification, location, and declassification of its assassination records at which time it should submit to the Review Board a final report certifying its compliance with the provisions of the JFK Act. The final report should consist of a Final Declaration of Compliance from the Library of Congress in which it certifies, under oath, its compliance with the JFK Act.

This Final Declaration shall set forth all of the information initially set forth in the initial Statement of Compliance and shall also supplement the initial Statement of Compliance by detailing any further steps that were conducted by the Library of Congress to identify and locate assassination records. The Review Board intends to include the Final Declarations of Compliance of the various federal agencies in its final report to Congress.

5. Compliance Depositions. In early 1998 after submission of the Final Declaration of Compliance by the Library of Congress, the Review Board, pursuant to its statutory authority, may decide to conduct the deposition, under oath, of the Compliance Official for the Library of Congress (along with any other person with responsibility for complying with the JFK Act). Generally, the decision to take a compliance deposition of a Federal agency will be made on a case by case basis, taking into account the importance of the agency to the work of the JFK Act and the sufficiency of the agency's efforts to account fully for its compliance with the JFK Act. In the event that the Review Board decides to commence a compliance deposition of the Library of Congress, the responsible designee(s) will be expected to testify with respect to any and all issues relating to the Library's record search, including the scope of its search, the identity of files searched, the destruction of any relevant records, and any other matters set forth in the Final Declaration of Compliance. Any person obligated to appear for a deposition under oath shall be fully entitled to have legal representation.

We look forward to receiving, by October 27, the initial response of the Library of Congress that designates its Agency Compliance Official(s) and includes its agreement to the procedures outlined in this letter. To the extent that you have any questions or suggestions regarding the JFK Act Compliance Program, please do not hesitate to contact me or our Associate General Counsel, Ronald G. Haron, at (202) 724-0088.

Thank you for your cooperation with our work.

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Sincerely,

T. Jeremy Gunn
Executive Director and
General Counsel

cc: Daniel P. Mulhollan, Director
Congressional Research Service
John J. Kominski, General Counsel
Library of Congress

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